

(2017) 02 GUJ CK 0065
In the Gujarat High Court
Case No : 195 of 2017

BHAVESHBHAI DAHYABHAIMODI & ORS.

APPELLANT

Vs

STATE OF GUJARAT

RESPONDENT

Date of Decision : 09-02-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs
Code of Criminal Procedure, 1973, Section 102, Section 102, Section 451, Section 457, Section 357 -
Power of police officer to seize certain property - Power of police officer to seize certain property — Order for custody and disposal of property pending trial in certain cases -
Procedure by police upon seizure of property - Order to pay compensation
Indian Penal Code, 1860, Section 34, Section 109 - Acts done by several persons in furtherance of common intention - Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment
Prevention of Corruption Act, 1947, Section 18, Section 17, Section 13(2), Section 13(1)(e) -
Benami Transaction Prohibition Act, 1988, Section 3, Section 4, Section 5

Citation : (2017) 02 GUJ CK 0065

Hon'ble Judges : J.B.Pardiwala

Bench : Single Bench

Advocate : TATTVAM K PATEL, ?THAKORE

Final Decision : Disposed

Judgement

1. Since the issues involved in both the captioned writ applications are more or less the same, those were heard analogously and are being disposed of by this common judgment and order.
2. Rule returnable forthwith. Ms. Thakore, the learned APP, waives service of notice of rule for and on behalf of the respondent-State.
3. For the sake of convenience, the Special Criminal Application No.196 of 2017

is treated as the lead matter.

4. By this writ application under Article 226 of the Constitution of India, the writ applicant, a public servant, has prayed for the following reliefs;

"(A) Your Lordships may be pleased to admit/allow present petition.

(B) Your Lordships may be pleased to issue a writ of certiorari or any other appropriate writ, order or direction quashing and setting aside order dated 22.11.2016 passed by 2nd Addl. Sessions Judge, Gandhinagar below exh.1 in Spl. Criminal Application No.850/2016 and further order de-freezing of bank accounts of present petitioner details of which is given in paragraph No.3, 4 of present petition and further be pleased to pass consequential order thereof.

(C) pending admission, hearing and final disposal of present Special Criminal Application, order de-freezing of bank accounts of present petitioner details of which is given in paragraph-3,4 of present petition and further be pleased to pass consequential order thereof.

(D) Pass such other and further order/s, which may be just and proper in the interest of justice."

5. The facts giving rise to this writ application may be summarized as under;

5.1 One M.J. Christian, Police Inspector, Anti Corruption

Bureau, lodged the first information report on 01.06.2016 at the Gandhinagar A.C.B. Police Station against the writ applicant herein for the offence punishable under section 13(1) (e) and section 13(2) of the Prevention of Corruption Act read with section 34 and 109 of the Indian Penal Code,, 1988 and sections 3, 4 and 5 of the Benami Transaction Prohibition Act, 1988.

5.2 The case of the prosecution is that the writ applicant herein is serving as an Executive Magistrate at Gandhinagar and he possesses the assets disproportionate to the non- sources of his income. In the course of the investigation, the Investigating Officer was able to find out 34 different bank accounts made in the name of the different persons alleged to have been used for the commission of the offence. In such circumstances, the Investigating Officer, in exercise of his power under section 102 of the Code of Criminal Procedure, 1973, directed the banks concerned to freeze the accounts. The banks, acting upon the directions issued by the Investigating Officer, has freezed all the 34 accounts. In such circumstances, and being aggrieved by such action on the part of the Investigating Officer, the applicant herein preferred two applications being Criminal Misc. Applications Nos.849 of 2016 and 850 of 2016 respectively for appropriate orders directing the banks to de-freeze the accounts. Both the applications were ordered to be rejected by the Special Judge, Gandhinagar. Being dissatisfied, the writ applicant has come up with this writ application.

6. Mr. Tatvam Patel, the learned counsel appearing for the writ applicants

vehemently submitted that the Investigating

Officer, in the first place, could not have exercised his powers under section 102 of the Cr.P.C for freezing of the bank accounts. He would submit that the learned Special Judge also did not take notice of this position of law and committed an error in rejecting the applications referred to above. Mr. Patel submitted that a case of disproportionate wealth could only be proved from the entries effected in the books of accounts so as to trace the past bank dealings of the accused and of his near relatives during the check period, but not freezing the accounts unless the Investigating Officer is of the view that by permitting the accused or his relatives to continue to operate the accounts, any damage would be caused to the entries already effected in the past, which are relevant for the check period and, therefore, no purpose would be served in the progress of investigation by freezing the accounts and obstructing the accused and his relatives from operating the accounts abruptly.

7. In support of his submissions, he has placed reliance on the decision of this Court in the case of Paresha G. Shah vs. State of Gujarat & Ors., Special Criminal Application No.150 of 2015, decided on 15th June, 2015, a decision of the Madras High Court in the case of B. Ranganathan vs. State & Ors ., 2003 Criminal Law Journal, 2779 and a Division Bench decision of the Delhi High Court in the case of Ms. Swaran Sabharwal vs. Commissioner of Police, 1988 Criminal Law Journal, 241(1).

8. On the other hand, both the writ applications have been vehemently opposed by Ms. Thakore, the learned APP appearing for the State. The learned APP would submit that

the Investigating Officer was well within his power under section 102 of the Cr.P.C to instruct the banks to freeze the accounts for the purpose of effective investigation. She would submit that no error, not to speak of any error of law could be said to have been committed by the learned Special Judge in rejecting the two applications filed by the applicants for the purpose of de-freezing of the bank accounts. Ms. Thakore submitted that the bank accounts will not be kept freezed for an indefinite period, but at least, till the time, the charge-sheet is filed. Ms. Thakore submitted that if this Court is inclined to permit the applicants to operate their accounts, then the interest of the prosecution may be protected or safeguarded by asking the public servant, i.e., the main accused to furnish a solvent surety of the amount of Rs.20,00,000/-. She submits that in the course of the investigation, it has revealed that the total amount in the 34 different bank accounts aggregates to Rs.20,00,000/-. She submits that probably, in future, few more bank accounts may surface, said to have been used in the commission of the offence.

9. Having heard the learned counsel appearing for the parties and having considered the materials on record, the only question that falls for my consideration is whether the writ applicants are entitled to the relief prayed for in

the two writ applications.

10. In the case of Paresha G. Shah (supra), this Court observed as under; "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 adequate material is collected. . It clothes the authority 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 property. It is also not necessary at all 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.

In the aforesaid context, I may quote with profit a decision of the Supreme Court in the case of State of Maharashtra v. Tapas D. Neogy, (1999) 7 SCC 685 . The issue before the Supreme Court was, whether a police officer investigating into an offence can issue prohibitory order in respect of a bank account of the accused in exercise of powers under Section 102 of the Code. The Supreme Court, after an exhaustive consideration of the provisions of Section 102 of the Code, took the view that the bank account of an accused or of his relations could be said to be property within the meaning of sub-section (1) of Section 102 of the Code. I may quote with profit the following observations made by the Supreme Court, as contained in paras 5 to 12 of the judgment :

5. Coming now to the provisions of Section 102 of the Code of Criminal Procedure, the said provisions are extracted herein below in extenso:

"Sec.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- sec.(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, 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."

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 pre-conditions for applicability of Section 102(1) are that it must be 'property' and secondly, in respect of the said property there must have 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 of the Cr.P.C. and secondly, whether circumstances exist, creating suspicion of commission of any offence in relation to the same. Different High Courts in the country have taken divergent views in this regard. In the case of *Ms. Swaran Sabharwal vs. Commissioner of Police*, reported in 1988 Criminal Law Journal(Vol. 94) 241, a Division Bench of Delhi High Court examined the question whether bank account can be held to be 'property' within the meaning of Section 102 of the Cr.P.C. In the said case, proceeds realised by sale of official secrets were deposited by the accused in his wife's account. The Court in that case came to hold that it is not quite sure whether monies deposited in a bank account can be seized by means of a prohibitory order under the provisions of Section 102 but even assuming that a bank account is a 'property' within the meaning of Section 102 of the Code of Criminal Procedure, the further consideration must be satisfied namely the property has been found under circumstances which

create the suspicion of the commission of an offence. But in that case it is not the discovery of the property that has created suspicion of commission of an offence but on the other hand the discovery of the bank account is a sequel to the discovery of commission of offence inasmuch as the police suspected that some of the proceeds realised by the sale of the official secrets have been passed on to the bank account of the wife of the accused. Therefore, the Court was of the opinion that the provisions of Section 102 cannot be invoked. In the case of *M/s. Purbanchal Road Service, Gauhati vs. The State*, reported in 1991Criminal Law Journal (Vol.97) 2798, a learned Single Judge of the Gauhati High Court examined the provisions of Section 102 of the Criminal Procedure Code and the validity of an order by a Police Officer, prohibiting the bank from paying amount to the accused from his account. The learned Judge came to the conclusion that word 'seize' used in Section 102 Cr.P.C. means actual taking possession in pursuance of a legal process and, therefore, in exercise of the said power, a bank cannot be prohibited not to pay any amount out of the account of the accused to the accused nor can the accused be prohibited from taking away any property from the locker, as such an order would not be a 'seizure' within the meaning of Section 102 of the Criminal Procedure Code. The learned Single Judge agreed with the view taken by Allahabad High Court in the case of *Textile Traders Syndicate Ltd., Bulandshahr vs. The State of U.P .*, AIR 1960 Allahabad 405 (Vol .47). In the Allahabad Case on which Gauhati High Court relied upon (AIR

1960 Allahabad 405), what was decided by the Court is, once money passes on from the accused to some other person or to the bank, money itself becomes unidentifiable and, therefore, there cannot be any question of seizure of the same by the Police Officer.

7. In the case of M/s Malnad Construction Co., Shimoga and Ors. vs. State of Karnataka and Ors ., 1994 Criminal Law Journal(Vol.100) 645, a learned Single Judge of Karnataka High Court examined the provisions of Section 102 of the Criminal Procedure Code and relying upon the Gauhati High Court's decision, referred to supra, came to hold that the `seizure" in Section 102 would mean taking actual physical possession of the property and such a prohibitory order to the banker of the accused not to

operate the account is not contemplated under the Code and consequently, the police has no power to issue such order. Thus the High Courts of Karnataka, Allahabad, Gauhati and Delhi have taken the view that the provisions of Section 102 of the Criminal Procedure Code cannot be invoked by the Police Officer in course of investigation to issue any prohibitory order to the banker or the accused from operating the bank account.

8. In P.K. Parmar and ors. vs. Union of India and anr., 1992 Criminal Law Journal 2499 (Vol.98), a learned Single Judge of Delhi High Court considered the power of police officer under Section 102 of the Criminal Procedure Code, in connection with the fraudulent acquisition of properties and opening of fictitious bank accounts and withdrawal of huge amounts as subsidy from Government by producing bogus documents by the accused. The learned Judge took note of the earlier decision of Delhi High Court in Ms. Swaran Sabharwal vs. Commissioner of Police, 1988 Criminal Law Journal 240 (Vol.94), and analysed the provisions of Section 102 of the Criminal Procedure Code and the facts of the case were as under. It was revealed that during investigation the prosecution came to know that without actually manufacturing phosphate and fertilizers, the accused withdrew as much as Rs.3.39 crores as subsidy from the Govt. of India by producing bogus documents. The Court ultimately came to the conclusion that the recovery of assets in the bank links prima facie with the commission of various offences with which they have been charged by the CBI and, therefore, the police officer could issue directions to various banks/financial institutions freezing the accounts of the accused. The learned Judge in the aforesaid case has really considered the amount of money which the accused is alleged to have swindled by producing bogus documents which prompted him to hold that the power under Section 102 Cr.P.C. can be exercised.

9. In Bharath Overseas Bank vs. Minu Publication, 1988 Madras Law Weekly (Crl.) 106, a learned Single Judge of the Madras High Court considered the same question and came to the conclusion that the expression `property" would include the money in the bank account of the

accused and there cannot be any fetter on the powers of the police officer in

issuing prohibitory orders from operating the bank account of the accused when the police officer reaches the conclusion that the amount in the bank is the outcome of commission of offence by the accused. The Court considered the fact as to how in modern days, commission of white collar crimes and bank frauds are very much on the increase and banking facilities have been extended to the remotest rural areas and, therefore the expression "property" may not be interpreted in a manner so as to exclude the money in a bank which in turn would have the effect of placing legal hurdles, in the process of investigation into the crimes. According to the learned Judge, such literal interpretation of the expression "property" could not have been the intent of the framers of the Criminal Procedure Code . In paragraph 11 of the said judgment, the learned Judge referred to the object behind investing the police with powers of seizure. It will be appropriate to extract the same in extenso:

"It would now be useful to refer to the object behind investing the police with powers of seizure. Seizure and production in court of any property, including those regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence or any other property will have a two-fold effect. Production of the above property may be necessary as evidence of the commission of the crime. Seizure may also have to be necessary, in order to preserve the property, for the purpose of enabling the Court, to pass suitable orders under S.452 of the Criminal Procedure Code at the conclusion of the trial. This order would include destruction of the property, confiscation of the property or delivery of the property to any person claiming to be entitled to possession thereto. It cannot be contended that the concept of restitution of property to the victim of a crime, is totally alien to the Criminal Procedure Code . No doubt, the primary object of prosecution is punitive. However, Criminal Procedure Code, does contain several provisions, which seek to re- imburse or compensate victims of crime, or bring about restoration of property or its restitution. As S.452, CrI.P.C. itself indicates, one of the modes of

disposing of property at the conclusion of the trial, is ordering their return to the person entitled to possession thereto. Even interim custody of property under Ss.451 and 457, CrI.P.C., recognises the rights of the person entitled to the possession of the properties. An innocent purchaser for value is sought to be re-imbursed by S.453, CrI.P.C. Restoration of immovable property under certain circumstances, is dealt with under S.456, CrI.P.C. Even, monetary compensation to victims of crime or any bona fide purchaser of property, is provided for under S.357, CrI.P.C. Wherein when a Court while convicting the accused imposes fine, the whole or any part of the fine, if recovered, may be ordered to paid as compensation to any person, for any lose or injury, caused by the offence or to any bona fide purchaser of any property, after the property is restored to the possession of the person entitled thereto. This two fold object of investing the police with the powers of seizure, have to be borne in mind, while setting this legal issue."

10. This Judgment of the learned Single Judge of the Madras High Court was followed in a later decision in the case of *Bharat Overseas Bank Ltd. vs. Mrs. Prema Ramalingam*, 1991 Madras Law Weekly (Criminal) 353, wherein the learned Judge agreeing with Padmini Jesudurai, J in *Bharat Overseas Bank's* case came to hold that money in bank account is "property" within the meaning of Section 102 of the Criminal Procedure Code, which could be seized by prohibiting order. In the aforesaid case, the learned Judge has also noticed the fact that the Judgment of Padmini Jesudurai, J, in 1988 LW(Crl.)106, was upheld by the Division Bench subsequently.

11. In the case of *Dr. Gurcharan Singh vs. The State of Punjab*, 1978(80) Punjab Law Reporter, 514, a Division Bench of the Punjab & Haryana High Court differing with the view taken by the Allahabad High Court in AIR 1960 Allahabad 405, came to hold that the bank account would be "property" and as such would be capable of being seized under Section 102 of the Code of Criminal Procedure.

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 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 relation 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. The contrary view expressed by Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the Courts in fixing the amount of fine shall take into consideration the amount or the value of the property, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section(1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us

in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay 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. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating upon his account, and so, we do not interfere with the same.

At this stage, it deserves to be noted that the Supreme Court considered a Division Bench decision of the Delhi High Court in the case of *Swaran Sabharwal v. Commissioner of Police*, 1988 Cri.L.J. 241 (Del). The Division Bench of the Delhi High Court took the view that the suspicion of an offence did not arise on account of discovery of the property (bank account). There were no circumstances attendant upon the bank account or its operation that had led the officer to suspect that some offence had been committed somewhere. The discovery of the bank account was a sequel to the discovery of the commission of the offence. The police suspected that some of the proceeds realized by the sale of official secrets had been passed on to the petitioner by her husband. The Division Bench of the Delhi High Court finally concluded that it was not sufficient to attract 102 of the Code as it could not be said that the bank account had been traced or discovered in circumstances which had made the police aware of the commission of an offence."

11. In the Division Bench decision of the Delhi High Court in the case of *Ms. Swaran Sabharwal* (supra), the Court observed as under;

"6. We are not able to accept this argument. In the first place, we are not quite sure whether monies deposited in a bank account can be "seized" by means of a prohibitory order as has been done in the present case under the provision of section 102 . But assuming that a bank account is "property" within the meaning of the section, it should be property "found under circumstances which create the suspicion of the commission of an offence", to justify under section 102 . In other words, it applies where a police officer comes across certain property in circumstances

which create in his mind a suspicion that an offence has been committed. Thus in the cases cited by counsel, action under section 102 was upheld where a public servant was found in possession of moneys in his bank account far in excess of his known source of income, when a person was found in possession of a large quantity of small coins for sale in contravention of the defense of India Rules, where a trader was found to have stored a large number of bags of rice in contravention of rules and orders and where a person was found standing on a public road with a bag containing several bundles of the currency notes. The

position here is different. Here, it is not the discovery of the property that has created the suspicion of an offence. There are no circumstances attended upon the bank account or its operation that have held the officer to suspect that some offence has been committed somewhere. The discovery of the bank account here is a sequel to the discovery of the commission of the offence. The police suspect that some of the proceeds realised by the sale of official secrets have been passed on to the petitioner by her husband. This, we think, is not sufficient to attract section 102 as it cannot be said that the bank account has been traced or discovered in circumstances which have made the police aware on the commission of an offence.

7. We may further point out that no justification seems to exist for "seizing" the amounts in the bank account. All that the respondents seem to want to establish from the bank account is that some funds were transferred by the petitioner's husband to her. This can be proved at any time by comparison of the two accounts and since the entries in the accounts are always available, no purpose seems to be served by restarting the operation of the bank account. Since, as we point out below, it is not the case that the moneys in the bank constitute "case property", i.e., the property involved in the commission of the crimes with which Ram Swarup is charged, the seizure of the monies by the issue of a prohibitory order can not be upheld.

8. Again even if the provisions of section 102 are held applicable, the respondents have not followed the requirements of the section. Reading that provision, by adapting it to the case of seizure of a bank account, the police officer should have done two things : he should have informed the concerned magistrate forthwith regarding the prohibitory order. He should have also given notice of the seizure to the petitioner and followed her to operate the bank account subject to her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same. This was not done. Even a copy of the prohibitory order was not given to the petitioner. The police did not seek the directions of the Magistrate trying the offence. Not only that, when the petitioner herself approached the Magistrate who was trying the petitioner's husband under the Official Secrets Act, her request to be allowed to operate the account was opposed by the police contending that the bank account was not "case property" and that the petitioner's remedies lay elsewhere than in the court of the Magistrate. The Magistrate accepted the plea of the police and dismissed the application of the petitioner and directed her to seek remedy elsewhere before the appropriate authority. The petitioner having lost before the Magistrate, had no other recourse except to file a writ petition praying for the setting aside of the prohibitory order. "

12. It may not be out of place to state that the Division Bench decision of the Delhi High Court referred to above has been considered in the case of Paresha G. Shah (supra) and distinguished. The case of Paresha G. Shah (supra) arose from

the proceedings under the Prevention of Money Laundering Act .

13. In B. Ranganathan (supra), a learned Single Judge of the Madras High Court took the view that a case of disproportionate wealth could only be proved from the entries effected in the books of accounts so as to trace the past bank dealings of the accused and of his near relatives during the check period, but not freezing the accounts unless the

Investigating Officer is of the view that by permitting the accused or his relatives to continue to operate the accounts, damage would be caused to the entries.

14. Again, at this stage, it may not be out of place to state that such apprehension has not been expressed by the Investigating Officer.

15. Ms. Thakore, the learned APP, clarify that out of 34 bank accounts, ordered to be freezed, the entries of 27 such accounts have been obtained and they are under scrutiny through the financial adviser, whereas the entries of the balance 7 accounts are yet to be scrutinized.

16. In B. Ranganathan (supra), the court held as under;

"12. From the import of the Section 13 of the said Act barely dissected, it is clear that Section 13(2) is the penal Section for the commission of an offence under Section 13(1)(e) which offers an opportunity for the public servant to satisfactorily account for either the pecuniary resources or property disproportionate to his known sources of income thereby meaning that in these types of cases of acquisition or being in possession of disproportionate wealth to the known sources of income, the cases could only be registered on reasonable suspicion and could be proved subject to the opportunity for the accused to satisfactorily account for the same and therefore prima facie no case could be made out by the prosecution bluntly either on registering a case or even during the course of investigation since according to the warranting ingredients of the Section, the accused cannot be preliminarily held to have committed the offence as it could be in other cases arising out of the IPC or the other criminal acts or even from out of the Prevention of Corruption Act itself. Therefore, the framers of law have been careful enough to impose a pre-condition or a subjective clause to the effect that the commission of the offence by the accused could only be complete, provided on a fair and reasonable opportunity being afforded to the public servant in spite of which if he fails to satisfactorily account for the pecuniary resources after the case has been put up by the prosecution but not on a case being registered on suspicion. Therefore, on a case registered on reasonable suspicion of the accused being in possession of property disproportionate to his known sources of income, the pecuniary resources of which he cannot satisfactorily account for, it is not correct to conclude that either the commission of offence is complete as it is in most of the other cases or could it be said that the Investigating Officer shall have all such freedom as he would have in other cases in the exercise of such powers pending investigation.

13. From this background, the case of the petitioner has to be studied in the context of Sections 17 and 18 of the Prevention of Corruption Act and Section 102 of the Code of Criminal Procedure. Regarding the freezing of the bank accounts operated by the petitioner and his family members hitherto, it has become necessary on the part of this Court to ascertain the powers and jurisdiction of the Investigating Officer particularly in view of the fact that the first respondent/ Investigating Officer is the Inspector of Police in rank, and therefore it is relevant to consider the authorisation granted by the Superintendent of Police, Directorate of Vigilance and Anti corruption Special Investigation Cell and the very freezing order passed by the first respondent.

14. No doubt, the Superintendent of Police, Vigilance and Anti Corruption, in exercise of his powers conferred under Section 18 of the Prevention of Corruption Act, 1988, has empowered the first respondent to investigate an offence specified under Section 17 of the said Act against the petitioner and to exercise powers under Section 18 of the Prevention of Corruption Act "for the purpose of investigation into such offences to inspect any Bankers" Book in so far as they relate to the accounts of the person suspected to have committed those offences and of any other persons suspected to be holding money on behalf of such person and to take or cause to be taken certified copies of the relevant entries, therefrom ... considered necessary for the purpose of the investigation into aforesaid offences." No explanation need be necessary that the specific acts that the first respondent/ Inspector is empowered to do are spelt out in the above authorisation made by the Superintendent of Police, Vigilance and Anti Corruption Special Cell, in his letter dated 16.8.2002, which does not, in any manner, empower the first respondent to freeze the accounts operated by the petitioner and his family members.

15. However, based on this authorisation given by the Superintendent of Police, Vigilance and Anti Corruption Special Investigation Cell, Chennai, the first respondent has not only carried out the searches at various places during the course of investigation, during which the first respondent would allege that the bank accounts numbering six in different persons" names and businesses have been detected and pursuant to the detection of the operation of the said accounts, the first respondent Inspector of Police has caused the requisition to the respective Banks to freeze the said six accounts and that the account holders should not be allowed to operate the accounts.

16. The point that is to be ascertained is "whether the first respondent could exercise his power and jurisdiction to that extent as to freeze the accounts of not only the petitioner, who is an accused but also the other family members or the businesses?"

17. At the outset, it may be remembered that the first respondent has not been specifically empowered or authorised to do such acts of freezing the accounts or obstruct the account holders from operating the accounts and while so, it has to be considered "whether the authorisation made by the Superintendent of Police,

dated 16.8.2002 implies such powers to be exercised by the first respondent/Inspector of Police, who is empowered to investigate into the case?"

18. The authorisation given by the Superintendent of Police to the first respondent is specific to the effect of carrying out certain acts for the purpose of investigation that is to inspect any bankers' book and to take the copies of the relevant entries therefrom, which are considered necessary for the purpose of the investigation into the aforesaid offences. It could be stated that if freezing of the accounts would have also been thought of by the authorising Officer, in one sentence, he could have included the freezing of the accounts of the petitioner and others also in the said authorisation letter. But it was not intended on the part of the empowering authority, the Superintendent of Police, Vigilance and Anti Corruption Special Investigation Cell and therefore it is safe to conclude that the said Superintendent of Police has not authorised the first respondent/Inspector of Police with such drastic powers to be exercised by him since the empowering officer would have thought of serious consequences to follow in the aftermath of such drastic steps taken by the Inspector of Police. The Superintendent of Police would have also further considered that for the purpose of the case of the possession of disproportionate wealth to the known sources of income, the object sought to be achieved is to prove from the sources of income whether disproportionate wealth has been acquired by the accused or in his possession by inspection of bankers' book and by certified copies of the relevant entries taken and not freezing the accounts or obstructing the account holder from running his life or day-to-day business or in operating the accounts since he is susceptible to be crippled and thrown out of his routine by such unwanted drastic steps falsely initiated by the first respondent without there being anything to achieve by such acts.

19. A case of disproportionate wealth could only be proved from the entries effected in the books of accounts so as to trace the past bank dealings of the accused and of his near relatives during the check period but not freezing the accounts unless the Investigating Officer is of the view that by permitting the accused or his relatives to continue to operate the accounts any damage would be caused to the entries already effected in the past which are relevant for the check period and therefore no purpose is also going to be served in the progress of investigation by freezing the accounts and obstructing the accused and his relatives from operating the accounts abruptly. The net result would be that the daily routine of personal life or business of the account holders would be paralysed with no scope for making any progress in the investigation by such of the acts of ordering to freeze the accounts. Therefore, at this juncture, the only conclusion that could be arrived at by this Court is that neither the first respondent is authorised to indulge in such acts of freezing the bank accounts of the petitioner and his family members as per the authorisation made by the Superintendent of Police, dated 16.8.2002 nor could the first respondent assume such powers himself and therefore it is safe to conclude that the act perpetrated by the first respondent in freezing the accounts of the petitioner and others listed

herebefore is without authorisation and without jurisdiction and they could be termed only as illegal.

20. At this juncture, it is relevant to point out from the proviso to Section 18 of the Prevention of Corruption Act, 1988 which is specific to the effect that 'no power under this section in relation to the accounts of any person shall be exercised by a police officer below the rank of a Superintendent of Police, unless he is specially authorised in this behalf by a police officer of or above the rank of a Superintendent of Police.' No clarification is required that this proviso to Section 18 requires special authorisation by officer not less than the rank of Superintendent of Police to any police officer who is below the rank of Superintendent of Police. Since as aforementioned, the first respondent is not specifically authorised by the Superintendent of Police, the requisition made by him to the banks to freeze the accounts of the petitioner and others mentioned in his letter dated 3.1.2003 is an act done in excess than what he was empowered or not authorised to and the same is illegal.

21. Yet another legal aspect pointed out on the part of the petitioner by his counsel is the procedure that is to be adopted on seizure of bank account. In case of seizure of a bank account, the police officer should do two things: he should inform the concerned Magistrate forthwith regarding the prohibitory order. He should also give notice of the seizure to the accused and allow him/her to operate the bank account subject to his/her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same. An order under Section 102, without doing so is liable to be set aside, as held in *Ms. SWARAN SABHARWAL vs. COMMISSIONER OF POLICE* reported in 1988 CrL.L.J.241 (Delhi) (extracted supra). This procedure that is to be followed and felt mandatory has also not been followed by the first respondent."

17. I also take notice of an order passed by a Co-ordinate Bench of this Court in the very same case, wherein the bank account of a partnership firm was ordered to be freezed since the Investigating Officer noticed that the son of the public servant is one of the partners in the said partnership firm. The partnership firm, being dissatisfied with such action, had to come before this Court, and this Court, vide judgment and order dated 2nd September, 2016 passed in the Special Criminal Application No.6404 of 2016, held as under;

" Section 102 of the Code of Criminal Procedure at the outset deserves reference and reproduction, which is 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.

4. The Apex Court in the case of *State of Maharashtra vs. Tapas D. Neogy* reported in (1999) 7 SCC 685 was considering the applicability of section 102 of the Code of Criminal Procedure to hold that if circumstances exist in relation to the Bank Account, section 102(1) of the Code is attracted empowering police officer investigating the offence to seize the bank account and issue order prohibiting the account from being operated upon if such assets have direct links with the commission of offence for which the police officer is investigating into.

Profitable it would be to reproduce the relevant findings and observations of the Apex Court in the said matter, which reads as under:-

The law relating to the prevention of corruption and matters connected therewith were being dealt with by the Prevention of Corruption Act, 1947, which was amended in the year 1964 based on the recommendations of the Santhanam Committee. In the Criminal Law Amendment Ordinance, 1944, there are provisions to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees of such wealth. To make the existing anti corruption laws more effective by widening their coverage and by strengthening the provisions, the Parliament enacted the Prevention of Corruption Act, 1988, which received the assent of the President of India on September 9th 1988. Under the Act, the definition of the expression "public servant" stood widened and penalty for offences under Sections 161 to 165A of the Indian Penal Code was enhanced. Under Section 13 of the Act, a public servant who commits criminal misconduct, is liable to be punished with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine. Without providing the amount of fine which could be imposed under sub-section (2) of Section 13 the legislature have indicated the matters to be taken into consideration for fixing the fine under Section 16 of the Act and it categorically provides that for fixing the amounts of fine under sub-section (2) of Section 23 or Section 14, the Court shall take into consideration

the amount or the value of the property which the accused person has obtained by committing the offence. Under Section 18 of the Act, power has been conferred on the Police Officer to inspect any bankers book and to take or cause to be taken certified copies of the relevant entries therefrom and the bank concerned shall be bound to assist the police officer in the exercise of his powers under Section 18 . Under Section 22 of the Act, the provisions of the Code of Criminal Procedure have been made applicable to any proceeding in relation to an offence punishable under the Act." "We have analysed the aforesaid provision of the Prevention of Corruption Act, 1988 as in our view the object engrafted in the different provisions of the Prevention of Corruption Act, 1988 has to be taken into account while interpreting the provisions contained in Section 102 of the Code of Criminal Procedure."

4. "There is no specific provision in the Act itself as to how or in what manner the said property can be dealt with by the Investigating Officer even if he comes to the conclusion that the assets in the possession of the "public servant" is directly linked with the commission of the offence. It is therefore, only by applying the provisions of Section 102 of the Criminal Procedure Code if the said provision is held to be conferring power of seizing and or prohibition operation of bank account, the Investigating Officer can pass order of seizing the bank account or issue prohibitory orders to the banks not allow the account holder to operate the account."

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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 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 relation 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. The contrary view

expressed by Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the Courts in fixing the amount of fine shall take into consideration the amount or the value of the property, which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section(1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay 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. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating upon his account, and so, we do not interfere with the same.

4. In wake of this judgment it can be held that the officer concerned would definitely have the power of seizure of the bank account of any of the accused or of his relatives for the same being property within the meaning of section 102 of the Code of Criminal Procedure, and therefore, it would not be correct to say that the officer concerned would have no authority under section 102 of the Code of Criminal Procedure even if such assets have direct links with the commission of offence for which investigation is going on.

5. So far as the investigations in relation to the account of the present petitioner firm are concerned, the Court needs to notice that those persons who are alleged as accused, presently are under the scanner of the Investigating Officer. Investigating Officer would be within his right to seize or prohibit operation of any of those accounts, if such assets have direct links with the commission of offence for which he is investigating the matter. However, before the account of the partnership firm is actually seized, the Court also must bear in mind 75% of the portions of the share in the profit and loss of the partnership business is of those partners, who have so far nothing to do with the crime in question. Since some of the accused are already partners, the officer would surely be entitled to scrutinize the entire gamut of facts and also particularly the entries effected in the books of accounts to know the past dealings of the accused through banking channel and can make a request to the Bank for getting all the details of those partners.

6. Some of the safeguards against such extreme step of abrupt seizure are (i) Intimating the concerned Magistrate forthwith regarding this prohibition order and (ii) giving of notice of seizure to the accused and (iii) allowing him to

operate, subject to his furnishing the bank guarantee with an undertaking of producing the amount, allegedly linked with the crime, in Court as and when required as directed along the line prescribed by the Delhi High Court in the case of Ms.Swaran Sabharwal vs. Commissioner of Police reported in 1988 Cri.L.J.241(1).

7. Learned Additional Public Prosecutor submits that certified copy of the entire account is likely to be made available to the investigating officer by tomorrow. It is also urged that screening of the certified copies would also require minimum 8 to 10 days time. This Court notices that more than the seizure, the screening of the account is a very serious step and so far, except the fact that some of the accused are the partners of this firm, complicity of other partners is also yet not coming on record. The daily business work stood paralyzed due to this order of freezing of account. The Investigating Officer at the most would be entitled to insist on freezing of the account to the extent of amount of Rs.1.44 crore considering the case of disproportionate wealth.

8. Resultantly, the following operative order:-

(a) The order directing freezing of the account NO.01320104221 of the partnership firm is quashed on the condition that the petitioner firm shall separately open an account with the amount of Rs.1.44 crores which shall not be touched by the partnership firm till further order from the competent Court. Alternatively, the Investigating Officer may also insist on petitioner furnishing bank guarantee of the said amount of Rs.1.44 crore with an undertaking to produce before the Court as and when required.

(b) In wake of first alternative, the said amount of Rs. 1.44 crore shall be invested in a nationalised bank by way of a fixed deposit by the bank concerned in the name of the firm itself. The fixed deposit receipt shall be handed over to the Investigating Officer, who shall retain it as a seized property.

(c) Initially, such fixed deposit shall be for a period of one year and the same shall be extended with a direction of the concerned Court on expiry of such period, if the final report by then is not submitted.

(d) The officer concerned shall make a request to the concerned Bank to expeditiously provide him with the certified copy of the entire account at an appropriate time. If he is in a position to point out the complicity of any of the partners in the crime in question, on issuance of notice, he shall be permitted to take the steps in accordance with law.

(e) The Investigating Officer shall intimate the learned Magistrate concerned forthwith of this step of freezing of account and subsequent development. He shall keep the concerned Court appraised of the development thereafter in future as well."

18. Without going into any further controversy, I am of the view that the ends of justice would be met if the applicant of the Special Criminal Application No.196 of

2017, i.e., the main accused is directed to execute a bond of Rs.20,00,000/- with a solvent surety of the like amount to the satisfaction of the Special Judge, Gandhinagar. I, accordingly, direct the writ applicant of the Special Criminal Application No.196 of 2017 to act accordingly. He shall execute the bond of the amount of Rs.20,00,000/- with the solvent surety of the like amount to the satisfaction of the learned Special Judge, Gandhinagar within a period of eight days from today. No sooner the main accused, i.e., the writ applicant of the Special Criminal Application No.196 of 2017 furnishes such solvent surety, the Investigating Officer shall inform the banks concerned to de-freeze the accounts and permit the account holders to operate their accounts. Each of the writ applicants herein, including the other bank account holders, are directed that they shall not cause any damage to the entries, which are already effected in the past and are relevant for the check period.

19. Both the writ applications are, accordingly, disposed of. Rule is made absolute to the aforesaid extent.

Direct service is permitted.