State Of Maharashtra vs Tapas D. Neogy on 16 September, 1999

PETITIONER:
STATE OF MAHARASHTRA

Vs.

RESPONDENT:
TAPAS D. NEOGY

DATE OF JUDGMENT: 16/09/1999

BENCH:
G.B.Pattanaik, N.S. Hedge

JUDGMENT:

PATTANAIK, J.

Leave granted.

This appeal by special leave is directed against the judgment and order dated 9.4.97 of the Bombay High Court in Criminal Application No. 826 of 1996. The said criminal application along with four other criminal writ petitions involving the same question of law were decided together and disposed of by the common judgment which is being impugned in this appeal. The short question that arose before the High Court is 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 under Section 102 of the Criminal Procedure Code?

So far as Crl. Application No. 826 of 1996 is concerned, the short facts are that one Tapas D.Neogy was an Architect & Town Planner in the Department of Town Planning of the Union Territory of Daman and Diu. The CBI, ACB, Mumbai registered three First Information Reports against the said Tapas Neogy and three others for offences under Sections 120-B, 467, 468, 471 and 420 IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. It was alleged that the accused committed the offence while on duty and while he was posted as Architect and Town Planner under Government of Daman. The original plan of Daman was prepared by the Department of Architecture and Planning and was approved by the Town and Country Planning Board. In the approved plan, various zones were earmarked for industries, roads, defence, agriculture etc. It was further alleged that out of total area of land, 7.25% was earmarked for industries and 41.21% for agriculture and open space. The zoning could be changed by the Town and Country Planning Board. The procedure to alter the agricultural land into non-agricultural land was that the land owners who wish to change their land to non-agricultural use were required to apply to the Collector, who was the competent authority to grant such permission. Such applications were then forwarded to Town Planning Department for the purpose of clearance. It was further alleged

that Tapas Neogy and accused Narayan Divakar entered into a conspiracy by which Divakar caused a forged map of Daman to be prepared, thereby increasing industrial zone. On the basis of the same forged map, accused Tapas Neogy issued false certificates indicating that the land fell within the industrial zone. On account of such act, the land prices shoot up from Rs.100/- to Rs.110/- per square meter to Rs.800/- to Rs.1,600/- per sq. meter, and in the process, accused Divakar and accused Tapas Neogy caused pecuniary advantage to be gained by the land owners. Pursuant to the First Information Report, the premises of Tapas Neogy at Daman were searched on 12th of October, 1993 and several incriminating documents were seized. On the same day, the premises of the mother of accused Tapas Neogy at Calcutta was also searched and certain documents were seized. The locker in Indian Bank at Calcutta, jointly held by Tapas Neogy's mother and his brother was also searched and was sealed and another locker held by the mother and sister of Tapas was searched and was also sealed. The Investigating Officer issued instructions to Managers of different banks not to allow the accounts to be operated upon. The mother of Tapas then filed an application before the Additional Chief Metropolitan Magistrate, 37th Court, Esplande, Mumbai, under Section 457 of the Cr.P.C. to allow her to operate the bank account and for return of the documents and articles seized, claiming that they belonged to her. The Magistrate by his Order dated 13th of October, 1995, granted the relief in respect of the locker in question but refused to allow the mother of said Tapas Neogy to operate the bank account. The Magistrate was of the view that he had no inherent power and, therefore, has no jurisdiction to allow to grant the relief sought under Section 457 of the Criminal Procedure Code. Against the said order of the learned Magistrate, the matter was carried to the Bombay High Court. The High Court in the impugned judgment analysed the provisions of Section 102 of the Criminal Procedure Code and after noticing several judgments of different High Courts, came to the conclusion that the bank account of an accused or any relation of the accused cannot be held to be `property' within the meaning of Section 102 of the Code of Criminal Procedure and, therefore, the Investigating Officer has no powers either to seize the said bank account or to issue any prohibitory order, prohibiting the operation of the bank account. In coming to this conclusion, the learned Single Judge followed the Division Bench decision of the Bombay High Court in Lloyds Bank's case and some other decisions of some other High Courts, taking the similar view. The State of Maharashtra in this appeal assails the correctness of the view taken by the learned Single Judge of the Bombay High Court.

At the outset, it may be stated that there is no decision of this Court on the point in issue. When Mr. Shukla, the learned Senior Counsel, appearing for the appellant began his submissions, Mr. Mariarputham, the learned counsel for the respondent pointed out that pursuant to the impugned judgment of the Bombay High Court, the bank accounts in question have been allowed to be operated upon and, therefore, the question of law raised does not survive for consideration. But since the High Courts in the country have taken divergent views on the interpretation of Section 102 of the Code of Criminal Procedure and since there is no decision of this Court on the question, we indicated that notwithstanding the fact that the order has been allowed to be operated upon, it will be appropriate for this Court to entertain and decide the question. The law relating to the prevention of corruption and matters connected therewith were being dealt with by the Prevention of Corruption Act, 1947, which was amended in the year 1964 based on the recommendations of the Santhanam Committee. In the Criminal Law Amendment Ordinance, 1944, there are provisions to enable attachment of ill-gotten wealth obtained through corrupt means, including from transferees

of such wealth. To make the existing anti corruption laws more effective by widening their coverage and by strengthening the provisions, the Parliament enacted the Prevention of Corruption Act, 1988, which received the assent of the President of India on September the 9th, 1988. Under the Act, the definition of the expression "public servant" stood widened and penalty for offences under Sections 161 to 165A of the Indian Penal Code was enhanced. Under Section 13 of the Act, a public servant who commits criminal misconduct, is liable to be punished with imprisonment for a term which shall be not less than one year but which may extend to seven years and shall also be liable to fine. Without providing the amount of fine which could be imposed under sub-section (2) of Section 13 the legislature have indicated the matters to be taken into consideration for fixing the fine under Section 16 of the Act and it categorically provides that for fixing the amount of fine under sub-section (2) of Section 13 or Section 14, the Court shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence. Under Section 18 of the Act, power has been conferred on the Police Officer to inspect any bankers' book and to take or cause to be taken certified copies of the relevant entries therefrom, and the bank concerned shall be bound to assist the police officer in the exercise of his powers under Section 18. Under Section 22 of the Act, the provisions of the Code of Criminal Procedure have been made applicable to any proceeding in relation to an offence punishable under the Act. We have analysed the aforesaid provision of the Prevention of Corruption Act, 1988 as in our view the object engrafted in the different provisions of the Prevention of Corruption Act, 1988 has to be taken into account while interpreting the provisions contained in Section 102 of the Code of Criminal Procedure. It may be stated that though the Prevention of Corruption Act has been enacted to deal with the `public servants' who receive gratification other than legal remuneration in respect of an official act and who by corrupt or illegal means or by abusing his position obtains for himself or for any other person any pecuniary advantage or valuable thing, or such public servant who is found to be in possession or has at any time during the period of his office been in possession of property for which he cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income, yet there is no specific provision in the Act itself as to how or in what manner the said property can be dealt with by the Investigating Officer even if he comes to the conclusion that the assets in the possession of the `public servant' is directly linked with the commission of the offence. It is therefore, only by applying the provisions of Section 102 of the Criminal Procedure Code if the said provision is held to be conferring power of seizing and/or prohibiting operation of bank account, the Investigating Officer can pass orders of seizing the bank account or issue prohibitory order to the banks not to allow the account holder to operate the account.

Coming now to the provisions of Section 102 of the Code of Criminal Procedure, the said provisions are extracted herein below in extenso:

> "Sec.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-sec.(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, 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.]"

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 pre- conditions for applicability of Section 102(1) are that it must be `property' and secondly, in respect of the said property there must have 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 of the Cr.P.C. 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 Ms. Swaran Sabharwal vs. Commissioner of Police, reported in 1988 Criminal Law Journal(Vol. 94) 241, a Division Bench of Delhi High Court examined the question whether bank account can be held to be `property' within the meaning of Section 102 of the Cr.P.C. 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 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 M/s. Purbanchal Road Service, Gauhati vs. The State, reported in 1991Criminal Law Journal (Vol.97) 2798, 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 word `seize' used in Section 102 Cr.P.C. 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 Allahabad

> High Court in the case of Textile Traders Syndicate Ltd., Bulandshahr vs. The State of U.P., AIR 1960 Allahabad 405 (Vol.47). In the Allahabad Case on which Gauhati High Court relied upon (AIR 1960 Allahabad
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> 405), 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.

In the case of M/s Malnad Construction Co., Shimoga and Ors. vs. State of Karnataka and Ors., 1994 Criminal Law Journal(Vol.100) 645, a learned Single Judge of Karnataka High Court examined the provisions of Section 102 of the Criminal Procedure Code and relying upon the Gauhati High Court's decision, referred to supra, came to hold that the `seizure' in Section 102 would mean taking actual physical possession of the property and such a prohibitory order to the banker of the accused not to operate the account is not contemplated under the Code and consequently, the police has no power to issue such order. Thus the High Courts of Karnataka, Allahabad, Gauhati and Delhi have taken the view that the provisions of Section 102 of the Criminal Procedure Code cannot be invoked by the Police Officer in course of investigation to issue any prohibitory order to the banker or the accused from operating the bank account.

In P.K. Parmar and ors. vs. Union of India and anr., 1992 Criminal Law Journal 2499 (Vol.98), a learned Single Judge of Delhi High Court considered the power of police officer under Section 102 of the Criminal Procedure Code, in connection with the fraudulent acquisition of properties and opening of fictitious bank accounts and withdrawal of huge amounts as subsidy from Government by producing bogus documents by the accused. The learned Judge took note of the earlier decision of Delhi High Court in Ms. Swaran Sabharwal vs. Commissioner of Police, 1988 Criminal Law Journal 240 (Vol.94), and analysed the provisions of Section 102 of the Criminal Procedure Code and the facts of the case were as under. It was revealed that during investigation the prosecution came to know that without actually manufacturing phosphate and fertilizers, the accused withdrew as much as Rs.3.39 crores as subsidy from the Govt. of India by producing bogus documents. The Court ultimately came to the conclusion that the recovery of assets in the bank links prima facie with the commission of various offences with which they have been charged by the CBI and, therefore, the police officer could issue directions to various banks/financial institutions freezing the accounts of the accused. The learned Judge in the aforesaid case has really considered the amount of money which the accused is alleged to have swindled by producing bogus documents which prompted him to hold that the power under Section 102 Cr.P.C. can be exercised.

In Bharath Overseas Bank vs. Minu Publication, 1988 Madras Law Weekly (Crl.) 106, a learned Single Judge of the Madras High Court considered the same question and came to the conclusion that the expression `property' would include the money in the bank account of the accused and there cannot be any fetter on the powers of the police officer in issuing prohibitory orders from operating the bank account of the accused when the police officer reaches the conclusion that the amount in the bank is the outcome of commission of offence by the accused. The Court considered the fact as to how in modern days, commission of white collar crimes and bank frauds are very much on the increase and banking facilities have been extended to the remotest rural areas and, therefore

the expression `property' may not be interpreted in a manner so as to exclude the money in a bank which in turn would have the effect of placing legal hurdles, in the process of investigation into the crimes. According to the learned Judge, such literal interpretation of the expression `property' could not have been the intent of the framers of the Criminal Procedure Code. In paragraph 11 of the said judgment, the learned Judge referred to the object behind investing the police with powers of seizure. It will be appropriate to extract the same in extenso:

> "It would now be useful to refer to the object behind investing the police with powers of seizure. Seizure and production in court of any property, including those regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence or any other property will have a two-fold effect. Production of the above property may be necessary as evidence of the commission of the crime. Seizure may also have to be necessary, in order to preserve the property, for the purpose of enabling the Court, to pass suitable orders under S.452 of the Criminal Procedure Code at the conclusion of the trial. This order would include destruction of the property, confiscation of the property or delivery of the property to any person claiming to be entitled to possession thereto. It cannot be contended that the concept of restitution of property to the victim of a crime, is totally alien to the Criminal Procedure Code. No doubt, the primary object of prosecution is punitive. However, Criminal Procedure Code, does contain several provisions, which seek to re-imburse or compensate victims of crime, or bring about restoration of property or its restitution. As S.452, Crl.P.C. itself indicates, one of the modes of disposing of property at the conclusion of the trial, is ordering their return to the person entitled to possession thereto. Even interim custody of property under Ss.451 and 457, Crl.P.C., recognises the rights of the person entitled to the possession of the properties. An innocent purchaser for value is sought to be re-imbursed by S.453, Crl.P.C. Restoration of immovable property under certain circumstances, is dealt with under S.456, Crl.P.C. Even, monetary compensation to victims of crime or any bona fide purchaser of property, is provided for under S.357, Crl.P.C. Wherein when a Court while convicting the accused imposes fine, the whole or any part of the fine, if recovered, may be ordered to paid as compensation to any person, for any lose or injury, caused by the offence or to any bona fide purchaser of any property, after the property is restored to the possession of the person entitled thereto. This two fold object of investing the police with the powers of seizure, have to be borne in mind, while setting this legal issues."

This Judgment of the learned Single Judge of the Madras High Court was followed in a later decision in the case of Bharat Overseas Bank Ltd. vs. Mrs.Prema Ramalingam, 1991 Madras Law Weekly(Criminal) 353, wherein the learned Judge agreeing with Padmini Jesudurai, J in Bharat Overseas Bank's case came to hold that money in bank account is `property' within the meaning of Section 102 of the Criminal Procedure Code, which could be seized by prohibiting order. In the aforesaid case, the learned Judge has also noticed the fact that the Judgment of Padmini Jesudurai, J, in 1988 LW(Crl.)106, was upheld by the Division Bench subsequently. In the case of Dr. Gurcharan Singh vs. The State of Punjab, 1978(80) Punjab Law Reporter, 514, a Division Bench of

the Punjab & Haryana High Court differing with the view taken by the Allahabad High Court in AIR 1960 Allahabad 405, came to hold that the bank account would be `property' and as such would be capable of being seized under Section 102 of the Code of Criminal Procedure. 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 whther the bank account can be held to be `property' within the meaning of 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 relation 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 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 upon his account, and so, we do not interfere with the same.