

Court No. - 1

Case :- CRIMINAL MISC. WRIT PETITION No. - 3511 of 2022

Petitioner :- M/S SJS Gold Pvt. Ltd. Thru. Director Sunil Jaihind Salunkhe And Another

Respondent :- State Of Up Thru. Addl. Chief Secy. Home Deptt. Civil Secrtt. Lko And Others

Counsel for Petitioner :- Anurag Kumar Singh, Akhilendra Singh

Counsel for Respondent :- G.A.

Hon'ble Ramesh Sinha,J.

Hon'ble Mrs. Saroj Yadav,J.

Heard Sri Anurag Kumar Singh, learned Counsel for the petitioners, Shri Dhananjay Kumar Singh, learned Additional Government Advocate for the State/respondents and perused the material brought on record.

The debit of the bank account of the petitioners has been freezed on the instructions of the Investigating Officer dated 24.03.2022 by the Axis Bank, City Centre, XXV/1130 Round West, Thrishur, Kerala as a sequel to the F.I.R. lodged by the Chief Manager of the Management of Manuments, Museum, Parks, Garden etc. registered as Case Crime No. 0716 of 2021 at Police Station Gomti Nagar, District Lucknow Eastern (Commissionarate Lucknow) on 16th September, 2021 for offence punishable under Sections 409, 420, 467, 468, 471 I.P.C.

Feeling aggrieved by the debit freeze of the petitioners' account on the instructions of the Investigating Officer, the instant writ petition has been filed by the petitioners.

The contention of the learned Counsel for the petitioners is that as per Section 102 (3) of the Code of Criminal Procedure, 1973, seizure of bank account shall forthwith be reported to the Magistrate concerned having jurisdiction and the same is mandatory in nature as prescribed under Section 102 (3) Cr.P.C. but in the instant case, the Investigating Officer has not reported the seizure/debit freezing of the petitioners' account to the

Magistrate concerned having jurisdiction, hence the impugned action to freeze the debit account of the petitioners is contrary to the provisions of Section 102 (3) Cr.P.C., hence the entire proceeding initiated against the petitioners is liable to be quashed.

Per contra, learned Additional Government Advocate argued that the question as to whether Section 102 (3) Cr.P.C. is mandatory or directory, has already been decided by a Co-ordinate Bench of this Court at Allahabad in Criminal Misc. Writ Petition No. 11201 of 2021 : *Amit Singh Vs. State of U.P. and others*, decided on 18.04.2022, wherein while observing that Section 102 (3) Cr.P.C. is not mandatory but it is directory, the Co-ordinate Bench of this Court dismissed the writ petition. It was also observed that non-reporting of the seizure forthwith, as provided under Section 102 (3) Cr.P.C., shall not *ipso facto* render the seizure illegal particularly as no period is specified and it's consequences have not been provided. Thus the instant writ petition is also liable to be dismissed.

For convenience, the relevant part of the order dated 18.04.2022 (Supra) is reproduced as under :-

"(14) In view of submissions of learned counsel for the parties the main issue which falls for our consideration is as to whether Section 102(3) Cr.P.C. is mandatory or directory in nature? It is well settled that non-observance of a mandatory condition is fatal to the validity of the action. However, non-observance would not matter if the condition is found to be merely directory. In other words, it is not that every omission or defect entails the drastic penalty of invalidity. Whether the provision is mandatory or directory can be ascertained by looking at the entire scheme and purpose of the provision and by weighing the importance of the condition, the prejudice to private rights and the claims of the public interest, therefore, it will depend upon the provisions of the statute and mere use of word "shall" would itself not make the provision mandatory. The Hon'ble Supreme Court in the case of State of Haryana Versus Raghuvir Dayal (Supra) has held that the use of word 'shall' is ordinarily mandatory but it is sometimes not so interpreted if the scope of the enactment, on consequences to flow from such construction would not so demand.

(15) *The Hon'ble Supreme Court, in the case of Nasiruddin and Others Versus Sita Ram Agarwal; AIR 2003 Supreme Court 1543, has held that it is well settled that the real intention of the legislation must be gathered from the language used. It may be true that the use of the expression "shall or may" is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character. It has further been held that if an act is required to be performed by a private person within 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 consequences therefor are specified. The relevant paragraphs 38 and 39 are extracted below:-*

"38. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of the provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression "shall or may" is not decisive for arriving at a finding as to whether the statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

39. Yet there is another aspect of the matter which cannot be lost sight of. It is a well-settled principle that if an act is required to be performed by a private person within 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 consequences therefor are specified. In Sutherland's Statutory Construction, 3rd Edn., Vol. 3, at p. 107 it is pointed out that a statutory direction to private individuals should generally be considered as mandatory and that the rule is just the opposite to that which obtains with respect to public officers. Again, at p. 109, it is pointed out that often the question as to whether a mandatory or directory construction should be given to a statutory provision may be determined by an expression in the statute itself of the result that shall follow non-compliance with the provision.

At p. 111 it is stated as follows:

"As a corollary of the rule outlined above, the fact that no consequences of non-compliance are stated in the statute, has been considered as a factor tending towards a directory

construction. But this is only an element to be considered, and is by no means conclusive."

(16) The consequences of non reporting about the seized property have 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 have not been specified, it would be safe to hold that requirement of Section 102(3) Cr.P.C. cannot be termed as mandatory but would be directory in nature.**

(17) The Scheme for disposal of property under the Code is provided under Chapter XXXIV of the Cr.P.C. Section 451 provides that when any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial. Section 452 provides the order for disposal of property at conclusion of trial. Section 457 (1) provides that whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property. Sub-section (2) provides that if the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.

(18) In view of above scheme of the Code the purpose of information given to the Magistrate regarding seizure of property by the Police Officer is merely to facilitate its disposal in accordance with law during pendency of trial or subsequent thereto. Therefore non reporting of the seizure forthwith, as provided under Section 102(3) Cr.P.C., shall not ipsofacto render the seizure illegal particularly as no period is specified and it's consequences have not been provided. Therefore when on an application moved by the petitioner, the same has been informed, the petitioner may move the concerned Magistrate for the custody of the property i.e. unfreezing of the account of the petitioner, which may be dealt with in accordance with law and on it's own merit.

(19) The Delhi High Court, in the case of Ms.Swaran Sabharwal Versus Commissioner of Police (Supra), quashed the prohibitory order on the ground that the moneys in the bank does not constitute "case property". In the case of Dr. Shashikant D. Karnik Versus The State of Maharashtra (Supra), the Bombay High Court allowed the petition on the ground that all the three requirements of

Section 102 Cr.P.C. have not been complied. It appears that in this case a direction was issued not to permit operation of the bank accounts of petitioner therein and his family without seizure therefore the court was of the view that there can not be an interim order and thereafter it's continuation. The authorities had also failed to ascertain, by the time it was decided, as to whether there was any connection of it with the alleged crime. The court has only mentioned that sub-section (3) of Section 102 lays down a mandate without any finding as to whether it is mandatory or directory. The Court without any provision has also observed that there is a fourth requirement of law that notice is required to be given before stopping the operation of the account. In the absence of any specific stipulation in the statute or necessary consequence flowing from the scheme contained in the Act, we are not inclined to subscribe to such a view.

(20) In the present case we have considered the issue in detail and are of the view that sub-Section (3) of Section 102 Cr.P.C. is directory in nature and once the court has been informed of freezing of bank account on an application moved by the petitioner, the requirement of statute stands fulfilled. Deprivation of property (freezing of bank account) otherwise being as per law, the argument that Article 300-A of Constitution is violated cannot be accepted. Contrary view taken by learned Single Judges of the High Courts of Delhi, Madras and Telangana in the judgments in Ms Swaran Sabharwal Versus Commissioner of Police, 1990 (68) Comp Cas 652 Delhi (DB); Muktaben M.Mashru Vs. State of N.C.T. of Delhi and Another; Crl M.C. 4206 of 2018, decided on 29.11.2019; Tmt.T. Subbulakshmi Vs. The Commissioner of Police; Crl. O.P. No.13103 of 2013 decided on 30.08.2013; Uma Maheshwari Vs. The State Rep. By Inspector of Police, Central Crime Branch, Egmore, Chennai; Criminal O.P. No.15467 of 2013 decided on 20.12.2013; The Meridian Educational Society Vs. The State of Telangana; Writ Petition No.21106 of 2021 decided on 04.10.2021 without considering and dealing with the provisions and scheme of the Code cannot be relied upon. Therefore these judgments can not be of any help to the petitioner. The Judgment, in the case of Chief Information Commissioner and another Versus State of Manipur and another (Supra), relied by learned counsel for the petitioner, is also not applicable in the facts and circumstances of the present case.

(21) In view of the discussions made above this court is of the considered opinion that there is no infringement of Constitutional right of property of the petitioner under Article 300-A of the Constitution of India. Article 300-A of the Constitution of India only provides that no person shall be deprived of his property save by authority of law. The alleged deprivation of property (freezing of bank account) since is found to be in accordance with applicable law i.e. Code of Criminal Procedure, the action complained of is clearly in consonance with Article 300-A of the Constitution of India. Petitioner's plea of violation of Article 300-A of Constitution of India cannot be pressed to impeach the act of freezing of bank account after such act is held to be as per applicable law i.e. the Code of Criminal Procedure.

(22) *The bank account of the petitioner has been got freezed in exercise of powers given under Section 102 Cr.P.C. and the Code of Criminal Procedure restricts the release of such bank account only to an order passed by the Magistrate, which is not the case here. The provisions of the Code thus cannot be by-passed on the plea that Article 300-A of Constitution of India is violated. Merely because the freezing of bank account is not reported forthwith and reported only on an application moved by the petitioner, it cannot be said that there is infringement of right of property given under Article 300-A of the Constitution of India. The plea of the petitioner in this regard is misconceived and not sustainable. The writ petition consequently lacks merit and is dismissed. No order is passed as to costs"*

Keeping in mind the aforesaid judgment and order dated 18.04.2022 (supra) and also considering the facts and circumstances of the case, this Court is in full agreement with the view expressed by the Co-ordinate Bench of this Court at Allahabad vide judgment and order dated 18.04.2022 passed in Criminal Writ Petition No. 11201 of 2021 : *Amit Singh Vs. State of U.P. and others.*

The writ petition lacks merit and is, accordingly, **dismissed** in terms of the judgment and order dated 18.04.2022 (supra).

(Mrs. Saroj Yadav, J.) (Ramesh Sinha, J.)

Order Date :- 1.6.2022
Arun/Ajit/-