

Sheeba C E vs National Cyber Crime Reporting Portal, ... on 16 August, 2024

Author: V.G.Arun

Bench: V.G.Arun

2024:KER:64921

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

FRIDAY, THE 16TH DAY OF AUGUST 2024 / 25TH SRAVANA, 1946

WP(C) NO. 25512 OF 2024

PETITIONER:

SHEEBA C E
AGED 48 YEARS
W/O NAVAS KB, KONNAMKUDY HOUSE, PALLIKKAVALA,
PALLIPPADY, PERUMBAVOOR, ERNAKULAM., PIN - 683547

BY ADVS.
P.B.MUHAMMED AJEESH
RAIEEZ M ASHRAF
SANDEEP V.G.
ATHIRA UTHAMAN

RESPONDENTS:

- 1 NATIONAL CYBER CRIME REPORTING PORTAL, REPRESENTED BY
ITS MODEL OFFICER
NATIONAL HIGHWAY - 8, MAHIPALPUR, NEW DELHI,
PIN - 110037
- 2 THE DIRECTOR GENERAL OF POLICE
STATE POLICE HEADQUARTERS, VELLAYAMBALAM,
THIRUVANANTHAPURAM, PIN - 695010
- 3 THE SUPERITENDENT OF POLICE
OFFICE OF THE SUPERITENDENT OF POLICE DAHOD, GALI ROAD,
BURHANI SOCIETY, SHIDHPUR, DAHOD DISTRICT, GUJARAT,
PIN - 389151

4 THE STATION HOUSE OFFICER
DAHOD TOWN B-DIVISION POLICE STATION, CHHAPRI, USARVAN
PART, DAHOD DISTRICT, GUJARAT., PIN - 389151
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5 THE BRANCH MANAGER
UNION BANK OF INDIA, PERUMBAVOOR BRANCH, AM ROAD,
OPP. GOVT. TALUK HOSPITAL, PERUMBAVOOR, ERNAKULAM
DISTRICT., PIN - 683542

BY ADVS.
P.S. APPU, GOVERNMENT PLEADER.
DSGI IN CHARGE, T.C. KRISHNA.
A.S.P. KURUP, STANDING COUNSEL FOR UBI.
SADCHITH.P.KURUP(K/1419/2002)
C.P.ANIL RAJ(K/872/2007)
SIVA SURESH(K/2688/2022)
ATHIRA VIJAYAN(K/199/2024)
B.SREEDEVI(K/169/2024)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
16.08.2024, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:
WP(C)No.25512 of 2024

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JUDGMENT

Dated this the 16th day of August, 2024 The petitioner is aggrieved by the sudden freezing of her account by the bank based on requisitions/intimation received from the police. The police in turn has acted on the basis of Cyber Crime Incident Reports filed by persons subjected to online financial fraud/UPI fraud.

2. Learned counsel for the petitioner submitted that this Court in Dr.Sajeer v. Reserve Bank of India [2024 (1) KLT 826] has addressed the plight of similarly situated persons, and after elaborately dealing with the revolutionary change in money transactions with the advent of Unified Payment Interface (UPI for short), as also the positives and negatives of UPI transactions in the context of Cyber crimes and Online fraud, the writ petitions were 2024:KER:64921 disposed of with certain directions. The petitioner is also seeking disposal of her case in similar manner.

3. Heard learned Counsel for the petitioner, the Standing Counsel for the bank, learned Government Pleader and the learned Central Government Counsel.

4. For convenience, the directions in Dr.Sajeer's case (supra) is extracted hereunder:-

" a. The respondent Banks arrayed in these cases, are directed to confine the order of freeze against the accounts of the respective petitioners, only to the extent of the amounts mentioned in the order/requisition issued to them by the Police Authorities. This shall be done forthwith, so as to enable the petitioners to deal with their accounts, and transact therein, beyond that limit.

b. The respondent - Police Authorities concerned are hereby directed to inform the respective Banks as to whether freezing of accounts of the petitioners in these Writ Petitions will require to be continued even in the afore manner; and if so, for what further time, within a period of eight months from the date of receipt of a copy of this judgment.

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c. On the Banks receiving the afore information/intimation from the Police Authorities, they will adhere with it and complete necessary action

- either continuing the freeze for such period as mentioned therein; or withdrawing it, as the case may be.

d. If, however, no information or intimation is received by their Banks in terms of directions (b) above, the petitioners or such among them, will be at full liberty to approach this Court again; for which purpose, all their contentions in these Writ Petitions are left open and reserved to them, to impel in future."

5. While I am in respectful agreement with the above directions, I also consider it apposite to scrutinise the issue in the context of the applicable provision and the precedents on the point. The intimation from the police, in most of the cases, refers to Section 102 of Cr.P.C., which, no doubt, is the applicable provision. Hence, Section 102 is extracted hereunder for easy reference. Here, it is essential to note that Section 106 of the Bharatiya Nagarik 2024:KER:64921 Suraksha Sanhita, 2023, which is the corresponding provision, is also identically worded.

"Section 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.

2024:KER:64921 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."

6. A reading of Section 102, makes it clear that the police has the 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 the commission of any offence. The Apex Court in *State of Maharashtra v. Tapas D Neogy* [(1999) 7 SCC 685] has held that the bank account of the accused or any of his relatives can be treated as "property" for the purpose of Section 102 of the Code. Later, in *Teesta Atul Setalvad v. State of Gujarat* [(2018) (2) SCC 372], the Supreme Court also held that the Investigating Officer can issue instruction to 2024:KER:64921 seize the suspected bank accounts, subject to his submitting a report to the Magistrate concerned, as mandated in sub-section (3) of Section 102. Thereafter, another issue arose with respect to cases in which there was delay in reporting the seizure to the Magistrate. This led to divergent views being expressed by different High Courts. Some High Courts held that delayed reporting to the Magistrate would, ipso facto, vitiate the seizure order; certain other High Courts held that the delay in reporting would constitute a mere irregularity and would not vitiate the seizure order. The issue was set at rest by the Supreme Court in *Shento Varghese v.*

Julfikar Husen and others [2024 SCC OnLine SC 895]. For that purpose, a comparative analysis of the legislative history of Section 102 Cr.PC was undertaken. After elaborate discussion, the Apex Court held in Shento Varghese's case (supra) as under:-

2024:KER:64921 "22.From the discussion made above, it would emerge that the expression 'forthwith' means 'as soon as may be', 'with reasonable speed and expedition', 'with a sense of urgency', and 'without any unnecessary delay'. In other words, it would mean as soon as possible, judged in the context of the object sought to be achieved or accomplished.

23. We are of the considered view that the said expression must receive a reasonable construction and in giving such construction, regard must be had to the nature of the act or thing to be performed and the prevailing circumstances of the case. When it is not the mandate of the law that the act should be done within a fixed time, it would mean that the act must be done within a reasonable time. It all depends upon the circumstances that may unfold in a given case and there cannot be a straight-jacket formula prescribed in this regard. In that sense, the interpretation of the word 'forthwith' would depend upon the terrain in which it travels and would take its colour depending upon the prevailing circumstances which can be variable.

24. Therefore, in deciding whether the police officer has properly discharged his obligation under Section 102(3) Cr. P.C., the Magistrate would have to, firstly, examine whether the seizure was reported forthwith.

In doing so, it ought to have regard to the 2024:KER:64921 interpretation of the expression, 'forthwith' as discussed above. If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/wanton negligence, then it may direct for appropriate departmental action to be initiated against such erring official. We once again reiterate that the act of seizure would not get vitiated by virtue of such delay, as discussed in detail herein above."

7. Thus it is no longer open for any person to contend that the delay in complying with Section 102 Cr.P.C would vitiate the seizure as such. This gives rise to an ancillary question, as to the impact of non- compliance of Section 102(3), by the failure on the part of the police officer concerned to report the seizure of bank account to the jurisdictional Magistrate. In my opinion, this question has to be addressed in the light of Article 300A of the Constitution of India, which 2024:KER:64921 stipulates that no person shall be deprived of his property except by authority of law. The authority of law in the cases under consideration is conferred by Section 102 Cr.P.C. Therefore, abject violation of the procedure prescribed therein will definitely affect the validity of the seizure. While on the subject, it will be profitable to refer the well considered judgment rendered by a learned single Judge of this Court in Madhu K v. Sub Inspector of Police and others [2020 (5) KLT 483]. Therein, the practice of certain police officers of directing freezing of accounts without reporting to the Magistrate

concerned was deprecated. As rightly observed in the judgment, the police officer acting under Section 102 Cr.P.C cannot be permitted to arrogate to himself an unregulated and unbridled power to freeze the bank account of a person on mere surmise and conjuncture, since such unguarded power may bring about drastic consequences affecting the 2024:KER:64921 right to privacy as well as reputation of the account holder. The other relevant portion of that judgment reads as under:-

"If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/wanton negligence, then it may direct for appropriate departmental action to be initiated against such erring official. We once again reiterate that the act of seizure would not get vitiated by virtue of such delay, as discussed in detail herein above."

The learned single Judge finally held that the breach of procedure can be considered as irregular and not illegal.

8. The above discussion leads to the conclusion that, while delay in forthwith reporting the seizure to the Magistrate may only be an irregularity, total failure 2024:KER:64921 to report the seizure will definitely have a negative impact on the validity of the seizure. In such circumstances, account holders like the petitioner, most of whom are not even made accused in the crimes registered, cannot be made to wait indefinitely hoping that the police may act in tune with Section 102 and report the seizure as mandated under Sub-section (3) at some point of time. In that view of the matter, the following direction is issued, in addition to the directions in Dr.Sajeer (supra).

(i) The police officer concerned shall inform the banks whether the seizure of the bank account has been reported to the jurisdictional Magistrate and if not, the time limit within which the seizure will be reported. If no intimation as to the compliance or the proposal to comply with the Section 102 is informed to the bank within one month of receipt of a copy of this 2024:KER:64921 judgment, the bank shall lift the debit freeze imposed on the petitioner's account.

(ii) In order to enable the police to comply with the above direction the bank, as well as the petitioner, shall forthwith serve a copy of this judgment to the officer concerned and retain proof of such service.

Ordered accordingly.

Sd/-

V.G.ARUN JUDGE NM/NB 2024:KER:64921 APPENDIX OF WP(C) NO.25512/2024 PETITIONER EXHIBITS EXHIBIT P1 THE TRUE COPY OF THE COMPLAINT DETAILS DATED 25.05.2024 ISSUED BY THE 5TH RESPONDENT BANK TO THE PETITIONER EXHIBIT P2 THE TRUE COPY

OF THE JUDGMENT DATED 25.09.23 IN WPC NO. 12960 OF 2023 RESPONDENT EXHIBITS
EXHIBIT R₅A A TRUE COPY OF THE MAIL COMMUNICATION ISSUED BY THE 3RD
RESPONDENT TO THE BANK TRUE COPY P.A. TO JUDGE