

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

CRIMINAL PETITION No.6069 OF 2022

BETWEEN

Alibaba Cloud (India) LLP
404, Zee Square,
M.G.Road, Vile Parle East,
Mumbai – 400057, Rambhawan,
Rep. by Authorized Signatory.

... Petitioner

And

The State of Telangana rep. by
Public Prosecutor, High Court of Telangana
at Hyderabad.
Through
Inspector of Police,
Cyber Crime Police Station,
Detective Department (CCS), Hyderabad.

... Respondent

Date of Judgment Pronounced: **17.08.2022**

SUBMITTED FOR APPROVAL:

THE HONOURABLE Dr.JUSTICE CHILLAKUR SUMALATHA

1. Whether Reporters of Local newspapers may (Yes/No)
be allowed to see the Judgments?
2. Whether the copies of judgment may be (Yes/No)
marked to Law Reports/Journals?
3. Whether their Lordship/ Ladyship wish to (Yes/No)
see the fair copy of the Judgment?

Dr.JUSTICE CHILLAKUR SUMALATHA

*** THE HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA**

+ CRIMINAL PETITION No.6069 OF 2022

% Dated 17-08-2022

Alibaba Cloud (India) LLP
404, Zee Square,
M.G.Road, Vile Parle East,
Mumbai – 400057, Rambhawan,
Rep. by Authorized Signatory.

... Petitioner

\$ The State of Telangana rep. by
Public Prosecutor, High Court of Telangana
at Hyderabad.
Through
Inspector of Police,
Cyber Crime Police Station,
Detective Department (CCS), Hyderabad.

... Respondent

! Counsel for Petitioners: Sri T.Niranjan Reddy
^ Counsel for respondent: Sri Khaja Vizarith Ali,
Assistant Public Prosecutor

<GIST:

> HEAD NOTE:

? Cases referred

- 1.MANU/TL/0409/2020
- 2.2021(6) ALD 474 (TS)
- 3.1992 SCC (Crl.) 426
4. 2008 CRI.L.J.148

THE HON'BLE Dr.JUSTICE CHILLAKUR SUMALATHA**CRIMINAL PETITION No.6069 of 2022****ORDER:-**

1. Heard Sri T.Niranjan Reddy, learned Senior counsel who argued representing the petitioner as well as the learned Assistant Public Prosecutor.
2. Challenging the Prohibitory Order by which the Bank Account of the petitioner bearing No.00623888001 maintained with Mumbai Branch of HSBC India has been frozen and to direct the respondent to defreeze the said Bank Account, the present Criminal Petition is filed.
3. Making his submission, the learned Senior Counsel submitted that the petitioner Alibaba Cloud (India) Private Limited Company is a Limited Liability Partnership Firm registered under Limited Liability Partnership Act, 2008 and is carrying out business of providing Cloud Computing Services and related services in India. He contends that the account of the petitioner was illegally and unjustifiably seized and the account was frozen by the respondent on 13.08.2021 invoking Sections 91 and 102 Cr.P.C, while

investigating the case in Crime No.1342 of 2021 of Cyber Crime Police Station, Hyderabad. Learned counsel contends that the Prohibitory Order was passed without arraying the petitioner atleast as a suspect and no investigation is done regarding his activities and further, the petitioner has not been served with the copy of the Prohibitory Order till this date. Learned counsel further states that though the petitioner, on obtaining the relevant information, including the copy of FIR, has voluntarily provided all information and further, the request of the respondent to provide further information was also complied through mails and though all the documents that are called for were also given, the respondent could not find any involvement of the petitioner in the crime. Thus, the action of the respondent in illegally freezing the account, that too in violation of Section 102 Cr.P.C., is gross abuse of process of law. Learned counsel further submits that though the account was frozen long time back i.e. way back in the month of December 2021, till now, a copy of Prohibitory Order is not served upon the petitioner and the respondent has not given any value or credence to the

letter of law. It is also contended that the name of the petitioner is not figured in the FIR and though the petitioner approached the respondent to ascertain the facts and circumstances necessitating freezing of account, no reply was given as to why the Prohibitory Order was issued. Learned counsel further states that the petitioner is carrying out lawful activities and freezing of his account for such a long period has hampered his business activities. He states that the business operations of a law abiding enterprise cannot be stalled on the ground of investigation in a crime, that too where allegations are directed against the third parties. Therefore, questioning the attitude of the respondent, and also the procedural irregularity, the petitioner has approached this Court.

4. Contradicting the submissions thus made, the learned Assistant Public Prosecutor contends that by following due procedure established by law, Prohibitory Order was issued and the account was frozen.

5. Learned Assistant Public Prosecutor submits that normally, no prior notice would be issued to the account

holder regarding freezing of account. Learned Assistant Public Prosecutor gives explanation stating that in case prior notice is issued regarding the intention to freeze the account, the account holder would withdraw the entire amount and nothing would be left for investigation or for the victims to be compensated and therefore, in the normal course, no prior notice to freeze the account would be issued. Learned Assistant Public Prosecutor also contends that the respondent, during the course of investigation, has got every authority to take steps for seizure of the suspected property and freezing of accounts and therefore, there is no illegality committed by the respondent in freezing the account of the petitioner by passing the Prohibitory Order.

6. Making a submission that the Investigating Agency is well empowered to freeze the account and seize the crime property and that the proper course that has to be adopted for seeking custody of the property or for de-freezing account is to file an application under Section 451 Cr.P.C, the learned Assistant Public Prosecutor relied upon the

decision of the single Bench of this Court in the case between **M/s. A.P.Product represented by its Proprietor Mr.Yagyanand Agarwal Vs. State of Telangana**¹ wherein the Court at Paras 37 to 40 held as follows:-

“37. Further, whether Police Officer applied his mind and satisfied on fulfilment of ingredients of seizure are matters for consideration by trial Court and it is permissible for the accused to raise such pleas, before the learned Magistrate but not in proceedings under Article 226 of the Constitution of India.

38. Section 451 of Cr.P.C. enables the trial Court to grant interim custody pending trial. Similarly, Section 457 also vests power in the Magistrate to deal with the property as deemed proper and necessary. An accused whose property is seized by police officer can file application to grant interim custody. This is an effective and efficacious remedy.

39. Though, under Article 226 of the Constitution of India, the jurisdiction of the Writ Court is very wide and all pervading wherever and whenever, by the conduct/decision of a public authority rights of a person are infringed. But the constitutional Courts are slow in entertaining the writ petitions where statutory scheme envisages certain procedures and aggrieved party has statutorily engrafted remedies.

40. In these two cases, the Police have already intimated seizing of bank account to the concerned Magistrate. As rightly pointed out by the learned Assistant Government Pleader, Sections 451 and 457 Cr.P.c. vest power in the concerned Magistrate to grant interim custody of the crime property and it is always open to an aggrieved person to file appropriate application or granting interim custody. The subject bank accounts are the crime properties in the

¹MANU/TL/0409/2020

respective crimes and the seizure is already intimated to the concerned Magistrates. Therefore, it is deemed that the property is in the custody of the said Courts. In exercise of power of judicial review, writ Court cannot trench into the jurisdiction of the concerned Magistrate to deal with the crime property and order for release of crime property on the grounds as urged in these writ petitions.[Mohd.Mazbool Ahmed (supra)]. As held by the Division Bench in the above case, it is always open to the petitioners to file appropriate application before the criminal Court regarding handling of bank accounts.”

7. However, contradicting the submission made and contending that where there is procedural irregularity, the said irregularity can be pointed out as the same amounts to abuse of process of law and thus the proceedings under Section 482 Cr.P.C. are maintainable, the learned counsel for the petitioner relied upon the decision of the Coordinate Bench of this Court in the case between **Meridian Educational Society, Hyderabad Vs. State of Telangana and others**² wherein the Court referring to the decision that is relied upon by the learned Assistant Public Prosecutor at Para 7, observed as follows:-

“(vi) Now coming to the facts of the case, it is relevant to note that it is the contention of the petitioner that the 3rd respondent did not inform the Magistrate

² 2021(6) ALD 474 (TS)

about the freezing of the Bank Account in question forthwith in compliance of the provisions under Section 102 of Cr.P.C. The 3rd respondent in his written instructions did not deny the same. Therefore, he has not informed the same to the concerned Magistrate.

(vii) Section 102(3) of Cr.P.C. clearly provides that the Magistrate is to be informed 'forthwith'. The said aspect fell for consideration. In A.P.Product v.State of Telangana 2021 (1) ALD (CrI.) 286 (TS)=2021 (1)ALT 528. In the said case, the term 'forthwith' was interpreted to mean 'as soon as may be' or 'with reasonable speed and expedition' or with a sense of urgency' or 'without any unavoidable delay'. It was held that forthwith does not mean instantaneous but would mean within a reasonable time. In that case, due to Covid -19 Pandemic, the Court permitted a delay of more than 5 months in intimating the Magistrate about the freezing of Bank Accounts.

(viii) The Delhi High Court in Muktaben M.Mashru v.State (NCT of Delhi), 2019 SCC Online Del.11509,. held that if the procedures under Section 102 are not followed, the freezing of the Bank Account is not legally sustainable. The relevant paragraphs are extracted below:

31. In the case of T.Subbulakshmi v. The Commissioner of Police (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 IO 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 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.

33. Recently, in the case of Manish Khandelwal v.State of Maharashtra, 2019 SCC Online Bom.1412, decided on 30.07.2019, 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.

(ix) It is clear from the facts that the concerned Magistrate was not informed at all. As held in A.P.Products's case (supra), the Magistrate has to be informed within reasonable time without any undue delay. The impugned notice was addressed on 11.08.2021, however, till date the Magistrate has not been informed about the freezing of the Bank Account in question. Therefore, the freezing of Bank Accounts in the instant case is liable to set aside on this ground alone.

(x) Placing reliance on the principle laid down in A.P.Product's case (supra), it is contended by the 5th respondent that the petitioner has an efficacious alternative remedy under Section 451 or 457 of the Cr.P.C. Reliance was placed on the order passed by this Court in Sri Darshan Kothari v.State of Telangana, W.P.No.9386 of 2021, decided on 05.07.2021, in support of its contentions. However, alternative remedy is not a bar to invoke the jurisdiction under Article 226. Moreover, where an act such as freezing of Bank Account is carried out without following the procedure laid down, the Court can interfere and set-aside such order."

8. Section 482 of Cr.P.C. reads as under:-

*482. **Saving of inherent powers of High Court**:- Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.*

9. The above provision thus makes it abundantly clear that to prevent the abuse of process of any Court or otherwise to secure the ends of justice, the High Court is empowered to make such orders as may be necessary to give effect to any of the orders under the code of Criminal Procedure. Indicating circumstances under which the power granted under Section 482 Cr.P.C. can be exercised, the Hon'ble Apex Court in the case between **State of Haryana Vs Bhajanlal**³, at Paras 108 and 109 of the order held as under:-

“In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the

³ 1992 SCC (CrI.) 426

exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- (1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.*
- (3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission*

of any offence and make out a case against the accused.

- (4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.*
- (5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- (6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- (7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

10. In the case on hand, the contention of the learned counsel for the petitioner is that, there is procedural irregularity that is committed by the respondent during the course of freezing of account and the procedure required by law during the course of freezing the account is not followed.

11. Having regard to the said fact and taking into consideration the law governing the field as enunciated supra, this Court is of the view that it is well empowered to deal with the present application wherein and whereby, the allegation is that the mandate of law is not followed during the course of investigation.

12. The main attack is on deviation of procedure and non-obedience to the procedure laid down which is required to be followed under Section 102 Cr.P.C. For better appreciation, Section 102 Cr.P.C. is extracted 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)¹ 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, 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.

13. Thus, the above provision makes it abundantly clear that wide power is granted to any police officer to seize any property which is alleged or suspected to have been stolen or which is found under circumstances which create suspicion of commission of any offence. Yet, while doing so, the police officer concerned is required to follow the procedure laid down there under. Stating that in case the procedure laid down is not followed, the seizure of property or the steps taken in that regard are unsustainable under law, the learned counsel for the petitioner relied upon the decision of the Bombay High Court in **Dr.Shashikant**

D.Karnik v. State of Maharashtra⁴ wherein the High Court of Bombay at Paras 17 & 18 of the order held as under:-

“17. Re-reading of Section 102 of the Cr.P.C. shows that what is permitted to be done is the seizure of the property by the Police Officer. Now, as per the view of the Supreme Court, bank accounts can be seized under Section 102 of the Cr.P.C. There is no doubt about that, and since they are bank accounts, the seizure means their attachment by the police and the attachment order of the bank accounts will have the effect of stopping the account holder from operating those bank accounts. But in any case when the powers are to be exercised by the police officer under Section 102 of Cr.P.C. and they are so exercised, there is nothing like giving oral instructions of stopping the operation of the account or written instructions not to allow operations of the accounts. If such instructions are given either oral or in writing then they are to be regarded as attachment of the account. Therefore, what is stated in the aforesaid affidavit of Mr.Pardeshi, as quoted above, is an attempt to escape from the consequences of non-compliance to the Section 102 of Cr.P.C. No other provision of the Cr.P.C. was shown to us by Mr.Mhaispurkar which

⁴ 2008 CRILJ.148

empowers the police officer, firstly, to issue orders oral or written of stopping the operation of account before attachment or seizure and then pass second order of attachment of account. There is nothing like empowering the police officers to issue ad interim or temporary order of stopping the operation and then final order of attachment of the account. If they issue any order of stopping operation of the account, it has to be treated as action under Section 102 of Cr.P.C. resulting in seizure i.e. attachment of the account, and if that is so the compliance to all the three requirements, is a must.

18. *So far as requirement under Section 102(1) is concerned, it is obligatory upon the police to show that the property which they want to attach or attaching is under circumstances which create suspicion of the commission of any offence. From paragraph 5 of the affidavit of Mr.Pardeshi, ACP attached to ACB, quoted above, and from the oral submissions made by Mr.Mhaispurkar, it is clear that till this date the authority who attached the accounts of the petitioner have not been able to come to any conclusion, even prima facie case that the amount in the accounts has any connection with the offence of disproportionate income of the petitioner. In these circumstances, there is no option but to hold that any action taken in giving oral instructions of stopping the operation of the*

account or in issuing written directions of stopping the operation of account, is illegal per se. Section 102 of Cr.P.C. does not permit any police officer to seize the property, viz, to attach the account in the first instance and then to decide whether the property has any connection with the commission of any offence. The attachment orders oral or written in this case are issued in 2002, we are in 2007, but till this date investigating agency has not been able to come to a conclusion, as stated in paragraph 5 of the affidavit reproduced above, that the amount lying in the bank accounts, is out of the disproportionate income of the petitioner. In these circumstances, the entire attachment under oral or written directions has to be struck down as has been illegal.”

14. In the case on hand, the contention of the learned counsel for the petitioner is that the mandatory requirement to report the seizure to the Magistrate has not been followed at all and there is no material on record to show that immediately, the matter is reported to the concerned Magistrate.

15. Learned Assistant Public Prosecutor however submits that intimation regarding freezing of account is given to the

concerned Magistrate. On which date such intimation is given is not stated. No proof in that regard is furnished to this Court. At least, the date and time of such a report is not indicated anywhere.

16. It is clearly mandated under Section 102(3) Cr.P.C. that every police officer acting under sub-section 1 of Section 102 Cr.P.C. shall forthwith report the seizure to the Magistrate having jurisdiction. The word “forthwith” that is used in sub-section 3 of Section 102 Cr.P.C. itself goes to show that reporting to concerned Magistrate by the Police Officer has been given much prominence by the legislature by its wisdom to prevent abuse of process of law.

17. In the case on hand, there is no material whatsoever to show that the freezing of account is through any written proceedings. No doubt, even through oral instructions, the account can be frozen. However, after doing so, the concerned Police Officer has to reduce the proceedings that went on in writing and then has to forward the same to the jurisdictional Magistrate forthwith. In case such procedure is followed, nothing would have prevented the respondent

to furnish the said information to this Court. Therefore, this Court is of the view that on freezing the account, the procedure required to be followed that is laid down under Section 102(3) Cr.P.C. is not followed. Further, the learned counsel for the petitioner submits that information regarding the freezing of account is not provided to the petitioner in writing till date. The learned Assistant Public Prosecutor did not state that on freezing the account, such information is furnished to the petitioner. The learned Assistant Public Prosecutor who stated that in case prior intimation is given, there is every possibility of the Account holder to withdraw the amount, did not state as to why after freezing the account the fact of freezing the account is not intimated to the account holder. Principles of natural justice require that the person holding the account should be informed that his account has been frozen due to suspicion regarding the involvement of the offence. Furthermore, there is no material that is brought to the notice of this Court by the respondent to show that the amount that is lying in the account of the petitioner is the proceeds of crime. Even as per the submission of the

learned Assistant Public Prosecutor, a sum of Rs.5 lakhs was shown to be deposited into the account of the petitioner as regards to the crime concerned. The crime was registered in the month of August 2021 and the case is still under investigation. For what purpose the account is still required to be in frozen state is not stated anywhere. Therefore, this Court is of the opinion that the account cannot be permitted to stay in a frozen state any longer. Also, as already indicated, the procedure required by law while freezing the account and subsequent thereof is not followed. As the mandatory requirement is not complied with and as no material is produced or shown indicating the requirement of the account to be in frozen state, this Court is of the view that the request of the petitioner requires to be honoured.

18. Resultantly, the Criminal Petition is allowed. The Prohibitory Order by which the petitioner's bank account No.00623888001 that is maintained with Mumbai Branch of HSBC India has been frozen, is consequently set-aside. The respondent is directed to defreeze the bank account of

the petitioner on the petitioner furnishing a bond for Rs.25 lakhs. The petitioner shall also give an undertaking that he would not close the account and that he would produce the relevant transaction details as and when required either to the Court or to the Investigating Agency in all aspects during the course of investigation. The present order does not debar the respondent from taking steps in freezing the account at a subsequent stage in case sufficient material or *prima facie* evidence is collected to show that the proceeds of crime are deposited into the bank account of the petitioner and that the petitioner's involvement in the commission of offence is found out. The petitioner is also specifically directed not to withdraw the entire amount that is in the account so as to hamper the investigating process or to escape from the liability. The bank account shall only be operated for the business purpose for which the account is opened and is being operated.

19. As a sequel, pending miscellaneous applications, if any, shall stand closed.

Dr.JUSTICE CHILLAKUR SUMALATHA

Dt.17.08.2022

Note: LR copy to be marked.

ysk

HON'BLE Dr. JUSTICE CHILLAKUR SUMALATHA

CRIMINAL PETITION No.6069 of 2022

Dt.17.08.2022

