

(2021) 10 TEL CK 0001
In the Telangana High Court
Case No : Writ Petition No. 21106 Of 2021

Meridian Educational Society

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 04-10-2021

Acts Referred:

Constitution Of India, 1950 — Article 226
Code Of Civil Procedure, 1908 — Order 38 Rule 5
Indian Penal Code, 1860 — Section 34, 406, 420
Code of Criminal Procedure, 1973 — Section 91, 102, 102(1), 102(3), 406, 451, 457
Arbitration And Conciliation Act, 1996 — Section 9

Citation : (2021) 10 TEL CK 0001

Hon'ble Judges : K. Lakshman, J

Bench : Single Bench

Final Decision : Allowed

Judgement

1. This Writ Petition is filed seeking to declare the action of the Respondents in issuing the notice in Cr.No.366/5/MDPRPS/CYB/2021, dated 11.08.2021 as illegal and also issue consequential direction to the Respondents not to take any coercive steps against the petitioner and their assets.

2. Heard Sri Mr. S. Ravi, learned Senior Counsel representing Ms. N. Niyatha, learned counsel for the Petitioner and Mr. S. Rama Mohan, learned Assistant Government Pleader for Home and Mr. D. Narender Naik, learned counsel for the 5th Respondent and perused the record.

3. FACTS OF THE CASE

i) The Petitioner and 5th Respondent are Educational Institutions run by responsible societies.

ii) An agreement of sale, dated 28.12.2018 was executed by the Petitioner in favour of Respondent No.5 on 28.12.2018 to sell the immovable property admeasuring 3833.28 Square Yards situated at Kukatpally Housing Board (KPHB)

Colony, Phase VI, Kukatpally, Medchal-Malkajgiri District, Telangana for a total sale consideration of Rs. 36,00,00,000/- (Rupees Thirty-Six Crore Only).

iii) Subsequently, a Business Transfer Agreement (hereinafter referred to as "BTA") was entered into between the Petitioner and 5th Respondent on 11.03.2019. The purchase price for the transfer of business under the BTA was Rs. 6,50,00,000/-

iv) According to the 3rd Respondent, the above said agreement of sale and BTA were not performed.

v) First Information Report was lodged by the 5th Respondent wherein it was alleged that the whole transaction involving the agreement of sale was to be completed by 31.03.2019. However, the transaction was not completed by 31.03.2019 as the Petitioner failed to obtain No Objection Certificate (NOC) from the LIC Housing Finance to give effect to the above said agreements, which is one of the conditions of the said BTA.

vi) The agreements were extended by 30 days and subsequently for additional periods up to 30.09.2019. Meanwhile, Respondent No. 5 paid an amount of Rs.6,50,00,000/- as advance and when the performance of the BTA and agreement of sale became due, communications were addressed to the Petitioner but no response was received.

vii) The 5th Respondent claimed to return the advance amount of Rs.6,50,00,000/- but the Petitioner refused.

viii) the 5th Respondent claims that the Petitioner is illegally and unlawfully holding the amount of Rs.6,50,00,000/- and is not performing its obligations under the BTA and the agreement of sale dated 28.12.2018.

ix) Therefore, a complaint was lodged on 02.04.2021 with the Police, Madhapur Police Station, who in turn, registered a case against the Petitioner in Cr. No. 366 of 2021 for the offences under Sections 406 and Section 420 read with Section 34 of the Indian Penal Code, 1860 (for short, 'IPC').

x) In furtherance of the investigation, a notice in Cr.No.366/2/ MDP RPS/ CYB/2021 dated 25.07.2021 was issued by the Investigating Officer to the 4th Respondent to freeze the bank Accounts of the Petitioner in Central Bank of India and Kotak Mahindra Bank.

xi) The said notice was challenged in W.P. No. 18154 of 2021 and this Court vide order dated 04.08.2021 granted interim relief to the Petitioner wherein the Petitioner was allowed to operate the bank Accounts only in respect of payment of salaries and administering the school.

xii) On 11.08.2021 in the same crime vide Cr. No. 366 of 2021, another notice was issued by the same Investigating Officer under Section 91 and 102 of Cr.P.C. to 4th Respondent to freeze A/c No.0297301000034830 of the Petitioner. The said notice is challenged under the present writ petition.

4. CONTENTIONS OF THE PETITIONER

i) The notice issued by the 3rd Respondent under Section 91 and 102 of the Cr.P.C, to freeze its bank Account maintained with the 4th

Respondent bank is illegal, arbitrary and without jurisdiction.

ii) The 3rd Respondent has no jurisdiction to investigate the case as neither the land nor the building which is subject matter of the complaint falls within the jurisdiction of the 3rd Respondent.

iii) Mere reading of the complaint suggests that there exists a civil dispute between the Petitioner and the 5th Respondent. The 5th Respondent is intentionally giving a 'criminal colour' to a purely civil dispute.

iv) The Petitioner has an appropriate remedy in the nature of attachment before judgment under Order XXXVIII Rule 5 of the Code of Civil Procedure. However, till date no suit was filed.

v) The time in the agreement of sale dated 28.12.2018 has already been lapsed. The 5th Respondent has filed the complaint only to arm twist the Petitioner to enter into the agreement and to enforce a time barred agreement of sale.

vi) In a case of freezing of Accounts, under Section 102 of Cr,P,C, the Magistrate ought to have been informed forthwith with regard to such freezing. The 3rd Respondent failed to inform the Magistrate having jurisdiction.

vii) The action of the 3rd Respondent is causing irreparable loss and hardship to the Petitioner as it is not able to meet the requirements of payment of salaries and other operational expenditure.

viii) The fee collected from the students is deposited in the frozen Account and not the alleged advance sale consideration paid by the 5th Respondent.

With the said submissions, learned counsel for the petitioner sought to allow the Writ Petition as prayed for.

5. CONTENTIONS OF THE 5TH RESPONDENT

i) It is submitted that the Accounts of the Petitioner were frozen in view of the offences committed by it.

ii) Registration of crimes in view of siphoning away the proceeds of the crime amounting to Rs. 6,50,00,000/- as part of investigation under the guise of meeting administrative expenditure, monies are being siphoned away to related parties of trustees and key personnel of the Petitioner.

iii) When bank Accounts are frozen, the aggrieved party must approach the concerned Magistrate by filing an application under Sections 451 or 457 of Cr.P.C.

With the said submissions, learned counsel for the 5th Respondent sought to dismiss the Writ Petition.

6. CONTENTIONS OF THE 3RD RESPONDENT

i) Basing on written instructions, submits that the impugned notice freezing the bank Account was issued in the light of the crime registered in Cr. No. 366 of 2021 under Section 406 and Section 420 read with Section 34 of IPC.

ii) The case is being investigated and as part of the investigation three witnesses were examined. It was, in furtherance of the investigation and on suppression of commission of offences, notice to freeze the bank Account was issued on 11.08.2021 under Section 102 of Cr.P.C.

With the said submissions, learned Assistant Government Pleader for Home, sought to dismiss the Writ Petition.

7. FINDINGS OF THE COURT

i) Before going into the issues involved in the case, it is relevant to discuss the scope of Section 102 of Cr.P.C.

Section 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.

ii) It is clear from the bare reading of the provision that only such property can be seized which is alleged or suspected to have been stolen or which has raised any suspicion of commission of any offence. Further, the details of such seizure are to be 'forthwith' informed to the Magistrate.

iii) It is also relevant to note the object behind Section 102 CrPC. The Supreme

Court in *Navada Properties Private Limited v. State of Maharashtra* (2019) 20 SCC 119 held that the purpose of Section 102 of Cr.P.C. is to help and assist investigation and to enable the Police Officer to collect evidence to be produced to prove the charge complained of and set up in the charge sheet. The Section is a part of the provisions concerning investigation undertaken by the Police Officer.

iv) With regard to freezing of bank Accounts by invoking power of the Investigating Officer under Section 102 of Cr.P.C. is no longer *res integra*. The phrase 'any property' in Section 102 of Cr.P.C includes bank Accounts and Police authorities have power to freeze bank Accounts. In *State of Maharashtra v. Tapas D. Neogy* (1999) 7 SCC 685 it was held as follows-

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 Code of Criminal Procedure. 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 Code of Criminal Procedure 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 Code of Criminal Procedure 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.

Therefore, a Police Officer can freeze a bank Account if the monies in that bank Account have any nexus with commission of any offence.

v) It is also relevant to note that the scope of Police Officer's power under Section 102 Cr.P.C, was discussed by the Apex Court in *Teesta Atul Setalvad v. The State of Gujarat* (2018) 2 SCC 372. wherein it was held that the power under Section 102 Cr.P.C. cannot be stretched to irrelevant matters and must be exercised cautiously, failing which, the discretion exercised by the authority would be tainted with arbitrariness. The relevant portion is reproduced below -

In the case of *Sri Jayendra Saraswathy Swamigal* (supra), the Court while considering a transfer petition Under Section 406 of the Code, seeking transfer of the case pending before the Principal Sessions Court, Chenglepet, to any other State outside the State of Tamil Nadu, adverted to the circumstance of a

motivated order passed Under Section 102 of the Code for freezing of 183 bank Accounts of the Mutt on the ground that the head of the Mutt was involved in a murder case. In that context, it observed that the power vested Under Section 102 of the Code cannot be stretched to irrelevant matters, to extremes and to a breaking point. The power must be exercised cautiously, failing which, the discretion exercised by the authority would be tainted with arbitrariness.

vi) Now coming to the facts of the case, it is relevant to note that it is the contention of the Petitioner that the 3rd Respondent did not inform the Magistrate about the freezing of the bank Account in question forthwith in compliance of the provisions under Section 102 of Cr.P.C. The 3rd Respondent in his written instructions did not deny the same. Therefore, he has not informed the same to the concerned Magistrate.

vii) Section 102(3) of Cr.P.C., clearly provides that the Magistrate is to be informed 'forthwith'. The said aspect fell for consideration. In AP Product v. State of Telangana 2021 (1) ALT 528. In the said case, the term 'forthwith' was interpreted to mean 'as soon as may be' or 'with reasonable speed and expedition' or 'with a sense of urgency' or 'without any unavoidable delay'. It was held that 'forthwith' does not mean instantaneous but would mean within a reasonable time. In that case, due to Covid-19 Pandemic, the Court permitted a delay of more than 5 months in intimating the Magistrate about the freezing of bank Accounts.

viii) The Delhi High Court in Muktaben M. Mashru v. State (NCT of Delhi) 2019 SCC OnLine Del 11509 held that if the procedures under Section 102 are not followed, the freezing of the bank Account is not legally sustainable. The relevant paragraphs are extracted below-

31. In the case of T. Subbulakshmi v. The Commissioner of Police, (supra), it was held that if there is any violation in following the procedures under Section 102 Cr.P.C., the freezing of the bank Account cannot be legally sustained. Freezing of bank Account is an act of investigation by the police and therefore, duty is cast upon the I.O. under Section 102 Cr.P.C. to report the same to the Magistrate forthwith as freezing prevents a person from operating his bank Account.

32. Further, in the case of Uma Maheswari v. State rep. by Inspector of Police, 2013 SCC OnLine Mad 3829, the Court held that reporting of the freezing of the bank Accounts is mandatory. Failure to do so will vitiate the freezing of the bank Account. It shall be reported 'forthwith' to the jurisdiction Magistrate. The phrase 'shall' employed in Section 102(3) Cr.P.C. is held to be mandatory in nature and violation of it goes to the root of the matter.

33. Recently, in the case of Manish Khandelwal v. State of Maharashtra, 2019 SCC OnLine Bom 1412, decided on 30.7.2019, the Court rejected the contention that non-compliance of the procedure laid down under Section 102 Cr.P.C. is only an irregularity and will not vitiate freezing of the bank Accounts. It was held that in case the mandatory provision under Section 102 Cr.P.C. has not been followed

then it would entail the consequence of giving directions to defreeze the bank Account. The duty of reporting to Magistrate any seizure of bank Account is cast upon the IO as freezing of the bank Account prevents the person from operating the bank Account pursuant to investigation. If there is any violation in following the procedures under Section 102 Cr.P.C., freezing of Account cannot be legally sustained.

ix) It is clear from the facts that the concerned Magistrate was not informed at all. As held in AP Products (supra) the Magistrate has to be informed within reasonable time without any undue delay. The impugned notice was addressed on 11.08.2021, however, till date the Magistrate has not been informed about the freezing of the bank Account in question. Therefore, the freezing of bank Accounts in the instant case is liable to set aside on this ground alone.

x) Placing reliance on the principle laid down in AP Products (supra), it is contended by the 5th Respondent that the Petitioner has an efficacious alternative remedy under Sections 451 or 457 of the Cr.P.C. Reliance was placed on the order passed by this Court in Sri Darshan Kothari v. State of Telangana W.P. No.9386 of 2021, decided on 05.07.2021 in support of its contentions. However, alternative remedy is not a bar to invoke the jurisdiction under Article 226. Moreover, where an act such as freezing of bank Account is carried out without following the procedure laid down, the Court can interfere and set aside such order. The said principle was laid down by the Delhi High Court in Muktaben M. Mashru (Supra).

xi) It is relevant to note that in Sri Darshan Kothari (supra), it is a case where there were serious allegations of loan fraud by Chinese Companies involving Crores of rupees by cheating innocent people and their harassment. There were suicidal deaths due to the unbearable torture by the personnel of the said companies. Therefore, there was strong suspicion of transfer of the said money into the bank Account of the Petitioner therein. It was an organized crime. Whereas, in the present case, the dispute is between the Petitioner and the 5th Respondent, Educational Institutions with regard to sale and transfer of the business and assets of the Petitioner. Therefore, the said principle is not applicable to the facts of the present case.

xii) As discussed supra, the Petitioner had executed an agreement of sale dated 28.12.2018 with the 5th respondent with regard to sale of schedule mentioned property on the specific terms and conditions. BTA dated 11.03.2019 was entered between them. The 5th respondent has not filed any suit either seeking specific performance of agreement of sale dated 28.12.2018 or suit for recovery of money. There is an arbitration clause in BTA dated 11.03.2019. The 5th Respondent did not invoke the same. It can even file an application under Section 9 of the Arbitration and Conciliation Act, 1996 and an application under Order XXXVIII and Rule 5 of C.P.C. by filing a suit.

xiii) It is also apt to note that the 5th Respondent had lodged a complaint with

the Police, Madhapur Police Station only on 02.04.2021 and the Station House Officer, Madhapur, in Cr.No.366 of 2021, has issued impugned notice only on 11.08.2021 freezing the Account of the Petitioner maintained in 4th Respondent Bank.

xiv) It is relevant to note that the very same Investigating Officer had issued a similar notice under Section 102 of Cr.P.C., on 25.07.2021 in Cr.No.366 of 2021 to freeze the Account of the Petitioner maintained in 4th Respondent Bank. This Court granted interim order dated 04.08.2021 in W.P.No.18154 of 2021. During the pendency of the said Writ Petition and subsistence of the interim order, dated 04.08.2021, the Investigating Officer had issued the impugned notice dated 11.08.2021.

8. CONCLUSION:

i) Viewed from any angle, the impugned notice is liable to be set aside.

ii) Accordingly, this Writ Petition is allowed and the impugned notice issued in Cr.No.366/5/MDPRPS/CYB/2021, dated 11.08.2021 by the 3rd Respondent is set aside.

iii) In the circumstances of the case, there is no order as to costs.

As a sequel, the miscellaneous petitions, if any, pending in the writ petition shall stand closed.