Adarsh Co-operative Housing Society Limited Vs Union of India (UOI), State of Maharashtra and Central Bureau of Investigation Anti Corruption Branch

Court: Bombay High Court

Date of Decision: July 27, 2011

Acts Referred: Benami Transactions (Prohibition) Act, 1988 â€" Section 2, 3, 5
Constitution of India, 1950 â€" Article 14, 19, 21, 226
Criminal Procedure Code, 1973 (CrPC) â€" Section 102, 102(1), 523
Penal Code, 1860 (IPC) â€" Section 120B, 302, 420, 468, 471
Prevention of Corruption Act, 1988 â€" Section 13, 13(1), 13(2), 14, 16

Citation: (2012) 114 BOMLR 431 : (2012) CriLJ 520

Hon'ble Judges: Ranjit More, J; Ranjana Desai, J

Bench: Division Bench

Advocate: V.A. Thorat, S.L. Maneshinde and Saket Mane, instructed by Vidhi Partners, for the Appellant; D.J. Khambatta, A.S.G., D.N. Salvi, Afroz Shaha and C.S. Damne for Respondents 1 and 3 and P.A. Pol, Public Prosecutor for Respondent 2-State, for the Respondent

Final Decision: Dismissed

Judgement

Ranjana Desai, J.
The Petitioner is a society registered under the Maharashtra Co-operative Societies Act, 1960 (for convenience, ""the

Petitioner-society""). Respondent 1 is the Union of India. Respondent 2 is the State of Maharashtra and Respondent No. 3 is the Central Bureau of

Investigation, Anti Corruption Branch (for short, ""the CBI""), who is currently investigating certain matters connected with the Petitioner-society and

its members.

2. In this petition filed under Article 226 of the Constitution of India, the Petitioner-society has, inter alia, prayed that the letter dated 31/1/2011

issued by CBI in respect of accounts of the Petitioner-society maintained with the State Bank of India in Wodehouse Road Branch and Cuffe

Parade Branch be quashed. By the said letter, CBI has issued a direction to the State Bank of India to stop operation of the said accounts of the

Petitioner-society.

3. Gist of the facts stated in the petition will have to be noted.

(a) The Petitioner-society is a society registered under the Maharashtra Co-operative Societies Act, 1960. It has 102 members. The Petitioner-

society and its members were allotted, on occupancy basis, 6428.5 sq. meters of land owned by the Government of Maharashtra situate in the

Backbay Reclamation Area in Block No. VI in Colaba, Mumbai. The Petitioner-society paid a total amount of Rs. 16,33,22,292/-. It was duly

granted all necessary permissions. Occupation Certificate was granted on 16/9/2010. A complaint was registered by the Ministry of Defence,

Government of India with the CBI requesting the CBI to conduct enquiry about the alleged irregularities concerning the Petitioner-society. Upon

the complaint being received, the CBI conducted a preliminary enquiry.

(b) On 29/1/2011, the CBI registered FIR against several persons connected with the Petitioner-society under Sections 120-B, 420, 468 and 471

of the Indian Penal Code, 1860 (for short, ""the IPC"") and u/s 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 (for

short, ""the P.C. Act"") alleging that, the accused abused their official position, manipulated and fabricated the records to achieve their objective of

getting the land allotted in favour of the Petitioner-society in an illegal manner. It is further alleged that various clearances from Municipal

Authorities and other State Government Authorities were taken in an illegal manner. It was alleged that the accused abused their official position

and obtained for themselves and for their close relations, property rights over flats in the Petitioner-society at a very low cost compared to the

market value.

(c) The investigation was started. The office of the Petitioner-society was searched and several documents, writings, etc. were seized. Similarly,

residences of the accused were searched. The CBI seized all the documents required by the Petitioner society for operating its bank accounts such

as bank passbooks, cheque books, statement of bank accounts, etc. On 31/1/2010, the CBI wrote to the State Bank of India, Wodehouse Road

Branch and Cuffe Parade Branch directing them to stop operation of the said bank accounts and not to allow their operation without further

instructions from the CBI. The CBI did not serve any notice on the Petitioner-society prior to freezing of the said accounts. The Petitioner-society

came to know about the said direction issued by the CBI through a letter addressed by the State Bank of India to it on 1/2/2011. Being aggrieved

by this action of the CBI, the Petitioner-society has approached this Court.

4. We have heard Mr. Thorat, learned senior counsel appearing for the Petitioner-society and Mr. Khambatta, learned Additional Solicitor

General appearing for Respondents 1 and 3. We have perused the affidavit-in-reply of Mr. Ravindra Singh, Addl. Superintendent of Police, CBI,

dated 15/3/2011 and affidavit-in-rejoinder and additional affidavit of Lt. (Commander) (Retd.) G.S Grewal. We have also carefully perused the

written submissions filed by the Petitioner-society and the CBI.

5. Mr. Thorat, learned senior counsel submitted that the unlawful and unjust freezing of accounts of the Petitioner-society must be set aside.

Counsel submitted that it is alleged in the FIR that 13 persons who are members of the Petitioner-society conspired with each other with the

intention to illegally get land allotted in its favour. The period during which the offences are alleged to have been committed is prior to 2004. The

amount lying deposited in the Petitioner-society"s two accounts in the State Bank of India have been deposited on or about 1/11/2010 in the form

of contribution from the members of the Petitioner- society for the purpose, inter alia, of meeting the expenses of litigation initiated against the

Petitioner-society. Thus, ex facie, there is no connection between the said amount and the alleged offences.

6. Counsel further submitted that the Petitioner-society is a society registered under the Maharashtra Co-operative Societies Act, 1960. It is a

separate and legal entity. It is statutorily required to open bank account so as to discharge its financial commitments through its operation. It is

required to make payments towards (a) security agencies for the purpose of security of its building and compound, (b) maintenance of building and

its precincts. The building has a lift. If it is not maintained, it will become junk, (c) pending invoices of contractors and other service providers who

have rendered their service towards construction of the building, (d) payment towards advocates and counsel engaged by the Petitioner-society in

various litigations concerning the Petitioner-society, (e) salary of the staff of the Petitioner-society and (f) payment of statutory dues. Due to the

freezing of its accounts, the Petitioner-society has not been able to make the above payments.

7. Counsel further submitted that freezing of the accounts has caused injustice to the Petitioner-society. It is deprived of its right to engage a lawyer

of its choice. There is thus violation of its fundamental rights guaranteed by the Constitution of India under Articles 14, 19 and 21. In this

connection, counsel relied on the judgments of the Supreme Court in Madhav Hayawadanrao Hoskot Vs. State of Maharashtra, ., Mrs. Maneka

Gandhi Vs. Union of India (UOI) and Another, and Hussainara Khatoon and Others Vs. Home Secretary, State of Bihar, Patna, Counsel pointed

out that the Petitioner-society had addressed a letter to the bank requesting it to allow it to open a new account, however, permission was denied.

8. Counsel submitted that the CBI has not collected any material against the Petitioner-society to establish causal connection between the funds

deposited in its bank accounts and the alleged offence. The only evidence is found in paragraphs 12 and 13 of the affidavit of Mr. Singh, where it is

stated that this amount would be utilized to tamper with the evidence which submission is too farfetched. Relying on the judgment of learned Single

Judge of the Madras High Court in His Holiness Sri Kanchi Kamakoti Peetadhipathi Jagadguru Sri Sankaracharya Swamigal Srimatam

Samasthanam Vs. The State of Tamil Nadu and Others, counsel submitted that bank account cannot be frozen on this ground. Seizure u/s 102 of

the Code of Criminal Procedure, 1973 (for short, ""the Code"") can be done in respect of assets which are a direct outcome of the crime.

9. Counsel submitted that the Petitioner-society is not the accused in the FIR. There is no reference to the bank accounts in the FIR. Retention of

money in the accounts, by no stretch of imagination can be said to be a requirement for investigation into the source of funds or to determine

whether any account is benami. It is alleged that the accused have generated money from benami transactions, however, there is no allegation that

this amount is deposited in the Petitioner-society"s accounts which are seized.

10. Counsel submitted that no notice was given to the Petitioner-society prior to freezing of accounts. Relying on the judgment of this Court in Dr.

Shashikant D. Karnik Vs. The State of Maharashtra, , counsel submitted that therefore the seizure is bad. Counsel also relied on Anwar Ahmad

Vs. State of U.P., , B. Ranganathan Vs. State, Indian Overseas Bank and Allahabad Bank, and R. Chandrasekar Vs. Inspector of Police, Fair

Land Police Station Salem and The Dy. Superintendent of Police, C.B., C.I.D., Counsel submitted that in the circumstances, this Court should

direct the CBI to forthwith defreeze the seized accounts.

11. Mr. Khambatta, learned Additional Solicitor General appearing for the Union of India and the CBI, on the other hand, submitted that no case

is made out for defreezing the accounts. He submitted that scope of Section 102 of the Code is very wide. It contemplates seizure of any property.

Property of an accused or even property of a non-accused could be seized provided, it is found in circumstances which create suspicion about

commission of an offence. Drawing our attention to the definition of the term "suspicion" given in P. Ramanatha Aiyar"s Advanced Law Lexicon

Vol.4 (2005), counsel submitted that attachment of the property may be backed with slight or no evidence. In this connection, counsel also relied

on judgment of the Division Bench of the Andhra Pradesh High Court in K. Munivelu Vs. The Government of India and Others, . Counsel

submitted that State of Maharashtra Vs. Tapas D. Neogy, is the case on the point. Counsel also relied on the Full Bench decision of this Court in

Vinoskumar Ramchandran Valluvor v. State of Maharashtra 2011 (2) C.R. (Cri.) 179, where it is held that Section 102 of the Code does not

require issuance of a notice to a person before attachment of property. Counsel submitted that during the course of investigation, prima facie, it

appeared that various public servants/private persons had acquired flats in the Petitioner-society in benami names. In Writ Petition No. 3359 of

2010 concerning the Petitioner-society, on 17/3/2011, a Division Bench of this Court directed the concerned officer to amend the FIR so as to

invoke the provisions of the Benami Transactions (Prohibition) Act, 1988 (for short, ""the Benami Act""). Counsel submitted that the investigation is

at a crucial stage. It is to investigate the offences under the Benami Act that the accounts of the Petitioner-society had to be seized. Counsel

submitted that the accused are charged for offences under the P.C. Act. In the light of observations of the Supreme Court in Tapas Neogy,

counsel submitted that the trial court may after conclusion of the trial, exercise its powers u/s 13 read with Section 16 of the P.C. Act while

imposing fine. The trial court may take into consideration the amount or the value of the property which the accused has obtained or the pecuniary

sources of the property which the accused is unable to satisfactorily account. It is, therefore, necessary to ensure that the money lying in the bank

accounts of the Petitioner-society is secured. If the seizure is lifted at this stage that will adversely affect the investigation.

12. Counsel submitted that it is true that the Supreme Court has held that the right to legal services is a fundamental right, but nowhere has it said

that it includes the right of person to engage a counsel of his choice irrespective of the fact whether he has funds or not. Counsel submitted that the

Petitioner-society has so far not been prejudiced. This is evident from the fact that so far it has been defended by some of the finest lawyers of the

country. In this connection, counsel also relied on the following two decisions of the Supreme Court of the United States (i) United States v.

Monsanto 491 US 600 (1989) and (ii) Caplin and Dysdale v. United States 49 U.S 617 (1989) . Counsel submitted that the judgments cited by

Mr. Thorat are not applicable to the facts of this case. Counsel submitted that in the circumstances, the petition deserves to be dismissed.

13. The members of the Petitioner-society and others have been charged with offences punishable under Sections 120-B, 420, 468 and 471 of the

IPC and u/s 13(2) read with Section 13(1)(d) of the P.C. Act. It is, inter alia, alleged that the accused conspired with the Defence Service officers

and functionaries of Government of Maharashtra and others with the intention to illegally get the land allotted in favour of the Petitioner-society in

which they were the members. The concerned public servants abused their official position, manipulated and fabricated the records to achieve their

objective of getting the land allotted in favour of the Petitioner-society in an illegal manner and also got various clearances from the Municipal

Authorities and other State Government Authorities in an illegal manner and in lieu of this, abused their official position and obtained for themselves

and for their close relations, property rights over flats at a very low cost compared to the market value.

14. From the affidavit of Mr. Ravindra Singh, Additional Superintendent of Police, CBI, it appears that during the course of investigation, CBI

carried out searches of the office/residential premises of the main accused. Office of the Petitioner-society was also searched on 30/1/2011.

During preliminary investigation, it prima facie appeared that various public servants/private persons have acquired flats in the Petitioner-society in

benami names. In Writ Petition No. 3359 of 2010, on 17/3/2011, a Division Bench of this Court directed that due steps be taken to amend the

FIR so as to invoke the provisions of the Benami Act, so that every membership of the Petitioner-society is investigated into. Accordingly, CBI

submitted a corrigendum to the FIR submitted to the Special Court, Mumbai, to include the provisions of the Benami Act in the FIR. It is stated by

Mr. Singh in his affidavit that with a view to verifying benami transactions, purportedly made by the suspected accused persons, the operation of

the bank accounts of the Petitioner-society maintained with State Bank of India were seized after observing due process of law in order to verify

the various transactions. To complete the narration of facts, we must note the information supplied to us by Mr. Khambatta, learned Addl. Solicitor

General. Apart from the accounts of the Petitioner-society, the CBI has frozen the accounts of the following accused i.e. (i) Mr. R.C. Thakur, (ii)

Brig. (Retd.) Madan Mohan Wanchu, (iii) Mr. Kanhalyalal Gidwani, (iv) Mr. P.V. Deshmukh, (v) Mr. Ramanand Tiwari, (vi) Mr. Subhash Lal

and (vii) Mr. Jairaj Phatak.

15. It is necessary to quote paragraphs 10, 11 and 12 of Mr. Singh''s affidavit which clearly spell out CBI''s stand and the reason why the

accounts were seized.

10. It is true that Adarsh Co-op Hsg. Soc. LTD., Petitioner here in is not accused in this case. However, all transaction related to the accused

persons in this case are flowing from this account and the operations there of are being carried out by the office bearers of the Society. Who are

the accused in this case, therefore, to investigate the issue of Benami Transactions and other aspects the seizure of this accounts was considered

necessary.

11. Investigation revealed that accused K.L. Gidwani and his two sons, are having flat in Adarsh Co-op Hsg. Soc. for which an amount of Rs. 56

lakhs (appx.) have been paid by each of his sons whereas Rs. 82 lakhs (appx.) hasbeen paid by Shri K.L. Gidwani himself. Prima facie it is

revealed that Shri Gajanan S. Koli, Amol V. Kharbhari andShri Kiran Bhadange have been shownto have given loan of Rs. 51.3 lakhs byShri

Sunil Gidwani, Rs. 52.04 lakhs byShri Amit Gidwani and Apeksha Impex P. Ltd., (belonging to accused K.L. Gidwani). Rs. 52.4 lakhs was given

to Shri Kiran Bhadange by Devi Gidwaniand Apeksha Impex P. Ltd. Shri Amol V. Kharbhari even dose not have a PAN no of his own and has

not even filed any IT return. This prima facie indicates that all the three flats are benami and belonging to Shri K.L. Gidwani. Similar more

transactions of Benami Transaction are evident which needs to be proved further under Benami Transaction Act.

12. If we allow to operate the society account, the proceeds of crime would be utilized to tamper with the evidence and also would get benefit of

using the amount in their own ways to indulge in illegal activities.

16. The above case of the CBI will have to be kept in mind while dealing with the submissions of counsel for the Petitioner-society. Since we are

concerned with the interpretation of Section 102 of the Code, it is necessary to quote Sub-section (1) thereof for ready reference.

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.

17. In Tapas Neogy, the Supreme Court was considering whether a police officer investigating into an offence can issue prohibitory order in

respect of the bank account of the accused in exercise of power u/s 102 of the Code. The Supreme Court held that the bank account of the

accused or any of his relations is ''property'' within the meaning of Section 102 of the 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 which the police is investigating into.

The Supreme Court found that Section 102 is cast in the widest terms. The following observations of the Supreme Court are material.

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.

18. Thus, the Supreme Court has noted that the use of the words ''any property'' and ''any offence'' in Sub-section (1) of Section 102 of the Code

indicates its wide applicability. Seizure u/s 102 can be effected in respect of property which may be alleged or suspected to have been stolen or in

respect of property found under circumstances which create suspicion about the commission of an offence. As rightly pointed out by Mr.

Khambatta, learned Additional Solicitor General, in P. Ramanatha Aiyar''s Advanced Law Lexicon Vol.4, (2005), the word ''suspicion'' is defined

as being imagination of the existence of something without proof, or upon very slight evidence or upon no evidence at all. In this connection,

reliance placed on the judgment of the Division Bench of the Andhra Pradesh High Court in K. Munivelu is apt. In that case, the Andhra Pradesh

High Court has stated that the word ''suspicion'' regarding a fact is the first and initial stage for believing the existence of certain thing or alleged

fact. Information is then collected by investigation and examined to come to a final conclusion on the basis of the information that the thing or

condition or fact exists.

19. Admittedly, provisions of Benami Act have been applied to this case. Section 3 of the Benami Act prohibits benami transactions. Section 2(a)

defines benami transactions. Section 5 provides that property held benami is liable to acquisition and no money will be payable for such an

acquisition. Section 2(c) defines ''property'' as follows:

2(c) ''property'' means property of any kind, whether moveable or immoveable, tangible or intangible and includes any right or interest in such

property.

This definition is of wide amplitude.

20. We have already quoted relevant portions of the affidavit of Mr. Singh, the Superintendent of Police, CBI. He has stated that investigation has,

prima facie, revealed that the various public servants/private persons have acquired flats in the Petitioner-society in benami names and all the

transactions related to the accused persons are flowing from the accounts which are seized. It is further stated that the operations of these accounts

are being carried out by the office bearers of the Petitioner-society, who are the accused and the said accounts are seized with a view to verifying

the benami transactions. Thus, if the investigating agency, at this crucial stage of investigation as regards benami transactions, entertains any

suspicion about the bank accounts of the Petitioner-society, which are in the light of Tapas Neogy, a "property" within the meaning of Section 102

of the Code, their seizure cannot be faulted. In the circumstances of the case, investigating agency would be right in concluding that the said bank

accounts create suspicion about commission of an offence. The contention that the offence is alleged to have been committed prior to 2004 and the

money has been deposited in the accounts by the members in the form of contribution on or about 1/11/2010 for meeting the expenses of the

Petitioner-society and, therefore, the offence has no casual connection with the amounts deposited in the seized accounts must be rejected. We are

also unable to accept the submission that retention of money in the accounts is not necessary for investigating into the source of funds or to

determine whether any account is benami. It is improper at this stage to draw such conclusions. Investigating agency must be given a free hand to

determine the course of its investigation. We cannot trench upon its domain.

21. It is also necessary to bear in mind that the accused have been charged u/s 13(2) read with Section 13(1)(d) of the P.C. Act. Section 16 of the

P.C. Act states the matters which the court has to take into consideration for fixing fine. Section 16 reads thus:

16. Matters to be taken into consideration for fixing fine. -Where a sentence of fine is imposed under Sub-section (2) of Section 13 of Section 14,

the court in fixing the amount of the fine shall take into consideration the amount or the value of the property, if any, 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 referred to in that clause for which the accused person is unable to account satisfactorily.

22. Section 16 of the P.C. Act indicates that on conclusion of the trial, if the court wants to impose fine, it has to take into consideration the

amount or the value of the property which the accused had obtained by committing the offence. In Tapas Neogy, the Supreme Court observed

that the time consumed by the courts in concluding the trials is another factor, which should be borne in mind while interpreting the provisions of

Section 102 of the 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 the 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. The Supreme Court also observed that in the P.C. Act, 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. The Supreme Court observed that therefore, the

interpretation given by it in respect of the power of seizure u/s 102 of the Code was in accordance with the intention of the legislatures engrafted in

Section 16 of the P.C. Act.

23. Examined in the light of the above observations of the Supreme Court, in our opinion, the action of the investigating agency in seizing the bank

accounts of the Petitioner-society is justified. The money lying in the said account cannot be allowed to be dessipated or depleted as the said

amount would have great relevance at the conclusion of the trial in case the trial court decides to impose the sentence of fine. This answers the

contention raised by the counsel for the Petitioner-society that retention of amount in the bank accounts is not necessary. In this connection, it is

also necessary to refer to the judgment of the Full Bench of this Court in Vinoskumar Valluvar. The Full Bench highlighted the need to preserve the

property suspected to have been used in the commission of offence from being disseminated, depleted or destroyed. This judgment also provides

answer to the argument advanced by the counsel for the Petitioner-society that no notice was given to the Petitioner-society before seizing its

accounts. The Full Bench has clarified that no such notice is necessary. We may quote the relevant observations of the Full Bench.

18. It is, therefore, clear that like any other property a bank account is freezable. Freezing the account is an actin investigation. Like any other act,

it commands and behoves secrecy to preserve the evidence. It does not deprive any person of his liberty or his property. It is necessarily

temporary i.e.till the merit of the case is decided. It clothes the Investigating Officers with the power to preserve a property suspected to have been

used in the commission of the offence in any manner. The property, therefore, requires to be protected from dissemination, depletion or destruction

by any mode. Consequently, under the guise of being given information about the said action, no accused, not even a third party, can overreach the

law under the umbrella of a sublime provision meant to protect the innocent and preserve his property. It would indeed be absurd to suggest that a

person must be told that his bank account, which is suspected of having been used in the commission of an offence by himself or even by another,

is being frozen to allow him to have it closed or to have its proceeds withdrawn or transferred upon such notice.

Reliance placed on the judgment of this Court in Shashikant Karnik by the counsel for the Petitioner society to buttress the contention that notice

ought to have been given to the Petitioner-society is, therefore, misplaced.

24. There is also no substance in the contention of Mr. Thorat that since the Petitioner-society is not the accused, its bank accounts cannot be

seized. We have already referred to Tapas Neogy. There is no doubt that amplitude of Section 102 of the Code is very wide. It empowers the

police officers to seize properties not only of the accused but of any of his relatives or any other person who could be concerned with the said

property. The requirement is only that it must be found under the circumstances which create suspicion about the commission of an offence. In

Tapas Neogy, the Supreme Court has observed that the bank account of the accused or any of his relations is ''property'' within the meaning of

Section 102 of the Code. This would apply with more force in cases involving illegal gratification/gain and benami transactions. The fact that the

accused are members of the Petitioner-society has great relevance. In the circumstances, we find nothing wrong in seizure of the bank accounts of

the Petitioner-society though the Petitioner-society is not cited as an accused. Considering the intention of the legislature behind enacting Section

102 of the Code and also upon giving effect to its plain language, we are unable to give any restricted meaning to it. Once action is taken under this

section, it is clear that the property needs to be protected during investigation. Its wide amplitude cannot be restricted by ordering release of some

property on the ground that statutory dues are to be paid or lawyers fees have to be paid. It is necessary to state here that since one of the grounds

on which the Petitioner-society has prayed for defreezing the accounts was the need to pay statutory dues, we had called upon the CBI to state

whether the amounts of statutory dues could be released from the frozen accounts. Without prejudice to the rights and contentions of the CBI, Mr.

Khambatta, learned Additional Solicitor General had submitted that the statutory dues would be released provided detailed particulars of the bills

are furnished. However, the Petitioner-society did not accept this offer.

25. We also do not find any substance in the contention that the impugned action of the CBI has affected the Petitioner-society''s right to legal

representation being part of its fundamental right under Article 21 of the Constitution of India. It is true that the Supreme Court has held that right

to legal services is a fundamental right. We may quote the relevant paragraph of the Supreme Court judgment in Hussainara Khatoon.

This Article also emphasizes that free legal service is an unalienable element of ''reasonable, fair and just'' procedure for without it a person

suffering from economic or other disabilities would be deprived of the opportunity for securing justice. The right to free legal services is, therefore,

clearly an essential ingredient of "reasonable, fair and just" procedure for a person accused of an offence and it must be held implicit in the

guarantee of Article 21. This is a constitutional right of every accused person who is unable to engage a lawyer and secure legal services on

account of reasons such as poverty, indigence or incommunicado situation and the State is under a mandate to provide a lawyer to an accused

person if the circumstances of the case and the needs of justice so required, provided of course the accused person does not object to the

provision of such lawyer .....

26. However, nowhere has the Supreme Court held that the right to legal representation includes right to the counsel of one"s choice even though

the person concerned does not have necessary funds. Such a proposition is also not found in M.H. Hoskot or Maneka Gandhi on which reliance is

placed. If the Petitioner-society had claimed any legal aid that could have been provided to it. No such application is made. Besides, we find that

the Petitioner-society has all along been represented by some of the finest counsel in the country. Therefore, seizure of the bank accounts has

caused no prejudice to it. In any case, bank accounts which are frozen for investigation, particularly in respect of benami transactions cannot be

defreezed on the specious ground that the Petitioner-society wants to engage lawyer of its choice. The amounts lying in the bank accounts which

create suspicion about commission of crime cannot be allowed to be depleted. In this connection, we may usefully refer to two decisions of the

Supreme Court of the United States to which our attention was drawn by Mr. Khambatta, learned Additional Solicitor General. In Monsanto and

Caplin & Dysdole, the U.S. Supreme Court rejected the constitutional challenge to a statute providing for forfeiture of an accused"s property. The

challenge was on the ground that the accused was denied his constitutional right to counsel of his choice (6th Amendment) and that the due process

Clause (5th Amendment) stood violated. The U.S. Supreme Court held that the language of the statute concerned was unambiguous and did not

exclude or make an exception for money which the accused wanted to pay his lawyer, out of forfeited property or in respect of pre-trial restraining

orders (made on a probable cause basis) in respect of properties of the accused. It was further held that the accused"s constitutional right did not

extend to permitting him to use assets adjudged to be forefeitable to pay his lawyer"s fees.

27. We shall now refer to some of the cases which we have not discussed though reliance is placed on them by the Petitioner-society. Anwar

Ahmed"s case is not applicable to this case because there the court was dealing with an issue whether a police officer can take a bond from a

person to whom the property is entrusted u/s 523 of the old Criminal Procedure Code. In Kanchi Kamakoti Peetadhipathi, learned Single Judge of

the Madras High Court was dealing with a case where bank accounts of the Mutt were seized due to the commission of offence punishable u/s

302 of the IPC by the head of the Mutt. Facts of that case, therefore, materially differ from the present case. Learned Single Judge however,

observed that if the accused were public servants and investigation was about illegal gratification, invocation of Section 102 of the Code would be

justified. In our opinion, in view of the authoritative pronouncement of the Supreme Court in Tapas Neogy that property of a person who is not an

accused can also be seized u/s 102 of the Code, contrary view taken by the Madras High Court in: 35: this case, is per incurriam.

28. In the ultimate analysis, we are of the view that freezing of the accounts of the Petitioner-society cannot be interfered with by us. We find no

substance in the petition. The petition is, therefore, rejected.