

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO.3198 OF 2009

Sudhir Vasant Karnataki
Aged about 51 years,
residing at 14, Rohan Corner,
Shivtirtha Nagar, Poud Road,
Pune - 411 037.

..Petitioner

Vs.

1. The State of Maharashtra
2. The Commissioner of Police,
Pune.
3. The Senior Inspector,
Anti-Extortion Cell, Crime Branch,
Pune.
4. Yeshwant V. Natu

Age : 63 years, Occu : Retired lecturer
R/o.Plot No.14, Tapodhan Society,
Near Bhagini Nivedita Bank,
Pune.

..Respondents

WITH

CRIMINAL WRIT PETITION NO.395 OF 2010

Mohideen Mohammed Sheik Dawood
an adult, occu : business
non resident Indian
residing at P.O.Box 24770,
Dubai, U.A.E.
and having permanent residence
in India at 34, South Street,
Nagore - 611 002, Tamil Nadu,
India.

Through its Power of Attorney Holder
Mr.Rajesh Baxi

..Applicant

Vs.

1. Russian Federation represented
in India through its Counsel
General Mr.Alezander V. Mantytsky
having their office at 42,
L. Jagmohandas Marg,
(Old Napean Sea Road), Palm Beach,

Mumbai - 400 036.

2. The State of Maharashtra ..Respondents

WITH

CRIMINAL WRIT PETITION NO.2024 OF 2009

Sudhir Vasant Karnataki
Aged about 51 years,
residing at 14, Rohan Corner,
Shivtirtha Nagar, Poud Road,
Pune - 411 037.

..Petitioner

Vs.

1. The State of Maharashtra
 2. The Commissioner of Police,
Pune.
 3. The Senior Inspector,
Anti-Extortion Cell, Crime branch
Pune.
- ..Respondents

WITH

CRIMINAL WRIT PETITION NO.2137 OF 2010

Chetna Properties Pvt. Ltd.
Registered Office :-No.1008,
10th floor, Dalamal Towers,
Nariman Point
Mumbai - 400 021.

..Applicant

Vs.

The State of Maharashtra
(at the instance of M.R.A.
Marg Police Station
C.R.No.15 of 2009)

..Respondent

Mr. Kunal Cheema i/by Ms. Veera Shinde for petitioner in Cri. W.P. No. 3198/09.

Mr. Harshad Ponda with Mr. Vijay Kantharia for petitioner in W.P. No.395/10.

Mr. Aabad H. H. Ponda for petitioner in Cri. W.P. No. 2137 of 2010.

Mr. S.V. Kotwal i/by Mr. Ashish Sawant for respondent no.4 in W.P. No.3198/09.

Mr. Ashok Mundargi with Mr. S.V. Kotwal and Mr. A.V. Jain i/by M/s. A.V. Jain and Co. for respondent no.1 in W.P. No. 395/10.

Mrs. P. P. Shinde, APP in W.P. No. 395/10.

Mr. A.S. Gadkari, APP in W.P. Nos.2024/09, 3198/09 and 2137/10.

CORAM: B. H. MARLAPALLE,
R. C. CHAVAN &
SMT. ROSHAN DALVI, JJ.

RESERVED ON : AUGUST 12, 2010

PRONOUNCED ON : NOVEMBER 29, 2010

JUDGMENT (PER B. H. MARLAPALLE, J.)

I have gone through the majority judgment written by Chavan J., for himself and for Dalvi J., holding that the powers of seizure under Section 102 of the Criminal Procedure Code 1973 are not applicable for the immovable property and with respect I could not persuade or agree with the same view. Hence this separate judgment.

2. A Division Bench of this Court while hearing this petition was confronted with two divergent findings on the issue as to whether an immovable property could be seized under Section 102 of the Criminal

Procedure Code, 1973 (for short “the Code”). As per the petitioners Section 102 of the Code envisages seizure of only movable property, but the respondents, including the State of Maharashtra, contended before the Division Bench that the word “any property” used in Section 102 of the Code cannot be restricted to movable property alone and immovable property can also be seized under the said Section. The Division Bench in its order dated 1st April, 2010 observed in para 12 as under:-

“12. Having gone through Tapas Neogy [(1999) 7 SCC 685], we are inclined to hold that it is possible to urge that in Tapas Neogy, the Supreme Court was primarily considering whether the bank account of the accused could be property within the the Section 102 (1) of the Code and not whether under Section 102 of the Code, immovable property could be seized. That question has been decided by this Court in Kishore Shankar Signapurkar vs. State of Maharashtra & Ors., 1997 Vol. IV LJ 793. It is held

therein that under Section 102, immovable property cannot be seized. Unfortunately, attention of the Division Bench of this court was not drawn to this judgment when it decided **M/s.Bombay Science & Research (2008 All. M.R. (Cri.) 2133)**. Reliance placed by the Division Bench in M/s. Bombay Science & Research on **Tapas Neogy** does not appear to us to be apt because in that case, the Supreme Court was not considering whether immovable property can be seized under Section 102 of the Code. There is, therefore, an apparent conflict between the view expressed in **Kishore Signapurkar** and **M/s.Bombay Science & Research**. In our opinion, therefore, the question whether under Section 102 of the Code, immovable property can be seized needs to be referred to a larger bench as there is conflict between two coordinate benches of this Court.”

In Tapas Neogy's case the Supreme Court has referred to Section 16 of the P. C. Act and hence is presumed to have considered the Criminal Law (Amendment) Ordinance 1944.

2. For the above said reasons the Division Bench framed and referred the following questions to be decided by the larger Bench:-

“(a) Whether the words “any property” used in sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 would mean to include “immoveable property.?”

(b) Whether a police officer can take control of any immovable property which may be found under circumstances which create suspicion of the commission of any offence?

(c) Which of the above two judgments lay down correct law in respect of the powers of a police officer to seize any immoveable property under Section 102 of the Code of Criminal Procedure.

(d) Whether the law laid down by the Supreme Court in case of State of Maharashtra v. Tapas D. Neogy (supra) is restricted to seizure of bank accounts only or it can be

extended to immoveable property also, as interpreted by the Division Bench in the case of M/s.Bombay Science and Research Education Institute (supra).”

3. The main issue which we are required to decide is as to whether an immovable property can be seized under Section 102 of the Code, and our reply on this single issue will result in deciding all the above stated four issues set out in the referral order.

4. In Kishore Shankar Signapurkar's case the Division Bench considered the following points:-

(i) Whether the police can seize immovable property under the provisions of Section 102 of the Code of Criminal Procedure?

(ii) Whether the police can seize or freeze Bank accounts

under the provisions of section 102 of the Code of Criminal Procedure;

(iii) What is the procedure to be followed by the police in respect of the property seized under the provisions of section 102 of the Code of Criminal Procedure.

After referring to the arguments advanced by the parties and the judgments cited across the bar the Division Bench concluded its findings, as under on the first two issues framed by it.

(a) The word “property” as used in Section 102 of the Cr.P.C. cannot include “immovable property” and

(b) the police have no power under the provisions of Section 102 to direct the bank accounts to be freezed and prevent the account holder from operating the bank account.”

The short reasoning on the first issue in the said case finds place in the following observations of the Division Bench:-

“As a matter of fact, we are of the opinion that the aforesaid observations of the apex Court in **R.K. Dalmia v. Delhi Administration reported in A.I.R. 1962 S.C. 1821** support the conclusion that the interpretation of the word “property” as used in section 102 will not depend on the interpretation of the word “property” but on the fact whether a particular kind of property can be subject to the acts covered by that section. As stated earlier, in our opinion, the provisions of sub-section (3) contemplate the property to be capable of being produced before the Court and being transported, and in as much as the immovable property would be incapable of being transported or so produced, we are of the opinion that the word “property” as used in section 102 of the Cr.P.C. Cannot include “immovable property..... Therefore, on reading of the provisions of Section 102 the Code which in our opinion are clear, and unambiguous, we are of the opinion that an immovable property cannot be seized by the police under the provisions of Section 102 of the Code.”

The reasoning and findings recorded on the second issue

regarding the bank accounts need not be considered as they have been disapproved by the Supreme Court in Tapas Neogy's case (supra).

5. In the case of M/s. Bombay Science Research Education Institute (supra) another Division Bench of this Court following the law laid down by the Supreme Court in Tapas Neogy's case held that all properties whether movable or immovable can be seized by the police under Section 102 of the Code as there is nothing in the provision to show that the property would include only movable and not immovable property. It is true that there is no reference in this judgment in the case of M/s.Bombay Science Research Education Institute (supra), to the earlier judgment in the case of Kishore Signapukar (Supra) but it is beyond any doubt that the findings in both the decisions of this Court are in conflict and the view taken in the later judgment of this Court is solely based on the subsequent decision of the Supreme Court in the case of Tapas Neogy's case (supra). In paras. 10 and 11 of the judgment

in M/s.Bombay Science and Research Education Institute the Division Bench stated as under:-

“10. Now contention of the petitioner is that though Supreme Court held that the bank account as “property” within the meaning of Section 102 of Criminal Procedure Code, but “immovable properties” can not be “properties” within the meaning of Section 102.....

11. We do not find that there is any basis for such distinction to be made in the movable and immovable properties as far as “property” is mentioned in Section 102. All properties whether movable or immovable in our view can be seized by police under Section 102, as there is nothing in the provision to show that the property would include only movable and not immovable. The Supreme Court has held in the para quoted above there was no justification to come to the conclusion that the “property” should be defined in the narrow sense”.

6. In Tapas D. Neogy's case (supra) the main question for consideration before the Apex Court was, whether the investigating officer can pass orders freezing the bank account or issue prohibitory orders to the bank not to allow the account holder to operate the account by invoking the powers under Section 102 of the Code. The Supreme Court reproduced the provisions of Section 102 of the Code and in para 6 stated as under:-

“6. A plain reading of sub-section (1) of Section 102 indicates that the police officer has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression “any property” and “any offence” have made the applicability of the provisions wide enough to cover offences created under any Act. But the two preconditions for applicability of Section 102(1) are that it must be “property” and secondly, in respect of the said property there must have been suspicion of commission

of any offence. In this view of the matter the two further questions that arise for consideration are whether the bank account of an accused or of his relation can be said to be “property” within the meaning of sub-section (1) of Section 102 Cr.P.C. And secondly, whether circumstances exist, creating suspicion of commission of any offence in relation to the same.....”

After referring to the earlier decisions of some of the High Courts as well as the Supreme Court, Their Lordships in para 12 of Tapas D. Neogy's case (supra) stated thus,

“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.” (emphasis supplied).

7. The arguments by the respective parties before us are almost on the same lines as they were advanced before the Division Bench while passing the referral order. The learned Counsel for the petitioner urged before us that the words “any property” used in Section 102 of the Code does not extent to “immovable property” and, therefore, the police officer does not have the power to seize the immovable property under the said Section. When it comes to immovable property, what is envisaged under the Code is “attachment” and not “seizure” and wherever the Legislature had intended to extend the provisions of the

Code to apply to immovable property the words “immovable property” have been specifically used. The draftsmen of the Code have distinguished between “seizure” and “attachment” and they have contemplated the word “seizure” to apply to “movable property” and not to the “immovable property”. In support of these contentions, our attention was drawn to the provisions of Sections 51, 52, 83(3)(a), 83(4)(a), 105, 105E, 145, 146 and 451 to 459 of the Code as well as Section 68-F of the N.D.P.S. Act, 1985 so as to urge that the powers of seizure under Section 102 of the Code cannot be invoked in respect of an immovable property. It is further submitted that the later decision in the case of M/s. Bombay Science and Research Institute (supra) did not consider the reasoning set out by the earlier Division Bench in Kishore Shankar Signapurkar's case (supra) and did not analyze the various provisions of the Code to come to the said view that an immovable property can be seized under Section 102 of the Code. The judgment of the Supreme Court in the case of Tapas D. Neogy (supra) is a binding precedent only to the extent that the power under Section 102 of the

Code can be invoked for the seizure or freezing of the bank account and it cannot be extended to an immovable property even by inference or implication. Though Section 102 of the Code can be divided in two different parties, in the first part the “property stolen” is different from the words “stolen property” as defined in Section 410 of the I.P.C., and, therefore, the immovable property is not covered in the first part. As regards the second part of Section 102 of the Code, it was submitted that it cannot apply to an immovable property as the word used is “found” and an immovable property cannot be found and it stays where it is. The entire phrase “found in circumstances which creates suspicion of the commission of any offence” which is the second part of Section 102 of the Code would apply only to movable property. Section 102 of the Code finds its place in Chapter VII of the Code and heading of the said Chapter uses the word “things” and, therefore, it is impossible to imagine by the common usage of the word “things” that the same would also mean immovable property as an immoveable property cannot be said to be “things”. He also urged that Sections 451 to 459 of the

Code also support his arguments. Section 456 specifically takes care of “immovable property” and it does not contemplate that the immovable property should have been seized earlier. Section 452 grants power to the Magistrate to pass an order for disposal, at the conclusion of the trial, of the property in its custody or regarding which an offence appears to have been committed and the stress in the Section is on its production in the Court thereby implying that it applies only to movable property. Our attention has also been invited to the following observations made by the earlier Division Bench in Kishore Shankar Singnapurkar's case (supra) :-

“.....If one goes to the provisions of the Code and especially the provisions of Sections 83, 93, 105-C to 105-I, 145, 146, 152 and 456 it is clear that whenever movable property is concerned, the power is given either to the Court or to the Magistrate.”

Based on these observations, it has been contended before us that when it comes to an immovable property, the power of attachment can be exercised by the Court or by the Magistrate and the power of seizure which is available to a police officer under Section 102 of the Code cannot be made applicable to an immovable property, otherwise the consequence of any other interpretation would be disastrous and innocent people or persons who have no connection with the alleged crime would be made to suffer till the trial is completed and in given cases the chances of dispossession during the investigation itself could not be ruled out on account of the high handed attitude of the police officer. Lastly, the learned Counsel for the petitioner also relied upon the recommendations of the Malimath Committee so as to amend the scheme of Section 102 of the Code to include the immovable property and they urged that an inference ought to be drawn that the present scheme of Section 102 does not include immovable property, and there is no reason to upset the said view solely relying upon some of the

observations made by the Supreme Court in Tapas D. Neogy's case (supra).

8. On the other hand the learned Counsel for the respondents have urged before us that the words “any property” must be given their natural meaning and it cannot be limited or altered to mean only ‘movable property’. Wherever the legislature wanted to make distinction it has used the words “movable property” and “immovable property” in the Code. Reference has also been made to the dictionary meaning of the words “seizure”, “attachment” and “disposal”, etc. It was submitted that unless the property is seized during the course of investigation by the police, the power of attachment to be invoked by the Magistrate or by the Court cannot be applied effectively, in given cases as the property in the meanwhile would have changed hands, more so if it is a property acquired from the proceeds of crime/offence. The term “any property” has to be interpreted so as to make the procedural

law effective and a restricted meaning to the said words would, at times, render the Code ineffective. When the words used in the statute are clear, plain and unambiguous, the Courts have no power to delete or add any other words in the statute. The judgment in the case of Tapas D. Neogy (supra) clearly states that the word “any property” cannot be given a limited meaning and to keep pace with the changing scenario of different organised crimes, it would be imperative that the words “any property” must include “movable property” as well as “immovable property” otherwise the legislature would not have used the adjective “any” before the word “property”. The seizure does not connote merely taking physical possession of the property by leaving it or removing it. The requirement of production of the seized property, if the Court so orders, found in Section 102, does not lead to the conclusion that “any property” means only movable property. There are several cases where movable property because of its size, etc., cannot be produced in the Court. However, in respect of the seized immovable property, title documents and other documents indicating seizure can be placed before

the Court. Therefore, sub-section (3) of Section 102 of the Code cannot be read so as to indicate that because the immovable property cannot be produced before the Court the words “any property” must mean only “movable property”. The object behind the action of seizure under Section 102 of the Code is to preserve and to protect the property which has been acquired from the proceeds of the crime during the trial. Section 451 of the Code provides for an order which a Court can pass pending trial for custody of the property, whereas Section 452 and 456 of the Code speaks about disposal of the property at the completion of the trial. Section 457 of the Code is the only Section which enables the Court to preserve and protect the property till the conclusion of the trial and it can be directly related to Section 102 of the Code. If Section 102 of the Code is given a narrow meaning as suggested by the petitioner it would curtail the investigating officer's legitimate power and that would adversely affect the investigation of serious crimes under various penal provisions general as well as special. The investigating officer may become totally helpless where he would come to the prima facie

conclusion that the property found was under the circumstances which create suspicion on the commission of any offence. The investigation of serious offences under the N.D.P.S. Act, Maharashtra Control of Organised Crime Act, Money Lending Act, the Maharashtra Protection of Interest of Depositors (In Financial Establishment) Act, 1999 and the Prevention of Money Laundering Act, 2002 would be adversely affected. It was further urged that the view taken by the Division Bench in M/s. Bombay Science & Research Education Institute (supra) is in keeping with the letter and spirit of the interpretation of Section 102 as amplified by the Supreme Court in the case of Tapas D. Neogy (supra) and that the view taken in the case of Kishore Shankar Signapurkar (supra) is no more a good law. The Criminal Law (amendment) Ordinance 1944 could not detain, as is clear from the taken by the Supreme Court in Tapas D. Neogy's case (supra), to take a restricted view that a property acquired from the proceeds of crime cannot be seized under Section 102 of the Code, urged the learned Counsel for the respondents.

9. It may be useful to quote for our ready reference some of the Sections of the Code including Section 102 which have been referred to and relied upon during the course of arguments, including Sections 68-C to 68-F of the N.D.P.S. Act and the Criminal Law (Amendment) Ordinance 1944.

The Code of Criminal Procedure:

“S.83.(1) The Court issuing a proclamation under Section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person:

Provided that where at the time of issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-

- (a) by seizure; or
- (b) by the appointment of a receiver; or
- (c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases-

- (a) by taking possession; or
- (b) by the appointment of a receiver; or
- (c) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or
- (d) by all or any two of such methods, as the Courts thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908).

S.102 (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.)

“105-A. Definitions.- In this Chapter, unless the context otherwise requires,-

(a) “contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

(b) “identifying” includes establishment of a proof that the property was derived from, or used in, the commission of an offence;

(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;

(d) “property” means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime;

(e) “tracing” means determining the nature, source, disposition, movement, title or ownership of property.”

“S.105-C. (1) Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property, as it may

deem fit under the provisions of Sections 105-D to 105-J (both inclusive).

(2) Where the Court has made an order for attachment or forfeiture of any property under sub-section (1), and such property is suspected to be in a contracting state, the Court may issue a letter of request to a Court or an authority in the contracting State for execution of such order.

(3) Where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit, for execution in accordance with the provisions of Section 105-D to 105-J (both inclusive) or, as the case may be, any other law for the time being in force.”

“S.105-E. (1) Where any officer conducting an inquiry or investigation under Section 105-D has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed, transferred or dealt with in any manner which will result in disposal of such property, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the said Court, within a period of thirty days of its being made.”

“S.105-H. Forfeiture of property in certain cases.- (1) The Court may, after considering the explanation, if any, to the show-cause notice issued under section 105-G and the material available before it and after giving to the person affected (and in a case where the person affected holds any property specified in the notice through any other person, to such other person also) a reasonable opportunity of being heard, by order, record a finding whether all or any of the properties in question are proceeds of crime:

“S.105-L. Application of this Chapter.- The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.”

“D – Disputes as to immovable property.

S. 145. Procedure where dispute concerning land or water is likely to cause breach of peace – (1) whenever an Executive Magistrate is satisfied from a report of police officer or upon other information that a dispute is likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression “land or water” includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

“S.146.(1) If the Magistrate at any time after making the order under sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate-

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just.”

“451. Order for custody and disposal of property pending trial in certain cases.- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, “property” includes-

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”

“452. Order for disposal of property at conclusion of trial.- (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Sessions may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term “property” includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.”

“456. Power to restore possession of immovable property.- (1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

The Criminal Law (Amendment) Ordinance, 1944:

“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.”

“6. Attachment of property of mala fide transferees.- (1) Where the asset available for attachment of a person believed to have committed scheduled offence are found to be less than the amount or value which he is believed to have procured by means of such offence, and where the District Judge is satisfied, by affidavit, or otherwise, that there is reasonable cause for believing that the said person has, after the date on which the offence is alleged to have been committed, transferred (whether after the commencement of this Ordinance or not) any of his property otherwise than in good faith and for consideration, the District Judge may by notice, require any transferee of such property (whether or not he received the property directly from the said person) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of property transferred should not be attached.”

“13. Disposal of attached property upon termination of criminal proceedings.- (1) Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the (State Government or, as the case may be, the Central Government) shall without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any, of the appellate or revisional Courts thereon.

(2) Where it is reported to the District Judge under sub-section (1) that cognizance of the alleged scheduled offence has not been taken or where the final judgment or order of the Criminal Court is one of acquittal, the District Judge shall forthwith withdrawn any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.

(3) Where the final judgment or order of the Criminal Courts is one of conviction, the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to Government such amount or value as is found, in the final judgment or order of the Criminal Courts in pursuance of section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge and where the final judgment or order of the Criminal Courts have imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment.

(4) Where the amounts ordered to be forfeited or recovered under sub-section (3) exceed the value of the property of the convicted person attached, and where the property of any transferee of the convicted person has been attached under section 6, the District Judge shall order that the balance of the amount ordered to be forfeited under sub-section (3) together with the costs of attachment of the transferee's property is determined by the District Judge shall be forfeited to Government from the attached property of the transferee or out of the security given in lieu of such attachment; and the District Judge may order, without prejudice to any other mode of recovery, that any fine

referred to in sub-section (3) or any person thereof not recovered under that sub-section shall be recovered from the attached property of the transferee or out of security given in lieu of such attachment.

(5) If any property remains under attachment in respect of any scheduled offence of any security given in lieu of such attachment remains with the District Judge after his orders under sub-sections (3) and (4) have been carried into effect, the order of attachment in respect of such property remaining shall be forthwith withdrawn or as the case may be, the remainder of the security returned, under the orders of the District Judge.

(6) Every sum ordered to be forfeited under this section in connection with any scheduled offence other than one specified in item I of the Schedule to this Ordinance, shall, after deduction of the costs of attachment as determined by the District Judge, be credited to the Government being a Government referred to in the said Schedule or local authority to which the offence has caused loss, or where there is more than one such Government or local authority, the sum shall, after such deduction as aforesaid, be distributed among them in preparation to the loss sustained by each.”

“THE SCHEDULE

(See section 2)

OFFENCES IN CONNECTION WITH WHICH PROPERTY IS LIABLE TO BE ATTACHED

2. An offence punishable under section 406 or section 408 or section 409 of the Indian Penal Code (45 of 1860), where the property in respect of which the offence is committed is property entrusted by His Majesty’s Government in the United Kingdom or in any part of His Majesty’s dominions or the Central or a State Government

or a department of any such Government or a local authority [or a corporation established by or under a Central, provincial or State Act, or an authority or a body owned or controlled or aided by Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a society aided by such corporation, authority, body or Government company] or a person acting on behalf of any such Government or department or authority [or corporation or body or Government company or society].

3. An offence punishable under section 411 or section 414 of the Indian Penal Code (45 of 1860), where the stolen property in respect of which the offence is committed is property such as is described in the proceeding item and in respect of which an offence punishable under section 406 or section 408 or section 409 of the said Code has been committed.
4. An offence punishable under section 417 or section 420 of the Indian Penal Code (45 of 1860), where the person deceived is His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or State Government or a department of any such Government or a local authority or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government Company or a person acting on behalf of any such Government or department (or authority or corporation or body or Government company or society).

[4-A. An offence punishable under the Prevention of Corruption Act, 1988 (49 of 1988)]

5.Any conspiracy to commit or any attempt to commit or any abetment or any of the offences specified in [items 2, 3, 4 and 4-A].”

The Narcotic Drugs and Psychotropic Substances Act:

“68-C. Prohibition of holding illegally acquired property.- (1) As from the commencement of this Chapter, it shall not be lawful for any person to whom this Chapter applies to hold any illegally acquired property either by himself or through any other person on his behalf.

(2) Where any person holds any illegally acquired property in contravention of the provisions of sub-section (1), such property shall be liable to be forfeited to the Central Government in accordance with the provisions of this Chapter:

(Provided that no property shall be forfeited under this Chapter if such property was acquired, by a person to whom this Act applies, before a period of six years from the date he was arrested or against whom a warrant or authorisation of arrest has been issued for the commission of an offence punishable under this Act or from the date the order or detention was issued, as the case may be.)

68-E. Identifying illegally acquired property.- (1) Every officer empowered under section 53 and every officer-in-charge of a police station shall, on receipt of information is satisfied that any person to whom this Chapter applies holds any illegally acquired property, he may, after recording reasons for doing so, proceed to take all steps necessary for tracing and identifying such property.)

(2) The steps referred to in sub-section (1) may include any inquiry, investigation or survey in respect of any person, place, property,

assets, documents, books of account in any bank or public financial institution or any other relevant matters.

(3) Any inquiry, investigation or survey referred to in sub-section (2) shall be carried out by an officer mentioned in sub-section (1) in accordance with such directions or guidelines as the competent authority may make or issue in this behalf.

68-F. Seizure or freezing of illegally acquired property.- (1) Where any officer conducting an inquiry or investigation under section 68-E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

Explanation.- For the purposes of this section, “transfer of property” means any disposition, conveyance, assignment, settlement,

delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes-

- (a) the creation of a trust in property;
- (b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;
- (c) the exercise of a power of appointment of property vested in any person, not the owner of the property, to determine its disposition in favour of any person other than the donee of the power; and
- (d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person.”

(underlining is ours)

10. A survey of the English Law was also made by one of us (Roshan Dalvi, J.) and Sections 19 to 22 of the Police and Criminal Evidence Act, 1984 enactment by the United Kingdom which have been reproduced in the majority judgment.

However, we have noted that the power of seizure as envisaged in the scheme of the English Law is in respect of a property

located in the premises and the said power could be exercised by the constable if he has reasonable grounds for believing (a) that it has been obtained in consequence of the commission of an offence; and (b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed. The constable has also the power of seizing anything which is on the premises and if he has reasonable grounds for believing that (a) it is evidence in relation to an offence which he is investigating or any other offence; (b) that it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed. However, such a power cannot be invoked when the constable has reasonable grounds for believing to be a subject to legal privilege. The word “premises” itself would refer to the “immovable property” and “any thing on the premises” would refer to only the “movable property.” The above said scheme is not comparable to the scheme of Section 102 of the Code, even by inference, and to support the contention that the seizure of property under Section 102 of the Code is only with respect to the movable property.

11. The power of seizure in Section 102 (1) of the Code is in two parts i.e. any police officer may seize any property (a) which may be alleged or suspected to have been stolen or (b) which may be found under circumstances which create suspicion of the commission of any offence. Thus the power of seizure is in respect of “any property”. As per sub-section (2) of Section 102 of the Code if the police officer seizing the property is subordinate to the officer in charge of a police station, he shall forthwith report the seizure to that officer and as per sub-section (3) therein 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. By the Act 25 of 2005 a proviso has been added below Section 102(3) of the Code with effect from 23rd June, 2006 and sub-section (3) also has been amended in the year 1978 so as to give greater discretion to the police for releasing seized property, where there is difficulty in securing proper accommodation for the custody of the property or where the continued retention of the property in police custody is not considered necessary for the purposes of investigation. If the property is of perishable nature and its value is less than five hundred rupees and if the person entitled to the possession of such property is unknown or absent, the police have been empowered to sell such property by auction.

12. As per Section 2(y) of the Code the words and expressions used therein and not defined but defined in the Indian Penal Code have the meanings respectively assigned to them under the I.P.C. The word “property” has not been defined under the Code, but Section 410 of the

I.P.C., has defined “stolen property” and Section 22 of IPC has defined “movable property” and the said sections are reproduced as under:-

“410. Stolen property.--Property, the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated or in respect of which criminal breach of trust has been committed, is designated as “stolen property”, whether the transfer has been made, or the misappropriation or breach of trust has been committed, within or without India. But, if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be stolen property.”

Whereas “movable property” has been defined under Section 22 of I.P.C. And it reads as under:-

“22.Moveable property-- The words “movable property” are intended to include corporal property of every description, except land and things attached to the earth or permanently

fastened to anything attached to the earth.”

Thus what is excepted from Section 22 of the I.P.C. is an immovable property.

13. The words “seizure”, “attachment” “freezing”, “forfeiture” “disposal” and “return” have been used in different sections of the Code and certainly in different context. The word “seizure” cannot be said to be synonymous with the word “attachment” in every case. However, “attachment” may include “seizure”. Attachment of property is done under the Court's or Magistrate's order and seizure under Section 102 of the Code is done by the police officer. However, under some special penal statutes, the police officer has been entrusted with the powers of provisional attachment, and it may be accepted that such powers are synonymous to “seizure”. As per Black's Law Dictionary the meaning of the words “seizure”, “attachment” “freezing”, “forfeiture” and “disposal” is as under:-

(a) “Attachment” - the legal process of selling another's property in accordance with a writ or judicial order for the purpose of securing satisfaction of a judgment yet to be rendered. The act or process of taking, apprehending, or seizing persons of propoerty, by virtue of a writ, summons, or other judicial order, and bringing the same into the custody of the court for the purpose of securing satisfaction of the judgment ultimately to be entered in the action.”

(b) “Forfeiture” - A comprehensive term which means a divestiture of specific property without compensation, it imposes a loss by the taking away of some preexisting valid right without compensation. A deprivation or destruction of a right in consequence of the nonperformance of some obligation or condition. Loss of some right of property as a penalty for some illegal act.”

(c) “Freeze” - A period when the government restricts or immobilizes certain commercial activity. To make immobile, by government mandate, of banking action. To cease physical movement, especially when ordered by a law enforcement officer.

(d) “Disposal” - Sale, pledge, giving away, use, consumption or any other disposition of a thing. To exercise control over; to direct or assign for a use, to pass over into the control of someone else; to alienate, bestow, or part with.”

14. The common arguments advanced before us by and for the petitioners are that the words “any property” in Section 102(1) of the Code ought to be read “any movable property”, whereas it is the contention of the respondents including the State that the words “any property” ought to be read as “movable and immovable property”. The line of argument advanced by the petitioner is that the scheme of the Code does not envisage the seizure of immovable property under Section 102(1) and more so because as required under sub-section (3) therein the immovable property cannot be produced before the Court. It is also urged that as and when the Code intended to refer to seizure of immovable property it has been so stated and in this regard reliance is placed on the scheme of Sections 83, 105-C, 105-F, 145, 146 and 451 to

457 of the Code. The respondents on the other hand vehemently urged before us that the words “any property” cannot be given a restricted meaning so as to mean “any movable property” only and such an explanation of the word “any property” cannot be accepted, if the Code which is a procedural law, has to remain an effective instrument for investigation and trial of the offences under the I.P.C. as well as the special penal statutes and to do full and complete justice to the victims of modern crimes.

15. When it comes to the interpretation of statutes, it has to be presumed that the legislature does not waste its words and say anything in vain. The construction which attributes redundancy to the legislature has to be avoided. The legislature is presumed to have inserted every part of the statute for a purpose and hence should be given effect to. The ordinary rule of interpretation is that the words used by the legislature shall be given such meaning as the legislature has chosen to assign them by coining definitions contained in the interpretation clause and in the

absence thereof the words would be given such meaning as they are susceptible in ordinary parlance may be by having recourse to dictionaries as has been held by the Constitution Bench in the case of **State of West Bengal vs. Kesoram Industries Ltd. & Ors., 2004 10 S.C.C. 201.** The court should not be over zealous in searching for ambiguities or obstacles in words which are plain. A penal statute indisputably is required to be strictly construed. Procedure should not be used to discourage substantial and effective justice but should be so construed as to advance justice. Every statute is to be interpreted without any violence to its language and the court cannot enlarge the scope of legislation or intention. When the language of the statute is clear, plain or unambiguous, Courts should avoid a construction which would reduce the legislation to futility. If there is any doubt or ambiguity in the statute the rule of purposeful construction should be taken recourse to. When the words of the statute are clear, plain or unambiguous, the Courts are bound to give effect to that meaning irrespective of consequences. Where the language of the statute is clear,

the Courts cannot make any additions or substitution of words, otherwise the provision stands meaningless or doubtful in meaning. All the Rules of procedure are handmaiden of justice. The language employed by the draftsman of the procedural law may be liberal or stringent but the fact remains that the object of prescribing the procedure is to advance the cause of justice. Unless compelled by express and specific language of the statute, the provisions of a procedural law ought not to be construed in a manner which would leave the court helpless to meet the extraordinary situations in the ends of justice. Courts cannot add words to a statute or read into the statute words not in it. Where the wordings of the statute are absolutely clear and unambiguous, recourse to different principles of interpretation may not be resorted to. It is, therefore, necessary to keep these principles of interpretation in mind while answering the prime question as to whether immovable property could be seized under Section 102 of the Code.

16. The judgment of the Apex Court in the case of Tapas D.

Neogy (supra) also clearly goes to show that the statutes ought to be interpreted to meet the demands of time, we live in and with an intention to keep pace for the prevention and deterrence of crimes and must be capable of arresting all the possible loopholes likely to cause impediments in taking the criminal trial to a logical and meaningful conclusion. The Courts cannot afford to interpret the penal statutes or a procedural statute in a manner which would make such laws defective. The Court's interpretations of criminal procedural laws must be capable of dealing with the rampant corruption in public life as well as innovative manipulations of scamsters, underworld dons, cyber crime offenders, corporate manipulators, food and drugs adulterators and crime syndicates. Any narrow interpretation of criminal procedural law, evolved by the Courts, may lead to the defeat of social, public, economic, health, industrial and environmental interests of the country. At the same time the Courts must provide for checks and balances so that the police are kept within the bounds of law. The power of seizure as envisaged under Section 102 of the Code ought to be treated as

procedural and not penal. It has built-in safeguards and on seizure of the property the police officer in charge is required to report forthwith such seizure to the Court concerned. It has sufficient means to keep the police officer invoking the powers of seizure within the bounds of law, so as to ensure that the powers are not misused or abused. It is the mandate that the seizure effected is required to be reported forthwith to the Magistrate having jurisdiction. The production of the property before the Court need not be physical production and, therefore, the inability or incapacity to produce the immovable property before the Court cannot be the sole reason to hold that the immovable property cannot be seized under Section 102(1) of the Code by the police officer. Section 457 of the Code provides for adequate safety measures so that the police officer is not allowed to misuse the powers of seizure. An isolated instance of abuse of power or not reporting to seizure forthwith to the Magistrate can not be a reason to give a narrow interpretation to the powers of seizure under Section 102 of the Code.

17. Let us first consider the decision in the case of R. K. Dalmia (Supra) which was referred to by the Division Bench in the case of Signapurkar (Supra). The Supreme Court was considering the scheme of Section 405 to 409 of IPC and more particularly the meaning of the word “property”. Section 405 defines what amounts to criminal breach of trust and Section 406 of IPC provides for punishment for the said offence. Section 407 provides for punishment for criminal breach of trust committed by a carrier, wharfinger or ware-house-keeper, with respect to property entrusted to them and makes their offence more severe than the offence under Section 406 of IPC. Similarly, Section 408 makes the criminal breach of trust committed by a clerk or servant entrusted in any manner, in such capacity, with property or with any dominion over property, more severely punishable than the offence of criminal breach of trust under Section 406 and offences under Section 407 and 408 of IPC are similarly punishable. Section 409 provides for a still heavier punishment when criminal breach of trust is committed by persons mentioned therein i.e. public servant, business banker,

merchant, factor, broker, attorney or agent. It would be relevant to reproduce the observations made by the three Judge Bench in paras 47, 48 and 50 of the said judgment:

“47. We are of opinion that there is no good reason to restrict the meaning of the word ‘property’ to movable property only when it is used without any qualification in S.405 or in other sections of the Indian Penal Code. Whether the offence defined in a particular section of the Indian Penal Code can be committed in respect of any particular kind of property will depend not on the interpretation of the word ‘property’ but on the fact whether that particular kind of property can be subject to the acts covered by that section. It is in this sense that it may be said that the word ‘property’ in a particular section covers only that type of property with respect to which the offence contemplate in that section can be committed.

48. Section 22 I.P.C. defines ‘movable property’. The definition is not exhasutive. According to the section the words ‘movable property’ are intended to include corporeal

property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth. The definition is of the expression 'movable property' and not of 'property' and can apply to all corporeal property except property excluded from the definition. It is thus clear that the word 'property' is used in the Code in a much wider sense than the expression 'movable property'. It is not, therefore, necessary to consider in detail what type of property will be included in the various sections of the Indian Penal Code.

50. It is to be noticed that though S. 403 I.P.C. speaks of dishonestly misappropriating or converting to one's own use any movable property, S. 404 speaks of only dishonestly misappropriating or converting to one's own use property. If the Legislature had intended to restrict the operation of S. 404 to movable property only, there was no reason why the general word was used without the qualifying word 'movable'. We, therefore, do not see any reason to restrict the word 'property' to 'movable property' only. We need not express any opinion whether immovable property could be subject of the offence under S. 404 I.P.C.”

18. The Apex Court held that the definition of movable property in Section 22 of IPC is not exhaustive and it is the definition of the expression “movable property” and not of “property”. The word “property” is used in the Code in a much wider sense than the expression “movable property” and, therefore, it is not necessary to consider in detail what type of property will be included in the various sections of IPC. Section 403 speaks of dishonestly misappropriating or converting to one's own use any movable property, whereas Section 404 of IPC speaks of only dishonestly misappropriating or converting to one's own use property. The Supreme Court, therefore, held that if the Legislature had intended to restrict the operation of Section 404 of IPC to movable property only, there was no reason why the general word was used without the qualifying word “movable” and, therefore, it did not see any reason to restrict the word “property” to “movable property” only and their Lordships did not express any opinion whether

immovable property could be the subject of the offence under Section 404 of IPC. Similar interpretations and reasoning must apply in the instant case as well. When the Legislature has used the word “any property”, it would not be permissible, having regard to the principles of interpretations, as referred to hereinabove, to restrict the meaning of the said word to only “movable property”. I, therefore, find that the judgment of the Supreme Court in the case of Dalmia (Supra) does not support the view taken by the Division Bench in Signapurkar's case.

19. Section 102 finds place in Chapter VII which is titled as “Process to Compel the Production of Things”. The title of the Chapter does not necessarily be taken support of to interpret the provisions of the Sections thereunder. It cannot be expected that because the Chapter speaks of the “production of things”, the words “any property” used in Section 102 (1) of the Code cannot include immovable property. The word “things” may not include a bank account, but it does not mean that the power of seizure under Section 102(1) cannot be invoked by the

Police Officer for a bank account and the view otherwise taken by this Court in the case of Kishore Shankar Signapurkar (supra) has already been set aside by the Supreme Court in Tapas D. Neogy (supra). The Supreme Court reminded in the said case that the legislature having used the expression “any property” and “any office” in Section 102(1) of the Code has made the applicability of the provisions to cover offences committed under any Act provided two preconditions for applicability of the said Sections are made i.e. (1) it must be property and (2) in respect of the said property there must have been suspicion of commission of any offence. While elaborating on this point, the Supreme Court further stated that there was no justification to give any narrow interpretation to the provisions of the Code and more particularly to the words “any property” as set out in Section 102(1) of the Code. The Supreme Court further took note of the fact that corruption in public offices has become so rampant that it has become difficult to cope up with the same and the time consumed by the Courts including the price is another factor which should be borne in mind in interpreting the

provisions of Section 102 of the Code. The underlying object engrafted therein also has to be kept in mind and the Courts should not be made powerless to get such property acquired from the proceeds of crime within its fold, during the course of investigation provided such property has direct links with the commission of offence for which he is investigating into. This elaboration by the Apex Court ought to be kept in mind and it is sufficient to support the argument that a redantic approach while interpreting the penal criminal law has to be discarded.

20. Section 83 is under Chapter VI of the Code and it deals with the attachment of property of a person absconding. Chapter VIIA has been added to the Code by Act 40 of 1993 with effect from 20th July, 1994. It prescribes reciprocal arrangements for assistance in certain matters and procedure for attachment and forfeiture of property. Section 105-A to 105-L are under Chapter VIIA of the Code. Clauses © and (d) of Section 105-A define the term “proceeds of crime” and “Property”. “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, whereas “property” means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime. The scheme of Chapter VII-A of the Code, deals with reciprocal arrangement for assistance, in relation to a criminal matter and the property in a contracting State or within the country. The term “contracting State” means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise. The actions of attachment, forfeiture or seizure of the property envisaged under the said Chapter are to be at the instance of the Court and by the officer not below the rank of Sub Inspector of Police as directed by the Court. Section 105-C is in relation to the orders of

attachment or forfeiture of property whereas Section 105-E is regarding seizure or attachment of property while conducting an enquiry or investigation under Section 105-D which enquiry is for identifying unlawfully acquired property. Section 105-A provides for the management of the property seized or forfeited under Chapter VIIA. Sections 145 and 146 find place in Chapter X and titled as Maintenance of Public Order and Tranquility (under sub part D-Disputes as to Immovable Property). Both these Sections find their place in Chapter X. Section 145 prescribes the procedure where a dispute concerning land or water is likely to cause breach of peace, whereas Section 146 is power to attach the subject of dispute and to appoint receiver by the Magistrate after making an order under Section 145 of the Code.

21. Sections 451 to 459 are part of Chapter XXXIV and the said Chapter is titled as “Disposal of Property“. Section 451 provides for the order for custody and disposal of property pending trial in certain cases and such an order is contemplated to be passed by the Court. Section

452 provides for order for disposal of the property at the conclusion of enquiry or trial in any criminal Court and such an order is required to be passed by the Court for the disposal/distruction/confiscation or delivery to any person claiming to be entitled to possession of the property. Section 456 empowers the Court to restore the possession of the immovable property to any person who was dispossessed of such property by the person convicted by the Court of an offence attended by criminal force or show of force or by criminal intimidation. Section 457 of the Code provides for the procedure to be followed by the police upon seizure of the property and undoubtedly it is applicable for the seizure to be made under Section 102 of the Code as well. As per sub-section (1) of Section 457 whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of the Code and such property is not produced before the Criminal Court during an enquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, if such

person cannot be ascertained, respecting the custody and production of such property. As per sub-section (2) of Section 457 of the Code if the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation. As per Section 458(1) of the Code if no person within such period establishes his claim to such property and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government and may be sold by that Government and the proceeds of such sale shall be dealt with in such manner as may be prescribed. Such an order passed by the Magistrate under sub-section (1) is appealable under sub-section (2) of Section 458 and the appeal will lie to the Court to which

the appeals ordinarily lie on conviction by the Magistrate.

22. The scheme of Sections 457 and 458 of the Code if read together would go to show that the powers under section 102 of the Code of seizure are also applicable to an immovable property and it cannot be said that the police officer has no power to seize the immovable property and the said powers can be exercised only in respect of the movable property or the bank accounts. Such limited meaning if given to the words “any property” would make the procedure of seizure and subsequent action of attachment by the Court otiose. When the statute has used the words “any property”, in the course of its interpretation, the Court has no power to restrict its scope so as to apply it only to the movable property. The learned Counsel for the petitioner insisted that there has to be an addition in the words “any property” and the addition must be the word “movable” between “any” and “property”. In a way these arguments presuppose that the legislature has dropped the word “movable” and, therefore, it is required to be added. It is well

settled that the Courts have no power to supply casus omissus when the language of the statute is plain and clear. In the case of **Padma Sundara Rao (dead) and others vs. State of T.N. and others, A.I.R. 2002 S.C.1334** the Supreme Court has stated thus,

“11.....It is well settled principle in law that the Court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent. The first and primary rule of construction is that the intention of the legislation must be found in the words used by the Legislature itself. The question is not what may be supposed and has been intended but what has been said.....”

“13. While interpreting a provision the Court only interprets the law and cannot legislate it. If a provision of law is misused and subjected to the abuse of the process of law, it is for the legislature to amend, modify or repeal it, if deemed necessary. The legislative casus omissus cannot be supplied by judicial interpretative process....”

14. Two principles of construction—one relating to casus omissus and the other in regard to reading the statute as a whole—appear to be well settled. Under the first principle a casus omissus cannot be supplied by the Court except in the case of a clear necessity and when reason for it is found in the four corners of the statute itself but at the same time a casus omissus should not be readily inferred and for that purpose all the parts of a statute or section must be construed together and every clause of a section should be construed with reference to the context and other clauses thereof so that the construction to be put on a particular provision makes a consistent enactment of the whole statute. This would be more so if literal construction of a particular clause leads to manifestly absurd or anomalous results which could not have been intended by the Legislature.....”

It is also clear from the said judgment that it is always safer to apply plain and primary rule of construction. The first and primary rule of construction is that the intention of the legislature is to be found in the words used by the legislature itself. The true or legal meaning of an

enactment is derived by construing the meaning of the word in the light of the discernible purpose or object which comprehends the mischief and its remedy to which an enactment is directed.

24. Section 102 of the Code has used the words “any property” and it must be read in the same manner and the word “any” cannot be redundant. As noted earlier Section 105A of the Code has defined the term “property” and it means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of an offence and includes property obtained through proceeds of crime. However, Chapter VII-A deals with a reciprocal arrangements for assistance in relation to criminal matter in a contracting State or in respect of a property in a contracting State or a property in India, but arising from a crime in the contracting State. There is no reason or specific provision in the Code as to why the same meaning of “property” as set out under

Section 105-A cannot be made applicable for the term “property” appearing in Section 102 of the Code. It is prefixed by the word “any” and hence must include property of all types and it cannot be limited only to the movable property. Such an interpretation will be doing violence to the statute and, therefore, is not permissible.

24. The learned Counsel for the petitioner also relied upon the Criminal Law (Amendment) Ordinance 1944 as well as the recommendations of Malimath Committee for amendment in Section 102 of the Code so as to add the word “immovable property”. It is required to be noted that the power of attachment available in the Criminal Law (Amendment) Ordinance is in respect of the scheduled property, and the said power is exercised by the Court. It does not deal with the powers of seizure of immovable property to be exercised by the police officer during the course of investigation. However, Section 68-E of the N.D.P.S. Act does empower any officer investigating under Section 68-A of the said Act to exercise the power of seizure or freezing

of illegally acquired property. The enquiry under Section 68-E of the N.D.P.S. Act is in respect of the identification of illegally acquired property. Undoubtedly the N.D.P.S. Act is a special statute and the availability of power of seizure with the investigating officer of an immovable property under Section 68-E of the N.D.P.S. Act cannot be read to hold that such a power is not available under Section 102 of the Code, which is a procedural law for investigation of crimes in general. We cannot limit or qualify the interpretations of Section 102 of the Code by relying upon Section 68-E of the N.D.P.S. Act. When we interpret the power of seizure available with the police officer under Section 102 of the Code we have to keep in mind the ground realities and the interpretation must be to do complete justice by the Court in a criminal trial. If an immovable property has been acquired from the proceeds of crime and the crime is under investigation by the police, it is not enough to say that the Court will pass an order of attachment of such immovable property and the police officer cannot exercise the powers of seizure of the said property. By the time the Court is called upon to pass such an

order of attachment, the property may not disappear, but it may have changed hands, and probably in multiple transactions. In such a situation, it would be difficult or in some cases impossible for the Court to bring the property acquired from the proceeds of the crime within its folds even by passing an order of attachment. The recommendations of the Malimath Committee suggesting for amendment in Section 102 of the Code could be read as an intention to make the law more specific and without leaving any doubt for interpretation and such a recommendation cannot be taken to support the contentions that the words “any property” used in Section 102 of the Code means “any movable property” and such an interpretation finds support from the reasons set out in Tapas D. Neogy’s case (supra) by the Apex Court. We must also note that in Topas Neogy case, the Supreme Court was aware of the Criminal Law (Amendment) Ordinance 1944 and by referring to Section 16 of the Prevention of Corruption Act, 1988, the Court held that the police officer has the power to seize the bank accounts.

25. I am, therefore, satisfied that the term “any property” used in Section 102 of the Code cannot be read as “any movable property” and it must include all types of properties, whether movable or immovable and merely because an immovable property cannot be produced before the Court on its seizure, does not lead to the conclusion that the words “any property” means “any movable property”. As noted earlier production of the property before the Court need not be in the physical form every time and the immovable property could be produced before the Court/Magistrate in the form of its title deeds, possession certificates and/or applications/tax bills, etc. Such an interpretation alone would make the procedural law i.e. the Code effective and meaningful and any limited interpretation or meaning of the words “any property” as was sought to be made on behalf of the petitioner may make the investigation of a crime as an exercise in futility and hamper the powers of the Court to do complete justice in the course of trial of crimes. The interpretation, as advanced by the petitioner, would render

the Code toothless and resultantly it may cripple the trial. In a given case, it may result in denial of complete justice to the victims of crime and more particularly the victims of organised bloodless crimes. We cannot allow the trial courts to become powerless in their bounden duty to do full justice to the victims of crime.

26. Hence I hold that the police officer has the powers to seize any property whether movable or immovable under Section 102 of the Code and we, therefore, approve the view taken by the Division Bench in the case of M/s. Bombay Science and Research Institute (*supra*). The view taken by the earlier Division Bench in the case of Kishore Shankar Signapurkar (*supra*) that a police officer cannot seize immovable property under Section 102 of the Code is no more a good law. The reference is answered accordingly.

(B. H. MARLAPALLE, J.)

JUDGMENT (PER R.C. CHAVAN, J.)

27. A Division Bench of this Court has referred the following questions for decision by this Bench.

“(a) Whether the words “any property” used in sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 would mean to include “immoveable property”?

(b) Whether a police officer can take control of any immoveable property which may be found under circumstances which create suspicion of the commission of any offence?

(c) Which of the above two judgments lay down correct law in respect of the powers of a police officer to seize any immoveable property under Section 102 of the Code of Criminal Procedure?

(d) Whether the law laid down by the Supreme Court in case of State of Maharashtra v. Tapas D. Neogy (1999) 7 SCC 685 is restricted to seizure of bank accounts only or it can be extended to immoveable property also, as interpreted by the Division Bench in

the case of M/s. Bombay Science and Research Education Institute v. The State of Maharashtra & Ors. 2008 All M.R. (Cri.) 2133?"

28. The need to make this reference arose since a Division Bench of this Court in **Kishore Shankar Signapurkar v. State of Maharashtra & Ors.**, reported in 1997 Vol.IV LJ 793 had held that under Section 102 of the Code of Criminal Procedure immovable property could not be seized. That Bench had formulated the following questions in paragraph 18 of the said Judgment.

"18. We make it clear that in these proceedings, we are dealing only with the scope and interpretation of section 102 of the Code of Criminal Procedure and we are not dealing specifically with factual aspects of any matter, the points which we would consider are as under:-

(i) Whether the police can seize immovable property under the provisions of section 102 of the Code of Criminal Procedure?

(ii) Whether the police can seize or freeze Banks accounts under the provisions of section 102 of the Code of Criminal Procedure?

(iii) What is the procedure to be followed by the police in respect of the property seized under the provisions of section 102 of the Code of Criminal Procedure."

29. After considering the arguments advanced, on the first question, the Bench held towards end of paragraph Nos.20, 21 and 28 as under:-

"20. In our opinion, the provisions of sub-section (3) clearly suggest that the property which is seized under sub-section (1) has necessarily to be such as is capable of being transported to the Court. Only in a case where though the property is capable of being transported, but it is not convenient to do so that the custody thereof can be given 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. In our opinion, the requirement of the undertaking to produce the property before the Court as and when required also

suggests that the property which can be seized under the provisions of section 102 has to be capable of being produced before the Court and inasmuch as immovable property is incapable of being produced before the Court, we are of the opinion that the words "any property" as used in sub-section (1) cannot include immovable property."

"21. As a matter of fact, we are of the opinion that the aforesaid observations of the apex Court support the conclusion that the interpretation of the word "property" as used in section 102 will not depend on the interpretation of the word "property" but on the fact whether a particular kind of property can be subject to the acts covered by that section. As stated earlier, in our opinion, the provisions of sub-section (3) contemplate the property to be capable of being produced before the Court and being transported, and in as much as the immovable property would be incapable of being transported or so produced, we are of the opinion that the word "property" as used in section 102 of the Cr.P.C. cannot include "immovable property".

"28. Therefore, on reading the provisions of section 102 which, in our opinion, are clear and unambiguous, we are of the opinion that an immovable property cannot be seized by the police under the provisions of section 102 of the Code of Criminal Procedure."

30. On the second question, the Bench held in paragraph Nos.34 and 36 as under:-

"34. We are of the opinion that so far as the nature of the amount in Bank is concerned, we are bound by the decision of the Division Bench of this Court. That being the nature of the amount in an account in a Bank, we are of the opinion that though such funds are property, it is not such a property which is capable of being produced in Court and, therefore, outside the purview of the provisions of section 102 of the Code of Criminal Procedure."

"36. On consideration of the entire matter, we are of the view that the police have no power under the provisions of section 102 to direct the Banks accounts to be freezed and prevent the account holders from operating the account."

31. The finding on the third question in paragraph 38 reads as under:-

"38. This brings us to the third question, viz., the procedure to be followed by the police. In fact, the procedure to be followed by the police is very clearly mentioned in the section itself. If the police officer is subordinate to the officer in charge of the police station, he must forthwith report the seizure to the officer-in-charge of the police station. Secondly, the police officer seizing the property under the provisions of sub-section (1) is also obliged to forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, he may give custody thereof to any person on his executing a bond 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. It is also clear that section 457 clearly mentions that whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of the Code and such property is not produced before a Criminal Court during an enquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property."

32. The findings on the second question, without doubt do not reflect the correct position of law in view of Judgment of the Supreme Court in **State of Maharashtra v. Tapas D. Neogy**, reported in (1999) 7 SCC 685. In **Tapas Neogy** (supra) the Supreme Court was considering the following question:-

"The short question that arose before the High Court is whether a police officer investigating into an offence can issue prohibitory order in respect of the bank account of the accused in exercise of power under Section 102 of the Criminal Procedure Code."

33. After considering the arguments advanced, the Supreme Court held as under in paragraph Nos.6 and 12:-

"6. A plain reading of sub-section (1) of Section 102 indicates that the police officer

has the power to seize any property which may be found under circumstances creating suspicion of the commission of any offence. The legislature having used the expression "any property" and "any offence" have made the applicability of the provisions wide enough to cover offences created under any Act. But the two preconditions for applicability of section 102(1) are that it must be "property" and secondly, in respect of the said property there must have been suspicion of commission of any offence. In this view of the matter the two further questions that arise for consideration are whether the bank account of an accused or of his relation can be said to be "property" within the meaning of sub-section (1) of Section 102 CrPC and secondly, whether circumstances exist, creating suspicion of commission of any offence in relation to the same."

"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."

(emphasis supplied)

34. Following this Judgment another Division Bench of this Court in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra & Ors**, reported in 2008 ALL MR (Cri) 2133 held that police could seize even

immovable property under Section 102 of the Criminal Procedure Code. In that case, police had presumably seized immovable properties purchased from crores of rupees collected from students by cheating them to enroll for courses which were not recognized. In this context the Bench held in paragraph Nos.9 to 11 as under:-

"9. The learned counsel for the Petitioners submits that the immovable property cannot be attached and the learned counsel for the Petitioner had relied on some judgments of the High Courts. We do not think that the question is res integra in view of the judgment of **State of Maharashtra Vs. Tapas D. Neogy, (1999) 7 S.C.C. 685**. It is true that there was divergence of opinion with regard to the scope of the term "the property" mentioned in Section 102 before this judgment in various High Courts. But the controversy was put to rest by this judgment of the Supreme Court. In Para 12 of the said Judgment, the Supreme Court held that:

"We are, therefore, persuaded to take the view that the bank account of the accused or any of his relation 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 Karnataka, Gauhati and Allahabad High Courts, does not represent the correct law."

(emphasis supplied)

10. Now contention of the Petitioner is that though Supreme Court held that the bank account was "property" within the meaning of Section 102 of Criminal Procedure Code, but "immovable properties" can not be "properties" within the meaning of Section 102.

11. We do not find that there is any basis for such distinction to be made in the movable and immovable properties as far as "property" is mentioned in Section 102. All properties whether movable or immovable in our view can be seized by police under Section 102, as there is nothing in the provision to show that the property would include only movable and not immovable. The Supreme Court has held in para quoted above that there was no justification to come to the conclusion that the "property" should be defined in the narrow

sense."

35. Confronted with these conflicting Judgments of two Division Benches, the Division Bench has made this reference. The reasons which prevailed upon the Division Bench, to make this reference are as under:-

"12. Having gone through **Tapas Neogy**, we are inclined to hold that it is possible to urge that in **Tapas Neogy**, the Supreme Court was primarily considering whether the bank account of the accused could be property within the meaning of Section 102(1) of the Code and not whether under Section 102 of the Code, immovable property could be seized. That question has been decided by this court in **Kishore Signapurkar**. It is held therein that under Section 102, immovable property cannot be seized. Unfortunately, attention of the Division Bench of this court was not drawn to this judgment when it decided **M/s. Bombay Science & Research**. Reliance placed by the Division Bench in **M/s. Bombay Science & Research** on **Tapas Neogy** does not appear to us to be apt because in that case, the Supreme Court was not considering whether immovable property can be seized under Section 102 of

the Code."

36. Considering these reasons, we would first consider question (d) referred to us – namely whether the Judgment of Supreme Court in **Tapas Neogy's** case (supra) is restricted only to Bank accounts.

37. We have heard the learned counsel appearing for the respective parties in the respective applications, as also the learned APPs, all of whom have advanced well-researched and erudite arguments. The learned Counsel for petitioners contended that observations in Tapas Neogy could not be extended to cover seizure of immovable properties, as had been done in Bombay Science And Research Education Institute by a Division Bench of this Court. Their adversaries, on the other hand, submitted that the observations of the Supreme Court in paragraph 6

to the effect that, "The legislature having used the expression 'any property' and 'any offence', have made the applicability of the provision wide enough to cover offences created under any Act," can not be ignored. It was submitted that the Supreme Court then considered only the question whether Bank accounts were "property". It was submitted that as far as immovable property is concerned, there can be no doubt that it is "property". Consequently the dictum of the Supreme Court that there was no justification to give any narrow interpretation to the term "property", would have to be applied to include immovable property within the ambit of Section 102 of the Criminal Procedure Code.

38. The learned counsel for the petitioners also pointed out that seizure of bank accounts would be even otherwise permissible under Section 102 of Criminal Procedure Code.

Since the word "property" has not been defined in the Criminal Procedure Code, in view of provisions of section 2(y) of the Criminal Procedure Code, terms not defined in the Criminal Procedure Code would have the same meaning as in the Indian Penal Code. Section 22 of the Indian Penal Code defines "movable property" to include everything that is not attached to earth. Therefore, if bank account is "property", since it is not attached to earth, it would be a movable property and, therefore, capable of being seized under Section 102 of Criminal Procedure Code. The learned counsel, therefore, suggests that the Judgment in Tapas Neogy is even otherwise justified by the above causation, though not adopted by the Supreme Court. Consequently, the learned counsel suggests that Tapas Neogy cannot be an authority for the proposition that immovable property can be seized under Section 102 of Criminal Procedure Code.

39. The learned Counsel for petitioners in these bunch of petitions relied on observations of the Supreme Court in **Gopal Upadhyaya and others v. Union of India and others**, reported in 1986 (Supp) SCC 501 and **National Insurance Company Limited v. Geeta Bhat and others**, reported in (2008) 12 SCC 426 on what constitutes a binding precedent and the effect of obiter dicta of the Supreme Court. In paragraph 4 of the Judgment in **Gopal Upadhyaya's** case (supra), the Supreme Court observed as under:-

"4. The learned counsel however invites our attention to the judgments of the learned Single Judge and the Division Bench of High Court which were confirmed by Supreme Court in that case and urges that the real question there was whether the fundamental right guaranteed by Article 19(1)(c) of the Constitution could be claimed in view of the notification issued under Section 4 of the Defence of India Act and the Army Rules. We

are unable to appreciate this submission. When a question is answered expressly or by necessary implication we cannot ignore the answer by referring to the decisions appealed against and holding that the real question that must be considered to have been answered was something else. That is not our understanding of the law of precedents. What the judges expressly decided or what they must be considered to have decided by necessary implication by reference to the facts stated by the judges themselves are what constitute precedents. We cannot traverse (sic travel) beyond the judgment, ignoring what has been said in the judgment. We have therefore, no option but to dismiss the writ petition."

40. In paragraph 26 of Judgment in **National Insurance Company's** case (supra) the Supreme Court held that obiter dicta of the Supreme Court are binding on the High Courts, though for the Supreme Court they may only be persuasive.

41. The learned Additional Public Prosecutor submitted that attempting to make a distinction between

binding effect of ratio and obiter dicta in Judgments of Supreme Court may be only an academic exercise as pointed out by a Full Bench of this Court in **Kamleshkumar Ishwardas Patel v. Union of India and others**, reported in 1994 (1) LJ Soft 313 = 1995 (2) Bom.C.R. 640, in the following words:

"7. It must be borne in mind that what has been made binding under the provisions of Article 141 of the Constitution of India is "the law declared by the Supreme Court". If there is a clear enunciation or declaration of law, the same would be binding even though such declaration was not strictly necessary for the disposal of the case or the declaration of law is not followed by actual application thereof in the case in question. The law declared as well as applied in a particular decision becomes the ratio decidendi of the case while a mere declaration of law, even though solemn and thoroughly reasoned, without application thereof in the case in question is branded as obiter dictum. Since Article 141 uses the expression "the law declared" as was the case in section 212 of the preceding Constitution, being the Government of India, Act, 1935, "a declaration

of law" even though not accompanied by actual application thereof, is binding on all other Courts within the territory of India. From that point of view, it may be idle and futile to ascertain whether a declaration of law, which is otherwise clear, forms part of the ratio or is only obiter, as it would be equally binding in either case."

(emphasis supplied)

42. In view of this, it may be necessary to recall what was the question which the Supreme Court was considering in Tapas Neogy's case and whether there was any clear enunciation of law on the question of seizure of immovable property. It would be clear from the question that had been framed for consideration by the Supreme Court in Tapas Neogy, as also all the observations of the Supreme Court thereon which have been reproduced in earlier paragraphs, that the Court was considering whether Bank accounts could be seized and there is not even a faint reference to seizure of

immovable properties.

43. Though there could have been no doubt that immovable property is "property" - (as contrasted with bank accounts about which there was a doubt which was set at rest by the Supreme Court), still the question as to whether immovable property could be seized under Section 102 remains and would have to be decided by reading Section 102 in its entirety, since in *Tapas Neogy* there is not even a faint whisper about seizure of immovable property. The question is whether by process of logical deduction, the observations of the Supreme Court could be held to cover immovable property as well. Judgments of the Courts cannot be read, interpreted and applied like statutes. While in the case of a statutory provision, it may be possible to interpret the words therein in order to apply them to a situation which even the Legislature

may not have contemplated, or to indulge in logical deductions and extensions permissible from the words used therein, the same does not hold good about words in a Judgment. A Judgment is an authority only for what it decides and not for what logically follows from it, as held by the Supreme Court in **U.P. State Electricity Board v. Pooran Chandra Pandey and others**, reported in (2007) 11 SCC 92 as under:-

"12. As observed by this Court in *State of Orissa v. Sudhansu Sekhar Misra* [AIR 1968 SC 647] (vide AIR pp.651-52, para 13):

"13. ... A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury, L.C. said in *Quinn v. Leathem* [1901 AC 495: (1900-03) All ER Rep 1 (HL)]: (All ER p.7 G-I)

`Before discussing *Allen v. Flood*

[1898 AC 1: (1895-99) All ER Rep 52 (HL)] and what was decided therein, there are two observations of a general character which I wish to make; and one is to repeat what I have very often said before - that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, *but are governed and qualified by the particular facts of the case* in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all'".

(emphasis supplied)

"13. In *Ambica Quarry Works v. State of Gujarat* [(1987) 1 SCC 213] (vide SCC p.221, para 18) this Court observed:

"18. ... The ratio of any decision must be understood in the background of the facts of that case. It has been said long time ago that a case is only an

authority for what it actually decides,
and not what logically follows from it."

"14. In *Bhavnagar University v. Palitana Sugar Mill (P) Ltd.* [(2003) 2 SCC 111] (vide SCC p.130, para 59) this Court observed:

"59. ... It is also well settled that a little difference in facts or additional facts may make a lot of difference in the precedential value of a decision."

(emphasis supplied)

"15. As held in *Bharat Petroleum Corpn. Ltd. v. N.R. Vairamani* [(2004) 8 SCC 579: AIR 2004 SC 4778] a decision cannot be relied on without disclosing the factual situation. In the same judgment this Court also observed: (SCC pp.584-85, paras 9-12)

"9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. *Observations of courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context.* These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To

interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* [1951 AC 737: (1951) 2 All ER 1 (HL)] (AC at p.761) Lord MacDermott observed: (All ER p.14 C-D)

`The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J. as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge, ...'

10. In *Home Office v. Dorset Yatch Co. Ltd.* [1970 AC 1004: (1970) 2 WLR 1140: (1970) 2 All ER 294 (HL)] (All ER p.297 g-h) Lord Reid said, 'Lord Atkin's speech ... is not to be treated as if it were a statutory definition. It will require qualification in new circumstances.' Megarry, J. in *Shepherd Homes Ltd. v. Sandham (No.2)* [(1971) 1 WLR 1062: (1971) 2 All ER 1267]

observed: (All ER p.1274d)

`One must not, of course, construe even a reserved judgment of even Russell, L.J. as if it were an Act of Parliament;'

And, in *Herrington v. British Railways Board* [1972 AC 877: (1972) 2 WLR 537: (1972) 1 All ER 749 {HL(E)}] Lord Morris said: (All ER p.761c)

`There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case.'

11. Circumstantial flexibility, *one additional or different fact may make a world of difference between conclusions in two cases.* Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

`Each case depends on its own facts and a close similarity between one case and another is not enough because *even a single significant detail may alter the*

entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

* * *

Precedents should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path of justice clear of obstructions which could impede it.'

(emphasis supplied)"

44. This was restated by a Full Bench of this Court in para 13 of the Judgment in **Emkay Exports v. Madhusudan Shrikrishna**, reported in 2008 (4) Mh.L.J. 843.

45. We may also refer to the observations in para 39

of the Judgment of the Supreme Court in **Commissioner of Income-Tax v. M/s. Sun Engineering Works (P) Ltd.**, reported in AIR 1993 SC 43 which read as under:-

"39. It is neither desirable nor permissible to pick out a word or a sentence from the judgment of this court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by this court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before this Court. A decision of this Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a later case, the courts must carefully try to ascertain the true principle laid down by the decision of this court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by this Court, to support their reasonings. In *Madhav Rao Jiwaji Rao Scindia Bahadur v. Union of India*, (1971) 3 SCR 9: (AIR 1971 SC 530 at p.578) this Court cautioned:

"It is not proper to regard a word, a clause or a sentence occurring in a

judgment of the Supreme Court, divorced from its context, as containing a full exposition of the law on a question when the question did not even fall to be answered in that judgment."

We have also considered the observations of the Supreme Court, on the doctrine of precedent in judgment of Supreme Court in **State of U.P. and Another v. Synthetics & Chemicals Ltd. and Another**, reported in **(1991) 4 SCC 139**.

46. In the light of these judgments we have carefully considered the arguments advanced. First, in *Tapas Neogy* the question of seizure of bank account was being considered, which is a movable property in view of the definition in the Indian Penal Code, and about power to seize movable property, there was no controversy. Secondly, there is no reference or even a whisper about

immovable property in the Judgment in Tapas Neogy. Approval by Supreme Court in para 9 of the Judgment of observations of learned Single Judge of Madras High Court is unhelpful since even the Madras High Court was considering whether money in a Bank account could be property which could be seized under Section 102 of the Code, and not the question of seizure of immovable property. It would be wrong to stretch the words in a judgment or to read them out of context of the facts in which they came.

47. The Criminal Law (Amendment) Ordinance, 1944 (quoted in discussion to follow) would have enabled the prosecuting and investigating agencies to attach properties, including bank accounts and immovable properties of persons accused of amassing wealth by corrupt means. As a riposte, it was sought to be

suggested that if in spite of provisions of Criminal Law (Amendment) Ordinance, the Supreme Court found it necessary to include bank accounts in the expression "property" in Section 102 of the Cr.P.C., existence of those provisions cannot help in excluding immovable properties. To this we may only observe that in Tapas Neogy the Supreme Court had not at all referred to the provisions of Criminal Law (Amendment) Ordinance. Had the Court noted those provisions and then concluded that in spite of those provisions bank accounts could be seized even under Section 102 of Cr.P.C., it would have been possible to hold that the Supreme Court had impliedly ruled that recourse to provisions of Section 102 to provide for seizure of even immovable property was necessary. Though the provisions of Criminal Law (Amendment) Ordinance were not specifically referred to by the Supreme Court, the finding about seizability of

bank account ruled out adequacy of mechanism under the ordinance and impliedly held that Rule 102 of the Code of Criminal Procedure is in consonance of the provisions of the Ordinance. It would be too strained a logic to conclude that though the Supreme Court did not even note provisions of Criminal Law (Amendment) Ordinance, its finding in respect of seizure of a bank account ruled out adequacy of mechanism under the ordinance and impliedly held that Rule 102 of the Code of Criminal Procedure could encompass even immovable property. Rather, it may be arguable that had the Supreme Court noticed the provisions of Criminal Law (Amendment) Ordinance, the Court would certainly have held that bank accounts could be seized in view of these specific provisions, as the offence involved in that case was one included in the Schedule to the Ordinance. Therefore, in the light of Judgments on the use of precedents referred

to in the preceding paragraphs, the question (d) would have to be answered thus:-

The law laid down by the Surpeme Court in **State of Maharashtra v. Tapas D. Neogy** (supra) is restricted to seizure of bank account and cannot be extended to immovable property also, as interpreted by the Division Bench in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra & Ors.** (supra).

48. This takes us to question (a), namely,

“(a) Whether the words “any property” used in sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 would mean to include “immovable property”?

49. On behalf of petitioners it is submitted that

immovable property is not included in the term "any property" in Section 102 of Criminal Procedure Code for the following reasons - most of which were canvassed before and accepted by a Division Bench of this Court which decided **Kishore Signapurkar's** case (supra).

(i) Wherever the Legislature wanted to refer to immovable property it has specifically used the expression "immovable property".

(ii) Ordinarily in relation to immovable property the expression used is "attachment" and not "seizure", and therefore, there would be no question of seizure of immovable property.

(iii) The expression "any property" used in Section 102 would have to be read contextually and "any property" does not mean "any property under the sun" but which may be alleged or suspected to have been stolen or which may be found in the circumstances which create suspicion of commission of any offence and, therefore, excludes immovable property.

(iv) Since Section 102 lays down procedure in relation to penal statutes, it has to be

strictly interpreted.

(v) Consequences of allowing police to dabble with immovable property may be disastrous.

50. On behalf of the respondents it was submitted that:-

(i) Whenever the Legislature wanted to refer to movable property or immovable property alone, it has specifically done so, and therefore, if the legislature wanted to refer to movable property alone in Section 102 of the Code, it would have said so;

(ii) Attachment and seizure are synonymous and there is no warrant for tagging the term "attachment" to immovable property and restricting "seizure" to movable property.

(iii) Even if read contextually the term, "any property" cannot exclude "immovable property".

(iv) Strict interpretation of Section 102 does not warrant narrow interpretation and observations of the Supreme Court in para 12 in Tapas Neogy that the Supreme Court saw, "no

justifications to give any narrow interpretation to the provisions of the Criminal Procedure Code" would have to be borne in mind while interpreting Section 102.

(v) If the provisions are not so interpreted, offenders would be able to walk away with the property acquired from proceeds of crime.

51. In support of their respective contentions the learned counsel for the parties took us through all the relevant provisions of the Code and relied on the Judgments which have a bearing on the issues involved.

52. It has been suggested that the conclusions drawn in Signapurkar's case are not supportable and may be in conflict with the judgment of the Supreme Court in **R.K. Dalmia v. The Delhi Administration**, reported in AIR 1962 SC 1821, which was considered by the Division Bench. In that case, the Supreme Court was considering the

provisions of Sections 403 to 409 of the IPC, in order to find out if reference to "property" in those sections also included all species of property. The Supreme Court held that the word "property" in Sections 403 to 409 of the IPC would include all corporeal property except property excluded from the definition. At first blush it may seem that in the face of this judgment of the Supreme Court it was not open to the Division Bench deciding Kishore Signapurkar's case that the term "property" in Section 102 of Cr.P.C. excluded immovable property. However, apart from reasons given by the Division Bench deciding Signapurkar's case, it has to be pointed out first, that it may be impermissible to import interpretation of a word from altogether different statute, of a different character - a penal statute - for the purpose of interpreting a procedural provision. A penal statute must be so interpreted that

no crook escapes punishment, but procedural laws have to be so interpreted that no innocent person would suffer. Reasons for including immovable property in the term "property" misappropriated or in respect of which criminal breach of trust is committed in penal statute would not be valid for including it in procedural provision enabling a police officer to seize it on suspicion of commission of a crime. Therefore, with great respect, it has to be observed that judgment of the Supreme Court in **Dalmia's** case (supra) does not come in conflict with the observations of the Division Bench in Signapurkar's case. At the cost of repetition it may be pointed out that a term has to be interpreted contextually and not with reference to interpretation in another provision in a statute of different kind. Secondly, and most importantly, even in Dalmia's case what the Supreme Court was considering were bank

accounts. The Court noted the distinction in expression in Sections 403 and 404 of the Penal Code and found that while Section 403 specifically referred to movable property, Section 404 merely referred to "property" without any qualifier. In that context the Court held that the funds in banks referred to in the charge did amount to property.

53. In our view it would be impermissible to conclude that the Division Bench deciding Signapurkar's case was wrong in taking the view that "property" in Section 102 Cr.P.C. did not include immovable property because of the judgment of the Supreme Court in Dalmia's case, which, first, was not considering provision of Section 102 Cr.P.C. and secondly was not at all dealing with immovable property even in the context of Section 404 of the Penal Code.

54. We would now briefly refer to Judgments cited before going to the provisions of the Code of Criminal Procedure and other relevant enactments. In **Amrit Lal Kumawat & Ors. v. State of Rajasthan & Anr.**, reported in **1998 Cri.L.J 3032**, a learned Single Judge of the High Court of Rajasthan held, after an elaborate analysis of the relevant provisions, that police had no power to seize disputed immovable property under Section 102 of the Criminal Procedure Code.

55. In **Bisweswar Singh and others v. Bhola Nath Pathuk**, reported in 1914 Vol.XXII Indian Cases 751, the Calcutta High Court held that Section 517 of the 1898 Code had no application to immovable property. Section 517 of the 1898 Code roughly corresponds to Section 452 of the 1973 Code.

56. To support their contention that immovable property was not contemplated as capable of being seized under Section 102 of the Code of Criminal Procedure, 1973, the learned Counsel for the petitioners placed reliance on a Judgment in **Anwar Ahmad Vs. State of U.P.**, reported at **AIR 1976 SC 680**. The Supreme Court was considering enforceability of a bond on which property had been returned by police, under the old Code. The Court pointed to an omission in the new (1973) Code in paragraph 4 as under:-

"4. Before closing this judgment, we would like to observe that even in the new Criminal Procedure Code, there is no express provision which empowers the police to get a bond from the person to whom the property seized is entrusted. This may lead to practical difficulties, for instance in cases where a bulky property, like an elephant or a car is seized and the magistrate is living at a great distance, it would be difficult for a police

officer to report to the magistrate with the property. In these circumstances, we feel that the Government will be well advised to make suitable amendments in the CrPC to fill up this serious lacuna by giving power to the police for taking the bond in such circumstances."

57. Taking note of the lacuna pointed out by the Supreme Court, Section 102 was amended by an amendment in 1978 adding sub-section (3) to provide for contingency referred to by the Supreme Court. The argument is that the Supreme Court would not have referred to the requirement of taking the property to a Magistrate, had the property seizable under Section 102 been other than movable property. Though persuasive, this argument alone, in our view, may not be decisive of the questions which have been referred to this Bench.

58. The learned Counsel for the petitioners also

pointed to a further amendment to subsection 3 of Section 102 of the Code carried out in 2005 (?) giving greater discretion to police (according to Statement of Objects and Reasons of the amending Act) for releasing the seized property where there is difficulty in securing proper accommodation for custody of property. This too may indicate that seized property could also be movable property, required to be stored in police stations, but cannot in itself lead to a conclusion that it could be only movable property, since it is arguable that the provisions may apply mutatis mutandis according to nature of property.

59. This takes us to the submissions on the question : how to interpret of Section 102 of the Code. The learned Counsel for the parties placed for our perusal settled canons of interpretation of statutes. It is

indisputable that while interpreting a provision of statute a Court must first find out what is the plain or natural or literal meaning of the words used. If this does not lead to any ambiguity, nothing further is required to be done. For gathering the meaning of words used, the Court may first look into definitions in the statute itself, or General Clauses Act in that order of preference. If such an interpretation leads to ambiguity then the Court may look elsewhere. Again here, the order in which other sources could be invoked would be, first, other provisions of the same statute; next, similar provisions in other statutes; and next, the object of legislation with reference to the mischief rule. If, and only if, there is still an ambiguity can a Court, look at the consequences, and then may utilise tools like adding or deleting a word to ensure that the construction is harmonious, does not lead to absurdity

and achieves the object, subject to the limitations on such exercise expressed in **M/s. Mandvi Co-op. Bank Ltd. v. Nimesh B. Thakore**, reported at AIR 2010 Supreme Court 1402 and **Union of India and another, v. Deoki Nandan Aggarwal**, reported at AIR 1992 Supreme Court 96. Dictionaries are undoubtedly a help in interpreting words, but since dictionaries may list several meanings against a word, the meaning appropriate to the occasion has to be contextually gathered. Therefore, attachment and seizure being shown as synonymous in dictionaries is irrelevant. Every synonym has a contextual usage and one word cannot replace another only because it is synonymous.

60. With this prelude, before considering the question raised, it may be useful to quote for ready reference Section 102 of the Code and some of the other

provisions of the Code where "property" is dealt with; along with provisions from other enactments, illustratively and not exhaustively.

The Code of Criminal Procedure:

"S.83.(1) The Court issuing a proclamation under Section 82 may, for reasons to be recorded in writing, at any time after the issue of the proclamation, order the attachment of any property, movable or immovable or both, belonging to the proclaimed person:

Provided that where at the time of issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued-

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local jurisdiction of the Court, it may order the attachment simultaneously with the issue of the proclamation.

(2) Such order shall authorise the attachment of any property belonging to such person within the district in which it is made; and it shall authorise the attachment of any property belonging to such person without such district when endorsed by the District Magistrate within

whose district such property is situate.

(3) If the property ordered to be attached is a debt or other movable property, the attachment under this section shall be made-

(a) by seizure; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the delivery of such property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Court thinks fit.

(4) If the property ordered to be attached is immovable, the attachment under this section shall, in the case of land paying revenue to the State Government, be made through the Collector of the district in which the land is situate, and in all other cases-

(a) by taking possession; or

(b) by the appointment of a receiver; or

(c) by an order in writing prohibiting the payment of rent or delivery of property to the proclaimed person or to any one on his behalf; or

(d) by all or any two of such methods, as the Courts thinks fit.

(5) If the property ordered to be attached consists of live-stock or is of a perishable nature, the Court may, if it thinks it expedient, order immediate sale thereof, and in such case the proceeds of the sale shall abide the order of the Court.

(6) The powers, duties and liabilities of a receiver appointed under this section shall be the same as those of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908)."

"S.102 (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.)

"105-A. Definitions.- In this Chapter, unless the context otherwise requires, -

(a) "contracting State" means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise;

(b) "identifying" includes establishment of a proof that the property was derived from, or used in, the commission of an offence;

(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;

(d) "property" means property and assets of every description whether corporeal or incorporeal, movable or immovable, tangible or intangible and deeds and instruments evidencing title to, or interest in, such property or assets derived or used in the commission of

an offence and includes property obtained through proceeds of crime;

(e)"tracing" means determining the nature, source, disposition, movement, title or ownership of property."

"S.105-C. (1) Where a Court in India has reasonable grounds to believe that any property obtained by any person is derived or obtained, directly or indirectly, by such person from the commission of an offence, it may make an order of attachment or forfeiture of such property, as it may deem fit under the provisions of Sections 105-D to 105-J (both inclusive).

...

"S.105-E. (1) Where any officer conducting an inquiry or investigation under Section 105-D has a reason to believe that any property in relation to which such inquiry or investigation is being conducted is likely to be concealed, transferred or dealt with in any manner which will result in disposal of such property, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order of attachment directing that such property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.

...

"S.105-L. Application of this Chapter.- The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal

arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification."

Chapter X Maintenance of Public Order & Tranquility

"D - Disputes as to immovable property.

S. 145. Procedure where dispute concerning land or water is likely to cause breach of peace - (1) whenever an Executive Magistrate is satisfied from a report of police officer or upon other information that a dispute is likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

"S.146.(1) If the Magistrate at any time after making the order under sub-section (1) of Section 145 considers the case to be one of emergency, or if he decides that none of the parties was then in such possession as is referred to in Section 145, or if he is unable to satisfy himself as to which of them was then in such

possession of the subject of dispute, he may attach the subject of dispute until a competent Court has determined the rights of the parties thereto with regard to the person entitled to the possession thereof:

Provided that such Magistrate may withdraw the attachment at any time if he is satisfied that there is no longer any likelihood of breach of the peace with regard to the subject of dispute.

(2) When the Magistrate attaches the subject of dispute, he may, if no receiver in relation to such subject of dispute has been appointed by any Civil Court, make such arrangements as he considers proper for looking after the property or if he thinks fit, appoint a receiver thereof, who shall have, subject to the control of the Magistrate, all the powers of a receiver appointed under the Code of Civil Procedure, 1908 (5 of 1908):

Provided that in the event of a receiver being subsequently appointed in relation to the subject of dispute by any Civil Court, the Magistrate-

(a) shall order the receiver appointed by him to hand over the possession of the subject of dispute to the receiver appointed by the Civil Court and shall thereafter discharge the receiver appointed by him;

(b) may make such other incidental or consequential orders as may be just."

"451. Order for custody and disposal of property pending

trial in certain cases.- When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, "property" includes-

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence."

"452. Order for disposal of property at conclusion of trial.- (1) When an inquiry or trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation or delivery to any person claiming to be entitled to possession thereof or otherwise, of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

(2) An order may be made under sub-section (1) for the delivery of any property to any person claiming to be entitled to the possession thereof, without any

condition or on condition that he executes a bond with or without sureties, to the satisfaction of the Court, engaging to restore such property to the Court if the order made under sub-section (1) is modified or set aside on appeal or revision.

(3) A Court of Sessions may, instead of itself making an order under sub-section (1), direct the property to be delivered to the Chief Judicial Magistrate, who shall thereupon deal with it in the manner provided in sections 457, 458 and 459.

(4) Except where the property is livestock or is subject to speedy and natural decay, or where a bond has been executed in pursuance of sub-section (2), an order made under sub-section (1) shall not be carried out for two months, or when an appeal is presented, until such appeal has been disposed of.

(5) In this section, the term "property" includes, in the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

"456. Power to restore possession of immovable property.- (1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation,

any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

The Criminal Law (Amendment) Ordinance, 1944:

"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.

...

"6. **Attachment of property of mala fide transferees.** - (1) Where the asset available for attachment of a person

believed to have committed scheduled offence are found to be less than the amount or value which he is believed to have procured by means of such offence, and where the District Judge is satisfied, by affidavit, or otherwise, that there is reasonable cause for believing that the said person has, after the date on which the offence is alleged to have been committed, transferred (whether after the commencement of this Ordinance or not) any of his property otherwise than in good faith and for consideration, the District Judge may by notice, require any transferee of such property (whether or not he received the property directly from the said person) to appear on a date to be specified in the notice and show cause why so much of the transferee's property as is equivalent to the proper value of property transferred should not be attached."

"13. Disposal of attached property upon termination of criminal proceedings.- (1) Upon the termination of any criminal proceedings for any scheduled offence in respect of which any order of attachment of property has been made under this Ordinance or security given in lieu thereof, the agent of the (State Government or, as the case may be, the Central Government) shall without delay inform the District Judge, and shall where criminal proceedings have been taken in any Court, furnish the District Judge with a copy of the judgment or order of the trying Court and with copies of the judgments or orders, if any, of the appellate or revisional Courts thereon.

(2) Where it is reported to the District Judge under sub-section (1) that cognizance of the alleged scheduled offence has not been taken or where the final judgment

or order of the Criminal Court is one of acquittal, the District Judge shall forthwith withdraw any orders of attachment of property made in connection with the offence, or where security has been given in lieu of such attachment, order such security to be returned.

(3) Where the final judgment or order of the Criminal Courts is one of conviction, the District Judge shall order that from the property of the convicted person attached under this Ordinance or out of the security given in lieu of such attachment, there shall be forfeited to Government such amount or value as is found, in the final judgment or order of the Criminal Courts in pursuance of section 12 to have been procured by the convicted person by means of the offence, together with the costs of attachment as determined by the District Judge and where the final judgment or order of the Criminal Courts have imposed or upheld a sentence of fine on the said person (whether alone or in conjunction with any other punishment), the District Judge may order, without prejudice to any other mode of recovery, that the said fine shall be recovered from the residue of the said attached property or of the security given in lieu of attachment.

...

*"THE SCHEDULE
(See section 2)*

OFFENCES IN CONNECTION WITH WHICH PROPERTY
IS LIABLE TO BE ATTACHED

2. An offence punishable under section 406 or section 408 or section 409 of the Indian Penal Code (45 of

1860), where the property in respect of which the offence is committed is property entrusted by His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or a State Government or a department of any such Government or a local authority [or a corporation established by or under a Central, provincial or State Act, or an authority or a body owned or controlled or aided by Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a society aided by such corporation, authority, body or Government company] or a person acting on behalf of any such Government or department or authority [or corporation or body or Government company or society].

3. An offence punishable under section 411 or section 414 of the Indian Penal Code (45 of 1860), where the stolen property in respect of which the offence is committed is property such as is described in the proceeding item and in respect of which an offence punishable under section 406 or section 408 or section 409 of the said Code has been committed.
4. An offence punishable under section 417 or section 420 of the Indian Penal Code (45 of 1860), where the person deceived is His Majesty's Government in the United Kingdom or in any part of His Majesty's dominions or the Central or State Government or a department of any such Government or a local authority or a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by Government or a Government company as defined in section 617 of

the Companies Act, 1956 (1 of 1956) or a society aided by such corporation, authority, body or Government Company or a person acting on behalf of any such Government or department (or authority or corporation or body or Government company or society).

[4-A. An offence punishable under the Prevention of Corruption Act, 1988 (49 of 1988)]

5.Any conspiracy to commit or any attempt to commit or any abetment or any of the offences specified in [items 2, 3, 4 and 4-A]."

The Narcotic Drugs and Psychotropic Substances Act:

"68-C. Prohibition of holding illegally acquired property. ...

68-E. Identifying illegally acquired property. ...

68-F. Seizure or freezing of illegally acquired property.- (1) Where any officer conducting an inquiry or investigation under section 68-E has reason to believe that any property in relation to which such inquiry or investigation is being conducted is an illegally acquired property and such property is likely to be concealed, transferred or dealt with in any manner which will result in frustrating any proceeding relating to forfeiture of such property under this Chapter, he may make an order for seizing such property and where it is not practicable to seize such property, he may make an order that such property shall not be transferred or otherwise dealt with, except with the prior permission

of the officer making such order, or of the competent authority and a copy of such order shall be served on the person concerned:

Provided that the competent authority shall be duly informed of any order made under this sub-section and a copy of such an order shall be sent to the competent authority within forty-eight hours of its being made.

(2) Any order made under sub-section (1) shall have no effect unless the said order is confirmed by an order of the competent authority within a period of thirty days of its being made.

Explanation.- For the purposes of this section, "transfer of property" means any disposition, conveyance, assignment, settlement, delivery, payment or other alienation of property and, without limiting the generality of the foregoing, includes-

- (a) the creation of a trust in property;
- (b) the grant or creation of any lease, mortgage, charge, easement, licence, power, partnership or interest in property;
- (c) the exercise of a power of appointment of property
- (d) any transaction entered into by any person with intent thereby to diminish directly or indirectly the value of his own property and to increase the value of the property of any other person."

(underlining is ours)

61. If every species of property could be seized, under Section 102 of the Code it may have been unnecessary for the Legislature to provide for freezing the property in Section 68-F of the Narcotic Drugs and Psychotropic Substances Act, or for attachment of properties under the Criminal Law (Amendment) Ordinance, or to clarify in Clause (d) of 105-A that property would include movable or immovable property and then provide for its attachment in Section 105-C. The very fact that Section 105-A of the Cr.P.C. begins with the words "In this chapter" would indicate the legislative intent of restricting the definitions therein to the provisions of that chapter and this is the reason why these definitions cannot be applied to terms used in other parts of the Code including Section 102 of Cr.P.C.. Had

the legislature so intended, it could have included these definitions in Section 2 of the Code, to make them applicable throughout the body of the Code. Rather the clarificatory Clause (d) of Section 105-A would indicate that since legislature was aware that "property" did not explicitly include all species of property, it felt the need to provide an expansive definition.

62. It may be useful to note that Rules 43, 51 and 54 in Order XXI of Civil Procedure Code, which deal with attachment of movables, negotiable instruments and immovable property respectively, the mode of attachment provided for movables and negotiable instruments is seizure, while attachment of immovable property has to be made by a prohibitory order. It may be useful to quote these rules as under:-

"43. Attachment of movable property, other than agricultural produce, in possession of judgment-debtor. - Where the property to be attached is movable property, other than agricultural produce, in the possession of the judgment-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof;

Provided that, when the property seized is subject to speedy and natural decay, or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

51. Attachment of negotiable instruments - Where the property is a negotiable instrument not deposited in a Court, nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought into Court and held subject to further orders of the Court.

54. Attachment of immovable property (1) Where the property is immovable, the attachment shall be made by an order prohibiting the judgment-debtor from transferring or charging the property in any way, and all persons from taking any benefit from such transfer or charge.

(1-A) The order shall also require the judgment-debtor to attend Court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale.

(2) The order shall be proclaimed at some place on or adjacent to such property by beat of drum or other customary mode, and a copy of the order shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the Court-house, and also where the property is land paying revenue to the Government, in the office of the Collector of the District in which the land is situate (and, where the property is land situate in a village, also in the office of the Gram Panchayat, if any, having jurisdiction over that village.)."

63. Though on a plain reading of Section 102 of the Code it may appear that since the word "property" is qualified by adjective "any", it would include even immovable property, if considered in the context of use of the words "property", "immovable property" and "movable property" in the other sections of the Code, it

would be clear that "any property" referred to is only movable property. Section 83 of the Code refers to attachment of property, movable or immovable. It provides for attachment of movable property by seizure and attachment of immovable property by taking possession, appointment of receiver, prohibitory order, etc.. It is significant that while the section provides for seizure of movable property, it does not use the word "seizure" in relation to immovable property. Attachment of property in Section 146 of the Code is also relevant. As already pointed out, Sections 145 and 146 are contained in Part-D of Chapter X of the Code which is titled as 'Disputes as to immovable property'. Therefore, it can not be said that the contention that term "seizure" is used in relation to movables and "attachment" in relation to immovables is without any merit. Section 456 of the Code refers to the power of

the Courts to restore possession of immovable property. Therefore, if the provisions of Section 102 are examined in the above context, it would be difficult to conclude that any property would include immovable property since it would not be capable of being physically seized. Whenever the Legislature wanted to deal with immovable property it has specifically used that expression. Therefore by implication when this adjective is not used, the word "property" may refer to only movable property.

64. The words "any property" cannot be interpreted in isolation. They have to be read in the context of all expressions used in the section. Therefore, such property has to be one which is alleged or suspected to have been stolen or "found" under circumstances which create suspicion of commission of any offence. Now, by

definition of "theft", immovable property cannot be stolen. As to "finding" it under circumstances which create suspicion of commission of any offence, it is difficult to conceive as to how immovable property itself could give rise to suspicion of commission of an offence. An offence may be committed on immovable property - like say, a murder in a house. An offence could be committed in respect of immovable property - like trespass, or construction, or development in violation of building bye-laws. Construction or development of property in violation of law may come nearest to the property itself creating suspicion of commission of an offence. But even here, a closer look would show that rarely would the property itself create a suspicion of commission of offence - but, activities thereon, which could be objectively observed, may create such suspicion and could be proved by objective

observations at the trial. The purpose which Section 102 which is supposed to serve is to enable police officer to collect evidence. The provision is procedural in nature and not penal even in the widest sense of putting any temporary restraint on a suspect, as a part of investigation, or for ensuing a fair trial.

65. If it is taken for a while that Section 102 of the Code provided for seizure of immovable property for the purpose of ensuring that offenders do not derive benefits from the property which they got as a result of crime as well, then it would have been unnecessary for the Legislature to provide for attachment and, eventually, forfeiture of such property under the Criminal Law (Amendment) Ordinance, as also the provisions of Section 105-A to 105-L of the Code and Sections 68-C to F of the Narcotic Drugs and

Psychotropic Substances Act. It became necessary for the Legislature to provide for attachment and forfeiture of such property which the offenders had got as a result of crime, because Section 102 did not and could not have provided for attachment of such property.

66. A learned single Judge of the Delhi High Court did consider this aspect. In **Jagdish Chander & Ors. v. State & Ors.**, reported at **40 (1990) Delhi Law Times 233**, the Delhi High Court was considering investigating officer's letter to a builder to withhold certain properties as investigation in offences punishable under Sections 380, 467, 468, 470 and 420 of the Indian Penal Code was pending. It was argued that Section 102 of the Cr.P.C. did not apply to immovable properties. The Court held that assuming that Section 102 of the Code applied to immovable property still it could not be seized unless

it was found under circumstances which create suspicion of commission of offence. This limited object of the provisions in Section 102 of the Criminal Procedure Code cannot be lost sight of. Using this provision for seizing property to prevent an offender from utilising proceeds of crime was decidedly not intended, since whenever the Legislature felt such a need, they have so provided and at the cost of repetition we may point out that the provisions of the Criminal Law Amendment ordinance are a glaring example.

67. Section 102 basically deals with the manner in which a police officer has to collect evidence for the purpose of proving charge at the trial. It does not deal with penalising an offender or depriving the offender of the benefits of such property because it was derived from crime before he is tried. It would be an abuse of the

provision if it were to be interpreted to mean that the property acquired by offenders from crime could be attached by a police officer to prevent the offender from getting the benefit of ill-gotten wealth or proceeds of crime on a mere suspicion that it was ill-gotten, without any enquiry, since such property in itself could not at all be conceived as creating a suspicion of the commission of any offence.

68. Whether a person acquired any immovable property from his ill-gotten wealth from crime could be proved by documents and not by the seizure of the immovable property itself. Thus, sale deed or any other document whereby immovable property was acquired would be an evidence which would create suspicion of commission of an offence. It is hard to conceive that the immovable property in itself would provide any evidence of its

having been acquired from the proceeds of crime. Therefore, if the argument is that Section 102 of the Code is to be interpreted to include immovable property to ensure that criminals do not walk away with the property acquired from the proceeds of crime, it would amount to attempting to put Section 102 to an use to which it was not intended to provide for.

69. Nothing prevents the Legislature from enacting provisions like Criminal Law (Amendment) Ordinance or to include such property in the Schedule to the ordinance which already exists. As may be seen from the Schedule, right now stolen properties of the Government/State in respect of which offences punishable under Section 411 or 414 of the IPC are committed, or properties of the Government in respect of which offences punishable under Sections 408, 409, 417 or 420 of the IPC are committed,

is included in the Schedule. Should the Legislature so decide, it could remove from the Schedule the qualifier that the property must belong to the State, enabling attachment of any property which is obtained from the proceeds of crime. Therefore, the argument that Section 102 ought to be interpreted to include immovable property in order to prevent criminal from enjoying their ill-gotten wealth amounts to seeking legislation from the Court. It may be pointed out that in *Tapas Neogy*, this aspect as to whether the property, namely, Bank accounts could be seized under Section 102 of the Criminal Procedure Code for the purpose of preventing criminals from taking advantage of their ill-gotten wealth was not raised. The question as to whether Section 102 could be put to such use or whether seizure of immovable property was permissible under Section 102 even if it was not found under circumstances which create suspicion of the

commission of offence, had not been raised and so cannot be said to have been decided even by implication. The belief that unless Section 102 was interpreted to include seizure of ill-gotten wealth, increase in incidents of corruption in public life cannot be adequately dealt with is belied by the Criminal Law (Amendment) Ordinance which contains adequate mechanism for attachment of such property. Offences under the Prevention of Corruption Act are included in entry 4A in Schedule to the Criminal Law (Amendment) Ordinance, 1944. Therefore, this was not and could not have been the rationale of the judgment in Tapas Neogy. On the other hand, we cannot lose sight of the fact that in Tapas Neogy, in para 6 (quoted earlier), the Supreme Court said that upon a plain reading of Section 102 that there was a precondition that "there must have suspicion of commission of any offence".

70. We may also usefully quote relevant provision of the Police and Criminal Evidence Act, 1984 in force in U.K. as under:-

"19.-(1) The powers conferred by subsections (2), (3) and (4) below are exercisable by a constable who is lawfully on any premises.

(2) The constable may seize anything which is on the premises if he has reasonable grounds for believing-

(a) that it has been obtained in consequence of the commission of an offence; and

(b) that it is necessary to seize it in order to prevent it being concealed, lost, damaged, altered or destroyed.

(3) The constable may seize anything which is on the premises if he has reasonable grounds for believing-

(a) that it is evidence in relation to an offence which he is investigating or any other offence; and,

(b) it is necessary to seize it in order to prevent the evidence being concealed, lost, altered or

destroyed.

(4) The constable may require any information which is contained in a computer and is accessible from the premises to be produced in a form in which it can be taken away and in which it is visible and legible if he has reasonable grounds for believing-

(a) that -

(i) it is evidence in relation to offence which he is investigating or any other offence; or

(ii) it has been obtained in consequence of the commission of an offence; and

(b) it is necessary to do so in order to prevent it being concealed, lost, tampered with or destroyed.

(5) The powers conferred by this section are in addition to any power otherwise conferred.

(6) No power of seizure conferred on a constable under any enactment (including an enactment contained in an Act passed after this Act) is to be taken to authorise the seizure of an item which the constable exercising the power has reasonable grounds for believing to be subject to legal privilege."

"21.-(1) A constable who seizes anything in the exercise of a power conferred by any enactment, including an enactment contained in an Act passed after this Act, shall, if so requested by a person showing himself-

(a) to be the occupier of premises on which it was seized ; or

(b) to have had custody or control of it immediately before the seizure,

provide that person with a record of what he seized.

(2) The officer shall provide the record within a reasonable time from the making of the request for it.

(3) Subject to subsection (8) below, if a request for permission to be granted access to anything which-

(a) has been seized by a constable ; and

(b) is retained by the police for the purpose of investigating an offence,

is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized or by someone acting on behalf of such a person, the officer shall allow the person who made the request access to it under the supervision of a constable.

(4) Subject to subsection (8) below if a request for a photograph or copy of any such thing is made to the officer in charge of the investigation by a person who had custody or control of the thing immediately before it was so seized, or by someone acting on behalf of such a person, the officer shall-

(a) allow the person who made the request

access to it under the supervision of a
constable for the purpose of
photographing or copying it ; or

(b) A photograph or copy it, or cause it to be
photographed or copied.

(5) A constable may also photograph or copy, or have
photographed or copied, anything which he has power to
seize without a request being made under subsection (4)
above.

(6) Where anything is photographed or copied under sub
section (4)(b) above, the photograph or copy shall be
supplied to the person who made the request.

(7) The photograph or copy shall be so supplied within a
reasonable time from the making of the request.

(8) There is no duty under this section to grant access
to, or to supply a photograph or copy of, anything if
the officer in charge of the investigation for the
purposes of which it was seized has reasonable grounds
for believing that to do so would prejudice -

(a) that investigation ;

(b) the investigation of an offence other
than the offence for the purposes of
investigation which the thing was seized; or

(c) any criminal proceedings which may be
brought as a result of -

(i) the investigation of which he is in charge; or

(ii) any such investigation as is mentioned in paragraph (b) above."

"22._(1) Subject to subsection (4) below, anything which has been seized by a constable or taken away by a constable following a requirement made by virtue of section 19 or 20 above may be retained so long as is necessary in all the circumstances.

(2) Without prejudice to the generality of subsection(1) above-

(a) anything seized for the purpose of a criminal investigation may be retained, except as a provided by sub section (4) below____

(i) for use as evidence at a trial for an offence; or

(ii) for forensic examination or for investigation in connection with an offence; and

(b) anything may be retained in order to establish its lawful owner, where there are reasonable grounds for believing that it has been obtained in consequence of the commission of an offence.

- (3) Nothing seized on the ground that it may be used -
- (a) to cause physical injury to any person;
 - (b) to damage property;
 - (c) to interfere with evidence ; or
 - (d) to assist in escape from police detention or lawful custody,

may be retained when the person from whom it was seized is no longer in police detention or the custody of a court or is in the custody of a court but has been released on bail.

(4) Nothing may be retained for either of the purposes mentioned in subsection 2(a) above if a photograph or copy would be sufficient for that purpose.

(5) Nothing in this section affects any power of a court to make an order under section 1 of the Police (Property) Act, 1897."

"23. In this Act -

"premises" includes any place and, in particular, includes, -

- (a) any vehicle, vessel, aircraft or hovercraft;
- (b) any offshore installation; and
- (c) any tent or movable structure; and

"offshore installation" has the meaning given to it by

section 1 of the Mineral Workings (Offshore Installations) 1971 c.61. Act 1971."

70. It may thus be seen that the provisions relating to seizure in U.K. too do not refer to seizure of immovable property. The question of interpreting these provisions had come up in the case of **William Cowan v. Sir Paul Condon, Metropolitan Police Service, [1999] EWCA (iv 203)**] decided on 29-7-1999 in relation to seizure of a car, since under Section 23, quoted above, a vehicle is included in the definition of premises, 'car' would be 'premises'. It may be interesting to note how the Court of Appeal dealt with the issue. The Court held:

"In s.19(2) and (3) the constable is given a power to seize "anything which is on the premises". In s.18(2) the constable is given power to seize and retain "anything for which he may search under ss.(1) above". The thing for which he may search under s.18(1) is evidence on the premises that relates to the offence for which the person has been arrested or to some other offence which is

connected with or similar to that offence. Neither section gives a constable power to seize and retain the premises as a whole. On the other hand neither section prohibits the constable from seizing and retaining the premises as a whole. A constable will not be able to seize and retain premises when they are immovable property because of the physical impossibility of doing so. That practical barrier does not exist where the premises are readily movable such as a vehicle or a tent or a caravan. In my judgment there is no reason why the word "anything" contained in s.18(2) and s.19(2) and (3) should not include "everything" where the nature of the premises makes it physically possible for the totality of the premises to be seized and retained by the police, and where practical considerations make that desirable. In this case there were two practical reasons why the removal of the vehicle to the police station was desirable and necessary. First, the police wished to fingerprint the vehicle to see if the fingerprints of any of the children were to be found in or on the vehicle. The police would not know where such finger prints might be found and a thorough investigation required that the whole vehicle should be available for fingerprinting. Second, if the vehicle were to be left in the street opposite the appellant's home, then there would be a high risk of the vehicle being interfered with by others, for example the parents of children who had made complaints who might wish to vent their anger upon it, or those close to the appellant who believed they might assist him by interfering with the vehicle.

In those circumstances, I would adopt an interpretation of the Act which enables the police to carry out effective investigation, which will normally in the case

of premises which can easily be removed to a police station, involve the removal of such premises to the police station so that evidence may be preserved. Such removal will still be subject to the statutory requirements relating to retention which are to be found in s.22 of the 1984 and in Lord Denning's statement of the common law in Ghani-v-Jones (above). The preservation of evidence is in the interests of both the general public and an accused or suspected person."

71. Thus it may be seen that even an English Court has referred to impossibility of seizure of immovable property. The test applied was whether the property could be "removed" to a police station.

72. Judgments in **Textile Traders Syndicate Ltd., Bulandshahr v. The State of U.P. and others**, reported at **AIR 1960 Allahabad 405 (V 47 C 99)**, **M/s.Purbanchal Road Service, Gauhati v. The State, Opposite Party**, reported at **1991 CRI.L.J.2798**, **Ms. Swaran Sabharwal, v. Commissioner of Police**, reported at **1988 CRI.L.J.241** and **M/s.Malnad Construction Co., Shimoga, and others, v.**

State of Karnataka and others, reported at **1994 CRI.L.J.645** dealing with service of bank accounts need not be dealt with in view of Judgment in Tapas Neogy.

73. At the cost of repetition we may point out that when there is adequate provision for attachment of ill-gotten wealth out of certain offences with sufficient safeguard of judicial control, which the Legislature could extend to other species of offences should it so desire, we cannot opt for interpreting Section 102 in a manner which may open up unbridled dabbling in immovable property by investigating agencies. Even the British rulers, who should have been interested in strengthening their rule, expressed weariness, if not suspicion, about activities of police and investigating agencies and included sufficient safeguards and controls over powers of police. In independent India, this will be more valid.

74. The argument that restrictive interpretation of expression "any property" in Section 102 of Cr.P.C. would hamper the powers of the Courts to do complete justice or that such interpretation would render the Code toothless or that it would make trial Courts powerless is misleading and flows from a failure to make distinction between powers of police and powers of Courts. Section 102 refers to powers of police to seize properties. As far as Courts are concerned, the powers to deal with property which is ill-gotten or is proceeds of crime need not be sought in the procedural code itself. First, the Schedule to Criminal Law (Amendment) Ordinance takes care of even ill-gotten wealth by corrupt means and property of State misappropriated by committing an offence.

75. If a private citizen is aggrieved about misappropriation of his property he can always knock the doors of a civil Court and such property - if immovable - is subject matter of such suit it would be virtually frozen in view of the provisions of Section 52-A of the Transfer of Property Act. Thus the citizen is not rendered remediless nor are Courts rendered powerless to deal with such a situation. To insist that only the criminal Courts ought to be able to exercise such powers would amount to over-look the purpose of system of criminal justice - which is to punish the offenders for the crime committed. The slow and steady obliteration of distinction between civil and criminal jurisdiction is a disturbing development which would encroach upon liberty which a citizen is expected to enjoy. Clamour for greater powers by police under the pretext of failure to check crime would result in our State being turned into a

police State. Rather than recognize such drastic powers in the police, Courts would do well to remind the uniformed force as also aggrieved citizens to exhaust legal remedies available under the existing law. Courts too cannot be oblivious to possibilities of abuse of powers without adequate safeguards. We may also remind ourselves of the role of the Courts in as far as criminal justice is concerned – they are to stand between the mighty State and the liberty of the citizen and cannot align themselves with prosecuting or investigating agencies when the State itself, with power to legislate, does not do so. To borrow the words of Lord Atkin in his famous dissent in **Liversidge v. Anderson**, [Law Reports citation: (1942) A.C. 206] we cannot be more executive minded than the executive.

76. We may add that a Bank account, or a Demat

account reflecting the shares of the Limited Company listed on the Stock Exchange, may similarly be required to be dealt with during investigation, extract whereof may be available from the Bank, and may provide circumstances which would create suspicion of commission of offence. But we would repeat that it is difficult to conceive that an immovable property could be found in circumstances creating suspicion of commission of offence to warrant its seizure. The situation at a place of offence may provide evidence of commission of crime, such as finding incriminating articles, dead body, blood stained clothes, weapons, etc.. This has to be distinguished from finding the immovable property itself as creating suspicion of commission of crime. Therefore, on question (a) we hold that the expression "any property" used in Section 102 of the Code cannot be given widest possible interpretation to include

immovable property as well, since it is difficult to conceive that any immovable property could ever be found in circumstances which may create suspicion of commission of any offence.

77. As regards Question (b), since it is not conceivable that any immovable property could ever be found under the circumstances which could create suspicion of commission of any offence, (except the cases in which the immovable property is itself acquired from the proceeds of a crime such as in cases of disproportionate assets under the Prevention of Corruption Act, 1987 or 1988, and which can be sufficiently and adequately dealt with by the police officer during investigation by its attachment under the Criminal Law (Amendment) Act (supra),) there could be no question of police officer being in a position to take

control of such immovable property. In view of this, we hold that police officer may not be required to take control of any immovable property since such property could ordinarily not be found under the circumstances which create suspicion of commission of any offence. The question (b) is, therefore, answered in the negative.

78. It has been submitted that due to changing times, it is necessary to interpret the provisions in a manner which will ensure that criminals do not reap the benefits of crime. It is also suggested that delay in securing an order of attachment from the Court would harm interest of the victim of crime is fallacious. This argument, Section 4 of Criminal Law (Amendment) ordinance enjoining that a District Judge shall pass an order of interim attachment without delay. It has also to be observed that the argument overlooks the availability of

other remedies in a Civil Court. The person aggrieved could always knock the door of Civil Court promptly, and once he knocks the door of the Civil Court, he could also have re-course to provisions of Section 52A of the Transfer of Property Act to secure his interest. It may be mentioned that forgery, if proved, would not at all pass on title even to successive holders, and, it would be easier to prove forgery in a Civil Court than forgery as a crime before the Criminal Court because of the different standards of proof.

79. There have been several civil wrongs which have been treated as crimes also, for which both civil and criminal remedies are available. Libel or slander is punishable as offence of defamation. Assault, battery and mayhem are punishable as offences against human body. Misappropriation, cheating or forgery could be dealt with

under criminal law, as also civil wrongs of conversion or trover. This does not mean that Civil remedies are abolished or can not be resorted to, or can be branded as inefficacious.

80. Since a reference to change in times has been made, it may be useful to recall that the proportion of convictions in Criminal Courts in India is miniscule as compared to number of charge sheets filed. There is a growing tendency to add to the burden of already inadequate police force. Without augmenting their strength and without enhancing their skills to deal with the new type of work that is passed on to them, there would be even more failures. The frustration of a citizen, who is led to believe that police will take care of his woes in respect of wrongs to private property, would be greater when the prosecution fails and his

interests are defeated, than if he is told at the beginning itself that it would be for him to fight his own cause in an appropriate Civil Court by seeking appropriate remedy.

81. In any case, whether police should be taking up this work is a matter in the realm of policy to be decided by other pillars of the State and not by the Court. As a matter of policy, the State has acted by passing Criminal Law (Amendment) Ordinance providing that properties which are involved in offences of corruption and/or properties of only the State which are misappropriated would be dealt with under the provisions of the Ordinance. It would be inappropriate for the Courts to hold that properties of even private individuals could be dealt with likewise (like fees wrongfully taken from students by educational

institutions) when the State has chosen not to include such properties in the Criminal Law (Amendment) Ordinance.

82. Victimology undoubtedly has a significant place in Criminal jurisprudence. But this cannot be stretched too far and only if the victim is under any disability should there be occasion for the State (or Courts) to help him. Otherwise, he must pursue such legal remedies as are available.

83. As regards Question (c), in the light of the foregoing discussion, we hold that the judgment in **Kishore Shankar Signapurkar v. State of Maharashtra** (supra), and not that in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra** (supra) lays down the correct law and the judgment of the Supreme

Court in **State of Maharashtra v. Tapas D. Neogy** (supra) has not been correctly interpreted in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra** (supra). This question is, therefore, answered accordingly.

84. To sum up, we answer the reference thus:

Q.(a) Whether the words "any property" used in sub-section (1) of Section 102 of the Code of Criminal Procedure, 1973 would mean to include "immoveable property"?

Ans. We, therefore, hold that the expression "any property" used in sub-section (1) of Section 102 of the Code does not include immovable property. Question (a) is, therefore, answered in the negative.

Q.(b) Whether a police officer can take control of any immoveable property which may be found under

circumstances which create suspicion of the commission of any offence?

Ans. NO.

Q.(c) Which of the above two judgments lay down correct law in respect of the powers of a police officer to seize any immoveable property under Section 102 of the Code of Criminal Procedure?

Ans. The judgment in **Kishore Shankar Signapurkar v. State of Maharashtra** (supra), and not that in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra** (supra) lays down the correct law and the judgment of the Supreme Court in **State of Maharashtra v. Tapas D. Neogy** (supra) has not been correctly interpreted in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra** (supra). This question is, therefore, answered accordingly.

Q.(d) Whether the law laid down by the Supreme Court

in case of State of Maharashtra v. Tapas D. Neogy (1999) 7 SCC 685 is restricted to seizure of bank accounts only or it can be extended to immoveable property also, as interpreted by the Division Bench in the case of M/s. Bombay Science and Research Education Institute v. The State of Maharashtra & Ors. 2008 All M.R. (Cri.) 2133?

Ans. The law laid down by the Supreme Court in **State of Maharashtra v. Tapas D. Neogy** (supra) is restricted to seizure of bank account and cannot be extended to immovable property also, as interpreted by the Division Bench in **M/s. Bombay Science & Research Education Institute v. State of Maharashtra & Ors.** (supra).

(R. C. CHAVAN, J.)

(SMT. ROSHAN DALVI, J.)

On pronouncement of the judgment, Mr. Gadkari, the learned A.P.P., submitted an oral application for stay.

2. The judgment of the Full Bench only answers the questions of law referred to it and, therefore, we do not find any compelling necessity to stay the above order. However, the certified copy of the judgment be made available to the parties on priority basis.

(B. H. MARLAPALLE, J.)

(R. C. CHAVAN, J.)

(SMT. ROSHAN DALVI, J.)