(2020) 11 J&K CK 0028

In the Jammu And Kashmir High Court

Case No : Writ Petition (C) No. 1432 Of 2020, Civil Miscellaneous No. 3933 Of 2020

Neelofar Abass APPELLANT

Vs

State Of J&K And Others RESPONDENT

Date of Decision : 12-11-2020

Acts Referred:
Code Of Criminal Procedure, 1973 — Section 102, 102(1),
Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120(B), 468, 471
Prevention Of Corruption Act, 1988 — Section 5(2), 13(1)(e), 13(2), 16
Constitution Of India, 1950 — Article 226

Citation : (2020) 11 J&K CK 0028

Hon'ble Judges : Rajnesh Oswal, J

Bench : Single Bench

Advocate : R. A. Jan, Taha Khalil, Mohsin Qadiri

Final Decision : Disposed Of

Judgement

Rajnesh Oswal, J

1. Through the medium of this petition, the petitioner, who is serving as a Medical Officer at Public Health Centre near Ompura, Budgam, has impugned the action of the respondent No. 2 and 3 in freezing her salary account bearing No. SB/8456 maintained by her with respondent No. 4 and has prayed for de-freezing the said account.

2. Before appreciating the present controversy, it is necessary to have a glance of the factual aspects of the matter.

3. The petitioner states that in the month of July, 2020, she found that she was unable to operate her salary account mentioned above with respondent No. 4 and on being approached, the Branch Head of respondent No. 4 informed her about the freezing of her salary account due to FIR No. 2/2020. The petitioner further states that she through her husband got the copy of the FIR (supra)

registered with Crime Branch, Kashmir on 04.02.2020 for commission of offences 5(2) of the P.C. Act and 478, 471 and 120-B IPC at the instance of General Administration Department. The petitioner further contends that she in no way is connected to the Jammu and Kashmir Project Construction Corporation(JKPCC) and rather is member of the Health and Medical Gazetted Service so her account could not have been attached by the respondent No. 3. It is further stated that the statement of the accounts maintained by respondent No. 4 in ordinary course of business clearly reflects that the petitioner has opened and been maintaining with the respondent No. 4, the Account No. SB/8456 as salary account and whole of the money credited in the account of the petitioner is the salary drawn and disbursed to her by the Health and Medical Education Department as a consideration of her services rendered as medical officer. It is further contended that as per mandate of section of 102 Cr.P.C. the Police can seize the property only when the property is either the stolen one or is found under the circumstances creating the suspicion of the commission of offence and as the account was the salary account of the petitioner so the same could not have been frozen by respondent Nos. 3 and 4.

4. Pursuant to the order passed by this Court, the Crime Branch Kashmir i.e. respondent Nos. 2 and 3 have filed the status report in which it is stated that the Police Station Crime Branch had received a communication from the General Administration Department, Jammu and Kashmir dated 03.04.2019 to enquire into all the works executed by the JKPCC after issuance of the Government order No. 308 of 2015 dated 21.01.2015 to identify irregularities in the award of contracts in violation of the prescribed standing operating procedure(s). It was pursuant to the fact finding report submitted by the committee headed by a Principal Secretary to Government, Planning Department and Monitoring Department on the basis of which PV No. 51/2019 was initiated at Crime Branch Kashmir that culminated into the registration of FIR No. 2/2020 (supra) for commission of offences under sections 468, 471 and 120-B RPC read with 5(2)P.C. Act. It is further stated that during the course of investigation house searches of the suspects were conducted at different locations including the house of the then Deputy Chief Manager of the JKPCC Kupwara, namely, Mohd. Abbas Lone, husband of the petitioner as per the mandate of law. During search, incriminating material and documents related with property, gold coins and account numbers maintained in different Banks were recovered and subsequently suspected bank accounts were frozen to ascertain the mode of acquisition of both moveable/immoveable property. During the course of investigation, bank accounts statements of the alleged accused (Mohd. Abbas Lone) and his spouse i.e. the petitioner herein were perused and huge transactions were found carried out during different years. Further, it has been found that an amount of Rs. 68.98 lakhs (CCRs and saving accounts) were found present in the bank accounts of Mohd. Abbas Lone in different branches of J&K Bank. Further perusal of the bank accounts statements maintained by the petitioner, it has been found that an amount of Rs 98.55 lakhs (CCRs and saving accounts) was present in the

bank accounts of the petitioner. Further 19 gold coins were also recovered and seized during the house search of Mohd Abbas Lone and at his ancestral village Watto Shopian. To unearth the possible hidden assets created out from the illegal gratification, questionnaires were served to accused, Mohd. Abbas Lone and his wife i.e. petitioner herein to submit all the property related documents (both immovable/movable) acquired during the period before the Investigating Officer which has not been furnished till date. It is further stated in the status report that the Investigating Agency has already issued NOC for opening of fresh salary accounts in faovur of the petitioner and her husband on 14.09.2020.

5. Mr. R. A. Jan, learned senior counsel appearing for the petitioner submits that the salary account of the petitioner has nothing to do with the investigation that is being conducted by the respondent Nos. 2 and 3 in FIR No. 2/2020 as the petitioner is the member of Health and Medical Education Department and the amount lying in her account is the salary drawn by her, so her salary account cannot be frozen in any manner and is required to be de-freezed.

6. Per contra, Mr. Mohsin Qadiri, learned counsel appearing for the respondents submits that the petitioner is the wife of Mohd. Abbas Lone, Deputy General Manager, JKPCC Kupwara. During their house searches, number of incriminating material and documents were found and the petitioner has no cause of action to file the instant petition as she can demonstrate before the Investigating Officer with regard to the amount lying in her account is as salary amount.

7. Heard and considered.

8. From the perusal of the FIR, it is evident that the matter under the investigation pertains to the contracts executed by the JKPCC in violation of Government order No. 308 dated 21.11.2015. The petitioner is admittedly the wife of Mohd. Abbas Lone, who as per the status report filed by the respondents has worked as Deputy General Manager of the JKPCC Kupwara. It is mentioned in the status report that perusal of the bank accounts statements of Mohd. Abbas Lone as well as the petitioner revealed that huge transactions were carried out during different years and also a sum of Rs. 98.55 lakhs (CCRs and saving accounts) was present in the bank accounts of the petitioner. It is also stated in the report that the questionnaire was served to Mohd. Abbas Lone and his wife, petitioner herein but they did not furnish any reply to the Investigating Officer.

9. Now it is to be seen whether the Bank account of one spouse can be frozen when the matter under investigation pertains to the other spouse. At this juncture, it would be appropriate to take note of the judgment of the Apex Court rendered in case titled State of Maharashtra versus Tapas D Neogy reported in (1999) 7 SCC 685. The relevant paras are 6 and 12 of the judgment, the same are reproduced as under:

"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. Different High Courts in the country have taken divergent views in this regard. In the case of Swaran Sabharwal v. Commr. of Police [1988 Cri LJ 241 (Del) (DB)] a Division Bench of the Delhi High Court examined the question whether a bank account can be held to be "property" within the meaning of Section 102 CrPC. In the said case, proceeds realised by sale of official secrets were deposited by the accused in his wife's account. The Court in that case came to hold that it is not quite sure whether monies deposited in a bank account can be seized by means of a prohibitory order under the provisions of Section 102 but even assuming that a bank account is a "property" within the meaning of Section 102 of the Code of Criminal Procedure, the further consideration must be satisfied namely that the property has been found under circumstances which create the suspicion of the commission of an offence. But in that case it is not the discovery of the property that has created suspicion of commission of an offence but on the other hand the discovery of the bank account is a sequel to the discovery of commission of offence inasmuch as the police suspected that some of the proceeds realised by the sale of the official secrets have been passed on to the bank account of the wife of the accused. Therefore, the Court was of the opinion that the provisions of Section 102 cannot be invoked. In the case of Purbanchal Road Service v. State [1991 Cri LJ 2798 (Gau)] a learned Single Judge of the Gauhati High Court examined the provisions of Section 102 of the Criminal Procedure Code and the validity of an order by a police officer, prohibiting the Bank from paying amount to the accused from his account. The learned Judge came to the conclusion that the word "seize" used in Section 102 CrPC means actual taking possession in pursuance of a legal process and, therefore, in exercise of the said power, a bank cannot be prohibited not to pay any amount out of the account of the accused to the accused nor can the accused be prohibited from taking away any property from the locker, as such an order would not be a "seizure" within the meaning of Section 102 of the Criminal Procedure Code. The learned Single Judge agreed with the view taken by the Allahabad High Court in the case of Textile Traders Syndicate Ltd. v. State of U.P. [AIR 1960 All 405 : 1960 Cri LJ 871] In the Allahabad case on which the Gauhati High Court relied upon (Textile Traders [AIR 1960 All 405 :1960 Cri LJ 871]), what was decided by the Court is, once money passes on from the accused to some other person or to the bank, money itself becomes unidentifiable and, therefore, there cannot be any question of seizure of the same by the police officer.

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" (Emphasis Supplied)

10. Thus, is it is evident that the bank account of the accused as well as his relative falls within the definition of the "property" under section 102 Cr.P.C can be validly frozen during the course of investigation, if the circumstances exist creating suspicion regarding commission of any offence.

11. The next issue that arises for the consideration of this Court is whether the

money lying in the account of the petitioner falls within the purview of section 102 Cr.P.C so as to warrant the freezing of account. The respondent No. 3 has categorically stated in the status report that the questionnaire was submitted to the petitioner and her husband to submit all the property related documents (both immovable/movable) acquired during the period before the Investigating Officer, but they did not furnish the same. More so, in paragraph 15 of the petition, the petitioner has submitted that she made a formal representation on 20.08.2020 and the same is annexed as annexure A-5. However, its perusal reveals that the representation was made to respondent No. 4 only, who had frozen the account only on the instructions of respondent Nos. 2 and 3 and could not have been independently de-freezed the salary account of the petitioner without there being any instructions to that extent by respondent Nos. 2 and 3. This Court while exercising writ jurisdiction under Article 226 of the Constitution of India, cannot determine the disputed question of facts as to whether the amount lying in the salary account of the petitioner falls within the mischief of section 102 (1) of the Cr.P.C or not. There are serious allegations and investigation is still going on. To be fair to the petitioner and her husband, the questionnaires have been issued to them by Investigating Officer but those have been not replied by the petitioner as well as her husband. The petitioner has an option to demonstrate before I.O that the money lying in her account is the remuneration earned by her from her employer. The Investigating Officer may de-feeze her account if her contentions are found to be genuine and other wise after the conclusion of the investigation and after the filing of the report before the concerned court, the petitioner can still demonstrate before the concerned court with regard to the legitimacy of the amount lying in her salary account. Reliance is placed upon the decision of Apex Court in case titled Teesta Atul Setalvad v. State of Gujarat, reported in (2018) 2 SCC 372 and the relevant para is reproduced as under:

"26. Although both sides have adverted to statement of accounts and vouchers to buttress their respective submissions, we do not deem it necessary nor think it appropriate to analyse the same while considering the matter on hand which emanates from an application preferred by the appellants to defreeze the stated bank accounts pending investigation of the case. Indisputably, the investigation is still in progress. The appellants will have to explain their position to the investigating agency and after investigation is complete, the matter can proceed further depending on the material gathered during the investigation. The suspicion entertained by the investigating agency as to how the appellants appropriated huge funds, which in fact were meant to be disbursed to the unfortunate victims of 2002 riots will have to be explained by the appellants. Further, once the investigation is complete and police report is submitted to the court concerned, it would be open to the appellants to apply for defreezing of the bank accounts and persuade the court concerned that the said bank accounts are no more necessary for the purpose of investigation, as provided in sub-section (3) of Section 102 of the Code. It will be open to the court concerned to consider that request in accordance with law after hearing the investigating agency, including to impose conditions as may be warranted in the fact situation of the case." (Emphasis Supplied)

12. In view of what has been discussed above, this petition is disposed of with a direction to the petitioner to approach and demonstrate before the Investigating Officer in FIR no: 02/2020 u/s 5(2) P.C. Act, 478, 471 and 120-B IPC that the amount lying in her account No. SB/8456 maintained with J&K Bank Branch Bagati Barzulla Srinagar is the amount earned as salary from her employer and on being approached, the Investigating Officer shall proceed in accordance with law.

13. Disposed of accordingly.

