

Order below Ex. 1

1. The present application is preferred by the Applicant U/s.451 & 457 of Code of Criminal Procedure, 1973 (In short "Code"). It is contended by the applicant that incident of online fraud took place with the applicant. Hence, applicant had filed complaint before Cyber Crime Police Station. In pursuant to that, Investigating Officer of Cyber Crime Police Station has freezed the amount lying with the bank account of opponent u/s.102 of the Code. The said amount is lying with the concerned Bank and applicant has not received the said amount yet. It is further contened that no F.I.R. registered against anyone. The applicant has to bear financial loss and he/she is in financial crisis. At the end, prayed to transfer the said amount in applicant's account under Section-451 or Section-457 of the code.

2. The present application is ordered to be registered as Criminal Misc. Application and kept for hearing. Heard Learned Advocate on behalf of the applicant and Learned A.P.P. for the state. Perused the application and paper filed along-with the application. Perused the Police report.

3. It is profitable to refer Section 102 of Cr.P.C. which reads as under :-

102. Power of police officer to seize certain property.

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

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

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court, 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.

4. Looking to the provision of Sub-Section (1) of Section 102, it is crystal clear that, 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. Further, looking to the provision of Sub-Section (3) of Section 102, it is also crystal clear that 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, 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.

5. Thus, power of seizure is vested with the Police Officer and it is also mandatory forthwith to report the seizure to the Magistrate having jurisdiction. As per the say of the applicant, the Police Officer of Cyber Crime Police Station has freezed the account of the opponent. In the present case on hand, Police Officer of Cyber Crime Police Station has not reported the said seizure/freezing of Bank Account to this Court at the time of

seizure/freezing or after the completion of entire investigation.

6. Now, looking to the wording of provision of Section-451 of the Code, it is necessary that the property is produced before any Criminal Court, then 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. Thus, this Court can not invoke the power under section 451 of the Code as the property is not produced before this Court by the concerned Cyber Crime Police Station. Section-457 of the Code speaks that, whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court, during an inquiry 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. In present case on hand, as discussed here in above, the Police Officer of Cyber Crime has not reported to this Court in regard to the seizure/freezing of bank account. Thus, this Court can not invoke the power under section 457 of the Code.

7. For deciding an application filed under Section-451 of Code of Criminal Procedure, 1973, it is profitable to refer the decision of Hon. Gauhati High Court, in case of "Dwijen Deka Vs. Lalita Das" reported in 1987(3) Crimes 837,839, in which it is held that, "A Magistrate can pass an order under this section only after physical or symbolical production of seized material before the Court and that too only after hearing both the parties and such an order is final as between the parties, and a party aggrieved by such an order can have the remedy by way of revision."

Hon. Madhya Pradesh High Court in case of "Kanhaiyalal Vs. State of M.P." reported in 1987 CrLJ 368(MP) has held that,

"For disposal of the property under this provision it is necessary that the property should be under the control of the Magistrate."

8. For deciding an application filed under Section-457 of Code of Criminal Procedure, 1973, it is profitable to refer the decision of Hon. Orissa High Court in case of "Rabinarayan Panigrahi Vs. State of Orissa reported in 1990(3) Crimes 379 (Ori.) in which it is held that,

"It is quite clear that this section empowered the Magistrate to pass orders for disposal of property which is seized by the police and has not been produced in Court during the enquiry or trial provided that the seizure of such property by the police has been reported to the Magistrate under the provisions of the Code. Section 457 imposes a clear duty on the police to make report to the Magistrate in respect of the property seized under alleged or suspected to be stolen or found under the circumstances which create suspicion of the commission of an offence."

Hon. Bombay High Court in case of "Manish Khandelwal And Ors vs The State Of Maharashtra And Ors" CRIMINAL WRIT PETITION NO. 2434 OF 2018, D.O. 30 July, 2019 held in para-25 that,

"25. Accordingly, the learned Single Judge directed to defreeze the bank accounts which were frozen by the concern bank pursuant to directions of concerned police officer. Admittedly, in the present case, the Investigating Agency/Officer, in freezing the accounts of the Petitioners, has not reported freezing of the accounts of the

Petitioners to the learned Magistrate which is mandatory requirement under sub-Section (3) of Section 102 of Cr.PC. As disclosed in the petition it is an admitted position that accused No.1 Vipul Desai and his wife Arti Desai appears to be the Directors of their own company viz. E2E, and both the Petitioners herein were and are running their companies viz. B M Financial Services and Reliance Securities. Prima facie it appears that no report as contemplated under sub-section (3) of Section 102 of Cr.P.C. was forwarded to the learned Magistrate till filing of this petition. It is required to be noted that freezing of bank account is an act of investigating officer/agency and therefore, duty is cast upon the investigating agency/officer under sub-section (3) of Section 102 of the Cr.P.C., to report the same to the learned Magistrate having the jurisdiction."

Hon. Delhi High Court in case of "Muktaben M. Mashru vs State Of NCT Of Delhi & Anr, CRL.M.C. 4206/2018 & Crl.M.A.30311/2018 decided on 29 November, 2019, held in para-36 that,

"36. Now reverting back to the present petition, taking into consideration the oral as well as the written submissions of both the parties and also taking into consideration the material on record as well as the legal position, more specifically in view of the judgments discussed hereinabove, this Court has no hesitation to hold that the reporting of the freezing of bank accounts is "mandatory". Failure to do so, apart from other conditions, will vitiate the freezing of bank account, which should be "forthwith" reported to the concerned Magistrate and non-compliance of this mandatory requirement goes to the root of the matter. If there is any violation in following the procedures under Section 102 of the Cr.PC, the freezing of the bank accounts cannot be legally sustained."

9. Therefore, as per the ratio laid down by Hon'ble High Courts in various judgments (supra) it is crystal clear that, the concerned Investigating Officer is required to report the concerned Magistrate having jurisdiction forthwith the seizure. In the present case on hand, the concerned Investigating Officer of Cyber Crime Police Station has not reported the the fact of seizure/freezing bank account to this Court. The bank account of opponent has not been freezed by the order of this Court. Therefore, Looking to the prayer sought by the applicant, I pass following order in the larger interest of justice.

∴ ORDER :

- The Concerned Investigating Officer, Cyber Crime Police Station is directed to deal with the prayer sought by the applicant under the power vested in him/her under sub-section (3) of Section 102 of the Code of Criminal Procedure, 1973.
- A copy of this order be sent to the Cyber Crime Police Station accordingly for compliance and necessary action.

Pronounce in the open Court on this 14th day of September, 2024 in Special Sitting of the Lok-Adalat.

(Manish V. Chauhan)
GJ01015
23rd Add. Chief Judicial Magistrate,
Court no. 11, Ahmedabad City.