(1987) 05 DEL CK 0023

In the Delhi High Court

Ms Swaran Sabharwal APPELLANT

Vs

Commissioner of Police RESPONDENT

Date of Decision : 22-05-1987

Acts Referred:

Citation : (1990) 68 CompCas 652 : (1986) 2 RCR(Criminal) 382 : (1988) 1 RCR(Criminal) 338

Hon'ble Judges : S. Ranganathan, J;H.C. Goel, J

Bench : Division Bench

Advocate : P.N. Lekhi and Ms. Hema Kohli, for the Appellant; Maheshwar Dayal, for the Respondent

Judgement

This Judgment has been overruled by : State of Maharashtra Vs. Tapas D. Neogy, (1999) 98 CompCas 626 : (1999) CriLJ 4305 : (1999) 3 CTC 350 : (1999) 7 JT 92 : (1999) 5 SCALE 613 : (1999) 7 SCC 685 : (1999) 2 SCR 609 Supp : (2000) 1 UJ 431

S. Ranganathan, J.—The petitioner, Mr. Swaran Sabharwal, is the wife of Shri Ram Swarup. She maintains a savings bank account with the American express International Banking Corporation (respondent No. 4), the number of the account being 1656. Her grievance in the writ petition is that the above savings account, has been forzen at the instance of respondent No. 2. It is alleged that she has not even been supplied with a copy of the order freezin her account because of such a prohibitory order from respondent No. 2.

2. It is now common ground that the Deputy Commissioner of Police, Special Branch, Delhi (respondent No. 2), has issued to the manager of the American Express Bank, a letter dated October 31, 1985. The subject matter of the letter as set out in the letter reads thus :

``Regarding ceasing of an account in r/o Sh. Ram Swarup S/o .... arrested in case FIR No. 216, dated September 23, 1985 u/s 3, 4 and 5, 7 of the Official Secrets Act read with 120B, IPC, P. S. Tughlaq Road, Delhi.''

3. The memorandum proceeds to state :

``I am to inform you that Mr. Swaran Sabharwal, s/o. Ram Swarup, Holder of Bank Account No. 1656, has been arrested in the aforesaid case. His account may kindly be ceased forthwith and he may not be allowed to operate his account.''

4. The petitioner contends that this prohibitory order is wholly invalid and that the same should be quashed.

5. The petitioner also applied for permission to operate the bank account during the pendency of the petition. After hearing both the parties, the court made the following order in the interim applications (viz., C. Ms. Nos. 882, 883 of 1986) :

``Head. Mr. Lekhi states that it will be acceptable to him if the petitioner is not allowed to operate the bank account but orders are passed to the effect that, if the writ petition is ultimately allowed, respondents 1 to 3 will pay 18% per annum interest with effect from October 31, 1985, till the date of the petition being allowed. We feel that the suggestion is very fair and we order accordingly.''

6. The bench also directed the expeditious hearing of the petition and the petition now comes up for hearing.

7. There can be no doubt that the prohibitory order dated October 31, 1985, is on the face of it illegal and should be quashed. It discloses a mix up regarding the sex of the petitioner and her relationship to Ram Swarup who is the accused in FIR 216 referred to in the letter. The letter proceeds on the basis that the account was in the name of the son of Ram Swarup and that it was necessary that his account should be frozen. Counsel for the respondents submits that this was an inadvertent error and that in the original letter sent to the bank, the name and relationship have been set out correctly. But, even granting this, the letter is reckless in setting out the reason for the issue of the prohibitory order. It purports to say that the petitioner had been arrested in connection with the offence under the Official Secrets Act and that it was, Therefore necessary to prevent her from operating the account. This is admittedly no correct. Counsel for the respondents concedes that the petitioner has neither been arrested nor accused of the offences mentioned in the letter. The prohibitory order dated October 31, 1985, Therefore, discloses no valid or relevant reason for the direction given and discloses a complete non-application of mind to the circumstances in which the order was considered necessary. We, Therefore, think that there is no alternative but to quash it.

8. Learned counsel for the respondents contended that the order dated October 31, 1985, could be sustained by reference to section 102 of the Code of Criminal Procedure. This section reads as under :

"102 (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 transport 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."

9. Counsel referred to certain judgments to show that a bank account can be treated as "property" within the meeting of the above section : AIR 1944 366 (Nagpur) , Babulal Agarwalla Vs. Province of Orissa and Others, , Krishnan Sukumaran Vs. Enforcement Officer, Cochin, and Dr. Gurcharan Singh v. State of Punjab (1978) PLR 514. he submitted that a perusal of the bank account of the petitioner with respondent No.2 shows that monies had been transferred to her by her husband. According to counsel, police had reason to believe that the fund obtained by the petitioner''s husband as a result of the offence with which he is charged have been transferred to the petitioner and deposited in the above-mentioned bank account. He says that, in these circumstances, the seizure of the monies deposited with the bank can be justified by reference to section 102 above-mention.

10. 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 u/s 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 u/s 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 hear 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.

11. 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 account 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 of 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.

12. 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 in 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 give 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 orders 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 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.

13. For the reasons abovementioned, we are of the opinion that the prohibitory order dated October 31, 1985, by reason of which the petitioner was prevented from operating the bank account in question should be quashed. We direct accordingly. In view of the order of this court dated May 4, 1986, we further direct respondents Nos 1 to 3 to pay the petitioner interest at the rate of 18% per annum on the amount of the balance which stood to her credit on the date of the prohibitory order, namely, Rs. 42,770.14 from May 4, 1986, till the date of this order.

14. Counsel for the petitioner states that he is also entitled to the cost of this petition. Having regard to the fact that the petitioner has been awarded interest during the pendency of the writ petition, we are of the opinion that we should

make no orders as to costs.

15. The writ petition is disposed of accordingly. There will be no order as to costs.

