Received on : 07/08/2025
Registered on : 07/08/2025
Decided on : 02/06/2026
Duration : 9 Months & 26 Days
Exhibit :

IN THE COURT OF SESSIONS JUDGE AT BOTAD

CRIMINAL REVISION APPLICATION NO.34/2025

Applicant/ :- Revisionist		**Axis Bank Ltd., Malviya Nagar, Jaipur (Raj.)** Through Its POA Holder Narendra Choudhary, Aged:-65 years.
		Versus
Opponents :-	**1)**	**Zuber Abdul Ganibhai Gadhiya,** R/o Muslim Society, Botad.
	2)	**The State of Gujarat (through Public Prosecutor),** Cyber Crime Cell, Botad.

Appearance :-
Learned Advocate Mr. J. U. Dave for the Applicant/Revisionist.
Learned Advocate Mr. M. A. Mankad for the Opponent No.1.
Learned P.P. Mr. K. M. Makwana for the Opponent No. 2.

Subject :- Revision application filed under Sections 438 of the Bhartiya Nagarik Suraksha Sanhita, 2023 against the order passed by the Learned 2nd Additional Judicial Magistrate First Class, Botad.

-:: JUDGMENT ::-

[1] The present criminal revision application has been preferred by the applicant/revisionist under Section 438 of the Bharatiya Nagarik Suraksha Sanhita,2023 challenging the order passed by the Learned 2nd Additional Judicial Magistrate First Class, Botad in CRMA 1095/2024 dtd.14/12/2024.

[2] The brief facts leading to the filing of the present Revision Application are that the applicant/revisionist is a Banking Company duly registered under the provisions of Companies Act, 1956 as also under the Banking Regulation Act 1949. That the Ld. Trial Court has directed to the applicant/revisionist Bank that the amount Rs. 15,500/- be given as under interim custody to the applicant / Complainant on execution of Bond with the conditions that he will submit the amount whenever directed by the Court at the time of trial, complainant shall have to return the said amount if aforesaid account holder or any other person makes claim on the said amount, which means the money which is directed to be given is to be kept intact by the Applicant as directed. But as per the revisionist the money does not belong to the said Applicant only as there are several victims who have approached to Police and Courts. The Authorities have directed to keep their claimed money in the account with the applicant/revisionist Bank under Freeze and Lien marked, for which the Bank has complied. It is further submitted that Complainant has filed a Complaint with Cyber Crime Police Station, Botad alleging that the suspected Accused has transferred **Rs.15,500/-** from his account and said amount has reportedly been credited in the suspected account no. **923020048747439 IFSC CODE UTIB0000626** in the name of **Pragya Sagar Enterprises** with the Axis Bank Ltd. the applicant/revisionist herein and reportedly dishonestly and fraudulently misappropriated the amount by the reported Accused. It is humbly submitted that based on the Complaint filed by the first Informant, the Complainant, the Police have registered the FIR in Crime No. **31107240105420** for the offences punishable under **Section 66(C) and 66(D)** of the Information and Technology Act read with **Section 381(4) of BNS.** It is further submitted that based on the Complaint filed by the first Informant, the Complainant, the Police have conducted the Investigation and during the course of the said investigation, the Police have requested to freezed the suspected account maintained by the so-called accused with the applicant/revisionist Bank at **Malviya Nagar**

Jaipur branch bearing Accounts No. 923020048747439 for Rs.15500/-. It is further submitted that during the pendency of the proceedings, the first Informant has filed an Application under Section 457 of Cr.P.C.(503 BNSS) for Interim Custody of the amounts so freezed by the Investigating Agency from the account of the accused maintained with various Banks, including the one as stated above, with the applicant/revisionist - Bank. After hearing the application filed by the first Informant, the Hon'ble Court below by its Order dated 14/12/2024 was pleased to direct the Investigating Agency to de-freeze the said account and transfer the amount fully sought by the first Informant to his account with **Equitas Bank A/C no. 100052835834.** It is further submitted that after passing the Order by this Hon'ble Court, the Hon'ble Court have issued a letter by instructing the applicant/revisionist to de-freeze the account bearing No. **923020048747439** with the applicant/revisionist - Bank and to credit a sum of **Rs. 15,500/-** to the account of the first Informant. It is further submitted that applicant/revisionist is a Banker and representing larger interest of the Society. The applicant/revisionist being a Banker is also custodian of funds of public at large. Under the circumstances, whenever any prayers have been sought against the applicant/any Institution, it is the duty of the applicant to make the applicant/Institution as a Party Respondent, as the Order of the Hon'ble Court below may affect the interest of the third parties. It is further submitted that as the applicant/revisionist is a Banking Corporation, the applicant/revisionist is involved in various types of Banking Transactions of their valued customers. Therefore, the customers of other Banks are also governed under similar terms and conditions for remittance and withdrawals. It is further submitted that as in the meanwhile, the applicant/revisionist has received the written communications from the other various Investigating Authorities/ Cyber Crime Police Station instructing to keep the said account under "Debit Freeze". Under the circumstances, the Order dated 14/12/2024 passed by the Ld. Trial Court is without giving a reasonable opportunity to the applicant/revisionist. Under the said Impugned Order dated 14/12/2024, the Hon'ble Court below was pleased to direct the applicant/revisionist to de-freeze, interalia, the afforested account of the Accused and to credit a sum of **Rs.15,500/-** by transferring the same to the account of the first Informant. Further, the details of existing Pre-Freeze / lien marked / Courts orders in the said accounts stated in the application at page **5, 6 & 7.** Further, the Excel Sheets of all notices and Court orders and Summary of Freezes / Lien Marked by the applicant/revisionist in the account are annexed and marked as **Annexure – C.** It is further submitted that the amounts available in the suspected account of the reported accused, as on the date of the Order is **Rs.8,98,692.16/-** only and Bank has marked Lien for recovery of other victims as above for **Rs.2,04,04,445/-** or more as directed by and in compliance of notices of various Cyber Crime Authorities and Court Orders as referred herein above is already exists, and hence there is Negative balance of **Rs.1,95,05,752.84/-** and therefore, there is no clear available balance to be paid to the said Claimant while ignoring the other Hon'ble Court Orders and notices of complaints filed various Victims through various Cyber Crime Authorities. Therefore, the complainant is entitled to get amount himself only when the account comes in Positive Balance State and after payment of others victims in compliance of Court Orders and after receipts of NOC from Other Cyber Crime Cells as Ordered by the Hon'ble Court duly indemnified for the amount to be taken by the complainant. If at all as per the direction of the Hon'ble Court below if the "Debit Freeze" is to be removed, automatically the right of pre-existing lien operates for other victims also as referred and hence, it would be difficult to operate the account. Moreover, as the applicant/revisionist is answerable to RBI with regard to the public fund and the complainant is entitled for the said amount of **Rs.15,500/-** which is not available clearly in the account, to an extent the complainant is entitled. Further, the applicant/revisionist – bank states that there is no credit balance available in account No. **923020048747439** with the applicant/revisionist - bank after Lien marked while there is freeze marked on the said account as detailed in para no.10 and total lien of Rs **2,04,04,445/-** or besides the amount of Freezes which is yet to be disclosed by the various Cyber Crime Authorities to the Bank. It is further submitted that Criminal Cases are not for recovery and the first Informant cannot seek the said amount as a matter of right, which is in the custody of the applicant/revisionist - Bank. To recover the amount from the Accused, the first Informant shall have to file a Civil Suit by paying necessary Court Fees. Whereas, on the other hand, as the right of lien is operated, the applicant/revisionist is directly entitled for the said amount. The right of the first Informant is to get himself indemnified along with surety Bonds. For the above said reasons, the Interim Order dated 14/12/2024 passed by this Hon'ble Court below may be recalled and suitable order by taking on records the facts of pre-existing Lien / Debit Freeze as referred herein, may kindly be passed in the interest of justice and for the protection of the rights of other victims also, thereby give the said amount to the Interim Custody of the applicant/revisionist - Bank on behalf of all victims for which the Bank is ready to furnish an undertaking as Ordered by the Hon'ble Court. Therefore, the applicant/revisionist has prayed to set aside the order passed by the Learned Trial Court and allow this application. The Learned Trial Court allowed the said application and passed an order in favour of present Opponent no.1. Being aggrieved and dissatisfied with the said order, present revision application has been preferred by the applicant/revisionist under Section-438, 439, 440 and 441 of the

Bharatiya Nagarik Suraksha Sanhita, 2023.

[3] The Ld. Advocate for the applicants has argue all grounds mentioned in the present revision. Besides routine contentions, he has stated that the order passed by the Learned Trial Court is contrary to the established principle and principle of equitable justice and hence, it is liable to be set aside. He has further submitted that the Ld. 2nd Additional Judicial Magistrate First Class, Botad has passed an order in CRMA 1095/2024 dtd.14/12/2024 without hearing the complainant/revisionist. It is further submitted that the However, the Learned Trial Court proceeded with the matter in the absence of the advocate representing the present applicant/revisionist. It is further urged that appropriate orders be passed in the interest of justice. It is further submitted that the Ld. Trial Court without hearing present applicant/revisionist passed an order in favour of other side i.e., present opponent no.1. Therefore, short and some submissions are such that if the Ld. Trial Court ought to have made party to present revisionist or they have been heard prior to passing of the order, the revisionist would have been in a position to explain that no existing balance is available for payment to opponent no.1 by the reason that the amount available in the account is far lesser than the request to freeze the amount as been received. Therefore, the bank is not in position to honour of order Ld. Trial Court. Therefore, either be pleased to set aside the order or remand the order of the Ld. Trial Court to hear afresh and revisionist may allowed to put-up their defense or the factual deposition which may help the Ld. Trial Court to arrive to a logical conclusion. Further, learned advocate for the applicant/revisionist has placed his reliance upon the judgment passed by Hon'ble Karnataka High Court in the case of Rahul Chari and Ors Vs. The State of Karnataka and Ors. in W.P No.2865/2022 wherein the Hon'ble High Court has held that in these type of case, the bank is necessary party and required to be heard before passing necessary order.

[4] Per contra, learned PP and Advocate for the Opponent No.1 has submitted that the judgment and order passed by the learned Trial Court is just, proper and reasonable and there is no requirement to interfere with the said judgment and order. He has further submitted that the learned Trial Court has very well scrutinized the documents placed on record. Further, he submitted that the Learned Trial Court after considering the entire evidence of both the sides and evaluating the same in its true perspective has passed a well reasoned order and hence, no interference is called for by this Court. It is further stated that, the Learned Trial Court has correctly appreciated facts of the case and documentary evidences on record and thus, has prayed to dismiss the present appeal.

[5] In view of the materials placed on record, the following issues are formulated for the consideration of this revision:-

(1) Whether the order passed by the learned Trial Court below the said application is illegal, unjust and perverse ?

(2) Whether interference of this Court is needed ?

(3) What Order ?

[6] My findings on the above issues are as under.

(1) In Affirmative.

(2) In Affirmative.

(3) As per final Order.

:: R E A S O N S ::

<u>Issue Nos. 1 & 2</u> :-

[7] Heard, Learned for the respective parties. Looking to the fact of the present case, the account details of account bearing No. **923020048747439** existing Pre-Freeze / lien marked / Courts orders in the said accounts stated in the application at page **5, 6 & 7.** Further, the Excel Sheets of all notices and Court orders and Summary of Freezes / Leon Marked by the applicant/revisionist in the account are annexed and marked as **Annexure – C.** Upon perusal of the same, it appears that the amounts available in the suspected account of the reported accused, as on the date of the Order is **Rs.8,98,692.16/-** only and Bank has marked Lien for recovery of other victims as above for **Rs.2,04,04,445/-** or more as directed by and in compliance of notices of various Cyber Crime Authorities and Court Orders as referred herein above is already exists, and hence there is Negative balance of **Rs.1,95,05,752.84/-** and therefore, there is no clear available balance to be paid to the said Claimant. The said fact was never of brought to the notice of Ld. Trial Court, it is also on record that the Ld. Trial Court has not heard the present revisionist Bank before passing any order. Therefore, the situation arise is wherein an order passed by the Trial Court could not be executable. In case of Rahul Chari (Supra) it is categorically held that Bank is necessary party in before passing such order. Further, the principle of necessary justice are violated and necessary has not heard therefore, the order of Ld. Trial Court is required to be remanded back and after giving an opportunity of hearing to the revisionist may pass an appropriate order.

[8] In view of the entire facts and circumstances, I am of the view that the order of the learned Trial Court is illegal, unjust and perverse. I found necessity to interfere with the order passed by the learned Trial Court for the aforementioned reasons and accordingly, I answer issue No.1 in Affirmative. Therefore, I am of the view that the order of the learned Trial Court is not just and proper. Furthermore, the order passed by Ld. Trial Court is illegal, unjust and perverse therefore, I found necessity to interfere with the order passed by the learned Trial Court and accordingly, I answer issue No.2 in Affirmative.

Issue No. 3:-

[9] In the above premises, I answer issue No.3 as per following final Order :-

O R D E R

1. The present revision application is hereby allowed.

2. The Order passed by the learned 2nd Additional Judicial Magistrate, F.C., Botad, below Exhibit-1, in CRMA No.1095/2024 is hereby set aside.

3. The Ld. Trial Court is directed to hear the matter afresh after giving opportunity to the applicant/revisionist to plead and argue and then pass appropriate order in the interest of justice.

4. R&P, be returned to the Trial Court along with copy of this order.

5. No order as to costs.

Pronounced in the Court today i.e., on this **02nd** Day of **June, 2026.**

DATE :- 02/06/2026
BOTAD.

(M. J. PARASHAR)
SESSIONS JUDGE,
BOTAD.
Code No.GJ00463