7th September, 2022
(D/L No.23)
(SKB)

W.P.A. 19095 of 2022

Umang Business Consultant Pvt. Ltd.
-Versus-
Reserve Bank of India and others

Mr. Siddhartha Banerjee,
Mr. Shaunak Ghosh,
Mr. Soumajit Majumder,
Mr. Rajib Mullick,
Mr. Biswaroop Ghosh
… for the petitioners.

Mr. Avishek Guha,
Ms. Debarati Das,
Ms. Akansha Chopra
… for the ICICI Bank.

Mr. Arindam Paul,
Ms. Parna Mukherjee
… for respondent no.4.

The petitioner was asked to serve copies of the writ petition on the Gujarat Police as well as the private respondent who bought the cell phone from the petitioner's shop on 25th April, 2022.

The private respondent is in court today.

The affidavit of service filed on behalf of the petitioner shows that the Gujarat Police received the writ petition by e-mail and have acknowledged the same.

The petitioner seeks a direction on the respondent Bank to defreeze the account of the petitioner which was done on and from 7th June, 2022. The writ petition does not enclose any document by which the decision to freeze the petitioner’s account was communicated to the petitioner by the Bank or by any other authority.

In the course of hearing, on 5th September, 2022, learned counsel appearing for the Bank disclosed a letter dated 4th June, 2022 from the Police Sub Inspector, Cyber Police Station, Junagadh Range to the Nodal Officer, ICICI Bank pertaining to request for furnishing information about two accounts and with a direction to ‘debit freeze’ the said accounts. The first of the two accounts mentioned in the said letter is of the petitioner. The Notice/letter has been brought on record by way of a supplementary affidavit filed by the petitioner.

Learned counsel appearing for the petitioner points to the relevant documents or rather to the absence of such in relation to the action complained of.

Learned counsel appearing for the respondent Bank submits that the Bank has no option but to comply with the direction for defreezing the petitioner’s account.

Learned counsel representing the purchaser/respondent no.4 submits that the purchaser’s Bank account has also been locked.

The document issued by the Cyber Police Station, Junagadh Range dated 4th June, 2022 may be treated as the document under challenge and giving rise to the impugned action taken on behalf of the Bank. The document directs the respondent Bank to provide an Account opening form with KYC details and other coordinates of the accounts mentioned in the letter. The accounts have been directed to be marked as "debit freeze". The document does not disclose any involvement of the petitioner in any offence nor does it mention the name of the petitioner as an interested party who is required to be investigated as an accused or otherwise.

Section 102(1) of the Cr.P.C. empowers the police to 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. The wording of the provision makes it clear that a 'property' may be seized and that the seized property must have a relatable nexus with the commission of an offence. The Section also contemplates that the police officer can seize such 'property' which is the subject-matter of a theft or has been discovered in circumstances of suspicion. The discovery angle is evident from the word 'found' and the required nexus appears from the property being discovered in suspicious circumstances linking the property to an offence which has already been committed. The link is hence commission of an offence—>discovery of the property—>presumption of a link between the offence and the property discovered.

The present case involves facts in reverse order. The fact of any commission of an offence has not been disclosed in the document issued by the Cyber Police Station, Junagadh Range save and except a reference to an application by one Mr. Sojitra about financial fraud. There is no link whatsoever between the complaint of financial fraud and the accounts which have been frozen by the Bank. There is also an absence of any established link or a presumption thereof between the account of the petitioner and the commission of offence.

The petitioner claims to be a dealer of cell phones and admittedly sold a cell phone to the private respondent in April, 2022. Such act alone, without the attending circumstances required under Section 102 of the Cr.P.C., cannot entitle the respondent Bank to freeze the petitioner's account. Significantly, the letter of 4th June, 2022 has not been followed up by any further documents intimating the petitioner as to the basis of the impugned action.

The decisions cited on behalf of the petitioner with regard to Section 102 of the Cr.P.C., are on Section 102 as well as on the requirement of direct nexus between the act complained of and the offence. Ref: *(2012)6 SCC 760 [M.T. Enrica Lexie and another Vs. Doramma and* *others]*, and *Mr. Swaran Sabharwal vs. Commissioner of Police; 1987 SCC Online Del 221*.

Having found that the impugned action of the respondent is wholly without supporting reasons including under Section 102 of the Cr.P.C., this court is of the view that the petitioner is entitled to the relief prayed for.

W.P.A.19095 of 2022 is accordingly disposed of with a direction on the respondent nos.2 and 3 to defreeze the account of the petitioner being the first account mentioned in the letter dated 4th June, 2022 within a period of 24 hours from today.

(Moushumi Bhattacharya, J.)