



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**Cr.MMO No.533 of 2024
Date of Decision: 04.09.2024**

Aeronfly International Private Limited

.....**Petitioner**

Versus

State of Himachal Pradesh and Others

.....**Respondents**

Coram

**Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting? Yes.**

For the Petitioner: Mr. Aditya Mishra, Mr. Anshuman Singh Kangarot and Ms. Kiran Sharma, Advocates.

For the Respondents: Mr. Rajan Kahol, Mr. B.C. Verma and Mr. Vishal Panwar, Additional Advocates General, with Mr. Ravi Chauhan, Deputy Advocate General, for respondents No.1 to 3/State, along with ASI Vijay Kumar, I.O., Police Station Kullu, District Kullu, Himachal Pradesh.

Mr. Vijay Verma, Advocate, for the respondent No.4.

Sandeep Sharma, J. (Oral)

Being aggrieved and dissatisfied with the notice dated 14.05.2024 under Section 91 of Code of Criminal Procedure (**for short, 'Cr.P.C.'**), issued by Cyber Cell, Kullu, thereby directing the Manager, ICICI Bank, Kullu, District Kullu, Himachal Pradesh to debit freeze two bank accounts of the petitioner-company, petitioner-company has approached this Court in the instant proceedings, praying therein to set aside the aforesaid notice/order on the ground that provisions contained under Section 91 Cr.P.C., neither empowers

Investigating Officer to order seizure of the property nor debit freeze of the bank account of an accused.

2. For having bird's eye view, facts, which may be relevant for the adjudication of the case at hand, are that person namely Sahil Sharma, resident of village Chowki Dhobi, District Kullu, lodged a complaint at Police Station Sadar Kullu on 14.05.2024 alleging therein that on 13.05.2024, he received a link from an unknown mobile number (+92-3077677818) and thereafter two times, amount of ₹5,000/- each (total ₹10,000/-) was debited from his bank account No.42708925613, IFSC SBIN0000672 without his knowledge and consent. Having taken note of aforesaid complaint, Police lodged a rapat in General Diary bearing entry No.55 dated 14.05.2024 at Police Station Sadar, Kullu. Since matter was found to be with regard to cyber crime, complaint was forwarded to Cyber Cell, Kullu for inquiry. During inquiry, it was found that two transactions of ₹5,000/- each, as alleged in the complaint, was credited in the bank account No.065405002530 IFSC No.ICIC0000654 on 13.05.2024 at 05:21 p.m. and 06:17 p.m., respectively.

3. Having taken note of aforesaid fraud/cyber crime, complaint was entered in NCRP portal and information was collected from afore portal pertaining to account number, as detailed hereinabove. It came to be found from the NCRP portal that as many as 94 cyber complaints were registered against the account number,

detailed hereinabove, in the Police Stations of different States. Since activities of above bank account were found to be suspicious, a notice under Section 91 Cr.P.C. was sent to the Manager, ICICI Bank, Kullu, District Kullu, by respondent No.2, requesting therein to provide following information:

"a. The name, address and registered mobile number of the holder of bank account number-065405002530 IFSC-ICIC0000654.

b. The transaction detail of above mentioned account from dated 13-05-2024 to till date.

c. Kindly mark debit freeze of the above mentioned account number."

4. Respondent No.2 also made correspondence with the petitioner-company on 24.05.2024 and directed him to join the investigation on 27.05.2024 along with documents relevant to the Company. However, petitioner-company expressed its inability to join the investigation by sending e-mail dated 25.05.2024 stating therein that Headquarter of the Company is located nearly 1000 kilometers away and as such it is not feasible to reach on 27.05.2024. However, on 10.06.2024, a copy of representation was received in the office of Superintendent of Police, Kullu, stating therein that intimation has already been sent to the Bank for refunding the amount, illegally received in the bank account of the petitioner-company, to the source. Bank, after having received aforesaid intimation, could not do the needful for the reason that bank account of the petitioner-company

stood debit frozen pursuant to notice issued under Section 91 Cr.P.C. However, being not satisfied with the aforesaid explanation rendered on record by the petitioner-company, Police proceeded to lodge FIR No.183 of 2024 dated 27.06.2024 under Section 420 IPC.

5. Pursuant to notices issued in the instant proceedings, respondent/State has filed reply, wherein facts, as have been noticed hereinabove, are not in dispute, rather stand admitted. Today, during proceedings of the case, learned Additional Advocate General has placed on record fresh status report filed under the signatures of Station House Office, Police Station Kullu, District Kullu, wherein it has been mentioned that petitioner-company was earlier in the business of tour & travels, but with effect from 2019, it launched platform called 'AeronPay' through which one can pay his/her utility bills and it can also be used for repayment of loans etc.

6. During investigation, Police also collected on record CDRs to ascertain conversation/communication, if any, *inter se* employee of petitioner-company as well as complainant and other similarly situate persons, who allegedly were defrauded or induced to deposit amount in the bank account of the petitioner. However, nothing incriminating was found against the petitioner-company. It has been further mentioned in status report that communication was sent to the Branch Manager ICICI Bank, Mahaveer Marg, Sumerpur Road, Pali, Rajasthan, for refunding ₹10,000/- of unknown transaction to the

source, but probably same could not be done, on account of order of debit freeze issued by Cyber Cell under Section 91 Cr.P.C. It has further been mentioned in the status report that though effort was made to collect information with regard to complaints, if any, lodged against the petitioner-company in other States with regard to fraud, as was done in the present case, but detailed information with regard to same has not been furnished till date. As per status report, no complaint has been found to be lodged in NCRP portal, as far as State of Himachal Pradesh is concerned. Investigating Agency also attempted to collect CDRs with regard to suspected mobile number, as detailed hereinabove, but no data has been provided by the company.

7. Precisely the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Aditya Mishra, learned counsel representing the petitioner is that though case registered against the petitioner-company under the various provisions of law shall be decided by the competent Court of law in totality of evidence collected on record by the prosecution, but certainly no orders, if any, could be passed by the Investigating Agency under Section 91 Cr.P.C., thereby directing the Bank to debit freeze the bank account of the petitioner-company, as a result thereof, hundreds of employees of the Company are suffering on account of non-payment of salaries. Learned counsel representing the petitioner argued that since main bank accounts of the petitioner-company have

been frozen for no justifiable reasons, petitioner-company is at the verge of closure. He submitted that otherwise also, no cogent and convincing evidence has been adduced on record till date suggestive of the fact that Company or its employee ever induced complainant to deposit some amount in the bank account of the petitioner-company, rather, such amount, which was subsequently found to be linked with the number used by the person, who allegedly sent link to the complainant, had no connection, if any, with the petitioner-company and as such, petitioner-company after having realized credit of ₹10,000/- in its account from unknown source, immediately requested Bank to refund that amount to the source from where it was received. However, on account of order received from Cyber Cell under Section 91 Cr.P.C., needful could not be done. Lastly, Mr. Mishra, learned counsel representing the petitioner-company submitted that otherwise also, bank account of the petitioner-company could not have been ordered to be debit freeze for fraud of ₹10,000/-, which otherwise was never committed by the petitioner-company. He contended that till the time, complicity, if any, of the petitioner-company in the alleged fraud is not established by prosecution by leading cogent and convincing evidence, no fruitful purpose would be served by ordering debit freeze of the bank account of the petitioner-company.

8. Mr. Rajan Kahol, learned Additional Advocate General representing the respondents/State, while fairly admitting that no

order to debit freeze the bank account under Section 91 Cr.P.C. could be issued by Cyber Cell, submitted that since 94 complaints were found to have been registered against the petitioner-company in the NCRP portal, alleging therein similar fraud, Cyber Cell, Kullu, with a view to ensure that no other person is made victim of such fraud, deemed it necessary to call upon the Bank to debit freeze the bank account during pendency of the investigation. Mr. Kahol fairly stated that otherwise, in such like situation, procedure as envisaged under Section 102 Cr.P.C. ought to have been followed by the Investigating Agency before ordering debit freeze of the bank account of the petitioner-company, that too after obtaining necessary order of the Magistrate of the area concerned.

9. Before ascertaining the correctness of rival submissions made by learned counsel representing the parties, it would be apt to take note of Section 91 Cr.P.C., which reads, as under:

“91. Summons to produce document or other thing.

(1) Whenever any Court or any officer-in-charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed -

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Banker's Books Evidence Act, 1891(13 of 1891); or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegram authority."

10. Having perused aforesaid provision of law, this Court is persuaded to agree with Mr. Aditya Mishra, learned counsel representing the petitioner that Investigating Officer had no power to order debit freeze of bank account of the petitioner while issuing notice under Section 91 Cr.P.C., which otherwise empowers Investigating Officer to cause production of any document or other thing, which is deemed to be necessary/desirable for the purpose of investigation, inquiry, trial or other proceedings under the Code. In the instant case, Cyber Cell after having received complaint with regard to fraud committed upon complainant namely Sahil Sharma, straightaway issued notice under Section 91 Cr.P.C. to ICICI Bank, Kullu, thereby requesting to debit freeze the bank account of the petitioner in ICICI Bank situate at Pali, Rajasthan, which was not permissible.

11. No doubt that during inquiry, two transactions of ₹5,000/-, as alleged in the complaint, were found to be credited in the bank account of the petitioner-company, but such fact, if any, could not otherwise be a ground for Investigating Agency to straightaway order debit freeze of the bank account, especially when petitioner-company deals with the business of providing digital payment mode, whereby any person can come and pay bills of any utility.

12. Though, it has been mentioned in the reply of the respondents that as many as 94 number of cyber complaints were found to be registered against the account number, ordered to be frozen vide impugned notice under Section 91 Cr.P.C., but such fact, if any, also could not be a reason for Investigating Agency to straightaway order debit freeze of the bank account of the petitioner-company, especially when factum of lodging 94 complaints could not be further verified by the Investigating Agency in investigation.

13. During proceedings of the case, learned counsel representing the petitioner-company invited attention of this Court to communication dated 16.07.2024 addressed by CPIO and Director, (14-C) Ministry of Home Affairs, Government of India, to demonstrate that factum with regard to lodging of 94 complaints in NCRP portal came to the notice of the petitioner-company, after its having received order of debit freeze, issued by Cyber Cell, Kullu and thereafter, communication was sent in writing to Ministry of Home Affairs to

provide details with regard to complaints, if any, lodged against them. However, vide aforesaid communication, Ministry of Home Affairs while expressing its inability to provide adequate information with regard to all complaints, advised petitioner-company to find out from the different States with regard to nature and status of complaint, if any, lodged against the petitioner-company, which otherwise may not be possible for the petitioner-company for the reason that there may be large number of Cyber Cell cross the country.

14. As has been observed hereinabove, case registered against petitioner-company shall be decided by the competent Court of law in totality of evidence collected on record by the prosecution, but question which needs to be decided in the instant proceedings is that ***“whether Cyber Cell could order debit freeze of the bank account of the petitioner-company under Section 91 Cr.P.C. or not?”***

15. Since bare perusal of aforesaid provision of law, as reproduced hereinabove, clearly reveals that Section 91 Cr.P.C. does not empower the Investigating Agency to order debit freeze of bank account, coupled with the fact that at no point of time, procedure, as envisaged under Section 102 Cr.P.C. was followed by the respondent before ordering debit freeze, if any, of the bank account of the petitioner-company, prayer made on behalf of the petitioner-company, inasmuch as setting aside the notice under Section 91 Cr.P.C. deserves to be allowed.

16. In similar facts and circumstances where Police while exercising power under Section 91 Cr.P.C., proceeded to order debit freeze of bank account, various Constitutional Courts not only deprecated such practice, but also quashed and set aside such notices, with the direction to release the bank accounts. High Court of Madras in case titled as **Sahil Raj Vs. State of Tamil Nadu and Others**, Writ Petition No.21344/2024, decided on 14.09.2022, held as under:

“7. Thus, it is clear that the first respondent has no jurisdiction. In the summons issued under Section 91 of Cr.P.C., the Investigating Officer summons the person to produce the document or other things. On the summons issued under Section 91 of Cr.P.C., account cannot be freezed. That apart, the first respondent failed to comply with the procedure as contemplated under Section 102(3) of Cr.P.C. Admittedly the first respondent failed to inform the freezing of the petitioner’s account to the concerned jurisdictional Magistrate even till now. However, the petitioner himself admitted that he placed order of purchase of USDT (virtual digital asset in the form of crypto currency) from a user named Raj Ghosh on 21.10.2021. He also had made a payment of Rs.89,000/- to his HDFC Bank current account.

8. In view of the above, the petitioner is directed to deposit a sum of Rs.89,000/- in the form of fixed deposit in favour of crime No.33 on the file of the first respondent and the third respondent is directed to permit the petitioner to operate his Account No.10074558873 IFSC: IDFB 0020109, Karol Bagh Branch, IDFC First Bank. Insofar as the notice under Section 41-A of Cr.P.C., now the date of enquiry has expired. However, the first respondent is directed to issue fresh notice after compliance of

the procedure laid down under Section 41-A of Cr.P.C. for enquiry.”

17. While placing reliance upon the judgment passed by High Court of Madras in Sahil Raj's case (supra), High Court of Telangana in case tilted as **K. Sathvik Reddy Vs. Union of India and Others, 2023 SCC OnLine TS 4377**, decided on 21.12.2023, held as under:

“14. A bare perusal of the counter affidavit in particular para 6 filed by the Respondent No. 3 herein clearly indicates that the account of the Petitioner has been frozen with a balance of Rs. 4,67,542.04 Ps by the Statutory Notice Department, Axis Bank Limited, Mumbai in response to Notice dated 06.07.2023 received under Section 91 of Criminal Procedure Code from Respondent No. 4, Cyber Police Station, Outer North District, Delhi in FIR No. 17/2023 registered against one Mr. Arjun Karam Singh.

15. This Court opines that upon the basis of Notice dated 06.07.2023 under Section 91 of Criminal Procedure Code received from 4th Respondent the Statutory Notice Department, Axis Bank Limited, Mumbai, had attached the outstanding balance of Rs. 4,67,552.04 Ps in Petitioner's subject account No. 290010100107723 of the Petitioner maintained with Respondent No. 3. This Court opines that on the summons issued under Section 91 of the Criminal Procedure Code account of the Petitioner cannot be frozen.

16. Taking into consideration of the above referred facts and circumstances of the case and duly considering the averments made in Para 6 of the counter affidavit filed by the 3rd Respondent (referred to and extracted above) and duly considering the fact that the petitioner as on date had not been served with a notice under Section 41-A Cr. P.C. nor is an accused in the FIR and duly taking into consideration the view

taken by the High Court of Madras in Judgment dated 14.09.2022 in "Sahil Raj v. State of Tamilnadu" under identical circumstances this Court opines that the Notice issued under Section 91 Criminal Procedure Code against the Petitioner by the 4th Respondent herein to the Statutory Notice Department, Axis Bank Limited, Mumbai, without any intimation/prior notice to the Petitioner is illegal and in clear violation of principles of natural justice and without jurisdiction and the same is accordingly set aside. This Court cannot issue any directions against the Statutory Notice Department, Axis Bank Limited, Mumbai, which had ordered for freezing of the Petitioner's subject account since the same is not made a party in the present writ petition. The Petitioner is however at liberty to pursue the remedies as are available to the Petitioner seeking defreezing of the Petitioner's subject Account No. 290010100107723 of the Petitioner maintained with the Respondent No. 3."

18. Similarly, in case titled as **Ayesha Creations Private Limited and Another Vs. State Bank of India and Others, 2023 SCC OnLine Cal 2268**, decided on 04.08.2023, High Court of Calcutta held as under:

"3. The present challenge has been preferred against a decision of the respondent no. 1-Bank that is the SBI to put a "Hold" lien with regard to the petitioners' Account No. 33722305271.

4. The ground for such imposition by the Bank, as communicated in an e-mail to the petitioners, is apparently an instruction from the Office of the Inspector of Police, Konankunte Police Station, South Division, Bengaluru City.

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7. A copy of the trail mail indicates that the said Police Station is allegedly investigating a fraud case registered in Bengaluru. In course of the investigation, information has been requested to be

furnished by the respondent no. 1-Bank, along with certified documents, which include certified copies of Account Opening Form, KYC documents, etc. One of the instructions speak about putting a hold/lien mark on the said account from immediate effect until further notice.

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11. The Sections of law quoted by the concerned Police Station of Bengaluru in their e-mail, issued to the respondent no. 1-Bank, also do not provide for imposing such a lien.

12. Section 91 of the Code of Criminal Procedure pertains to summons to produce documents or other materials.

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14. However, nothing in Section 91 empowers any police authority to ask for a lien on any bank account of a third party, which has not even been named as an accused in any criminal complaint.

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23. Thus, even as per the information furnished by the Bank, the provisions cited and information furnished by the Bengaluru Police regarding their investigation do not, in any manner, entitle either the said police authorities or the Bank to put the account of the petitioners in Kolkata on hold and/or to mark lien on the same.

24. Hence, the impugned action of the respondent no. 1-Bank in keeping the petitioners' Account on hold and placing a lien thereon is palpably de hors the law and vitiated by principles of natural justice.

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26. Accordingly, WPA No. 13010 of 2023 is allowed, thereby setting aside the lien imposed by the respondent no. 1-Bank on the account of the petitioners and directing the Bank to remove the hold thereon immediately. The petitioners are permitted to

operate the said account, being Account No. 33722205271 freely, otherwise in accordance with law.”

19. High Court of Karnataka in case titled as **Sree Gowri Ganesha Souharda Credit Co-operative Society Ltd. Vs. The Superintendent of Police, Bangalore Rural, District Bangalore and Others**, decided on 22.06.2023, held as under:

“6. I have given my anxious consideration to the contentions of respective learned counsel and have perused the material on record.

7. In the teeth of the aforesaid facts, which do not require any reiteration. What requires to be considered is whether the Investigating Officer has followed the procedure in terms of the law to direct such debit freezment.

8. The learned High Court Government Pleader has produced certain communications by which the account frozen. The communications read as follows:

The afore-quoted communications are the ones that have led to the impugned action. The notice for debit freezment is made under Section 92 of CR.P.C. It is now by well settled principle of law that a account freezment order/ directions cannot be made by the Investigating Officer invoking his power under Sections 91 and 92 of Cr.P.C. On this solitary ground, the direction for debit freezment is rendered unsustainable.

9. The issue need not detain this Court for long or delve deep into the matter, in the light of the judgment rendered by the Delhi High Court in the case of V PLUS TECHNOLOGY PVT. LTD., V. STATE (NCT OF DELHI)¹ wherein the learned Judge has held as follows:

"10. I have heard arguments and gone through the records. It is an admitted case that u/s 91 Cr.P.C, the order of debit freeze could not have been passed. Mr. Kundu is also correct in stating that it was a procedural lapse on the part of the investigating agency to nomenclature the notice u/s 91 because the prosecuting agency has the power to debit freeze an account even though not u/s 91 Cr.P.C. but u/s 102 Cr.P.C.

11. As far as the compliance of 102(3) is concerned, I am of the view that there has been a delay in compliance of the provision and the magistrate was informed only after more than 2 months of the order of the debit freeze.

Section 102(3) reads as under:

"Section 102 : Power of police officer to seize certain property.

(1)

(2) ...

(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."

12. I am unable to subscribe to the contention of Mr. Kundu that the delay in compliance of Section 102(3) is not fatal to the case of the prosecution. In the present case, the delay of more than two months to inform the magistrate is neither explained nor justified by the

respondent. In *Manish Khandelwal v. State of Maharashtra*, the Bombay High Court held that non-compliance of the procedure laid down u/s 102 Cr.P.C. is not only an irregularity but it is a mandatory provision and if not followed, it will entail the consequence of giving directions to de-freeze the bank account. In *Muktaben (Supra)* the above legal position was observed as follows:

"33. Recently, in the case of *Manish Khandelwal v. State of Maharashtra*, 2019 SCC OnLine Bom 1412, decided on 30.07.2019, the Court rejected the contention that non-compliance of the procedure laid down under Section 102 Cr.P.C. is only an irregularity and will not vitiate freezing of the bank accounts. It was held that in case the mandatory provision under Section 102 Cr.P.C. has not been followed then it would entail the consequence of giving directions to defreeze the bank account. The duty of reporting to Magistrate any seizure of bank account is case upon the IO as freezing of the bank account prevents the person from operating the bank account pursuant to investigation. If there is any violation in following the procedures under Section 102 Cr. P.C., freezing of account cannot be legally sustained.

36. Now reverting back to the present petition, taking into consideration the oral as well as the written submissions of both the parties and also taking into consideration the material on record as well as the legal position, more specifically in view of the judgments discussed hereinabove, this Court has no hesitation to hold that the

reporting of the freezing of bank accounts is "mandatory". Failure to do so, apart from other conditions, will vitiate the freezing of bank account, which should be 'forthwith' requirement goes to the root of the matter. If there is any violation in following the procedures under Section 102 of the Cr.P.C, the freezing of the bank accounts cannot be legally sustained."

13. I am of the view that in the present case there has been a delay of reporting of freezing of the account to the magistrate. However, in the fact of the present case the course adopted in Muktaben (supra) i.e. directing the petitioner to execute bonds before the Trial Court undertaking to produce amount in Court as and when required by the Court is the correct course to follow.

14. Accordingly, it is directed that the order of the IO debit freezing the bank account of the petitioner company is in clear violation of the law and account No. 407411212776 maintained at RBL Bank at Banglore, is directed to be de-frozen, subject to the condition that before de-freezing the account, the petitioner shall execute bonds before the Trial Court undertaking to produce Rs. 25,000/- in the Court as and when required by the Court and also to the extent that if any such order is made by the Court regarding disposal of the same, the same shall be complied by the petitioner.

15. The petition is accordingly allowed."

(Emphasis supplied)

10. The High Court of Delhi considers the very issue with regard to the power of the Investigating Officer to direct freezement of the account by a notice under Section 91 of the Cr.P.C. The Court

clearly holds that the power is available under Section 102 of the Cr.P.C. and not under Section 91 of the Cr.P.C. That having not been done in the case at hand, the petition deserves to succeed, albeit, in-part, as liberty will have to be reserved to the Investigating Officer to act in accordance with law.”

20. High Court of Orissa in case titled as **Datum Micro Credit Gundichar Nagar, Ganjam Vs. State Bank of India and Others**, Writ Petition (C) No.5451 of 2022, decided on 23.12.2022, held as under:

“10.From a bare perusal of Section 91 of Cr.P.C, it is clear that the I.I.C. of Golanthara P.S has no jurisdiction insofar as issuing instructions towards freezing the bank account of the present Petitioner. In the summons issued under Section 91 of Cr.P.C., the investigation officer summons the person to produce the document or other things. On the summons issued under Section 91 of Cr.P.C., account cannot be freezed. That apart, the I.I.C. of Golanthara P.S failed to comply with the procedure as contemplated under Section 102(3) of Cr.P.C. From the materials available on record, it can be further inferred that the Opposite Party No.3 has failed to inform the freezing of the petitioner’s account to the concerned jurisdictional Magistrate till date.

11.According to Section 91 of Cr.P.C, the Court or any Police Officer does not have the authority to freeze the bank account of any person. Such power, however, is available to a Police Officer under Section 102 of Cr.P.C., with a caveat as provided in Sub-Section (3) of Section 102 of Cr.P.C., namely, the Police Officer, who has seized any property, has to forthwith report the seizure to the concerned jurisdictional Magistrate. In the present case, no intimation has been given to the concerned Magistrate.”

21. It is quite apparent from the aforesaid exposition of law laid down by various Constitutional Courts that power to direct freezement of account, if any, is available to the Investigating Agency under Section 102 Cr.P.C., but definitely such order cannot be passed under Section 91 Cr.P.C.

22. While dealing with the correct procedure to seize bank account under Section 102 Cr.P.C., High Court of Madras in case titled as **R. Chandrasekar Vs. Inspector of Police, Fair Land Police Station, Salem and Another, 2002 (5) CTC 598**, decided on 11.10.2002, held as under:

“11. The respondents/police has also not followed the mandatory requirements of Section 102 of Cr.P.C. The police officer shall forthwith report the same 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 the amount in court, as and when required as contemplated in clause 3 of Section 102, but not given any such notice. Even the copy of prohibitory order was not served to the petitioner.”

23. Reliance is also placed upon the case titled as **Ms. Swaran Sabharwal vs Commissioner of Police, 1990 68 CompCas 652 Delhi**, the Delhi High Court observed:

“Again even if the provisions of section 102 are held applicable, the respondents have not followed the requirements of the section. Reading that provision, by adapting in to the case of seizure of a bank account, the police officer should have done

two things : he should have informed the concerned magistrate forthwith regarding the prohibitory order. He should have also given notice of the seizure to the petitioner and followed her to operate the bank account subject to her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same. This was not done. Even a copy of the prohibitory orders was not given to the petitioner. The police did not seek the directions of the Magistrate trying the offence. Not only that, when the petitioner herself approached the Magistrate who was trying the petitioner's husband under the official Secrets Act, her request to be allowed to operate the account was opposed by the police contending that the bank account was not "case property" and that the petitioner's remedies lay elsewhere than in the court of the Magistrate. The Magistrate accepted the plea of the police and dismissed the application of the petitioner and directed to seek remedy elsewhere before the appropriate authority. The petitioner having lost before the Magistrate, had no other recourse except to file a writ petition praying for the setting aside of the prohibitory order.

For the reasons abovementioned, we are of the opinion that the prohibitory order dated October 31, 1985, by reason of which the petitioner was prevented from operating the bank account in question should be quashed."

24. Reliance is also placed upon Datum Micro Credit Gundichar Nagar, Ganjam (supra), relevant para of which is reiterated as under:

"13. Recently, in the case of Manish Khandelwal & Ors. v. State of Maharashtra, the Court rejected the contention that non-compliance of the procedure laid down under Section 102 Cr.P.C.

is only an irregularity and will not vitiate freezing of the bank accounts. It was held that in case the mandatory provision under Section 102 Cr.P.C. has not been followed then it would entail the consequence of giving directions to defreeze the bank account. The duty of reporting to Magistrate about any seizure of bank account is cast upon the I.O as freezing of the bank account prevents the person from operating the bank account pursuant to investigation. If there is any violation in following the procedures under Section 102 Cr.P.C., freezing of account cannot be legally sustained.”

25. Admittedly, in the case at hand, Cyber Cell, Kullu, straightaway, without ascertaining the factual position, issued notice to ICICI Bank, Kullu, to debit freeze the account of the petitioner-company that too by issuing notice under Section 91 Cr.P.C., which does not empower the Investigation Officer to order debit freeze of bank account. There is nothing to suggest that at any point of time, Cyber Cell approached competent Court of law under Section 102 Cr.P.C. for ordering freezement of the bank account of the petitioner and there is no order in that regard, if any, passed by the Magistrate. Though, Mr. Rajan Kahol, learned Additional Advocate General, argued that there is procedural lapse, which can be ignored, but afore submission of learned Additional Advocate General is totally contrary to record. At no point of time, process, if any, ever came to be initiated at the behest of Investigating Officer to start process against accused under Section 102 Cr.P.C., rather Investigating Officer itself without there being any authority of law proceeded to order debit freeze of the

account of accused under Section 91 Cr.P.C, which was not permissible.

26. Consequently, in view of the above, present petition is allowed and notice under Section 91 Cr.P.C., dated 14.05.2024, issued by Incharge, Cyber Cell Kullu, District Kullu, Himachal Pradesh to Manager, ICICI Bank, Kullu, District Kullu, Himachal Pradesh, is quashed and set aside. The petition stands disposed of in the aforesaid terms, along with all pending applications, if any.

September 04, 2024

(Rajeev Raturi)

**(Sandeep Sharma),
Judge**

High Court