

(2023) 03 SHI CK 0028
In the High Court Of Himachal Pradesh
Case No : Criminal Revision No. 200 Of 2022

Anita Aggarwal

APPELLANT

Vs

State Of H.P

RESPONDENT

Date of Decision : 09-03-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 102
Indian Penal Code, 1860 — Section 420, 457, 458

Citation : (2023) 03 SHI CK 0028

Hon'ble Judges : Vivek Singh Thakur, J

Bench : Single Bench

Advocate : Rajeev Chauhan, Menka Raj Chauhan, Hemant Vaid, Sandeep Negi

Final Decision : Allowed

Judgement

Vivek Singh Thakur, J

1. Petitioner has approached this Court against dismissal of her application, filed before the Magistrate, for release/de-freezing her Saving Bank Accounts bearing No. 39816286371 of State Bank of India and 10610100004166 of Bank of Baroda in Branches at Kasauli, vide impugned order dated 21.2.2022 passed by Additional Chief Judicial Magistrate, Kasauli.

2. According to status report filed by Station House Officer, Police Station Kasauli, District Solan, H.P., FIR No. 20 of 2020, dated 13. 4.2020 was registered under Section 420 of the Indian Penal Code in Police Station Kasauli, on the basis of complaint filed by complainant Vartika Mehta against the petitioner, wherein it was alleged that since about last 5 years petitioner Anita Aggarwal had been contacting Vartika Mehta complainant and she persuaded and impressed the complainant to invest by depositing amount with Adarsh Cooperative Society, with assurance that she (Anita Aggarwal) was an authorized agent for Kasauli for the said Society and there was no need to worry about the money, but lateron, on the date of maturity of invested amount, on contacting by the complainant,

Anita Aggarwal started avoiding her. Thereafter, complainant came to know from other residents of the town that Anita Aggarwal had cheated so many persons in the like manner and had not refunded any amount of the investors/depositors.

3. It was further alleged in the complaint that petitioner Anita Aggarwal had contacted complainant Vartika Mehta for opening account of RD etc. in the Post Office also, as she was also authorized agent of the Post Office, but lateron complainant came to know that Anita Aggarwal had cheated her either by depositing lesser amount or by not opening the account or by opening the account for lesser amount. As per complainant, as and when Anita Aggarwal was contacted for repayment of amount, she started misbehaving and abusing.

4. After registration of aforesaid FIR, investigation was carried on. As per status report, inquiry was conducted about the deposit of amount, which was received by Anita Aggarwal from various persons. For that purpose, correspondence took place between Police and Yash Mehta, Area Manager of Adarsh Cooperative Society, Solan. In response Yash Mehta sent record of the Society through e-mail regarding deposit by petitioner Anita Aggarwal in the account of Vartika and other account numbers. Inquiry and verification was conducted by the Police from the Post Office, wherein record of deposit of amount by Anita Aggarwal in the account of Vartika, was also traced.

5. As per status report, Anita Aggarwal received certain amount from Vartika Mehta for deposit in the Post Office, but deposited the same with Adarsh Cooperative Society. In this regard, it has been alleged by the complainant that Anita Aggarwal had done so at her own without informing the depositor of the amount.

6. As per investigation, Anita Aggarwal has been found a registered agent of Credit Cooperative Society, who had received money from the villagers for deposit in Adarsh Cooperative Society.

7. As per status report, amount of Vartika Mehta has been found deposited in the account of Adarsh Credit Cooperative Society. Further that, after closure of Society, agent Anita Aggarwal could not ensure entries of payment of amount since December to March, 2020 and she had offered repayment of the said amount to Vartika Mehta, but Vartika Mehta was asking for payment of entire amount in one go. Deposit of amount in the Post Office was also verified by the Investigating Agency by obtaining record from the Post Office.

8. During investigation, on the basis of communication sent by the Investigating Officer/SHO concerned, above mentioned account numbers of petitioner Anita Aggarwal were ordered to be seized/freezeed.

9. Petitioner had approached the Trial Court under Section 457 Cr.P.C. for release/de-freezing of account numbers of the petitioner referred supra. The said application was dismissed by the Magistrate on the ground that investigation was pending, but with direction to expedite the investigation and to submit final

report at the earliest.

10. It has also been submitted by respondent-Investigating Agency that investigation was complete and as per conclusion of investigation, for the facts and circumstances of the case, no offence was found to be committed by the petitioner and, therefore, cancellation report was prepared and submitted to Law Officer for vetting and verification, which was returned by the Law Officer with certain comments and as per Investigating Agency steps for removing objections raised by the Law Officer are in progress and investigation is yet to be completed, wherein no person linked with Adarsh Cooperative Society could be examined despite making all efforts and visiting some places in Rajasthan.

11. It has been stated in the status report that now office of Adarsh Credit Cooperative Society at Solan has been closed and Society is under liquidation and, therefore, investigation could not be completed till date.

12. Learned counsel for the petitioner to substantiate the claim of the petitioner for release of accounts has placed reliance upon the judgments of Uttrakhand High Court in *Puran Chand Pal Vs. Punjab National Bank*, 2017 Cri. L.J. 4252; Delhi High Court in *Muktaben M Mashru Vs. State of NCT of Delhi* and another, 265 (2019) DLT 651; Madras High Court in *TMT. T Subbulakshmi Vs. T. Yamini*, 2016 Cri. L.J. 2861; and Karnataka High Court in *Smt. Lathifa Abubakkar Vs. The State of Karnataka & others*, 2012 Cri. L.J. 3487.

13. As held by the Supreme Court in *State of Maharashtra V. Tapas D. Neogy*, (1999) 7 SCC 685 that bank account of an accused or any of his relation is property within the meaning of Section 102 of the Code of Criminal Procedure and Police Officer in course of investigation, can seize or prohibit operation of the said account, if such assets have direct link with the commission of offence which the Police Officer is investigating into.

14. Section 102 of the Code of Criminal Procedure empowering the Police Officer to seize property reads as under:-

"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."

15. Section 102 of the Code of Criminal Procedure empowers the Police Officer to seize certain property on existence of certain condition which is pre-requisite, empowering the Police Officer to seize such property. He can seize any property, but the said property should have been the property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of commission of any offence.

16. In present case, it is version of the Investigating Agency that Anita Aggarwal received money from Vartika Mehta and deposited the same in Adarsh Credit Cooperative Society, though some of those deposits were directed to be deposited in the Post Office and status report filed by the Investigating Agency nowhere reveals or alleges that the bank accounts of Anita Aggarwal contains property received from Vartika Mehta complainant or relevant accounts were used for transaction at the time of commission of alleged offence of cheating so as to create suspicion of commission of offence through these bank accounts. Admittedly, it is not a case that the property, i.e. Bank Accounts of Anita Aggarwal, is suspected for depositing/withdrawing or operating or transacting the stolen property. Therefore, in present case, necessary ingredient, empowering the Investigating Officer to seize the Bank Accounts of petitioner are missing and thus seizure/freezing of Bank Accounts of the petitioner is not sustainable.

17. Undisputedly, investigation is still stated to be pending. FIR was lodged in the year 2020. We are in 2023. No doubt, as observed by the Magistrate, there was Covid-19 period, during which everything was halted, but now more than sufficient time has passed after the period of Covid-19, but till date conclusion of investigation has not been finalized.

18. It is also noticeable that Instigating Agency had concluded its investigation at one point of time and found that no offence was committed by the petitioner and, therefore, cancellation report was submitted to the Law Officer, but thereafter Law Officer raised certain objections and the report alongwith record was returned to the Investigating Agency, but till date investigation has no progress, even for an inch. It is case of Investigating Agency that persons belonging to Rajasthan are involved in the matter and, therefore, they cannot be joined/associated or interrogated during investigation despite making efforts and now all out efforts are being made to complete the investigation.

19. In the aforesaid circumstances, I find that in present case, neither ingredients of Section 102 Cr.P.C. are existing to empower the Police Officer to seize the bank accounts of the petitioner nor any nexus or link has been pointed out, much less established, by the Investigating Agency between the offence allegedly, as per complainant, committed by the petitioner and operation of bank accounts concerned. There is inordinate delay in concluding the investigation and there is no plausible or valid reason to continue the seizure/freezing of the bank accounts of the petitioner as there is nothing to point out that how de-freezing of the account shall come in the way of Investigating Agency in investigating and concluding the investigation in the FIR concerned. Commission of any offence or leveling allegations of commission of offence is not sufficient to freeze the accounts of a person except as permissible under law and pendency of investigation, that too for the last three years, is also not permissible under law for infinite period, particularly when the property is neither a suspected stolen property nor there is any nexus between the property, i.e. Bank accounts and the commission of alleged offence by the accused.

20. With the aforesaid discussion, I find that at this stage petitioner is entitled for de-freezing of her accounts mentioned supra and to operate them in accordance with law and, therefore, these accounts are ordered to be released/de-freezed, but subject to furnishing personal bond for an amount lying deposited in the bank accounts at the time of freezing of these bank accounts by giving undertaking therein to produce the said amount in the Court or anywhere else, wherever directed by the Court during trial or on conclusion of trial. The bond shall be executed to the satisfaction of Trial Court having the jurisdiction over Police Station, Kasauli or to the satisfaction of Magistrate available at Kasauli at the time of furnishing the bond. In case petitioner furnishes the bonds, as directed supra, concerned Magistrate shall pass an appropriate order immediately thereafter but after accepting the personal bond to his/her satisfaction, release/de-freeze the Bank accounts of the petitioner referred supra.

With the aforesaid observations, petition is allowed and disposed of in aforesaid terms, alongwith pending application(s), if any.