

**IN THE HIGH COURT OF JAMMU & KASHMIR AND
LADAKH AT SRINAGAR**

Reserved on: 20.04.2022
Pronounced on:28.04.2022

CrI R No.1/2022
CrIM No.175/2022
c/w
CrI R No.2/2022
CrIM No.155/2022

KAISER AHMAD SHEIKH & ANR ... PETITIONER(S)
BASHIR AHMAD WAR AND ANR.

Through: - Mr. Areeb Javed Kawoosa, Advocate.

Vs.

SHO P/S CRIME BRANCH KASHMIR ...RESPONDENT(S)

Through: - Ms. Asifa Padroo, AAG

CORAM: HON'BLE MR. JUSTICE SANJAY DHAR, JUDGE

JUDGMENT

1) By this common order, afore-titled two revision petitions filed against order dated 29.01.2022 passed by learned Special Judge, Anticorruption, Kashmir Srinagar, whereby applications of the petitioners for defreezing of their bank accounts have been declined, are proposed to be disposed of.

2) Petitioners Kaiser Ahmad Sheikh and Bashir Ahmad War happen to be the employees of Jammu and Kashmir Projects Construction Corporation (hereinafter referred to as JKPCC). Petitioner Ishrat Ara happen to be the wife of petitioner Kaiser Ahmad Sheikh whereas

petitioner Neelofar Jan happens to be the wife of petitioner Bashir Ahmad War.

3) It appears that Crime Branch, Kashmir, was asked to enquire into all works executed or contracted out by JKPCC after issuance of Government Order No.308/2015 dated 21-11-2015, so as to identify irregularities in award of contracts in violation of prescribed SOP/ procedure and take necessary action under law. It is submitted by the respondent that a Preliminary Enquiry vide No 51/2019 was registered and initiated. During the enquiry it was revealed that Officers/Officials of JKPCC unit 3rdSrinagar by abusing their official position with ulterior motive executed (36) thirty-Six works illegally on nomination basis in violation of Govt order No 308 of 2015 dated 21-11-2015. It was found that these works were split into 1412 work components to bring the works within the competence of the unit head (Deputy General Manager, DGM) in utter disregard to existent financial rules, whereafter these works were allotted without inviting tenders. This was allowed by Supervisory Officers concerned, General Manager and the Managing Director of the Corporation, by release of funds without Technical Sanction, Administrative Approval and Overlooking the Invitation of Competition. The enquiry further revealed that an amount of Rs.43914.8 lacs was projected as rough cost for these works without framing proper DPR/estimates and bills of quantities, in disregard and violation to laid down rules and procedures. This, according to the verification, has caused loss to the State Exchequer.

4) During the course of the probe, the photostat copies of records were obtained from the concerned department and were examined. During the

probe physical inspection of one work namely Govt. College of Engineering and Technology(GCET), Safapora, was conducted as test check by engineering experts, which revealed that the concerned Officers/Officials of Unit 3rd have wilfully and with ulterior motives caused a loss to the tune of Rs.62,21,258/= to the State Exchequer. This loss has been found on account of 'exorbitant, unsubstantiated and arbitrary rates shown in the records by the concerned officers/officials of the said unit for providing & laying of Khakbajri and procurement of water,

5) Further probe revealed that an amount of Rs.11257000/= has been found paid to one Sheikh Zubair Aslam S/o Sheikh Mohammad Aslam R/o116-Barari Nambal A/P Nishat and his father and uncle in the year 2017 who worked as piece workers. This amount has been found to have been paid in advance and later on, the same was got adjusted against the works found executed mostly on account of providing materials like marble/Granite and iron etc. However, Rs.11.00 lacs still stand unrecovered from the said piece worker. This clearly indicates favouritism and violation of set rules and regulations as there is no provision whereby Advance Payment in favour any pieceworker is allowed. The higher officers of JKPCC have also maintained criminal silence over the matter. The justification given by the DGM in this regard is not plausible and justified and is against the facts as existing on ground. The said DGM has obtained an affidavit from the concerned pieceworker and later on released payment in advance to the said pieceworker in utter violation of the set procedure. This amount has been shown debited against works namely District Hospital Ganderbal and construction of District Hospital Pakherpora.

6) The aforesaid acts of omission and commission on part of the accused Officers/Officials of JKPCC Unit 3rd mentioned above in league with the concerned General Manager, then Managing Director JKPCC and the Piece Workers prima facie discloses the commission of cognizable offence U/S 420, 468, 120-B RPC and 5(2)(d) P.C. Act Svt. 2006. Accordingly, a case FIR No. 18/2021 was registered at Police Station Crime Branch Kashmir and in-depth investigation started in this case.

7) During the course of the investigation, various records obtained during Preliminary Verification were seized and the same were perused. Perusal of the records has revealed that during that period, below mentioned officers/officials from S.No 01 to 03 have remained posted and associated with the execution of the above referred works wherein a loss of Rs.62,21,2581/ and Rs.11,00,000/ has been found caused to the State Exchequer and S.No. 04 has worked as piece worker who has illegally been benefited:

1. Bashir Ahmad War S/O Habibulla War R/O Arampora Ganderbal (then Deputy General Manager Unit 3rdJKPCC Srinagar).
2. Nissar Ahmad Pandith S/Q Abdul Rashid Pandith R/O Teeliyan Sopore (then Manager Unit 33rdJKPCC Srinagar).
3. Kaisar Ahmad Sheikh S/o Hmidullah Sheikh R/O Dudarhama Ganderbal (Manager Unit 3rdJKPCC Srinagar),
4. Sheikh Zubair Aslam S/o Mohammad Aslam R/O 116 Brari Nambal Srinagar A/P Nishat Srinagar.

8) During further course of investigation, house search of the accused persons was conducted after obtaining necessary warrants from the court of Special Judge Anti-Corruption Srinagar. During search an amount of Rs.9.00 lacs (Cash), was seized from the house of accused Sheikh Zubair Aslam, which, however, was got released by the accused in compliance to order of

the Court dated 14.06.2021. Compliance reports of each warrant dated 20.04.2021 along with the requisite memos have already been submitted to the Court of Special Judge, Anti-Corruption Kashmir, Srinagar on 28.04.2021.

9) During the course of investigation, the bank statements of account numbers 0081040 109902424,00810401000, 1744,0081041000000926 and 0081040100912583 pertaining to accused Mr Bashir Ahmad War, his spouse namely Neelofar Bashir and children namely Hadeel Bashir war and Tabish Bashir War were obtained, from the concerned bank and after perusal of these bank statements, the same were got debt freezed. Some suspicious credits were noticed in the account numbers of Mr Bashir Ahmad War and his wife. An explanation was sought from accused Mr Bashir Ahmad War and his spouse to explain the source of these suspicious credits to which they were unable to reply properly. These accounts were accordingly debt freezed. Account numbers of NOK's namely Hadeel Bashir war and Tabish Bashir War were later unfreezed, after observing no suspicious credits in their respective accounts. Account numbers 0081040100020745 and 0081040100019022 of accused Mr Kaiser Ahmad Sheikh and his wife namely Ishrat Ara were also got freezed after observing suspicious credits in these account numbers. An explanation was sought from these two to explain the source of suspicious credits.

10) It appears that all the four petitioners had approached learned Special Judge, Anticorruption, Kashmir, Srinagar for defreezing of their aforementioned bank accounts but their application was rejected by the learned Special Judge vide the impugned order.

11) The petitioners have challenged the impugned order passed by the learned Special Judge on the ground that by freezing the accounts of the petitioners, the respondents have deprived the petitioners of their pension and salary which has affected their source of livelihood. It is further contended that the petitioners have explained the source of funds which have been credited in their accounts from time to time to the investigating agency but despite that, they have refused to defreeze the accounts of the petitioners. It has been contended that petitioners Neelofar Jan and Ishrat Ara are not the employees of JKPCC but are working as Government Teachers but still then their accounts have been freezed without any rhyme and reason. It is contended that the learned Special Judge while passing the impugned order, has not considered the clarifications that were given by the petitioners regarding banking transactions. It is contended that the impugned order passed by the learned Special Judge has resulted in miscarriage of justice and the families of the petitioners have been made to suffer for none of their fault.

12) I have heard learned counsel for the parties and perused the material on record.

13) It has been contended by learned counsel for the petitioners that the respondent Investigating Agency was not within its jurisdiction to pass the orders of freezing of accounts of the petitioners as it is only the property which is alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of the

commission of any offence which is liable to be seized by a police officer in exercise of his powers under Section 102 of Cr. P. C. According to learned counsel for the petitioners, the money lying in the bank accounts of the petitioners is not a stolen property nor it can be stated that the same has been acquired by the petitioners so as to raise a suspicion or commission of any crime by the. Therefore, the order of freezing of bank accounts of the petitioners is without jurisdiction. To support his contention, learned counsel for the petitioners has relied upon various judgments, details whereof are given below:

- (I) ***Krishnaveni vs. State of Telanga (Crl. R No.322 of 2009 decided on 20.07.2021) (Telengana High Court)***
- (II) ***R. Chandrasekar vs. Inspector of Police (Criminal OP No.24398 of 2002 decided on 11.10.2002) (2005)1 BC 208)***
- (III) ***B. Ranganathan vs. State, Indian Overseas Bank (Criminal OP No.4324 of 2003 decided on 04.03.2003)(2004) 2 AICLR 212.***
- (IV) ***Uma Maheswari and S. Yuaraj v. The State and R. Kailash Kumar (Criminal OP Nos.15467, 15573, 15982 of 2013 decided on 20.12.2013) (2014) 1 LW(Cri) 407)***
- (V) ***Smt. T. Sububulakshmi and T. Yamini v. The Commissioner of Police, State, the Manager, Indian Overseas Bank, Valmiki Nagar Branch and the Manager, Indian Bank Thruvanmiyur Branch (CriminalNo. O.P No.s 13103, 13104 and 13105 of 2013 decided on 30.08.2013) (2013) 2 LW(Cri) 465***
- (VI) ***Dr. Shashikant D. Karnik v. The State of Maharashtra (Criminal Writ petition No. 2509 of 2006 decided on 17.04.2007) (2007) 6 AIRBomR 397***
- (VII) ***B. Kavitha v. Inspector of Police, Anna Nagar Police Station (Criminal Original Petition No. 14824 of***

2019, Criminal Miscellaneous Petition No. 7253 of 2019 decided on 11.06.2019) (2019) 2 LW (cri) 56

(VIII) Ms Swaran Sabharwal v. Commissioner of Police 1990 68 CompCas 652 Delhi (decided on 22nd May, 1987).

14) It has also been contended by learned counsel for the petitioners that despite giving satisfactory account of the transactions, which as per the investigating agency, were found to be suspicious, the respondent has refused to defreeze their accounts thereby putting the petitioners to hardships.

15) In order to test the merits of the submissions made by the learned counsel for the petitioners, it is necessary to have a look at the provisions of Section 102 of Cr. P. C, which 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, 2 [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 sale.”

16) From a perusal of the aforesaid provision, it is clear that a police officer during the investigation of the case has power to seize any property which may be alleged or suspected to have been stolen or which may be found under circumstances which create suspicion of commission of an offence. In the instant case, the allegations against the petitioners Kaiser Ahmad and Bashir Ahmad are that they were working as officers/officials in JKPC during the time when irregularities in allotment of the works without tendering had taken place which had resulted in loss to the State exchequer running into crores of rupees. In order to investigate these serious allegations and to ascertain the destination of money which has been allegedly pilfered from the State exchequer, it was necessary for the investigating agency to analyse the bank accounts of officers and officials who were at the helm of affairs at the relevant time including their kith and kin. For this purpose, seizure of their bank accounts was absolutely essential. The question whether bank account of spouse of a suspect/accused can be freezed during investigation of a case came up for consideration before the Supreme Court in the case of **State of Maharashtra v. Tapas D Neogy, (199) 7 SCC 685**. In this context, it would be apt to reproduce paras 6 and 12 of the judgment, which read as under:

“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 CrPC and secondly, whether circumstances exist, creating suspicion of commission of any offence in relation to the same. Different High Courts in the country have taken divergent views in this regard. In the case of Swaran Sabharwal v. Commr. of Police [1988 Cri LJ 241 (Del) (DB)] a Division Bench of the Delhi High Court examined the question whether a bank account can be held to be "property" within the meaning of Section 102 CrPC. In the said case, proceeds realised by sale of official secrets were deposited by the accused in his wife's account. The Court in that case came to hold that it is not quite sure whether monies deposited in a bank account can be seized by means of a prohibitory order under the provisions of Section 102 but even assuming that a bank account is a "property" within the meaning of Section 102 of the Code of Criminal Procedure, the further consideration must be satisfied namely that the property has been found under circumstances which create the suspicion of the commission of an offence. But in that case it is not the discovery of the property that has created suspicion of commission of an offence but on the other hand the discovery of the bank account is a sequel to the discovery of commission of offence inasmuch as the police suspected that some of the proceeds realised by the sale of the official secrets have been passed on to the bank account of the wife of the accused. Therefore, the Court was of the opinion that the provisions of Section 102 cannot be invoked. In the case of Purbanchal Road Service v. State [1991 Cri LJ 2798 (Gau)] a learned Single Judge of the Gauhati High Court examined the provisions of Section 102 of the Criminal Procedure Code and the validity of an order by a police officer, prohibiting the Bank from paying amount to the accused from his account. The learned Judge came to the conclusion that the word "seize" used in Section

102 CrPC means actual taking possession in pursuance of a legal process and, therefore, in exercise of the said power, a bank cannot be prohibited not to pay any amount out of the account of the accused to the accused nor can the accused be prohibited from taking away any property from the locker, as such an order would not be a "seizure" within the meaning of Section 102 of the Criminal Procedure Code. The learned Single Judge agreed with the view taken by the Allahabad High Court in the case of Textile Traders Syndicate Ltd. v. State of U.P. [AIR 1960 All 405 : 1960 Cri LJ 871] In the Allahabad case on which the Gauhati High Court relied upon (Textile Traders [AIR 1960 All 405 : 1960 Cri LJ 871]), what was decided by the Court is, once money passes on from the accused to some other person or to the bank, money itself becomes unidentifiable and, therefore, there cannot be any question of seizure of the same by the police officer.

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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. The contrary view expressed by the 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 his account, and so, we do not interfere with the same.

17) From the foregoing enunciation of law on the subject, it is clear that bank account of any of the relations of an accused fall within the definition of property as contained in Section 102 of the Cr. P. C and a police officer, during the course of the investigation, can seize or prohibit operation of the said account if such assets have direct links with the commission of the offence, which the police officer is investigating into.

18) Now coming to the facts of the instant case. There are certainly some transactions reflected in the bank accounts of the petitioners

which have raised suspicions in the mind of the investigating agency as these transactions relate to the loans alleged to have been raised and advanced by spouses of petitioners Kaiser Ahmad and Bashir Ahmad and the repayments of these loans. There are also certain suspicious transactions pertaining to the transfer of the amounts from the accounts of petitioners Kaiser Ahmad and Bashir Ahmad to the accounts of their spouses. Although petitioners have tendered explanation to the investigating agency in respect of these suspicious transactions but then the investigating agency cannot take these responses or explanations at their face value. They have to verify and ascertain the truthfulness or otherwise of these claims made by the petitioners. Unless the same is done, it would be premature for the respondent investigating agency to defreeze the accounts but it seems that the petitioners are in tearing hurry to get their accounts defreezed without allowing reasonable time to the investigating agency to perform its job.

19) A perusal of the Case Diary reveals that the investigating agency has already defreezed accounts of some of the relatives of the petitioners after feeling satisfied with the responses and explanations given by them. The investigating agency may, after ascertaining veracity of the explanations given by the petitioners in their responses, come to a conclusion that the same are based on facts and pass an order of defreezing of accounts but till then the petitioners have to be patient and they have to allow the law to have its own course. The Supreme

Court in the case of **Teesta Atul Setalvad v. State of Gujarat**, (2018)

2 SCC 372 has, while emphasizing this aspect, observed as under:

“Although both sides have adverted to statement of accounts and vouchers to buttress their respective submissions, we do not deem it necessary nor think it appropriate to analyse the same while considering the matter on hand which emanates from an application preferred by the appellants to de-freeze the stated bank accounts pending investigation of the case. Indisputably, the investigation is still in progress. The appellants will have to explain their position to the investigating agency and after investigation is complete, the matter can proceed further depending on the material gathered during the investigation. The suspicion entertained by the investigating agency as to how the appellants appropriated huge funds, which in fact were meant to be disbursed to the unfortunate victims of 2002 riots will have to be explained by the appellants. Further, once the investigation is complete and police report is submitted to the concerned Court, it would be open to the appellants to apply for de-freezing of the bank accounts and persuade the concerned Court that the said bank accounts are no more necessary for the purpose of investigation, as provided in sub-Section (3) of Section 102 of the Code. It will be open to the concerned Court to consider that request in accordance with law after hearing the investigating agency, including to impose conditions as may be warranted in the fact situation of the case.”

20) A Coordinate Bench of this Court in the case of **Neelofar Abass v. State of J&K and others** (WP(C) No.1432/2020 decided on 12.11.2020), has, in similar circumstances permitted the petitioner therein to approach the investigating officer and demonstrate before him that the money lying in the account has been earned from legitimate sources

21) For the foregoing reasons, I do not find any merit in these petitions. The same are, accordingly, dismissed leaving it open to the petitioners to approach the investigating agency, who shall

expeditiously look into the explanation and defence put up by the petitioners regarding alleged suspicious transactions, whereafter a decision regarding defreezing of the accounts of the petitioners shall be taken by the investigating agency in accordance with the law. It shall also be open to the petitioners to open fresh salary/pension accounts so that they are able to draw their salary/pension regularly.

22) A copy of this order be sent to learned Special Judge for information.

23) Case Diary be returned to the learned counsel for the respondent No.1.

(SANJAY DHAR)
JUDGE

Srinagar,
28 .04.2022
“Bhat Altaf, PS”

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No