

(2021) 02 BOM CK 0021

Bombay High Court (Nagpur Bench)

Case No: Criminal Writ Petition No.920 Of 2018

Rohini

APPELLANT

Vs

State Of Maharashtra And
Others

RESPONDENT

Date of Decision: Feb. 10, 2021

Acts Referred:

- Constitution Of India, 1950 - Article 226
- Maharashtra Cooperative Societies Act, 1960 - Section 83, 88
- Indian Penal Code, 1860 - Section 34, 109, 120B, 201, 406, 408, 409, 420, 457, 458, 467, 468, 471
- Information Technology Act, 2000 - Section 65
- Maharashtra Protection Of Interest Of Depositors (In Financial Establishments) Act, 1999 - Section 3
- Code Of Criminal Procedure, 1973 - Section 91, 102,. 102(2), 102(3)

Hon'ble Judges: Z. A. Haq, J; Amit B. Borkar, J

Bench: Division Bench

Advocate: Akshay Sudame, T.A.Mirza

Final Decision: Dismissed

Judgement

Amit B. Borkar, J

1. Rule. Rule is made returnable forthwith.
2. By this petition under Articles 226 of the Constitution of India, the petitioner has challenged the communication dated 27th March 2018 issued by the respondent no. 3 and the Notification dated 2nd August 2019 issued by the respondent no.1 published in the Official Gazette dated 6th August 2019 attaching bank account of the petitioner.

3. The petitioner was appointed as Clerk on probation with Samata Saharkari Bank in the year 1992. The petitioner was promoted to the post of Chief Accountant by order dated 29th January 2000. It is contended that due to the irregularities committed by the managing committee members, the bank suffered huge losses. An inquiry under Section 83 of the Maharashtra Cooperative Societies Act, 1960 (for short "the Act of 1960") was conducted. It is stated that in the enquiry under Section 88 of the Act of 1960, the petitioner was exonerated.

4. First Information Report came to be registered with Sitabuldi Police Station, Nagpur, by Auditor on 15th November 2007 as First Information Report No.338 of 2007. As per the said First Information Report, it was alleged that 22 Managing Committee Members, 06 employees and 02 borrowers have committed the offences under Sections 406, 408, 409, 467, 468, 471, 420, 201, 120-B, 109 read with Section 34 of the Indian Penal Code, 1860 and Section 65 of the Information Technology Act, 2000 alongwith Section 3 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999 (for short, "the Act of 1999").

5. The petitioner was discharged from the service with effect from 6th June 2011. On 13th June 2018, the petitioner came to know that her Savings Bank Account no.1472000100357626 with Punjab National Bank, Khamla Branch, Nagpur, has been freezed on the instructions of the respondent no.4. It is contended that the said Savings Account had been used by the petitioner to withdraw the amount of pension and provident fund. Therefore, representation for de-freezing the account filed with the Branch Manager on 13th June 2018. The petitioner, on enquiry with the bank officials, came to know that by way of impugned orders, the respondent no.4 has attached bank account of the petitioner in exercise of power under Section 91 of the Code of Criminal Procedure.

6. The petitioner has, therefore, challenged the impugned communications by way of present petition. This Court on 14th September 2018 issued notices to the respondents. The respondent no.4 has filed reply and has stated that the order to freeze the bank account of the petitioner has been passed in exercise of power under Section 102 of the Code of Criminal Procedure. It is further stated that the impugned communications were issued

in relation to the investigation in Crime No.338 of 2007 registered under Sections 406, 408, 409, 467, 468, 471, 420, 201, 120-B and 109 read with

Section 34 of the Indian Penal Code, 1860 and Section 65 of the Information Technology Act, 2000 alongwith Section 3 of the Act of 1999.

7. It is further stated in the reply that the Managing Committee members alongwith employees of Samata Sahakari Bank Ltd. have cheated

depositors/investors by indulging in fraudulent transactions. In para 9 of the said reply, it has been stated that though the petitioner has been

exonerated in an enquiry under Section 88 of the Act of 1960, it will have no effect on the registration of the criminal offences, which are alleged

against the petitioner.

8. We have carefully considered the impugned communications and the notification. At this stage, it will be relevant to note Section 102 of the Code of

Criminal Procedure. Section 102 of the Code of Criminal Procedure reads as under:

“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 saleâ€.

9. On careful reading of Section 102 of the Code of Criminal Procedure shows that the Police Officer in the course of investigation can seize any property under Section 102 of the Code of Criminal Procedure, if such property is alleged or suspected to have been stolen or which may be found under circumstances, which create suspicion of commission of any offence. As per Section 102 (1) of the Code of Criminal Procedure, it is obligatory upon the Investigating Agency to show that the property which is attached is creates suspicion of the commission of offence.

10. Taking into consideration, the offences which are alleged against the petitioner, it was necessary for the Investigating Agency to show that the amount in the Savings Account of the petitioner has any connection with the offences alleged against the petitioner. From the material produced by the petitioner, it appears that the Savings Account, which was being operated by the petitioner, was her pension account. The offences, which are alleged against the petitioner, were for the period between 1997 till 2007. The prosecution has not shown that the amount in the Savings Account of the petitioner has any relation to the offences alleged against the petitioner. The prosecution is not able to show as to whether the ingredients of sub-section (3) of Section 102 of the Code of Criminal Procedure of reporting seizure to the Magistrate had been complied with.

11. We are, therefore, satisfied that the communication and notification impugned in the present petition deserve to be quashed and set aside. We, therefore, pass the following order:

ORDER

Communication dated 27th March 2018 issued by respondent no.4 and the Notification dated 2nd August 2019 issued by the respondent no.1 published in the Official Gazette dated 6th August, 2019 attaching Bank account no. 1472000100357626 of the petitioner with Punjab National Bank, Khamla Branch, Nagpur, is quashed and set aside.

Rule is made absolute in the above terms.