2025 INSC 1413

REPORTABLE

IN THE SUPREME COURT OF NDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 5373 OF 2025
(Arising out of SLP(Crl.) No. 1003/2025)

THE STATE OF WEST BENGAL … APPELLANT(S)

VERSUS

ANIL KUMAR DEY … RESPONDENT(S)

J U D G M E N T

For ease and clarity, this judgment is divided as follows:

I N D E X

SANJAY KAROL, J.

Leave granted.

QUESTION TO BE CONSIDERED

2. The short but significant question that arises in this appeal is whether, when proceedings initiated against a person are only under the provisions of the Prevention of Corruption Act 1988[1], would it be open for the investigating authorities (police) to freeze the accounts of the accused persons under Section 102 of the Code of Criminal Procedure 1973[2]. In other words, are the powers under Section 18A of the PC Act, which prescribes the application of the Criminal Law Amendment Ordinance, 1944[3] insofar as the proceedings of attachment are

1 Hereinafter referred to as 'PC Act'
2 Hereinafter referred to as 'CrPC'
3 Hereinafter referred to as 'Ordinance '

concerned, and the power under Section 102 Cr.P.C., i.e., the power of a police officer to seize certain property, co-existent or mutually exclusive.

FACTUAL AND LEGAL BACKDROP

3. The facts in which the question framed above arises are that:

a) Kalyan Mandal, Sub-Inspector of Police posted at the Directorate of Anti-Corruption Branch, West Bengal, conducted a preliminary enquiry against the Respondent's son, Mr. Prabir Kumar Dey Sarkar, and asked, *vide* complaint dated 30th July 2019 addressed to the Superintendent of Police, Directorate of Anti-Corruption Branch, West Bengal, that a case be registered under Section 13(2) read with 13(1)(b) of the PC Act. The relevant extracts thereof are extracted hereinbelow:

> **"**…During enquiry, it could be revealed that Sri Prabir Kumar Dey Sarkar, S/O- Sri Anil Kumar Dey Sarkar residing at GA-130, Rajdanga Main Road, PS-Kasba, Kolkata-700107 had joined as Constable of Police in 1979 and was promoted to the rank of Wireless Operator in the year 1984. Subsequently, he joined as Sub Inspector in the year 1991 and was promoted to the rank of Inspector of Police in the year 2011. During his tenure at different Police Stations, he earned huge illegal money thereby creating enormous movable/immovable properties, channelizing the said illegal money in the name of his relatives

which have been found disproportionate to his known sources of income.

He, being a Police Officer (SI in 1991) had drawn net salary for the check period from 2007 to 2017 to the tune of Rs.40,08,090/- (approximately) and kitchen expenditure for the said check period will be 1-3rd of his Net Salary i.e., Rs. 13,36,030/-. Thus, his likely savings for the said check period could be Rs. 26,72,060/-

But during the enquiry, available documents revealed that the total movable/immovable properties acquired by Sri Prabir Kumar Dey Sarkar in his name as well as in the name of his relatives, together with the expenditure incurred during the said check period, comes around Rs. 1,49,18,628/- [One Crore Forty-enine lakh eighteen thousand six hundred & twenty-eight]. The said amount of Rs. 1,49,18,628/- comprises (a) construction cost, labour cost and KMC fees of building (G+3) OF GA-130, Rajdanga Main Road, (b) liquid cash seized from the premises of GA-130, Rajdanga Main Road, (c) value of gold ornaments seized from the residence of P.K. Dey Sarkar at GA-130, Rajdanga Main Road, (d) cost of a Flat at P.Majumdar Road, (e) landed properly at Chak Kalar Khal measuring abut four cottahs, (f) premium for LICI and (g) fees paid to the Heritage School for his daughter.

During calculation the valuation of : (I) the five storied building at BF-11, Rajdanga Main Road, (ii) three storied building at GA-97, Rajdanga Main Road, (iii) GB-50, Rajdanga Main Road have not been taken into consideration which may further compound the valuation of the total assets.

Considering his income, expenditure, likely savings, Sri Prabir Kumar Dey Sarkar prima-facie, has possessed huge assets disproportionate to his known sources of income…”

b) Pursuant to the complaint, FIR No. 09/19 came to be registered. During investigation, certain fixed deposits held by the Respondent (*father of the main accused*) were frozen. An application was filed before the City Sessions Court, Calcutta[4] seeking de-freezing of the said accounts. The same came to be rejected by order dated 28th March 2023. The operative portion is thus:

> "..The petitioner by filing his petition has stated that his fixed deposits have been freezed by the police. He is 93 years old and is suffering from various ailments. He has prayed for defreezing the fixed deposits standing in his name.
>
> Ld. Spl. P.P. vehemently opposes the petition. A written objection is filed against the petition by the I.O through Ld. Spl. P.P.
>
> It is submitted by Ld. Spl. P.P. that Prabir Kr. Dey Sarkar acquired movable and immovable properties in his name and also in the name of his relatives. The amount he acquired is abnormally disporportaiton to his income. That apart, he has also acquired to Benami properties standing in the name of his nearest relatives. This petitioner has six fixed deposits in Axis Bank, Cosba Branch. He also has six fixed deposits in SBI, Rubi Park branch. It is submitted that those are not standing only in his name. Those are standing either jointly in thename of this petitioner and Deepa Dey Sarkar or in the name of this petitioner and Subrata Dey Sarkar or in the name of this petitioner and other rleatives of his family. The petitioner could not give appropriate source of his income where from he deposited this huge amount of money jointly with others. It is further submitted that in course of investigation it

4 Hereinafter referred to as 'Trial Court'

> revealed that the son of this petitioner has acquired huge disproportionate property. The prosecution apprehends that the same is kept by his son in the name of this petitioner and others. Therefore, according to the prosecution if the fixed deposits are allowed to be defreezed the prosecution will suffer irreparable loss to prove the case.
>
> I have considered the submissions made by Ld. Spl. P.P. and Ld.
>
> Advocate appearing on behalf of this petitioner. I have examined the CD carefully. I also do not find any CD that the petitioner has bee able to show the source of his income where from he fixed the amounts. As the investigation is still in progress, I am unable to entertain the prayer of the petitioner.
> The petitioner dated 16.03.2023 filed on behalf of the petitioner, Anil Kr Dey Sarkar to defreeze the fixed deposits is rejected…"

c) The Home and Hill Affairs Department, Government of West Bengal, by order dated 22nd April 2024, by order of the Hon'ble Governor, granted sanction for prosecution against the son of the respondent.

d) Upon completion of the investigation, chargesheet was presented on 13th May 2024 which named a total of 4 accused persons: Prabir Kumar Dey Sarkar (*main accused and son of Respondent herein*); Dipa Dey Sarkar (*wife of main accused*); Anil Kumar Dey Sarkar (*Respondent herein*); and Subir Kumar Dey Sarkar (*brother of main accused and son of Respondent herein*). Some of the

observations made in the chargesheet against the instant respondent, *inter alia*, are:

> "…Investigation further revealed that business income and house property income of Dipa Dey Sarkar and Anil Kumar Dey Sarkar could not be substantiated in the instant case….
> …The circumstances and evidences collected so far in the case substantiated that the construction at BF-11 was solely attributed on Prabir Kumar Dey Sarkar apart from Anil Kumar Dey Sarkar…
> …Besides, huge number of Fixed Deposits in the name of accused Anil Kumar Dey Sarkar….
> …Investigation revealed that there had been thirty eight nos. of FD accounts lying in the name of Anil Kumar Dey Sarkar, Dipa Dey Sarkar, Subrata Dey Sarkar, Papiya Dey Sarkar and Supriyo Dey Sarkar. Out of thirty eight nos. of FD accounts, twelve FD accounts were still live and twenty six nos. of FD accounts were opened and closed within the check period and benefit of interest of the same was given to the accused persons in case of sixteen nos. of FDs, but in case of ten nos. of FDs, maturity benefit of the same was not provided to the accused persons because those matured FDs were re-invested. Investigation revealed that prior to the creation of the following FDs were re-invented. Investigation revealed that prior to the creation of the following FDs, there was huge deposition of unexplained cash in the SB accounts of accused persons. Such type of huge deposition of cash in the SB accounts of accused of persons was not in conformity with the legal source of income of accused person. Moreover, neither Dipa Dey Sarkar nor Anil Kumar Dey Sarkar was in position to explain the deposition of huge cash in their accounts. Therefore, Dipa Dey Sarkar being house wife and Anil Kumar Dey Sarkar being the pension holder of scanty amount was dependent on Prabir Kumar Dey Sarkar. So evidence collected so far substantiated that Prabir Kumar

> Dey Sarkar played major role in the creation of the following FDs."

e) The City Sessions Court, Calcutta took cognizance on the basis of the chargesheet by order dated 14th May 2024 against the above said persons.

IMPUGNED JUDGMENT

4. The order of the Trial Court rejecting the application for de-freezing of accounts was challenged before the Calcutta High Court[5]. The Judgment and Order dated 4th October 2024, delivered therein setting aside the findings of the learned Trial Court and directing de-freezing of the accounts, has been challenged before us by the State. The relevant paras of the order are:

> **"…13.** In other words, an attachment/freezing of the bank accounts in connection with an offence under the 1988 Act is to be made in accordance with section 18A of the Act. Admittedly the bank accounts of the petitioner have been frozen by the opposite party in exercise of power under section 102 of the Code of Criminal Procedure.
>
> **14.** Diverse views have been taken by the High Courts of Madras and Patna with regard to applicability of section 102 of the Code in seizure and freezing of bank accounts in a criminal case registered under the 1988 Act. The Madras High Court has held in favour of such application whereas the Patna High Court has held that such

5 CRR No. 4511 of 2023

seizure and freezing can be made only under section 18A of the Act and not under section 102 of the Code.

15. The Hon'ble Supreme Court, in the authority in *Ratan Babulal* (supra) has examined the question whether attachment of bank accounts is sustainable in exercise of powers under section 102 of the Code. The Hon'ble Court has held that it is not possible to sustain freezing of the bank accounts taking recourse to section 102 of the Code as The Prevention of Corruption Act is a Code by itself. The freezing was accordingly set aside by the Hon'ble Court leaving open to the respondents/State to take such recourse in law as may be permissible.

16. Section 18A of the Act envisages that attachment, administration of attached property, execution of order of attachment and confiscation of money or property procured by means of an offence under the Act shall be governed by section 18A. Since admittedly the bank accounts of the petitioner were frozen by the opposite party by invoking section 102 of the Code and not by procedure under section 18A of the Act, the said freezing cannot be sustained.

17. In view of the fact that the bank accounts in question were not frozen in accordance with law, this Court does not find it necessary to deal with the prayer for de-freezing the same and objection raised thereto on merits.

18. Accordingly, freezing of the bank accounts of the petitioner is set aside.

19. The opposite party is directed to de-freeze the said accounts within seven days from date.

…”

RELEVANT PROVISIONS

5. Before proceeding further, it would be important to take note of the relevant provisions.

Section 13 of the PC Act

> "**13. Criminal misconduct by a public servant. —**1 [(1) A public servant is said to commit the offence of criminal misconduct,—
>
> (a) if he dishonestly or fraudulently misappropriates or otherwise converts for his own use any property entrusted to him or any property under his control as a public servant or allows any other person so to do; or
>
> (b) if he intentionally enriches himself illicitly during the period of his office.
>
> Explanation 1.—A person shall be presumed to have intentionally enriched himself illicitly if he or any person on his behalf, is in possession of or has, at any time during the period of his office, been in possession of pecuniary resources or property disproportionate to his known sources of income which the public servant cannot satisfactorily account for.
>
> Explanation 2.—The expression ''known sources of income'' means income received from any lawful sources.]
> (2) Any public servant who commits criminal misconduct shall be punishable with imprisonment for a term which shall be not less than [four years] but which may extend to [ten years] and shall also be liable to fine."

Section 18A of the PC Act

"18A. Provisions of Criminal Law Amendment Ordinance, 1944 to apply to attachment under this Act.—(1) Save as otherwise provided under the Prevention of Money Laundering Act, 2002 (15 of 2003), the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall, as far as may be, apply to the attachment, administration of attached property and execution of order of attachment or confiscation of money or property procured by means of an offence under this Act.

(2) For the purposes of this Act, the provisions of the Criminal Law Amendment Ordinance, 1944 (Ord. 38 of 1944) shall have effect, subject to the modification that the references to "District Judge" shall be construed as references to "Special Judge".]"

Section 102, CrPC

"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.]"

Section 109, IPC

"**109. Punishment of abetment if the act abetted is committed in consequence and when no express provision is made for its punishment.**

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

Sections of the Criminal Law (Amendment) Ordinance 1944

3. Application for attachment of property

"(1) Where the [State Government or, as the case may be, the Central Government], has reason to believe that any person has committed (whether after the commencement of this Ordinance or not) any scheduled offence, the [State Government or, as the case may be, the Central Government] may, whether or not any Court has taken cognizance of the offence, authorise the making of an application to the District Judge within the local limits of whose jurisdiction the said person ordinarily resides or carries on business, for the attachment, under this Ordinance of the money or other property which the [State Government or, as the case may be, the Central Government] believes the said person tohave procured by means of the offence, or if such money or property cannot for any reason be attached, or other property of the said person of value as nearly as may be equivalent to that of the aforesaid money or other property.

(2) The provisions of Order XXVII of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), shall apply to proceedings for an order of attachment under this Ordinance as they apply to suits by the Government.

(3) An application under sub-section (1) shall be accompanied by one or more affidavit, stating the grounds on which the belief that the said person has committed any scheduled offence is founded, and the amount of money or value of other property believed to have been procured by means of the offence. The application shall also furnishany information available as to the location for the time being of any such money or other property, and shall, if necessary, give particulars, including the estimated value, of other property of the said person;the names and

addresses of any other persons believed to have or to be likely to claim, any interest or title in the property of the said person.

4. Ad interim attachment

(1) Upon receipt of an application under section 3, the District Judge shall, unless for reasons to be recorded in writing he is of the opinion that there exist no prima facie grounds for believe that the person in respect of whom the application is made has committed any scheduled offence or that he has procured thereby any money or other property, pass without delay an ad interim order attaching the money or other property alleged to have been so procured, or if it transpires that such money or other property is not available for attachment, such other property of the said person of equivalent value as the District Judge may think fit: Provided that the District Judge may if he thinks fit before passing such order, and shall before refusing to pass such order, examine the person or persons making the affidavit accompanying the application.

(2) At the same time as he passes an order under sub-section (1), the District Judge shall issue to the person whose money or other property is being attached, a notice, accompanied by copies of the order, the application and affidavits and of the evidence, if any, recorded, calling upon him to show cause on a date to be specified in the notice why the order of attachment should not be made absolute.

(3) The District Judge shall also issue, accompanied by copies of the documents accompanying the notice under sub-section (2), to all persons represented to him as having or being likely to claim, any interest or title in the property of the person to whom notice is issued under the said sub-section calling upon each such person to appear on the same date as specified in the notice under the said sub-section and make objection if

> he so desires to the attachment of the property or any portion thereof on the ground that he has an interest in such property or portion thereof.
>
> (4) Any person claiming an interest in the attached property or any portion thereof may, notwithstanding that no notice has been served upon him under this section, make an objection as aforesaid to the District Judge at any time before an order is passed under sub-section (1) or sub-section (3), as the case may be, of section 5."

BRIEF SUBMISSIONS

6. We have heard Mr. Shadan Farasat and Mr. Siddharth Agarwal, learned senior counsel for the State and the Respondent, respectively. We have also perused the written submissions. The State's position is that the High Court's reliance on ***Ratan Babulal Lath v. State of Karnataka***[6] which observes that the PC Act is a Code complete in itself, is not justified, for it does not lay down any authoritative position in law, binding under Article 141 of the Constitution of India. The two provisions, i.e., Section 18A of the PC Act and Section 102 Cr.P.C., operate in distinct and/or complementary spheres and are not mutually exclusive. This seizure of property may or may not culminate in attachment. The purpose of the former is to secure the property as evidence during investigation, and that by itself does not constitute attachment. The power of attachment/*ad interim* attachment given under Sections 3 and 4

6(2022) 16 SCC 287

of the Ordinance are not akin to the power of seizure given under Section 102, Cr.P.C. The latter is a power to be exercised by the police, which does not require prior judicial approval and so, is effective in securing evidence, even if it is also suspected, tainted property, whereas the latter has to be supported by grounds set out in affidavits, inherently making it a deliberative process. This means that both powers cannot be construed as inconsistent with the other or barring the exercise of the other. It was, as such, submitted that the High Court had erred in its conclusion.

Per contra, the Respondent's position is that ***Ratan Babulal Lath*** (supra) does in fact constitute binding precedent as evidenced by the fact that it has been relied on by this Court in ***The State of Bihar & Ors.*** *v.* ***Sukhdani Devi Etc. Etc***.[7]as also by other High Courts. The purpose of the power under Section 102, CrP.C. is, to serve investigative needs. The account, having been frozen by the police, does not serve any such investigative need as the banks have already supplied detailed statements regarding the same, and the Respondent has also disclosed the source of funds in his replies to the authorities. Further, it is the State's case that the action of reason has been taken since the funds found in these bank accounts are disproportionate to the known sources of income.

7 Order dated 14.10.24 in Criminal Appeal Nos.4232-4234 of 2024

In other words, the same was done, not for any investigative purpose. In effect, the freezing has been done to prevent the funds suspected of being disproportionate, from being withdrawn/transferred, which is the object of attachment. This Court in ***State of Maharashtra v. Tapas D. Neogy***[8], permitted the freezing of bank accounts under Section 102, Cr.P.C. In that case, the Respondent, such as in the present case, was also a public servant, given that, at the relevant point in time there was no provision for attachment under the PC Act. This lacuna was addressed and cured by the 2018 amendment to the PC Act, and so, the procedure provided therein has to be followed. [Ref: ***Opto Circuit India Ltd v Axis Bank & Ors***[9]]. Lastly, it has been submitted that the allegations of disproportionate assets have been responded to by the Respondent before the Police, however, the same has not been reflected in the chargesheet, nor have they been considered in their proper light, i.e., retirsl benefits, profits from the sale of lands belonging to his wife, rental income, etc. The said seizure was not reported to the concerned Magistrate, in accordance with Section 102(3), Cr.P.C. In the above terms, the conclusion of the High Court was submitted to be correct in law.

8 (1999) 7 SCC 685
9 (2021) 6 SCC 707

CONSIDERATION

7. In light of the afore-stated submissions, let us now consider the question as framed in paragraph 2.

8. Section 102, which appears in Chapter VI of the Cr.P.C. titled as '*Processes to Compel Appearance*' and more particularly Part 'D' thereof, which is headlined as '*Miscellaneous*', uses the word '*seizure*' and Sections under the Ordinance, which Section 18A applies to the PC Act, uses the word '*confiscation*' and '*attachment*'. The meaning of these two words, which obviously would indicate the similarities and/or differences, acquires importance. Seize means to "*to take something quickly and keep or hold it*[10]" Merriam Webster defines '*seizure*' as "*the act, action, or process of seizing* **:** *the state of being seized* or *the taking possession of person or property by legal process*"[11]. Black's Law Dictionary describes '*seize*' as "*To put in possession, invest with fee simple, be seized of or in, be legal possessor of, or be holder in fee simple*." Seizure is "*to take possession of forcibly, to grasp, to snatch, or to put in possession*.[12] P. Ramanatha Aiyar's Advanced Law Lexicon defines '*seizure*' as " *In general "seizure" is a forcible taking possession. The legal definition*

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11 https://www.merriam-webster.com/dictionary/seizure#:~:text=seizure-,noun,the%20brain%20(as%20in%20epilepsy)

12 Henry Cambell Black, Black's Law Dictionary, 4th Edition.

of the word "seizure" is the taking possession of property by an officer under legal process."[13] Confiscate, then means "*to officially take private property away from someone, usually by legal authority*"[14] Black's Law Dictionary defines '*confiscate*' as *"To appropriate property to the use of the state. To adjudge property to be forfeited to the public treasury; to seize and condemn private forfeited property to public use"* Now moving to attachment, the Cambridge Dictionary, describes attachment, in law, as *"the act of arresting a person for failing to obey the order of a court, or of officially taking their property because they have failed to pay money that they owe"*[15] Black's Law Dictionary defines attachment as *"The act or process of taking, apprehending, or seizing persons or property, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the law; used either for the purpose of bringing a person before the court, of acquiring jurisdiction over the property seized, to compel an appearance, to furnish security for debt or costs, or to arrest a fund in the hands of a third person who may become liable to pay it over. Also, the writ or other process for the accomplishment of the purposes above enumerated, this being the more common use of the word. A remedy ancillary to an action by which plaintiff is enabled to acquire a lien upon*

13 3rd Edition, 2009
14
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property or effects of defendant for satisfaction of judgment which plaintiff may obtain."

Having referred to and understood the meaning of the terms, we move forward.

9. The text of Section 102, Cr.P.C., has already been reproduced *supra*. From a studied analysis of the judgments of this Court involving this provision, the following principles/aspects can be highlighted:

9.1 Under this Section, property that is alleged/suspected to be stolen; is the object of crime; has a direct link to the commission of the offence, can be seized. [See: ***M.T. Enrica Lexie v. Doramma***[16]]

9.2 The police have the power to seize passports and bank accounts under this Section. [See: ***Tapas D. Neogy*** (supra), ***Suresh Nanda v. CBI***[17], ***Teesta Atul Setalvad v. State of Gujarat***[18].

9.3 Orders of freezing issued under this Section, can only be in effect to aid investigation. [See: ***Jermyn Capital LLC v. CBI***[19]] Once the investigation is complete, that *ipso facto*, does not entitle the person whose bank

16 (2012) 6 SCC 760
17 (2008) 3 SCC 674
18 (2018) 2 SCC 372
19 (2023) 7 SCC 810

accounts have been frozen, to have them released. It shall, however, be open to them to apply to the concerned authority for the same, and the authority shall consider the same in accordance with law. [See: ***Teesta Atul Setalvad*** *(supra)*]

9.4 The police do not have the power to seize any immovable property. It cannot dispossess someone who is in possession of the immovable property. [See: ***Nevada Properties (P) Ltd. v. State of Maharashtra***[20]]

9.5 It is not an enabling provision under which the police may, to do justice, seize the property and hand it over to whom they believe to be the rightful owner thereof. [See: ***Nevada Properties (P) Ltd.*** (supra)]

10. In order to understand attachment, i.e., what is prescribed in the PC Act, let us look at the procedure given in the Ordinance, as also other legislations where attachment of property is a consequence, to appreciate, in particular, the procedure of the ***Ordinance***, as also attachment as employed in other statutes.

10.1 The Ordinance prescribes the following procedure:

- Step 1: Application under Section 3

20 (2019) 20 SCC 119

- State or authorised agency files an application before the District Judge.
- Must be supported by affidavit(s) stating grounds of belief that the accused committed a scheduled offence and giving details/value of property believed to be procured.
- Prior cognizance of the offence by a criminal court is *not required*. (*Ravi Sinha v. State of Jharkhand*, Kamal Malik case).

• Step 2: Ad-interim attachment (Section 4)

- On receiving the application, the District Judge ordinarily passes an ad-interim order of attachment without delay.
- This order prevents alienation or disposal of the property pending further proceedings.

• Step 3: Notice and Opportunity to Show Cause

- The person whose property is attached is given notice.
- They must be given a fair opportunity to show cause why the attachment should not be made absolute.

• Step 4: Making the Order Absolute (Section 5)

- After hearing objections, the Judge may confirm the order and make the attachment absolute.
- Ownership objections and claims about the lawful source of acquisition are considered judicially. (*AIR 2018 SC (Cri) 164*).

- Step 5: Execution and Enforcement
    - The attachment order is carried out “so far as may be practicable” under the Code of Civil Procedure, 1908.
    - This may include seizure, freezing of assets, or appointment of a receiver.
- Step 6: Security in lieu of Attachment (Section 8)
    - The affected person may apply to provide security in place of attachment.
    - If the Judge finds security sufficient, the attachment can be lifted or not enforced.
- Step 7: Appeal / Revision (Section 11)
    - Orders making attachment absolute (or other specified orders) are appealable under Section 11.
    - Appeal must be filed before the appropriate forum within limitation.

10.2 Now, moving to other statutes. The ***Prevention of Money Laundering Act, 2002***, dedicates an entire chapter, i.e., Chapter III, to these processes. Sections 5 and 8 thereof, provide for the procedure to be followed. A perusal of Section 5 (*Attachment of property involved in money-laundering*) reveals these sequential steps:

1. Director/Authorised Officer forms 'reason to believe'.

2. Provisional Attachment Order issued (max 180 days).
3. Order + material sent to Adjudicating Authority (sealed envelope).
4. Within 30 days → Complaint filed before Adjudicating Authority.
5. Adjudicating Authority holds hearing (Section 8).
6. Order under Section 8(3): Confirm or Release attachment.
7. If confirmed → Property continues attached until trial ends.
8. Final outcome: Confiscation to Government OR Release.

Section 8, (Adjudication) also prescribes detailed steps:

1. Receipt of complaint (u/s 5(5)) or application (u/s 17(4) or 18(10)).
2. Adjudicating Authority forms 'reason to believe' (person committed offence u/s 3 or possesses proceeds of crime).
3. Notice issued (≥ 30 days) to such person → requiring explanation of sources of income/assets + evidence.
   • If property held on behalf of another → notice is also served to that person.
   • If property is jointly held → notice to all holders.
4. Adjudicating Authority considers:
   (a) Reply to notice,
   (b) Hearing of aggrieved person & Director (or authorised officer),
   (c) All relevant material on record.

5. Order recorded: Finding whether property is involved in money laundering.

- If claimed by a third party → opportunity of hearing is given.

6. If property involved → Attachment / Retention / Freezing is confirmed (u/s 8(3)).

- Continues during investigation (≤ 365 days) or pendency of proceedings.
- Becomes final upon confiscation order (u/s 8(5)/(7), 58B, 60(2A)).
- Period of stay by the Court is excluded from 365 days.

7. After confirmation → Director/Authorised Officer takes possession of property (u/s 8(4)).

8. Trial before Special Court:

- If money laundering proved → property confiscated to Central Government (u/s 8(5)).
- If not proved → property released to entitled person (u/s 8(6)).
- If trial cannot be concluded (death/proclaimed offender/other reason) → Court decides confiscation or release (u/s 8(7)).

9. Restoration to Claimants:

- If property confiscated → Special Court may restore to the claimant with legitimate interest who suffered quantifiable loss (u/s 8(8)).
- Conditions: claimant acted in good faith, took precautions, not involved in laundering.

• Court may even consider restoration during trial (Proviso to s. 8(8)).

10.3 ***The Income Tax Act, 1961***, provides for provisional attachment to protect the interests of the revenue. A perusal of Section 281B makes clear the following steps:

1. Proceeding pending for assessment/ reassessment / escaped assessment; Assessing Officer (AO) forms an opinion that provisional attachment is necessary to protect revenue.
2. AO obtains previous approval from the relevant higher authority (Principal Chief Commissioner/Chief Commissioner; Principal Commissioner/Commissioner; Principal Director General/Director General; Principal Director/Director).
3. On approval, AO issues a written order provisionally attaching the assessee's property in the manner provided in the Second Schedule.
4. Initial period of provisional attachment is six months from the date of the order.
5. The higher authority may extend the provisional attachment (reasons recorded), but total extension cannot exceed two years or sixty days after the date of assessment/reassessment, whichever is later.
6. Assessee may furnish a bank guarantee from a scheduled bank for an amount not less than the fair market value (FMV) of the

attached property. If accepted, the AO shall revoke the attachment.

7. AO may refer the matter to the Valuation Officer (s.142A) to determine FMV — report due within 30 days.

8. AO must revoke the provisional attachment within 45 days of receiving the guarantee if a Valuation Officer reference was made; otherwise, within 15 days.

9. If a notice of demand specifying a sum is served and the assessee fails to pay, the AO may invoke the bank guarantee (wholly or partly) to recover the amount.

10. The AO shall invoke the guarantee if the assessee fails to renew the guarantee 15 days before its expiry.

11. Amount realized by invoking the guarantee is adjusted against existing demand; any balance is deposited in the Personal Deposit Account (PDA) of the Principal Commissioner/Commissioner.

12. If AO is satisfied that the guarantee is no longer required, the AO shall release the guarantee forthwith.

11. A detailed analysis of the provisions concerning attachment given in the Ordinance as also the other Acts, the steps of which have been detailed above, is an effort to juxtapose the procedure laid down in different statutes, showing that attachment is a consequence which is given effect to after due application of mind and compliance with procedure. It is not

a decision that can be taken on the spur of the moment. It is not a decision that can be taken by a single person. The situation prevalent on the ground and in response to the situation as it may be developing, has to be considered. Instead, the law provides detailed steps and procedures to be complied with before someone's property can be attached. Now, contrasting this with the power contained under Section 102 Cr.P.C., it is clear from the text reproduced *supra* that it allows '*any police officer*' to '*seize any property*', and in order to balance the scales, requires that once such a seizure is done, information thereof has been sent forthwith to the concerned Magistrate. This requirement of communication to the Magistrate forthwith received consideration in a recent judgment of this Court in ***Shento Varghese v. Julfikar Husen***[21], the conclusions of which are as below:

> "**26.** From the discussion made above, it would emerge that the expression "*forthwith*" means "*as soon as may be*", "*with reasonable speed and expedition*", "*with a sense of urgency*", and "*without any unnecessary delay*". In other words, it would mean as soon as possible, judged in the context of the object sought to be achieved or accomplished.
>
> **27.** We are of the considered view that the said expression must receive a reasonable construction and in giving such construction, regard must be had to the nature of the act or thing to be performed and the prevailing circumstances of the

21 (2024) 7 SCC 23

> case. When it is not the mandate of the law that the act should be done within a fixed time, it would mean that the act must be done within a reasonable time. It all depends upon the circumstances that may unfold in a given case and there cannot be a straitjacket formula prescribed in this regard. In that sense, the interpretation of the word "*forthwith*" would depend upon the terrain in which it travels and would take its colour depending upon the prevailing circumstances which can be variable.
>
> **28.** Therefore, in deciding whether the police officer has properly discharged his obligation under Section 102(3)CrPC, the Magistrate would have to, firstly, examine whether the seizure was reported forthwith. In doing so, it ought to have regard to the interpretation of the expression, "*forthwith*" as discussed above. If it finds that the report was not sent forthwith, then it must examine whether there is any explanation offered in support of the delay. If the Magistrate finds that the delay has been properly explained, it would leave the matter at that. However, if it finds that there is no reasonable explanation for the delay or that the official has acted with deliberate disregard/wanton negligence, then it may direct for appropriate departmental action to be initiated against such erring official. We once again reiterate that the act of seizure would not get vitiated by virtue of such delay, as discussed in detail hereinabove."

While it is undoubted that in ordinary circumstances, information is to be sent to the Magistrate, in certain circumstances, if that is not done, even then the seizure will not be vitiated. This indicates the width of the power granted to the police with the sole aim of smooth facilitation of the

investigation. As evidenced by the procedure given in the Ordinance, it is sequential and has to be compliant with principles of natural justice, for it to survive scrutiny. It is necessarily time consuming and deliberative. The difference between the two processes is, therefore, clearly exhibited. In essence, we hold that the power of seizure and attachment are separate and distinct, even if, to the naked eye it may so appear, that the effect is same/similar which is, that the property is taken into custody of, by the authority, either investigative or judicial. Consequentially, the conclusion to be drawn is that the powers under Section 18A of the PC Act and Section 102, CrP.C. are not mutually exclusive. Mr Farasat's submission to this extent merits acceptance and is so done accordingly.

12. The next submission to be weighed is whether ***Ratan Babulal Lath*** *(supra)* constitutes a binding precedent in as much as it declares the PC Act to be a *'code in itself'*, thereby ruling out the application of the Cr.P.C. or any other law to any proceedings which emanates therefrom. There have been several instances where this Court has declared a particular statute to be a self-contained Code or, a Code in itself. Reference to some of these instances is as follows:

> 12.1 The Industrial Disputes Act, 1947, which N.L.Untwalia J., writing for this Court in ***Premier***

Automobiles Ltd. v. Kamlekar Shantaram Wadke[22], observed to be an act providing for *"investigation and settlement of industrial disputes, which means adjudication of such disputes…*" is one such example. In para 8 of this judgment, the learned Judge gives a glimpse of the width and expanse of the powers provided therein. Krishna Iyer J., in ***Rohtas Industries Ltd. v. Rohtas Industries Staff Union***[23], called it a Code for it *"… it speaks and the enforcement of rights created thereby can only be through the procedure laid down therein. Neither the civil court nor any other tribunal or body can award relief."* What is seen from the Act is that its references to other procedural laws are only limited to certain extents, which have been clearly laid down for example, Section 11 thereof provides that every Board, Court constituted thereunder shall have the powers under the Code of Civil Procedure, 1908, insofar as the four aspects mentioned therein are concerned.

12.2 The Insolvency and Bankruptcy Code, 2016[24] is another example. The name itself professes that this legislation is a Code. [See: ***Ebix Singapore (P) Ltd. v. Educomp Solutions Ltd. (CoC)***[25]] Various judgments

22 (1976) 1 SCC 496
23 (1976) 2 SCC 82
24 Hereinafter referred to as 'IBC'
25 (2022) 2 SCC 401

since its enactment have underscored its self-contained nature. In ***Pratap Technocrats (P) Ltd. v. Reliance Infratel Ltd. (Monitoring Committee)***[26]**,** this Court expressly rejected the importation of the guarantees of non-arbitrariness and fair procedure into the Court holding that the Code defines in itself what is fair and equitable treatment "*constituting a comprehensive framework*". It was also noted that the same is compliant with the "*Legislative Guide on Insolvency Law*" given by UNCITRAL. In ***E.S. Krishnamurthy v. Bharath Hi-Tecch Builders (P) Ltd***.[27], it was observed that the IBC "*confers jurisdiction*" and "*structures, channelises and circumscribes the ambit of such jurisdiction*"**.** ***V. Nagarajan v. SKS Ispat & Power Ltd.***[28], held that the Code overrides its inconsistencies as they may be with other laws.

12.3 Two further examples. The Land Acquisition Act, 1894, was held in ***State of Bihar v. Dhirendra Kumar***[29], to be a complete code in itself since it details the complete procedure to be followed by the State when it exercises the power of eminent domain. The Securitisation and Reconstruction of Financial Assets

26 (2021) 10 SCC 623
27 (2022) 3 SCC 161
28 (2022) 2 SCC 244
29 (1995) 4 SCC 229

and Enforcement of Security Interest Act, 2002 has been termed as a code in itself since it provides the procedure to be followed by a secured creditor and also the aggrieved party including borrower. [See***: Raj Kumar Shivhare v. Directorate of Enforcement***[30]]

13. Analysing the judgments referred to immediately hereinabove, the following factors can be deduced as essentials of a code being self-contained or complete in all respects:

I. A Code should be comprehensive, dealing with all aspects arising directly out of or, ancillary to, the main issue addressed in the statute.

II. It should lay down, clearly, when dealing with criminal laws, the offence, its punishment, and when dealing with civil laws, the rights and liabilities of the parties.

III. Addressing the above, the procedure provided therein should be all-encompassing. This includes, for instance, adjudication of grievances, and appeals from findings recorded by authorities. In other words, the reliance of the statute upon general laws with reference to the offences/ punishments or, rights/liabilities should be limited as far as possible.

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30 (2010) 4 SCC 772

14. With utmost respect to the learned Judges and the conclusion in ***Ratan Babulal Lath*** *(supra)*, we would state that in the absence of a detailed discussion made of the scheme of the Act, its provisions and its interactions with other substantive or procedural laws, as far as they may be applicable, it cannot be stated that the conclusion arrived at therein constitutes *ratio decidendi* and, therefore, would be binding on all Courts as per the effect of Article 141 of the Constitution of India. We draw support for our conclusion from a judgment of this Court in ***MCD v. Gurnam Kaur***[31]**:**

> **"11.** Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in *Jamna Das case* [Writ Petitions Nos. 981-82 of 1984] and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions …So far as the order shows, no argument was addressed to the court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of

31 (1989) 1 SCC 101

> the *Salmond on Jurisprudence*, 12th Edn. explains the concept of *sub silentio* at p. 153 in these words:
>
> A decision passes *sub silentio*, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio."
>
> (Emphasis supplied)

In the same vein, a reference can also be made to ***Jayant Verma v. Union of India***[32] wherein R.F Nariman J, writing for the Court, referred to the dissenting opinion of A.P. Sen, J. who set out in ***Dalbir Singh* v. *State of Punjab***[33] what is the *ratio decidendi* of a judgment, in the following terms:

> "*22*. … According to the well-settled theory of precedents every decision contains three basic ingredients:
>
> '(*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;
>
> (*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and

32 (2018) 4 SCC 743
33 (1979) 3 SCC 745

> (*iii*) judgment based on the combined effect of (*i*) and (*ii*) above."

15. In our considered view, ***Ratan Babulal Lath*** (supra) does not constitute binding precedent for want of ***(ii)*** and ***(iii)*** since it does not discuss the facts of the matter. Granted, inference can be made as to the facts of the case, and the background in which the order came to be passed. However, Courts ought not to be expected to follow judgments and orders of this Court as binding precedents when, the facts, in light of which the conclusion arrived at, are not properly disclosed and discussed, for law is not always applicable as the black letter of the law and is instead applied to the facts of each case. It may be clarified here that our observations regarding the PC Act do not hold, either way, as to its status as a code. They are only confined to the precedential value of ***Ratan Babulal Lath*** (supra).

CONCLUSION

16. Having decided the points of law, as above, let us now turn to the facts of this case. The respondent is the father of the main accused. Although he had submitted certain responses to the source of the money present in his accounts, the same was not found to be a justifiable explanation by the investigating authorities and as such, seizure was effected. The release of the funds so seized was rejected by the Trial Court but later

accepted by the High Court on the premise that the same had been carried out on an erroneous interpretation of the law. We do not agree. We have held as above that Section 102, Cr.P.C., being distinct from the powers and procedures as detailed under Section 18-A of the PC Act, would apply to the case. Generally, with the setting aside of the order of the High Court, the matter would have ended there, but since the investigation has been completed and the final report already stands presented in the case, the freezing of the accounts, of which fixed deposits are undoubtedly a part, may or may not be required. Considering that in light of the principles enunciated in para 9 of this judgment, we may observe that as per this Court's order issuing notice dated 27th January 2025, we had stayed the operation of the impugned judgment which was dated 4th October 2024. This may result into two situations, viz., ***(a)*** where the amount stands released; and ***(b)*** is yet to be released. If the situation is the former, then the respondent herein would either re-deposit the amount or furnish tangible security / bank guarantee of the like amount. This shall be done positively within three weeks from today. Rights of the parties emanating from the statute whether in situation ***(a)*** or ***(b)*** for follow up action are left open to be adjudicated in appropriate proceedings before the appropriate court.

17. The appeal is allowed as aforesaid.

Pending application(s), if any, shall be disposed of.

…….....……J.
(SANJAY KAROL)

…….....……J.
(PRASHANT KUMAR MISHRA)

New Delhi;
December 10, 2025