

Lathifa Vs. the State of Karnataka and Others

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Court : Karnataka

Decided On : Mar-21-2012

Reported in : 2012(2)KCCR1480; 2012ILR(Kar)2220

Judge : S. Abdul Nazeer, J.

Acts : [Constitution of India](#) - Articles 226, 227; [Code of Criminal Procedure \(CrPC\), 1973](#) - Section 102; Indian Penal Code (IPC) - Sections 399, 404; Code Of Criminal Procedure (CrPC) - Sections 102, 102(3)

Appeal No. : Writ Petition No.17240 of 2011 (GM-RES)

Appellant : Lathifa

Respondent : The State of Karnataka and Others

Advocate for Def. : M.C. Nagashree, Adv.

Advocate for Pet/Ap. : Arun Shyam; Dharmashree Associates; Advs.

Judgement :

(Prayer: This Writ Petition is filed under Articles 226 and 227 of the [Constitution of India](#), praying to quash the communication/letter dated 25-4-2011 issued by the 5th respondent, etc.)

1. The question for consideration in this writ petition is whether the Sub-Inspector of Police, Vitla Police Station is justified in freezing the bank account of the

petitioner under Section 102 of the Code of Criminal Procedure, 1973?

2. The petitioner contends that on 21.3.2011, Belthangady Police have illegally detained her son, daughter, brother. Aggrieved by the same, she gave a representation to the Superintendent of Police, Mangalore, to release them from the illegal custody. The Superintendent of Police neither gave any reply nor released them from the illegal custody. Therefore, the petitioner filed a habeas corpus petition in W.P.No.55/2011 before this Court. This Court issued the notice to the Police on 25.3.2011 and sought status report in the matter. On the same day, the detenues were produced before the JMFC, Bantwal, by the 4th respondent with a false story that they had indulged in commission of offences punishable under Sections 399 and 404 of the Indian Penal Code. On the basis of the status report filed by the Police, habeas corpus writ petition was disposed of by this Court on 5.4.2011. When the petitioner went to the 5th respondent-Bank to operate her bank account, the 5th respondent issued the endorsement at Annexure 'A' dated 25.4.2011 informing that her S.B.account No.18186 has been freezed as directed by the 4th respondent.

3. The 4th respondent has filed the statement of objections contending that the petitioner and her husband Aboobakkar are hard core criminals. Aboobakkar was involved in many cases registered in various Police Station. It is further contended that anticipating the seizure/recovery of the stolen money from his account in the event of his arrest, he has deposited the same in the bank account of his wife, the petitioner herein and his brother-in-law. It is further contended that the petitioner is now absconding and is trying to escape from the clutches of law, That is why her bank account has been seized.

4. Learned Counsel for the petitioner submits that the respondents have not made out a case for seizure of the bank account of the petitioner under Section 102 of the Cr.P.C. He further contends that it is obligatory upon the Police to show that the property, which they want to attach has created suspicion of the commission of any offence. The Officer seizing the account or attaching the account subordinate to the officer in charge of the police station has to forthwith report the seizure or attachment to his superior, which has not been done in the present case. They

have not reported the seizure of the accounts to the Magistrate having jurisdiction. The Police have not issued notice of seizure to the petitioner and allowed her to operate the account subject to executing a bond as contemplated under Section 102(3) of the Cr.P.C.

5. On the other hand, learned HCGP appearing for the respondents submits that the Police have complied with all the requirements of law before and after seizing the bank account of the petitioner.

6. Section 102 of the Code of Criminal Procedure, 1973, authorizes the Police Officer to seize certain property. The said provision is 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 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 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 prosecution 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.”

7. The Apex Court in STATE OF MAHARASHTRA VS. TAPAS D. NEOGY - (1999) 7 SCC 685 has held that bank account of the accused or any of his relation is ‘property’ within the meaning of Section 102 of the Code and a Police Officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct link with the commission of the offence which the police office is investigating into.

8. In R. CHANDRASEKAR VS. INSPECTOR OF POLICE, SALEM AND ANOTHER - 2003 CRI.L.J. 294, the Madras High Court has held that mere allegation of the prosecution that property viz., the bank account is a sequel to the discovery of commission of offence is not sufficient to attract Section 102 of the Code. Following the procedure as provided under Section 102 is mandatory. The Police Officer has to report the seizure to the Magistrate and also give notice to the petitioner and allow him to operate the bank account subject, to executing a bond undertaking to produce amounts in Court as and when required as contemplated in clause (3) of Section 102, Service of copy of the prohibitory order on the person concerned is also necessary.

9. In Dr. SHASHIKANT D. KARNIK VS. STATE OF MAHARASHTRA - 2008 CRL. L.J. 148, a Division Bench of Bombay High Court has held that it is mandatory for the Police to comply with the requirements of sub-sections (1), (2) and (3) of Section 102 of the Code before and after seizure of the bank account.

10. In RAJASTHAN VS. INSPECTOR OF POLICE, SALEN AND OTHERS - 2003 CRL. L.J. 2902, the Madras High Court has held that for the application for the Section, the basic requirements are that the properties sought to be seized or frozen must be either stolen properties or they should have been found to have some nexus with the alleged offence which is under investigation of the Police Officer concerned. It has been further held that in the case of freezing of a bank account, the police officer should do two things. He should inform the concerned Magistrate forthwith regarding the prohibitory order and he should also give notice of seizure to the accused and allow him/her to operate the bank account subject to his/her executing the bond undertaking to produce the amounts in Court as and

when required.

11. It is thus clear that the bank account of the accused or any of his relations is 'property' within the meaning of Section 102 Cr.P.C. and the police officer in course of investigation, can seize or prohibit operation of the said account, if such assets have direct link with the commission of the offence. For the application of the Section, the basic requirements are that the properties sought to be seized or frozen must be either stolen properties or they should have been found to have some nexus with the alleged offence which is under investigation of the Police Officer concerned. The provisions of Section 102 Cr.P.C. are mandatory. Mere allegation of the prosecution, that the property i.e., bank account is a sequel to the discovery of commission of offence, is not sufficient to attract Section 102 of Cr.P.C. Following the procedure as provided under Section 102 is mandatory. If the police officer who has seized the bank account is subordinate officer/incharge of a police station, he shall forthwith report the seizure to his higher officer. He should inform the concerned Magistrate forthwith regarding the prohibitory order and he should also give notice of seizure to accused and allow him/her to operate bank account subject to his/her executing bond undertaking to produce the amount in Court as and when required.

12. In the present case, the fourth respondent has not produced any materials till this day to show that the bank account has any nexus with the commission of the alleged offence. It is evident that respondents have not issued a notice of seizure to the petitioner to enable her to operate the bank account subject to her executing bond undertaking to produce the amount in the Court as and when required. Admittedly, the third respondent has not reported the seizure of the bank account to the Magistrate having jurisdiction. Thus, it is clear that respondents have not complied with the mandate contained in Section 102 of the Cr.P.C. Therefore, the direction of the fourth respondent in freezing the bank account of the petitioner is illegal.

13. In the result, the writ petition succeeds and it is accordingly allowed. The endorsement at Annexure-A dated 25-4-2011 issued by the fifth respondent is hereby quashed. The fifth respondent-Bank is directed to permit the petitioner to

operate her bank account in accordance with law. No costs.

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