

(2021) 04 CHH CK 0003
In the Chhattisgarh High Court
Case No : Cr.R. No. 760 Of 2020

Ramesh Kumar Sharma

APPELLANT

Vs

State Of Chhattisgarh

RESPONDENT

Date of Decision : 12-04-2021

Acts Referred:

Prevention Of Corruption Act, 1988 — Section 13(1)(e), 13(2), 16
Code Of Criminal Procedure, 1973 — Section 102, 397(2)

Citation : (2021) 04 CHH CK 0003

Hon'ble Judges : Rajendra Chandra Singh Samant, J

Bench : Single Bench

Advocate : Kishore Bhaduri, Sunny Agrawal, Adil Minhaj

Final Decision : Disposed Of

Judgement

Rajendra Chandra Singh Samant, J

1. This Criminal Revision has been brought challenging the legality, propriety and correctness of the order dated 03.12.2020 passed in miscellaneous Criminal Case No.28/2020 by Special Judge (Prevention of Corruption Act), Raipur, by dismissing the prayer of the applicant to defreeze the bank account, which has been seized in Crime No.43 of 2016 by the respondent.

2. The facts of the case are these, that the applicant was charge-sheeted for trial in offence under Section 13(1)(e) read with 13(2) of Prevention of Corruption Act, which was registered as Criminal Case No.06/2018. After framing of charge by the Special Court, the same was challenged in Cr.R. No.352 of 2019 before this Court. This Criminal Revision was disposed off vide order dated 24.10.2019, in which the charges framed against the applicant were set aside and there was a direction to the Investigation Agency, to comply with the direction of the High Court in the order in W.P.(Cr) No.223/2018 and for obtaining a fresh sanction order. It is submitted that in fact the direction of this Court had been to re-investigate the case but no such re-investigation has been done. It is submitted

that on prayer made by the applicant, some of the articles seized have been granted to the applicant on interim custody, in which the applicant has also received the passbooks of the bank accounts, which were under seizure. Even after receipt of the same, the applicant is unable to operate the bank accounts, as there is no specific direction of the Special Court for operation of the accounts. As the applicant has been discharged from the criminal case and at present there is no such case pending against him, therefore, he has entitlement to operate the bank accounts possessed by him. The learned trial Court has erroneously dismissed the prayer of the applicant for the reason that the case against the applicant is still pending after the filing of charge sheet.

3. Reliance has been placed on the judgment of Delhi High Court in the case of Ms. Swaran Sabharwal Vs. Commissioner of Police reported in 1987 SCC OnLine Del 221 and on the judgment of High Court of Madras in the case between Padmini Vs. The Inspector of Police reported in 2008 (3) CTC 657.

4. Reliance has also been placed on the order of this Court in W.P.(Cr.) No.582/2020 decided on 14.12.2020 between Ram Naresh Tiwari Vs. State of Chhattisgarh & Ors. and on the judgment of Bombay High Court in the case of Dr. Shashikant D. Karnik Vs. State of Maharashtra reported in 2008 Cr.L.J. 148, it is submitted that the prohibitory order of the respondent regarding operation of the bank account is uncalled for in the present situation, hence, it is prayed that the revision petition may be allowed and the impugned order may be set aside and relief be granted to the applicant.

5. Learned State counsel for the respondent opposes the revision petition and submissions made in that respect. It is submitted that the operation of the bank accounts of the applicant had been freezed by the Investigation Agency regarding which, there is a mention in the case diary. The charge-sheet and the case has been filed against the applicant, although he has succeeded in getting a discharge order from this Court, but the prosecution against him has not come to an end. The prosecution shall commence after the compliance of the order of this Court in Cr.R. No.352 of 2019 dated 24.10.2019, hence, under these circumstances, the amount in the bank accounts which can be regarded as property under seizure, which has been acquired unlawfully, cannot be allowed to be disbursed or disposed.

6. Relying on the judgment of Supreme Court in the case of State of Maharashtra Vs. Tapas D. Neogy reported in (1999) 7 SCC 685, it is submitted that it was held by the Supreme Court, that the money in the bank account may be regarded as a property and the seizure of such property on suspicion that it is connected with commission of offence held as property within the meaning of Section 102 of Cr.P.C. and the police officer also has power to prohibit the operation of such account, if such assets have linkages with the commission of offence. Therefore, the operation of the bank accounts cannot be permitted under such circumstances for the reason that the prosecution case against the applicant is still pending. Hence, the revision petition may be dismissed.

7. It is also submitted that this Court in the case in W.P.(Cr.) No.582 of 2020 decided on 14.12.2020, it has been held that the freezing of bank accounts in an investigation is lawful, therefore, any application for defreezing such accounts is not maintainable. It is further submitted that the impugned order is an interlocutory order regarding which, a revision petition is not maintainable under Section 397 (2) of Cr.P.C. Hence, the revision petition is not maintainable under Section 397 (2) of Cr.P.C. which is without any substance, which may be dismissed.

8. In reply, it is again submitted by the learned counsel for the petitioner that at present, there is no prosecution against the applicant, after he has been discharged by the High Court in Cr.R. No.352/2019, therefore, the applicant has entitlement to pray for defreezing the accounts seized.

9. Heard learned counsel for both the parties and perused the documents present on record.

10. Considered on the submissions. The applicant has been granted custody of some of the properties by the learned Special Court which is evident from Annexure-A/3, which is the memo issued to the S.H.O., E.O.W., Raipur directing release of the property under seizure. The list of the articles contains the details of the passbooks from serial No.16 to 36. There is no such order that the applicant has been granted permission to operate accounts. It is mentioned in the impugned order that there is a prohibition order of the Investigation Authority with respect to the operation of the accounts, as it is said that the bank accounts of the applicant had been freezed. The case laws that have been cited by the applicant side do not relate to the commission of offence under Prevention of Corruption Act. In the case of Ms. Swaran Sabharwal (Supra), it was the view of the Court, that there was no material to suspect any commission of offence with respect to the bank account that was seized, then relief can be granted. In the case of Padmini (Supra), the High Court of Madras has followed the judgment of Delhi High Court in M/s Swaran Sabarbal (Supra) and held that the proceeding of seizure and freezing of account of the petitioner was unlawful. In the case of Dr. Shashikant D. Karnik (Supra), the Bombay High Court has held that police has not been able to come to any conclusion so far in the case registered against the petitioner regarding commission of any offence. Therefore, the relief was granted to the petitioner.

11. In the case of State of Maharashtra Vs. Tapas D. Neogy (Supra). The High Court has held in paragraph 12, which is as follows:--

"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 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 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 upon his account, and so, we do not interfere with the same."

12. In the order of this Court in the case of Ram Naresh Tiwari (Supra), this Court has followed the ratio laid down in State of Maharashtra Vs. Tapas D. Neogy (Supra). Having considered on all the submissions made by the learned counsel from both the sides and all the case laws cited in the facts present in this case, I am of this view that the prosecution against the applicant has not come to an end so far. There is a clear conclusion of the Investigation Agency against the applicant that he has amassed wealth, acquired assets, which are disproportionate to his income. The question of legality of the seizure of bank accounts is already decided in the case of State of Maharashtra Vs. Tapas D. Neogy (Supra) by the Supreme Court, therefore, so far the prosecution against this applicant is under contemplation by the respondent side, therefore, no order

can be passed to defreeze the bank accounts, which have been seized from this applicant. Hence, I do not find any error in the order passed by the learned Special Court. The present revision petition is hereby dismissed.

13. Accordingly, the petition stands disposed off.