

A.F.R.

**High Court of Judicature at Allahabad
(Lucknow)**

Neutral Citation No. - 2024:AHC-LKO:9081-DB

Court No. - 10

Case :- CRIMINAL MISC. WRIT PETITION No. - 7850 of 2023

Petitioner :- M/S Brijwasi Sarraf Thru. Its Prop. Namely Sanjeev Kumar Agarwal

Respondent :- Union Of India Thru. Secy. Ministry Home Affairs Deptt. Cabinet Secrt. New Delhi And Others

Counsel for Petitioner :- Vinod Kumar Singh

Counsel for Respondent :- A.S.G.I., Amit Jaiswal Ojus Law, C.S.C., Sudhir Kumar, Vijay Kumar Dubey

Hon'ble Mrs. Sangeeta Chandra, J.

Hon'ble Ajai Kumar Srivastava-I, J.

(Oral)

1. Heard learned counsel for the petitioner, Sri Amit Jaiswal, learned counsel for the opposite party no.10, Learned A.G.A. for the State Respondents and Sri Sudhir Kumar, Advocate, who has appeared and filed his vakalatnama on behalf of the opposite party no. 11 in the Registry yesterday.

2. The instant writ petition has been filed by the petitioner with the following main reliefs:-

(i). Issue a writ, order or direction in the nature of certiorari whereby order passed by opposite party directing the bank to freeze the current account 407010200000347; IFSC Code IFSC-

UTIB0000407 existed in Branch Hawett Road, Lucknow in the Axis Bank Ltd. of petitioner's firm be quashed and set aside.

(ii). Issue a Writ, Order or Direction in the nature of mandamus directing the opposite parties no. 9 to de-freeze the current account 407010200000347; IFSC Code IFSC-UTIB0000407 existed in Branch Hawett Road, Lucknow in the Axis Bank Ltd. of the petitioner's firm and the petitioner may be allowed to operate the account as earlier he was able to operate.

(iii). Issue a Writ, Order or Direction in the nature of mandamus commanding opposite parties specifically opposite party no. 10 i.e. Branch Manager, Axis Bank Ltd., Branch Hawett Road Shivaji Marg, 226001, Lucknow, that he may not permit to the opposite parties no. 5 to 9 to deduct any amount from the current account the current account 407010200000347; IFSC Code IFSC- UTIB0000407 existed in Branch Hawett Road, Lucknow in the Axis Bank Ltd. of the petitioner's firm, in any manner, during pendency of the present writ petition.

3. It is submitted by learned counsel the petitioner that seizure made by the Investigating Officer in these cases have not been reported to the Magistrate having jurisdiction, therefore, due to non-compliance of provisions contained under Section 102 (3) of Code of Criminal Procedure (*hereinafter referred to as 'Cr.P.C.'*) such seizure is not sustainable in the eye of law. His further submission is that freezing of account of the petitioner amounts to deprivation of his right to property as the money in his account belongs to the petitioner.

4. Per contra, learned Additional Government Advocate argued that the question as to whether Section 102 (3) Cr.P.C. is mandatory or directory, is no more res

integra, has already been decided by a Co-ordinate Bench of this Court at Allahabad in ***Amit Singh v. State of U.P.***¹ that Section 102 (3) Cr.P.C. is not mandatory but it is directory. It was also observed that non-reporting of the seizure forthwith, as provided under Section 102 (3) Cr.P.C., shall not ipso facto render the seizure illegal particularly as no period is specified and its consequences have not been provided. He has also submitted that the petitioner has a statutory remedy as provided under Sections 451 to 457 Cr.P.C. against any seizure made under Section 102 Cr.P.C. Therefore, he prays that the instant writ petition is also liable to be dismissed.

5. An affidavit of service filed today by Sri Vinod Kumar Singh, learned counsel for the petitioner, is taken on record.

6. Learned A.G.A. for the State has produced before this Court written instructions sent by the Sub-Inspector of Police, Cyber Crime Cell Police, Police Station- Amroli, District- Surat City, Gujarat and also from Cyber Police Station, Pune, Maharashtra.

7. Sri S.P. Singh, learned A.G.A. for the State has stated on the basis of said instructions that one Amarnath Awasthi was running a company by the name of Gravity Solutions which had falsely promised the investors of earning 20 to 30 percent profit on invested amount. The investigation has revealed that Rs. 6,01,000/- were transferred online from Yes Bank Account No. 001885800006111 of the accused Amarnath Awasthi to

¹ **2022 SCC OnLine All 1254**

HDFC Bank Account No. 50200026791298 of Messers Jugal Kishore, The Jewellers, Eldeco Green, Gomti Nagar, Lucknow. The investigation has further revealed that out of the amount of fraudulently transferred money in the Bank Account of Jugal Kishore in HDFC Bank Account, an amount of Rs.6,21,750/- was transferred online to Axis Bank Account No. 407010200000347 of the accused Brijwasi Saraf, Jhandewala Park, Aminabad, Lucknow, Uttar Pradesh on 15.07.2023.

8. Mr. Parag Patel, the complainant in the said crime, had filed a complaint online on cybercrime.gov.in on National Cyber Crime Register Portal (NCCRP) on 24.08.2023. The bank account of the petitioner, Brijwasi Saraf has been debit frozen through NCCRP Portal. The investigation of the crime through money trail has revealed that money received in the said Axis Bank of the petitioner is from the complainant's Bank Account.

9. Sri S.P. Singh has also produced before this Court instructions sent by Senior Police Superintendent, Police Station Pune City, Shivaji Nagar, Pune, Maharashtra, wherein a mention has been made of online complaint made on 24.08.2023 by one Parag Arun Patil under Sections 419/420/34 I.P.C. read with Section 66D of the Information Technology Act. In the said complaint while mentioning several named accused mention has also been made of one company by the name of Gravity Solutions with Yes Bank Account No. 001885800006111 and account holders and user of Canara Bank Account No.110115106665. The amount cheated from the

complainant as mentioned in the said complaint is 31 lakhs. The complainant saw an advertisement on Facebook issued by the Managers of Gravity Solutions Company saying that company handles a trading pool account and they can give 50% profit on the money invested by anyone. Similarly, Managers of one Lovotrade company also said that their company trades in Bullion and Foreign Currencies and they can give 20% return on the amount invested in their company. The complainant being lured was duped online and he transferred a total amount of Rs.31 lakhs to a different Bank Accounts. The Pune Police on investigation has found that on 12.05.2023 the complainant transferred Rs. 9 lakhs to the Account of accused Amar Nath Awasthi R/o Vibhuti Khand Gomti Nagar Lucknow in his Yes Bank Account No. 001885800006111 and Rs.6 lakhs was transferred to the Yes Bank Account of the company Gravity Solutions on 04.07.2023. Further investigation revealed that the Accused Amar Nath Awasthi took a total amount of Rs.15 lakhs into the two accounts maintained in his Bank and then transferred it to different bank Account. Rs.6,01,000 was transferred online from Bank Account of Amar Nath Awasthi to HDFC Bank Account of M/s Jugal Kishore Jewellers, Eldeco Green, Gomti Nagar. Jugal Kishore Jewellers transferred Rs.6,21,750/- from their HDFC Bank account to Axis Bank Account of the petitioner Brijwasi Sarraf Aminabad, Lucknow, on 15.07.2023.

On the basis of online complaint made on cybercrime.gov.in/nationalcybercrimeregistrationportal on 24.08.2023, the Bank Account of the petitioner has been debit frozen. Not only the Pune Police, Cybercrime Cell, has

requested for debit freeze of the petitioner's account, but a request has also been made by other three Investigating Agencies as the money trail has revealed that the money received in the petitioner's Bank Account in Axis Bank is from the complainant's Bank Account.

10. The Police Personnel, namely, Mr. M. N. Katuriya, Sub-Inspector of Police, Salabatpura and Mr. G. D. Gadhavi, Sub-Inspector of Police, Amroli, Surat City, Gujarat have also given written instructions which relate to one complainant by the name of Dharmesh Bhai Gopal Bhai Vashi, who had made a complaint on 17.08.2023 regarding Gravity Solutions which had duped the complainant and the other investors. Some of the accused have also been apprehended and now lodged in Sabarmati Central Jail since 24.08.2023. The exact modus operandi of the accused has been given in detail in the said instructions. Initially, the small amounts were transferred every month in the accounts of the investors to make them believe that they will be getting better returns on the money that they had invested in Gravity Solutions, later on such money stopped coming and on suspicion of fraud, the complainant lodged a complaint with the Cyber Crime Cell which was uploaded on the NCCRP Portal, which resulted in the money trail being traced to the account of the petitioner, Brijwasi Saraf maintained in Axis Bank.

11. Hon'ble Supreme Court in the case of ***Teesta Atul Setalvad v. State of Gujarat***² in paragraph nos.17 & 18 has held as under:-

² **(2018) 2 SCC 372**

"17. The sweep and applicability of Section 102 of the Code is no more res integra. That question has been directly considered and answered in State of Maharashtra v. Tapas D. Neogy [State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685 : 1999 SCC (Cri) 1352] . The Court examined the question whether the police officer investigating any offence can issue prohibitory orders in respect of bank accounts in exercise of power under Section 102 of the Code. The High Court, in that case, after analysing the provisions of Section 102 of the Code had opined that bank account of the accused or of any relation of the accused cannot be held to be "property" within the meaning of Section 102 of the Code. Therefore, the investigating officer will have no power to seize bank accounts or to issue any prohibitory order prohibiting the operation of the bank account. This Court noted that there were conflicting decisions of different High Courts on this aspect and as the question was seminal, it chose to answer the same. In para 6, this Court noted thus : (SCC p. 691)

"6. A plain reading of sub-section (1) of Section 102 indicates that the police officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression "any property" and "any offence" have made the applicability of the provisions wide enough to cover offences created under any Act. But the two preconditions for applicability of Section 102(1) are that it must be "property" and secondly, in respect of the said property there must have been suspicion of commission of any offence. In this view of the matter the two further questions that arise for consideration are whether the

bank account of an accused or of his relation can be said to be "property" within the meaning of sub-section (1) of Section 102 CrPC and secondly, whether circumstances exist, creating suspicion of commission of any offence in relation to the same."

18. After analysing the decisions of different High Courts, this Court in para 12, expounded the legal position thus : (SCC pp. 694-95)

"12. Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or

any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. ... In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay [Chandrashekar Ramprakash Agarwal v. State of Maharashtra, 1997 SCC OnLine Bom 632] committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon."

After this decision, there is no room to countenance the challenge to the action of seizure of bank account of any person which may be found under circumstances creating suspicion of the commission of any offence."

(Emphasis supplied by us)

12. The action of seizing a movable property, which includes freezing of the Bank account, is taken under Section 102 of the Cr.P.C. which is reproduced hereinunder:-

"102. Power of police officer to seize certain property.— (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."

13. In *Vinoshkumar Ramachandran Valluvar v. State of Maharashtra*³ it was observed as under:—

"18. It is, therefore, clear that like any other property a bank account is freezable. Freezing the account is an act in investigation. Like any other act, it commands and behoves secrecy to preserve the evidence. It does not deprive any person of his liberty or his property. It is necessarily temporary i.e. till the merit of the case is decided. It clothes the Investigating Officers with the power to preserve a property suspected to have been used in the commission of the offence in any manner. The property, therefore, requires to be protected from dissemination, depletion or destruction by any mode. Consequently, under the guise of being given information about the said action, no Accused, not even a third party, can overreach the law under the umbrella of a sublime provision meant to protect the innocent and preserve his

3 2011 SCC OnLine Bom 402

property. It would indeed be absurd to suggest that a person must be told that his Bank account, which is suspected of having been used in the commission of an offence by himself or even by another, is being frozen to allow him to have it closed or to have its proceeds withdrawn or transferred upon such notice."

(Emphasis supplied by us)

14. We find that for freezing the account invoking provision as contained under Section 102 Cr.P.C. cannot, by any stretch of imagination, be held to be deprivation of right of property available to the petitioner. Such argument of learned counsel for the petitioner appears to be misconceived.

15. It is apposite to refer Section 451 of Cr.P.C. which enables the trial Court to grant interim custody pending trial. Similarly, Section 457 also vests power in the Magistrate to deal with the seized property as deemed proper and necessary. An accused whose property is seized by police officer can file application for grant of interim custody. This is an effective and efficacious remedy. Section 457 of Cr.P.C. for ready reference is reproduced here-in-under:-

"457. Procedure by police upon seizure of property.

(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person

cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

(Emphasis supplied by us)

16. Thus, on the basis of what has been discussed above, the petitioner ought to have approached the jurisdictional Magistrate seeking appropriate remedy in respect of the property seized and therefore, when an alternative remedy is available, in our considered opinion the present writ petition is not maintainable.

17. In view of the above, the petition lacks merit, which is accordingly, finally ***disposed of***, leaving it open to the petitioner to avail appropriate remedy as may be available to him in accordance with law.

18. Interim order, if any, stands discharged.

Order Date :- 31.01.2024

A.Dewal

(Ajai Kumar Srivastava-I, J)

(Sangeeta Chandra, J)