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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on: 1st October, 2019
Date of Decision: 29th November, 2019

\+ **CRL.M.C. 4206/2018 & Crl.M.A.30311/2018**

MUKTABEN M. MASHRU ..... Petitioner
Through: Ms. Nidhi Mohan P., Mr.Soajib Qureshi and Mr.S. Shriram, Advocates

versus

STATE OF NCT OF DELHI & ANR ..... Respondents
Through: Mr. Mukesh Kumar, APP for the State with SI Rajeshwar, PS:Palam Village, Delhi.
Mr. Ajay Burman, Senior Advocate with Ms. Nishi Chaudhary and Ms. Sadhvi Gaur, Advocates for respondent No.2.

CORAM:
HON'BLE MR. JUSTICE CHANDER SHEKHAR

CHANDER SHEKHAR, J.

1. The petitioner has assailed the order dated 2.8.2018 passed by learned Additional Sessions Judge, Dwarka Court, New Delhi. (hereinafter to be referred as 'impugned order') whereby the learned Additional Sessions Judge has set aside the order dated 17.3.2018 passed by the learned Metropolitan Magistrate.

2. The learned Metropolitan Magistrate, Dwarka Courts, vide order dated 17.3.2018 allowed the application filed by the petitioner and directed the Investigating Officer (IO) to defreeze the accounts of the petitioner Muktaben which had been seized/debit-freezed by the concerned I.O. under Section 102 of the Code of Criminal Procedure, 1973 ("Cr.P.C") and dismissed the application filed by respondent No.2 praying for release of case property i.e. money lying in the bank accounts debit freezed by the IO during investigation.

3. Aggrieved by the order of the learned Metropolitan Magistrate, the respondent No.2 filed a criminal revision petition, which was allowed by the learned Additional Sessions Judge vide the impugned order, whereby the order of the learned Metropolitan Magistrate was set aside and the matter was remanded back to the trial Court to decide the application of the respondent no.2 afresh after conducting inquiry under Section 457(2) Cr.P.C.

4. Briefly stated, the facts of the case, as per the Status Report, are that the respondent No.2 had got an FIR No.627/2015, registered against the grandson of the petitioner for the offence under Sections 498A/406/34 of the Indian Penal Code, 1860 (IPC). According to the complaint, it was alleged that accused Piyush Bhai Thakkar (husband of respondent No. 2) had forced and coerced respondent No.2, Pooja Sharma to hand over an amount of Rs.25lacs awarded to her by the Haryana Government as well as the amount of Rs.30 lacs kept in a Fixed Deposit in her name, deposited by her father.

5. During investigation, bank statement of respondent no.2/complainant was obtained. On analysis of bank statement of

respondent No. 2, it was found that on 23.4.2011, Rs.15 lacs were deposited in the account of complainant vide FD No.91104002159 and on 30.4.2011, Rs.15 lacs were deposited in the account of complainant vide FD no. 91104002275. Further, on 18.1.2012, Rs.25 lacs were deposited in the account of the complainant and that was the same amount given to her by the Haryana Government.

6. The details of bank account No.20039082561 (SBI Bank) of accused Piyush Bhai Thakkar was also obtained and analysed. It was found that on 20.1.2012, amount of Rs.20 lacs was transferred in the account of accused Piyush Bhai Thakkar from the account of complainant through cheque bearing No.061691. On the next day, accused Piyush Bhai Thakkar withdrew the amount of Rs.20 lacs from his account and after one and a half month, on 12.3.2012 accused Piyush Bhai Thakkar, opened a joint account in Yes Bank in the name of the petitioner, who is his maternal grandmother, and himself. On the same day, accused transferred Rs.25,000/- in this joint account from his SBI account. Thereafter, on 15.3.2012, accused transferred Rs.20 lacs in this joint account of Yes Bank from his SBI account through cheque No.852691.

7. It is further mentioned in the status report that it is evident from the transactions of the various bank accounts that accused Piyush Bhai Thakkar dishonestly misappropriated the money of the complainant. He deposited the amount, which he had taken from the complainant, in different Banks in different forms, i.e. Fixed Deposit, cash deposit in joint accounts of his maternal grandmother i.e. the petitioner, Muktaben and himself.

8. Upon interrogation, the husband of respondent No.2 failed to produce any proof regarding the money and hence, for the recovery of the misappropriated amount of the complainant, six joint bank accounts of accused Piyush Bhai Thakkar and Petitioner bearing No.913010041032178, 915010058850066, 914040008866743, 914040036492088, 9143030037694035 & 916030004596825 of Axis Bank were debit freezed during investigation.

9. The respondent No.2 has alleged that she was harassed, tortured and subjected to cruelty at the hands of her husband. It was further alleged that she was made to hand over the amount of Rs. 25 Lacs which she was awarded by the Haryana government as well as the F.D. amount of Rs.30 lacs, which had been deposited by her father, forcibly to her husband, the co-accused in the FIR.

10. On the other hand, the case of the petitioner is that she is an old widowed lady and the maternal grandmother of co-accused Piyush Bhai Thakkar. It is alleged that the co-accused was named as a joint account holder in the said accounts in order to help her in the smooth functioning of the debit and credit operations of the said accounts in view of her old age. It is claimed by the petitioner that the money kept in the freezed accounts is the hard-earned money and *streedhan* of the petitioner and nobody has any ownership upon that money.

11. Learned counsel for the petitioner submitted that the respondent no.2 had filed a complaint at CAW Cell, Dwarka, South-West Delhi against her husband, mother-in-law and her brother-in-law and the CAW Cell issued summons to them to appear before the concerned officer but the CAW never issued any summon to the petitioner. Even,

in the case filed under Section 12 of the Protection of Women from Domestic Violence Act, 2005 against the husband of respondent No.2, the mother-in-law and the brother-in-law, the petitioner is not named as a party to the case. Learned counsel for the petitioner further submitted that the petitioner is not an accused in the FIR No.627/2015, registered under Sections 498-A/406/34 of the IPC.

12. It is further submitted by the learned counsel for the petitioner that under the garb of an *ex parte* order, the respondent No.2 and her family members, along with police officials of P.S. Palam Village, Delhi, reached Ahmedabad, Gujarat and ransacked the matrimonial home and confiscated almost all the present articles of jewellery and cash, despite the fact that it was repeatedly claimed that none of the items belonged to the respondent No.2 and that she had already taken with her all the articles of jewellery and cash belonging to her on 5.6.2015 at the time of leaving the matrimonial home.

13. It is further alleged by the learned counsel for the petitioner that respondent No.2 had started to pressurize the co-accused Piyush Bhai Thakkar to demand his share in the properties from all his relatives.

14. The learned counsel for the petitioner has addressed the arguments, mainly on the point that the freezing of the six bank accounts jointly held in the petitioner's name is an abuse of process of law and would violate the interest of justice and by itself lacks legality. The learned counsel for the petitioner stated that the IO had not applied his mind and had seized the six bank accounts on 23.2.2016, without following the mandatory due procedure laid down in Section 102 Cr.P.C.

15. Learned counsel for the petitioner also submitted that learned Sessions Court, while passing the impugned order, had not applied its mind that under Section 102 (3) of Cr.P.C., IO was required to inform forthwith the concerned Court after seizing the bank accounts which is a mandatory requirement of law and failure to do so would vitiate the order of seizing of bank accounts.

16. Learned counsel for the petitioner, to buttress her arguments, has relied upon the judgment of the Division Bench of this Court in *Swaran Sabharwal v. Commissioner of Police*, 1987 SCC OnLine Del 221 and also the judgment passed by the Division Bench of the Bombay High Court in *Shashikant D. Karnik v. State of Maharashtra,* 2007(109) BOMLR 934, wherein it was held that the requirement of Section 102 Cr.P.C. is necessary to be complied with and non-compliance of the same renders the order illegal and perverse. Learned counsel for the petitioner has also relied upon the judgment of the Madras High Court titled as *T. Subbulakshmi & Anr. v. The Commissioner of Police & Ors.*, 2013 SCC OnLine Mad 2629, which reiterates that the seizure has to be reported forthwith to a magistrate which is a necessary requirement and if the requirement is not fulfilled, then the seizure cannot be legally sustained.

17. It was further submitted by the learned counsel for the petitioner that while passing the impugned order, the Sessions Court failed to appreciate that the petitioner is an old-aged widow lady and is in need of immediate funds and the six bank accounts were seized without following the mandatory due procedure laid down in Section 102 Cr.PC.

18. Learned counsel for the petitioner also submitted that the investigating authorities should not be allowed to circumvent mandatory procedures prescribed under criminal law. In this regard, reliance has been placed upon the judgment of the Supreme Court in *Sukhdev Singh v. State of Haryana*, (2013) 2 SCC 212, wherein it was held that no law can be interpreted in a way so as to frustrate the very basic rule of law. It is a settled principle of criminal jurisprudence that the provisions have to be strictly construed.

19. Learned counsel for the petitioner lastly submitted that while exercising the revision jurisdiction, the learned Additional Sessions Judge vide the impugned order has wrongly interfered with the order of the Metropolitan Magistrate dated 17.03.2018. The order of the Metropolitan Magistrate has followed the law laid down in *Swaran Sabharwal v. Commissioner of Police (supra)* and the Magistrate has rightly set aside the seizure of the bank accounts by the IO and the order did not warrant any interference whatsoever. There is no question of adjudication under Section 457(2) Cr.P.C. since the bank account is admittedly of the petitioner and not of the respondent No.2. Reliance has been placed upon the judgment of the Gujarat High Court in *Chetanbahai Vasantbhai Mistary v. State of Gujarat & Anr*., 2003 SCC Online Guj 277.

20. *Per Contra*, the learned Senior Counsel for the respondent No.2 submitted that the petitioner himself had moved an application for de-freezing of the accounts on 2.3.2016 immediately after the freezing of the bank accounts and later, the said application was withdrawn on 12.5.2016. Hence, this shows that the learned Metropolitan Magistrate

was well aware of the debit-freezing of the accounts of Axis Bank. In this regard, reliance has been placed upon the judgment of the Punjab & Haryana High Court in *Narottam Singh Dhillon and Anr. v. State of Punjab*, 2007 SCC OnLine P&H 20, to elucidate their arguments that the provisions of Section 102 (3) Cr.P.C. cannot be termed as mandatory, but would be directory in nature and also relied upon the judgment of the Bombay High Court in *Vinodkumar Ramachandran Valluvar v. State of Maharashtra,* 2011 SCC Online Bom 402, wherein it was held that the freezing of the bank account is an act in investigation and it does not deprive any person of his liberty or his property. Section 102 Cr.P.C. does not require issuance of notice to a person before or simultaneously with the action of attaching his bank account.

21. The learned Senior Counsel for the respondent No.2 has further contended that the present petition deserves to be dismissed on the ground that the money freezed by the IO is the hard-earned money of respondent No.2 awarded to her for participation in various national and international tournaments and the same has been dishonestly misappropriated by the husband of the respondent No.2 in connivance with the petitioner by depositing the money, belonging to the respondent No.2 into a number of joint accounts held by the petitioner and the husband of respondent No.2 with different banks in different forms i.e. fixed deposit, cash deposit etc.

22. As far as, the reliance placed upon the judgment of the Punjab & Haryana High Court in *Narottam Singh Dhillon and Anr. (supra)* by the respondent No.2 is concerned, the learned counsel for the

petitioner has stated that the case appears to be standing on its own facts and that it is not a normal case of seizure of accounts. Therefore, the law laid down in that case cannot be applied to every case because of its peculiar nature. Furthermore, The Madras High Court in the case of *T. Subbulakshmi & Anr. V. The Commissioner of Police & Ors.*, *(supra)* has noted that the judgment of the Punjab & Haryana High Court was passed under the Prevention of Corruption Act and the same stands on an entirely different footing and hence cannot be made applicable to the facts of the present case.

23. Section 102 of the Cr.P.C. defines and deals with the powers of the police officer to seize the property, especially where the allegation of commission of an offence is alleged. Section 102 of the Cr.P.C. provides that the police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under the circumstances which create suspicion of commission of any offence. All movable properties can be seized by a police officer under Section 102 of the Cr.P.C. The basic requirements for the application of the Section 102 of the Cr.P.C. are that the properties sought to be seized or frozen, must be the stolen properties or they should have been found to have some nexus with the alleged offence which is under investigation of the police officer concerned.

24. In the case of ***Nemichand Jain v. The Superintendent of Central Excise and Land Customs, Silchar (Cachar) & Anr.***, AIR 1963 Manipur 35, it was held that every property seized must be included in the list prepared by the police officer and no property can

be detained without including it in the list. The police officer should also report the matter forthwith to a Magistrate.

25. In the case of ***Swaran Sabharwal v. Commissioner of Police***, *(supra)*, it has been held that where the bank account is seized, the I.O. should inform the concerned Magistrate forthwith regarding the prohibitory order and also give notice to the accused and allow him/her to operate the bank account subject to his/her executing a bond undertaking to produce the amounts in court as and when required or to tell him/her subject to such orders as the court may make regarding the disposal of the same. An order under Section 102 Cr.P.C., without doing so, would be set aside. Relevant portions of the said judgment read as under:

> "10. We may further point out that no justification seems to exist for "seizing" the amounts in the bank account. All that the respondents seem to want to establish from the bank account is that some funds were transferred by the petitioner's husband to her. This can be proved at any time by comparison of the two account and since the entries in the accounts are always available, no purpose seems to be served by restarting the operation of the bank account. Since, as we point out below, it is not the case of the moneys in the bank constitute "case property", i.e., the property involved in the commission of the crimes with which Ram Swarup is charged, the seizure of the monies by the issue of a prohibitory order cannot be upheld.
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> 11. Again even if the provisions of section 102 are held applicable, the respondents have not followed the requirements of the section. Reading that provision, by adapting in to the case of seizure of a bank account, the police officer should have done two things: he should have informed the concerned magistrate forthwith

> regarding the prohibitory order. He should have also give notice of the seizure to the petitioner and followed her to operate the bank account subject to her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same. This was not done. Even a copy of the prohibitory orders was not given to the petitioner. The police did not seek the directions of the Magistrate trying the offence. Not only that, when the petitioner herself approached the Magistrate who was trying the petitioner's husband under the official Secrets Act, her request to be allowed to operate the account was opposed by the police contending that the bank account was not "case property" and that the petitioner's remedies lay elsewhere than in the court of the Magistrate. The Magistrate accepted the plea of the police and dismissed the application of the petitioner and directed to seek remedy elsewhere before the appropriate authority. The petitioner having lost before the Magistrate, had no other recourse except to file a writ petition praying for the setting aside of the prohibitory order."

26. In the case of ***State of Maharashtra v. Tapas D Neogy***, (1999) 7 SCC 685, it was held that the bank account, or postal account of the accused or any of his relations is property within the meaning of Section 102 of the Cr.P.C. and the police officer, in the course of investigation, can seize or prohibit operation of the said account, if such assets have direct link with the commission of offence.

27. It is held in the case of ***R Chandrasekhar v. Inspector of Police Station***, 2003 Cr LJ 294(295) that the provisions of Section 102 of the Cr.P.C. are mandatory and where the mandatory provisions of Section 102 of the Cr.P.C. are not complied with, the police officer does not report to the concerned Magistrate about the seizure, the notice and

copy of the prohibitory order are not sent on the person whose bank account has been seized, the order of the police officer for seizure of the bank account would be set aside.

28. Similarly, In ***B Ranganathan v. State***, 2003 Cr LJ 2779 (Mad), it was held as under:

> "In case of seizure of a bank account, the police should do two things; he should inform the concerned Magistrate forthwith regarding the prohibitory order. He should also give notice of the seizure to the accused and allow him/her to operate the bank account subject to his/her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same".

29. It is held in the case of ***Shashikant D Karnik (dr) v. State of Maharashtra***, *(supra)* that before issuing orders of stopping the operation of account, notice is also required to be given to the accused. Further, every police officer acting under sub-section (1) is required to forthwith report the seizure or attachment of accounts to the Magistrate having jurisdiction.

30. In the matter of ***Smt. Lathifa Abubakkar v. State of Karnataka***, 2012 Cr LJ 3487 (Kar), the Court held that in a case relating to freezing of Bank Account, no materials were produced by the bank to show that the bank account of petitioner accused had any nexus with commission of any offence. No notice of seizure to the petitioner was issued to enable her to operate bank account subject to her executing bond undertaking to produce amount in court as and when required. The seizure of bank account was also not reported to the Magistrate

having jurisdiction. It was held that in the circumstances, there was non-compliance with the mandate contained in Section 102 of the Code. Thus, the freezing of the bank account of the petitioner was improper.

31. In the case of ***T. Subbulakshmi & Anr. V. The Commissioner of Police & Ors.***, *(supra)*, it was held that if there is any violation in following the procedures under Section 102 Cr.P.C., the freezing of the bank account cannot be legally sustained. Freezing of bank account is an act of investigation by the police and therefore, duty is cast upon the I.O. under Section 102 Cr.P.C. to report the same to the Magistrate forthwith as freezing prevents a person from operating his bank account.

32. Further, in the case of ***Uma Maheswari & Anr. v. State rep. by Inspector of Police***, 2013 SCC OnLine Mad 3829, the Court held that reporting of the freezing of the bank accounts is mandatory. Failure to do so will vitiate the freezing of the bank account. It shall be reported 'forthwith' to the jurisdiction magistrate. The phrase 'shall' employed in Section 102(3) Cr.P.C is held to be mandatory in nature and violation of it goes to the root of the matter. The relevant portions of the aforesaid judgment reads as under:

> "33. In seizing the properties, the investigating officer has to follow certain procedures. That has been prescribed in Section 102 Cr.P.C. It runs as under:
>
> "102.Power of police officer to seize certain property.-
>
> (1)Any Police Officer may seize any property which may be alleged or suspected to have been stolen or which may be found under

circumstances which create suspicion of the commission of any offence.

(2)Such police officer, if subordinate to the officer in charge of a Police Station, shall forthwith report the seizure to that officer.

(3)Every Police Officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court 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."

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41. In pursuing investigation under Section 102 Cr.P.C., the Code empowered the police officers

> to deprive a person of his properties. In this context, the phrase, "shall" employed in Section 102(3) Cr.P.C, is held to be mandatory in nature. Violation of it goes to the root of the matter.
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> xxxxxxx
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> 44. The Investigation Officer has suspected that the moneys swindled were secreted by the accused persons in their Bank accounts. Thus, he took steps to freeze the Bank accounts.
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> 45. We have elaborately seen that such freezing of the Bank accounts shall be reported to the jurisdiction Magistrate. When it is to be reported has been stated in Section 102(3) Cr.P.C. It is stated therein that it shall be reported "forthwith" to the jurisdiction Magistrate. The reporting of the freezing of the Bank accounts is mandatory. Failure to do so will vitiate the freezing of the bank account. In this back drop of the matter, the word "forthwith" shall mean 'immediately', 'without delay', 'soon'.
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> 46. In this case, the freezing of the Bank accounts were done on 30.04.2013 and on 3.5.2013. However, the Investigation Officer has reported this to the learned XI Metropolitan Magistrate, Saidapet only on 27.6.2013. This will not be reporting of the freezing of the Bank account to the Magistrate forthwith. Thus, there is breach of mandatory requirement of law. Thus, the freezing of the Bank accounts is vitiated."

33. Recently, in the case of ***Manish Khandelwal & Ors. v. State of Maharashtra***, 2019 SCC Online Bom 1412, decided on 30.7.2019, the Court rejected the contention that non-compliance of the procedure laid down under Section 102 Cr.P.C. is only an irregularity and will not vitiate freezing of the bank accounts. It was held that in case the mandatory provision under Section 102 Cr.P.C. has not been followed

then it would entail the consequence of giving directions to defreeze the bank account. The duty of reporting to Magistrate any seizure of bank account is cast upon the IO as freezing of the bank account prevents the person from operating the bank account pursuant to investigation. If there is any violation in following the procedures under Section 102 Cr.P.C., freezing of account cannot be legally sustained.

34. In view of the aforesaid premises, it would be quite relevant to reproduce the relevant extracts of the order of the learned Metropolitan Magistrate, dated 17.3.2018, which are as follows:-

> "It is thus settled position of law that mandatory requirement of section 102 of CrPC is that the police officer shall forthwith report the seizure of the property to the magistrate and if the same is not done, the order is illegal.
>
> In the case, an application was filed on behalf of complainant on 21.01.2016 for calling of status report. In the said application, she had prayed for seizure of the accounts of accused Piyush and his maternal grandmother/ accused Muktaben. Status report to the said application was filed by the IO wherein he stated that a cheque of Rs. 20 lacs was encashed in the bank account of accused Piyush. In the said report, it was not mentioned that the account of the accused was seized. Thereafter, IO was again called with report and one report was filed on 15.02.2016. In the said report, 1O had mentioned as to how the accused Piyush had got prepared FD in the name of Muktaben from the amount taken by the complainant. Thereafter, vide order dated 15.02.2016 Court notice was issued to the accused. Notice was again directed to be issued vide order dated 22.02.2016 and on 02.03.2016, Proxy counsel

appeared for the accused. The matter was adjourned from 02.03.2016 to 19.03.2016. Thereafter, on 02.03.2016 itself, an application was filed on behalf of Muktaben for de-freezing of her bank accounts. Copy of this application was supplied to complainant and this application was also adjourned for 19.03.2016 and Ld. Predecessor of this Court called the 1O vide order dated 19.03.2016 to file report and the applications were adjourned from 19.03.2016 to 27.04.2016. Thereafter, from 27.04.2016, applications were adjourned for 04.05.2016. On 11.05.2016 one application was filed by Muktaben for withdrawal of the application for de-freezing of her bank accounts and vide order dated 12.05.2016, the application seeking unfreezing was disposed of as withdrawn.

The application of the complainant for status report for freezing of bank account was adjourned and fresh notice was issued to IO for filing status report. In the meantime, the charge sheet was filed and vide order dated 03.12.2016 the application of the complainant was disposed of by the ld. Predecessor with the following observations:

> "Charge sheet has been filed.
> Application is disposed off accordingly."

It is clear from the record that the IO had never intimated the Court about freezing of the accounts of accused Muktaben and only through the application filed by Muktaben on 02.03.2016, this Court got information that the account was freezed by the bank official on the request of the 1O vide letter dated 23.02.2016 and the petitioner/accused Muktaben was informed about the debit freezing of the account vide letter dated 24.02.2016 issued by the authorized

signatory of Axis Bank, Vastrapur Branch, Ahmadabad.

Before disposing of the applications in hand, the IO was asked to submit his report in respect to the procedure followed by him for the freezing of account. In the report, he has stated that on 23.02.2016 he got the Axis bank account debit freezed and accused had come to know about the same on that day only and thereafter he had filed an application for de-freezing of account and in the charge sheet filed on 03.12.2016, it has been mentioned that the account of Muktaben was debit freezed.

It is thus clear from the record that the IO had not intimated this Court about the freezing of the accounts from date of request given to the bank i.e. 23.02.2016 till the filing of the charge sheet.

Ld. Counsel for the complainant has argued that applicant Mukat Ben has admitted that part of the amount has been deposited by accused Piyush in her account, during recording of her statement by this Court. It has been submitted that de-freezing of accounts in favour of Muktaben would cause grave injustice to the Complainant whose hard-earned money has been misappropriated by accused persons

This Court has considered the argument of Ld. Counsel and perused the record.

It is a matter of record that during hearing of the two applications, accused applicant Muktaben was examined by this Court in respect of her savings and bank accounts maintained by her. Accused / applicant Mukatben has stated that she did not have much knowledge about her bank accounts but she

had total Rs.30 lacs amount with her. She has also stated that the amount of Rs.19 lacs in the freezed accounts have been deposited by accused Piyush.

The statement of accounts of the Complainant shows that there has been withdrawal of huge amount and cheques were issued in favour of Piyush drawn on the account of complainant. Further, FDs of about 23 Lacs prepared in the name of Muktaben were also encashed by her and the amount was later on withdrawn from the account. There is no explanation of such huge transactions in the account of applicant.
However, as discussed above, the IO had not informed this Court under Section 102 Cr.P.C regarding seizure of the accounts which is a mandatory requirement of law and failure to do so vitiates the order of freezing of the bank accounts.

In view of aforesaid discussion, this Court is of the considered view that the order of IO of debit-freezing of bank accounts of accused / applicant Muktaben is in clear violation of mandatory requirement of law and therefore. the accounts of Muktaben seized/debit-freezed on the request of IO are directed to be de-freezed. Application of accused Muktaben is therefore allowed and application of complainant stands dismissed accordingly."

35. It would also be quite appropriate, for better appreciation of facts, to reproduce the relevant portion of the impugned order of the Revision Court, which are as follows:-

"20. After hearing both the parties, the short point which is required to be determined in the present revision petition is whether the conduct of IO in not reporting the seizing of six Axis Bank Accounts of the

respondent no.2 to the Ld.Magistrate makes the order unlawful or not?

21. Although it is true that as per Section 102 (3) Cr.P.C., IO is required to forthwith report any seizing of property made during the course of investigation to the Ld.Magistrate. However, the irregularity committed by 10 in the present case, in not reporting the attachment of six Axis Bank accounts of respondent no.2 to Ld.Magisrate will not make the order of attachment passed by IO dated 23.02.2016 to be unlawful/ invalid. I am supported in my reasoning by Section 466 C.P.C. which is reproduced as under:--

> "466 Cr.P.C - Defect or error not to make attachment unlawful—No attachment made under this Code shall be deemed unlawful, nor shall any person making the same be deemed a trespasser, on account of any defect or want of form in the proceedings relating thereto."

22. Secondly, I agree with the submission put forward by Ld.counsel for revisionist/complainant that provision under Section 102 (3) Cr.P.C. is not mandatory but is directory in nature and if IO had not reported the attachment of Bank Accounts to the Ld.Magistrate promptly, then it will not make the order of seizing/attachment dated 23.02.2016 to be invalid.

23. In the judgment relied upon by the Ld.counsel for revisionist/complainant of Hon'ble Punjab and Haryana High Court delivered in Narottam Singh Dhillion and another's case *(supra)*, the Hon'ble Punjab and Haryana High Court, after discussing the various judgments relied upon by Ld.counsel for respondents i.e. R.Chandrasekar's case *(supra)*, and Tapas D.Neogy's case *(supra)* and after relying upon the judgment of the Hon'ble Supreme Court

of India delivered in Nasiruddin and other's case *(supra)* had come to the conclusion in para 12 as follows:-

> "12.Applying the above noted test to the contents of the provisions of Section 102(3) Cr.P.C., it can be seen that after laying down the requirement of reporting further itself provides for exception in cases where the property seized I such that it cannot transported to the court etc... The consequences of non-reporting about the seized property have also not been provided under the Section. In addition, the requirement of reporting in the manner, as stated, is on the part of a public functionary and in view of the law laid down by the Hon'ble Supreme Court, as noticed above, the same is required to be held to be directory unless the consequences thereof are specified. Since the consequences therefore, have not been specified, it would be safe to say that requirement of Section 102 (3) Cr.P.C. cannot be termed as mandatory but would be directory in nature".

24. Therefore, Section 102 (3) Cr.P.C. is not mandatory in nature and non-compliance of the same by IO does not make the order to be invalid/illegal.

25. Thirdly, even otherwise, in the present case, the information to Ld.Magistrate about seizure of Bank Accounts was given promptly in the form of application filed by respondent no.2 on 02.03.2016 before the Ld.Magistrate and through this application, Ld.Magistrate came to be informed regarding seizing of six Axis Bank Accounts of respondent no.2 by IO on 23.02.2016.

26. Further, the Ld.Magistrate also came to know about freezing/seizing of six Axis Bank Accounts of respondent no.2 through the charge sheet which was filed before the Ld.Magistrate on 25.11.2016.

> 27. Therefore, in the facts of the present case, even compliance of Section 102 (3) Cr.P.C. was made as Ld.Magistrate had got the information promptly about seizing of six Axis Bank Accounts of respondent no.2, although not through IO but from respondent no.2 herself and the purpose of Section 102 (3) Cr.P.C. stood achieved.
> 28. In the light of above discussion, Ld.Magistrate committed grave illegality by dismissing the application of revisionist/complainant solely on the ground that IO had not complied with the provision of Section 102 (3) Cr.P. C. Accordingly the revision petition is allowed. Impugned order is accordingly, set aside.
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> 29. The matter is remanded back to the Ld.Trial Court to decide the application of revisionist/complainant afresh after conducting inquiry under Section 457 (2) Cr.P.C."

36. Now reverting back to the present petition, taking into consideration the oral as well as the written submissions of both the parties and also taking into consideration the material on record as well as the legal position, more specifically in view of the judgments discussed hereinabove, this Court has no hesitation to hold that the reporting of the freezing of bank accounts is "mandatory". Failure to do so, apart from other conditions, will vitiate the freezing of bank account, which should be 'forthwith' reported to the concerned Magistrate and non-compliance of this mandatory requirement goes to the root of the matter. If there is any violation in following the procedures under Section 102 of the Cr.PC, the freezing of the bank accounts cannot be legally sustained.

37. The Revision Court has wrongly held that Section 102(3) Cr.PC is not mandatory in nature and non-compliance of the same by the IO does not make the order to be invalid/illegal. The view taken by the Revision Court, is based upon the wrong premise, is erroneous and hence cannot be sustained. The judgments relied upon by learned counsel for respondent No.2, in view of the facts of the present case as well as in view of the judgments discussed hereinabove, are neither relevant nor *pari materia* to the facts of this case.

38. It is an admitted fact that the IO had not informed the concerned Magistrate forthwith regarding the prohibitory order and also did not give any notice to the petitioner and the co-account holder, Piyush Bhai Thakkar, allowing her/him to operate the bank account, subject to her/his executing a bond undertaking to produce the amounts in court, as and when required or to tell her/him, subject to such orders as the Court may make regarding the disposal of the same.

39. In view of the aforesaid discussions and considering the law laid down in various decisions as discussed hereinabove, more specifically the judgment of the Bombay High Court in the matter of ***Manish Khandelwal & Ors. v. State of Maharashtra***(supra), the Madras High Court in the matter of ***Uma Maheswari & Anr. v. State rep. by inspector of police*** (supra) as well as of this Court in the matter of ***Ms. Swaran Sabharwal vs Commissioner of Police*** (supra), I have no hesitation to hold that the conclusion arrived at by the Revision Court in its impugned order dated 2.8.2018 is untenable in law, hence, is liable to be set aside and is accordingly set aside and the order dated 17.3.2018 of the Metropolitan Magistrate is liable to be

upheld to its original position, however, to protect the interest of the respondents, it would be appropriate to impose a condition to the effect that before de-freezing the accounts of the petitioner, the petitioner and the co-account holder, Piyush Bhai Thakkar, both shall execute bonds before the Trial Court thereby undertaking to produce the amount in the Court, as and when required by the Court and also to the extent, that if any such order is made by the Court regarding disposal of the same, the same shall be complied with jointly and severally by them.

40. Accordingly, it is held that the order of the IO debit-freezing the bank accounts of petitioner Muktaben is in clear violation of mandatory requirement of law and, therefore, the accounts of Muktaben seized/debit-freezed on the request of the IO are directed to be de-freezed, subject to the condition that before de-freezing the accounts of the petitioner, the petitioner and the co-account holder, Piyush Bhai Thakkar, both shall execute bonds before the trial court thereby undertaking to produce amount in the Court, as and when required by the Court and also to the extent that if any such order is made by the Court regarding disposal of the same, the same shall be complied with jointly and severally by them.

41. The petition is accordingly allowed and disposed of in the above terms. Pending application is also disposed of.

CHANDER SHEKHAR, J.

NOVEMBER 29, 2019
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