

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1526 of 2022

Arising Out of PS. Case No.-17 Year-2021 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

Sukhdani Devi, W/o Late Sachindra Nath Dubey, resident of 119, Gandhi Path, North S.K. Puri, Near Gitanjali Pathology, Boring Road, Patliputra, P.S.- Patliputra, Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Chief Secretary, Govt of Bihar, Patna.
2. The Chief Secretary, Government of Bihar, Main Secretariat, Patna.
3. The Additional Chief Secretary, Government of Bihar, Main Secretariat, Patna.
4. The Director General of Police, Bihar, Patna.
5. The Additional Director General of Police, Bihar, Patna.
6. The Vigilance Commissioner, Government of Bihar, Patna.
7. The Joint Secretary, Department Of Home, Bihar, Patna.
8. The Under Secretary, Department Of Home, Bihar, Patna.
9. The Inspector General Of Police (Economic Offence Unit), Bihar, Patna.
10. The Deputy Inspector General Of Police (Economic Offence Unit) Bihar, Patna.
11. The Superintendent Of Police, Economic Of Offence Unit, Bihar, Patna.
12. The Deputy Superintendent Of Police-cum-Station House Officer, Economic Offence Unit, Bihar, Patna.
13. The Additional Superintendent Of Police-cum-Investigating Officer, Economic Offence Unit, Bihar, Patna.
14. Sri Amritendu Shekhar Thakur, son of not know, at present posted as the Additional Superintendent Of Police-cum-Investigating Officer, Economic Offence Unit, Bihar, Patna.

... .. Respondents

with

Criminal Writ Jurisdiction Case No. 359 of 2023

Arising Out of PS. Case No.-17 Year-2021 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

Abha @ Abha Dubey, Wife of Rakesh Kumar Dubey, R/o 119, Gandhi Path, North S.K. Puri, Near Gitanjali Pathology, Boring Road, Patliputra, P.S.- Patliputra, Patna.

... .. Petitioner

Versus



1. The State of Bihar through the Chief Secretary, Govt. of Bihar Patna Bihar
2. The Additional Chief Secretary (Home) Government of Bihar, Patel Bhawan, Bailey Road, Patna Bihar
3. The Director General of Police, Bihar, Govt. of Bihar, Main Secretariat Patna.
4. The Additional Director General of Police (Economic Offence Unit), Bihar, Patna.
5. The Superintendent of Police, Economic of Offence Unit, Bihar, Patna.
6. The Deputy Superintendent of Police-cum-Station House Officer, Economic Offence Unit, Bihar, Patna.
7. The Additional Superintendent of Police-cum-Investigating Officer, Economic Offence Unit, Bihar Patna.

... .. Respondents

Appearance :

(In Criminal Writ Jurisdiction Case No. 1526 of 2022)

For the Petitioner : Mr. P.N. Shahi, Sr. Advocate
Mr. Sanjeev Kumar Mishra, Advocate
For the State : Mr. Manish Kumar, G.P.-4
Mr. Deepak Kumar, A.C. to G.P.-4
For the Vigilance : Mr. Rana Vikram Singh, Advocate
For the EOU : Mr. Vishwanath Pd. Singh, Sr. Advocate
Ms. Soni Srivastava, Advocate

(In Criminal Writ Jurisdiction Case No. 359 of 2023)

For the Petitioner : Mr. P.N. Shahi, Sr. Advocate
Mr. Manini Jaiswal, Advocate
For the State : Mr. Manish Kumar, G.P.-4
Mr. Manoj Kumar, A.C. to G.P.-4
For the Vigilance : Mr. Rana Vikram Singh, Advocate
For the EOU : Mr. Vishwanath Pd. Singh, Sr. Advocate
Ms. Soni Srivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
COMMON ORAL JUDGMENT
Date : 08-11-2023

Since the issue involved in both these criminal writ petitions is common, they have been heard together and are being disposed of by this common judgment.

2. In Cr.W.J.C. No.1526 of 2022, the petitioner is challenging the order dated 10.08.2022 passed by the learned



Special Judge, Vigilance, Patna, in Special Case No. 36 of 2021, arising out of E.O.U. P.S. Case No.17 of 2021, by which the prayer to release/de-freeze all the bank accounts of the petitioner has been rejected save and except the pension account of the petitioner. Further prayer has been made by the petitioner to direct the investigating agency to release the following bank accounts of the petitioner:-

- (i) SB-625901135776 maintained in ICICI Bank, Boring Road, Patna.
- (ii) SB-10027601509 maintained in S.B.I. PBB Branch, Patna.
- (iii) SB-37072137868 maintained in SBI, PBB Branch, Patna.
- (iv) SB-34939414822 (pension account) maintained in SBI, PBB Branch, Patna.
- (v) SB-040401011017 maintained in ICICI Bank, Boring Road, Patna.
- (vi) SB-20682337109 maintained in Indian Bank (Allahabad Bank), Jasidih Branch.

3. In Cr.W.J.C. No.359 of 2023, the petitioner is challenging the order dated 11.11.2022 passed by the learned Special Judge, Vigilance, Patna, in Special Case No. 36 of 2021, arising out of E.O.U. P.S. Case No.17 of 2021, by which the prayer to release all bank accounts of the petitioner has been



rejected. Further prayer has been made by the petitioner to release the following bank accounts of the petitioner:-

- (i) SB-18630100010346 maintained in the Bank of Baroda, S.K. Puri Branch, Patna.
- (ii) PPF No.30116364090 maintained in SBI, S.K. Puri Branch, Patna.
- (iii) SB-915010029503784 maintained in the Axis Bank, Boring Road, Patna.
- (iv) Fixed Deposit bearing No. 18630300038779 maintained in the Bank of Baroda, S.K. Puri Branch, Patna.
- (v) Fixed Deposit being No. 18630300055544 maintained in the Bank of Baroda, S.K. Puri Branch, Patna.
- (vi) Fixed Deposit bearing No. 18630300037806 maintained in the Bank of Baroda, S.K. Puri Branch, Patna.

4. These criminal writ petitions arise out of the a criminal case vide E.O.U. P.S. Case No. 17 of 2021 lodged against one Rakesh Kumar Dubey, the then Superintendent of Police, Bhojpur at Ara, for possessing assets both moveable and immovable disproportionate to his known source of income and subsequently, the bank accounts of both the petitioners, who are



mother and wife of accused Rakesh Kumar Dubey, have been frozen by the Economic Offences Unit (for short “E.O.U.”) under Section 102 of the Cr.P.C. in connection with aforesaid case. The aforesaid case i.e. E.O.U. P.S. Case No. 17 of 2021 has been registered under sections 13(2) read with Section 13(1)(b) of the Prevention of Corruption Act, 1988.

5. Learned Senior Counsel for the petitioners submits that the criminal case has been registered against accused Rakesh Kumar Dubey under the provisions of the Prevention of Corruption Act, 1988, so the action of freezing the bank accounts of the petitioners, who are mother and wife of the petitioner, can only be done under Section 18-A of the Prevention of Corruption Act, which came into force w.e.f. 27.06.2018, and for this provisions, modality and process as mentioned in Criminal Law Amendment Ordinance, 1944 has been adopted in Section 18-A of the Prevention of Corruption Act, 1988.

6. Learned Senior Counsel for the petitioners draws the attention of this Court to Section 18-A of the Prevention of Corruption Act, 1988, which provides that “save as otherwise provided under the Prevention of Money Laundering Act, 2002, the provisions of the Criminal Law



Amendment Ordinance, 1944 shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act. For the purpose of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 shall have the effect, subject to the modification that references to “District Judge” shall be construed as reference to “Special Judge”. According to learned counsel for the petitioners, as per the provisions as contained in Section 18-A of the Prevention of Corruption Act as well as the provisions as contained in Section 3 of the Criminal Law Amendment Ordinance, 1944, the attachment or seizure of money or other property can be done after taking prior permission from the Special Court/Judge concerned.

7. Learned Senior Counsel for the petitioners relies upon the decision of the Hon’ble Supreme Court (three Judges Bench) in the case of *Neveda properties Private Limited through its Directors vs. State of Maharashtra & Another* reported in *(2019) 20 SCC 199* and submits that in the aforesaid decision the Hon’ble Supreme Court has considered the provisions of the Criminal Law Amendment Ordinance, 1944 and the offence punishable under the Prevention of Corruption



Act, 1988.

8. Learned Senior Counsel for the petitioners further relies upon a recent decision of the Hon'ble Supreme Court in the case of *Ratan Babu Lal Lath vs. The State of Karnataka* reported in *2021 (3) Crimes 339 (S.C.)* and submits that in the aforesaid decision the Hon'ble Supreme Court has held that freezing of bank account of the appellant taking recourse to Section 102 Cr.P.C. for an alleged offence under the Prevention of Corruption Act is not sustainable as the Prevention of Corruption Act is a Code by itself.

9. By making the aforesaid submissions, learned Senior Counsel for the petitioners submits that the freezing of bank account of the petitioners is wholly illegal and is not sustainable in the eye of law.

10. Learned counsel for the E.O.U. and the Vigilance Department jointly submit that sections 22 and 23 of the Prevention of Corruption Act specifically mentions about the application of the Cr.P.C. and Section 102 Cr.P.C. talks about the power of police officials to seize certain properties and this power of the police has not been curtailed by introduction of Section 18-A of the Prevention of Corruption Act. They further submit that Section 18-A of the Prevention of Corruption Act



has introduced provisions of Criminal Law Amendment Ordinance, 1944 which prescribed the procedure for attachment and disposal of attached property whereas, Section 102 of the Cr.P.C. provides for seizure of the articles and as such, the introduction of Section 18-A of the Prevention of Corruption Act will not exclude the provision of section 102 of the Cr.P.C.

11. It has been contended by learned counsel for the E.O.U. and the Vigilance Department that the decision of *Ratan Babu Lal Lath vs. The State of Karnataka (supra)*, relied upon by learned counsel for the petitioner, has no binding effect as the aforesaid order of the Hon'ble Supreme Court is on the basis of concession made by the respondent without contesting whether Section 102 of the Cr.P.C. would be applicable or not for attachment of bank account. In the aforesaid order, neither the previous judgments nor any reasons have been assigned for coming to the conclusion that Section 102 of the Cr.P.C. will not be applicable in reference to the offence under the Prevention of Corruption Act after introduction of Section 18-A in the said Act. They further submit that the Criminal Law Amendment Ordinance, 1944 has been made applicable by Section 18-A of the Prevention of Corruption Act deals with attachment and disposal of the



property whereas, Section 102 of the Cr.P.C. authorizes for seizure of property and freezing of the bank account so that the money be kept in safe custody and after conclusion of trial the seized money can be dealt in accordance with law. If the bank account is not frozen then the concerned person may withdraw the money and it would be practically impossible to recover the money which has link with the commission of offence committed by accused as public officer.

12. On the point that the bank account can be seized/frozen under Section 102 of the Cr.P.C., learned counsel for the Vigilance Department has relied upon the decisions of the Hon'ble Supreme Court in the case of *State of Maharashtra vs. Tapas D. Neogy* reported in (1999) 7 SCC 685 and in the case of *Teesta Atul Setalvad vs. The State of Gujarat* reported in (2018) 2 SCC 372.

13. By making the aforesaid submissions, learned counsel for the E.O.U. and the Vigilance Department jointly submit that there is no illegality and infirmity in the impugned order and the action of the E.O.U. in freezing the bank accounts of the petitioners is just and proper and therefore, this Court may dismissed both these petitions.

14. In reply, learned Senior Counsel for the



petitioner submits that the judgments in the case of *State of Maharashtra vs. Tapas D. Neogy and Teesta Seetalvad (supra)* were delivered much earlier to the amendment of the Prevention of Corruption Act and therefore, the aforesaid judgments are not applicable in the present case.

15. I have heard Sri P.N. Shahi, learned Senior Counsel assisted by Sri Sanjeev Kumar Mishra, learned counsel for the petitioners, Sri Manish Kumar, learned counsel for the State, Sri Rana Vikram Singh, learned counsel for the Vigilance Department and Sri Vishwanath Prasad Singh, learned Senior Counsel assisted by Ms. Soni Srivastava, learned counsel for the Economic Offences Unit. I have also perused the materials available on record.

16. Having considered the rival contentions of the parties, the issue involved in these cases are whether the seizure/freezing of the bank accounts of the petitioners, who are mother and wife of the main accused, under Section 102 of the Cr.P.C. when the criminal case has been instituted under the provisions of the Prevention of Corruption Act is legal or not and whether the immovable property can be attached under Section 102 of the Cr.P.C. pursuant to institution of a criminal case.



17. The contention of learned Senior Counsel for the petitioners is that Section 18-A of the Prevention of Corruption Act, 1988 came into force w.e.f. 26.07.2018 and for this provisions, the modalities and process as mentioned in Criminal Law Amendment Ordinance, 1944, has been adopted in Section 18-A of the Prevention of Corruption Act, 1988.

18. It will be relevant to quote Section 18-A of the Prevention of Corruption Act, 1988 and Section 3 of the Criminal Law Ordinance, 1944, which read as under:-

"Section 18-A of the P.C. Act, 1988:

"18A. Provision of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.- (1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purpose of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall have effect, subject to the modification that the references to "District Judge" shall be



construed as references to "Special Judge."

Section 3 of the Criminal Law Ordinance, 1944:

"3. Application for attachment of property.

(1) Where the State Government or, as the case may be, the Central Government, has reason to believe that any person has committed (Whether after the commencement of this Ordinance or not) any scheduled offence, the State Government or, as the case may be, the Central Government may, whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Ordinance of the money or other property which the State Government or, as the case may be, the Central Government believes the said person to have procured by means of the offence, or if such money or property cannot for any reason be attached, or other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908, shall apply to



proceedings for an order of attachment under this Ordinance as they apply to suits by the Government.

(3) An application under sub-section (1) shall be accompanied by one or more affidavits, stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnish?

(a) any information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;

(b) the names and addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.”

19. From conjoint reading of the provisions of Section 18-A of the Prevention of Corruption Act, 1988 and also the provisions of Section 3 of the Criminal Law Amendment Ordinance, 1944, it is clear that procedure for attachment of property or confiscation of property acquired or procured by means of an offence under the Prevention of Corruption Act,



1988, the procedure prescribed under the provisions of the Criminal Law Amendment Ordinance, 1944 shall apply and the Prevention of Corruption Act being a complete Code and a special Act will prevail over the provisions of Section 102 of the Cr.P.C so far as it relates to the attachment or seizure of property when the accused is facing prosecution under the Prevention of Corruption Act, 1988. The provision of Section 102 of the Cr.P.C. so far as it relates to confiscation and freezing of property is excluded because of the provisions of attachment and freezing are specified under the Prevention of Corruption Act. Any attachment of property which are subject matter of crime under the Prevention of Corruption Act can only be done under the provisions of the Criminal Law Ordinance, 1944 and not under the provisions of Section 102 of the Cr.P.C.

20. Paragraph no.12 of the judgment of the Hon'ble Supreme Court rendered in case of ***State of Maharashtra vs. Tapas D. Neogy (supra)*** reads as under:-

"12. 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 that bank account of the accused or any of his relation is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabd High Courts, does not represent the correct law. It may also be seen than under the prevention of Corruption Act, 1988, in the matter of imposition of the fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount of



the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his accounts, and so, we do not interfere with the same."

21. Paragraph nos. 17 and 18 of the judgment of the Hon'ble Supreme Court rendered the case of ***Teesta Atul Setalvad vs. The State of Gujarat (supra)*** read as under:-

"17. The sweep and applicability of Section 102 of the code of is no more res integra. That question has been directly considered and answered in State of Maharashtra v. Tapas D. Neogy. 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 "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 para 6, this Court noted thus: (SCC p. 691)

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

18. *After analysing the decisions of different High Courts, this Court in para-12, expounded the legal position thus : (SCC pp. 694-95)*

"12. 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 that bank account of the accused or any of his relation is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabd High Courts, does not represent the correct law. It may also be seen than under the prevention of Corruption Act, 1988, in the matter of imposition of the fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount of the value of the property which the accused person has obtained by committing the



offence or where the conviction is for an offence referred to in clause (e) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his accounts, and so, we do not interfere with the same."

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.”

22. Paragraph no.13 of the judgment of the Hon’ble Supreme Court rendered in the case of *Nevada properties Private Limited through its Directors vs. State of Maharashtra & Another (supra)* reads as under:-

“13. “Before we proceed further, we would like to refer to the Criminal Law Amendment Ordinance, 1944 (No. XXXVIII of 1944) which was promulgated in exercise of powers conferred under Section Criminal Appeal arising out of 72 of the Ninth Schedule of the Government of India Act, 1935 to prevent disposal or concealment of property procured by means of offences specified in its Schedule, which include offences punishable under Sections 406, 408, 409, 411 and 414 of the IPC in respect of Government property, property of local authority or a Corporation established by or under a Central, Provincial or State Act, etc., and an offence punishable under the Prevention of Corruption Act, 1988, an insertion made by the Prevention of Corruption Act, 1988....”

23. In a similar situation, the Hon’ble Supreme Court in the case of *Ratan Babu Lal Lath vs. The State of Karnataka* (supra) has held as under:-

“The only question which we are



examining is whether the attachment of bank account of the appellant is sustainable in exercise of powers under Section 102 Cr.P.C.

The counter affidavit of the respondent seeks to suggest that they are in the process of filing an application under Section 18A of the Prevention of Corruption Act, 1988, since the earlier authorization issued by the Government under Section 3 of the Criminal Law Amendment of Ordinance, 1944 was not in the form of the Government Order.

Be that as it may, on that account, it is not possible to sustain the freezing of the bank account of the appellant taking recourse to Section 102 Cr.P.C. as the Prevention of Corruption Act is a Code by itself.”

24. In the opinion of this Court, the judgment of the Hon'ble Supreme Court rendered in the case of ***State of Maharashtra vs. Tapas D. Neogy and Teesta Atul Setalvad vs. The State of Gujarat (supra)*** relied upon by learned counsel for the respondents were delivered in the year 1999 and 2017 respectively i.e. before the amendment in the Prevention of Corruption Act, 1988. The provision of Section 18-A of the Prevention of Corruption Act came into force w.e.f. 26.07.2018 only. Therefore, the aforesaid judgments will not be applicable in the present case and are of no help to the respondents.



25. A similar question was raised before the Manipur High Court in the case ***Central Bureau of Investigation vs. Konjengbam Ongbi Mangsatabam Ningol Devi & Ors. (Cril. Rev. Petn. No.14 of 2021)*** and vide order dated 18.01.2022 the Manipur High Court after considering the law including the judgments rendered in the case of ***Ratan Babulal Lath vs. State of Karnataka, State of Maharashtra vs. Tapas D. Neogy, Testa Atul Setalvad vs. State of Gujarat*** (supra) has held in paragraph nos. 7, 8 and 10 as under:-

“[7] It has also been submitted by the learned counsel appearing for the petitioner that the judgment of the Hon'ble Apex Court in the case of "Ratan Babulal Lath's" (Supra), relied on by the counsel for the respondent, had been passed without considering the earlier judgments of the Hon'ble Apex Court in the cases of "Tapas D. Neogy" (Supra) and "Teesta Atul Setalval" (Supra) and as such, the said judgement had been passed par incuraim and it has no binding or precedential value. The learned counsel, accordingly, submitted that the preliminary objection raised by the counsel for the respondents has no merit and the same deserves to be rejected outright.

In support of his contentions, the learned counsel relied on the judgment of the Hon'ble Supreme Court rendered in the



case "State of Assam Vs. Ripa Sharma" reported in (2013) 3 SCC 63 wherein, it has been held that judgment rendered in ignorance of earlier judgement of Benches of Co-equal strength would render the same par incuriam and that such judgments cannot be elevated to the status of precedent.

[8] On careful examination of the provisions of Section 18 A and Section 29 (c) (iii) of the P.C. Act as well as the provisions of the Criminal Law Amendment Ordinance, 1944, it is crystal clear that for attachment, administration of attached property execution of order of attachment or confiscation of money or property procured by means of an offence under the Prevention of Corruption Act, 1988, the procedure prescribe under the provisions of the Criminal Law Amendment Ordinance, 1944 shall apply and the P.C. Act being a complete code and a Special Act will naturally exclude the application of Section 102 Cr.P.C. in the matter of attachment or seizure of property relating to offence committed under the P.C. Act, 1988. The resultant conclusion is that if any property is to be attached or seized in connection with the allegation of committing offence under the P.C. Act, such attachment or seizure of the property is to be carried out in terms of the



provisions under the Criminal Law Amendment Ordinance, 1944 and not under the provisions of Section 102 Cr.P.C. If the authorities attached or seized any such properties in connection with offences under the P.C. Act taking recourse to Section 102 Cr.P.C., such attachment or seizure is not sustainable as held by the Hon'ble Supreme Court in the case of "Ratan Babulal Lath" (Supra).

[10] The counsel for the petitioner did not controvert or deny the contentions made on behalf of the respondents that the properties of the respondents have been seized without following the provisions laid down under the Criminal Law Amendment Ordinance, 1944. Accordingly, the seizure of the properties of the respondents are not sustainable. In view of the above and for the reasons given hereinabove, this Court finds force in the preliminary objection raised on behalf of the respondents that the petitioner (CBI) has no locus standi to file the present revision petition. In the result, the present criminal revision petition is hereby dismissed as not maintainable, however, without costs."

26. From the aforesaid discussions, it is clear that in a criminal case registered under the Prevention of Corruption Act, the seizure and freezing of the bank account and



confiscation of the property can only be done under Section 18-A of the Prevention of Corruption Act and under the provisions of the Criminal Law Amendment Ordinance, 1944. In the opinion of this Court, the freezing of bank account and confiscation of properties under Section 102 of the Cr.P.C. is not permissible in a case registered under the Prevention of Corruption Act as the Prevention of Corruption Act is a special Act and there is specific provision under the aforesaid Act which provides for the procedure for seizure and freezing of properties, the same will also be applicable in the present case registered under the provisions of the Prevention of Corruption Act. The Police / Investigating Agency i.e. the Economic Offences Unit cannot be allowed to proceed under Section 102 of the Cr.P.C. for freezing the bank accounts of the petitioners.

27. In the result, these applications are allowed. Accordingly, it is held that the freezing of the bank accounts of the petitioners, who are the mother and wife of the accused, under Section 102 of the Cr.P.C. is illegal. The prayer of the petitioners for releasing/de-freezing their bank accounts, as mentioned in paragraph nos. 2 and 3 of this order, is allowed. Consequently, the impugned orders dated 10.08.2022 and 11.11.2022 passed by the learned Special Judge, Vigilance,



Patna, in Special Case No. 36 of 2021, arising out of E.O.U. P.S. Case No. 17 of 2021 are set aside. However, the respondents are at liberty to proceed against the petitioners in accordance with law.

(Sandeep Kumar, J)

pawan/-

AFR/NAFR	A.F.R.
CAV DATE	N/A.
Uploading Date	24.11.2023.
Transmission Date	24.11.2023.

