IN THE HIGH COURT OF MANIPUR

AT IMPHAL

Cril. Rev. Petn. No. 7 of 2021

Central Bureau of Investigation (CBI), represented by its Head of Branch (HOB), Anti-Crime Branch (ACB), Imphal, P.O. & P.S. Lamphel, Imphal West District, Manipur- 795004.

... Petitioner

-Versus -

1. Yumnam Sharat Meitei, aged about 55 years, S/o Y. Bishma Singh of Wangkhei Angom Leikai, P.O. & P.S. Porompat, Imphal East, Manipur-795005.
2. OinamDayabati Devi aged 50 years W/O YumnamSharat Meitei of Wangkhei Angom Leikai, P.O. & P.S. Porompat, Imphal East, Manipur-795005.

.....Accused/Respondents.

B E F O R E
HON'BLEMR. JUSTICE AHANTHEM BIMOL SINGH

For the Petitioner	:	Mr. W. Darakishwore, Sr. Panel Counsel.
For the respondents	:	Mr. Ch. Ngongo, Adv.
Date of Hearing	:	**21.12.2021.**
Date of Order	:	**18.01.2022**

ORDER

[1] Heard Mr. W. Darakishwor, learned senior panel counsel appearing for the petitioner and Mr. Ch. Ngongo, learned counsel appearing for the respondents.

The present criminal revision petition has been filed under Section 397 Cr.P.C. with a prayer for setting aside the impugned Zima order dated 26.02.2021 passed by the learned Special Judge (P.C. Act),

Imphal East in Cril. Misc. (Zima) Case No. 2 of 2021 and Cril. Misc. Case No. 9 of 2021.

[2] The facts of the present case in a nutshell is that the petitioner (CBI) registered a case being FIR No. R.C. 1A/2020/CBI/ACB/Imphal U/S 13 (2) r/w 13 (1) (b) of P.C. Act 1988 (as amended in 2018) against the present respondent No. 1 for alleged possession of pecuniary resources or properties disproportionate to his known source of income. Immediately after registration of the said FIR, the Officials of the CBI conducted a search operation at the residential premises of the respondent No. 1 on 31.01.2020 and seize a large number of documents and articles by preparing a search-cum-seizure memo dated 31.01.2020 and the seized articles were kept in the custody of the CBI.

[3] The respondents No. 1 & 2, who are husband and wife, filed an application under Section 457 Cr.P.C. before the learned Special Judge (P.C. Act), Imphal East, praying for granting to them interim custody of the seized documents, money and gold ornaments on Zima and the said application was registered as Cril. Misc. (Zima) Case No. 2 of 2021. The present petitioner (CBI) also filed an application for allowing them to deposit the seized money in the current account of S.P., CBI and the said application was registered as Cril. Misc. Case No. 9 of 2021. Both the aforesaid applications was jointly heard by the learned Special Judge (P.C Act), Imphal East and the same were disposed of by a common order dated 26.02.2021 by allowing the prayer of the present respondents for

releasing the aforesaid seized documents and articles on Zima in their favour subject to the conditions mentioned in the order and at the same time dismissing the application filed by the CBI for depositing the seized money in the Bank Account of the S.P., CBI. Feeling aggrieved, the present petitioner (CBI) filed the present Criminal Revision Petition assailing the Zima order dated 26.02.2021 passed by the learned Special Judge (P.C. Act), Imphal West.

[4] At the outset, Mr. Ch. Ngongo, learned counsel appearing for the respondents raised a preliminary issue regarding the maintainability of the present revision petition on the ground that the CBI seized or confiscated the documents and articles including money and gold ornaments from the respondent No. 1 illegally without following due process of law provided under Section 18 A of the Prevention of Corruption Act, 1988 (hereinafter referred to as P.C. Act for short) read with Section 3 and 4 of the Criminal Law Amendment Ordinance 1944 (hereinafter referred to as Cril. Ordinance for short) and as such, the CBI has no locus standi to object to the Zima application filed by the respondents or to file the present revision petition challenging the impugned Zima order passed by the learned Special Judge (P.C. Act), Imphal East. The counsel for the respondents draw the attention of this Court to the provisions of Section 18 A of the P.C. Act and Section 3, 4 and Para 4-A of the Schedule to the Cril. Ordinance which reads 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 many 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 and 4 of the Cril. Ordinance:

" 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 affidavit, 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.

"4. Ad interim attachment. *(1) Upon receipt of an application under Section 3, the District Judge shall, unless for reasons to be recorded in writing he is of the opinion that there exist no prima facie grounds for believing that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit:*

Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order, examine the person or persons making the affidavit accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the person whose money or other property is being attached, a notice, accompanied by copies of the order, the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(3) The District Judge shall also issue, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if she so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.

(4) Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or sub-section (3) as the case may be, of Section 5."

"THE SCHEDULE"

*Offences in connection with which property is liable to be attached****.....***

> ***"4-A.*** *An offence punishable under the Prevention of Corruption Act, 1988."*

[5] By relying on the aforesaid provision of law, the learned counsel appearing for the respondents submitted that under Section 18 A of the P.C. Act, it is provided, inter-alia, that the provisions of the Cril. Ordinance shall apply to the attachment or confiscation of money or property procured by means of an offence under the P.C. Act and that under Section 3 and 4 of the Cril. Ordinance, the procedure for attachment or confiscation of property of an offence under the P.C. Act are provided. The learned counsel also submitted that the petitioner (CBI) did not follow the procedure prescribe under the said Cril. Ordinance at the time of attachment or seizure of the property of the respondent No. 1 and as such, the said seizure of the property is illegal and accordingly, the CBI has no locus standi to object to the granting of custody of the seized properties to the respondents on Zima or to file the present criminal revision for setting aside the Zima order passed by the learned Special Judge (P.C. Act), Imphal East.

In support of his contentions, the learned counsel relied on the judgment of the Hon'ble Apex Court in the case of ***"Ratan Babulal Lath Vs. State of Karnataka"*** reported in 2021 (3) Crimes 339 (S.C.) wherein, it has been held that it is not possible to sustain freezing of Bank Account of the appellant taking recourse to Section 102 Cr.P.C. for an alleged offence under P.C. Act as the Prevention of Corruption Act is a code by itself and

freezing of the account of the appellant cannot be sustained and it was accordingly set aside.

[6] Mr. W. Darakishwor, learned senior panel counsel appearing for the petitioner submitted that under Section 102 Cr.P.C., any Police Officer is empowered to seize and kept it under custody any property which may be alleged or suspected to have been stolen or which may be found under circumstances which creates suspicion of the commission of any offences including offences under the Prevention of Corruption Act, 1988. The learned counsel further submitted that the petitioner (CBI) can seize and kept it in their custody the property of the respondent No. 1 for committing the alleged offences under the P.C. Act in exercise of the power under Section 102 Cr.P.C. and thereafter to attach the same under Section 18 A of the P.C. Act if required.

In support of his contentions, the learned counsel relied on the following judgment of the Hon'ble Apex Court:-

(a) "State of Maharashtra Vs. Tapas D. Neogy" reported in (1999) 7SCC 685:

> ***"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 if 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."

(b) "Teesta Atul Setalvad Vs. State of Gujarat" reported in (2018) 2 SCC372 :

"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 ofthe 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 CrPC and secondly, whether circumstances exist, 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 if 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."

[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 "TeestaAtulSetalval" (Supra) and as such, the said judgment 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 judgment 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).

[9] So far as the judgments of the Hon'ble Apex Court in the cases of "Tapas D. Neogy" and "Teesta Atul Setalvad" (Supra) relied on by the

counsel for the petitioner is concerned, it is to be pointed out that the aforesaid two judgments were passed on 16.09.1999 and 15.12.2017 respectively before the amendment of the P.C. Act, 1988. The provisions of Section 18 A of the P.C. Act, 1988 were incorporated in the PC Act w.e.f. 26.07.2018 only and as such, the principle laid down by the Hon'ble Apex Court in the aforesaid two judgments relied on by the counsel for the respondents, which were decided much earlier to the aforesaid amendment will have no application in the facts and circumstances of the present case.

[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.

JUDGE

FR/NFR

Lhaineichong