A.F.R.

IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.5451 of 2022

Datum Micro Credit, Gundichar Nagar, Ganjam	**….**	***Petitioner***

-versus-

State Bank of India and Ors.	**….**	***Opp. Parties***

Advocates appeared in the case:

For Petitioner	:	*Mr. Bishnu Prasad Pradhan, Adv.*

-versus-

For Opp. Parties	:	*Mr. Ambika Prasad Mishra, Adv. (for O.Ps.1 & 2)*
		Mr. S.N. Das, ASC (for O.P.3)

CORAM:
DR. JUSTICE S.K. PANIGRAHI

DATE OF HEARING:-02.12.2022
DATE OF JUDGMENT:-23.12.2022

Dr. S.K. Panigrahi, J.

1. In this Writ Petition, the Petitioner challenges the action of Opposite Party-Bank in freezing petitioner's Bank Account bearing No-00000034307905193 based on a notice issued under Section 91 of Code of Criminal Procedure, 1973, by the IIC, Golanthara P.S, Berhampur. The Petitioner has further prayed for issuance of a direction to the Opposite Parties/Bank to allow him to withdraw the amount of Rs.12,71,324.95/- kept on hold in its Bank Account bearing No-00000034307905193 in State Bank of India, Konisi Branch.

I. FACTS OF THE CASE

2. Shorn of unnecessary details, the substratum of matter presented before this Court remain that Datum Micro Credit is a company incorporated under Section 25 of the Companies Act, 1956 and is a service provider (SP) for State Bank of India. Pursuant of agreement dated 29.09.2020 (Annexure-1), petitioner/company has been providing manpower services to the State Bank of India. It is pertinent to mention that the Petitioner company has not been arrayed as an accused in Golanthara P.S. Case No-122/2016, 202/2018 and 21/2019. There is no notice issued by the Investigating Officer of Golanthara vide P.S Case No-122/2016, 202/2018 and 21/2019 to the petitioner either under Section 91 of Cr.P.C or under Section 102 of Cr.P.C. Bank Account bearing No-00000034307905193 stands in the name of petitioner's company and deals with GST and salary amount of staffs supplied by the petitioner's company.

3. While matter stood thus, pursuant to a notice dtd.17.09.2021 and 04.10.2021 (Annexure-4 Series) under Section 91 Cr.P.C, issued by the Investigating officer of Golanthara P.S Case No-122/2016, 202/2018 and 21/2019 to the Opp. Party, Bank Accounts Bearing No-00000034307905193 and 00000034307909834 were freezed. Petitioner had filed WP(C) No.30070 of 2021 before this Court with a prayer to defreeze both the Bank Accounts. By order dated 30.11.2021, this Court disposed of the aforesaid Writ Petition on the basis of submissions made by the learned counsel for the Bank, allowing the petitioner to operate Bank Account bearing No 0000034307905193 keeping frozen therein a sum of Rs.12,71,324.95/-. Liberty was granted to petitioner to file afresh upon conclusion of the enquiry or investigation and result thereof, if petitioner has relief for remedy there against, available in law. As the frozen amount includes three months GST amount and staff salary amount, petitioner by its letter dated 15.12.2021 (Annexure-2) requested the Bank to allow him to withdraw the frozen amount so that petitioner's company will be able to deposit the GST amount and pay the salary amount of his staffs.

4. In reply to the request letter, the Opp. Party/ Bank by its letter dtd.11.01.2022 (Annexure-3) intimated that amount of

Rs.12,71,324.95/- has been kept on hold as per the order of this Hon'ble Court passed in W.P.(C) No.30070 of 2021 and the request for withdrawal can't be acceded to. Finding no other alternative, the petitioner has filed the present writ petition before this Court on 23.02.2022 for issuance of a direction to the Opp. Party/ Bank to allow him to withdraw the amount of Rs.12,71,324.95/- kept on hold in Bank Account No- 00000034307905193.

II. SUBMISSIONS ON BEHALF OF THE PETITIONER

5. It is submitted by Learned Counsel for the Petitioner that under Section 91 of Cr.P.C., the Investigating Officer summons the person to produce the document or other thing. On the summons issued under Section 91 Cr.P.C Bank Account cannot be freezed. Admittedly Bank Account bearing No- 00000034307905193 stands in the name of petitioner's company i.e., "Datum Micro Credit". Petitioner's company i.e. Datum Micro Credit is not an accused in Golanthara P.S Case No.122/2016, 202/2018 and 21/2019. During Investigation of aforesaid three P.S Cases, notice under Section 91 of Cr.P.C was issued to the Branch Manager, SBI Kanisi Branch on 17.09.2021 (Annexure-C/2 Series, internal page-11 of Bank's Counter) for submission of information. Subsequently, another notice under Section 91 of Cr.P.C was issued on 04.10.2021 (Annexure-4 Series, internal page-13 of Bank's Counter) directing the Bank that "the debit of that account may please be freezed till further correspondence". On the basis of said notice dated 04.10.2011, the Opp. Party Bank freezed the Bank Account of petitioner.

6. It is further contended by Learned Counsel for the Petitioner that in the present case, petitioner's company is not an accused in all three P.S cases as indicated in the notice (Annexure-C/2 Series) under Section 91 Cr.P.C. There is no strong suspicion against the petitioner / company. Therefore, Investigating Officer is not justified in freezing Rs.12,71,324.95/-. Due to said freezing, right to life of the petitioner is adversely affected/ offending Article 21 of the Constitution of India. No notice has been issued either under Section 91 or 102 Cr.P.C to the petitioner till today. That apart, no intimation has been sent to the concerned Jurisdictional Magistrate about freezing of Rs.12,71,324.95/- in terms of Section 102 of Cr.P.C. From the aforesaid facts it is very clear that the Investigating Officer/ Police Officer has no jurisdiction under Section 91 of Cr.P.C to freeze any Bank Account or freese any amount during investigation of a criminal case.

III. SUBMISSIONS ON BEHALF OF OPPOSITE PARTIES

7. Per Contra, it is contended by Learned Counsel for the Opposite Party that Bank Account bearing No-00000034307905193 is the Business correspondent commission Account of petitioner and out of deposits average about 28% of the commission is related to the Business correspondent and the rest 78% of the commission is for the customer service points, which is for banking transactions rendered by the customer service points (CSPs). Out of total amount of Rs.35,58,520.95/- commission amount of CSPs was Rs.22,87,196/-. So, Bank requested the Investigating Officer to allow the Bank to pay the commission amount of Rs.22,87,196/- to the customer service points and allow the branch to hold Rs.12,71,324.96/-

IV. COURT'S ANALYSIS AND REASONS

8. For the sake of brevity, Section 91 of Cr.P.C. is extracted herein for reference:

> *"Summons to produce document or other thing.*
> *(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order,*

to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.
(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.
(3) Nothing in this section shall be deemed-
(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891) or
(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority."

9. In the present case, the I.I.C. of Golanthara P.S had given a notice under Section 91 of Cr.P.C on 17.09.2021 requesting the Opposite Party No.2 to furnish information with regards to accounts bearing Nos.34307905193, 34001744323, 31326581712 and 34307909834. On 04.10.2021 another notice under Section 91 of Cr.P.C was given to the Opposite Party No.2 by the I.I.C., Golanthara P.S wherein information was sought regarding commission money of the Petitioner, and it was further instructed to "freeze debit" in the said account till further correspondence.

10. From a bare perusal of Section 91 of Cr.P.C, it is clear that the I.I.C. of Golanthara P.S has no jurisdiction insofar as issuing instructions towards freezing the bank account of the present Petitioner. In the summons issued under Section 91 of Cr.P.C., the investigation officer summons the person to produce the document or other things. On the summons issued under Section 91 of Cr.P.C., account cannot be freezed. That apart, the I.I.C. of Golanthara P.S failed to comply with the procedure as contemplated under Section 102(3) of Cr.P.C. From the materials available on record, it can be further inferred that the Opposite Party No.3 has failed to inform the freezing of the petitioner's account to the concerned jurisdictional Magistrate till date.

11. According to Section 91 of Cr.P.C, the Court or any Police Officer does not have the authority to freeze the Bank Account of any person. Such power, however, is available to a Police Officer under Section 102 of Cr.P.C., with a caveat as provided in Sub-Section (3) of Section 102 of Cr.P.C., namely, the Police Officer, who has seized any property, has to forthwith report the seizure to the concerned jurisdictional Magistrate. In the present case, no intimation has been given to the concerned Magistrate.

12. In the case of ***Sahil Raj v State of Tamil Nadu and others***[1], the High Court of Madras observed:

> *"7. Thus, it is clear that the first respondent has no jurisdiction. In the summons issued under Section 91 of Cr.P.C., the investigation officer summons the person to produce the document or other things. On the summons issued under Section 91 of Cr.P.C., account cannot be freezed. That apart, the first respondent failed to comply with the procedure as contemplated under Section 102(3) of Cr.P.C. Admittedly the first respondent failed to inform the freezing of the petitioner's account to the concerned jurisdictional Magistrate even till now."*

13. Recently, in the case of ***Manish Khandelwal & Ors. v. State of Maharashtra***[2], the Court rejected the contention that non-compliance of the procedure laid down under Section 102 Cr.P.C. is only an irregularity and will not vitiate freezing of the bank accounts. It was held that in case the mandatory provision under Section 102 Cr.P.C. has not been followed then it would entail the consequence of giving directions to defreeze the bank account. The duty of reporting to Magistrate about any seizure of bank account is cast upon the I.O as freezing of the bank account prevents the person from operating the bank account pursuant to

[1] 2022 LiveLaw (Mad) 441

[2] 2019 SCC Bom 1412

investigation. If there is any violation in following the procedures under Section 102 Cr.P.C., freezing of account cannot be legally sustained.

14. Furthermore, in the case of ***Ms. Swaran Sabharwal vs Commissioner of Police***[3], the Delhi High Court observed:

> *"Again even if the provisions of section 102 are held applicable, the respondents have not followed the requirements of the section. Reading that provision, by adapting in to the case of seizure of a bank account, the police officer should have done two things : he should have informed the concerned magistrate forthwith regarding the prohibitory order. He should have also given notice of the seizure to the petitioner and followed her to operate the bank account subject to her executing a bond undertaking to produce the amounts in court as and when required or to hold them subject to such orders as the court may make regarding the disposal of the same. This was not done. Even a copy of the prohibitory orders was not given to the petitioner. The police did not seek the directions of the Magistrate trying the offence. Not only that, when the petitioner herself approached the Magistrate who was trying the petitioner's husband under the official Secrets Act, her request to be allowed to operate the account was opposed by the police contending that the bank account was not "case property" and that the petitioner's remedies lay elsewhere than in the court of the Magistrate. The Magistrate accepted the plea of the police and dismissed the application of the petitioner and directed to seek*

[3] 1990 68 CompCas 652 Delhi

remedy elsewhere before the appropriate authority. The petitioner having lost before the Magistrate, had no other recourse except to file a writ petition praying for the setting aside of the prohibitory order.

For the reasons abovementioned, we are of the opinion that the prohibitory order dated October 31, 1985, by reason of which the petitioner was prevented from operating the bank account in question should be quashed."

15. In conspectus of facts and guided by precedents cited hereinabove, this Court directs the Opposite Parties to allow the Petitioner to withdraw the amount of Rs.12,71,324.95/- kept on hold in its Bank Account bearing NO-00000034307905193 in State Bank of India, Konisi and operate the bank account, subject to the Petitioner executing a bond undertaking to produce the amounts in Court as and when required.

16. In the final result, the Writ Petition is allowed and accordingly, disposed of.

(Dr. S.K. Panigrahi)
Judge

Orissa High Court, Cuttack,
Dated the 23rd Dec. 2022/B. Jhankar