

**Court No. - 43**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 23756 of 2019

**Petitioner :-** Independent Tv Limited

**Respondent :-** State Of U.P. And 4 Others

**Counsel for Petitioner :-** Vinayak Mithal

**Counsel for Respondent :-** G.A.,A.S.G.I.,Ravi Prakash Srivastava,Sanjai Singh

**Hon'ble Pankaj Naqvi,J.**

**Hon'ble Deepak Verma,J.**

Heard Sri Vinayak Mithal, learned counsel for the petitioner, Sri Sanjay Singh, learned counsel for the Punjab National Bank, Sri Ravi Prakash Srivastava for the Enforcement Directorate, Sri N.K. Verma / Sri Deepak Verma, the learned AGA's.

Independent TV Ltd. seeks a writ of mandamus against respondent nos. 2 & 3 i.e. S.S.P., Gautam Budh Nagar and Enforcement Directorate, New Delhi to defreeze the current account no.2726002100061294 of the petitioner in Punjab National Bank, Noida forthwith.

We do not propose to enter into the merits at this stage as in our considered view this petition is liable to be disposed of in view of the provision of Section 102 of the Code. Section 102 is extracted hereunder:

**"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) 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.**

**Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and the value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.**

A perusal of the above provision manifests that it empowers a police officer to seize a property which creates **suspicion** of commission of any offence. It is not disputed that a "bank account" is a property which is

capable of seizure. The caveat attached to such a seizure is that the seizure shall be reported by the police officer forthwith to the Competent Magistrate.

The personal affidavit of the D.C.P., Noida (2.7.2020, paragraph-7) alleges that the seizure was effected on 17.5.2019, duly entered in parcha no. 10 dated 3.6.2019 of the case diary and as per the established procedure, same was submitted before ACJM-III, Gautam Budh Nagar. The contents of the said paragraph remain uncontroverted.

We had some doubts as regards the exact date on which the seizure was reported to the Magistrate and accordingly called for a better affidavit from the State, to which an affidavit has been filed on behalf of DCP, Greater Noida on 8.7.2020 wherein in paragraph-4 earlier version with regard to reporting of seizure, was reiterated coupled with the fact that a fresh communication was also made to the Magistrate on 8.7.2020. Thus, reporting of the seizure is no longer an issue.

Learned counsel for the petitioner placed reliance on a judgement of a co-ordinate Bench of this Court in Writ -C No.13740/2019 dated 20.5.2019 to claim parity. We have carefully gone through the said judgment and find that the said judgment is per incurium as it proceeds on the premise that the seizing authority i.e. police, is denuded of its power to seize unless prior permission of the Magistrate is obtained. This view runs absolutely counter to sub-section (3) of Section 102 of the Code wherein the seizure is required to be reported to the competent Magistrate after the same has been effected.

Once seizure has been reported to the competent Magistrate, petitioner may stake a claim in accordance with law before the Magistrate.

The petition is **disposed off** with the direction that in the event the petitioner stakes a claim to defreeze the account in question along with certified copy of this order, preferably within 3 weeks from today, the learned Magistrate shall decide the same after hearing the parties concerned in accordance with law as expeditiously as possible.

**Order Date :-** 9.7.2020

Chandra