CNR No. MHGA090001012022
R.C.C. No. 10/2022
State -Vs- Mamata +1
Order below Exh No.15

IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS, CHAMORSHI
(Presided Over by Diksha D. Vighne)

Regular Criminal Case No. 10/2022

(State of Maharashtra -Vs- Mamata Bishwas +1)

Sunil Balaji Jettiwar
Age:- 46 years, Occ.:- Service,
R/o.:- Chamorshi,
Tq.- Chamorshi, Dist.- Chandrapur. ... **APPLICANT**

-VERSUS-

State of Maharashtra,
Through Police Station Officer
Police Station, Mulchera
Tq.- Mulchera, Dist.-Gadchiroli. ... **NON-APPLICANT**

Appearance :-

For the applicant : Learned advocate Shri. N. U. Lodalliwar.
For State : Learned Spl. A.P.P. Shri. D. V. Donadkar.

Order Below Exh.15

(Passed on 03/11/2022)

This is an application filed by accused no.2 under section 102 r/w. Section 457 of Code of Criminal Procedure, 1973.

2. It is stated by accused no.2 that on 01-07-2019 a crime under section 406, 409, 420, 175, 187 r/w. Section 34 of Indian Penal Code had been registered against him and Mamata Bishwas vide Crime No. 033/2019. During investigation, the investigation officer had seized his Bank accounts as follows.

Sr. No.	Bank Name	Branch Name	Account No.
1	Zilha Madhywarti Sahakari Bank	Mulchera	202720085006907
2	Bank Of India	Chamorshi	964610110001151
3	Bank Of Maharashtra	Chamorshi	20235319351
4	Bhartiya State Bank	Chamorshi	30423865652
5	Vidrabha Kokan Gramin Bank	Mulchera	405110110001276

3. It is contended in the application and submitted by learned advocate of the applicant/accused no.2 that as per section 102(3) of Code of Criminal Procedure, after seizure of bank account investigation officer shall inform forthwith about seizure to the Magistrate having jurisdiction. It is a mandatory provisions because the word "shall" is use under section 102 (3) of Cr.P.C. But investigation officer illegally seized bank account and did not inform to the magistrate. Therefore, the seizure of bank accounts of accused no.2 is illegal and on this ground his seized accounts shall be de-freeze.

4. Moreover, applicant is working as Gramsevak, mouza-Devada, Tq.-Mulchera, Dist.-Gadchiroli. He is not suspended from his work. His monthly salary is deposited in Zilha Madhywarti Sahakari Bank Branch Mulchera. But due to seizure and freezing of said accounts of accused no.2, he is facing financial inconvenience. He is a married person and having a old age mother, a wife, a daughter and a son in his family. His daughter and son are taking education in 12th and 8th Standard, respectively. Moreover, his old age mother is having medical issues. For that purpose, accused no.2 required money. But due to freeze of five accounts of accused no.2 by investigation officer, he and his family are facing financial difficulty. Therefore, on 14-10-2019 he had wrote a letter to Sub-Divisional Police Officer, Aheri but applicant did not received any response from him. Therefore, he has submitted that the seizure and freezing of accounts of accused no.2 by investigation officer is illegal. Hence, he prayed for de-freezing of personal accounts of accused no.2 seized by investigation officer and Sub-Divisional Police Officer, Aheri.

5. Learned A.P.P. has filed his say on the back-leaf of the application and stated that applicant is a accused in this offence. At the time of incident he was working as Secretary in Grampanchayat Vivekanandpur. During that period there was a criminal misappropriation of money was caused. The whole money was transacted by President and Secretary of Grampanchayat Vivekanandpur through their bank accounts. Approximately, Rs. 50,88,503/- were misappropriated. Therefore, to avoid further misappropriation investigation officer has seized the accounts of accused no.2. Hence, he prayed that not to release seized accounts.

6. Perused application and say. Heard learned advocate for accused and learned A.P.P. for State. I have perused the record of the case. The accused no.1 and 2 are charge-sheeted for the offence punishable under section 406, 409, 420, 175, 187 r/w. Section 34 of the Indian Penal Code. As per the case of prosecution accused no. 1 and 2 were President and Secretary of Grampanchayat Vivekanandpur, respectively. In the financial year-2016-17, 2017-18, 2018-19 accused no.1 and 2 had committed criminal misappropriation of government money which was sanctioned under 14th Vitta Aayog. I have perused record, I find that First Information Report was lodged on 01-07-2019. Thereafter, police had investigated the offence under section 156 of Cr.P.C. and during investigation police had seized aforementioned accounts of accused no. 2. But on perusal of record it is seen that investigation officer did not informed to the court about seizure of bank accounts of accused. As per section 102 (3) apparently it is seen that the word “shall” is used therefore it is mandatory. But as per the ratio held by **Hon’ble Allahabad High Court in Criminal Misc. Writ Petition No. 11201 of 2021 Amit Singh Vs State of U.P. and Ors.,** decided on 18-04-2022 it was held that the provision of section 102 (3) of Cr.P.C. is not mandatory but it is directory. The Hon’ble High Court while deciding this case had relied upon the judgment of **Hon’ble Supreme Court in the case of Nasuruddin and Ors. Vs Sitaram**

Agrawal AIR 2003 Supreme Court 1543. In which it was held that if and an is required to perform by a private person with in a specified time, the same would ordinarily be mandatory but when a public functionary is required to perform a public function within a time frame, the same will be held to be directory unless the consequence therefore are specified. Therefore, it was held in **Amit Singh Vs State of U.P. and Ors., (Supra)** that *"since the consequence have not been specified, it would be safe to hold that requirement of section 102 (3) Cr.P.C. cannot be term as mandatory but would be directory in nature."*

7. Keeping in mind the aforesaid principle that the direction specified in section 102 (3) of Cr.P.C. are directory and not mandatory. It is proper to held that the submission of learned advocate for applicant/accused no.2 that seizure of bank accounts of accused no.2 by investigation officer is illegal because he did not complied with section 102 (3) of Cr.P.C. is not tenable. Moreover, investigation officer has filed charge-sheet in this case. At that time he has filed information about seizure of accounts alongwith the statements of accounts seized and freezed by them. As per the case of prosecution during financial year-2016-17, 2017-18, 2018-19 accused no.1 and 2 were President and Secretary of Grampanchayat Vivekanandpur, respectively. On perusal of statements of accounts of accused no.2 filed by investigation officer alongwith charge-sheet it prima facie appears that huge amounts were transacted from his accounts. This case is registered in respect of misappropriation of money. Therefore, the transactions through bank accounts has an important role to play while unfolding the case of prosecution. When the seized bank accounts of accused no.2 are important as evidence to the case prosecution, in such circumstances it is not proper to de-freeze those bank accounts on mere grounds that investigation officer did not informed about seizure to the magistrate within reasonable time so also no specified period and its consequences are mentioned in section 102 (3) of Cr.P.C.

8. So far as, the submission of learned advocate for accused that due to freezing of his salary accounts he and his family are facing financial crises. Accused no. 2 is at liberty to open another account and submit to his office that his another account be treated as his salary account and deposit his salary in that new account. When accused has option to open another salary account then his seized accounts which are part of evidence in present crime cannot be de-freeze and release on Supratnama to him. Considering aforesaid reasons I find that applicant/accused no.2 is not entitled for release of his aforementioned bank accounts on supratnama. Hence, I pass following order.

<u>Order</u>

Application is rejected

Digitally signed by DIKSHA DINESH VIGHNE
Date: 2022.11.03 17:51:06 +0530

Date 03/11/2022

(Diksha D. Vighne)
Judicial Magistrate First Class,
Chamorshi

<u>CERTIFICATE</u>

I affirm that the contents of this P.D.F. file are word to word same, as per original Judgment.

Name of Stenographer : Mr. M.R.Mohurle, Stenographer (Grade-3)

Name of Court : Jt. Civil Judge (Jr.Dn.) & JMFC, Chamorshi.

Date of Judgment : 03/11/2022.

Judgment checked and

signed by Presiding Officer on : 03/11/2022.

Judgment uploaded on : 03/11/2022.