

CRR 2512 of 2019

**Iltush Ahmed Sarkar
Vs.
The State of West Bengal**

Mr. Prantick Ghosh
Mr. Prasad Bhattacharyya ...for the petitioner

Mr. Joydeep Biswas
Ms. Suchismita Dutta ...for the State

A report submitted on behalf of the State, signed by S.I of Police, Nischinda Police Station dated 15.1.2025, is taken on record.

Being aggrieved by the order dated 1st August, 2019 passed by the learned Chief Judicial Magistrate, Howrah in G.R. case no. 121 of 2018, the present application has been preferred by the petitioner. By the order impugned, the court below was pleased to reject the petitioner's prayer for de-freezing three accounts, two in the name of petitioner and the other, in the name of one Mayna Bibi.

Petitioner submits that the investigating officer under the pretext of investigation, has freezed the aforesaid bank accounts. He further submits that the petitioner filed a writ petition being W.P. no. 1059(W) of 2019 seeking writ of mandamus to revoke the instruction given by the investigating officer and this court by an order dated 7.2.2019, was pleased to give liberty to the petitioner to file appropriate application before the Trial Court seeking cancellation or lifting the instruction of freezing order. In presence of such direction, the petitioner filed an application with a prayer to de-freeze the said accounts and the court below after filing such application, was pleased to call for a report from the

Investigating Officer. Thereafter, on perusal of the report of the Investigating Officer, the court below was pleased to reject the petitioner's prayer by the order impugned.

Being aggrieved by that order, the petitioner's contention is that from the confessional statement recorded during investigation, it appears that there is no reason to freeze the said accounts. He further contended that elementary rule is that property sought to be seized or frozen must be either stolen property or such property is suspicious of the commission of any offence. In the present case, no circumstances attended upon the bank account or its operation that led the police to suspect that any offence was committed in respect of the said account. The Investigating Officer did not collect single piece of document to show that the property of the petitioner is stolen or suspicious. Moreover, the charge-sheet submitted by the Investigating Officer does not indicate that Section 102(2) of the Code of Criminal Procedure was complied by the Investigating Officer. He further contended that the order of freezing the bank account has been made gross violation of law and the court below disposed of the application without assigning any reason and as such, the order is liable to be set aside and the order for de-freezing the bank accounts may be passed in favour of the petitioner.

The petitioner in this context has relied upon the judgment of **Gulam Sarvar Vs. State of Maharashtra** reported in **(2018) SCC Online Bombay 164** and another judgment of **R. Chandrasekar Vs. Inspector of Police, Fair Land Police Station, Salem and another** reported in **2002 (5) CTC 598**.

Learned counsel for the State submits that sufficient incriminating materials have been collected by the Investigating Officer during investigation and he also submits a report before this court today, in support of his contention that there was sufficient grounds for freezing the said account.

I have perused the report which discloses that Mayna Bibi is mother-in-law of the accused, Iltush Ahmed Sarkar and charge-sheet has already been submitted against the accused. The accused/petitioner during investigation, confessed before police that he used the account no. 50160009673680 of Mayna Bibi and report further discloses that after perusing the bank statement of the account of Mayna Bibi, it was learnt that there was existence of huge transaction of the said account and Mayna Bibi failed to produce the transaction details. In the said report, the Investigating Officer has also annexed the statement of three accounts being no. 50160000196553, and 10160003132830 in the name of petitioner and another account being no. 50160009673680 in the name of Mayna Bibi.

It is no more res integra that the bank account of an accused person and that of his relative constitute "Property" for the purpose of Section 102 of Code of Criminal Procedure. Where the accused person did not offer explanation for the discrepancies in their bank account and investigating officer is in possession of materials pointing out circumstances which create suspicion of the commission of an alleged offence, the investigating officer in law can legitimately seize the bank accounts after following procedure laid down in Sub-section (2) & (3) of Section 102. When the question of custody of suspected stolen property arises, the

normal rule is that in case, the accused is discharged or acquitted after trial, the property would be restored to the person from whose custody it was taken. In case, the accused is convicted, the person from whose possession, it was stolen would be entitled to it's possession.

The case laws cited by the petitioner in **R. Chandrasekar's case (supra)**, it appears that the said case was in connection with an allegation under Section 465/468/471/420/120 of the Indian Penal Code but in the present case, it relates to an offence under Section 379/395/397/412/413/414/120B of the Indian Penal Code and as such, it is clearly distinguishable. Furthermore, in the judgment of **Gulam Sarvar's case (supra)**, it was clearly held that learned Public Prosecutor could not show any suspect entries in the account and moreover, the relevant account was a salary account of the petitioner. In the present context, there are sufficient materials in the case diary and also in the absence of proper explanation from Mayna Bibi, prima facie, a suspension has been raised by the petitioner in connection with the aforesaid entries in the account and as such, the said case law relied by the petitioner is also factually distinguishable with the present case.

In thorough assessment of the facts of the case and the materials collected during investigation, I do not find that the order impugned passed by the court below suffers from any impropriety or perversity which calls for any interference by this court, invoking jurisdiction under Section 482 of the Code of Criminal Procedure.

In such view of the matter, the revisional application being CRR 2512 of 2019 stands dismissed.

Urgent Photostat certified copy of this order, duly applied for, be given to the parties upon compliance of all requisite formalities.

(Dr. Ajoy Kumar Mukherjee, J.)