

HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE
HON'BLE SMT. JUSTICE ANJULI PALO

M.CR.C. NO. 4198 OF 2022

Between:-

1. Dilip Modi
S/o Shri Lajpat Rai Modi
Aged about 62 years
Occupation-Businessman,
2. Smt. Kiran Modi
W/o Dilip Modi,
Occupation – Self Employed,
3. Prakash Modi,
S/o Dilip Modi
Age-35 years

All are residents of Behind
Brahmakumari Ashram,
Barapatthar, C.V. Raman Ward
Seoni, (M.P.)

.....**APPLICANTS**

**(BY SHRI SANKALP KOCHAR WITH SHRI AMAN DAWRA,
COUNSEL FOR THE APPLICANTS.)**

AND

State of M.P.
Through P.S. Kotwali, Seoni
District Seoni (M.P.)

.....**RESPONDENT**

(STATE BY SHRI RAVINDRA KUMAR SHUKLA, PANEL LAWYER)

**(OBJECTORS BY SHRI VIPIN YADAV AND SUNIL KUMAR PANDEY,
ADVOCATES)**

Arguments heard on : 21.7.2022

Order passed on : 10.8.2022

This petition coming on for admission this day, the Court passed the following order:-

ORDER

1. This petition has been filed by the applicants invoking the extraordinary jurisdiction of this Court under Section 482 of Cr.P.C. being aggrieved by order (Annexure A-4) dated 23.10.2021 passed by Chief Judicial Magistrate, Seoni in Case No. 242 of 2021 and order (Annexure A-6) dated 13.1.2022 passed by Fourth Additional Sessions Judge, Seoni in Criminal Revision No. 46 of 2021.

2. The facts giving rise to this petition, in brief, are that a written complaint was submitted by complainant Suresh Aggarwal alleging that he had appointed applicant No. 1 as the Power of Attorney holder on 5.12.1992 whereby applicant No. 1 has been authorized to undertake various banking as well as financial transactions on behalf of the

complainant. Apart from other works, the complainant undertook the contract under Pradhan Mantri Gramin Sadak Yojna in District-Seoni from Ghansor Seoni and Chhapara for a period of 8 years commencing from 2002 till 2010 and applicant No. 1 was appointed to supervise and execute the aforesaid work. It is alleged that applicant No. 1 obtained blank cheques signed by the complainant for the purpose of staff bills and other contractual expenses but he misused the same for personal gain and withdrew different amounts in the name of applicant Nos. 2 and 3 from the account of complainant which was deposited under the head of Pradhanmantri Gramin Sadak Yojna. On being asked, applicant No. 1 assured the complainant to refund an amount of Rs.3 crores. It is also alleged that in the year 2010-11, the complainant undertook the work in Chhindwara under the scheme of Pradhanmantri Gramin Sadak Yojna and earned profit of Rs.4 Crore 80 Lakhs. This amount has also been withdrawn by applicant No. 1.

3. In pursuance of the aforesaid complaint, statement of witnesses as well as complainant were recorded and an FIR was registered against the applicants. On account of registration of the FIR, the bank accounts of the applicants have been freezed. Being aggrieved by the freezing of

accounts, the applicants filed an application (Annexure A-3) before Chief Judicial Magistrate, Seoni to defreeze their accounts, which has been dismissed by the Chief Judicial Magistrate, Seoni vide order (Annexure A-4) dated 23.10.2021 on the ground that prima facie there is ample evidence available on record to reflect that applicants have fraudulently gain exorbitant amount of money.

4. Being aggrieved by the order (Annexure A-4) dated 23.10.2021, the applicants preferred a criminal revision before Fourth Additional Sessions Judge, Seoni, which has also been dismissed vide order dated 13.1.2022 on the ground that the order passed by learned Chief Judicial Magistrate does not suffer from any infirmity, hence this petition has been filed by the applicants.

5. Learned counsel for the applicants submits that learned Chief Judicial Magistrate, Seoni has committed grave error of law while passing the impugned order. The Chief Judicial Magistrate has miserably failed to take into consideration the predicaments which are being faced on day-to-day basis by the applicants on account of freezing of their accounts. It is submitted that for the same cause of action, which has

been made the very genesis for registration of FIR, a civil suit has already been filed by the complainant against the applicants, which makes it axiomatic that a case of civil nature has been given the colour of a criminal case.

6. It is further submitted that impugned orders are perverse and abuse of legal process as learned Courts below have failed to decide the application under Section 457 of Cr.P.C. on its merits keeping in mind the legal principles governing the defreezing of bank accounts and returning the custody of seized property to the person entitled to receive it upon appropriate conditions. The impugned orders are also bereft of any analysis of the applicable statutory provisions and judicial precedents applicable to the freezing of bank accounts. The learned Courts below have also failed to appreciate the crucial facts that till date the respondent has neglected to formally notify the applicants about the seizure of the account; provide a copy of the prohibitory order under which the respondent had seized the accounts and provide the applicants with an opportunity to secure a release of the account upon furnishing appropriate security. The respondent is duty bound to provide a notice of such seizure to the account holder with a copy of the prohibitory order

and allow the account holder to secure the release of the bank account in terms of Section 102(3) of CrPC. It is further submitted that there is no material available on record which would reflect the fact that the accounts of the applicants so freezed by the respondent even have a close proximity or nexus with the allegation as levelled in the FIR.

7. Learned counsel for the applicants has further submitted that applicant Dilip Modi has been released on regular bail by this Court vide order dated 29.7.2021 passed in M.Cr.C. No. 33277 of 2021 observing that prima facie it appears that there is civil dispute between the parties regarding some transactions of amount between them which is also reflectable from the conversation of the applicant and complainant filed by the complainant himself. There is also some kind of cavil over the partnership between the parties. The applicant himself, submitted complaints to various authorities Inspector General of Police and Superintendent of Police for impartial inquiry in the matter and the relevant documents. Applicants Kiran Modi and Prakash Modi have also been enlarged on anticipatory bail by this Court vide common order dated 3.9.2021 passed in M.Cr.C. Nos. 41834 of 2021 and 41771 of 2021. In view of the aforesaid, it is prayed that the impugned orders may

be set aside and the impugned orders and the account of the applicants may be de-frozen.

8. Learned Panel Lawyer for the State as well as learned counsel for the objectors have supported the impugned orders and submitted that the applicants have misappropriated a huge amount from the account of the complainant. The power of attorney was executed by the complainant for smooth function of the contractual works assigned to Dilip Modi. It was clearly mentioned that Dilip Modi himself will perform the contractual works in his presence but he will not have any authority to transfer any movable and immovable property of the complainant and he will not be entitled to avail any loan in the name of the complainant. However, Dilip Modi availed the blank cheques signed by the complainant and misused them and misappropriated a huge amount.

9. I have heard learned counsel for the parties. The applicants are facing prosecution under Sections 409, 420 and 120-B of IPC for fraudulently receiving and misappropriating several crores of rupees in the course of criminal conspiracy. The allegation levelled against the applicants are grievous in nature and it is a crime against the property.

There is an allegation of misappropriation of a huge amount and accounts in question of the applicants have been freezed by the investigating agency suspecting that money available in the said account is proceed of crime or is ill-gotten money. The Courts below also took the same view when they were approached to defreeze the said account and rejected the prayer of the applicants to defreeze their accounts. In such circumstances, the accounts involved in crime cannot be ordered to be defreezed. The applicants cannot take advantage of the observations made by this Court while granting bail to the applicants in this petition under Section 482 of Cr.P.C.

10. The Supreme Court in the case of State of Maharashtra Vs. Tapas D. Deogy – (1999) 7 SCC 685 has observed that *“the interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hisitation 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". The Supreme in the case of *Teesta Atul Setalvad Vs. State of Gujarat* and other connected cases – (2018) 2 SCC 372 in Para 20 has observed thus:-

20. 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 Magistrate concerned on 21-11-2014 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 **Shashikant D. Karnik Vs. State of Maharashtra-2008 CriLJ 148 (Bom)** has been overruled in terms of the Full Bench judgment of the Bombay High Court in **Vinodkumar Ramchandran Valluvar Vs. State of Maharashtra – 2011 SCC OnLine bom 402**, rightly negated 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 **Adarsh Coop. Housing Society Ltd. Vs. State of India – 2011 SCC OnLine Bom 974**, 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.

11. In view of the aforesaid discussion and in the light of the aforesaid decisions of the Supreme Court, I do not find any ground to make interference in the orders passed by the Courts below. The petition being devoid of merit is hereby dismissed.

(Smt. Anjali Palo)
Judge

PB