Teesta Atul Setalvad vs The State Of Gujarat on 15 December, 2017

Equivalent citations: AIR 2018 SUPREME COURT 27, 2018 (2) SCC 372, AIR 2018 SC(CRI) 885, (2018) 4 GUJ LR 3261, 2018 CALCRILR 2 48, 2018 CRILR(SC MAH GUJ) 14, (2018) 1 RAJ LW 710, (2018) 1 RECCRIR 508, (2017) 14 SCALE 336, (2018) 182 ALLINDCAS 29 (SC), (2018) 1 CRIMES 109, (2018) 1 MAD LJ(CRI) 535, (2018) 1 UC 23, (2018) 1 BOMCR(CRI) 612, (2018) 4 MH LJ (CRI) 11, (2018) 102 ALLCRIC 643, 2018 CRILR(SC&MP) 14, (2018) 1 MADLW(CRI) 431, (2018) 69 OCR 520, (2018) 1 CRILR(RAJ) 14, (2018) 1 CURCRIR 174, (2018) 1 ALLCRIR 447, (2018) 1 ALLCRILR 818, 2018 (1) SCC (CRI) 718, 2018 (2) KCCR SN 99 (SC)

Author: A.M. Khanwilkar

Bench: Chief Justice, A.M. Khanwilkar, D.Y. Chandrachud

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REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1099 OF 2017
(Arising out of SLP(Crl.) No. 6474 of 2016)

TEESTA ATUL SETALVAD …Appellant(s)

:Versus:

THE STATE OF GUJARAT …Respondent(s)

WITH

CRIMINAL APPEAL NO. 1083 OF 2017
(Arising out of SLP(Crl.) No.6477 of 2016)

JAVED IFTEKHER AHMED ANAND …Appellant(s)

:Versus:

THE STATE OF GUJARAT & ORS. …Respondent(s)

AND

CRIMINAL APPEAL NO. 1084 OF 2017
(Arising out of SLP(Crl.) No.6476 of 2016)

CITIZENS FOR JUSTICE & PEACE …Appellant(s)

:Versus:

THE STATE OF GUJARAT & ORS. …Respondent(s)

AND

CRIMINAL APPEAL NO. 1085 OF 2017
(Arising out of SLP(Crl.) No.6475 of 2016)

SABRANG TRUST …Appellant(s)

:Versus:

THE STATE OF GUJARAT & ORS. …Respondent(s)

Reason:

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JUDGMENT

A.M. Khanwilkar, J.

1. The common question posed in these appeals centres around the sweep, purport and applicability of Section 102 of the Code of Criminal Procedure, 1973 (hereinafter referred to as "the Code"), which reads thus:

> "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.

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."

2. The bank accounts, in all nine, of the appellants have been seized on the instructions of the Investigating Officer as a sequel to the complaint filed by the members of Gulberg Co-Operative Housing Society, registered by D.C.P. Police Station, bearing CR No.1/2014, on 14th January, 2014 for offence punishable under Sections 406, 420 and 120B of the Indian Penal Code and Section 72A of the Information Technology Act, 2000. The bank accounts were seized and intimation in that behalf was given to the concerned Magistrate on 21st January, 2014. The appellants filed a petition before the Bombay High Court, being Writ Petition (Criminal) No.173/2014, for quashing of the FIR and for setting aside the freezing order which, however, was rejected on 4th November, 2014 with liberty to the appellants to approach the jurisdictional court. Against the said decision the appellants preferred special leave petition before this Court, being Special Leave Petition (Criminal) No.3330/2014, which was allowed to be withdrawn on 5th May, 2014 with liberty to the appellants to move before the Competent Authority. The appellants then filed Special Criminal Application No.2710/2014 before the High Court of Gujarat at Ahmedabad. That application was, however, withdrawn on 29th September, 2014 with liberty to approach the concerned Magistrate for appropriate relief.

3. The appellants thereafter moved formal applications before the Metropolitan Magistrate's Court at Ahmedabad, being Miscellaneous Application Nos.175-178/2014 which were dismissed by common order dated 28th November, 2014 passed by Additional Chief Metropolitan Magistrate, Ahmedabad. Aggrieved, the appellants filed four separate revision applications before the High Court of Gujarat at Ahmedabad, bearing Criminal Revision Application Nos.249-252 of 2015. While the said revision applications were pending, the anticipatory bail application filed by the appellants in connection with the alleged offence came to be rejected by the High Court by a speaking order dated 12th February, 2015. That order has been challenged by way of Special Leave Petition (Criminal) No.1512/2015 which has been converted into Criminal Appeal No.338/2015 and is pending for consideration by a larger Bench in terms of order dated 19th March, 2015. The appellants have been given interim protection of stay of arrest during the pendency of the said appeal.

4. The other relevant fact to be noted is that additional offences have been added to the FIR in relation to which the bank account freezing directions were issued by the Investigating Officer, punishable under Sections 467 and 471 of the Indian Penal Code ("IPC"). Besides, the Competent Authority under the Foreign Contribution (Regulation) Act, 1976 issued orders on 23rd July, 2015, categorising the authorization in respect of Citizens for Justice and Peace Trust ("CJP Trust", appellant in Criminal Appeal No.1084/2017), as "prior permission". In so far as the Sabrang Trust

(appellant in Criminal Appeal No.1085/2017), vide order dated 9th September, 2015 the Competent Authority suspended its authorisation. It is also relevant to note that FIR has been registered by the Competent Authority of CBI in respect of violation of Foreign Contribution (Regulation) Act, 1976. On 8th July, 2015 the appellants have been granted anticipatory bail in respect of the said offence.

5. Be that as it may, the criminal revision applications preferred by the appellants before the High Court of Gujarat, challenging the order dated 28th November, 2014 passed by the Magistrate rejecting the prayer for lifting of the bank account freezing, were finally heard and dismissed vide common judgment dated 6th/7th October, 2015. This order is the subject matter of the present appeals. In other words, the limited issue to be addressed in the present appeals is about the justness of the action of the Investigating Officer of freezing of stated bank accounts of the appellants in connection with FIR registered as CR No.1/2014; and the correctness of the approach of the Magistrate in rejecting the request for de-freezing the bank accounts of the appellants as affirmed by the High Court vide impugned judgment.

6. The genesis of the freezing of the bank accounts of the appellants is the registration of the FIR bearing CR No.1/2014 on 4th January, 2014. The same reads as follows:

> "First Information Report of Offence under police Jurisdiction (under Sec.154 of Cr.P.C)
>
> 1. Dist. Ahmedabad Po.St. D.C.P. Year-2014. First Information no. I CR No.01/2014 Dt.4/1/2014.
>
> 2. Law (1) IPC sec.406, 420, 120(B) and The I.T. Act. 72(A) (2) ---
>
> (3) ---
>
> 3. (A) Date of offence occurred and date:- year from 2007 to till today.

(B) Date declared of offence (Po.St.) :- 4/1/14 Time:-14:15 (C) Station diary entry no. 07/2014 Time : 14:15

4. How got information :- Oral or writing :- Writing.

5. Offence place :

> (A) Distance of offence from po.st. and direction. Beat no. / Chawky name...:-
>
> (B) Address :- Gulberg Society, Meghani Nagar, Ahmedabad and by the interest (C) If the offence has occurred outside the police station then name of that police station....:-

6. Complaint / Information :-

(A) Name : Firozkhan (B) Name of Father : Saeed Khan Pathan (C) Birth Date/Year : …….. (D) Nationality : Indian (E) Passport No……. Dt. ……. (F) Occupation : Business (G) Address : 15, Shukan Residency, 2nd floor, Opp. Sonal Cinema, Vejalpur Road, Ahmedabad City.

7. Name, Add and details of Accused :-

(1) Teesta Setalvad Resi. Nirant, Juhu Tara Road, Mumbai (2) Javed Anand (Husband) Resi. Nirant, Juhu Tara Road, Mumbai (3) Tanveer Jafri (4) Chairman of G.B.Soc. Salim Sandhi. (5) Secretary of G.B.Soc. Firoz Gulzar M.Pathan and others who come out after inquiry.

8. Reason for late information :-

9. Narration of Property if lost or theft

10. Total price of theft

11. Accident (if death) death :- .....

12. Details of 1st Information :- ..... The facts of this case are such that as mentioned on above date, time and place, the accused named in had conspired and exhibited the photographs and video of Gulberg Society and other affected areas and the accused had put up on the CJP and Sabrang s websites with the help of internet against the wishes of the complainant and on the website appealed wealthy people to deposit donation in the CJP s IDBI bank account as well as Union Bank of India Account of Sabrang and thereby obtained deposits of crores of rupees and used the money for personal use by diverting in different institutions with one/same address thereby indulging in wrong activities in the name of religion and used Rs. 1,51,00,000/- for personal use between 2009 and 2011 thereby committed breach of trust & cheated the victims by using internet.

13. Details of act done after registration of the offence:-

Dtd. 04/01/2014 My name is Firozkhan Saeedkhan Pathan, Aged 41, Business. Re.15, Shukun Residency, 2nd Floor, Opp. Sonal Cinema, Vejalpur Road, Ahmedabad City (M) 9974240961.

On being asked personally, I am giving this complaint that I am residing at the above mentioned address with my family since 2004 and own a Relief Cyber Café at Relief Road.

In the year 2002, I was residing in Bungalow No. 18, at Gulbarg Society, Chamanpura, Omnagar Road at Meghaninagar, with my family at the time of Godhra Riots. This bungalow was in the name of my uncle Anwarkhan Ahmedkhan Pathan. In this bungalow the nominee was my aunt Jetunbibi Anwarkhan Pathan. But this

massacre time my elder father Anwarkhan Ahmedkhan Pathan was killed. Thus, this bungalow is on the name of his wife Jetunbibi Anwarkhan Pathan who was residing there. This bungalow no. 18 was three storied. On the ground floor in two rooms my elder uncle Anwarkhan A.Pathan and his wife were lived. And other two rooms my younger uncle Rashidkhan A.Pathan and his wife Jamilabanu and my grandmother Kherunnisha A. Pathan lived in it. On the Second floor two rooms where my uncle Anwarkhan s son Asiamkhan A.Pathan and his wife Suraiya and their son Azar lived. And in other two rooms my elder father Anwarkhan s younger son Akhtar Khan A. Pathan and his wife Sajedabanu and their son Sadab and daughter Farin resided. On the third floor, I myself, my father and my mother Jehunnissa and my younger brother Imtiyazkhan Saeedkhan Pathan were residing. In the year 2002, after Godhra incident, our Gulbarg Society too was burnt by anti-social elements and 68 persons killed including my grand mother Kherunnisha A. Pathan Aged 80 and my uncle Anwarkhan A. Pathan Aged 70, my mother Johurannisha Saeedkhan Pathan aged 57, my uncle s wife Jamilabanu Rashidkhan Pathan aged 45 and my elder father Anwarkhan s son Akhtarkhan A. Pathan and his wife Sahedabanu Akhtarkhan and his son Sadabkhan A.Pathan. We lived at Dariyakhan Ghummat, Shahibaug relief camp for three months. At that time Raiskhan Azizkhan Pathan and Teesta Setawad met us and told that they run one NGO and had taken an interview. They told that they would publish the interview in their magazine namely Communalism Combat and would help you economically and legally and also assured of help whenever needed. I did not know Raiskhan and Teesta Setalwad before this time. After that, we have taken a flat on rent at Rakhial and live there for one year, and then, in the year 2004, we lived in a flat which on rent, at Juhapura for one and half year. And after that we lived in Ambar tower flat No.28, taken on rent and lived for one and half year there. After that in the 2007 lived in Firozalla, Nr. Vejalpur and then in the 2010, we shifted 15, Shukun Residency, 2nd floor, Opp. Sonal Cinema, Vejalpur with my family. After Godhra Riots, we organized programme for paying our tribute to our departed souls at Gulbarg Society on the 28th Feb every year and read Quran there. At this time, one NGO CJP s Ms. Setalvad arrived from Mumbai assured support in the Gulberg Society s case. This Teesta Setalvad helped us till the trial went on. She helped us only for the trial case and not economically.

Then in the year 2007, Teesta Setalvad s man one Raiskhan A. Pathan, resident of Mumbai and at present residing in Ajit mill compound, Ajit Residency flat, at Rakhial. They told us that we lived in a rental house and are tired of paying rent since 2002. So, went to sell Gulbarg Society, then Raiskhan told us that he has to talk with her and then reply us. After some time we the members of society were went at M.M. Tirmizi s office which is at Mirzapur and arranged a meeting there. In this meeting, Gulbarg Society members, Raiskhan Pathan, Teesta Setalwad and M.M. Tirmizi were present. When Raiskhan told Teesta Setalvad that the members of the Gulbarg Society wanted to sell their houses, she got angry at Raiskhan and told us that we all should not indulge in selling the society and informed that she would handle it in her own way and asked Raiskhan to leave the office. Thereafter Ms. Setalvad organised a

meeting of the members of the society and informed chairman, secretary to make a survey of Then a matting held the members of the society and told that chairman and secretary surveyed the society and expressed her wish to make a museum at this place. I will pay you the value of your houses within a month.

After this, in 2008, on 28.2.208, when all of us members and residents of the Gulberg Society gathered there to commemorate the dead, Teesta Setalvad had also visited and held a meeting. At this meeting affected persons following Godhra from Naroda Gaam, Queishi Yunusmiya and Odh village s Anwarmiyan and Saeed Radeeq Ahmed and Hasan Khan Pathan and Yusuf Vora and Jaffer Khan Pathan as also affected persons from Nroda Patiya, Sardarpura, Visnagar (Deepda Darwaza), and Pandharwada were also present at the meeting. Every year since 2007 Teesta Setalvad held meetings calling affected persons and media persons and made CDs of the opinions of affected persons and their plight and talked of making a museum there. At this meeting, son of former MP Ahsan Jafri, Tanvir Jafri was also there and spoke of putting a statute of his father Ahsan Jafri and building a Museum there.

Then on 28.2.2009, a meeting of the members and residents of Gulberg society and other victims from all over Gujarat and the media and other important people was held when all members of the society had told her that you had said in the 2007 meeting that within a month we would be paid. Until now no money has been paid. Hence pay us the money, we said. She said that we are collecting funds and as soon as funds are collected we will be paid, we were informed. Then, in the years 2010 and 2011 again, on 28.2.2002, she organized functions when also members had asked questions, but she had made excused and not given the money.

On 28.2.2012, this Teesta Setalvad organised a larger, well planed programme at Gulberg Society where the affected persons of riots, media s persons and Muslim leaders had gathered. At that time, all over Gulberg society, photos of dead persons on a Projector were shown. Banners displayed showed as if the Museum had been created. A large stage was made a Shobha Mudgal, a famous classical artist was called and a programme was held. Members of our society had opposed this and said that since you had not given any monies to the members and falsely projected that you had made a museum and collected donations, since then, strong opposition between society members and Teesta Setalvad began. Hence Teesta Setalvad took Tanvir Jafri, and the Chairman and the Secretary into her confidence and in a confidential meeting resolved that any persons who are members of the society could sell sale their houses to any persons of their choice regardless of caste or religion at the price of your choosing. Now none of the built homes will be used by us for the Museum. The resolution that was passed by which other society members had opposed it. In our opposition we had said that for 12 years since the incident took place, and since 2007, you had on the excuse of a Museum being built amassed crores of rupees and this fund you did not use for the Society or for riot victims, you have not paid any monies. You have breached our trust and cheated us. Along with this Teesta Setalvad

and resident of Surat, Tanveer Ahsan Hussain Jafri together, from 2007 to 2012 conducted programmes, made CDs and sent to her sister, Nargis Jafri and his younger brother Zuber who lived in USA via email and through hard copies. There, they organised seminars, showed CD s and wrongfully collected funds and collected crores of rupees for this. At these seminars, now and then, Teesta Setalvad, Tanveer Jafri, as also their persons, Father Cedric Prakash and R.B. Shree Kumar (Retd. D.G.P.) had visited America.

This Teesta Setalvad and Tanveer Jafri and other persons jointly planned a conspiracy of gathering photos etc of affected persons of Gulberg Society and other affected locations and displayed these on the CJP and Sabrang website and on internet against our desires.

Then the bank account numbers of the CJP. Institute Bank A/c. in IDBI No.014104000204736 and the Sabrang Bank Account @ Union Bank of India No.369102010802885 were displayed on the internet and appeals for the fund and crores of rupees were collected in the bank accounts. This fund was fraudulently used for their personal expenses through the creation of different organisations at the same address.

We got this information under an RTI application:-

that the CJP NGO had, from 2009 to 2011 had collected Rs.63 (sixty-three) lakhs and the Sabrang Trust had collected Rs.88 (eighty-eight) lakhs from local and foreign countries. The members of these trusts not amassed these funds through misrepresentation but also used these funds for personal reasons. These funds were not used for the benefit of the members of Gulberg Society. Apart from this also, crores of rupees have also been amassed by them and used for personal reasons and committed a breach of trust and cheating with affected persons.

Therefore, a complaint against Teesta Setalvad, her husband Javed Anand, who both live at „Nirant bungalow, Juhu Tara Road, Mumbai and Tanveer Jafri, and Chairman of Gulberg Society, Salimbhai Sandhi and Secretary Firoz Gulzar Mohammed Pathan and others who may be involved after investigations, this is my complaint for a detailed and lawful investigation. The persons unknown are named as etc. This complaint is true as per my knowledge which has been read and understood by me and thereafter signed. I have received a copy of my complaint.

Sd-

(C.B.Gamit) (P.S.I. Crime) (S.O.G. Crime) Ahmedabad City.

Sd- Asst.-

Adl. Chief Metro Magistrate Court-11 A bad."

7. Simultaneously, with the registration of the aforementioned FIR, the Assistant Commissioner of Police, Cyber Cell, Crime Branch, Ahmedabad issued instructions to the Union Bank of India, Juhu Tara Branch, Mumbai and IDBI, Khar Branch, Mumbai to seize the stated bank accounts pertaining to Sabrang Trust, CJP Trust, Teesta Atul Setalvad and Javad Anand, appellants herein.

Intimation about the seizure of concerned bank accounts was given to the concerned Magistrate on 21st January, 2014. On the applications for de-freezing of the concerned bank account filed before the Metropolitan Magistrate Court No. XI, Ahmedabad, it was mainly contended that - the Investigating Officer had failed to comply with the mandate of Section 102 of Cr.P.C., by not informing the Magistrate of the action of freezing of the accounts; the Investigating Officer has not given prior notice to the account holders before freezing of their bank accounts; the appellant CJP Trust, in any case, is not named as accused in the alleged crime and is not associated with the same in any manner; the concerned Trust maintains proper accounts which are duly audited and there is no trace of any illegality committed in respect of receipt and expenditure; the contributions made by foreign fund is after due approval of the Competent Authority; the attempt of freezing of the bank accounts of the Trust and also personal accounts of the Trustees, in particular private appellants, was motivated and an attempt to stifle them from carrying on their social welfare activities; the bank accounts had no causal connection with the commission of alleged offence in respect of which investigation was in progress and more so, not even one donor has come forward to question the intention or activity of the concerned Trust. These contentions have been duly considered by the Magistrate whilst rejecting the application submitted by the appellants for de-freezing the accounts. The Magistrate took the view that the private applicants were the Trustees of the Trusts whose bank accounts have been seized and preliminary investigation revealed substantial discrepancies in the accounts, including that the accounts of the Trusts were not audited for the relevant period and the transactions and huge withdrawals from the bank accounts raised suspicion regarding the commission of the alleged offence. It is further held that since the investigation was at the nascent stage and was in progress and the private appellants were seemingly not cooperating with the investigation, the prayer for lifting of seizure of the bank accounts cannot be acceded to. Accordingly, the applications came to be rejected vide a common order dated 28th November, 2014 by the Additional Chief Metropolitan Magistrate Court No.XI, Ahmedabad.

8. Before the High Court, more or less similar arguments were canvassed on behalf of the appellants. The High Court in paragraph 15 of the impugned judgment adverted to the gist of contentions recorded by the Magistrate as under:

"15. The questions which raised in the Lower Court, as submitted by the learned counsel for the petitioners, were (A) That seizer of accounts was illegal in absence of prior notice, (B) The action of freezing of accounts in absence required intimation to the Magistrate concerned was illegal, (C) The accounts could not have been freezed for all times to come and the object of the investigation could have been achieved by requiring the petitioners to execute a bond to compensate the State, if at all the case

against the petitioners was made out, (D) Freezing of accounts could have been resorted only as a sequel to crime and not for the purpose of discovery of crime, (E) The accounts had nothing to do with proceeds of crime and therefore continued seizure was unnecessary. (F) That accounts were Foreign Contribution Regularization Accounts (FCRA) under the authorization of the Home Ministry, and therefore, local police had no authority to freeze them."

9. The High Court then adverted to the arguments of the appellants as advanced, in paragraphs 16 to 24. The first point was about the absence of prior notice to the appellants before the freezing of the bank accounts, which has been rejected following the Bombay High Court Full Bench decision in the case of Vinoskumar Ramachandran Valluvar V. The State of Maharashtra1. The High Court then noted the contention of the appellants that the Audit Reports of the accounts concerned were submitted to various authorities, like Charity Commissioner, Home Ministry etc., who 1 (2011) Cri.L.J. 2522 (Bom.) neither raised any objection nor found any irregularity in the accounts. Further, different contributories including Human Resources Development Ministry, have contributed to the corpus of the Trust and none of the contributors or donors have ever raised any objection about the activities of the appellants. The High Court also noted that even United Nations Organization was one of the donors. For obtaining donations from the said organizations, strict procedure and formalities are required to be complied with and have been so complied with and only thereafter the donation amount has been released. The concerned authorities did not find any irregularities in the transactions in question. It was then contended that freezing of accounts cannot be for indefinite period.

The appellants can be allowed to operate the accounts upon execution of a bond and that would subserve the interest of justice. The appellants also contended that the accounts were re-audited by the Chartered Accountants and no irregularity or illegality has been found during the said re-audit. In case there is any illegality or irregularity, the same can be deciphered by examining the entries in the books of accounts and the vouchers in the relevant documents which are already furnished to the Investigating Agency. It was contended that freezing of the accounts of the Trust, in particular, operated for receiving donations under the FCRA, was motivated and to completely paralyse the working of the Trust. It was contended that there can be no presumption that the use of the funds from the accounts in question was not for private purpose. It was also contended that the appellants and their chartered accountants and auditors were extending full cooperation with the investigation. The principal argument of the appellants was that the power under Section 102 of Cr.P.C. could not have been exercised as no material was produced by the investigating authority to support the fact that the property in question was parted with to indicate the commission of alleged offence of cheating or breach of trust or for that matter forgery of the record. These contentions were countered by the respondents. The High Court then considered the relevant material placed on record and the affidavits filed by the investigating authority highlighting the suspicious transactions done from the stated bank accounts and the conduct of the appellants, including the incorrect statements made by the appellants on oath in the proceedings before the Court regarding the maintenance of the accounts of the two Trusts. The High Court also adverted to the decision of the

coordinate Bench while rejecting the anticipatory bail application preferred by the appellants and inference drawn in support of the conclusion as to why the prayer for anticipatory bail should be rejected. The same has been extracted in paragraphs 37 and 38 of the impugned judgment, which read thus:

> "37. From the aforestated facts this Court drew following inference thus:
>
> „Thus, from the above, it is evident that the accounts were also not audited for a long period of time, and it is only when the FIR was registered wherein serious allegations of misappropriation of lacs of rupees have been alleged that all of a sudden the accounts from April, 2003 to March, 2008 were got audited in the year 2014.
>
> 38. On the basis of the facts available on record as aforestated, this Court assigned the reasons as to why custodial investigation was necessary; they were as under:
>
> (a) From the accounts of the Sabrang Trust and CJP, a total amount of Rs.1,69,84,669=00 have been transferred to the Sabrang Communication & Publishing Pvt Ltd, a company owned by the petitioners.
>
> (b) From the accounts of the Sabrang Trust and of CJP, an amount of Rs.46,91,250=00 and Rs.28,34,804=00 were transferred to the personal accounts of the petitioner nos. 1 & 2 respectively.
>
> (c) From the accounts of the Sabrang Trust and CJP, the petitioners have withdrawn Rs.1,08,73,782=00 as cash.
>
> (d) From the accounts of the Sabrang Trust and CJP, the petitioners have paid Rs.29,66,121=00 towards Credit Card payments.
>
> (e) The petitioners have endeavored to explain the credit card payment running into lakhs of rupees by stating that all such personal expenditure were repaid to the NGO Page 40 of 48 HC-NIC Page 40 of 48 Created On Fri May 06 16:33:26 IST 2016 R/CR.RA/249/2015 JUDGMENT accounts. This employment of public donations to personal use needs to be investigated. The petitioners have not submitted any debit/ credit vouchers and/or cheques details to prove their statement.

(f) Upon scrutiny of the saving accounts Nos.014104000142595 & 014104000142601 of the petitioner nos. 1 & 2 with the IDBI, Mumbai, it was noticed that both the accounts were opened on 30.04.2005. The FCRA permission from MHA for CJP and Sabrang Trust was granted in November, 2007. Proposal to purchase the Gulbarg Society was mooted by petitioner no.1 orally in December, 2007 and formally in January, 2008, Resolution was passed by the society accepting her proposal in June, 2008 and thereafter the advertisements commenced and monies started pouring in. Further no substantial income of any nature, except from the CJP and Sabrang Trust, is noticed in both the above mentioned personal accounts of the petitioners, which were further invested in fixed deposits,

shares and mutual funds such as ICICI Prudential, Reliance Capital, Kotak Mahindra, Franklin Templeton etc.

(g) The donations received by the Sabrang Trust and CJP are utilized for personal purposes.

(h) Receipt of donations to the tune of Rs.29,20,000=00 from Ashoka Foundation, Arlington, USA, in the personal accounts of Ms. Setalvad and Rs.6,05,442=00 as foreign remittance in Ms. Setalvads personal account.

(i) Monthly withdrawal of salary by both the accused from all the six accounts of CJP, Sabrang Trust and Sabrang Communications.

It also appears that the custodial interrogation is necessary for the following reasons :

> 1. The case of the prosecution is based on cogent documentary evidence received from the Charity Commissioner, Mumbai, Ministry of Home Affairs, New Delhi, various Banks, etc. Financial details received from these authorities require detailed investigation.
>
> 2. The petitioners have never remained present before any investigating agency and have employed every means to avoid the due process of law. The petitioners seek to avoid custodial interrogation by the investigating authorities by dismissing cogent documentary evidence as accounting jugglery.

Approximately 44% of the total donations received in the Sabrang Trust and approximately 35% of the total donations received in the CJP, were transferred to their personal accounts.

3. Cash withdrawal running into over Rs 1.09 crore need to be further scrutinized and examined wherein Rs.50,000=00 to Rs.5,00,000=00 have been withdrawn as cash on a single day.

4. Credit card details received from the UBI and Citi Bank revealed expenditure of purely personal nature running into lacs of rupees being serviced from the CJP and Sabrang Trust accounts through cheques signed by the petitioners."

10. After having noticed the relevant material, the High Court proceeded to consider the contentions germane for answering the issue regarding de-freezing of the bank accounts and answered in the following words:

> "39. This Court is conscious of the fact that question of custodial investigation is not under consideration. The endeavour of the Court is to point out material in possession of the investigating agency in relation to the accounts in question and the conduct of the petitioners. It is required to be noted that the affidavit-in-reply, in the same terms as in the aforestated bail applications, has been filed by the State in these petitions also. From the aforestated facts, it cannot be disputed that the investigating

agency has in its possession a considerable material entitling it to freeze the accounts of the petitioners under Section 102 of Cr.P.C. The power to seize the tainted property or the property which is doubted as tainted, on the basis of substantial material under Section 102 of Cr.P.C. is not in dispute. It is also settled legal position that the investigating agency, while investigating the matter, is the master of its case; the Courts would be loath to interfere in the investigation in absence of serious irregularity or illegality aimed at mala fide impairing the right of the accused rather than serving public interest. It may be true that the action of the investigating agency at the inception may not be regular, but the Court cannot be oblivious to the collection of substantial material by the investigating agency justifying the action under Section 102 of Cr.P.C. Therefore, it is insignificant at this stage, when the investigation has progressed to a material point, to ponder around the question as to whether the act of freezing the accounts was a sequel to crime or the crime was detected later. If the arguments to that effect advanced by the learned counsel for the petitioners is accepted at this stage, it would advance the public injustice rather than serving the ends of justice. De-freezing accounts on the basis of such arguments, may paralyze the investigation, which cannot be approved as an act 'in the interest of justice.'

40. Having found the aforestated serious material against the petitioners, it cannot be said that the execution of the bond by the petitioners is a suitable alternative. Securing the public interest rather than money is the central point of consideration when theft or manipulation of accounts meant for the beneficiaries, is alleged. It is rightly contended by the learned Public Prosecutor that when the investigating agency is wanting to ascertain the extent of the tainted accounts, and when on the basis of material, the whole corpus of the accounts is under the cloud of doubt, at this stage, mere execution of bond is not going to serve the purpose of law.

41. The learned counsel for the petitioners submitted in the affidavit-in-rejoinder in Para 5.2, that the petitioners have controverted the facts as regards non-auditing of accounts by the petitioners for a continuous period of six years or so as alleged by the State with appropriate material. That is not the only question on which the investigation is based as indicated in detail. Irrespective of the accounts being audited or not, serious discrepancies have been noticed by the Court in the audited accounts submitted to the Charity Commissioner and in the bank statements etc. It is apparent from the affidavit-in-reply filed by the State that they have noticed and compared various entries in the audited accounts with the statements of the bank accounts. Further, this is not a stage where the Court will appreciate the case as if in a trial. The question is whether there is a material with the investigating agency justifying freezing of accounts under Section 102. The purpose of Section 102 obviously is to find out the truth after noticing the material raising doubt about the commission of offence. At this stage, it is not incumbent upon the investigating agency to justify the material as if in a trial and it would be suffice for it to justify the material for the purpose of investigation. If justifiable material for investigation is

available, the Court would not sit in appeal over such justification, as investigation is in the absolute domain of the investigating agency, and as pointed out earlier, the Court may interfere only in exception circumstances.

42. As indicated above, prima facie the entire accounts are in serious clouds of doubt, and therefore, freezing thereof could be the only remedy with the investigating agency. The law must be allowed to take its own course, even at the cost of causing inconvenience to the accused or others, and therefore, the petitioners cannot be heard to complain that the consequence of legal action has translated into paralyzing its activities.

43. It is also rightly contended by the learned Public Prosecutor that arguments of the learned counsel for the petitioners justifying the transactions or offering justification as to certain entries are more in the nature of defence than valid arguments at this stage. Such facts are required to be considered at this stage by the investigating agency on cooperation of the petitioners, and later, in the trial, if at all the case is found against the petitioners by the investigating agency for trial, and if the cognizance of the offence as alleged is taken by the competent Court. Therefore, arguments that the trusts are registered under the FCRA 1976, and that it has various reputed contributors or the donors including the Human Resources Development Ministry or that the trusts have avowed objects of brining about the communal harmony and helping the victim and providing legal aid to them must fail.

44. The arguments impugning the freezing of the accounts under Section 102 of Cr.P.C. without notice to the petitioners are to be noted for rejection for the simple reason that the Section 102 does not contemplate issuance of any such notice, and for the purpose of investigation, no notice to the suspect can be expected under the law. Section 102 of Cr.P.C. is an important step towards investigation and in view of settled legal position that accused cannot have any say in investigation, notice to the suspect is out of question. The intention of the investigating agency is not required to be revealed to the suspect at that crucial stage, else, a message of alert would be received by the suspect creating a huge room for manipulation and or destruction of evidence.

45. It is noticed from the impugned order that the notice of the seizure or freezing of the accounts or its intimation was sent to the competent magistrate, and therefore, learned counsel for the petitioners has fairly not pressed the said argument.

46. It is also misconceived to argue that the seizure in exercise of powers under Section 102 of Cr.P.C.

would be valid only if the accounts in question contain the proceeds of crime.

47. There appears to be no substance in the argument that it is only Human Resources Development Ministry which can exercise power of freezing or seizing of the account. There is nothing in the language of any of the provisions of FCRA 1976 to infer any fetters on the powers of the police to investigate even those accounts in which the authorization to obtain the donation even from a foreign national is granted under the FCRA Act. No fetters, therefore can be read in the powers of investigating agency investigating the case under the Cr.P.C.

48. True it is that the learned Government Public Prosecutor rightly concedes against perennial freezing of accounts; however, it is for the investigating agency, probably on conclusion of the investigation to determine the extent of the accounts tainted with crime and to De-freeze the rest, if at all such Defreezing is warranted in the facts and circumstances of the case. This issue can be answered from another angle as contended by the learned Public Prosecutor. If upon conclusion of the investigation, a part of accounts is found to be tainted, obviously it would amount to stolen property within the meaning of Section 410 of IPC, and in such an eventuality, by no stretch of imagination, a stolen property can be released before trial or acquittal of accused.

49. The argument as to applicability of the penal provisions invoked against the petitioners cannot be gone into at this stage when the investigation is at crucial point and the material in this regard is yet to be placed before the Court after conclusion of the investigation. In fact, in view of the settled legal position that accused has no role to play in the investigation except as indicated in Cr.P.C., the question as to applicability of a particular provision is required to be left to the discretion of the investigating agency and then to the Court as and when and if the report under Section 173 of Cr.P.C. is filed."

11. In the present appeals, the appellants have largely reiterated the stand taken in the proceedings before the Magistrate and the High Court, wherefrom the present appeals have arisen. The appellants contend that to justify the freezing of the bank accounts the investigating authority must demonstrate that the monies held in these accounts are connected with the commission of the offence. The investigation of the alleged offence has been a roving one and the police has investigated the entire accounts of the appellants even beyond the period referred to in the FIR. Further, the seized accounts have nothing to do with the subject matter of the FIR. CJP Trust has no concern with the appeal made by the Sabrang Trust on its website. The donations were invited by Sabrang Trust to be deposited in its account displayed on the website. Notably, the grants/donations made by the donors for executing specific projects and the amounts were and still are supposed to be spent in accordance with the agreements. The donors are private parties and none of them has complained about the embezzlement of their funds. The donors have been furnished with relevant information and accounts concerning their donations. In the written submissions filed by the appellants it is submitted that the provisions of law sought to be invoked against the appellants and the transactions in question must necessarily result in commission of some offence by the appellants so as to invoke Section 102 of the Code; whereas keeping in mind the ingredients of Sections 405 & 406, there is nothing to indicate that the said offence is made out against the appellants. Only that private person who has contributed can be heard to make grievance about entrustment and criminal breach of trust. Not even one donor has come forward to make such grievance. Similarly, the ingredients of offence of cheating specified in Section 415 to be an offence under Section 420,

required dishonest or fraudulent inducement of any person to deliver any property to the accused. None of the donors have come forward to make grievance in that behalf. It is submitted that it is well settled that if the property is not suspected of commission of offence, it cannot be seized under Section 102 of the Code. For, the police officer can seize only such property which may be alleged or suspected to have been alleged in the commission of offence. Reliance has been placed on M.T. Enrica Lexie and Anr. v. Doramma and Ors.2 and Sri Jayendra Saraswathy Swamigal (II), T.N. v. State of T.N. and Ors.3 to contend that in the absence of due procedure as specified by Section 102 of the Code, seizure of bank accounts would be illegal and more so, when it has been done to stifle all the activities of the Trust. The counsel for the appellants, during the course of argument, had invited our attention to various documents and also explained the entries relied upon by the respondents, which according to the appellants was a tenuous plea 2 (2012) 6 SCC 760 3 (2005) 8 SCC 771 to link the stated bank accounts with the crime under investigation. Details have been given in the written submission as to how the entries in the books of accounts have been distorted and misread by the respondents.

12. The respondents, on the other hand, submit that the investigation is still in progress and the appellants have not given full cooperation to the Investigating Officer. Rather, the appellants have caused hurdles in the smooth progress of the investigation of the alleged crime. The record would reveal that proper procedure for seizure of the bank accounts was followed and that considering the nature of allegations in the FIR and the material gathered during the investigation thus far, would require elaborate investigation with regard to the subject matter of the FIR. The High Court had elaborately analysed the material on record while considering the prayer for grant of anticipatory bail of the private appellants and prima facie found substance in the allegations against the appellants of misuse of funds received by them through various donors and that the appellants were not ready and willing to cooperate with the investigation. The respondents would submit that since the investigation is in progress and the material already gathered throws up circumstances which create suspicion of the commission of the alleged offence, therefore it is imperative to continue the seizure of bank accounts until it is necessary and till the completion of the investigation. If the Investigating Officer eventually finds that the accounts are not tainted with the crime, he would not hesitate to defreeze the same or to exclude the untainted amounts.

13. We have heard Mr. Kapil Sibal, learned senior counsel along with Ms. Aparna Bhat, appearing for the appellants and Mr. Tushar Mehta, learned Additional Solicitor General along with Mr. Ajay Chokshi, appearing for the State of Gujarat.

14. The sweep and applicability of Section 102 of the Code is no more res integra. That question has been directly considered and answered in the case of State of Maharashtra v. Tapas D. Neogy.4 The Court examined the question whether the police officer investigating any offence can issue prohibitory orders in respect of bank accounts in exercise of power under Section 102 of the Code. The High Court, in that case, after analysing the provisions of Section 102 of the Code had opined that bank account of the accused or of any relation of the accused cannot be held to be 4 (1999) 7 SCC 685 “property” within the meaning of Section 102 of the Code. Therefore, the Investigating Officer will have no power to seize bank accounts or to issue any prohibitory order prohibiting the operation of the bank account. This Court noted that there were conflicting decisions of different

High Courts on this aspect and as the question was seminal, it chose to answer the same. In paragraph 6, this Court noted thus:

> "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 of the Cr.P.C. and secondly, whether circumstances exist, creating suspicion of commission of any offence in relation to the same....."

15. After analysing the decisions of different High Courts, this Court in paragraph 12, expounded the legal position thus:

> "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.
>
> xxx xxx xxx xxx xxx 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."

16. After this decision, there is no room to countenance the challenge to the action of seizure of bank account of any person which may be found under circumstances creating suspicion of the commission of any offence.

17. In the present case, FIR has been registered at least against three private appellants, naming them as accused. CJP Trust has not been named as an accused in the FIR. But the investigation thus far, according to the respondents, reveals that Teesta Atul Setalvad and Javed Anand are actively associated with the said Trusts and have carried out transactions which may be found under circumstances suspicious of the commission of the alleged offence. That is still a matter of investigation. For the present, the Investigating Officer is of the view that there are certain circumstances emerging from the transactions done from these bank accounts which create suspicion of the commission of an offence. It is on that belief he has exercised his discretion to issue directions to seize the bank accounts pertaining to CJP Trust.

18. As regards the procedure for issuing instructions to freeze the bank accounts, it is noticed that the same has been followed by giving intimation to the concerned Magistrate on 21st November, 2014 as required in terms of Section 102 of the Code. There is nothing in Section 102 which mandates giving of prior notice to the account holder before the seizure of his bank account. The Magistrate after noticing that the principle stated by the Division Bench of the Bombay High Court in the case of Dr. Shashikant D. Karnik v. State of Maharashtra5 has been overruled in terms of the Full Bench Judgment of the Bombay High Court in the case of Vinoskumar Ramachandran Valluvar (supra), rightly negatived that contention. The Full Bench of the Bombay High Court has expounded that Section 102 does not require issuance of notice to a person before or simultaneously with the action attaching his bank account. In the case of Adarsh Co-operative Housing Society Limited v. Union of India & Ors.6, the Division Bench of the Bombay High Court once again considered the issue and rejected the argument that prior notice to the account holder was required to be given before seizure of his bank account. It also noted that the bank account need not be only of the accused but it can be any account creating suspicion about the commission of an offence. The view so taken commends us.

5 (2008) Cri.L.J. 148 (Bom.) 6 (2012) Cri.L.J. 520 (Bom.)

19. In the case of Sri Jayendra Saraswathy Swamigal (supra), the Court while considering a transfer petition under Section 406 of the Code, seeking transfer of the case pending before the Principal Sessions Court, Chenglepet, to any other State outside the State of Tamil Nadu, adverted to the circumstance of a motivated order passed under Section 102 of the Code for freezing of 183 bank accounts of the Mutt on the ground that the head of the Mutt was involved in a murder case. In that context, it observed that the power vested under Section 102 of the Code cannot be stretched to irrelevant matters, to extremes and to a breaking point. The power must be exercised cautiously, failing which, the discretion exercised by the authority would be tainted with arbitrariness. In

paragraph 23, the Court observed thus:

> "...Again, the action of the State in directing the banks to freeze all the 183 accounts of the Mutt in the purported exercise of the power conferred under Section 102 CrPC, which had affected the entire activities of the Mutt and other associated trusts and endowments only on the ground that the petitioner, who is the head of the Mutt, has been charge- sheeted for entering into a conspiracy to murder Sankararaman, leads to an inference that the State machinery is not only interested in securing conviction of the petitioner and the other co-accused but also to bring to a complete halt the entire religious and other activities of the various trusts and endowments and the performance of pooja and other rituals in the temples and religious places in accordance with the custom and traditions and thereby create a fear psychosis in the minds of the people. This may deter anyone from appearing in Court and give evidence in defence of the accused....." The Court did not lay down as a proposition that it is impermissible to freeze multiple bank accounts, even though circumstances emanating from the nature of transactions effected from the concerned bank accounts and the conduct of the account holders created suspicion of the commission of an offence. The Court while directing lifting of seizure of bank accounts had noted that the Mutt could not be paralysed by freezing of all its bank accounts in the guise of a direction issued under Section 102 of the Code. Further, the continuation of the seizure of all the bank accounts even after completion of the investigation of the case and filing of charge-sheet was unwarranted.

20. In the case of M.T. Enrica Lexie (supra), the Court noted in paragraph 7 that agencies had completed their respective investigations and vessel was seized in exercise of power under Section 102 of the Code. In Para 16, the Court noted the concession given by the counsel for the Government that the vessel was not the object of the crime or the circumstances which came up in the course of investigation that create suspicion of the commission of any offence. In that case, it was alleged that while the fishing boat was sailing through the Arabian Sea, indiscriminate firing was opened from the vessel in question, as a result of which two innocent fishermen who were on board, died. The Counsel for the State had also conceded that the vessel was no longer required in connection with the offence in question. Indeed, in paragraph 14, the Court made the following observations:-

> "14. The police officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other." These observations are in no way different from the proposition expounded in the case of Tapas D. Neogy (supra).

21. Keeping these principles in mind and the material on record, it is noticed that the prosecution has alleged that the two Trusts are run by the private appellants and other accused. They were

actively involved in collecting huge funds as donation in the name of providing legal assistance to the 2002 Gujarat Riot Victims. Such donations received by the two Trusts had never reached the victims, the members of the Gulberg Society in respect of which grievance has been made in the subject FIR. Further, substantial discrepancies have been noticed from the bank accounts, copies of audited account statements and Balance Sheet. The final account did not tally with the accounts, as submitted. The appellants did not offer credible explanation in that regard, much less satisfactory. According to the respondents, the conduct of the appellants of non-cooperation during the investigation strengthens the suspicion of the commission of an offence. They provided incorrect information. It is also a case of non-disclosure and suppression of material facts. These circumstances create suspicion of the commission of offence under investigation. It is alleged by the respondents that the appellants deliberately and intentionally did not disclose that they have already opened new accounts and transferred huge sums of money after knowing that stated bank accounts of the appellants were seized on 21.01.2014 by the investigating agency. The details of the two newly opened accounts were not forthcoming. Further, in the proceedings filed before different Courts, incorrect plea has been taken by the appellants, suggestive of the fact that their accounts were not compliant and duly scrutinized by the Competent Authority.

22. Suffice it to observe that as the Investigating Officer was in possession of materials pointing out circumstances which create suspicion of the commission of an offence, in particular, the one under investigation and he having exercised powers under Section 102 of the Code, which he could, in law, therefore, could legitimately seize the bank accounts of the appellants after following the procedure prescribed in sub-Section (2) and sub-Section (3) of the same provision. As aforementioned, the Investigating Officer after issuing instructions to seize the stated bank accounts of the appellants submitted report to the Magistrate concerned and thus complied with the requirement of sub-Section (3).

23. 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.

24. In our opinion, such a course would meet the ends of justice. We say so also because the explanation offered by the appellants in respect of the discrepancies in the accounts, pointed out by

the respondents, will be a matter of defence of the appellants.

25. We clarify that at an appropriate stage or upon completion of the investigation, if the Investigating Officer is satisfied with the explanation offered by the appellants and is of the opinion that continuance of the seizure of the stated bank accounts or any one of them is not necessary, he will be well advised to issue instruction in that behalf.

26. Accordingly, these appeals are dismissed.

.....CJI.

(Dipak Misra) .....J. (A.M. Khanwilkar) New Delhi;

15th December, 2017.