
Dilip Mehta Vs Special Police Establishment, Lokayukt

Writ Petition No. 11561 Of 2019

Court: Madhya Pradesh High Court

Date of Decision: July 1, 2019

Acts Referred:

Constitution Of India, 1950 " Article 226, 227#Code Of Criminal Procedure, 1973 " Section 102, 102(1)#Prevention Of Corruption Act, 1988 " Section 13(1)(d), 13(2)

Hon'ble Judges: Sujoy Paul, J; B.K. Shrivastava, J

Bench: Division Bench

Advocate: Devashish Sakalkar, Abhijit Awasthi

Final Decision: Dismissed

Judgement

1. This petition filed under Article 226/227 of the Constitution takes exception to the order of the Court below dated 09.05.2019 (Annexure-P/10)

whereby the application preferred by the present petitioner dated 23.04.2019 was partially allowed by the Court below.

2. Learned counsel for the petitioner submits that the petitioner is a builder. There is some investigation going on at the behest of Lokayukt

Organization. In furtherance of said investigation in Crime No.525/2014, the petitioner's bank account No.50018599160 was freezed by the

respondent-Organization. Aggrieved, petitioner filed an application on 23.04.2019 before the Court below and argued that the respondent has erred in

freezing the said account which is creating serious financial problem to the petitioner to smoothly run his business. Accordingly, the said account be

directed to be de-freezed.

3. Prayer of the petitioner was opposed by Lokayukt Organization on the ground that the offences under Section 13(1)(d) read with Section 13(2) are

registered against Shri Anil Mishra who had booked Duplex No.81 from Rajul Builders. Shri Anil Mishra had deposited Rs.5 lac and Rs.2 lack in the

Allahabad Bank, Branch at Katanga on 26.04.2012 and 27.04.2012 respectively. This transaction and account is a relevant piece of evidence. The

statement of petitioner is yet to be recorded. At this stage, it will not be proper to de-freeze the account.

4. The Court below partially entertained the application and directed the respondents to continue to freeze the account to the extent of Rs.7 lac, the

amount under transaction. Rest of the account was permitted to be operated by the petitioner.

5. Criticizing this order, learned counsel for the petitioner submits that the petitioner has been falsely implicated. The respondent has not produced any

evidence whatsoever which shows that the petitioner was guilty in any manner, in the aforesaid crime.

6. Prayer is opposed by Shri Abhijit Awasthi, learned counsel for the respondent by placing reliance on the language employed in Section 102 Cr.P.C.

and the judgment of Supreme Court reported in 2018 (2) SCC 372 (Teesta Atul Setalvad Vs. State of Gujarat and others).

6. No other point is pressed by learned counsel for the parties.

7. We have heard learned counsel for the parties at length and perused the record.

8. So far question of involvement of petitioner is concerned, at this stage, no view in a proceeding of this nature can be expressed. It is for the Court

of competent jurisdiction to examine the aforesaid aspect while deciding the matter on the merits of the case. The limited question before this Court at

this stage is : whether the respondent authorities are well within their authority/competence in freezing the said account ? This point is no more res

integra.

9. In Teesta Atul Setalvad Vs. State of Gujarat and others, 2018(2) SCC 372, the Apex Court opined as under:

“17. The sweep and applicability of Section 102 of the Code is no more res integra. That question has been directly considered and answered in the

case of State of Maharashtra V. Tapas D. Neogy. The Court examined the question whether the police officer investigating any offence can issue

prohibitory orders in respect of bank accounts in exercise of power under Section 102 of the Code. The High Court, in that case, after analysing the

provisions of Section 102 of the Code had opined that bank account of the accused or of any relation of the accused cannot be held to be

“property” within the meaning of Section 102 of the Code.

Therefore, the Investigating Officer will have no power to seize bank accounts or to issue any prohibitory order prohibiting the operation of the bank

account. This Court noted that there were conflicting decisions of different High Courts on this aspect and as the question was seminal, it chose to

answer the same. In paragraph 6, this Court noted thus:

“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 of the Cr.P.C. and secondly, whether

circumstances exist, creating suspicion of commission of any offence in relation to the same.

18. After analysing the decisions of different High Courts, this Court in para 12, expounded the legal position thus:

"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. 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.

After this decision, there is no room to countenance the challenge to the action of seizure of bank account of any person which may be found under

circumstances creating suspicion of the commission of any offence.

[Emphasis Supplied]

10. A bare perusal of the aforesaid paras makes it clear that the Investigating Authority is equipped with the power to freeze the account in case of

commission of offence and also even in cases of suspicion of commission of such offence. Thus, we are unable to hold that action of the respondent-

organization in freezing the account is without authority of law. The Court below has rightly taken care of business interest of the petitioner and

partially lifted the order of freezing the account which, in our opinion, is in accordance with law.

11. In absence of any jurisdictional error, procedural impropriety, perversity or illegality in the impugned order, interference is declined. Petition is

dismissed.