

(2023) 09 JH CK 0058

In the Jharkhand High Court

Case No : Writ Petition (Criminal) No. 131 Of 2022

Meena Srivastava

APPELLANT

Vs

State Of Jharkhand And Others

RESPONDENT

Date of Decision : 20-09-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Prevention Of Corruption Act, 1988 — Section 13(1)(b), 13(1)(e), 13(2), 16, 7, 18, 18A

Code Of Criminal Procedure, 1973 — Section 102, 102(1)

Citation : (2023) 09 JH CK 0058

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Binod Singh, Ashok Kumar Yadav, Ranjan Kumar, Binit Chandra, Vikas Kishore

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. After hearing the learned counsel for the parties, the judgment was reserved on 12.09.2023.

2. This petition has been filed for quashing the letter dated 04.02.2022 (Annexure-1 series) issued by the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna, whereby, he has directed to freeze the petitioner's Bank Account Nos. 30249601201, 30249571069, 30249621239, 30249621104, 30249620938, 30249620778, 30249620519, 10802007228, 30142572609, 30142569936 and 30142569302 at SBI Bazar Branch, Branch Code-01221, Daltonganj, Account Nos. 40546408283, 33686123450, 33686089042, 33686091302, 33686093241, 33686098885, 33686078518, 33686102032, 33686127783, 33686116817 and 33686118973 at Daltonganj Branch, Branch Code-00061, Daltonganj and Account Nos. 39921570624, 39921570330, 39921487919, 30534383980, 30630588911, 34048487155,

11444177541, 31598674230, 30534362937, 30534362507 and 30534363306 at Jail Hata Branch, Daltonganj, Branch Code-03144 and further respondent nos. 3, 4 and 5 have been directed not to allow any operation or withdrawal from the above mentioned bank accounts. The further prayer is made for quashing the objection dated 11.03.2022 issued by the State Bank of India, Daltonganj Branch, District- Palamau (Jharkhand).

3. Mr. Binod Singh, learned counsel for the petitioner submitted that the petitioner is the local permanent resident of Mohalla Belwatiker, Daltonganj, P.O. & P.S. Medininagar, Palamau, Jharkhand. The husband of the petitioner was in permanent service under the State Bank of India and he was working and posted as Branch Manager. He submitted that the petitioner's husband joined the service in the year 1971 and continued in the service till June, 1995, however, he left for his heavenly abode on 16.06.1995. After the death of her husband Late Anil Kumar Shrivastava, the petitioner received death cum retiral benefits including the family pension since June, 1995 up till now.

The petitioner is having permanent source of income through House Rent from the house situated at Daltonganj town. He submitted that the petitioner visited State Bank of India, Daltonganj Branch on 11.03.2022 for withdrawal of fixed deposit amount of Rs.15 Lacs from STDR Account No.40546408283, which was not allowed by the Bank on the letter dated 04.02.2022 issued by the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna with bank objection dated 11.03.2022. He further submitted that in the said letter dated 04.02.2022, it has been recorded that Criminal Case No.05/2022 registered on 02.02.2022 under Section 13(2) read with Section 13(1)(b) of the Prevention of Corruption Act, 1988 (Amended 2018) against Shri Brij Behari Sharan, District Sub Registrar, Motihari (Bihar) is pending. He also submitted that the intention of the Vigilance Investigation Bureau, Bihar, Patna was for freezing the bank account of Smt. Rashmi Kumari Shrivastava, the wife of Shri Brij Behari Sharan and the present petitioner is the mother of Smt. Rashmi Kumari Shrivastava and the bank accounts of the petitioner cannot be freezed in view of the above fact. He submitted that the petitioner is facing hardship and said letter under Section 102 Cr.P.C. and under Section 18 of the Prevention of Corruption Act is there and the Prevention of Corruption Act is complete Code in itself and as such that letter is without jurisdiction. To buttress his argument, he relied upon the order passed in the case of Ratan Babulal Lath v. The State of Karnataka in Criminal Appeal No.949 of 2021 [arising out of S.L.P.(Crl.) No.2987/2021], dated 06.09.2021. He further relied upon the judgment passed by Delhi High Court in the case of Ms. Swaran Sabharwal v. Commissioner of Police, reported in 1987 SCC OnLine Del 221. Relying on these judgments, he submitted that the case of the petitioner is fully covered in view of these two judgments and, therefore, the impugned letter dated 04.02.2022 issued by the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna may kindly be quashed and the petitioner may be directed to operate the bank accounts.

4. On the other hand, Mr. Binit Chandra, learned counsel for the respondent-State of Bihar submitted that the case against Shri Brij Behari Sharan, the then District Sub Registrar, East Champaran was registered for disproportionate assets being Vigilance P.S. Case No.05/2022, dated 02.02.2022 under Section 13(2) read with 13(1)(b) of the Prevention of Corruption Act, 1988 (amended, 2018). He further submitted that on house search, house hold articles, jewelleryes and documents related to investment in properties were seized and certain amount has also been seized from the house of Shri Brij Behari Sharan. He submitted that search cum seizure list along with FIR has been submitted in the court of the learned Special Judge, Vigilance, Muzaffarpur and the investigation is going on. He further submitted that in connection with this case, the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna has sent letter to the Manager, State Bank of India, Daltonganj Branch, Palamau, Jharkhand dated 04.02.2022 and instructed not to allow any operation in view of the fact that Smt. Meena Shrivastava has joint bank account as former or survivor with her daughter Smt. Rashmi Kumari Shrivastava, who is wife of the accused Shri Brij Behari Sharan. He submitted that thus, there is disproportionate assets case with regard to joint bank account of Smt. Meena Shrivastava and Smt. Rashmi Kumari Shrivastava and that is why, the impugned letter has been issued. He also submitted that if such a situation was there, there is no illegality. He submitted that the said letter can be issued by the competent person, as has been held by the Hon'ble Supreme Court in the case of State of Maharashtra v. Tapas D. Neogy, reported in 1999 0 Supreme (Ori) 132. He referred paragraph 12 of the said judgment, which is quoted hereinbelow:

"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. The

contrary view expressed by the 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 his account, and so, we do not interfere with the same."

5. On these grounds, learned counsel for the respondent-State of Bihar submitted that this petition may kindly be rejected.

6. In view of the above submissions of the learned counsel for the parties, the Court has gone through the materials on record and finds that admittedly the letter dated 04.02.2022 has been issued by the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna to the Manager, State Bank of India, Daltonganj Branch, Palamau, Jharkhand for freezing of the accounts, as has been noted hereinabove. It is also not in dispute that the objection was made by the State Bank of India for withdrawal of the amount vide objection dated 11.03.2022. It has come in the counter affidavit, filed on behalf of the Deputy Superintendent of Police, Vigilance, Government of Bihar that the case was registered against Shri Brij Behari Sharan, the then District Sub Registrar, East Champaran for disproportionate assets vide Vigilance P.S. Case No.05/2022, dated 02.02.2022 under Section 13(2) read with 13(1)(b) of the Prevention of Corruption Act, 1988 (amended, 2018) and in course of investigation, it transpired that the petitioner Smt. Meena Shrivastava has joint bank account as former or survivor with her daughter Smt. Rashmi Kumari Shrivastava, who is wife of the accused- Shri Brij Behari Sharan and it was found that disproportionate assets is related with the bank accounts with Smt. Meena Shrivastava and Smt. Rashmi Kumari Shrivastava and that is why, the said letter dated 04.02.2022 has been issued. The investigation is still going on. Such power is already there with the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna under Section 18 of the Prevention of Corruption Act, 1988. For the ready reference, Section 18 of the said Act is quoted hereinbelow:

"18. Power to inspect banker's books.- If from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate under Section 17 and considers that for the purpose of investigation or inquiry into such offence, it is necessary to inspect any bankers' books, then, notwithstanding anything contained in any law for the time being in force, he may inspect any bankers' books insofar as they relate to the accounts of the persons suspected to have committed that offence or of any other person suspected to be holding money on behalf of such person, and 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 this section:

Provided 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.

Explanation.—In this section, the expressions "bank" and "bankers' books" shall have the meanings respectively assigned to them in the Bankers' Books Evidence Act, 1891 (18 of 1891)."

7. After going through the above Section, following thing emerges:

- (i) That the Vigilance Department can check the accounts of civil servants and book every banker in so far as they relate to the accounts of those suspected.
- (ii) They can also check the accounts of others suspected of holding money on behalf of civil servants.
- (iii) They can take an official copy of the relevant entry from him.
- (iv) It is mandatory that the bank will help the police (defined in Section 17 and also specifically described in Section 18 of the Prevention of Corruption Act, 1988).
- (v) The terms mentioned above is not limited to just one bank, but all the banks in which the accused can be expected to keep the account or of any other person suspected of holding money on behalf of civil servants (including outer involved with him in certain cases).
- (vi) Section 18 does not say anything about the court lockers Bank documents / letters are given to the concerned officer. They are generally called in court to give evidence of the contents of the book along with bank account.

8. Looking into the letter dated 04.02.2022, it transpires that the said letter was issued by the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna and it has been stated that in light of Section 18 of the Prevention of Corruption Act, 1988, the said letter is being issued. Thus, it appears that by exercising power under Section 18 of the Prevention of Corruption Act, 1988, such letter has been issued. It appears that in view of proviso of Section 18 of

the said Act, such power has been rightly exercised by the Superintendent of Police, Vigilance Investigation Bureau, Bihar, Patna.

9. In the judgment relied by Mr. Binod Singh, learned counsel for the petitioner in Ratan Babulal Lath (supra), it appears that the respondent before the Hon'ble Supreme Court has stated that application under Section 18A was in process of filing and prior to that Section 102 Cr.P.C. was applied and in that view of the matter, the Hon'ble Supreme Court allowed that petition and liberty was provided to the respondent to take such recourse in accordance with law, as may be permissible. In the case in hand, it appears that such power was exercised in pursuance of Section 18 of the Prevention of Corruption Act as well as under Section 102 Cr.P.C. Thus, it cannot be said that in light of Section 18 of the Prevention of Corruption Act, such power was not exercised by the competent authority. In view of that, the judgment relied by Mr. Binod Singh, learned counsel for the petitioner in the aforesaid case, is not helping the petitioner.

10. In the judgment relied by Mr. Binod Singh, learned counsel for the petitioner in Ms. Swaran Sabharwal (supra), the subject matter of that case was Official Secrets Act and the Indian Penal Code and Prevention of Corruption Act was not the subject matter in that case. In view of that, the said judgment is also not helping the petitioner.

11. Further, reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of Teesta Atul Setalwad v. State of Gujarat, reported in (2018) 2 SCC 372. Paragraphs 17 and 18 of the said judgment are quoted herein below:

"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."

12. Looking into the above judgment passed by the Hon'ble Supreme Court, it is settled that if such assets have direct links with the commission of offence, appropriate order can be passed.

13. In the case in hand, the allegations are there of joint account of Smt. Meena Shrivastava and Smt. Rashmi Kumari Shrivastava, who is the wife of the accused-Shri Brij Behari Sharan. Thus, it cannot be said that unnecessarily, the impugned letter has been issued.

14. Further, if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner i.e. well settled principle of law. A reference may be made to the judgment passed by the Hon'ble Supreme Court in the case of Opto Circuit India Limited v. Axis Bank and others, reported in (2021) 6 SCC 707.

15. In the case in hand, such power was exercised pursuant to Section 18 of the Prevention of Corruption Act, however, Section 102 Cr.P.C. is also recorded in the said letter. Thus, it appears that the intention was only to exercise power under Section 18 of the Prevention of Corruption Act and in view of that, statute has been followed.

16. Further, the petitioner has straightway filed this petition before this Court without filing any petition before the learned court for defreezing of the accounts in question. The petitioner is having alternative remedy.

17. The Court sitting under Article 226 of the Constitution of India, power is very wide and all pervading wherever and whenever, by the conduct/decision of a public authority rights of a person are infringed and at the same time, the constitutional Courts are slow in entertaining the writ petitions where statutory scheme envisages certain procedures and aggrieved party has statutorily engrafted remedies.

18. In view of the above facts, reasons and analysis, the court is not inclined to exercise its jurisdiction under Article 226 of the Constitution of India.

19. Accordingly, this petition is, hereby, dismissed.

20. However, the petitioner is at liberty to avail alternative remedy as available under the Code of Criminal Procedure as well as the Prevention of Corruption Act.