

(2002) 05 OHC CK 0025

In the Orissa High Court

Case No : Criminal Revision No's. 718, 719 and 720 of 2001

Nabapravat Trust, Zerina Marines Pvt. Ltd. and Zerina
Constructions Pvt. Ltd.

APPELLANT

Vs

State of Orissa

RESPONDENT

Date of Decision : 17-05-2002

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 401

Citation : (2002) 94 CLT 41 : (2002) OLR 777 Supp

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : S.C. Parija, P. Behera and M.R. Tripathy, for the Appellant; D.K. Mohapatra, Standing Counsel (Vigilance), for the Respondent

Judgement

L. Mohapatra, J.—All the three revisions have been filed against the order dated 3.10.2001 passed by the learned Special C.J.M. (Vigilance), Bhubaneswar rejecting the prayer of the petitioners in all the three revisions for release of bank accounts seized by the Vigilance Department.

2. The following are the facts giving rise to the above three revisions. First Information Report was lodged by the Vigilance Department against one Bichitrananda Muduli and the F.I.R. was registered as Bhubaneswar Vigilance P. S. Case No. 25/2000 for the offences alleged to have committed under Sections 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988. Allegation in the F.I.R. is that the public servant is in possession of properties disproportionate to his known sources of income. At the time of lodging F.I.R. the public servant was working as Chief Engineer in the Rural Works Department under the State Govt. Further case of the Vigilance department is that said Bichitrananda Muduli who has retired in the meantime had acquired properties disproportionate to his known sources of income to the tune of Rs. 77,50,614.75p. According to the Vigilance Department said accused Bichitrananda Muduli did not have sound financial background earlier and had incurred loan even after entering into

service and could not repay the same till 1970. On his failure to repay the loan certificate case was initiated against him and he was also not in a position to construct a residential house for himself for which he had also obtained loan from the Capital Urban House Building Co-operative Society Limited in the year 1986. The financial condition of the said public servant was also not very good even in the year 1995 when he applied for third instalment of the loan to the Secretary, Capital Urban House Building Co-operative Society Limited, Bhubaneswar. Son of the public servant Sri Nalinikanta Muduli who is the Managing Director of two of the petitioners-companies and a Trustee in the petitioner trust (in Crl. Revision No. 718/2001) also had no income and was not paying income tax till 1995. Suddenly after 1995 there has been acquisition properties to the extent stated above which have been found prima facie to be disproportionate to the known sources of income of said accused Bichitrananda Muduli. During investigation into the said case the Vigilance Department seized bank accounts of all the three petitioners in the aforesaid three revisions on the ground that huge amount of money misappropriated by said accused Bichitrananda Muduli have been invested in the two companies namely Zerina Marines Pvt. Ltd. (Crl. Ref No. 719/2001) Zerina Constructions Pvt. Ltd. (Crl. Rev, No. 720/2001) as well as Nabaprat Trust (Crl. Rev. No. 718/2001) run by his son.

3. Shri S.C. Parija, learned counsel appearing for the petitioners in all the revisions submitted that Nabaprat Trust has been established under the Indian Trust Act for charitable purpose and the same has been registered under the Income Tax Authorities for exemption from payment of income tax. The trust runs two technical institutes namely Neelachal Poly-technic and Neelachal Institute of Computer Science which were established on 1.9.97 and 30.11.99 respectively. The admission and tuition fees collected from the students of both the institutes were kept in bank accounts which have no nexus with the alleged disproportionate income of the public servant, who happens to be the father of trustee of the said Trust. He further submitted that so far as Nabaprat Trust is concerned, there is no iota of evidence on record to even prima facie prove that any amount said to be disproportionate to the known sources of income of accused Bichitrananda Muduli has been invested in the said trust.

So far as Zerina Marines Pvt. Ltd. and Zerina Constructions Pvt. Ltd. are concerned, it is submitted by Sri Parija, learned counsel that both the organisations have undertaken construction work under the Department of Water Resources of the State Government at various places and all incomes coming from execution of the work by the aforesaid two companies have been kept in deposit in different bank accounts which are under seizure. Sri Parija further submitted that all the incomes coming from execution of said works are in the form of negotiable instruments and their origins can be traced out by the Vigilance Department to find out whether the said amount kept in bank in the accounts by way of negotiable instruments are the investment of accused Bichitrananda Muduli or not. Instead of making any enquiry whatsoever, under the assumption that both the companies are incorporated by investing ill-got

money of accused Bichitrananda Muduli accounts operated by both the companies have been seized. Sri Parija also submitted that cash deposit in all the accounts seized by the Vigilance Department are negligible which otherwise prove that there was practically no investment made by accused Bichitrananda Muduli in any of the companies or the trust. Merely because Managing Director of both the companies is the son of accused Bichitrananda Muduli and that he is one of the trustees of the Nabapravat Trust, accounts operated by all the three organisations have been seized. According to Sri Parija u/s 18 of the Prevention of Corruption Act before issuing any direction or order for seizure of the bank accounts, the Vigilance Department should have verified the bank accounts and found out as to whether any of the deposit in the said banks appears to be doubtful or is not traceable to its source. Instead of making any such verification, the Vigilance Department directed seizure of accounts. According to him there is no material on record to even prima facie establish that there is any link between the amount lying in the said bank accounts with the offence committed by the public servant.

4. Shri D.K. Mohapatra, learned counsel appearing for the Vigilance Department, on the other hand, submitted that the documents seized during investigation clearly indicate that till the year 1995 neither accused public servant nor his son who is the Managing Director of the companies namely Zerina Marines Pvt. Ltd. and Zerina Constructions Pvt. Ltd. had sufficient sources of income. Rather son of accused-public servant had practically no income and was not filing tax return till year 1995. After 1995 suddenly income of the son of accused public servant has gone upto such extent that doubt arises in the mind of the Vigilance Department to the effect that accused-public servant might have invested huge amount from out of ill-got money in the aforesaid two companies as well as in the trust. He further submitted that some documents have been seized indicating that huge amount have been given on loan by the accused-public servant to his son and bank accounts also indicate that huge amount of money have been deposited in cash. Referring to the decision of the Apex Court reported in AIR 1999 SCW 3389 (State of Maharashtra v. Tapas D. Neogy) Sri Mohapatra submitted that the Vigilance Department has the authority u/s 201 of the Criminal Procedure Code to cause seizure of the bank accounts of the son of the accused public servant or accounts of the companies run by his son if the same has any nexus with commission of offence committed by the public servant for which investigation is going on. According to him since investigation is still in progress it may not be possible to hold at this stage that there is no nexus between the commission of offence by the public servant and the amount deposited in the bank accounts seized by the Vigilance Department.

5. In the aforesaid factual backdrop, it is necessary to examine the case of the Vigilance Department with regard to disproportionate assets of the public servant. Undisputed facts are that the Managing Director of both the construction companies is the son of accused public servant and he is also a trustee in Nabapravat Trust. Admittedly, both the construction companies have been

incorporated under the Companies Act and have undertaken several works under the State Government through department of Water Resources. Admittedly also, huge amount have been received by the two companies from the department for execution of work by way of negotiable instruments which have been deposited in the said bank accounts. So far as Nabapravat Trust is concerned, admittedly the said trust is running two institutions, such as Neelachal Poly-Technic and Neelachal Institute of Computer Science and admission fees as well as tuition fees collected from the students have been deposited in the bank accounts operated by the said Trust.

Now the question that arises for consideration is to what extent investment have been made by accused-public servant in the aforesaid three organisations. If the amount can be determined from the record there shall be no difficulty for the Vigilance Department to direct seizure of that amount from out of the bank accounts operated by all the three organisations. Case of the Vigilance Department is that disproportionate assets assessed by it will be around Rs. 77,50,615.75p. This figure has been arrived at the calculating the cost of the house belonging to public servant, his own bank accounts and other properties including ornaments. At the time of argument learned counsel for the Vigilance Department fairly submitted that for the aforesaid amount properties are secured and there could be an attachment of the said properties. The Vigilance Department having prima facie found the public servant in possession of properties disproportionate to his known sources of income to the aforesaid extent, which are otherwise secured, is it open for them to seize accounts of three organisations merely because Managing Director of the companies happens to be the son of public servant, in absence of any direct link between the commission of offence and investment made in the aforesaid three organisations.

It appears from the documents filed before this Court by the Vigilance Department that some entries made in the diary maintained by the son of the public servant have been seized. Though entries indicate some amounts with heading "Loan" in the names like Mama and Bapa. It is not clear from the said document as to whether said loan was given by the Managing Director of the said companies to his father and/or mother or he had received those amount from father/mother. Even accepting the contention of the learned counsel for the Vigilance Department that the amount indicated in the said entries relate to the amount received from accused public servant, it would be open for the Vigilance Department to cause seizure of such amount as indicated in the said entries from out of bank accounts instead of seizing the entire bank accounts. Even accepting that those amounts have been given by accused-public servant and his wife to the aforesaid three organisations, the total amount of money shall not be more than Rs. 20 lakhs approximately. From the documents placed before this Court it further appears that huge amount have been received and kept in deposits in the bank accounts by way of negotiable instruments towards payment against works executed under the Water Resources Department. It also appears that amount collected towards admission and tuition fees from the students of the two

institutes run by the Nabapravat Trust have been deposited in the said bank account. It also appears that cash of Rs. 11.70 lakhs have been seized from the office of one of the construction companies which is said to be the properties of the company kept to meet the expenses at work sites.

6. Section 18 of the Prevention of Corruption Act, 1988 prescribes that, if from information received or otherwise, a police officer has reason to suspect the commission of an offence which he is empowered to investigate u/s 17 and considers that for the purpose of investigation or enquiry it is necessary to inspect any of the bankers' books, then he may inspect and banker's books in so far as they relate to the accounts of the persons suspected to have committed that offence or any other person suspected to be holding money on behalf of such person, and 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 exercised of his powers under the said Section. It is very clear from the aforesaid Section that it is obligatory on the part of the Investigating Officer, in the event he got information as envisaged in the said provision, to make enquiry, take certified copies of the relevant entries causing seizure of the same. The aforesaid provision has been kept in the Act to empower the Investigating Officer to find out the investments or deposits made by accused public servant by himself or through others who may be relatives or friends for the purpose of finding out exact disproportionate assets in the hands of the accused-public servant. Section 102 of the Criminal Procedure empowers police officer to seize any property which may be alleged or suspected to have been stolen or which may be found under circumstance which creates suspicion of the commission of any offence. There is no doubt with regard to the authority of the Investigating Officer u/s 102 of the Cr. P. C. to cause seizure of any property which he feels may be connected with commission of any offence. Apex Court in the decision reported in the case of State of Maharashtra v. Tapas D. Neogy (supra) also made it very clear and the observations made by the Apex Court are as follows :

"Having considered the divergent views taken by different High Courts with regard to the power of seizure u/s 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 persons is unable to account satisfactorily. The interpretation given by us in respect of power of seizure u/s 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."

Though much reliance has been placed by Sri Mohapatra on the said decision, I am afraid that the facts of the said case are completely different than that of the present case. From the facts of the aforesaid case it appears that Tapas D. Neogy was an Architect and Town Planner in the Department of Town Planning of the Union Territory of Daman and Diu. The C.B.I., ACB, Mumbai registered three First Information Reports against the said Tapas D. Neogy and three others for the offence committed under the Prevention of Corruption Act as well as some of the offences under the Penal Code. In course of investigation bank accounts and lockers in the Indian Bank at Calcutta jointly held by the accused and his mother and brother were searched and sealed and another locker held by mother and sister of the accused was also searched and sealed. The Investigating Officer issued instructions to Managers of different banks not to allow accounts to be operated upon. Mother of the accused filed an application before the court to allow her to operate bank account and for return of documents and articles seized, claiming that they belong to her. Though Magistrate granted relief in respect of the locker in question but refused the mother to operate the bank account. The matter was carried to the Bombay High Court and the after analysing the provisions contained in Section 102 of the Cr.P.C. and after taking notice of several judgments of different High Courts, the Bombay High Court came to conclusion that the bank account of the accused or any relation of accused cannot be held to be the property within the meaning of Section 102 of

the Cr.P.C. and also held that the Investigating Officer has no power either to seize the bank account or to issue any prohibitory order, prohibiting the operation of the bank account. Challenging the said order of the Bombay High Court the Maharashtra Government went in appeal to the Apex Court. The Apex Court on consideration of the aforesaid facts came to hold that u/s 102, Cr.P.C. police officer in course of investigation can seize or prohibit operation of bank accounts of such assets have direct links with the commission of the offence for which police officer is investigating into.

Learned counsel for the petitioners has no quarrel over the proposition of law laid down by the Apex Court. On the other hand, he submitted that the police officer who is investigating into the case has power to seizure bank accounts or prohibit operation of said bank accounts only if such assets have direct link with commission of offence. According to Sri Parija, there is no material even to prima facie show that there is some link between the amounts in deposit in the account and the commission of offence.

7. In the light of the decision of the Apex Court and the submission made by the learned counsel appearing for both parties, I proceed to examine the documents on which reliance is placed by the Vigilance Department, to establish a direct link between the bank accounts operated by the three organisations as well as cash seized from one of the organisations with that of disproportionate income of the accused public servant. The documents are basically entries made in a diary. In some entries though figures have been mentioned in thousands in respect of some entries there is no mention as to whether the figures are in thousands or in lakhs. In one of the entries made in the diary which is marked "77" it appears that some amount have been mentioned against the name of "Bapa" and "Mama" under the heading "loan". As an example in the said document, it appears that Rs. 1,65,000/- has been mentioned against the name "Mama" on the left side and on the right side it is again written Grand-papa, Apa and Binu aunty. From these entries it is difficult to establish allegation of the Vigilance Department that such amount had been received on loan from mother. Had it been so the other entries with regard to Grand-papa, Apa, and Binu aunty as mentioned in the right side of the amount would not be indicated. One of the documents marked as "73" only indicates payment made by Zerina Marines Pvt. Ltd. On examination of the entries, I only find one entry where it is clearly mentioned that Rs. 40,000/- had been received from accused public servant. The said document is marked as "18". Rest of the documents and the entries made therein do not indicate as to whether the amount mentioned against the name of accused public servant and his wife were received as loan or given to them as loan.

8. So far as the accounts operated by the construction companies are concerned if any cash deposit is made at the initial stage for opening accounts there may be some chance of establishing the same to have been taken from the accused-public servant. There is no dispute about the fact that both the construction

companies had executed good number of works under the State Government in the water Resources Department. There is also no dispute that the amount received for execution of the said work by way of negotiable instruments had been deposited in the accounts. It is submitted by Sri Parija, learned counsel for the petitioners that in course of business some cash amounts have been withdrawn from such account and unutilised cash had again been deposited. Therefore, it cannot be said that whatever amount had been deposited in cash must have been received from the accused public servant. It is common knowledge that in course of business deposits are made not only by way of negotiable instruments but also by way of cash. Unless the Department is capable of proving prima facie that such cash deposits were the amount received from accused public servant it will be unjust to deprive the construction companies from utilising said money for the purpose of business.

Bank accounts were seized about two years back. In spite of passage of two years the Vigilance Department is not in a position to produce any material before this Court to establish the link between the deposits made in cash and the disproportionate assets of the public servant which is said to be invested in the aforesaid two construction companies. Shri D.K. Mohapatra, learned counsel for the Vigilance Department submitted that the Managing Director of the companies who is the son of the public servant is avoiding interrogation as a result of which the Vigilance Department is not able to establish the direct link as yet. I fail to appreciate such submission.

On consideration of the entire materials placed before this Court, I only found that there is one entry which indicates receipt of Rs. 40,000/- by the Managing Director of the companies from accused public servant. So far as other entries are concerned, though name of the accused public servant and his wife are indicated as Bapa and Mama, in view of the reasons stated above, it is difficult to accept the contention of the learned counsel for the Vigilance Department that those are the amount received from the accused public servant when admittedly both the construction companies and the trust received huge amounts by executing work under the State Government.

9. So far as the Nabapratat Trust is concerned, admittedly the case of both parties is that the said Trust has been established under the Indian Trust Act for charitable purpose. It is also admitted that the said Trust runs two technical Institutes namely Neelachal poly-technic and Neelachal Institute of Computer science which were established on 1.9.1997 and 30.11.2000 respectively. It is admitted case of both parties that since beginning both the institutes had students and admission fees as well as tuition fees has been collected from the students either in the form of cash or in the form of negotiable instruments. There is also no dispute that the institutions were getting grants. On perusal of the entire case diary I do not find any single document or evidence which would indicate that any amount had been deposited in the accounts operated by the Trust belonged to the accused public servant. Learned counsel Sri Mohapatra

appearing for the Vigilance Department also could not produce any material to establish any link between the amount deposited in the accounts operated by the Trust and disproportionate assets of the accused public servant. In absence of any link as observed by the apex Court the Vigilance Department had absolutely no authority to cause seizure of accounts operated by the Trust. Mere deposit of money in cash is not enough to presume that such amount must have been advanced by the accused-public servant. Such presumption will not arise in this case since admittedly the Institutes were receiving admission fees as well as tuition fees from the students and also getting grants in the form of either cash or negotiable instruments. I am, therefore, of the view that the seizure of the accounts operated by the Trust is illegal and in absence of any link between the disproportionate assets acquired by the accused-public servant and the amounts in deposit in the accounts operated by the Trust, the seizure is liable to be lifted.

10. So far as seizure of cash of Rs. 11.70 lakhs from one of the construction companies is concerned, the Vigilance Department has also not been able to prove any link. There is no material on record to show that the money belongs to the accused public servant. On the other hand, it appears that the property of the company kept in the office for the purpose of business.

11. On consideration of the above documents and in view of the discussions made in the earlier paragraphs, even accepting the contention of the learned counsel for the Vigilance Department that some amount had been received by the Managing Director of the companies in cash from accused public servant and his wife, the total amount as revealed from the record does not exceed Rs. 40,000/-. There being no material at all on record to show that any amount had been invested in Nabapravat Trust, the only conclusion that can be arrived at prima facie is that Rs. 40,000/- received from accused public servant might have been kept in any of the accounts run by the two construction companies.

12. It further appears from the records that Zerina Marines Pvt. Limited had filed writ application being O.J.C No. 1196/2000 before this Court and as an interim measure, this Court had permitted the company to deposit amounts by way of cheque or bank draft or pay order, etc. In the accounts opened with the State Bank of India, RCE Campus Branch, Bhubaneswar, but was not permitted to withdraw any amount from such account. Since the said interim order is still in operation and the writ is yet to be disposed of, I direct that the Zerina Marines Pvt. Limited may operate the said account in the manner directed by the Court in the aforesaid writ application and the said account is kept out of purview of these three revisions. Though this account is not subject matter of dispute, since an objection is raised by the department, the above order is passed.

13. In view of the discussions made above, all the revisions are disposed of with the following directions :

(i) It is directed that the accounts operated by the Zerina Marines Pvt. Limited, Zerina Constructions Pvt. Limited and Nabapravat Trust and the two institutions

namely Neelachal Poly-technic and Neelachal Institute of computer Science in the Bank of India, Saheed Nagar Branch, United Bank of India, Saheed Nagar Branch, Urban Co-operative Bank, Chandrasekharapur Branch, State Bank of India, Chandaka Branch and/or any other bank account operated by the petitioners under seizure except State Bank of India, RCE Campus Branch, Bhubaneswar (in view of order in O.J.C. No. 1196/2000) shall be released from seizure subject to the following conditions :

(a) The petitioners in Criminal Revision No. 719/2001 and Crl. Revision No. 720/2001 shall keep Rs 40,000/- in Fixed deposit received from accused- public servant for a period of six years within which time the trial is likely to be concluded.

(b) So far as cash amount said to have been advanced by accused-public servant and his wife are concerned, though I have specifically found that no nexus has been proved between the amount mentioned in the diary and the deposits made in the bank accounts, as abundant caution it is directed that the petitioner in both the cases shall execute indemnity bond for Rs. 10 lakhs each which shall remain operative for a period of six years.

(c) So far as cash seizure from Zerina Marines Pvt. Ltd. is concerned, it is directed that the said cash of Rs. 11.70 lakhs shall be released in favour of the said company on furnishing property security which shall be kept under attachment for a period of six years.

(d) So far as the accounts operated by the Nabapravat Trust and the two institutions namely Neelachal Poly-Technic and Neelachal Institute of Computer Science are concerned, there shall be no condition for operating the accounts.