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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE V.G.ARUN

MONDAY, THE 2ND DAY OF JUNE 2025 / 12TH JYAISHTA, 1947

CRL.MC NO. 3740 OF 2025

CRIME NO.732/2024 OF Kalamassery Police Station, Ernakulam

AGAINST THE ORDER/JUDGMENT DATED 08.04.2025 IN CMP NO.739 OF 2025 OF JUDICIAL FIRST CLASS MAGISTRATE COURT, KALAMASSERY

PETITIONER:

HEADSTAR GLOBAL PVT. LIMITED,
OFFICE NO.509, RUPA SOLITARATE, MILLENNIUM BUSINESS PARK, SECTOR 2, TANE BELAPUR ROAD, MAHEPE, NAVI MUMBAI, REPRESENTED BY ITS DIRECTOR/ AUTHORIZED SIGNATORY, SREEKUMAR C.S., AGED 49 YEARS, S/O. SREEDHARAN NAIR, FLAT NO.201, SREE GANESH DARSHAN, SECTOR 20, KOPERKHARNE, NAVI MUMBAI, MAHARASHTRA, PIN - 400710

BY ADV SRI.BABU S. NAIR

RESPONDENTS:

1 STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM, KOCHI, PIN - 682031

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2 THE STATION HOUSE OFFICER,
KALAMASSERY POLICE STATION, ERNAKULAM DISTRICT,
PIN - 683104

3 SANJAY N.S.
S/O.SAJEENDRAN , AGED 28 YEARS NJALOOR HOUSE,
PATTAMBI, KALLADIPATTA, ONGALLUR, PALAKKAD,
KERALA-679303 (IS IMPLEADED AS ADDITIONAL
RESPONDENT NO:3 AS PER ORDER DATED 2/06/2025 IN
CRL MA 2/2025 IN CRL MC 3740/2025)

BY ADVS.
SHRI.SARATHKUMAR.T.S
SMT.JISMEMOL JAMES
SHRI.SHYAM KUMAR M.P
SHRI.ACHANKUNJU P.C
SHRI.RONY V.P.
SMT.VISHNUJA VASUDEVAN

OTHER PRESENT:

PP M.P.PRASANTH

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 27.05.2025, THE COURT ON 02.06.2025 PASSED THE FOLLOWING:

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**V.G.ARUN, J**

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**Crl.M.C.No.3740 of 2025**

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**Dated this the 2nd day of June, 2025**

## ORDER

The petitioner, a private limited company engaged in the business of export/import of food grains, pulses, and sugar, is aggrieved by Annexure D order, rejecting its application to unfreeze the company's bank account.

2. The essential facts are as under;

M/s.Apple Middle East General Trading LLC, located in the United Arab Emirates, is engaged in the import and export of food grains and other food articles to the Middle East. The aforementioned company having got impleaded as a party to these proceedings through its Public Relations Manager, will hereafter be referred to as the 3rd respondent for convenience.

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As part of its business, the 3rd respondent raised proforma invoice with Spezia Organic Condiments Pvt. Ltd. through Headstar Trading LLP, for the export of 378 metric tons of sugar from Kochi to the UAE. As advance towards the order, the 3rd respondent remitted ₹49.53 lakhs to the account of Spezia Organic Condiments Pvt. Ltd. maintained at the Kochi branch of the IDBI Bank. The advance payment was made based on the assurance that the consignment would reach the UAE within 30 days. However, contrary to the assurance, the sugar was never despatched from India. Upon inquiries, it came to light that the commitment to deliver the consignment was made by concealing the fact that, due to a change in Government policy, it was no longer possible to export sugar from India. On being confronted with this fact, the Directors of Spezia Organic Condiments Pvt. Ltd. promised to refund the advance amount, but failed to fulfill the promise. Thereupon it became evident that the intention from the very inception was to cheat the 3rd respondent by collecting the advance amount based on the false



promise. The complaint in this regard filed on behalf of the 3rd respondent led to the registration of Crime No. 732 of 2024 at the Kalamassery Police Station against the Directors of Spezia Organic Condiments Pvt. Ltd., for offences under Sections 406 and 420, read with Section 34 of the Indian Penal Code (IPC). In the complaint, it was alleged that out of the advance paid by the 3rd respondent, ₹46,50,525 was transferred to another entity, M/s Headstar Trading LLP and from that account, ₹52,44,750 was transferred to the account of Headstar Global Pvt.Ltd./the petitioner. After registering the crime, the Investigating Officer issued Annexure B notice, directing the bank to debit freeze the petitioner's account. Thereupon, the petitioner filed Annexure C requesting the jurisdictional Magistrate to lift the debit freeze. That petition stands dismissed by Annexure D order.

3. Assailing the impugned order and the direction to debit freeze the petitioner's account, Advocate Babu. S.Nair put forth the following contentions;



Sections 94 and 106 of the BNSS does not empower the police to seize/freeze the account of a third party. While Section 94 has no application, Section 106 would apply only to tangible properties which are believed to be stolen or found under circumstances which create suspicion of the commission of any offence. There is no such allegation in the petitioner's case. On the other hand, the direction to debit freeze the account is issued solely on the ground that money from the account of Spezia Organic Condiments Pvt. Ltd. was transferred to the account of M/s.Headstar Trading LLP and thereafter, to the petitioner's account. These transfers were effected in the regular course of business and cannot therefore be termed even as proceeds of crime. While under the Code of Criminal Procedure, Sections 105C to 105H deals with the procedure for attachment of proceeds of crime, after the introduction of the BNSS, procedure for attachment is governed by Section 107, under which the jurisdictional Magistrate alone is empowered to pass such an order.

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4. Justifying the direction imposing debit freeze as well as the impugned order, Adv.Sarathkumar appearing for the 3rd respondent made the following submissions;

After receiving the advance amount towards export of sugar, Spezia Organic Condiments Pvt. Ltd. transferred a portion of the amount to M/s.Headstar Trading LLP and immediately after receiving the amount, M/s.Headstar Trading LLP transferred that amount along with some other amount to the petitioner with the remark “Sugar Advance”. One Mr.Sreekumar C.S, who is the Manager of Spezia Organic Condiments Pvt. Ltd is the Director of M/s.Headstar Trading LLP and M/s. Headstar Global Pvt.Ltd as well. This is sufficient proof of the fact that the transfers were made in an attempt to cover up the money collected through deception by Spezia Organic Condiments Pvt.Ltd.

5. I heard Adv.M.P.Prasanth, the learned Public Prosecutor also.



6. The question whether a police officer investigating an offence can issue a prohibitory order in respect of the bank account of the accused by exercising the power under Section 102 of the Criminal Procedure Code was answered by the Apex Court for the first time in **State of Maharashtra v. Tapas D. Neogy** [(1999) 7 SCC 685], in the following words;

> "**12.** Having considered the divergent views taken by different High Courts with regard to the power of seizure under Section 102 of the Code of Criminal Procedure, and whether the bank account can be held to be "property" within the meaning of the said Section 102(1), we see no justification to give any narrow interpretation to the provisions of the Criminal Procedure Code. It is well known that corruption in public offices has become so rampant that it has become difficult to cope up with the same. Then again the time consumed by the courts in concluding the trials is another factor which should be borne in mind in interpreting the provisions of Section 102 of the Criminal Procedure Code and the underlying object engrafted therein, inasmuch as if there can be no order of seizure of the bank account of the accused then the entire money deposited in a bank which is ultimately held in the trial to be the outcome of the illegal gratification, could be withdrawn by the accused and the courts



would be powerless to get the said money which has any direct link with the commission of the offence committed by the accused as a public officer. We are, therefore, persuaded to take the view that the bank account of the accused or any of his relations is "property" within the meaning of Section 102 of the Criminal Procedure Code and a police officer in course of investigation can seize or prohibit the operation of the said account if such assets have direct links with the commission of the offence for which the police officer is investigating into. The contrary view expressed by the Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law. It may also be seen that under the Prevention of Corruption Act, 1988, in the matter of imposition of fine under sub-section (2) of Section 13, the legislatures have provided that the courts in fixing the amount of fine shall take into consideration the amount or the value of the property which the accused person has obtained by committing the offence or where the conviction is for an offence referred to in clause (*e*) of sub-section (1) of Section 13, the pecuniary resources or property for which the accused person is unable to account satisfactorily. The interpretation given by us in respect of the power of seizure under Section 102 of the Criminal Procedure Code is in accordance with the intention of the legislature engrafted in Section 16 of the Prevention of Corruption Act referred to above. In the aforesaid premises, we have no hesitation to come to the conclusion that the High Court of Bombay committed error in holding that the

police officer could not have seized the bank account or could not have issued any direction to the bank officer, prohibiting the account of the accused from being operated upon. Though we have laid down the law, but so far as the present case is concerned, the order impugned has already been given effect to and the accused has been operating his account, and so, we do not interfere with the same."

7. Later, in **Teesta Atul Setalvad v. State of Gujarat** [(2018) 2 SCC 372], the Supreme Court categorically held that, after the decision in ***Tapas D. Neogy*** (supra), there is no room to countenance the challenge of seizure of bank account of a person, found under circumstances creating suspicion of the commission of an offence. Therefore, the question whether the bank accounts can be seized/frozen in exercise of the power under Section 102 of the Code is no longer *res integra*. What can be looked into is regarding the circumstances under which such power can be exercised. For that, one has to first scrutinise Section 102 of the Criminal Procedure Code, extracted below:

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

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

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized 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."



8. It is apparent from the provision that any police officer can seize any property, which is either stolen property or found under circumstances which create suspicion of the commission of any offence. Conversely, no police officer can seize any property, which is neither stolen, nor found under circumstances with create suspicion of commission of any offence. It has been so held by the Apex Court in **M.T. Enrica Lexie v. Doramma** [(2012) 6 SCC 760], the relevant portion of which is extracted hereunder;

> "**14.** The police officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other."

9. While on the issue it may also be apposite to note the following observations in **Shento Varghese v. Julfikar Husen,** [(2024) 7 SCC 23]:



> "**16.** This requires us to consider whether validity of the seizure order is contingent on compliance with the reporting obligation? In our view, the validity of the power exercised under Section 102(1) CrPC is not dependent on the compliance with the duty prescribed on the police officer under Section 102(3) CrPC. The validity of the exercise of power under Section 102(1) CrPC can be questioned either on jurisdictional grounds or on the merits of the matter. That is to say, the order of seizure can be challenged on the ground that the seizing officer lacked jurisdiction [*Nevada Properties (P) Ltd.* v. *State of Maharashtra*, (2019) 20 SCC 119 : (2020) 3 SCC (Cri) 782] to act under Section 102(1) CrPC or that the seized item does not satisfy the definition of "*property*" [*Swaran Sabharwal* v. *Delhi Police*, 1987 SCC OnLine Del 221 : (1990) 68 Comp Cas 652] or on the ground that the property which was seized could not have given rise to suspicion concerning the commission of a crime, in order for the authorities to justify the seizure. [*State of Maharashtra* v. *Tapas D. Neogy*, (1999) 7 SCC 685 : 1999 INSC 417]"

10. It is pertinent to note that all the above decisions were rendered with respect to Section 102 of the Code of Criminal Procedudre and the Code did not contain any provision for seizure or attachment of the proceeds of crime, except under Chapter VII-A dealing with reciprocal arrangements with other

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countries for assistance in attachment and forfeiture of property in a contracting state. This lacuna is cured by retaining Section 102 of the Criminal Procedure Code as Section 106 and including Section 107 in the Bharatiya Nagarik Suraksha Sanhita, 2023 ("BNSS" for short). For ease of reference, the newly introduced Section 107 of BNSS is extracted below;

> "**107. Attachment, forfeiture or restoration of property**- (1) Where a police officer making an investigation has reason to believe that any property is derived or obtained, directly or indirectly, as a result of a criminal activity or from the commission of any offence, he may, with the approval of the Superintendent of Police or Commissioner of Police, make an application to the Court or the Magistrate exercising jurisdiction to take cognizance of the offence or commit for trial or try the case, for the attachment of such property.
>
> (2) If the Court or the Magistrate has reasons to believe, whether before or after taking evidence, that all or any of such properties are proceeds of crime, the Court or the Magistrate may issue a notice upon such person calling upon him to show cause within a period of fourteen days as to why an order of attachment shall not be made.



(3) Where the notice issued to any person under sub-section (2) specifies any property as being held by any other person on behalf of such person, a copy of the notice shall also be served upon such other person.

(4) The Court or the Magistrate may, after considering the explanation, if any, to the show-cause notice issued under sub-section (2) and the material fact available before such Court or Magistrate and after giving a reasonable opportunity of being heard to such person or persons, may pass an order of attachment, in respect of those properties which are found to be the proceeds of crime:

Provided that if such person does not appear before the Court or the Magistrate or represent his case before the Court or Magistrate within a period of fourteen days specified in the show-cause notice, the Court or the Magistrate may proceed to pass the ex parte order.

(5) Notwithstanding anything contained in sub-section (2), if the Court or the Magistrate is of the opinion that issuance of notice under the said sub-section would defeat the object of attachment or seizure, the Court or Magistrate may by an interim order passed ex parte direct attachment or seizure of such property, and such order shall remain in force till an order under sub-section (6) is passed.

(6) If the Court or the Magistrate finds the attached or seized properties to be the proceeds of crime, the Court or the Magistrate shall by order direct the District Magistrate to rateably distribute such proceeds of crime to the persons who are affected by such



crime.

(7) On receipt of an order passed under sub-section (6), the District Magistrate shall, within a period of sixty days distribute the proceeds of crime either by himself or authorise any officer subordinate to him to effect such distribution.

(8) If there are no claimants to receive such proceeds or no claimant is ascertainable or there is any surplus after satisfying the claimants, such proceeds of crime shall stand forfeited to the Government."

11. The definition of 'proceeds of crime' as available in Section 111(c) of BNSS reads as follows;

"(c) "proceeds of crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity (including crime involving currency transfers) or the value of any such property;"

12. Going by Section 107 of BNSS, a police officer investigating a crime has to approach the jurisdictional Magistrate seeking attachment of any property believed to be derived directly or indirectly from criminal activity or the commission of an offence. The Magistrate may thereupon order attachment after hearing all parties concerned or issue an interim order for attachment, if issuing notice to the owner will



defeat the purpose of attachment and seizure. After confirming that the attached property is the proceeds of crime, the Magistrate can direct the District Magistrate to distribute the property among those affected by the crime. Thus Section 107 confers the jurisdictional Magistrates with explicit authority to act swiftly in cases involving proceeds of crime.

13. Another aspect of importance is that, while Section 106 speaks of seizure, Section 107 deals with attachment, forfeiture and restoration. Seizure under Section 106 can be carried out by a police officer and an *ex post facto* report submitted to the Magistrate. On the other hand, attachment under Section 107 can be effected only upon the orders of the Magistrate. The logic behind this distinction being that the purpose of seizure is more to secure the evidence during an investigation, whereas attachment is intended to secure the proceeds of crime by preventing its disposal and thus ensuring its availability for legal procedure such as forfeiture and distribution to the victim/s.



14. In the case at hand, the reason for directing the bank to debit freeze the petitioner's account, as stated in Annexure B notice is the transfer of some amount from the account of the accused to the account of the company Headstar Trading LLP and from there to the petitioner’s account. Even accepting that the Directors of the above mentioned three entities are known to each other or are related to each other, it may, at best, indicate that the money in the petitioner's account is proceeds of the crime committed by the accused. If so, the amount can be attached or the account frozen only by following the procedure prescribed in Section 107 of BNSS.

For the aforementioned reasons, the CrlMC is allowed. The impugned order is quashed and the debit freeze imposed over the petitioner's bank account is directed to be lifted. The officer concerned can approach the jurisdictional Magistrate under Section 107 of BNSS, if so warranted.

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**V.G.ARUN, JUDGE**

sj

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**APPENDIX OF CRL.MC 3740/2025**

**PETITIONER ANNEXURES**

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| **Annexure A** | **A TRUE COPY OF THE F.I.R. IN CRIME NO.732/2024 OF THE KALAMASSERY POLICE STATION DATED, 31-7-2024** |
| **Annexure B** | **A TRUE COPY OF THE LETTER ISSUED BY THE 2ND RESPONDENT DATED, 6-3-2025** |
| **Annexure C** | **A TRUE COPY OF THE APPLICATION FILED AS C.M.P.NO.739/2025 BEFORE THE J.F.C.M., KALAMASSERY BY THE PETITIONER DATED, 13-3-2025** |
| **Annexure D** | **A TRUE COPY OF THE ORDER IN C.M.P.NO.739/2025 OF THE J.F.C.M., KALAMASSERY DATED, 8-4-2025** |

**RESPONDENT ANNEXURES**

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| **Annexure R3(1)** | **ADDITIONAL STETEMT FILED BY THE APPLICANT DATED 16.05.2025** |
| **Annexure R3(2)** | **APPLICATION SUMBITTED FOR THE TRUE COPY DATED 26.05.2025** |