

Orissa High Court

Maa Kuanri Transport & Others vs State Of Orissa & Others on 4 June, 2021

HIGH COURT OF ORISSA : CUTTACK

CRLMP Nos.164,165.166.167 & 168 of 2018

An application under Article 226 of the Constitution of India;

CRLMP No.164 of 2018

Maa Kuanri Transport & others ..... Petitioners

Versus

State of Orissa & others ..... Opposite parties

For petitioners : Mr. Dharanidhar Nayak, Sr. Advocate  
& H.S.Mishra, Advocate.

For Opp.parties: Mr. Dillip Kumar Mishra,  
Additional Government Advocate.

Mr. M.K.Das,T.K. Harichandan &  
N.K.Das. (opp.party no.6)

CRLMP No.165 of 2018

Jagat Janani Services ..... Petitioner

Versus

State of Orissa & others ..... Opposite parties

For petitioner : Mr. Dharanidhar Nayak, Sr. Advocate  
& H.S.Mishra, Advocate.

For Opp.parties: Mr. Dillip Kumar Mishra,  
Additional Government Advocate.

Mr. M.K.Das,T.K. Harichandan &  
N.K.Das. (opp.party no.6)

CRLMP No.166 of 2018

Chaturbhuj Development Committee ..... Petitioner

Versus

State of Orissa & others ..... Opposite parties

For petitioner : Mr.H.S. Mishra, Advocate

For Opp.parties: Mr. Dillip Kumar Mishra,  
Addl. Government Advocate.

Mr. M.K.Das,T.K. Harichandan &  
N.K.Das. (opp.party no.6)

CRLMP No.167 of 2018

Sanatan Mahakud	.....	Petitioner
	Versus	
State of Orissa & others	.....	Opposite parties

For petitioner : Mr.H.S. Mishra, Advocate

For Opp.parties: Mr. Dillip Kumar Mishra,  
Addl. Government Advocate.

Mr. M.K.Das,T.K. Harichandan &  
N.K.Das. (opp.party no.6)

CRLMP No.168 of 2018

Jagat Janani Services	.....	Petitioner
	Versus	
State of Orissa & others	.....	Opposite parties

For petitioner : Mr.H.S. Mishra, Advocate

For Opp.parties: Mr. Dillip Kumar Mishra,  
Addl. Government Advocate.

Mr. M.K.Das,T.K. Harichandan &  
N.K.Das. (opp.party no.6)

JUDGEMENT

PRESENT :

THE HON'BLE MR. JUSTICE P.PATNAIK

----- Date of Hearing :  
15.04.2021 Date of judgment: 04.06.2021

----- P.PATNAIK, J. : The aforesaid petitions have been filed for quashing of the order passed by opposite party no.6 in freezing the Bank Account No.200010334681 of Maa Kuanri Transport, Unchabali, A/C No.200010298866 of Jagat Janani Services Private Ltd.,Nambira, A/C.No.200010263648 of Chaturbhuj Development Committee, Balda, A/C No.100022799033, personal Account of Sri Sanatan Mahakud and A/C No.200010352623 of Jagat Janani Services, Nambira and the petitioners have also sought for quashing of the intimation issued by the Bank authority to the petitioners' firm with regard to freezing of the accounts on the instruction received from the Investigating Officer, Sadar P.S., Keonjhar. Since all the aforesaid matters have arisen out of Keonjhar P.S.Case No.12 dated 12.01.2018, the cases have been heard analogously and are being disposed by common order/judgment.

2. The petitioner in CRLMP No.164 of 2018 has inter alia sought for quashing of the order under Annexures-2 & 4 issued by opposite party No.6 with further direction to issue a writ of mandamus to opposite party no.6 to allow the petitioner to operate the Bank Account bearing No. 200010263648. Further prayer has been made for direction to opposite party Nos.4,5 & 6 to produce the order of the Police to the Bank-opposite party no.6 and for quashing of the said order.

3. The petitioner in CRLMP No.165 of 2018 has inter alia sought for quashing of the order under Annexures-1 & 3 issued by opposite party No.6 with further direction to issue a writ of mandamus to opposite party no.6 to allow the petitioner to operate the Bank Account bearing No. 200010352623. Further prayer has been made for direction to opposite party Nos.4,5 & 6 to produce the order of the Police to the Bank-opposite party no.6 and for quashing of the said order.

The petitioner in CRLMP No.166 of 2018 has inter alia sought for quashing of the order under Annexures-2 & 4 issued by opposite party No.6 with further direction to issue a writ of mandamus to opposite party no.6 to allow the petitioner to operate the Bank Account bearing No. 200010263648. Further prayer has been made for direction to opposite party Nos.4,5 & 6 to produce the order of the Police to the Bank-opposite party no.6 and for quashing of the said order.

The petitioner in CRLMP No.167 of 2018 has inter alia sought for quashing of the order under Annexures-1 & 3 issued by opposite party No.6 with further direction to issue a writ of mandamus to opposite party no.6 to allow the petitioner to operate the Bank Account bearing No. 100022799033. Further prayer has been made for direction to opposite party Nos.4,5 & 6 to produce the order of the Police to the Bank-opposite party no.6 and for quashing of the said order.

The petitioner in CRLMP No.168 of 2018 has inter alia sought for quashing of the order under Annexures-2 & 4 issued by opposite party No.6 with further direction to issue a writ of mandamus to opposite party no.6 to allow the petitioner to operate the Bank Account bearing No. 200010298866. Further prayer has been made for direction to opposite party Nos.4,5 & 6 to produce the order of the Police to the Bank-opposite party no.6 and for quashing of the said order.

4. The reasons for freezing of the aforesaid Bank Account is based on Keonjhar Sadar P.S. Case No.12 dated 12.01.2018 which has been registered under sections 143, 148, 341, 283, 294, 506/149 of the Indian Penal Code and Section 7 of the Criminal Law Amendment Act, 2013. The allegation as has been projected in the F.I.R. lodged on 12.01.2018 is that at about 1.45 P.M., the complainant, Inspector S.Pradhan, I.I.C., Sadar Police Station, Keonjhar drew up a plain paper F.I.R. on N.H.20 near Silisuan to the effect that on the said date at about 1.15 P.M. getting information regarding congregation of huge numbers of supporters of Sana Sena near Railway over bridge at Silisuan, she had been to the spot along with other police staff and found more than 2000 people congregating at the place being armed with lathi and giving provocative slogans against police administration demanding abolishment of Toll Plaza from Banajodi under the leadership of Sudhir Kumar Nanda alias Raja of Nuagarh of Keonjhar and others along with 18 number of leaders. When the complainant along with police staff tried to intervene, they threatened them with dire consequence and they used to give slogans like Sana Sena Jindabad, Police Prasasana Murdabad etc. and continued their road blockage. They also blocked the road on the same issue on 11.12.2017 and 05.01.2018. Due to road block, the impression and suspicion has been created that they had been hired for money to continue prolonged agitational activities. She got a reliable information that huge amount of cash from IndusInd Bank, Joda will be delivered to the leaders for distribution amongst the agitators for continuance of agitation. On the basis of the aforesaid F.I.R. Keonjhar P.S. Case No.12 dated 12.01.2018 has been registered under sections 143, 148, 341, 283, 294, 506/149 of the Indian Penal Code read with Section 7 of CrL. Law Amendment Act, 2013.

As a sequel of the aforesaid F.I.R., the opposite party no.6 issued letters dated 23.01.2018 and 31.01.2018 to the petitioner for total freezing of different accounts in the name of petitioner, which are impugned in these applications.

5. Being aggrieved and dissatisfied with the freezing of different accounts, the aforesaid applications have been filed for redressal of grievances.

6. Mr.D.Nayak, learned senior counsel has strenuously urged that there is absolutely no justification for freezing of the aforesaid accounts since no reason has been assigned by the opposite party no.6. Learned senior counsel further submitted that section 102 Cr.P.C. has not been scrupulously followed nor the same is attracted since the account freezing does not have any direct nexus with the alleged crime and the opposite party-State have failed to produce the materials, reasons for freezing of the accounts. In support of his contention, learned senior counsel for the petitioners has referred 2012 Criminal Law Journal, Karnatak High Court 3487. 2017 Vol.(2) OLR 452.

7. Mr.H.S.Mishra, learned counsel for the petitioners vehemently submitted that the petitioner Sri Sanatan Mahakud has not been named in the F.I.R. and he received the notice under section 160 Cr.P.C. to appear before the I.O. On 20.01.2018 since he sustained injury in spinal cord, the petitioner intimated the I.O., B.K.Mallick-opposite party No.5 that he would appear on a later date. But due to the utter surprise and consternation he came to learn that five accounts of Sanatan Mahakud or his firm or company have been frozen. The learned counsel has referred to the decision reported in 2009 Vol.(1) Crimes 489 (Orissa), Agrani Exports Pvt.Ltd.-vrs.- State of Orissa, 2003 Cri.L.J. 1983 :: 2003 AIR Karnatak High Court 995, S.Satyanaarayana-vrs.-State of Karnataka, 1994

Crl.L.J. 645 M/s. Malnad Construction Company, Shimoga and others -vrs.State of Karnatak and others. Learned counsel for the petitioners further submitted that since the petitioner, Sri Sanatan Mahakud resided outside the jurisdiction of Keonjhar Police Station, notice under section 160 Cr.P.C. issued against any person not within the limits of the Police Station is without jurisdiction as per the decision in Sitaram Chayla Vrs.-Officer-in-charge, Laxmisagar P.S. reported in (1999) 17 OCR 123. Further, it has been contended by the learned counsel for the petitioners that the petitioner Sri Sanatan Mahakud was a MLA of Champua Assembly Constituency as independent candidate during the time of action taken by the Police.

8. Per Contra, a counter affidavit has been filed by opposite party nos.3 and 4 challenging the maintainability of the petition on the ground that the petitioners ought to have approached the learned magistrate by filing appropriate application. It has been further averred in the counter affidavit that the allegation made in the F.I.R. revealed that it was a preplanned and engineered move to paralise the movement of vehicles and persons on the National High Ways thereby harassing the public without any justifiable reason and in an illegal and inhuman manner. On earlier occasion on 11.12.2017 and 05.01.2018 there was road blockage on the same issue at the instigation of Sana Sena which group had been raised by Sri Sanatan Mahakud, MLA, Champua. The activities of the agitators on 12.01.2018 strengthened the suspicion that they had been hired by Sanatan Mahakud, MLA, Champua on payment of money to carry on such demonstration. The complainant drew up plain paper F.I.R. at the spot at 1.15 P.M. under sections 143, 148, 341, 283, 294, 506/149 of the Indian Penal Code read with Section 7 of Cr.Law Amendment Act, 2013. Thereafter the opposite party no.4 got information that the I.I.C., Champua Police Station has detained a white colour Hoonda Santafe Car bearing registration No.OR 02 BV 8007 containing a tin box loaded with cash of different denominations. During verification it was ascertained that cash of Rs.50,00,000/- was transported by Branch Manager, IndusInd Bank, Joda to hand over to Sanatan Mahakud at his Champua Office. Manager, Manas Rout when questioned miserably failed to explain the illegal transportation of huge sum of cash in a private vehicle without any official authority or supporting documents. S.I., B.K.Mallik, Investigating Officer went to Champua and seized the aforesaid cash along with other articles during investigation. Mr.Manas Rout, Manager, IndusInd Bank, Joda admitted to have been carrying the aforesaid cash from IndusInd Bank without any document as per the direction of the MLA, who is having accounts in their branch. Sanatan Mahakud was issued with notice on 16.01.2018 under section 160 Cr.P.C. to appear in person on 20.01.2018 at Keonjhar Sadar Police Station for his examination in the case. On the same day, the I.O. issued a letter to the Branch Manager, IndusInd Bank, Joda Branch to freeze the aforesaid account operated by Sri Sanatan Mahakud in the said Bank i.e. Account No.200010334681 in the name of Kuanri Transport, A/C No.20001263648 in the name of Chhaturbhuj Development Committee, A/C No.100022799033 in the name of Sanatan Mahakud, Account No.200010352623 in the name of Jagat Janani Services and Account No.200010298866 in the name of Jagat Janani Service Ltd. It has been further stated in the counter affidavit that instead of appearing in Keonjhar Sadar P.S. Case No.21 of 2018, Advocate of Mr.Sanatan Mahakud produced a letter for extension of time for his appearance before the Police and Sanatan Mahakud has not appeared in the Police Station. From this it is presumed that Sanatan Mahakud is deliberately avoiding to appear before the Police. Further, in the counter affidavit, it has been submitted that all the accounts have been frozen by the I.O., opposite party no.5 in Keonjhar Sadar

P.S.case No.12 of 2018 in exercise of power under section 102 Cr.P.C. during the course of investigation as it was well established that money in the account is directly linked in the commission of the crime. It is further submitted that Bank accounts of Mr. Sanatan Mahakud constitute property within the meaning of Section 102 Cr.P.C. and Police Officer in course of investigation has the power to freeze the said account if such assets are linked to the commission of offence which the Police Officer is investigating into. The decision rendered in the case of State of Maharastra-vrs. Tapas D Neogy reported in 1999(7) SCC 685 and the decision of the Hon'ble apex Court in the case of Teesta Atul Setalvad vrs.-The State of Gujarat reported in 2018(2) SCC 372 have been referred to.

9. A counter affidavit has also been filed by opposite party no.6 stating therein that the opposite party no.6 being the Bank Officer has no power to investigate into the authenticity than to carry out the instruction of the I.O. and there is no illegality in carrying out the instruction of the I.O. and the present case is not maintainable against opposite party no.6 which may be dismissed against opposite party no.6.

10. A rejoinder affidavit to the counter affidavit filed by opposite party Nos. 3 and 4 has been filed stating therein that a fabricated story has been designed to fit the prosecution case. In fact there is no such organization called "Sana Sena" in the district of Keonjhar. Moreover, Mr.Sanatan Mahakud is the MLA of Champua and Keonjhar Sadar Police Station is not within the Champua Assembly Constituency. Road Blockage by the local residents to abolish the Toll Plaza at Banajodi has no relation with the petitioner nor the alleged cash seized by them has any connection with the petitioners. It has been further submitted that due to arbitrary action of opposite party Nos. 3 and 4 the personal liberty of Mr.Sanatan Mahakud and his family members has been infringed. The F.I.R. registered has no connection with the freezing of the accounts and neither there is any material on record to show that the Police has exercised power under section 102 Cr.P.C. nor in the facts of the case, a case is made out even remotely to exercise power under section 102 Cr.P.C. to freeze the accounts of the petitioners. The Investigating Agency has not intimated the magistrate regarding freezing of the accounts under section 102 Cr.P.C. In absence of any intimation to the magistrate and intimation to the Account holder no petition can be filed by the petitioners nor in absence of any intimation of freezing the accounts the magistrate can entertain the petition to release the amount. Hence, there is no alternative to the petitioners.

11. Mr.Dilip Kumar Mishra, learned Additional Government Advocate apart from reiterating the submissions made in the counter affidavit has vociferously submitted that in view of the decision in the case of Teesta Atul Setalvad (supra) the present application is not maintainable. Learned counsel for the State submitted that even on suspicion the Investigating Officer can freeze the account and the I.O. gave notice under section 102 Cr.P.C. and the petitioners did not appear. So far as Section 102 Cr.P.C. the same has been scrupulously followed. Learned counsel for the State further submitted that after completion of investigation, the petitioners can approach the learned trial Court.

12. From the rival contentions, the issue which emerges for determination is as to

(i) Whether the action of the opposite parties in freezing different accounts of the petitioners purportedly under section 102 Cr.P.C. is legally permissible ?

(ii) whether relief sought for by the petitioners invoking Article 226 of the Constitution of India for quashing of the order for freezing of the accounts can be entertained by this Court at the first instance without approaching the learned jurisdictional magistrate ?

13. In order to appreciate issue No.1, it would be apposite to refer to section 102 Cr.P.C. which reads here as under:

"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 in such that it cannot be conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, 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 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."

On reading of the aforesaid provisions, there is no doubt or debate that a police officer can seize the property which may be alleged or suspected to have been stolen or commission of the offence. The Bank Accounts which have been seized pursuant to Keonjhar Sadar P.S. Case No.12 of 12.01.2018 is sequel to the complaint lodged by the I.I.C., Keonjhar Sadar P.S. and on the basis of the complaint, the case has been registered under sections 143,148,341,283, 294,506/149 of the Indian Penal Code read with Section 7 of Criminal Law Amendment Act, 2013.

Now, the question arises as to whether the action of the opposite parties in freezing different bank accounts of Mr.Sanatan Mahakud is in compliance to Section 102 Cr.P.C. In support of his contention, learned counsel for the petitioners has referred to 2009(1) Crimes 489 (Orissa), Agrani Exports Pvt.Ltd.-vrs.-State of Orissa wherein this Court has been pleased to hold that "Section 102-Investigating Officer got operation of loan account of the petitioner company stopped- Question whether action under section 102 Cr.P.C. could be taken against the petitioner company by freezing

its loan account though neither the Company nor its directors were accused in criminal case being investigated by police-Police found that FDR deposited as security for loan had belonged to a proprietary concern against whom criminal case was being investigated-Nothing on record to show that said loan account had a direct nexus with alleged to have been committed by proprietary concerned- Investigating Officer could not have got account of petitioner frozen and rather could have direct bank authority not to get term deposit encashed-Action of freezing loan account of petitioner company could not be sustained."

Learned counsel for the petitioners has also referred the decision reported in 2003 Cri.L.J.1983 :: 2003 AIR - KANT. H.C. 995: S.Sathyararayanan -vrs.-State of Karnataka wherein it has been held that ".....Hence, the Police Officer has no authority or power to seize the property when it is neither suspected to be stolen nor found under the circumstances creating any offence having been committed unless discovery of a property leads to a suspicion of offence having been committed...."

Learned counsel for the petitioners has also referred the decision reported in 1994 CRL.L.J. 645 :: 1993 (3) ALLCRLR 817 Karnataka High Court - M/s. Malnad Construction Company, Shimoga and others-vrs.-State of Karnataka and others wherein it has been held in para-16 that "16. Xx xx xx Thus a combined and careful reading of Section 102(1) and (3) of the Code shows that a Police Officer is not conferred with any power to issue direction to Banks prohibiting operation of accounts. Any action affecting the rights of the person/citizens cannot be sustained unless they are authorized by law. Undoubtedly, issuing of a direction to Bank prohibiting operation of accounts does not fall within the powers of the Police Officers acting under Section 102 of the Code."

14. Learned counsel for the State on the other hand has referred to the decision reported in (2018) 2 Supreme Court Cases 372 (Teesta Atul Setalvad -vrs.-State of Gujarat where the Hon'ble Apex Court has illuminatively discussed about the sweep and applicability of Section 102 Cr.P.C. In the aforesaid decision, the Hon'ble Apex Court has been pleased to hold in Paragraphs- 17,18,25,26, 27 & 28 as follows:

"17. The sweep and applicability of Section 102 of the Code 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 analyzing 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 exist, creating suspicion of commission of any offence in relation to the same.

"18. After analyzing 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 the bank account of the accused or any of his relations 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 operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into..... 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."

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." "25. Suffice it to observe that as the investigating officer was in possession of materials pointing out circumstances which create suspicion of the commission of an offence, in particular, the one under investigation and he having exercised powers under section 102 of the Code, which he could, in law, therefore, could legitimately seize the bank accounts of the appellants after following the procedure prescribed in sub-section (2) and sub- section (3) of the same provision. As aforementioned, the investigating officer after issuing instructions to seize the stated bank accounts of the appellants submitted report to the Magistrate concerned and thus complied with the requirement of sub-section (3).

26. Although both sides have adverted to statement of accounts and vouchers to buttress their respective submissions we do not deem it necessary nor think it appropriate to analyze the same while considering the matter on hand which emanates from an application preferred by the appellants to defreeze the stated bank accounts pending investigation of the case. Indisputably, the investigation is still in progress. The appellants will have to explain their position to the investigating agency and after investigation is complete, the matter can proceed further depending on the material gathered during the investigation. The suspicion entertained by the investigating agency as to how the appellants appropriated huge funds, which in fact were meant to be disbursed to the unfortunate victims of 2002 riots will have to be explained by the appellants. Further, once the investigation is complete and police report is submitted to the court concerned, it would be open to the appellants to apply for defreezing of the bank accounts and persuade the court concerned that the said bank accounts are no more necessary for the purpose of investigation, as provided in sub-section (3) of Section 102 of the Code. It will be open to the court concerned to consider that request in accordance with law after hearing the investigating agency including to impose conditions as may be warranted in the fact situation of the case.

27. In our opinion, such a course would meet the ends of justice. We say so also because the explanation offered by the appellants in respect of the discrepancies in the accounts, pointed out by the respondents, will be a matter of defence of the appellants.

28. We clarify that at an appropriate stage or upon completion of the investigation, if the investigating officer is satisfied with the explanation offered by the appellants and is of the opinion that continuance of the seizure of the stated bank accounts or any one of them is not necessary, he will be well advised to issue instruction in that behalf."

On cumulative effect of the aforesaid factual and legal aspect this Court is of the considered view that the opposite parties have invoked the provisions under section 102 of the Code of Criminal Procedure after lodging of the F.I.R. and institution of the criminal cases which is legally permissible.

15. Section 102, Cr.P.C. (Code of Criminal Procedure, 1973) indubitably empowers any police officer to seize the properties which have got any nexus or co-relation with the commission of any offence. In the instant case, on the lodging of the F.I.R. by the IIC, Keonjhar Sadar Police Station, a case has been registered under Sections 143, 148, 341,283, 294, 506/149 of the Indian Penal Code read with Section 7 of Cr.Law Amendment Act, 2013. Therefore, it can be gainsaid that invoking section 102, Cr.P.C. by the opposite party no.4 is not bereft of any jurisdiction nor the scope, ambit and applicability of Section 102, Cr.P.C. is any more res integra.

16. After institution of the criminal case, the petitioner, Sri Sanatan Mahakud was issued with notice under Section 160, Cr.P.C. to appear in person on 20.01.2018 at Keonjhar Sadar Police Station for his examination. But Sri Sanatan Mahakud did not appear before the police on the ground of his ailment. As has been disclosed from the averments in the counter affidavit filed by opposite party nos.3 and 4 that Sri Sanatan Mahakud did not appear before the police station at least till filing of the counter affidavit. Though Sri Sanatan Mahakud has not been specifically named in the F.I.R. as

an accused, but the complicity of Mr.Sanatan Mahakud has been well proved during investigation as stated in the counter affidavit. Law is well settled that F.I.R. is an encyclopedia of the fact and details of the crime are unearthed and unraveled during the course of investigation.

17. In order to dilate the rival contentions, it would be appropriate to refer to Section 160 of the Code of Criminal Procedure,1973 which reads as follows :

"160. Police officer's power to require attendance of witnesses -(1) Any police officer making an investigation under this Chapter may, by order in writing, require the attendance before himself of any person being within the limits of his own or any adjoining station who, from the information given or otherwise, appears to be acquainted with the facts and circumstances of the case; and such person shall attend as so required:

Provided that no male person under the age of fifteen years or above the age of sixty-five years or a woman or a mentally or physically disabled person shall be required to attend at any place other than the place in which such male person or woman resides.

(2) The State Government may, by rules made in this behalf, provide for the payment by the police officer of the reasonable expenses of every person, attending under sub-section (1) at any place other than his residence."

18. On perusal of the aforesaid provision, the power of the police officer to require attendance has been well delineated. Therefore, the notice by the police to Sri Sanatan Mahakud with regard to Keonjhar Sadar Police Station Case No.12 dated 12.01.2018 is in consonance with the aforesaid provision.

19. In respect of relief seeking defreezing of all the accounts of Sri Sanatan Mahakud in the aforementioned applications, this Court is of the considered view that the same is a sequel of the registration of the alleged offence as stated in the foregoing paragraphs. In pursuance of the lodging of F.I.R., the investigation commenced, but despite notice under Section 160, Cr.P.C. Sri Sanatan Mahakud did not appear on account of his ailment.

20. So far as issue No.2 is concerned, the petitioner Mr. Sanatan Mahakud despite notice being issued under section 160 of the Code has not appeared before the Investigating Officer to put forth his stand. The petitioner is not precluded to raise his claim for defreezing of the bank accounts after completion of investigation.

Therefore, in the fitness of things, the petitioners ought to have approached the Investigating Officer for defreezing of the account or else in the event the Investigating Officer fails to accede to the prayer of the petitioner, it was open for the petitioners to have approached the learned magistrate.

21. Considering the facts and circumstances in its entirety and on cumulative appreciation of the decision of the Hon'ble Apex Court in the case of Teesta Atul Setalvad (supra). While not entertaining these applications, this Court is of the considered opinion that it would be appropriate

for petitioner to approach the Investigating Officer or opposite party no.4 for defreezing of all the accounts. In the event, relief sought for by the petitioners is not acceded to either by the I.O. or by the opposite party no.4, it would be open to the petitioners to approach the jurisdictional Magistrate by filing appropriate application with same/ identical prayer. However, it is made clear that this Court has not gone into the merits of the case raised by the contesting parties in the aforesaid applications.

Resultantly, all the CRLMPs stand disposed of.

.....

P.Patnaik,J.

Orissa High Court, Cuttack The 4th June,2021/R