2025:KER:12218

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE C. JAYACHANDRAN

FRIDAY, THE 14TH DAY OF FEBRUARY 2025 / 25TH MAGHA, 1946

WP(CRL.) NO. 1284 OF 2022

PETITIONER:

SREEKALA K., AGED 52 YEARS
W/O.M.K.CHANDRAN, MANJAKKATIL HOUSE,
THIRUVANKULAM.P.O,682035, ERNAKULAM DISTRICT.

BY ADVS.
N.J.MATHEWS
ASHIK K. MOHAMED ALI
MUHAMMED RIFA P.M.(K/771/2022)
RAMSEENA N.(K/001380/2022)

RESPONDENTS:

1 CENTRAL BUREAU OF INVESTIGATION,
CBI:SCB, THIRUVANANTHAPURAM, REPRESENTED BY CBI
PROSECUTOR, HIGH COURT OF KERALA, COCHIN-682031.

2 THE BAR COUNCIL OF KERALA,
BAR COUNCIL BHAVAN, HIGH COURT CAMPUS,
KOCHI-682031, REPRESENTED BY ITS SECRETARY.

3 M/S DHANLAXMI BANK LTD, BAR COUNCIL BRANCH, HIGH
COURT COMLPLEX, COCHIN-682031.

ADDL.4 VIGILANCE AND ANTI-CORRUPTION BUREAU,
CENTRAL RANGE, ERNAKULAM -682017, REPRESENTED BY
SUPERINTENDENT OF POLICE-I, CENTRAL RANGE,
ERNAKULAM.
IMPLEADED VIDE ORDER DATED 26/07/2023 IN IA 2/2023
in W.P(Crl.) 1284/2022.

BY ADVS.
SRI.JOHN S.RALPH (AMICUS CURIAE)
SRI.SREELAL WARRIAR (SPECIAL P.P, CBI)FOR R1
SMT.M.U.VIJAYALAKSHMI
SRI.SAIJO HASSAN
SRI.NAGARAJ NARAYANAN
SRI.RAFEEK. V.K.
SMT.AATHIRA SUNNY
SMT.BINCY JOB
SMT.NEEMA NEERACKAL
SRI.AMBADI DINESH L.K.
SRI.SALMAN FARIS
SRI.K.JAJU BABU (SR.)(K/116/1981)

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ORDERS ON 05.09.2024, THE COURT ON 14.02.2025 DELIVERED THE FOLLOWING:

"C.R."

C.JAYACHANDRAN, J.

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W.P.(Crl.) No.1284 of 2022

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Dated this the 14th day of February, 2025

JUDGMENT

The petitioner herein is the 3rd accused in Crime No.VC.02/18/CRE of the Vigilance and Anti Corruption Bureau, Central Range, Ernakulam. She is aggrieved by the freezing of Exts P5 and P6 bank accounts in her name, pursuant to Exts P1 and P2 requests made by the Deputy Superintendent of Police, attached to the 4th respondent VACB. The specific ground raised is the non-adherence to the provisions of the Criminal Law Amendment Act, 1944 to freeze/attach the bank accounts of the petitioner. It is also urged that recourse to any of the provisions of the Code of Criminal Procedure is also not made. Another contention urged is that the accounts has been freezed without any enabling orders from a judicial authority. The seriousness of the issues involved impelled this Court to appoint an amicus curiae.

Accordingly, **Sri.John S. Ralph** was appointed as the amicus.

2. Heard the learned amicus; learned counsel for the petitioner; learned Special Public Prosecutor(CBI); the learned counsel for the 2nd respondent Bar Council; and learned counsel for the 3rd respondent, Dhanlaxmi Bank.

3. Before addressing the specific issues which have surfaced for consideration, it is noticed that the offences alleged in the subject crime bearing F.I.R No. RC0342022A0001 of the Special Court – I(CBI), Ernakulam are under Sections 109, 120B, 409, 420 and 477A of the Indian Penal Code, read with Sections 13(2) and 13(1)(c) and (d) of the Prevention of Corruption Act. There are 9 accused altogether, of whom the petitioner is the wife of the 1st accused. The gist of the prosecution allegation is that, the 1st accused (petitioner's husband), while working as the Accountant of the Kerala Bar Council, had misappropriated money to the tune of ₹ 7.6 Crores from the Kerala Bar Council Welfare fund during the period from 2007 to 2017.

According to the prosecution, the petitioner had conspired with and abetted the commission of the crime, by siphoning off the amount misappropriated through two of her bank accounts, maintained with the 3rd respondent Dhanlaxmi Bank, to the extent of ₹96 lakhs, approximately.

4. Arguments advanced by the learned amicus

The first point mooted by the learned amicus is that, when there exists a specific provision under the Criminal Law Amendment Ordinance, 1944 for attachment of properties involved in a crime, recourse to freeze the account, purportedly under Section 102 of the Code of Criminal Procedure, is illegal. Learned amicus would elaborate that, by virtue of Section 18 A of the Prevention of Corruption Act, the Criminal Law Amendment Ordinance, 1944 has been made applicable to an offence committed under the said Act; and by virtue of Section 5(6) of the Act, the special Judge is empowered to exercise the powers and functions of a District Judge under the Criminal Law Amendment Ordinance,

1944. According to the learned amicus, the Prevention of Corruption Act is a complete Code; and so is the Ordinance of the year 1944, as regards the procedure for attachment. That being the situation, recourse to Section 102 Cr.P.C - when there exists a special provision in the 1944 Ordinance, as made applicable to the offences under the Prevention of Corruption Act - is illegal. Learned amicus would also submit that, under the 1944 Ordinance, a person aggrieved by the attachment has more protection, since it mandates a judicial Order, coupled with an opportunity of hearing and also to adduce evidence. No such safeguard is available with respect to a seizure under Section 102 of the Cr.P.C. It was specifically pointed out that the impugned order freezing the bank accounts was passed on 13.12.2017, a date before Section 18A was inserted to the Prevention of Corruption Act. According to the learned counsel, even in the absence of Section 10A, the 1944 Ordinance, which was in force, ought to have been followed. The decision of the Hon'ble Supreme Court in ***State of***

Maharashtra **v.** ***Tapas D.Neogy [(1999) 7 SCC 685]*** was sought to be distinguished by pointing out that the same was rendered before the introduction of Section 18A to the Prevention of Corruption Act and also for the reason that the impact of the 1944 Ordinance has not been considered in that decision. Learned amicus would conclude his argument by stating that when a specific remedy is available under a special statute, recourse to Section 102 of a general statute, namely the Cr.P.C., cannot be countenanced in law. To buttress his arguments, the learned amicus would place reliance upon a recent judgment of the Hon'ble Supreme Court in ***Ratan Babulal Lath*** *v.* ***State of Karnataka [2022(16) SCC 287]***.

5. Learned counsel for the petitioner would adopt the arguments raised by the learned amicus and place heavy reliance upon ***Ratan Babulal*** (supra). Another judgment of the Hon'ble Supreme Court in ***OPTO Circuit India Ltd.*** v. ***Axis Bank and others [2021(6) SCC 707]*** was also pressed

into service, to point out that when the special enactment contains a provision for seizure/attachment/freezing, that power has to be exercised. Learned counsel would also submit that, even if a power under Section 102 Cr.P.C. is presumed, the subject seizure is illegal for want of compliance of Section 102(3) Cr.P.C., inasmuch as the seizure has not been reported to the Magistrate concerned. In this regard, learned counsel would place reliance upon the judgment of the learned single Judge of this Court in ***Nazeer K.T.*** v. ***The Manager, Federal Bank*** ***[2024(5) KLT 161].***

6. Refuting the above submissions made by the learned amicus, as also, the learned counsel for the petitioner, learned Special Public Prosecutor (CBI) relies on ***Tapas D.Neogy*** (supra), to argue that a bank account can be freezed in exercise of the powers under Section 102 Cr.P.C, which legal position is trite. Relying upon ***Shento Varghese*** v. ***Julfikkar Hussain and others*** ***[2024(7) SCC 23],*** it was canvassed that the non-compliance of

Section 102(3) Cr.P.C. cannot render the seizure illegal, since the purpose of Section 102(3) is only to deal with the disposal of the article seized. Prior or subsequent permission of the Magistrate concerned is neither contemplated, nor required under Section 102(3) Cr.P.C. The powers of the investigating officer to seize an article in terms of Section 102 Cr.P.C would remain unaffected and seizure would remain perfectly legal, even if it is assumed that the seizure was omitted to be reported to the Magistrate. On facts, it was pointed out that the seizure was effected when the case was being investigated by the Vigilance and Anti Corruption Bureau, and a record evidencing the reporting of seizure to the Magistrate in terms of Section 102(3) Cr.P.C., is not seen available in the files.

7. Learned counsel appearing for the 2nd respondent/Bar Council supports the arguments advanced by the learned Special Public Prosecutor(CBI). It was pointed out that

huge amounts have been siphoned off by the accused persons, especially the 1st accused, who was actively abetted by the petitioner/A2, pursuant to a conspiracy between them. The existence of amount to the tune of ₹ 96 lakhs in her accounts, if not otherwise explained, would go a long way in proving the prosecution allegations.

8. Learned counsel for the 3rd respondent Dhanlaxmi Bank would adopt a neutral stand agreeing to abide by the course directed by this Court.

9. Having referred to the arguments advanced by the counsel appearing for the respective parties, the following questions arise for consideration:

> 1) In respect of an offence under the Prevention of Corruption Act, whether recourse made to seize/freeze the accounts, in terms of Section 102 Cr.P.C, is illegal and bad in law, since the amounts in the account can be attached as per the

Criminal Law Amendment Ordinance, 1944, as made applicable to offences under the Prevention of Corruption Act by virtue of Section 18A of the said Act?

2) Whether the failure to report the seizure to the Magistrate concerned in terms of Section 102(3) Cr.P.C. would render the seizure illegal?

10. <u>Question no.1</u>

For a correct appreciation of the question raised, it is necessary to refer to the purpose, ambit and scope of Section 102 Cr.P.C, as also, of the Criminal Law Amendment Ordinance, 1944. Section 102 Cr.P.C. is included in Chapter VII, which deals with the processes to compel the production of things. In the last segment of Chapter VII, with the heading 'Miscellaneous', Section 102(1) is couched as follows:

> *"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 suspician of the commission of any offence.”

It is clear from the above that the power to seize the property is conferred on the police officer. The property, which is sought to be seized should be of such a nature that the same is alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence.

11. Now, let us look at the Criminal Law Amendment Ordinance, 1944. The very purpose of introduction of the said Ordinance of the year 1944 is to provide for attachment of property in criminal proceedings, as also, for disposal of such property, upon termination of criminal proceedings. In case of conviction, the attached property – to the extent of the value as found in the final judgment to have been procured by the convicted person by means of the offence – will be forfeited. If acquitted, such orders

of attachment of the property will be withdrawn. The Criminal Law Amendment Ordinance, 1944 applies only to scheduled offences. Section 3 of the Ordinance enables an application to be made to the District Judge for attachment of the money or other property, if the State Government or the Central Government, as the case may be, believe that the accused person has procured such money or property by means of commission of the scheduled offence. Section 3 also provides that the provisions of Order XXVII of the first schedule to the Code of Civil Procedure, 1908 shall apply to proceedings for an order of attachment under the Ordinance. Section 4 provides for ad interim attachment. Section 5 provides for investigation as to objections to attachment; and by virtue of Section 5(3), the District Judge has to pass an order, either making the ad interim order of attachment absolute or varying or withdrawing the order. An option is given to the accused to give security in lieu of such attached property, which, if satisfactory and sufficient, will enable the accused to get the

attachment withdrawn. Section 10 provides for the duration of attachment and stipulates the same to be in force until the termination of the criminal proceedings. Section 12 casts a duty on the Criminal Courts, trying the scheduled offence, to record a finding as to the amount of money or value of other property procured by the accused, by means of the offence, in case of conviction. Section 13 is important, which deals with the disposal of the attached property. As already indicated, in case of acquittal, the order of attachment shall be withdrawn forthwith; and in case of conviction, the amount or value, as found to have been procured by the accused by means of the offence, in terms of Section 12, shall be forfeited.

12. Juxtaposing the purpose of Section 102 and the purpose, ambit and scope of the Criminal Law Amendment Ordinance, 1944, it is explicit that the two provisions serve two different purposes. While Section 102 provides for 'seizure' of the property, which is suspected to have

been stolen or which is found in circumstances creating suspicion of commission of an offence, the Criminal Law Amendment Ordinance provides for 'attachment' of the money or the property, which is believed to have been procured by the accused, by means of the scheduled offence. While Section 102 provides a step in aid of investigation, the Criminal Law Amendment Ordinance only secures the money, which is alleged to have been procured by the accused, by means of the scheduled offence, in the form of an attachment, so that the same can be forfeited, if the accused is ultimately found guilty of the scheduled offence. In the case of the former (Section 102 Cr.P.C.), the property seized, if proved to have a direct connection or link with the offence alleged, can constitute a piece of evidence in the hands of the prosecution. However, in the case of the latter, no such purpose could be served, except securing the money for the purpose of ultimate disposal on the culmination of the proceedings. The two operates on two different fields and one cannot substitute the purpose

intended to be served by the other. This Court, therefore, finds that there is no merit in the proposition canvassed by the learned amicus to the effect that, upon the introduction of the Criminal Law Amendment Ordinance, 1944 to offences under the Prevention of Corruption Act, recourse made to Section 102 Cr.P.C to seize/freeze the account is illegal. The contention will stand rejected.

13. An incidental issue, which requires to be considered is with respect to the power of the investigating officer to seize/freeze bank accounts by virtue of the powers under Section 102 Cr.P.C. The issue is not *res integra*. The position has been settled by the Hon'ble Supreme Court by virtue of the judgment in ***Tapas D.Neogy*** (supra). After taking note of the dichotomy in the views expressed by the various High Courts on the issue, the Hon'ble Supreme Court held that the term 'property' cannot be given a narrow interpretation. The Supreme Court observed that, if there can be no seizure under Section 102 Cr.P.C, of the bank

account of the accused, then, the money deposited in a bank, which is ultimately held in the trial, to be the outcome of illegal gratification, could be withdrawn by the accused and the Courts would be powerless to get the said money, which has a direct link with a commission of offence. The Supreme Court ultimately held that the bank account of the accused is a property, within the meaning of Section 102 Cr.P.C and the police officer in the course of investigation can seize or prohibit the operation of the said account. The dictum laid down in ***Tapas D.Neogy*** (supra) was reiterated by the Hon'ble Supreme Court in ***Teesta Atul Setalvad*** v. ***State of Gujarat*** [2018(2) SCC 372]. In ***Teesta*** (supra), the observations of the Hon'ble Supreme Court in ***Tapas D.Neogy*** (supra) were quoted *in extenso* and ultimately, the Supreme Court held in paragraph no.16 of the judgment that there cannot be any room to countenance a challenge to the action of seizure of bank account of any person, which may be found under circumstances creating suspicion of the commission of an offence.

14. Learned amicus canvassed that ***Tapas D.Neogy*** (supra) does not reflect the correct proposition of law, since it did not consider the impact of the Criminal Law Amendment Ordinance, 1944. As already held above in this judgment, the purpose of attachment under the 1944 Ordinance and seizure under Section 102 Cr.P.C are different altogether, wherefore, the 1944 Ordinance cannot impact or substitute the purpose, ambit and scope of Section 102 Cr.P.C. Nor should the introduction of Section 18A to the Prevention of Corruption Act making the 1944 Ordinance applicable to offences under the Act would impact the dictum laid down in ***Tapas D.Neogy*** (supra) on the scope and ambit of Section 102 Cr.P.C. Those arguments will therefore stand repelled.

15. Before concluding the point, this Court should also refer to a recent judgment of the Hon'ble Supreme Court in ***Ratan Babulal Lath*** *v.* ***State of Karnataka*** ***[2022(16) SCC 287],*** on which heavy reliance has been placed, not only by the learned counsel for the petitioner, but also by the

learned amicus. To appreciate the contention, the short order in ***Ratan Babulal Lath*** (supra) is extracted hereunder:

> *"1. Leave granted. The only question which we are examining is whether the attachment of bank account of the appellant is sustainable in exercise of powers under Section 102 CrPC.*
> *2. The counter-affidavit of the respondent seeks to suggest that they are in the process of filing an application under Section 18-A of the Prevention of Corruption Act, 1988, since the earlier authorisation issued by the Government under Section 3 of the Criminal Law (Amendment) Ordinance, 1944 was not in the form of the government order.*
> *3. Be that as it may, on that account, it is not possible to sustain the freezing of the bank account of the appellant taking recourse to Section 102 CrPC as the Prevention of Corruption Act is a Code by itself."*

16. A perusal of the order would indicate that, no dictum, as such - so as to create a binding precedent for future governance - is seen laid down in this Order. Paragraph no.1 of the Order speaks about 'attachment' of the bank

account and the question which is seen posed is whether such 'attachment' is sustainable in exercise of the powers under Section 102 Cr.P.C. The same has been answered in the negative. A perusal of paragraph no.2 of the Order would indicate that the respondents in that case are filing an application under Section 18A of the Prevention of Corruption Act, which would obviously indicate that the issue therein was the 'attachment' of the money or property, which was suspected to be ill-gotten. It is in that context that the Hon'ble Supreme Court held in ***Ratan Babulal*** (supra) that a bank account cannot be freezed by taking recourse to Section 102 Cr.P.C. In other words, in a case where the prosecuting agency wants to attach the property, recourse should be made to the 1944 Ordinance, which has been made applicable to the offences under the Prevention of Corruption Act, by virtue of Section 18 A. The Order of the Hon'ble Supreme Court in ***Ratan Babulal*** (supra), as understood above, is only to that effect; and it does not lay down a dictum that a bank account cannot be

seized or freezed by a police officer, in exercise of the powers under Section 102 Cr.P.C. If the petitioner seeks to contend so, it could possibly be argued that the dictum laid down in ***Ratan Babulal*** (supra) is per incuriam, inasmuch as it has not considered the dictum laid down in ***Tapas D.Neogy*** (supra), reiterated in ***Teesta Atul Setalvad*** (supra) by two benches of co-ordinate strength. In the circumstances, the arguments advanced based on ***Ratan Babulal*** (supra) will also stand repelled.

17. While winding up Question No.1, it is noticed that ***OPTO Circuit India Ltd.*** (supra), relied on by the petitioner, cannot govern the instant facts, for, OPTO Circuit was dealing with a case under the Prevention of Money Laundering Act, 2002, which contains a specific provision under Section 17 for search and seizure. It is in that circumstance that the Hon'ble Supreme Court held that recourse cannot be made to Section 102 Cr.P.C, Prevention of Money Laundering Act being a special enactment, with an

enabling provision.

18. In the result, the first question raised is answered against the petitioner and in favour of the prosecution.

19. **Question No.2**

The question revolves on the fulcrum of there being a complete failure to report the seizure in terms of Section 102(3) Cr.P.C - as distinguished from the delay in reporting seizure under Section 102(3) Cr.P.C. Whether such failure would result in the seizure becoming vitiated and thus illegal, is the question posed.

20. Necessarily, we have to refer to the recent judgment of the Supreme Court in ***Shento Varghese*** v. ***Julfikar Husen and Others*** [2024(7) SCC 23]. The questions which fell for consideration in that judgment are as follows:

> *"2. The facts in the instant case, which we shall advert to later below, have given rise to the following question of law:*

What is the implication of non-reporting of the siezure forthwith to the jurisdictional Magistrate as provided under Section 102(3) CrPC?
more specifically:
Does delayed reporting of the seizure to the Magistrate vitiate the seizure order altogether?"

21. The divergent views and the reasons therefore of the various High Courts have been taken note of by the Supreme Court in paragraph nos.4 and 5. A comparative analysis of the legislative history is undertaken in paragraph no.6. It is relevant to note that the responsibility to report to the Magistrate about the seizure was originally there in the 1882 Code, which was, however, absent in the 1898 Code. Thereafter, in the 1973 Code, the provision was reintroduced, which aspects have been taken note of by the Supreme Court in paragraph no.7 of ***Shento Varghese*** (supra). As noted in paragraph no.8, Section 102(3) was inserted by an amendment of the year 1978, which also empowered the

seizing officer to give custody of the seized property to any person, upon executing a bond, undertaking to produce the property before the Court, as and when required. In paragraph no.10, the Supreme Court referred to the 'Notes on Clauses' appended to the 1978 amendment Bill. Two reasons have been stated in the Notes on Clauses. The first is, there is a lacuna in the law and the second is, to give effect to the observations of the Supreme Court in ***Anwar Ahmad*** v. ***State of U.P*** [(1976) 1 SCC 154]. Elaborating on the lacuna in the law and the observations in ***Anwar Ahmad*** (supra), the Supreme Court held in paragraph no.14 that the purpose of reporting to the Magistrate is only to ensure disposal of the seized property. Thereafter, in paragraph no.15, the Hon'ble Supreme Court again raises the question whether seizure orders can be set at naught for non-compliance with the procedural formality of reporting such seizure to the Magistrate forthwith. Raising the question as above, the Supreme Court answered the same in paragraph no.16 in the negative, holding that the validity

of the power under Section 102(1) Cr.P.C is not dependent on the compliance of the duty of reporting under Section 102(3) Cr.P.C. It was re-iterated in paragraph no.18 of ***Shento Varghese*** (supra) that, the obligation to report the seizure to the Magistrate is neither a jurisdictional pre-requisite to exercise the power of seizure; nor is such exercise subject to compliance of the obligation to report under Section 102(3) Cr.P.C. The powers under Section 102 Cr.P.C has been juxtaposed with the powers under Section 105E Cr.P.C, which also speaks of a power to seize, however, with a condition subsequent that such seizure shall have no effect, unless confirmed by an order of the court within 30 days. Reference is also made to Section 157 Cr.P.C. to hold that the delay in reporting the seizure to the Magistrate may, at best, dent the veracity of the prosecution case viz-a-viz the date, time and occasion for seizure of the property. Since the proof of prejudice on the part of the accused and explanation for delay on the part of the prosecution can be demonstrated only at trial,

the effect of non-compliance becomes an issue to be adjudicated, after appreciating the evidence. Ultimately, in paragraph no.21 of ***Shento Varghese*** (supra), the Supreme Court overruled the line of precedents, which held that seizure orders are vitiated for delay in complying with the obligation/duty under Section 102(3). According to the Supreme Court, whether the duty under Section 102(3) to report the seizure to the Magistrate is mandatory or directory was not the right question to be posed. The right question was whether the exercise of the power to seize was subject to the compliance of the duty to report. In paragraph no.28, Supreme Court held that, the deliberate disregard or negligence to comply with Section 102(3) may invite appropriate departmental action against the erring official, simultaneous with re-iterating that the act of seizure will not get vitiated by virtue of such delay.

22. An analysis of the judgment in ***Shento Varghese*** (supra) would make it explicit that the power to seize under

Section 102(1) Cr.P.C. is independent and unbridled by the duty to report such seizure to the Magistrate concerned under Section 102(3) Cr.P.C. As held by the Hon'ble Supreme Court, the requirement of reporting under Section 102 is neither a condition precedent, nor one subsequent, to exercise the power of seizure under Section 102(1) Cr.P.C. The purpose of reporting the seizure as per Section 102(3) Cr.P.C is only to enable disposal of the property seized. If that legal position is trite, this Court is of the opinion that, even the failure to report the same cannot *ipso facto* affect the validity of the seizure. Of course, during trial, it will be open for the accused to show prejudice, if the seizure is not reported in terms of Section 102(3) Cr.P.C., only confining to the veracity of such seizure as regards the time and place of the articles seized. However, non-reporting of seizure under Section 102(3) Cr.P.C. cannot automatically lead to the legal consequence of such seizure getting vitiated and thus illegal.

23. It is true that the learned single Judge held in ***Nazeer K.T.*** v. ***The Manager, Federal Bank*** [2024(5) KLT 161] in paragraph no.7 that abject violation of the procedure prescribed in Section 102(3) Cr.P.C will definitely affect the validity of the seizure, which was so held bearing in mind Article 300 A of the Constitution. It was re-iterated in paragraph no.8 that the delay in reporting the seizure to the Magistrate can only be an irregularity, but total failure to report will have a negative impact on the validity of the seizure. Despite holding so, the learned single Judge did not choose to hold that the seizure in question therein was vitiated by such non reporting. Instead, an opportunity was granted to the police officer concerned to report the seizure within a period of one month from the date of receipt of a copy of the Judgment.

24. Inasmuch as law is settled by **Shento Varghese** (supra) that (1) the purpose of reporting the seizure to the Magistrate concerned under Section 102(3) is only confined

to the disposal of the said property in terms of Section 457 or Section 459 and (2) the validity of the power exercised under Section 102(1) Cr.P.C is not dependent on compliance of the duty to report under Section 102(3) Cr.P.C., the non-compliance thereof cannot affect the validity, as such, of such seizure, is the opinion of this Court. True that the same may impinge upon the right of the property holder to seek disposal in terms of Sections 451, 457 or 459, if the seizure of the property is not forthwith reported to the Magistrate. However, it is not synonymous to say that the impingement of that right of the property holder tantamounts to the seizure becoming illegal and vitiated for non-compliance of Section 102(3) Cr.P.C. This Court, by holding so, does not undermine the important duty of the police officer to report the seizure to the Magistrate concerned. Needless to say that, it is the sublime duty of the police officer to do so in terms of Section 102(3) Cr.P.C., as otherwise, the right of the property holder gets seriously affected to seek disposal of

the property. This Court only holds that the seizure, as such, is not vitiated for that reason, for, if the seizure is vitiated as illegal, then, the article seized in terms of Section 102(1) Cr.P.C. cannot be propounded as a piece of evidence on the part of the prosecution, during trial. Say for example, in the instant case, if the prosecution could establish that the money in the accounts of the petitioner is the ill-gotten wealth of her husband/A1, or for that matter, the misappropriated money, the same, by itself, constitutes a piece of evidence of such misappropriation. It may have the trappings of the recovery of the embezzled money. However, if the legal position goes to hold that the seizure itself is illegal, the prosecution cannot let in that important piece of evidence, causing serious jeopardy and prejudice, especially when the power under Section 102(1) Cr.P.C. to seize an article is not circumscribed or subjected to the duty to report under Section 102(3) Cr.P.C.

25. In view of the authoritative pronouncement of the law on the point in ***Shento Varghese*** (supra), this Court is not inclined to grant reliefs sought for, treating the seizure/freezing of accounts as illegal. Instead, I am impelled to follow the course ultimately adopted in ***Nazeer K.T.*** (supra).

26. In the circumstances, the challenge against seizure/freezing of the petitioner's account will stand repelled, however, subject to the following directions to the investigating officer:

> a) to trace out the document, if any, reporting the seizure to the special court concerned in terms of Section 102(3) Cr.P.C. and to produce the same before the court which is seisin of the matter; or
>
> b) to report such seizure to the special court within one month from the date of receipt of a copy of this judgment.

27. It is clarified that it will be open for the petitioner to file necessary application as per the relevant provision of the Code, either seeking custody of the property or disposal of the same, which, if filed, will be dealt with in accordance with law by the learned special judge.

28. The valuable service rendered by the learned Amicus is appreciated.

The Writ Petition is disposed of as above.

Sd/-

C.JAYACHANDRAN, JUDGE

vdv

APPENDIX OF WP(CRL.) 1284/2022

PETITIONER EXHIBITS

Exhibit P1	**TRUE COPY OF THE REQUEST DATED 13.12.2017 ADDRESSED TO THE DYSP, VACCB, CENTRAL RANGE, ERNAKULAM TO THE 3RD PETITIONER.**
Exhibit P2	**TRUE COPY OF THE COMMUNICATION DATED 27.11.2017 ADDRESSED BY THE 2ND RESPONDENT TO THE 3RD RESPONDENT**
Exhibit P3	**TRUE COPY OF THE PROCEEDINGS OF THE SECRETARY, REGIONAL TRANSPORT AUTHORITY, KOTTAYAM DATED 5.7.2019**
Exhibit P4	**TRUE COPY OF THE DEMAND NOTICE DATED 21.11.2018 ISSUED BY THE REGIONAL TRANSPORT OFFICER, IN RELATION TO ARREARS OF VEHICLE TAX FOR HER STAGE CARRIER WITH REGISTRATION NO.KL05-H-5340**
Exhibit P5	**TRUE COPY OF THE STATEMENT OF ACCOUNT IN RELATION TO THIS PARTICULAR ACCOUNT FOR THE PERIOD 1.7.2007 TO 30.06.2020**
Exhibit P6	**TRUE COPY OF THE STATEMENT OF ACCOUNTS IN RELATION TO THIS PARTICULAR ACCOUNT FOR THE PERIOD 1.7.2007 TO 20.07.2020.**