
(2008) 03 AP CK 0054

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21293 of 2007

PACL India Ltd.

APPELLANT

Vs

The AXIS Bank and Others

RESPONDENT

Date of Decision : 27-03-2008

Acts Referred:

Andhra Pradesh Protection of Depositors of Financial Establishments Act, 1999 —
Section 10, 104, 11, 11AA, 12
Andhra Pradesh Protection of Depositors of Financial Establishments Rules, 1999 —
Rule 3, 4, 6
Banking Regulation Act, 1949 — Section 5, 5
Constitution of India, 1950 — Article 19, 19(1), 226
Criminal Procedure Code, 1973 (CrPC) — Section 102, 102(1), 357, 4, 4(1)
Evidence Act, 1872 — Section 123, 124
Penal Code, 1860 (IPC) — Section 406, 420, 511
Prevention of Corruption Act, 1988 — Section 13(2)
Prize Chits and Money Circulation Schemes Banning Act, 1978 — Section 3, 4, 5(2)(C)

Citation : (2009) 2 ALD 5

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : Harsha Vardhan Reddy Beeram, for the Appellant; Ashok Anand Kumar, for Respondent Nos. 1 to 6, V. Amar Kumar, for Respondent Nos. 7 and 8, M. Narender Reddy and G.P. for Home for Respondent Nos. 10 and 11, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—This Court issued Rule Nisi on 3.12.2007.

2. PACL India Limited, the petitioner, filed the present Writ Petition praying for issuance of an appropriate Writ Order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondents 2 to 9 in freezing the accounts of the petitioner company basing on the letter of the 10th respondent dated 21.8.2007 as illegal arbitrary, ultravirous, malafide and against the principles of natural justice and pass suitable orders.

3. 11th respondent-the Sub-Divisional Police Officer, Vikarabad, Ranga Reddy District addressed letters to the concerned following institutions as R1 to R9, and the letter dated 21.8.2007 addressed to Punjab National Bank, M.G. Road, Secunderabad-R7 reads as under:

Government of Andhra Pradesh (Police Department) From To P. Venkateshwara Rao The Branch Manager Sub-Divisional Police Officer Punjab National Bank Vikarabad Sub-Division Secunderabad Branch Sir,

Sub: Investigation of Criminal Case-Please furnish the upto date Bank statement and freezing the collection accounts of PACL India limited-Secunderabad Branch-Regarding.

Ref: Account No. 3631002100011615 of PACL India Limited of Secunderabad Branch.

I, invite your attention with reference to the above cited subject, there are complaints against PACL INDIA LIMITED and in this regard a case was registered and investigation and enquires are being done. There is lot of public money is involved in these transactions. Hence, it is requested to freeze the Bank Accounts of PACL India Limited and also to furnish the up to date Bank statements. It is also requested that these accounts should not be opened by any of them till further intimation is given.

The required information may please be furnished at the earliest for the purpose of investigation u/s 91 and 102 Cr.P.C.

Yours faithfully, P. Venkateswara Rao, Sub-Divisional Police Officer, Vikarabad Sub-Division Ranga Reddy District.

4. In the light of such similar letters, which had been addressed to the respective banking institutions there has been freezing of accounts of the writ petitioner.

Submissions of Sri Ashok B.

5. The learned Senior Counsel representing the Writ Petitioner had taken this Court through the contents of the affidavit filed in support of the Writ Petition, the respective stands taken in the counter affidavits and also the provisions of the A. P. Protection of Depositors of Financial Establishments Act, 1999 (hereinafter in short referred to as "the Act") and also A.P. Protection of Depositors of Financial Establishments Rules, 1999 (in short hereinafter referred to as "Rules" for the purpose of convenience), and would maintain that in the light of the facts and circumstances, the freezing of accounts of the writ petitioner cannot be sustained. The ingredients of Section 3 of the Act are not satisfied at all. The learned senior counsel also had taken this Court through Sections 2, 3, 4, 5 and 6 of the Act as well, and further made elaborate submissions pointing out the order made by a competent Criminal Court in this regard and would maintain that in the light of the same, the action of the

institutions in taking a stand that they are just following the directions of the police to freeze the accounts in exercise of the powers, which in fact had been exercised by the police, u/s 102 of the Code of Criminal Procedure, 1973, definitely cannot be sustained. The learned senior counsel also would contend that at any rate this is just abuse of process of law and no ad interim order had been made and no further progress in the investigation at least had been made and in a way the action taken at this juncture cannot be sustained. The learned senior counsel also placed strong reliance on a decision of Rajasthan High Court in this regard.

Submissis of Sri Ashok Anand Kumar:

6. Sri Ashok Anand Kumar, the learned Counsel representing R1 to R6 had taken this Court through the contents of the counter affidavit filed by R1 to R6 and would maintain that the order made by the police, as such, had not been called for in question and hence, the Writ Petition, as framed, cannot be maintained and the Writ Petition is liable to be dismissed on this ground alone. The learned Counsel also while further elaborating the submissions had taken this Court through Sections 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12 of the Act, in general and further emphasized on the language employed u/s 13 of the Act, in particular. While elaborating the submissions the learned Counsel would maintain that by virtue of Section 13 of the Act, procedure under the Code of the Criminal Procedure 1973 to be followed. Even in the present case, the action of the police cannot be found fault with and further inasmuch as the banking institutions are bound to follow such directions and the impugned action being in accordance with law and a well justified action, and such action being in public interest as well, the same cannot be found fault with. The learned Counsel also distinguished the decision of the Rajasthan High Court on facts. The learned Counsel further relied upon several decisions to substantiate the stand taken by R1 to R6 in the counter affidavit.

Submissions of Sri Amar Kumar

7. Sri Amar Kumar, learned Counsel representing R7 substantially adopted the stand taken by Sri Ashok Anand Kumar and had taken this Court through the contents of the counter affidavit filed by R7 and would maintain that inasmuch as the power of the police cannot be doubted at all and the freezing of accounts being the only grievance against the banking institutions, the Writ Petition is liable to be dismissed.

Submissions of Narender Reddy:

8. Sri Narender Reddy, learned Counsel representing R9 would maintain that the banking institutions are not interested in harassing the customers, however, when the police exercised the powers under the provisions of the Code of Criminal Procedure, 1973, the banking institutions are bound to follow such directions.

Submissions of AGP for Home:

9. The learned AGP for Home had taken this Court through the contents of the counter affidavit filed by R 11 and also had drawn the attention of the Court to Section 91 read with Section 102 of the Code of Criminal Procedure, 1973, and would maintain that the order made by the Criminal Court being not on merits, would not come in the way at all and the orders of the Government are being awaited and in the light of the facts and circumstances and also in public interest, the action which had been taken by R2 to R 11 being in accordance with law and since the said action had not been called in question, specifically in the relief portion, the relief prayed for as such cannot be granted and the Writ Petition is liable to be dismissed.

10. Heard the counsel and perused the respective stands taken in the affidavit and in the counter affidavits filed by the parties and also the material produced before this Court.

11. The petitioner is a Public Limited Company. One of the main objects of the petitioner-Company is to sale and purchase of the land, development of the land, taking up construction work in the purchased land and to sale the same to the proposed buyers/customers. The petitioner company is having various offices across the country having its Regional Office at Hyderabad in Pooja Edifice, 201, 2nd Floor, Door No. I-10-20/2B, Begumpet, Hyderabad. The petitioner company in the State of A.P has purchased several hundred acres of agricultural land for allotment to its customers.

12. Further it is stated that the business of the petitioner company had been lawfully conducted as per the various laws, by-laws and rules and regulations of the respective Government and District administration. The business of the petitioner company for sale and purchase of the land had been held to be absolutely lawful, as per authoritative pronouncement made by the Hon'ble High Court of Rajasthan in the Civil Petition No. 6735/99 decided on 28.11.2003 and the operative portion of the said judgment reads as hereunder:

Thus, on the facts and circumstances we agree with learned Sr. counsels for the petitioner company and also Mr. Dhankar, learned senior counsel in D.B. Civil Writ Petition No. 6747 of 1999 that the scheme of the company does not fall within the definition of Collective Investment Scheme, as defined in Section 11AA and Sub-Section (IB) of Section 12 of the Act, 1992 as well as Regulations, 1999 have no application.

As we have taken the view that scheme of petitioner company does not come within the definition of Collective Investment Scheme given in Section 11AA. Regulations, 1999 have no application in case of this petitioner company. Thus, now we need not go into the alternative prayer to examine the validity of provision of Section 11AA, Sub-section 1BO of Section 12 and legality of Regulation of 1999.

In the result, notices dated 30.11.1999 and 10.12.1999 are quashed and both the writ petitions are allowed.

13. The competitor and the rivals of the petitioner company have never left any opportunity to harass the petitioner company and hamper the business of the petitioner company by lodging a false complaint by manipulating one or two customers of the petitioner company.

14. It is further averred that under some ill advise of the some of the rivals and competitors of the petitioner company a complaint was lodged by one Mr. N. Pandu Ranga Reddy S/o Narayana Reddy R/o 7/2/34., Kothagodi, Vikarabad Mandal, Ranga Reddy District (AP). The complaint mainly stated that the petitioner company refused to allot the land despite having received the entire sale consideration of Rs. 50,000/- from the complainant. In fact the said complainant never made any demand from the petitioner company for refund of money, however, under the ill influence of some rivals company, the complainant had lodged the complaint before the sub-Divisional of Police Officer, Vikarabad, Ranga Reddy District. On the basis of the complaint of Mr. N. Pandu Ranga Reddy, the Sub-Inspector of Police registered a crime in FIR No. 195/07 PS Vikarabad, Ranga Reddy District.

15. It is further stated that the police in collusion with the rivals of the petitioner company prevail upon the complainant and got the aforesaid case registered against the petitioner company u/s 420, 406 and 511 IPC and Section 5 of the A.P. Protection of Depositors of Financial Act, 1999.

16. Further it is stated that the petitioner company came to know that the agents/the field workers of the petitioner company are being harassed by the respondent police, the petitioner immediately through its employees contacted the said complainant Sri N. Pandu Ranga Reddy. The complainant Sri N. Pandu Ranga Reddy on 24.8.2007 filed an affidavit before the Sub-Divisional Police Officer and made a statement that the complainant wish to withdraw the complaint since he had filed the said complainant under the ill influence of some persons.

17. Further it is averred that it would be pertinent to mention that the alleged deposit of Rs. 50,000/- was made by the said complainant only on 13.7.2007 for purchase of a plot and just after three days he had lodged the aforesaid complaint with the police station, which clearly go to show that the respondent police along with the complainant with oblique motives and with certain extraneous consideration wanted to implicate the petitioner and its officials and agents in the criminal case. However, the entire money of Rs. 50,000/- had been returned within a period of 10 days after the deposition. Hence, the intention of the petitioner company could not have been said to be mala fide.

18. Further it is stated that under the grab of aforesaid complaint and by registering the said FIR No. 195/07 PS. Vikarabad, Ranga Reddy District (AP) the respondents and the rivals of the petitioner had been successful in implicating

the petitioner, its agents and employees in false criminal cases registered under Sections 420, 406 and 511 IPC R/w Section 5 of A.P. Protection of Depositors of Financial Establishments Act, 1999. The entire episode mentioned above goes to show that the complainant Sri N. Pandu Ranga Reddy with dishonest intention and under the ill influence of the rivals of the petitioner had deliberately approached the petitioners and its agents with a request to register the names of the complainant and its customers for allotment of a plot and offered Rs. 50,000/- on 13.7.2007 and after three days i.e., 17.8.2007 lodged a complaint without any correspondence, without any notice and without any demand of the return of the said deposits from the petitioner.

19. Further it is stated that the respondent police without having any authority of law issued request letter dated 21.8.2007 with a direction to the respondents 2 to 9 and all its branches wherever the petitioner is maintaining the accounts to freeze the accounts of the petitioner so that the petitioner itself is not able to meet the demand/request of other customers for payment. The said letter dated 21.8.2007 written by the respondent police to the bankers of the petitioner, then the respondents 2 to 9, is absolutely without any notice or intimation and the respondent banks froze the accounts of the petitioner company without any proper authority and contrary to the provisions of Sections 3," 4 and 5 of the Act.

20. Further it is averred that the respondent police had filed a petition before the Court of the Principal Sessions Judge, R.R. District, Hyderabad, praying to issue directions to the respondents. 2 to 9 and all its branches to freeze the accounts standing in the name of the petitioner stating that the case of cheating, criminal breach of trust and collection of deposits under the Act, had been registered in the Crime No. 195 of 2007 u/s 420, 406 and 511 of IPC and u/s 5 of the Act. The respondents police 10 and 11 have admitted before the Sessions Judge that the respondent banks have frozen the accounts of the petitioner.

21. The learned Sessions Judge had heard all the parties in the aforesaid matter and had passed a detailed order on merits vide its order dated 19.9.2007 in CrI. M.P. No. 384 of 2007 in Crime No. 195 of 2007 and the relevant portion is as hereunder:

It is premature to decide whether the scheme floated by the PACL India Limited Company can be treated, as Collective Investment Scheme, especially, when the investigation is in progress. However, a perusal of the provisions of Section 3 and 4 of the Act and Rules 3 and 6 of the Rules there under, made it clear that the role of the Special Court comes into picture, under Sub-Section (3) of Section 4 of the Act, 1999, only after the competent authority, under the Act, applies to make the ad-interim orders of attachment of the properties of the accused absolute, within 15 days, after the receipt of the orders of the Government attaching the properties of the accused. In fact, in the memo, itself the public prosecutor mentioned that the Deputy Superintendent of Police, Vikarabad has sent a letter/notice u/s 91 and 102 of the Code of Criminal Procedure to hold all the Banks accounts standing in the name of the PACL India Limited Company and

accordingly, the Branch Managers of the eight branches mentioned in the memo have stopped payments. It is also mentioned in the memo that the Government of Andhra Pradesh is being addressed for passing ad-interim attachment orders of the banks accounts and properties of PACL India Limited Company and the matter is pending with the Government. Under these circumstances, this Court can not pass orders freezing the accounts of the PACL India Limited Company with the banks mentioned in the memo.

In view of the above facts and circumstances, the memo is not maintainable under law and is dismissed.

22. It is further averred that the petitioner after having received the aforesaid order passed by the learned Principal Sessions Judge, R.R. District, Hyderabad had made a request in person, in writing and also through its Advocate to defreeze the accounts, however, the respondents-banks have disobeyed the order passed by the Principal Sessions Judge, R.R. District, Hyderabad and have not allowed the petitioner to deposit or withdraw the amount even for its day to day requirement. The action of all the respondents banks are not only arbitrary and violative to the fundamental rights of the petitioner but also contrary to Sections 3, 4 and 5 of the said Act, which has been observed and held by the Principal Sessions Judge, R.R. District, Hyderabad.

23. The petitioner being aggrieved by the aforesaid action of the respondents 2 to 9 for freezing the accounts of the petitioner company basing on the letter of the 10th respondent is left with no other option but to approach this Court by invoking jurisdiction of this Court under Article 226 of the Constitution of India.

24. In the counter affidavit filed by R1 to R6, substantial allegations had been denied. It is averred that the petitioner Company opened the following collection accounts, duly following the banking norms:

- (a) Account No. 24401110200003612 with the respondent No. 2 Branch,
- (b) Account No. 152010200007429 with the Respondent No. 3 Branch,
- (c) Account No. 69010200019895 with the Respondent No. 4 Branch,
- (d) Account No. 2730102000003537 with the Respondent No. 5 Branch; and
- (e) Account No. 1070102000009249 with the Respondent NO.6 Branch of the Bank.

The Writ Petitioner has been operating the Accounts with the respondents 2 to 6.

25. While this being so, respondents 2 to 6 received the letters dated 21.8.2007 and 1.10.2007 intimating respondents 2 to 6 that Crime No. 195/2007 of P.S., Vikarabad, was registered u/s 420, 406 and 511 IPC and Section 5 of the A.P. Protection of Depositors of Financial Establishments Act, 1999 and the investigation and enquiries are being conducted by the police. According to the respondent No. 11 herein, the Crime No. 195 of 2007 on the file of the P.S.

Vikarabad is pending enquiry and investigation and lot of public money is involved in the transaction. The respondents 2 to 6 were requested by the respondent No. 11 to seize the bank accounts of the Writ Petitioner and furnish the up to date bank statements and therefore, their accounts shall not be operated by any of them till further intimation is given, exercising their powers of investigation u/s 91 and 102 of Cr.P.C.

26. It is further stated that u/s 102 Cr.P.C any Police Officer can seize any property, which is alleged or suspected to have been stolen or which may be found under the circumstances, which create suspicion of the commission of an offence. The term "any property" is wide enough to cover the seizure of the amounts in the Bank accounts. Therefore any Police Officer is entitled to exercise his powers conferred u/s 102 Cr.P.C and issue a prohibitory order to the respondents 1 to 6 to freeze the Bank accounts. Hence, the prohibitory orders issued by the respondents 10 & 11 are not illegal or without jurisdiction. It is further submitted that Section 91 confers power to the respondents 10 and 11 to direct the respondents to produce the statement of account. Hence, the orders impugned in this writ Petition are per se not illegal or without jurisdiction.

27. It is further averred that no Writ of Mandamus can be issued to question a prohibitory order passed by the respondents 10 and 11 in exercise of their power conferred u/s 102 Cr.P.C. This Writ Petition does not seek to enforce any rights conferred under Part II of the Constitution of India. The Writ Petitioner has an alternative and an efficacious remedy provided under the Criminal Procedure Code. Hence, this Writ Petition is not maintainable.

28. It is also stated that the right to conduct business, as enshrined under Article 19(1)(g) of the Constitution of India can be made with reasonable restrictions. The right of police to investigate an offence and exercise their powers lawfully conferred u/s 102 of Cr.P.C. are reasonable restrictions stipulated under Article 19 of the Constitution of India.

29. Further it is averred that the FIR No. 185 of 2007 on the file of the P.S., Vikarabad clearly indicates that a Crime is registered against the Writ Petitioner Company for offences u/s 420, 406 and 511 of IPC apart from Section 5 of the APPDFE Act, 1999. The Section 4(1) of Cr.P.C clearly mandates that all offences under IPC shall be investigated, inquired into, tried and otherwise dealt with according to the provisions of Cr.P.C. Therefore, a Police Officer investigating the offences u/s 420, 406 and 511 of IPC can exercise the powers conferred u/s 91 and 102 of Cr.P.C and the same cannot be termed as illegal., The Section 4(2) and Section 5 of Cr.P.C R/w Section 13 of APPDFE Act, 1999 clearly mandate that the provision of Cr.P.C applies to the said Act. Therefore, the respondents 10 and 11 can exercise the powers conferred. on them u/s 91 and 102 of Cr.P.C. The offences alleged against the writ petitioners are Sections 420, 406 and 511 of IPC, to which Section 102 of Cr.P.C applies, besides the respondents 10 and 11 suspect that the amounts in the Bank are connected to the offences mentioned therein. Hence, the exercise of powers under Sections 91 and 102 of Cr.P.C by

the respondents 10 and 11 and issuing the impugned prohibitory orders to freeze the Bank Accounts is neither illegal nor without jurisdiction and they do not warrant any interference by this Hon'ble Court.

30. It is also stated that the orders passed by the learned Sessions Judge is extracted in para 14 of the writ affidavit does not take away powers of the respondents 10 and 11 to exercise the powers conferred u/s 102 of Cr.P.C. The learned Sessions Judge only held that the said application is not maintainable duly referring to the APPDFE Act, 1999 and its Rules. The learned Sessions Judge did not refer to any of the provisions contained in Cr.P.C before holding that the said Court cannot pass any orders freezing the "Accounts of the Writ Petitioner and dismiss the same as not maintainable. The learned Sessions judge did not declare the impugned action of the respondents 10 and 11, as illegal and without jurisdiction. The existence of two specific forums available under the APPDFE Act, 1999 and the powers of the police to issue letters, in exercise of powers conferred u/s 102 of Cr.P.C., are supplementary and complementary to each other. Sections 3 and 4 of the APPDFE Act, 1999 and its provisions regulating the mode and manner of attachment cannot be exercised for an offence covered by it. They cannot be stretched to include offences falling under the provisions of IPC. Hence, when offences under APPDFE Act, 1999 and IPC are simultaneously investigated in the same FIR, the respondents 10 and 11 are entitled to invoke the provisions of Section 102 of Cr.P.C and the provisions of Section 104 of APPDFE Act, 1999. Hence, the impugned action of the Respondents 10 and 11 is not illegal and without jurisdiction and prays for dismissal of the Writ Petition.

31. In the counter affidavit filed by R7, the averments had been denied and it is stated that on receipt of the letter dated 12.8.2007 addressed by the respondent No. 11, the Sub-Divisional Officer, Vikarabad, R.R. District referring the provisions of law under Sections 91 and 102 of Cr.P.C., the respondent bank addressed a letter to the petitioner, for which the petitioner had got issued legal notice dated 24.8.2007. The matter was referred to the higher authorities of the bank and in the light of decision of this Court in 1997 ISJ 216, it is said that the operations of the petitioner's account is suspended for investigation of the case by the police. This respondent had done no improper Act. or against law. Certain further averments also had been made in the counter affidavit of R7.

32. In the counter of R 11 the Sub-Divisional Police Officer, Vikarabad Division, Rnga Reddy District stated that on the complaint of one Mr. Narayanagari Pandu Ranga Reddy, a case in Cr.No. 195/2007 under Sections 420, 406 and 511 IPC and Section 5 of A.P. Protection of Depositors of Financial Establishment Act, 1999 (for short "the Act") was registered against the petitioner and two others on the file of the Vikarabad Police Station and investigation was taken up by Inspector of Police, Vikarabad.

33. Further it is stated that during the course of investigation, the Investigation Officer examined six witnesses and recorded their detailed statements. No arrests were made so far. Investigation is still pending.

The investigation so far done revealed that the Office bearers of the petitioner company had approached the complainant and other witnesses and brought them into confidence that they will get 1000 sq. yards of land each if they pay some amount, as fixed deposit or on instalment basis as per their terms and conditions, and after maturity of the amount they registering the plot on the name of subscriber and if the subscriber is interested to take the plot, he will be paid entire amount after the maturity of said instalments. It was further revealed during investigation that when the complainant insisted the office bearers and others to show the place where they are going to provide the plot, the office bearers took him and other depositors to Nirmal of Adilabad District and shown a place situated in the Forest Area, which is not suitable for the purpose of agriculture or other development works.

34. It is also stated that the investigation discloses that the accused in the FIR are cheating the innocent people. The company had no proper by-laws, Annual Reports, Audit Reports. The statements of accounts were also not shown. The amounts received by the Regional Office and Branch Office were being immediately diverted by the accused to the Head Office at Delhi on various accounts and was being used by the Managing Director and Directors for their personal schemes and business they had already established and there is no proper accountability. The agents were encouraged by paying commission and remunerations etc., for having enrolled the members and this is nothing but money circulation and deposit mobilization, with an intention to cheat the people and the same amounts to criminal breach of trust. Thus the acts of the accused constitute the offence punishable under Sections 420, 406 and 511 IPC and Section 5 of the Act and Sections 3, 4, 5(2)? Chits and Prizes Money Circulation(Banning) Act, 1978. The investigation is still pending for want of collection of further evidence.

35. It is further stated that the petitioner's company had got eight branches in Andhra Pradesh and they had been collecting the huge sums from the customers. Keeping in view of the above facts and circumstances and to safeguard the public interest and for the purpose of investigation, he addressed letters to the Branch Managers of the respective Banks requesting to freeze the Bank Accounts of the petitioner's Company. It is submitted that a petition was also filed before the Court of Principal Sessions Judge, Ranga Reddy District at L.B. Nagar, Hyderabad praying the Court to issue directions to the Banks mentioned in the petition to freeze the accounts standing in the name of the PACL Ltd. The said Hon''ble Court dismissed the petition filed by this respondent vide its order in CrI. M.P. No. 384/2007 in Cr.P.No. 195 of 2007 dated 19.9.2007.

36. Further it is stated that the letter addressed by this respondent dated 21.8.2007, requesting the Banks to freeze the accounts of the PACL Ltd., which is impugned in this writ petition, is legally valid and the same is issued in the public interest and for the purpose of investigation.

37. It is also further stated that the complainant filed an affidavit-dated

24.8.2007 before him requesting to withdraw his complaint is false and hence denied. The allegation of the petitioner that the respondent police along with the complainant with oblique motives and with certain extraneous consideration wanted to implicate the petitioner, its officials agents in the criminal case is false and hence denied. It is pertinent to note that the purpose of investigation and in order to safeguard the interests of the larger public, he addressed letters to the respective banks to freeze the accounts of the petitioner's company. To divert the attention of the Investigation Officer, the petitioner filed the present writ petition. Hence, the Writ Petition is devoid of any merits.

38. These are the respective stands taken by the parties. The facts, which had been narrated in the affidavit filed in support of the Writ Petition and the specific stand taken in the counter affidavits by the Banking Institutions and the Police being self explanatory, they need not be elaborated again. It is not in serious controversy that the State of Andhra Pradesh through P.S. Vikarabad had invited orders in Cr. M.P. No. 384 of 2007 in Crime No. 195 of 2007 dated 19th September, 2007 on the file of Principal Sessions Judge, R.R. District at L.B. Nagar, Hyderabad. It may be appropriate to look at the points at paragraphs 3, 4, 5 and 6 of the said order and the same read as under:

(3) Heard the Public Prosecutor and the counsel for the accused.

(4) Now the points for consideration are:

(i) Whether this Court can freeze the accounts of PACL India Limited company in the branches of various Banks mentioned in the memo, as prayed for?

(ii) Whether the scheme floated by PACL India Limited Company can be treated as "Collective Investment Scheme" or not?

(iii) To what relief?

(5) POINT Nos. 1 and 2:

It is premature to decide whether the scheme floated by the PACL India Limited Company can be treated as "Collective Investment Scheme", especially, when the investigation is in progress. However, a perusal of the provisions of Section 3 and 4 of the A. P. Protection of Depositors of Financial Establishments Act, 1999 and Rules 3 and 6 of the Rules, there under, made it clear that the role of the Special Court comes into picture, under Sub-Section (3) of Section 4 of the Act, 1999, only after the competent authority, under the Act, applies for making the ad-interim orders of attachment of the properties of the accused absolute, within 15 days, after the receipt of the orders of the Government, attaching the properties of the accused. In fact, in the memo itself, the public prosecutor mentioned that the Deputy Superintendent of Police, Vikarabad has sent a letter/notice u/s 91 and 102 of the Code of Criminal Procedure to hold all the Banks accounts standing in the name of the PACL India Limited Company and accordingly, the Branch Managers of the eight branches mentioned in the memo have stopped payments. It is also mentioned in the memo that the government

of Andhra Pradesh is being addressed for passing ad-interim attachment orders of the banks accounts and properties of PACL India Limited Company and the matter is pending with the Government. Under these circumstances, this Court cannot pass orders freezing the accounts of the PACL India Limited Company with the Banks mentioned in the memo. Points are accordingly answered.

(6) Point No. 3: In view of the above facts and circumstances, the memo is not maintainable under law and is dismissed.

39. Section 2 of the Act deals with Definitions. Section 2? of the Act defines "Financial Establishment" which reads as under:

Financial Establishment" means any person or group of individuals accepting deposit under any scheme or arrangement or in any other manner but does not include a corporation or a cooperative society owned or controlled by any State Government or the Central Government or a banking company as defined under Clause ? of Section 5 of the Banking Regulation Act, 1949, (Central Act 10 of 1949)

Section 3 of the Act dealing with Attachment of properties on default in respect of deposits reads as hereunder:

"Notwithstanding anything contained in any other law for the time being in force,

(i) Where, upon complaints received from a depositor or depositors, that any financial establishment defaulted or is likely to default in the return of deposits in cash or kind after maturity, or in any manner agreed upon: or

(ii) Where the Government have reason to believe that any financial establishment is acting in a manner prejudicial to the interests of the depositors with an intention to defraud the depositors;

And if the Government are satisfied that such financial establishment is not likely to return to deposits in cash or kind after maturity, or in any manner agreed upon, the Government may, in order to protect the interests of the depositors of such financial establishment, pass an ad-interim order attaching the money or other property alleged to have been procured either in the name of the financial establishment or in the name of any other person from and out of the deposits collected by the financial establishment, or if it transpires that such money or other property is not available for attachment or not sufficient for repayment of the deposits, such other property of the said financial establishment, or the promoter, manager or member of the said financial establishment, as the Government may think fit, and transfer the control over the said money or property to the competent authority.

Section 4 deals with Competent Authority and Section 5 deals with Penalty for default. Section 6 of the Act deals with Special Court and Section 6 reads as under:

Special Court: (1) For the purpose of this Act, the Government shall, with the

concurrence of the Chief Justice of the High Court, by notification, constitute a District and Sessions Court as a Special Court.

(2) No Court including a Court constituted under the Presidency Towns Insolvency Act, 1909 (Central Act III of 1909 and the Provincial insolvency Act, 1920, (Central Act V of 1920) other than the Special Court shall have jurisdiction in respect of any matter to which the provisions of this Act apply.

(3) Any pending case in any other Court to which the provisions of this Act apply shall stand transferred to the Special Court.

(4) The Special Court shall, on an application by the competent authority, pass such order or issue such direction as may be necessary for the equitable distribution among the depositors of the money realized from out of the property attached.

Section 7 of the Act dealing with Powers of Special Court regarding attachment reads as under:

Powers of Special Court regarding attachment:

(1) upon receipt of an application u/s 4, the Special Court shall issue to the financial establishment or to any other person whose property is attached by the Government u/s 3, a notice accompanied by the application and affidavits and of the evidence, if any, recorded, calling upon to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(2) The Special Court shall also issue such notice, to all other persons represented to it as having or being likely to claim, any interest or title in the property of the financial establishment or the person to whom the notice is issued calling upon such person to appear on the same date as that specified in the notice and make objection, if he so desires, to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(3) Any person claiming an interest in the property attached or any portion thereof may, notwithstanding that no notice has been served upon him under this Section, make an objection as aforesaid to the Special Court at any time before an order is passed under Sub-section (4) or Sub-section (6).

(4) If no objections are made and no cause is shown on or before the specified date, the Special Court shall forthwith pass an order making the ad interim order of attachment absolute.

(5) If any objection is made or cause is shown as aforesaid, the Special Court shall proceed to investigate the same, and in so doing as regards the examination of the parties and in all other respects, the Special Court shall, subject to the provisions of this Act, follow the procedure and exercise all the powers of Court in hearing a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) and any person making an objection shall be required to

adduce evidence to show that at the date the attachment, he had some interest in the property attached.

(6) After investigation under Sub-section (5), the Special Court shall pass an order making the ad-interim order of attachment absolute or varying it by releasing a portion of the property from attachment or canceling the ad-interim order of attachment.

Provided that the Special Court shall not release from attachment any interest, which it is satisfied that the financial establishment or the person referred to in Sub-section (1) has, in the property unless it is also satisfied that there will remain under attachment an amount or property of value not less than the value that is required for repayment to the depositors of such financial establishment.

Section 8 of the Act deals with Attachment of Property of certain transferees and Section 9 deals with Security in lieu of attachment. Section 10 deals with Administration of Property attached. Section 11 deals with Appeal. Section 12 deals with Special Public Prosecutor and Special Government Pleader. Section 13 of the Act dealing with Procedure and Power of Special Court regarding offences is an important provision, on which the special emphasis had been laid and the said provision reads as hereunder:

Procedure and Powers of Special Court regarding offences: (1) The Special Court may take cognizance of the offences without the accused being committed to it for trial and in trying the accused person, shall follow the procedure prescribed in the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), for the trial of warrant cases by Magistrate.

(2) The provisions of the Code of Criminal Procedure, 1973 (Central Act 2 of 1974), shall, so far as may be, apply to the proceedings before a Special Court and for the purpose of the said provisions, a special Court shall be deemed to be a Magistrate.

40. Submissions at length were made by the counsel on record in relation to Section 3 of the Act aforesaid and also in relation to Section 13 of the Act as well. Rule 3 dealing with ad-interim order and examination of the complainant and witnesses reads as under:

(1) The Government shall pass the ad-interim order of attachment u/s 3 of the Act.

(2) Upon receipt of the orders of the Government under Sub-rule (1), the competent authority may examine the complainant and such examination shall be reduced in writing.

(3) The Competent authority shall have power to examine any person who in his opinion will be able to give any information about the financial establishment, and no oath shall be administered to such person.

Rule 4 dealing with the Competent Authority's Right to require information

specifies as under:

The competent authority shall have power to require any financial establishment or its officers or any officer or authority of the Government or a local authority or any other person to furnish such information as may be required and such Financial Establishment or Officer or authority of the Government or local authority or person shall furnish such information to the competent authority.

Rule 6 dealing with power to freeze or seize property, reads as under:

(1) Where the Competent Authority is satisfied or has reason to believe that any property which is liable to be attached under the Act is likely to be concealed, transferred or dealt with in any manner which will result in defeating the purpose of the Act, may make an order seizing such property or where it is not practicable to seize such property, make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the Special Court.

(2) The Competent Authority may take the assistance of any subordinate Officer of the Government to take possessions of the property in respect of which an order of seizure or freezing has been made under Sub-rule (1).

(3) Any Officer-in-charge of Police Station when required by the Competent Authority, shall take all steps, including inquiry, investigation or survey in respect of any person, place, property, documents, books or account, etc., for the purpose of tracing and identifying the properties.

(4) The Competent Authority shall maintain a record of all income received and expenditure incurred of the property received, managed, and disposed and furnish the same to the Special Court.

41. Further strong reliance was placed on Sections 91 and 102 of the Code of Criminal Procedure, 1973 and the said provisions read as under:

Section 91: Summons to produce document or other thing: (1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed?

(a) to affect, Sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers, Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.

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.

Section 4 of the Code reads as under:

Trial of offences under the Indian Penal Code and other laws: (1) All offences under the Indian Penal Code (45 of 1860) shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried, and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

42. Further reliance was placed on *Gourishetty Prabhakar v. State of Andhra Pradesh* 2002 ALT (CRI) 1 492, wherein the learned Judge of this Court observed:

(3) I am unable to agree with the contention of the leaned counsel for the petitioner that the Special Court cannot take cognizance of the offence u/s 5 of the Act, unless the procedure prescribed u/s 7 of the Act is followed. Section 7 relates to attachment of property being made absolute where the Government had u/s 3 of the Act ordered an interim attachment of the property. As per

Section 7 of the Act, after receipt of an application u/s 4 from the competent authority, the Special Court shall issue notice to the financial establishment, whose property was attached by the Government u/s 3 of the Act, to show cause why the attachment should not be made absolute. Thus, Section 7 has nothing to do with the punishment prescribed u/s 5 of the Act. As per Section 13 of the Act, the Special Court can take cognizance of the offences without the accused being committed to it for trial, and in trying the accused has to follow the procedure prescribed by Cr.P.C for trial of warrant cases by a Magistrate, and that provisions of Cr.P.C shall apply to the proceedings before it, and for the purpose thereof the Special Court shall be deemed to be a Magistrate Court. There is nothing in the Act or the Rules made there under to show that a complaint cannot be filed by an aggrieved person directly before the Special Court. So, the contention of the learned Counsel for the petitioner that the complaint filed by the aggrieved person directly, without reference to the competent authority, is not maintainable, cannot be accepted.

(4) Coming to the question of retrospectively of the Act, in my opinion, the contention of the learned Counsel for the petitioner cannot be upheld. It should not be forgotten that the cause of action survives till the date petitioner repays the amount accepted as deposit or till the expiry of the period of limitation prescribed for recovery of the same. Though the deposit matured on 3.10.1999, cause of action to recover the amount was surviving to the complainant by the date of filing of the complaint, i.e., 10.11.2001 also, i.e., after the Act came into force. Therefore, the contention of the learned Counsel "for the petitioner that since the deposit matured before the coming into force of the Act, the provisions of Section 5 of the Act cannot be made applicable to that deposit, cannot be accepted.

43. Further strong reliance was placed on the decision reported in *V. Siva Prasad v. State of A.P.* 2002 (2) ALT (CRI) 419, wherein the learned Judge of this Court observed at paragraphs 21 to 29 as under:

21. Normally, a regular criminal Court shall be deemed competent to deal with all offences including the offences under the Indian Penal Code. Exclusion of Jurisdiction of the Criminal Courts cannot be presumed lightly.

22. In this regard, it is necessary to refer to Section 4 of Cr.P.C which mandates that all offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions contained in the Criminal Procedure Code. Sub-Section (2) of Section 4 of Cr.P.C contemplates that all offences under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

23. Section 5 of Cr.P.C provides that nothing contained in this Code shall, in the absence of a specific provision to the contrary, affect any special or local law for

the time being in force or any special jurisdiction or power conferred, or any special form of procedure prescribed by any other law for the time being in force.

24. A plain reading of these provisions of the Cr.P.C would make it abundantly clear that normal assumption in respect of offences under Indian Penal Code is that they shall be investigated, enquired into, tried or otherwise dealt with according to the provisions in the Criminal Procedure Code. In regard to the other offences, a similar presumption shall be raised unless there is any special enactment relating to the manner or the place of investigating, enquiring into or trying or otherwise dealing with such offences.

25. Section 5 of the Cr.P.C saves the operation of any other law for the time being in force creating any special jurisdiction or power conferred or any special form of procedure prescribed.

26. In this case, "enactment" mentioned in Sub-Section (2) of Section 4 of Cr.P.C., and "any special or local law" or "any special jurisdiction or power conferred" contemplated u/s 5 of Cr.P.C., should be referable to Section 6 of the Act if the contention of the learned Counsel for the petitioner is to be accepted.

27. A close examination of the provisions of Section 6 of the Act would lead to a conclusion that as far as investigation, enquiry or trial of the offences under the Indian Penal Code is concerned, the normal jurisdiction as contemplated u/s 4 of Cr.P.C is not affected at all. There is nothing in Section 6 of the Act to indicate that any offence under the Indian Penal Code including the offence u/s 420 of IPC is encompassed by it. With reference to Section 5 of Cr.P.C., it is obvious that the special jurisdiction conferred on the special Court u/s 6 of the Act is confined to matters to which the provisions of the said Act apply. It is obvious that an offence u/s 420 of IPC is not a matter to which the provisions of the said Special Act apply. As stated above, the matters which will fall within the purview of special jurisdiction as conferred u/s 6 of the Act shall at best be relating to trial of offences specially created u/s 5 of the Act and matters relating to attachment of the properties as contemplated u/s 3 and other provisions of the Act.

28. It may be mentioned that mere default in payment of the deposited amount has been legislatively converted into an offence punishable under the Act. This offence does not supplant or displace the offence u/s 420, IPC Exclusive jurisdiction of the Special Court contemplated u/s 6 of the Act could only be in relation to the said offence created u/s 5 of the Act. By no stretch of imagination, could it be inferred that the Special Court will have an exclusive jurisdiction in respect of an offence of cheating punishable u/s 420 of IPC even if it is committed by the financial institutions as defined in the Act.

29. Further exclusive jurisdiction of special Court has relevance for the trial of offences and not for investigation. On this ground proceedings at the stage of investigation cannot be quashed even in respect of allegations of commission of special offence. At any rate, in this case the allegations indicate special offence as well as offences under Indian Penal Code.

44. Strong reliance was also placed on the decision of the Apex Court in *State of Maharashtra Vs. Tapas D. Neogy*, wherein the Apex Court observed at paragraphs 6 to 12 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 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. Commissioner of Police* 1998 Cri. L.J. (Del) a Division Bench of the High Court examined the question whether a bank account can be held to be "property" within the meaning of Section 102 Cr.P.C. IN the said case, proceeds realized 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 realized 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 Vs. The State*, 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., Bulandshahr Vs. The State of U.P. and Others, . In the Allahabad case on which the Gauhati High Court relied upon (Textile Traders), 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.

7. In the case of M/s Malnad Construction Co., Shimoga and others Vs. State of Karnataka and others, a learned Single Judge of the ;Karnataka High Court examined the provisions of Section 102 would mean taking actual physical possession of the property and relying upon the Gauhati High Court decision referred to supra, came to hold that the "seizure" in Section 102 would mean taking actual physical possession of the property and such a prohibitory order to the banker of the accused not to operate the account is not contemplated under the Code and consequently, the police has no power to issue such order. Thus the High Courts of Karnataka, Allahabad, Gauhati and Delhi have taken the view that the provisions of Section 102 of the Criminal Procedure Code cannot be invoked by the police officer in course of investigation to issue any prohibitory order to the banker or the accused from operation the bank account.

8. In P.K. Parmar and Others Vs. Union of India and Another, a learned Single Judge of the Delhi High Court considered the power of the police officer u/s 102 of the Criminal Procedure Code, in connection with the fraudulent acquisition of properties and opening of fictitious bank accounts and withdrawal of huge amounts as subsidy from the Government by producing bogus documents by the accused. The learned Judge took note of the earlier decision of the Delhi High Court in Swaran Sabharwal v. Commr. of Police and analysed the provisions of Section 102 of the Criminal Procedure Code and the facts of the case were as under: It was revealed that during investigation the prosecution came to know that without actually manufacturing phosphate and fertilizers, the accused withdrew as much as Rs. 3.39 crores as subsidy from the Government of India by producing bogus documents. The Court ultimately came to the conclusion that the recovery of assets in the Bank links prima facie with the commission of various offences with which they had been charged by CBI and, therefore, the police officer could issue directions to various banks/financial institutions freezing the accounts of the accused. The learned Judge in the aforesaid case has really considered the amount of money which the accused is alleged ;to have swindled by producing bogus documents which prompted him to hold that the power u/s 102 CrPC can be exercised.

9. In Bharath Overseas Bank v. Minu Publication 1988 MLW (Cri) 106 a learned Single Judge of the Madras High Court considered the same question and came to the conclusion that the expression "property" would include the money in the bank account of the accused and there cannot be any fetter on the power of the police officer in issuing prohibitory orders from operating the bank account ;of the accused when the police officer reaches the conclusion that the amount in the Bank is the outcome of commission of offence by the accused. The Court

considered the fact as to how in modern days, commission of while-collar crimes and bank frauds are very much on the increase and banking facilities have been extended to the remotest rural areas and, therefore the expression "property" may not be interpreted in a manner so as to exclude the money in a bank which in turn would have the effect of placing legal hurdles, in the process of investigation into the crimes. According to the learned Judge, such literal interpretation of the expression "property" could not have been the intent of the framers of the Criminal Procedure Code. In para 11 of the said judgment, the learned Judge referred to the object behind investing the police with powers of seizure. It will be appropriate to extract the same in extenso:

It would now be useful to refer to the object behind investing the police with powers of seizure. Seizure and production in court of any property, including those regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence or any other property will have a twofold effect. Production of the above property may be necessary as evidence of the commission of the crime. Seizure may also have to be necessary, in order to preserve the property, for the purpose of enabling the Court to pass suitable orders u/s 452 of the Criminal Procedure Code at the conclusion of the trial. This order would include destruction of the property, confiscation of the property or delivery of the property to any person claiming to be entitled to possession thereto. It cannot be contended that the concept of restitution of property to the victim of a crime, is totally alien to the Criminal Procedure Code. No doubt, the primary object of prosecution is punitive. However, Criminal Procedure Code does contain several provisions, which seek to reimburse or compensate victims of crime, or bring about restoration of property or its restitution. As Section 452 Cr.P.C itself indicates, one of the modes of disposing of property at the conclusion of the trial, is ordering their return to the person entitled to possession thereto. Even interim custody of property under Sections 451 and 457 Cr.P.C recognizes the rights of the person entitled to the possession of the properties. An innocent purchaser for value is sought to be reimbursed by Section 453 Cr.P.C. Restoration of immovable property under certain circumstances, is dealt with u/s 456 Cr.P.C. Even, monetary compensation to victims of crime or any bona fide purchaser of property, is provided for u/s 357 Cr.P.C., wherein when a court while convicting the accused imposes fine, the whole or any part of the fine, if recovered, may be ordered to be paid as compensation to any person, for any loss or injury, caused by the offence or to any bona fide purchaser of any property, after the property is restored to the possession of the person entitled thereto. This twofold object of investing the police with the powers of seizure, have to be borne in mind, while settling this legal issue.

10. This judgment of the learned Single Judge of the Madras High Court was followed in a later decision in the case of Bharat Overseas Bank Limited v. Prema Ramalingam 1991 MLW (Cri) 353 wherein the learned judge agreeing with Padmini Jesudurai, J, in Bharat overseas bank case came to hold that money in a

bank account is "property" within the meaning of Section 102 of the Criminal Procedure Code, which could be seized by a prohibiting order. In the aforesaid case, the learned Judge has also noticed the fact that the judgment of Padmini Jesudurai, J. In *Bharat Overseas Bank* was upheld by the Division Bench subsequently.

11. In the case of *Gurcharan Singh (Dr) v. State of Punjab* (1978) 80 Punj LR 514 a Division Bench of the Punjab 86 Haryana High Court differing with the view taken by the Allahabad High Court in *Textile Traders* came to hold that the bank account would be "property" and as such would be capable of being seized u/s 102 of the Code of Criminal Procedure.

12. 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 the said Section 102, 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 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 his account, and so, we do not interfere with the same.

45. In the light of the language employed in Section 13 of the Act, and also in the light of the Sections 4, 91 and 102 of the Code of Criminal Procedure, elaborate submissions were made in relation to power to issue such directions and also the action relating to the freezing of the accounts of the petitioner. On a careful reading of the material available on record, it is not in serious controversy that already an order was made by a Competent Criminal Court, and this Court need not further elaborate the same since the relevant portion of the order had already been specified supra. On a careful reading of Section 3 of the Act, this Court is also of the opinion that the ingredients are not prima facie satisfied. Even otherwise in the present Writ Petition the criminal proceedings, as such, are not being challenged and hence, these aspects need not be gone into any further. Certain submissions were made that the action had been initiated not only on the strength of the provisions of the Act only but also in addition thereto in relation to the offences even under the Indian Penal Code.

46. When a competent Criminal Court had already expressed an opinion in the light of the alleged directions issued by the concerned police, the banking institutions are not justified in freezing the accounts. This Court is expressing this opinion especially in the light of the insufficient material on the strength of which, the very action had been initiated. This Court is not inclined to express or touch upon the merits or demerits relating to the allegations made, as against the petitioner Company, only on one complaint. Even otherwise, this Court is thoroughly satisfied that. On the strength of such directions the banking institutions freezing the accounts of the petitioner company especially at this stage, in the peculiar facts and circumstances, cannot be said to be a justifiable action. All other further contentions which had been argued in elaboration need not detain this Court any longer especially in the light of the order already made in this regard by a Competent Criminal Court specified above.

47. Hence, viewed from any angle, the Writ Petitioner is bound to succeed and accordingly, the Writ Petition is hereby allowed. No order as to costs.