

## Freezing of Bank Accounts by Investigating Authorities: Breaking the ice on the legal position and remedies

### Introduction

The rampant rise of white-collar crimes and economic offences is ubiquitous and often cited as a gnawing threat to India's economic interests. This trend has led to formidable policy and legislative response by the Central and State governments, aimed at equipping various investigating authorities including the Police with a wide amplitude of powers to effectively investigate and prosecute offences pertaining to complex financial transactions. However, there has also been a steep escalation in instances of abuse and misuse of investigating powers by such authorities often leading to harsh ramifications for ostensible innocent parties as well as accused persons.

Freezing of bank accounts by investigating authorities in a mechanical fashion is an increasing problem faced by Indian businesses and companies. Such actions are routinely predicated on mere allegations or suspicions of tainted amounts being credited by accused persons or suspects involved in dubious financial dealings into the business or personal accounts of a *bonafide* party. One does not need to be an accused in the offence or even named in the First Information Report for the accounts to be frozen during investigation. This may have a crippling effect on the operational aspects of a business and can cause grave financial hardships and a party bearing the brunt of such actions, often get into deep waters. In this piece, we seek to delineate the statutory procedural safeguards and legal position on this issue and expound on the legal remedies available to an aggrieved party in cases of arbitrary freezing of bank accounts.

### Ambit of Power of Investigating Authorities

To understand the scope of powers that the investigating authorities possess to freeze a bank account, one needs to dive into the source

#### Legal500 Asia Pacific

- Tier 1 in Dispute Resolution: Arbitration [2021, 2020]

#### Forbes

- Top Law Firm in Arbitration [2021]
- Top Law Firm in Insolvency [2021]

#### Benchmark Litigation Asia Pacific

- Top Tier Firm in International Arbitration [2021, 2020]
- Ranked Firm in Commercial and Transactions [2021, 2020]
- Ranked Firm in Insolvency [2021, 2020]
- Notable Firm in Government and Regulatory [2021]
- Notable Firm in Tax [2020]

#### IDEX Awards

- Finalist in the IBC Law Firm of the Year [2020]

#### Asian Legal Business

- Ranked amongst Indian Firms to Watch [2020]
- Finalist in the Rising Law Firm of the Year [2021, 2019]
- Ranked as Best Boutique Law Firm in India [2017]

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- Ranked Firm in General Corporate Tax [2019]

#### Finance Monthly

- Best Game Changer Law Firm of the Year [2018]
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of the power itself. This source can be traced to Section 102 of the Code of Criminal Procedure, 1973 ('CrPC').

The purpose of Section 102 of the CrPC is to secure the property which has been or suspected to be stolen or which has a direct nexus with the commission of a crime from being 'disposed of' or 'destroyed'. Such a measure of seizing property including freezing of bank accounts ensures that the court is able to get back the property concerned. Section 102 of the CrPC falls under Chapter VII which deals with the 'Processes to Compel the Production of Things'. The provision states:

***Power of police officer to seize certain property.—***

*(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.*

*(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.*

*(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, 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 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.*

On an analysis of Section 102 of the CrPC and its related judicial pronouncements, the following broad essentials emerge:

**1. *The seizure must be of a 'property' as intended for the purposes of Section 102 of the CrPC***

A bare reading of the provision would lead one to believe that a police officer has the power to seize 'any property'. However, it was clarified by the Supreme Court in *Nevada*

*Properties Private Limited vs. State of Maharashtra and Ors.*<sup>1</sup> that the phrase ‘any property’ referred in Section 102 of the CrPC will only cover moveable property and excludes immovable property. The use of the terms such as ‘seize’ and ‘produce’ as included in the provision indicate that the phrase ‘any property’ as used under Section 102 of the CrPC will apply only to moveable property.

When considering the issue of whether ‘bank accounts’ fall within the scope of Section 102 of the CrPC, it was held by the Supreme Court in *State of Maharashtra vs. Tapas D. Neogy*,<sup>2</sup> that even bank accounts fall within the phrase ‘any property’ under Section 102 of the CrPC and could therefore be frozen by the investigating authorities, if found to have direct links with the commission of an offence.

**2. *The property must have a connection with the commission of a crime.***

For the purpose of Section 102 of the CrPC, the property must be either:

- a. Alleged or suspected to have been stolen; or
- b. Have a nexus between the property and the commission of the crime; or

Therefore, investigating authorities can only freeze bank accounts if the deposit in the account is stolen money or the account is connected with an alleged offence which is under investigation.

Further, to invoke Section 102 of the CrPC, particularly to freeze a bank account, there must be a reasonable suspicion of the involvement of the bank account with the commission of a crime. It will be upon the investigating authority to satisfy that there exists sufficient material to show that the amount in the bank account is connected with the alleged offence.<sup>3</sup> The property must not only have a close link to the alleged crime but the officer must have reasonable grounds to believe such a nexus exists.<sup>4</sup> The High Court of Bombay in *Gulam Sarvar vs. State of Maharashtra and Ors.*<sup>5</sup> in this context held that the:

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<sup>1</sup> Nevada Properties Private Limited vs. State of Maharashtra and Ors., AIR2019SC4554; See also Indiabulls Commercial Credit Limited vs. Economic Offences Wing and Ors., 2021 SCC OnLine Del 2906.

<sup>2</sup> State of Maharashtra vs. Tapas D. Neogy, (1999) 7 SCC 685.

<sup>3</sup> Ezulix Software Pvt. Ltd. vs. State of Maharashtra and Ors., MANU/MH/1076/2021.

<sup>4</sup> Madhu vs. Sub Inspector of Police, 2020 (5) KHC 35.

<sup>5</sup> Gulam Sarvar vs. State of Maharashtra and Ors., 2018 SCC OnLine Bom 164.

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*“Making of an allegation simplicitor; for the purposes of Section 102 of Cr.P.C., is not sufficient and it must be shown that the allegation is founded on such a material as to at least create a reasonable suspicion about the amount in the account having some connection or possibility of having some connection with the commission of crime.”*

The Court in the matter also observed that there should be *prima facie* evidence to indicate that there are entries in the bank account which can be connected to the commission, result or proceeds of a crime.

**3. *The discovery of the offence should be a sequel to the discovery of that property and not the other way around.***

Section 102 of the CrPC is said to not apply unless the discovery of the property by an investigating authority leads to a suspicion of an offence having been committed. This equally applies to deposits made in a bank account and, it cannot be frozen on the grounds that the deposits made in it had been traced from a connected crime. If the discovery of the account does not create a suspicion of a crime having been committed, no seizure of the account can be made.<sup>6</sup> The High Court of Madras in the case of *R. Chandrasekar vs. Inspector of Police, Fair Land Police Station Salem and Ors.*<sup>7</sup> had observed that:

*“There are no circumstances attendant upon the bank account or its operation that have led the police to suspect that some offence has been committed somewhere. The allegation of the prosecution is that the bank account in this case is a sequel to the discovery of the commission of the offence. This is not sufficient to attract Section 102 of Cr.P.C. as it cannot be since that the bank account has been traced or discovered in circumstance which have made the police aware of the commission of an offence.”*

Interestingly, the High Court of Allahabad while referring to the Supreme Court’s decision in *Tapas D. Neogy (supra)* rejected the argument that the discovery of the property must precede the offence.<sup>8</sup> The Court held that:

*“...the proposition that powers under Section 102 of the Code, are to be exercised only when discovery of a property leads to suspicion of a commission of an offence, does*

<sup>6</sup> Vinod Kumar Ramachandran Valluvar vs. State of Maharashtra, MANU/MH/2353/2011.

<sup>7</sup> R. Chandrasekar vs. Inspector of Police, Fair Land Police Station Salem and Ors., 2002(5)CTC598. See also Jignesh Prakash Shah vs. Central Bureau of Investigation and Ors., 2018(3)BomCR(Cri)81; Also see M. Adithya Cholan and Ors. vs. The Union of India and Ors., 2015 SCC OnLine Mad 6729.

<sup>8</sup> Suninder Sandha vs. State of U.P. and Ors., MANU/UP/0018/2018. An SLP was filed against the judgment of the Allahabad High Court. However, the Supreme Court did not find any ground to interfere (SLP (CrI) 1126/2018).

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*not represent the correct statement of law in view of Neogy (supra), wherein it has been held that if the property seized has links with commission of an offence under investigation, power under Section 102 of the Code can be exercised.”*

However, in the Supreme Court’s judgment in Nevada Properties (*supra*), the Court while referring to the decisions of the High Court of Delhi<sup>9</sup> clearly observed that Section 102 of the CrPC “*would not be attracted where the property has not been traced or discovered which leads to a suspicion of an offence having been committed. Discovery of property should precede the detection of crime.*”

**4. Freezing of the bank account must be 'forthwith' reported to the concerned Magistrate.**

The most often contravened condition under Section 102 of the CrPC is the requirement to apprise the Magistrate of the seizure of the property. Section 102(3) of the CrPC clearly mandates that “[e]very police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction”. The violation of this mandatory condition is what often allows the courts to direct the de-freezing of bank accounts.

The High Court of Delhi in *Muktaben M. Mashru vs. State of NCT of Delhi and Ors.*<sup>10</sup> held 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' reported to the concerned Magistrate and non-compliance of this mandatory 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.”*

Similar position has been articulated by the various High Courts in India.<sup>11</sup> A question that however arises is how to interpret the word ‘forthwith’ as used in the provision. For this, the High Court of Madras threw light on the issue by stating that the requirement of ‘forthwith’ reporting the seizure to mean 'immediately', 'without delay', 'soon'.<sup>12</sup>

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<sup>9</sup> Ms. Swaran Sabharwal vs. Commissioner of Police, 1988 CriLJ 241; K. Parmar and Ors. vs. Union of India and Anr., 1992 CriLJ 2499.

<sup>10</sup> Muktaben M. Mashru vs. State of NCT of Delhi and Ors., 265(2019) DLT 651.

<sup>11</sup> Manish Khandelwal and Ors. vs. The State of Maharashtra and Ors., 2019 SCC OnLine Bom 1412; Uma Maheswari and Ors. vs. The State and Ors., 2013 SCC OnLine Mad 3829; Ezulix Software Pvt. Ltd. vs. State of Maharashtra and Ors., MANU/MH/1076/2021; Tmt. T. Subbulakshmi and Ors. vs. The Commissioner of Police, State, 2013(4)MLJ(CrL)41.

<sup>12</sup> Uma Maheswari and Ors. vs. The State and Ors., 2013 SCC OnLine Mad 3829.

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Therefore, it is a mandatory requirement for the investigating authority to report to the Magistrate of the seizure under Section 102 of the CrPC at the earliest.

In addition to the above, courts have also touched upon as to how the provision ought to be interpreted as well as applied. The Supreme Court had clarified that while interpreting Section 102 of the CrPC, the underlying object behind it has to be kept in mind and that the provision cannot be given a narrow interpretation,<sup>15</sup> giving flexibility to the investigating authorities. However, such a view has provided a wider scope of misuse allowing investigating authorities to harass innocent third parties by freezing their bank accounts on the slightest of doubts as to its connection with any alleged offense. In *Teesta Atul Setalvad and Ors. vs. The State of Gujarat and Ors.*,<sup>14</sup> the Supreme Court did seek to address the concern by stating that the power under Section 102 of the CrPC is to be exercised cautiously and not be extended to irrelevant matters. Even the High Court of Madras in *B. Kavitha vs. The Inspector of Police*<sup>15</sup> emphasised that such discretion of the investing authorities, especially while freezing bank accounts, must be undertaken only in rare cases.

### **Interplay between Section 102 of the CrPC and Prevention of Money-Laundering Act, 2002 ('PMLA')**

It was pointed by the Supreme Court that the legislature by including the phrases 'any property' and 'any offence' under Section 102 of the CrPC had given the provision a wide scope.<sup>16</sup> The applicability of the provision was held to be wide enough to cover offences created under any statute. However, a pertinent question arises whether even the officers acting under the PMLA can seize property or freeze bank accounts through Section 102 of the CrPC?

There have been conflicting views on the application of Section 102 of the CrPC through the PMLA.<sup>17</sup> However, the recent decision of the Supreme Court in *Opto Circuit India Ltd. vs. Axis Bank and Ors*<sup>18</sup> observed that the PMLA is a standalone enactment which contains a provision for seizure including the freezing of accounts. As such, the power and procedure for seizure provided under the PMLA has to be complied with. The Court held that when a power is provided under a

<sup>15</sup> State of Maharashtra vs. Tapas D. Neogy., (1999) 7 SCC 685.

<sup>14</sup> Teesta Atul Setalvad and Ors. vs. The State of Gujarat and Ors., (2018) 2 SCC 372.

<sup>15</sup> B. Kavitha vs. The Inspector of Police, MANU/TN/4197/2019.

<sup>16</sup> State of Maharashtra vs. Tapas D. Neogy., (1999) 7 SCC 685.

<sup>17</sup> Paresha G. Shah vs. State of Gujarat and Ors., 2016GLH(1)329.

<sup>18</sup> Opto Circuit India Ltd. vs. Axis Bank and Ors., AIR2021SC753.

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special enactment such as the PMLA, resorting to the power under the general law such as the CrPC does not arise. Moreover, the scheme under both the statutes are different as well.

It has also been held by the High Court of Delhi that the essentials of Section 17 of the PMLA which pertains to 'search and seizure' must be strictly complied with and recourse cannot be taken to Section 102 of the CrPC.<sup>19</sup>

### **Freezing of third party bank accounts**

An anomalous situation emerges where bank accounts of a party who is neither an accused nor a named party in the complaint are frozen by the investigating authorities. This issue was raised before the High Court of Bombay as to "*whether Bank account of petitioners, who are not accused in any crime can be freezed [sic] by the Investigating Agency, under Section 102 of the Criminal Procedure Code?*"<sup>20</sup> In this matter however, the Court was not convinced of the justifications given as to why the amounts were deposited in the bank account of the Petitioner nor was the Petitioner able to showcase evidence on the utilisation of the money in their business. As such, the Court upheld the freezing of the bank accounts observing that the amounts earned by the accused have been found parked in the bank account of the Petitioner. However, the Court also pointed that given the pendency of the investigation, a conclusive finding in this regard cannot be recorded.

The view of the High Court was also reflected thereafter in the Supreme Court decision in Teesta Atul Setalvad (*supra*) where it was noted by the Court that "*the bank account need not be only of the Accused but it can be any account creating suspicion about the commission of an offence.*"<sup>21</sup> High Courts have furthered this position by stating that there has to be a 'strong' suspicion for such bank accounts of third parties to be frozen<sup>22</sup> and the discretion has to be invoked with the 'utmost restraint'.<sup>23</sup>

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<sup>19</sup> Directorate of Enforcement vs. Abdullah Ali Balsharaf and Ors., 2019 SCC OnLine Del 6428. Also see SLP(C) 28021/2019.

<sup>20</sup> Rohan Ashok Jagdale and Ors. vs. The Police Station Officer and Ors., 2016(4)BomCR(Cri)512.

<sup>21</sup> See also Neelofar Abass vs. State of J. and K. and Ors., 2020 SCC OnLine J&K 585. The Court relied on the decision in Neogy (*supra*) reiterating that the bank account of the accused as well as his relatives can fall within the scope of Section 102 of the CrPC.

<sup>22</sup> Anuradha Sadashivamurthy vs. State of Karnataka and Ors., MANU/KA/5007/2018. See also, Prakash Padukone and Ors. vs. State of Karnataka and Anr. (W.P. No. 13516-13518/2018) (04.04.2018).

<sup>23</sup> Rajamani vs. The Inspector of Police, Shevapet Police Station and Ors., 2003 SCC OnLine Mad 915.

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The High Court of Madras in a similar matter was approached by a Petitioner who was a third party to the criminal proceedings initiated by the police authorities. The Court found that there was no nexus or relevance of the freezing of the bank account to the investigation of the offence registered against the actual accused.<sup>24</sup> The Court observed in the matter that *“the [authorities] are not supposed to initiate such drastic steps to impair the business of anyone who is not an accused in the case ordering to freeze the Bank Accounts or obstructing such persons from operating their accounts.”*

A different approach was taken by the High Court of Telengana in *Hajji Mohammed Sattar vs. State of Telangana ACB*<sup>25</sup> where it considered the fact that not only is the Petitioner a third party to the crime but also the statement of the bank account was already secured by the authorities. Therefore, given that the statement of bank account was already secured, the Court held that the offence (if any) could be proved from the entries made in the bank account. Since no other incriminating evidence was found by the investigating authority even after freezing the account, the Court found no reason to keep the accounts frozen. A similar observation had also been made by the High Court of Madras stating that the alleged transfer of money into the Petitioner’s bank account can be *“verified at any time by a comparison between the accounts as the entries in the accounts are always available as such no purpose seems to be served by restricting the operation of the bank account.”*<sup>26</sup>

In another writ petition before the High Court of Kerala,<sup>27</sup> the de-freezing of the bank account of a charitable Society was sought. The Court observed that the Society was not an accused in the alleged crime and that the accounts were being maintained for the welfare of the members. Given that the accounts had no direct nexus with the offence, the Court held that the freezing of the accounts will adversely affect the interests of the members of the Society.

In the same vein, courts have also considered the impact of freezing of bank accounts on the rights of people. As discussed above, freezing of bank accounts is only to be undertaken in rare cases that too with utmost restraint and in compliance with the provision of Section 102 of the CrPC. In *B. Kavitha vs. The Inspector of Police*, the High Court of Madras while directing the de-freezing of an account pointed that the investigating authorities had not only failed to comply with the mandate of Section 102 but had also frozen the bank accounts without even registering an FIR, showing the hastiness of the officers’ actions.<sup>28</sup> The Court also considered that the said

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<sup>24</sup> Ibid.

<sup>25</sup> *Hajji Mohammed Sattar vs. State of Telangana ACB*, MANU/TL/0510/2019.

<sup>26</sup> *R. Chandrasekar vs. Inspector of Police, Fair Land Police Station Salem and Ors.*, 2002 SCC OnLine Mad 686. See also *Rakesh P. Sheth and Ors. vs. The State*, 2016 SCC OnLine Mad 25294.

<sup>27</sup> *South Indian Chamber of Commerce and Industries Members Welfare Charitable Society and Ors. vs. M.C. Alex and Ors.*, 2020 SCC OnLine Ker 16814.

<sup>28</sup> *B. Kavitha vs. The Inspector of Police*, MANU/TN/4197/2019.

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bank accounts were being used to repay the Petitioner's loan amounts. As such, the Court found the actions of the investigating authority as violative of the Petitioner's fundamental right under Article 21 of the Constitution. Similarly, the freezing of bank accounts is such a drastic measure that it affects the right to privacy and reputation of the account holder.<sup>29</sup> The investigating authorities cannot act in an arbitrary fashion and freeze bank accounts or even keep the accounts frozen indefinitely. Such actions will clearly amount to violating the constitutional and legal rights of the account holder.<sup>30</sup>

## Remedies

### 1. Before the Investigating Authority

By way of an amendment,<sup>31</sup> Section 102(3) of the CrPC allows the investigating authority to decide whether to return custody of the seized property if it finds that the continued retention of the property is not necessary for the purpose of investigation but conditioned on the person executing a bond undertaking to produce the property before the Court when required.

The Supreme Court in *Teesta Atul Setalvad (supra)* clarified 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.”*

### 2. Before the Magistrate

Though such a means as mentioned above exist, parties are often forced to approach the court. In this regard, a remedy available to the parties is to approach the concerned Magistrate under Section 451 or Section 457 of the CrPC. Courts have allowed for de-freezing of bank accounts on the direction that the party execute a bond for the concerned amount before the Magistrate and produce such amount if so directed by the Magistrate.<sup>32</sup> Section 457 of the CrPC empowers the Magistrate to deliver the seized

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<sup>29</sup> *Madhu vs. Sub Inspector of Police*, 2020 (5) KHC 35.

<sup>30</sup> *Mohammad Enamul Haque vs. Central Bureau of Investigation, ACB, Cochin*, 2018 SCC OnLine Ker 22772.

<sup>31</sup> Inserted by Act 25 of 2005, s.13 (w.e.f. 23-6-2006).

<sup>32</sup> *Sunita Ajit Gholkar and Ors. vs. State of Maharashtra and Ors.*, MANU/MH/2849/2014; *Muktaben M. Mashru vs. State of NCT of Delhi and Ors.*, 265 (2019) DLT 651.

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property to the entitled person. Even for de-freezing of a bank account an application under Section 457 of the CrPC is maintainable.<sup>33</sup>

### 3. Before the High Court

Another remedy invoked by the parties is the writ jurisdiction of the High Courts on the basis of violation of right to livelihood under Article 21 of the Constitution and/ or the seizure is arbitrary and hence violative of Article 14.<sup>34</sup> Since writ jurisdiction is an extraordinary remedy, the Court may reject such a writ petition on the ground that an effective alternative remedy in the form of a statutory remedy is available under Section 451 and 457 of CrPC and decline interference for non-exhaustion of such remedy.<sup>35</sup> High Courts may find it appropriate to direct the Petitioner to approach the Magistrate under Section 451 or 457 of the CrPC, rather than to hear the matter on merits under a writ jurisdiction.<sup>36</sup> However, in *Madhu vs. Sub Inspector of Police*,<sup>37</sup> the Court stated that a Petitioner can approach the High Court itself “if the freezing is per se contrary to the provisions of law and could be assailed as illegal without reference to factual disputes involved in the matter.” This is in line with the view that a writ court cannot venture into disputed questions of fact which a Magistrate would be in a better position to address.<sup>38</sup> Depending on the circumstances, the court can also reject the request for de-freezing of a bank account if it is of the view that such a de-freezing would frustrate the investigation<sup>39</sup> or on the ground that the investigation is not yet complete.<sup>40</sup>

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<sup>33</sup> Ram Naresh Tiwari vs. State of Chhattisgarh and Ors., 2020 SCC OnLine Chh 1185; Also see Sanju Nishad vs. State of Chhattisgarh, WP (Cr) 358/2016 (09.05.2017), wherein the Court in respect of the non-compliance of Section 102(3) held that “Non-reporting the seizure to the Magistrate having jurisdiction cannot take away the authority of the concerned Magistrate to deal with the property in terms of Section 457(2) of the CrPC.”

<sup>34</sup> Madhu vs. Sub Inspector of Police, 2020 (5) KHC 35; Mohammad Enamul Haque vs. Central Bureau of Investigation, ACB, Cochin, 2018 SCC OnLine Ker 22772; IMZ Corporate Private Limited and Ors. vs. State of Bihar and Ors., 2020 SCC OnLine Pat 2712.

<sup>35</sup> AP Product and Ors. vs. State of Telangana and Ors., 2020 SCC OnLine TS 1628. Also see Bharath Overseas Bank vs. Minu Publication, MANU/TN/0478/1988, wherein it was observed that while Section 457 of the CrPC “deals with orders that could be passed with reference to property, during investigation and before the commencement of any trial or enquiry, S. 451, Cr.P.C, deals with orders that could be passed for custody and disposal of property, pending trial or enquiry,”

<sup>36</sup> Ram Naresh Tiwari vs. State of Chhattisgarh and Ors., 2020 SCC OnLine Chh 1185.

<sup>37</sup> Madhu vs. Sub Inspector of Police, 2020 (5) KHC 35. See also, Manish Khandelwal and Ors. vs. The State of Maharashtra and Ors., 2019 SCC OnLine Bom 1412.

<sup>38</sup> Operation Mobilization India and Ors vs. State of Telangana and Ors. (MANU/TL/0401/2021).

<sup>39</sup> Ibid.

<sup>40</sup> Teesta Atul Setalvad and Ors. vs. The State of Gujarat and Ors., (2018) 2 SCC 372; Neelofar Abass vs. State of J. and K. and Ors., 2020 SCC OnLine J&K 585.

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In the case of *South Indian Chamber of Commerce and Industries Members Welfare Charitable Society and Ors. vs. M.C. Alex and Ors.*,<sup>41</sup> the Petitioner who was not an accused in the crime approached the High Court of Kerala under Article 226 of the Constitution. Though it was argued by the Respondent that the appropriate remedy would lie under Section 457 of the CrPC, the Court held that the “*writ jurisdiction of this Court cannot be said to be barred in a case where a glaring illegality committed by the seizing Officer is alleged and sought to be substantiated despite Section 457 of the Cr.P.C. providing an alternate remedy in such situation.*” Alternatively, an aggrieved party may also assail the freezing order by taking recourse to Section 482 of the CrPC and Article 226 of the Constitution before the jurisdictional High Court.<sup>42</sup> High Courts have entertained petitions under Section 482 of the CrPC, invoking its inherent powers for de-freezing bank accounts.<sup>43</sup>

#### 4. Ambiguous Areas

One pertinent issue is whether there is a requirement of prior and post freezing notice to the aggrieved party under section 102 CrPC. On many occasions parties are left in the dark about freezing actions until they discover it subsequently, thereby frustrating the appropriate remedial measures that may have been availed before harm is caused. The issue regarding the requirement of prior notice is considered to have been settled by the Supreme Court in *Teesta Atul Setalvad (supra)*, in which it was stated that “[*t*]here is nothing in Section 102 which mandates giving of prior notice to the account holder before the seizure of his bank account.” However, the contention with respect to service of prohibitory order post freezing and seizure memo remains available to aggrieved parties as a tenable objection.<sup>44</sup>

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<sup>41</sup> *South Indian Chamber of Commerce and Industries Members Welfare Charitable Society and Ors. vs. M.C. Alex and Ors.*, 2020 SCC OnLine Ker 16814.

<sup>42</sup> *M. Adithya Cholan and Ors. vs. The Union of India and Ors.*, 2015 SCC OnLine Mad 6729.

<sup>43</sup> *Rakesh P. Sheth and Ors. vs. The State*, 2016 SCC OnLine Mad 25294; *Agrani Export Private Limited vs. State of Orissa*, 2008(II)OLR888; *Irshad Ahmad Famda vs. Union Territory of J and K and Ors.*, MANU/JK/0402/2020; *Ezulix Software Pvt. Ltd. vs. State of Maharashtra and Ors.*, MANU/MH/1076/2021. See also, *Indiabulls Commercial Credit Limited vs. Economic Offences Wing and Ors.*, 2021 SCC OnLine Del 2906, wherein the Petitioner filed a petition under Article 226 read with Section 482 of the CrPC.

<sup>44</sup> *Neelofar Abass vs. State of J. and K. and Ors.*, 2020 SCC OnLine J&K 585; *Muktaben M. Mashru vs. State of NCT of Delhi and Ors.*, 265 (2019) DLT 651; *Dharani Wines and Ors. vs. The State and Ors.*, MANU/TN/5706/2020; *Manish Khandelwal and Ors. vs. The State of Maharashtra and Ors.*, 2019 SCC OnLine Bom 1412; *Shivanandhan vs. State and Ors.*, 2019 SCC OnLine Mad 1154.

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Another area which requires further clarity is the nature or extent of ‘suspicion’ that is required for the investigation authority to order the freezing of a bank account. In the decision of Nevada Properties (*supra*), the Supreme Court pointed that the use of the phrase “*found under circumstances which create suspicion of the commission of any offence*” in Section 102 of the CrPC does not mean the officers should have a “*firm opinion or an adjudication/finding*”. Rather, the Court observed that the word ‘suspicion’ “*is a weaker and a broader expression than ‘reasonable belief’ or ‘satisfaction’.*” This therefore indicates a subjective element to the application of Section 102 of the CrPC rather than having an objective assessment and investigating authorities routinely exploit this lacuna. However, courts still emphasise on the requirement that the authorities must satisfy themselves on the basis of the material available to them that there exists a need to freeze the account.<sup>45</sup> Such requirements ensure that the investigating authorities do not act whimsically or arbitrarily while dealing with measures as drastic as freezing bank accounts.

## Conclusion

The judicial pronouncements analysed above reflect the position that the bank accounts of any individual, entity or business may be frozen even if the account holder had no involvement in the alleged crime. The tenability of such actions is however conditioned on compliance with certain procedural safeguards and the requirement of ‘reasonableness’. It is an oddly peculiar position to take that an account holder who enters into a *bonafide* and genuine transaction with another party be punished for no fault of his own by freezing his bank accounts. In most business transactions or even in a person’s day to day dealings, it is not possible for him to trace and verify the source of the other party’s income before entering into each transaction. In such a situation it becomes highly unfair to subject those businesses or individuals to a drastic action such as freezing of bank accounts.

It would therefore be upon the courts to make strict directions to the concerned authorities on how they should approach an investigation which directs them to a third party’s bank account. Though the High Court of Madras rightly stated that the freezing of third-party accounts ought

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<sup>45</sup> IMZ Corporate Private Limited and Ors. vs. State of Bihar and Ors., 2020 SCC OnLine Pat 2712; Madhu vs. Sub Inspector of Police, 2020 (5) KHC 35; V.V. Kuttimalu Amma vs. State of Kerala and Ors., 2021 (1) KHC 251; South Indian Chamber of Commerce and Industries Members Welfare Charitable Society and Ors. vs. M.C. Alex and Ors., 2020 SCC OnLine Ker 16814, the Court stated that there must be materials supporting reasonable suspicion.

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to be done only in 'rare cases' and with 'utmost restraint', such a view has not yet been imbibed by investigating authorities, including the Police.

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