2026:BHC-NAG:1008

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.

CRIMINAL WRIT PETITION NO.583 OF 2026

1. Bhushan Vasantrao Pohekar
Age - Adult, Occupation – Business,
R/o Ner Parsopant, Taluka Ner,
District Yavatmal

2. Harshali Bhushan Pohekar,
Age – Adult, Occupation – Household,
R/o. Ner Parsopant, Taluka – Ner,
District Yavatmal

...PETITIONERS

VERSUS

1. State of Maharashtra,
through Police Inspector,
Police Station Ner Parsopant,
District Yavatmal

2. Sub-Registrar, Ner,
District Yavatmal

...RESPONDENTS

Mr. S.P. Deshpande, Advocate for the petitioners.
Mr. S.S. Doifode, Addl.P.P. for the State.

CORAM : URMILA JOSHI-PHALKE & NIVEDITA P. MEHTA, JJ.
DATED : AUGUST 4, 2026.

ORAL JUDGMENT (Per URMILA JOSHI-PHALKE, J.) :

RULE. Rule made returnable forthwith.

2. Heard finally with the consent of learned Counsel for both the parties for final disposal at the admission stage itself.

3. By this petition, the petitioners are seeking quashing and setting aside of the communication dated 16/04/2026 issued by respondent No.1 i.e. Police Inspector, Police Station Ner Parsopant, District Yavatmal to respondent No.2 – Sub-Registrar, Ner, District Yavatmal.

4. As per the contention of the petitioner the crime No.485/2025 registered against the Directors and Office bearers of Ashtavinayak Cooperative Credit Society Ltd., Ner Parsopant on 25/08/2025 for alleged financial irregularities during 1991-92 to 2023-24 wherein the petitioners are not named as an accused. On 22/04/2026, this Court directed the accused to file affidavits, not to transfer properties and cooperate with the investigation. It is the contention of the petitioner that he is the absolute owner and possessor of the immovable property purchased by him from his own income vide various sale-deeds.

5. It was the present petitioner No.1 who has paid the consideration amount against the said sale-deed. Petitioner No.2 is the wife and is also owner of the immovable property purchased in her

name. The FIR has been lodged by one Sujit Pralhad Jadhav, Special Auditor Class-2, Cooperative Department, Yavatmal. On the basis of an audit conducted under Section 81 of the Maharashtra Co-operative Societies Act, 1960 in respect of Ashtavinayak Cooperative Credit Society Ltd., Ner Parsopant. The allegations against the accused therein relating to the financial irregularities allegedly committed by the Directors, office bearers and employees of the society during the period from 1991-92 to 2023-24 including irregular loan disbursement, failure to recover outstanding dues and violation of circulars issued by the co-operative department.

6. The father of petitioner No.1 – Shri Vasantrao Shantaramji Pohekar has been shown as one of the accused in the said FIR as a Director of the said society. The petitioners are not named as an accused in the FIR. As far as the petitioners are concerned there was no allegation against them and they never be Directors, office bearers or employees of the society and have no connection with the transaction under the investigation.

7. The provisions of the MPID Act are also made applicable against the accused persons therein. It is further contention of the petitioners that the properties which are mentioned in the present petition never been attached and declared to be involved in the alleged

offence. It is also no allegation that the said properties are purchased by the petitioners out of the crime proceeds. Despite the abovesaid facts now the communication dated 15/06/2026 issued by respondent No.1 to respondent No.2 not to register any transaction entered either by the petitioners or their blood relatives and hence the petitioners approached to this Court.

8. Heard learned Counsel for the petitioners. He reiterated the said contention and submitted that respondent No.1 has no right either under Section 91 or under Section 102 of the Code of Criminal Procedure (Section 106 of the BNSS), as the properties were never attached as far as the provisions under the MPID Act is concerned. Section 4 of the MPID Act the detailed procedure is given that requires to be followed by the investigating agency. Without following the same, the communication by respondent No.1 to respondent No.2 is illegal, unauthorized and liable to be quashed and set aside.

9. *Per contra*, learned Additional Public Prosecutor strongly opposed the said contention and submitted that as father of the petitioner No.1 is an accused. The various investments was done by the various investors and to protect the properties respondent No.1 has issued the said communication, and therefore, there is no illegality committed by respondent No.1.

10. We have heard learned Counsel for both the sides. On perusal of the entire proceeding the first and foremost question which requires to be answered is whether respondent No.1 is having any right to issue such type of the communication. There is no dispute as to the fact that the petitioners are neither accused nor Directors of the cooperative society i.e. Ashtavinayak Cooperative Credit Society Ltd., Ner Parsopant was alleged financial irregularities.

11. Admittedly, these properties are not attached by the police authorities during the investigation. It is nowhere contention of the police investigation agency that the said properties are purchased out of the crime proceeds. In such circumstances, even accepting that the offence was registered under Section 4 of the MPID Act whether the respondent No.1 is having any right to issue such type of the communication.

12. Before considering the issue on the basis of the factual aspects, it is necessary to see the provision under Section 4 of the MPID Act which reads as under :

> *"**4. Attachment of properties on default of return of deposits.***
>
> *(1) Notwithstanding anything contained in any other law for time being in force,-*

(i) where upon complaints received from the depositors or otherwise, the Government is satisfied that any Financial Establishment has failed,-

(a)to return the deposit after maturity or on demand by the depositor; or

(b)to pay interest or other assured benefit; or

(c)to provide the service promised against such deposit; or

(ii) where the Government has reason to believe that any Financial Establishment is acting in a calculated manner detrimental to the interest of the depositors with an intention to defraud them;

and if the Government is satisfied that such financial Establishment is not likely to return the deposits or make payment of interest or other benefits assured or to provide the service against which the deposit is received, the Government may, in order to protect the interest of the depositors of such financial Establishment, after recording reasons in writing, issue an order by publishing it in the Official Gazette, attaching the money or other property believed to have been acquired by such Financial Establishment either in its own same or in the name of any other person from out of the deposits, collected by the Financial Establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said Financial Establishment or the promoter, director, partner or manager or member of the said Financial Establishment as the Government may think fit.

(2) On the publication of the order under sub-section (1), all the properties and assets of the Financial Establishment and the persons mentioned therein shall forthwith vest in the Competent authority appointed by the Government, pending further order from the Designated Court.

(3) The Collector of a District shall be competent to receive the complaints from his District under sub-section (1) and he shall forward the same together with his report to the Government at the earliest and shall send a copy of the complaint also to the concerned District Police Superintendent or Commissioner of Police, as the case may be, for investigation."

13. Thus, Section 4 of the MPID Act describes the entire procedure which is to be adopted and on being satisfied that such financial establishment is not likely to return the deposits, the investigating agency may move the designated Court seeking attachment of money or property. Thus, reading of Section 4 mandates the power of provisional attachment under Section 4(1) is specifically conferred on the State Government, and not on the Investigating Officer. Further, Section 4(2) requires the State to move to designated Court for confirmation of attachment within 30 days. The statutory design is thus clear that the power of attachment is legislative and judicial, it vests in the State Government and it is to be confirmed by the designated Court. The Investigating Officer's role is only confined to investigate and to place material collected during the said investigation before the government or the designated Court.

14. Recently, this issue is considered by this Court at Aurangabad Bench in **Criminal Writ Petition No.231/2025** *(Vijaykumar alias Vijay s/o Sitaram Dandanaik Vs. The State of Maharashtra)* **dated 16/09/2025.** The Aurangabad Bench has considered the judgment of this Court in **Criminal Writ Petition No.1073/2024** *(Mayur Vasantlal Shetiya Vs. State of of Maharashtra) wherein* it is held as under:

> *"4. Perusal of the impugned notice dated 14th February 2024 shows that it has been given under Section 91 of the Code of*

Criminal Procedure by the investigating officer to the Collector of stamps. If we consider Section 91 of the Code of Criminal Procedure, then it enables the Court or any officer in charge of a police station to issue summons to produce document or other thing. The said power can be exercised when any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceedings, then the Court may issue a summons or such officer may pass a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order. In the impugned notice, after giving names of the accused persons, it is stated that the offence has been registered against them and the Collector of Stamps was directed to give information, as to where the immovable or movable property of those accused persons is in AhmednagarDistrict and then direction has been given that the said property should be preserved. Further it has been stated that :-

‘‘सदर गुन्ह्यातील आरोपी यांचे नावे असलेल्या स्थावर/जंगम मालमत्तेची खरेदी विक्री व्यवहार न होणेबाबत तसेच मिळकतीचे कोणत्याही प्रकारचे हस्तांतरणाची नोंदणीदस्त न होणेबाबत संबंधीत दुययम निबंधकांना कळविणेस विनंती आहे.’’

English translation of the same is as under :-

“It is requested to inform the concerned Sub Registrar about the non-purchase and sale of immovable/movable property in the names of the accused in the said crime and also about the non-registration of any transfer of income.”

5. As aforesaid, Section 91 of the Code of Criminal Procedure does not empower the investigating officer to issue any directions to a person to do or not to do a particular thing. That Section only enables the production of the document or thing and therefore, the impugned order does not conform to the requirements of Section 91 of the Code of Criminal Procedure. By issuing such directions the investigating officer is transgressing his powers and there is no explanation as to why the provisions of the M.P.I.D. Act, which empowers the designated Court to take steps, were not adhered to.”

15. The Aurangabad Bench also considered the scope of Section 102 which empowers the police to seize properties which is alleged or suspected to have been stolen or which creates suspicion of the commission of any offence. This provision has consistently been interpreted to apply only movable property.

16. ***In Nevada Properties Pvt. Ltd vs. State of Maharashtra 2019 (20) SCC 119*** *the Hon'ble Apex Court held as under :*

> *"29. Section 102 postulates seizure of the property. Immovable property cannot, in its strict sense, be seized, though documents of title, etc. relating to immovable property can be seized, taken into custody and produced. Immovable property can be attached and also locked/sealed. It could be argued that the word "seize" would include such action of attachment and sealing. Seizure of immovable property in this sense and manner would in law require dispossession of the person in occupation/possession of the immovable property, unless there are no claimants, which would be rare. Language of Section 102 of the Code does not support the interpretation that the police officer has the power to dispossess a person in occupation and take possession of an immovable property in order to seize it. In the absence of the legislature conferring this express or implied power under Section 102 of the Code to the police officer, we would hesitate and not hold that this power should be inferred and is implicit in the power to effect seizure.*
>
> *30. Equally important, for the purpose of interpretation is the scope and object of Section 102 of the Code, which is to help and assist investigation and to enable the police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the chargesheet. The section is a part of the provisions concerning investigation undertaken by the police officer. After the charge-sheet is filed, the prosecution leads and produces evidence to secure conviction. Section 102 is not, per se, an enabling provision by which the police officer acts to seize the property to do justice and to hand over the property to a person whom the*

police officer feels is the rightful and true owner. This is clear from the objective behind Section 102, use of the words in the section and the scope and ambit of the power conferred on the criminal court vide Sections 451 to 459 of the Code.

31. The expression "circumstances which create suspicion of the commission of any offence" in Section 102 does not refer to a firm opinion or an adjudication/finding by a police officer to ascertain whether or not "any property" is required to be seized. The word "suspicion" is a weaker and broader expression than "reasonable belief" or "satisfaction". The police officer is an investigator and not an adjudicator or a decision maker. This is the reason why the Ordinance was enacted to deal with attachment of money and immovable properties in cases of scheduled offences.

32. In case and if we allow the police officer to "seize" immovable property on a mere "suspicion of the commission of any offence", it would mean and imply giving a drastic and extreme power to dispossess, etc. to the police officer on a mere conjecture and surmise, that is, on suspicion, which has hitherto not been exercised. We have hardly come across any case where immovable property was seized vide an attachment order that was treated as a seizure order by police officer under Section 102 of the Code. The reason is obvious. Disputes relating to title, possession, etc., of immovable property are civil disputes which have to be decided and adjudicated in civil courts. We must discourage and stall any attempt to convert civil disputes into criminal cases to put pressure on the other side (see Binod Kumar v. State of Bihar). Thus, it will not be proper to hold that Section 102 of the Code empowers a police officer to seize immovable property, land, plots, residential houses, streets or similar properties. Given the nature of criminal litigation, such seizure of an immovable property by the police officer in the form of an attachment and dispossession would not facilitate investigation to collect evidence/material to be produced during inquiry and trial.

33. As far as possession of the immovable property is concerned, specific provisions in the form of Sections 145 and 146 of the Code can be invoked as per and in accordance with law. Section 102 of the Code is not a general provision which enables and authorises the police officer to seize immovable property for being able to be produced in the criminal court during trial. This, however, would not bar or prohibit the police officer from seizing documents/papers of *title relating to immovable property, as it is distinct and different from seizure of immovable property. Disputes and matters relating to the physical and legal possession and title of the property must be adjudicated upon by a civil court.*

34. In view of the aforesaid discussion, the reference is answered by holding that the power of a police officer under Section 102 of the Code to seize any property, which may be found under circumstances that create suspicion of the commission of any offence, would not include the power to attach, seize and seal an immovable property."

17. Thus, the Hon'ble Apex Court held that the immovable property cannot be attached, sealed or frozen under Section 102 of Code of Criminal Procedure by a Police Officer. Any attempt to direct a sub-registrar to freeze "land or to make an endorsement on the 7/12 extract is therefore, without jurisdiction". Even where a special statue like M.P.I.D Act is invoked, Cr.P.C applies only to the extent of not being inconsistent with that special enactment. Since the M.P.I.D Act provides its own procedure for attachment, the Investigating Officer cannot bypass Section 4 and take a resort to provisions from the Cr.P.C.

18. Here the record reveals that the impugned communication has been issued by respondent No.1 to respondent No.2 without any authority of law and without issuing any notice to the petitioners. Thus, there is a violation of the principle of natural justice also.

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19. Applying the aforesaid legal principles, it is evident that the Investigating Officer's action of issuing a communication to the Sub-Registrar directing not to register any transaction either of the petitioners or their blood relatives is without any authority of law, and therefore, it deserves to be quashed and set aside. Accordingly, we proceed to pass following order:

a) The writ petition is allowed.

b) The communication issued by respondent No.1 to respondent No.2 dated 16/04/2026 is hereby quashed and set aside.

20. Rule is made absolute in the aforesaid terms. No costs.

(NIVEDITA P. MEHTA, J.) **(URMILA JOSHI-PHALKE, J.)**

**Divya*