IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.349 of 2024

Arising Out of PS. Case No.-26 Year-2019 Thana- VIGILANCE District- Patna
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Suresh Prasad Singh @ Suresh Prasad Chaudhary S/o Shri Bakhri Singh Resident of Shanti Nagar Market, West Patel Nagar, L.B S., Police Station-Shastri Nagar, District-Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Department of Vigilance

... ... Respondent/s
==

Appearance :

For the Petitioner/s	:	Mr. Piyush Tiwari, Advocate Mr. Saket Gupta, Advocate
For the Respondent/s	:	Mr. Navin Kumar Pandey, Advocate Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
CAV JUDGMENT

Date : 26-06-2025

1. The instant Revision Application is directed against an order dated 09.02.2024, passed by the learned Special Judge, Vigilance, Patna, whereby and whereunder, the learned Special Judge partially allowed the application filed by the accused/petitioner and directed the concerned Bank to allow the Revisionist to operate the bank account, however, holding an amount of Rs. 16,54,931/-, credited during the check period of alleged commission of offence.

2. It is pertinent to mention that FIR No. 26 of 2019 has been registered by the Vigilance Department,

Patna for the offences punishable under Section 13(2) read with Section 13(1) of the Prevention of Corruption Act and Sections 109 and 120B of the Indian Penal Code against the Revisionist and his wife on the allegation, inter alia, that the accused while discharging his duty as the Executive Engineer, Road Construction Department had assessed disproportionate assets to his known source of income during the period between 21.10.1991 to 08.06.2019.

3. The case of the Revisionist, on the other hand, is that he began his career in the Road Construction Department of the State Government, when he was appointed to the post of Assistant Engineer. He formally joined the department by submitting his joining report on October 1, 1991. From that point onward, he diligently carried out his responsibilities and duties in accordance with the rules, regulations, and laws governing the services of the State Government.

4. Over the years, the applicant worked to fulfill all the criteria and requirements necessary for career advancement within the department. Upon successfully meeting these conditions, he was granted promotion to the

post of Executive Engineer. This promotion was formalized through an official order issued on December 31, 2009, however, the promotion was made effective retrospectively from the year 2006.

5. After being promoted to the post of Executive Engineer, the petitioner was initially posted at the Road Construction Division, located in Begusarai, where he continued to serve in his new capacity. Subsequently, he was transferred within the department, taking charge as the Executive Engineer of the Road Division in Patna (West). Throughout these postings, the petitioner continued to serve in the Road Construction Department of the State Government, performing his duties as per the requirements and expectations of his role. During his employment as the Executive Engineer, Road Construction Department, he was apprehended by the Vigilance Department, Patna in a Trap Case while allegedly accepting bribe of Rs. 14,00,000/-. After being apprehended, Vigilance Case No. 23 of 2019, dated 08.06.2019, under Section 7(a)/12 of the Prevention of Corruption Act, 1988 (Amended 2018) and Sections 109 and 120B of the Indian Penal Code, was registered and

charge-sheet was submitted against the Revisionist.

6. The Vigilance Department filed the charge-sheet in this case on 30th of September, 2022 and the matter is currently pending at the stage of Section 207 of the Criminal Procedure Code before the Learned Special Court in Patna. During a search conducted at the residence of the Revisionist, the Vigilance Department seized several documents, including bank accounts, passbooks, cheque books, and other papers. At the time the case was registered, the Revisionist's salary account (Account No. 10076909819) was maintained with the State Bank of India, Sheikhpura Branch, Rajabazar, Patna.

7. During investigation, the agency issued a notice under Section 91 Cr.P.C. to the concerned SBI branch to obtain information relating to the aforementioned bank account, which the bank duly provided and the said salary account was frozen on the ground that the petitioner had deposited proceeds of crime in the said account.

8. When the Revisionist/accused approached the bank to withdraw some money from his salary account for daily expenses, he was informed by the bank that his salary

account had been frozen on the directions of the Vigilance Department.

9. The Learned Trial Court received an application from the Revisionist requesting unfreezing of his salary account. In response, the Vigilance Department submitted a report to the Learned Trial Court regarding this application, stating that while the Revisionist's account may be unfrozen, the funds accumulated during the check period ought not to be released.

10. Section 102 of the Code of Criminal Procedure empowers a Police Officer to seize certain property. The provisions runs thus: -

> *"(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the Commission of any offence.*
>
> *(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.*
>
> *(3) Every police officer*

acting under Sub-Section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and when required and to give effect to the further orders of the Court as to the disposal of the same.

Provided that where the property seized under Sub-Section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the

> *provisions of sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale."*

11. Plain reading of the above-mentioned provision goes to suggest that any Police Officer may seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the Commission of any offence. Thus, any article having nexus with commission of any offence may be seized.

12. Sub-section (3) of Section 102 Cr.P.C. obligates a Police Officer to report the seizure of any article forthwith to the Magistrate having jurisdiction and where the property seized is such that it cannot be, conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, the Police Officer may give custody thereof to any person on his executing a bond undertaking to produce the property before the Court as and

when required and to give effect to the further orders of the Court as to the disposal of the same.

13. The learned Advocate appearing on behalf of the petitioner submits that the Investigating Officer of this case failed to comply with the provision of Section 102(3) and failed to forthwith report the freezing of Bank account of the Revisionist to the Magistrate having jurisdiction. Therefore, the petitioner is entitled to use the seized money from his salary account.

14. In support of his contention, the learned Advocate appearing on behalf of the petitioner refers to a decision of the Hon'ble Supreme Court in the case of ***State of Maharashtra v. Tapas D. Neogy,*** reported in ***(1999) 7 SCC 685***. In the said report, the Hon'ble Supreme Court held that bank account of accused or any of his relations constitutes "property" and if circumstances exist create a suspicion of commission of offence in relation to bank account, Section 102(1) is attracted empowering the Police Officer, investigating the offence, to seize the bank account and issue order prohibiting the account from being operated

upon.

15. The learned Advocate for the petitioner next refers to an unreported decision of this Court in the case of ***M/s IMZ Corporate Private Limited & Anr. v. State of Bihar & Ors. (Cr.W.J.C. No. 378 of 2020)***, decided on 23rd of December, 2020. In the aforesaid case, the petitioners prayed for issuance of writ/direction upon the Respondents nos. 4 and 5 to forthwith withdraw their direction to the bankers of the petitioner company being Respondent Nos. 6 and 7 for debit freeze of the bank accounts of the petitioner company and to allow the petitioner to make debit transaction in its account and also for issuance of writ in the nature of mandamus, directing the Respondent Nos. 6 and 7 to defreeze the bank accounts of the petitioner's company with the respondent bank.

16. In this decision, a police case was registered under Sections 419, 420, 406, 467 and 471 of the Indian Penal Code on the basis of a written complaint submitted by Respondent No. 8, Mr. Siddharth Kasana, being the Director of one M/s MSD Telematics Private Limited that used to provide GPS service in different departments, like,

Excise, BSFC, Municipal Corporation and Mining Department in the State of Bihar and Jharkhand. It was alleged that the complainant used to stay abroad and one Ashmeet Singh was appointed as Director (Operation) of the Company to look after its activities in Bihar and Jharkhand. It is alleged that the said Asmeet Singh in collusion with others misappropriated crores of rupees of the company.

17. Police took up the case for investigation and freezed bank accounts of the Petitioner No. 1/company under Section 102 of the Cr.P.C.

18. This Court under the above-mentioned facts and circumstances held that sub-section (1) of Section 102 Cr.P.C. talks of power of a Police Officer to seize any property which may be alleged or suspected to have been stolen. In the present case, the allegation is not of stealing any property by Petitioner No. 1. The allegation was that Sri Ashmeet Singh entered into a conspiracy with other employees and misappropriated the money lying in the account of Petitioner No. 1. Under such circumstances, a Co-ordinate Bench of this Court directed Respondent Nos.

6 and 7 to allow the Petitioner No. 1 to operate its bank account in its usual course of business.

19. The factual circumstances of the instant case is absolutely different from the facts of the above-mentioned unreported decision.

20. This is a case of disproportionate assets of the petitioner in excess of his known source of income. The Investigating Officer found that a sum of Rs. 16,54,931/- was deposited during the check period in the salary account of the petitioner. The said amount was over and above the amount which was received by the petitioner as his salary.

21. The learned Advocate appearing on behalf of the petitioner also refers to another unreported decision in ***CRM-M-12969-2022 (O & M)*** pronounced on 2nd of December, 2023 by a Co-ordinate Bench of Punjab & Haryana High Court in the case of ***Central Bureau of Investigation v. Arvinderjeet Kaur Puri***.

22. The Co-ordinate Bench of Punjab & Haryana High Court, on examination of Section 102 of the Cr.P.C., held that the requirement of such a seizure is that there must

be a nexus between the bank account and the offence alleged, so as to give rise to a suspicion qua the commission of an offence.

23. It is submitted by the learned Advocate appearing on behalf of the petitioner that in the instant case only salary of the petitioner was deposited and there was no nexus between the bank account and the alleged offence. Moreover, no intervening circumstances have been brought to the notice of this Court which would warrant freezing of the bank accounts of the petitioner, more so, since the CBI has not disputed that the bank accounts of the petitioner were not made part of the charges-sheet or the case property.

24. Same view was taken by the High Court of Himachal Pradesh, Shimla in ***Cr. Revision No. 200 of 2022, Anita Aggarwal v. State of H.P.***, decided on 9th of March, 2023.

25. Very recently, the Hon'ble Supreme Court in the case of ***Shento Varghese v. Julfikar Husen & Ors.,*** reported in ***(2024) 7 SCC 23*** was pleased to consider the

scope of Section 102 and 102(3) of the Cr.P.C. While examining an order passed by the High Court of Madras allowing the claim of the respondent-accused for defreezing of their bank accounts, in paragraph no. 16 of the judgment, the Hon'ble Supreme Court held as hereunder: -

> *"16. This requires us to consider whether validity of the seizure order is contingent on compliance with the reporting obligation? In our view, the validity of the power exercised under Section 102(1)CrPC is not dependent on the compliance with the duty prescribed on the police officer under Section 102(3)CrPC. The validity of the exercise of power under Section 102(1)CrPC can be questioned either on jurisdictional grounds or on the merits of the matter. That is to say, the order of seizure can be challenged on the ground that the seizing officer lacked jurisdiction [Nevada Properties (P) Ltd. v. State of Maharashtra, (2019) 20 SCC 119 : (2020) 3 SCC (Cri) 782] to act under Section 102(1)CrPC or that the seized item does not satisfy the definition of*

> *"property" [Swaran Sabharwal v. Delhi Police, 1987 SCC OnLine Del 221 : (1990) 68 Comp Case 652] or on the ground that the property which was seized could not have given rise to suspicion concerning the commission of a crime, in order for the authorities to justify the seizure."*

26. In the instant case, it is the grievance of the petitioner that freezing of bank account was not reported forthwith to the jurisdictional Magistrate. Even assuming that the Investigating Officer failed to report seizure of bank account forthwith to the jurisdictional Magistrate, its validity cannot be called upon to question.

27. Relying on the aforesaid judgement of the Hon'ble Supreme Court in ***Shento Varghese*** (supra), this Court can safely held that the validity of the exercise of power under Section 102(1) can be questioned either on jurisdictional grounds or on the merits of the matter.

28. The learned Advocate appearing on behalf of the petitioner did not challenge the jurisdiction of the Investigating Officer. From the materials on record, this Court finds that the amount of money, which was not

directed to be used by the petitioner is the amount deposited by him in the bank account during the check period. Thus, there is prima facie reason to hold that the said money is a part of tainted property. Therefore, the learned Trial Judge correctly refused the prayer of the petitioner to defreeze the said bank account.

29. For the reasons stated above, I do not find any illegality or irregularity in the impugned order and accordingly the instant Revision is dismissed on contest.

30. However, there shall no order as to costs.

(Bibek Chaudhuri, J)

skm/-

AFR/NAFR	NAFR
CAV DATE	18.06.2025
Uploading Date	26.06.2025
Transmission Date	26.06.2025