Court No. - 44 AFR

Case :- CRIMINAL MISC. WRIT PETITION No. - 11201 of 2021

Petitioner :- Amit Singh

Respondent :- State Of U.P. And 3 Others

Counsel for Petitioner :- Manish Singh

Counsel for Respondent :- G.A,Rajesh Dwivedi,Sanjay Kumar Srivastava

Hon'ble Ashwani Kumar Mishra,J.

Hon'ble Rajnish Kumar,J.

(Delivered by Hon'ble Rajnish Kumar,J.)

(1) The instant writ petition had been filed by the petitioner Amit Singh for defreezing the Bank account of the petitioner bearing Account No.733910110001489 in Bank of India, Branch Panki, Kanpur Nagar and to allow the petitioner to operate his bank account. Subsequently by way of amendment the petitioner has also prayed for quashing the order dated 18.03.2021, contained in annexure no.11 to the writ petition by means of which the account of the petitioner has been got freezed by the respondent no.2 i.e. Station House Officer, Police Station-Kalyanpur, District-Kanpur Nagar in relation to Case Crime No.1504 of 2020, under Sections 420, 467, 468, 471, 120-B IPC, Police Station-Kalyanpur, District- Kanpur Nagar.

(2) Learned counsel for the petitioner submits that the account of the petitioner has been seized in violation of the provisions made under Section 102 of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.). The mandatory requirements of Section 102(3) Cr.P.C. has not been followed and the respondent no.2 has not informed the concerned Magistrate regarding seizure of the bank account, forthwith. Therefore the Constitutional right of property envisaged under Article 300-A of the Constitution of India has been infringed. Thus the impugned order is liable to be quashed and the respondents be directed to defreeze the account of the petitioner and allow him to operate the account. Learned

counsel for the petitioner has relied upon the judgments in *N.Padmamma and others Versus S.Ramkrishna Reddy and others, Civil Appeal No.3632 of 2008 decided on 16.05.2008; D.B.Basnett (D) through LRs.Versus The Collector East District, Gangtok, Sikkim and another; Civil Appeal No.196 of 2011 decided on 02.03.2020; Bajranga (Dead) by Lrs. Versus State of Madhya Pradesh and others; Civil Appeal No.6209 of 2010 decided on 19.01.2021; Ms Swaran Sabharwal Versus Commissioner of Police, 1990 (68) Comp Cas 652 Delhi (DB); Dr.Shashikant D.Karnik Versus The State of Maharashtra; 2008 Cri.LJ 148 (D.B.); Muktaben M.Mashru Vs. State of N.C.T. of Delhi and Another; Crl M.C. 4206 of 2018, decided on 29.11.2019; Tmt.T. Subbulakshmi Vs. The Commissioner of Police; Crl. O.P. No.13103 of 2013 decided on 30.08.2013; Uma Maheshwari Vs. The State Rep. By Inspector of Police, Central Crime Branch, Egmore, Channai; Criminal O.P. No.15467 of 2013 decided on 20.12.2013; The Meridian Educational Society Vs. The State of Telangana; Writ Petition No.21106 of 2021 decided on 04.10.2021; State of Haryana Vs. Raghuveer Dayal; 1995 SCC (1) 133 and Chief Information Commissioner & Another Vs. State of Manipur & Another; 2011 (15) SCC 1.*

(3) Learned counsel for the respondents vehemently opposed the submissions of learned counsel for the petitioner. It is submitted by learned counsel for the respondents that the account of the petitioner has rightly been got freezed in accordance with law by the respondent no.2 as the consideration received out of the illegal transactions, in regard to which F.I.R. vide Case Crime No.1504 of 2020 (Supra) has been lodged, has been deposited in the said account, hence the same is the case property and it cannot be allowed to be withdrawn by the petitioner.

(4) It was further contended by learned A.G.A. that on an application moved by the petitioner before the concerned Magistrate it has been informed that the Bank account has been seized. Therefore the requirement of Section 102(3) Cr.P.C. stands fulfilled and if there was any delay, that may not give any benefit to the petitioner at this stage to get

the account defreezed on this technical ground. However, the petitioner may move an application before the concerned Court for defreezing of his account which may be considered by the concerned court in accordance with law.

(5) We have considered the submissions of learned counsel for the parties and perused the record.

(6) The First Information Report vide case Crime No.1504 of 2020, under Sections 420, 467, 468, 471, 120-B IPC was lodged at Police Station-Kalyanpur, District-Kanpur Nagar by the respondent no.5/Radhelal Goel alleging therein that some person impersonating him as Radhelal sold the land bearing Gata No.782 by executing Power of Attorney in favour of other persons, who has nothing to do with the said land, whereas the land is recorded in the revenue records in the name of Radhelal son of Ram Milan. During course of investigation, the name of petitioner surfaced in commissioning of the alleged crime and he was arrested on 15.03.2021.

(7) It appears that during investigation the Investigating Officer found that the sale consideration received on account of aforesaid fraudulent transfer of land in question was deposited in the account of the petitioner bearing Account No.733910110001489 in Bank of India, Branch Panki, Kanpur Nagar. Therefore the respondent no.2 requested the respondent no.4 to freeze the account of the petitioner in his bank with immediate effect. It was further requested that no transaction be allowed in future without permission of the court or police officer.

(8) It appears that after the petitioner was enlarged on bail by means of order dated 19.05.2021 and released from Jail, he approached the Chief Metropolitan Magistrate, Kanpur Nagar with a prayer to clarify as to on the basis of which order the account of the petitioner has been seized so that he may get the same released through the court. The said application was moved on 03.09.2021. The respondent no.2 by means of the report dated 19.09.2021 informed the court that the account of the petitioner has been seized in connection with the case Crime No.1504 of 2020 (Supra).

Thereafter the petitioner approached this court by means of the present writ petition with the aforesaid prayers.

(9) Article 300-A of the Constitution of India provides that "No person shall be deprived of his property save by authority of law." Therefore a person can be deprived of his property only in accordance with law. The Hon'ble Supreme Court, in the case of *Bajranga (Dead) by LRs. Versus State of Madhya Pradesh and others (Supra)*, has held that right to property is still a constitutional right under Article 300-A of the Constitution of India though not a fundamental right and the deprivation of the right can only be in accordance with the procedure established by law. Similar view has been expressed by Hon'ble Supreme Court in the cases of *D.B.Basnett (D) through LRs Versus The Collector East District, Gangtok, Sikkim and another (Supra) and N.Padmamma and others Versus S.Ramkrishna Reddy and others (Supra).* In the present case however, the bank account has been got seized in exercise of powers under Section 102 Cr.P.C.

(10) The relevant Section 102 of Cr.P.C. is extracted below:-

"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.]"

(11) The aforesaid provision provides that 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. Therefore any police officer may seize any

property even if there is suspicion that the same is involved in commissioning of any offence. The property includes Bank account and a police officer in course of investigation can seize the account. Therefore once it is found by the Investigating Officer that the sale consideration received on account of alleged fraudulent transaction has been deposited in the said account, there is no illegality or infirmity in seizure of the account of the petitioner for the purposes of investigation because if the same is not secured, the amount deposited in the said account, which would be a case property, may be withdrawn. The Supreme Court considered the issue in *State of Maharashtra Versus Tapas D. Neogy (1999) 7 SCC 685* and held as under in paragraph 12:-

> "12……...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 ……..."

(12) The scope and object of Section 102 Cr.P.C. is to help and assist in investigation and to enable a police officer to collect and collate evidence to be produced to prove the charge complained of and set up in the charge sheet. There is no requirement of any notice or information to the concerned before seizure.

(13) Sub Section (3) of Section 102 Cr.P.C. provides that every police officer acting under sub-section (1) Cr.P.C. shall forthwith report the seizure to the Magistrate having jurisdiction. The main thrust of learned counsel for the petitioner is that since the police officer acting under sub-section (1) Cr.P.C., who has seized the account has not reported the concerned Magistrate about the seizure forthwith, and thus seizure has become illegal. Sub-section (3) of Section 102 Cr.P.C. further provides that where the property seized is such that it cannot be conveniently transported to the court or where there is difficulty in securing the custody of the said 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. Therefore the bank account which has been seized and is in the custody of the bank is subject to the further orders of the court as to the disposal of the same, therefore as per scheme of Code the purpose of information being given to the Magistrate concerned is to bring it to the knowledge of the Court but no consequences thereof has been provided. However the concerned person may move appropriate application for its release etc. from the court. Knowing it well the petitioner had also, after release from the Jail on bail, moved an application before the concerned court to know as to under which order the account has been seized, so that he may get the same released through the court. Therefore once the information in response to the aforesaid application has been submitted to the concerned court, it is apparent that the information has been furnished to the concerned court. Therefore the seizure would not become illegal on this ground.

(14) In view of submissions of learned counsel for the parties the main issue which falls for our consideration is as to whether Section 102(3) Cr.P.C. is mandatory or directory in nature? It is well settled that non-observance of a mandatory condition is fatal to the validity of the action. However, non-observance would not matter if the condition is found to be merely directory. In other words, it is not that every omission or defect entails the drastic penalty of invalidity. Whether the provision is mandatory or directory can be ascertained by looking at the entire scheme and purpose of the provision and by weighing the importance of the condition, the prejudice to private rights and the claims of the public interest, therefore, it will depend upon the provisions of the statute and mere use of word ‘shall’ would itself not make the provision mandatory. The Hon'ble Supreme Court in the case of *State of Haryana Versus Raghuveer Dayal (Supra)* has held that the use of word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the

enactment, on consequences to flow from such construction would not so demand.

(15) The Hon'ble Supreme Court, in the case of *Nasiruddin and Others Versus Sita Ram Agarwal; AIR 2003 Supreme Court 1543,* has held that it is well settled that the real intention of the legislation must be gathered from the language used. It may be true that the use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character. It has further been held that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time frame, the same will be held to be directory unless the consequences therefor are specified. The relevant paragraphs 38 and 39 are extracted below:-

> "**38.** The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.
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> **39.** Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time-frame, the same will be held to be directory unless the consequences therefor are specified. In *Sutherland's Statutory Construction*, 3rd Edn., Vol. 3, at

> p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision.
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> At p. 111 it is stated as follows:
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> "As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory construction. But this is only an element to be considered, and is by no means conclusive."

(16) The consequences of non reporting about the seized property have not been provided under the section. In addition, the requirement of reporting in the manner, as stated, is on the part of a public functionary and in view of the law laid down by the Hon'ble Supreme Court, as noticed above, the same is required to be held to be directory unless the consequences thereof are specified. Since the consequences have not been specified, it would be safe to hold that requirement of Section 102(3) Cr.P.C. cannot be termed as mandatory but would be directory in nature.

(17) The Scheme for disposal of property under the Code is provided under Chapter XXXIV of the Cr.P.C. Section 451 provides that when any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. Section 452 provides the order for disposal of property at conclusion of trial. Section 457 (1) provides that whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

Sub-section (2) provides that if the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

(18) In view of above scheme of the Code the purpose of information given to the Magistrate regarding seizure of property by the Police Officer is merely to facilitate its disposal in accordance with law during pendency of trial or subsequent thereto. Therefore non reporting of the seizure forthwith, as provided under Section 102(3) Cr.P.C., shall not ipsofacto render the seizure illegal particularly as no period is specified and it's consequences have not been provided. Therefore when on an application moved by the petitioner, the same has been informed, the petitioner may move the concerned Magistrate for the custody of the property i.e. unfreezing of the account of the petitioner, which may be dealt with in accordance with law and on it’s own merit.

(19) The Delhi High Court, in the case of *Ms.Swaran Sabharwal Versus Commissioner of Police (Supra)*, quashed the prohibitory order on the ground that the moneys in the bank does not constitute "case property". In the case of *Dr. Shashikant D. Karnik Versus The State of Maharashtra (Supra)*, the Bombay High Court allowed the petition on the ground that all the three requirements of Section 102 Cr.P.C. have not been complied. It appears that in this case a direction was issued not to permit operation of the bank accounts of petitioner therein and his family without seizure therefore the court was of the view that there can not be an interim order and thereafter it's continuation. The authorities had also failed to ascertain, by the time it was decided, as to whether there was any connection of it with the alleged crime. The court has only mentioned that sub-section (3) of Section 102 lays down a mandate without any

finding as to whether it is mandatory or directory. The Court without any provision has also observed that there is a fourth requirement of law that notice is required to be given before stopping the operation of the account. In the absence of any specific stipulation in the statute or necessary consequence flowing from the scheme contained in the Act, we are not inclined to subscribe to such a view.

(20) In the present case we have considered the issue in detail and are of the view that sub-Section (3) of Section 102 Cr.P.C. is directory in nature and once the court has been informed of freezing of bank account on an application moved by the petitioner, the requirement of statute stands fulfilled. Deprivation of property (freezing of bank account) otherwise being as per law, the argument that Article 300-A of Constitution is violated cannot be accepted. Contrary view taken by learned Single Judges of the High Courts of Delhi, Madras and Telangana in the judgments in *Ms Swaran Sabharwal Versus Commissioner of Police, 1990 (68) Comp Cas 652 Delhi (DB); Muktaben M.Mashru Vs. State of N.C.T. of Delhi and Another; Crl M.C. 4206 of 2018, decided on 29.11.2019; Tmt.T. Subbulakshmi Vs. The Commissioner of Police; Crl. O.P. No.13103 of 2013 decided on 30.08.2013; Uma Maheshwari Vs. The State Rep. By Inspector of Police, Central Crime Branch, Egmore, Channai; Criminal O.P. No.15467 of 2013 decided on 20.12.2013; The Meridian Educational Society Vs. The State of Telangana; Writ Petition No.21106 of 2021 decided on 04.10.2021* without considering and dealing with the provisions and scheme of the Code cannot be relied upon. Therefore these judgments can not be of any help to the petitioner. The Judgment, in the case of *Chief Information Commissioner and another Versus State of Manipur and another (Supra),* relied by learned counsel for the petitioner, is also not applicable in the facts and circumstances of the present case.

(21) In view of the discussions made above this court is of the considered opinion that there is no infringement of Constitutional right of property of the petitioner under Article 300-A of the Constitution of India.

Article 300-A of the Constitution of India only provides that no person shall be deprived of his property save by authority of law. The alleged deprivation of property (freezing of bank account) since is found to be in accordance with applicable law i.e. Code of Criminal Procedure, the action complained of is clearly in consonance with Article 300-A of the Constitution of India. Petitioner's plea of violation of Article 300-A of Constitution of India cannot be pressed to impeach the act of freezing of bank account after such act is held to be as per applicable law i.e. the Code of Criminal Procedure.

(22) The bank account of the petitioner has been got freezed in exercise of powers given under Section 102 Cr.P.C. and the Code of Criminal Procedure restricts the release of such bank account only to an order passed by the Magistrate, which is not the case here. The provisions of the Code thus cannot be by-passed on the plea that Article 300-A of Constitution of India is violated. Merely because the freezing of bank account is not reported forthwith and reported only on an application moved by the petitioner, it cannot be said that there is infringement of right of property given under Article 300-A of the Constitution of India. The plea of the petitioner in this regard is misconceived and not sustainable. The writ petition consequently lacks merit and is **dismissed**. No order is passed as to costs.

(Rajnish Kumar,J.) **(Ashwani Kumar Mishra,J.)**

Order Date: 18.04.2022
Banswar