

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

CRIMINAL APPEAL NO. 838 OF 2022

Cybiz Call International Private Limited	..Appellant
Versus	
State of Maharashtra & Anr.	..Respondents

Mr. Amar Vijay Dutta a/w. Ms. Jenny Somaiya i/b. Ajinkya Udane
for Appellant.

Smt. M. R. Tidke, APP for State/Respondent No.1.

Mr. Vivek Patil i/b. Vivek Patil and Associates for Respondent No.2.

CORAM : SARANG V. KOTWAL, J.
DATE : 12th OCTOBER 2022

PC :

1. This is an Appeal challenging the order dated 24/01/2022, as well as, order dated 04/02/2019 passed by the learned Additional Sessions Judge, Pune. The basic application made by the Appellant herein below Exhibit 48 in MPID Case No.6 of 2018 was for de-freezing the account bearing No.04852320000166 maintained with HDFC bank, Udyog Vihar branch, Vijaykunj, Gudgaon 122001. The account was freezed in connection with investigation of C.R.No.28 of 2018 registered

with Dattawadi police station U/s.419 and 434 of I.P.C. and U/s.66D of the Information Technology Act.

2. The case of the Appellant was that, he was the lessor of property situated on the 4th floor, 309-310 Udyog Vihar, Gurgaon having area of 5000 sq.ft. The lease was given for the rent of Rs.2,25,000/-p.m. plus applicable service tax with interest free security deposit of an aggregate amount of Rs.4,50,000/- for the period of 5 years. The Appellant is M/s. Cybiz Call International Pvt. Ltd. The premises were given on rent to M/s. Nexgen Facility Management Private Limited through its Chief Operating Officer Mr. Ajay Bhardwaj. According to learned counsel for the Appellant, the main allegations were against Amit Bharadwaj who is brother of Ajay Bhardwaj. The appellant had no transaction with Amit Bhardwaj. Learned counsel for the appellant submitted that, it is not the case of the prosecution that the amount deposited in the bank account of the Appellant could be termed as proceeds of the crime or that the appellant in any way had any connection with the main offence which was the subject matter of the above offence.

3. Learned Judge passed his order below Exhibit 48 in MPID Case No. 6 of 2018 as under:

“ORDER

- [1] Cyber Crime Cell, Crime Branch, Pune is hereby directed to defreeze the bank account of applicant bearing No. 04852320000166 in CR No. 28/2018 under Section 419, 434 of Indian Penal Code r/w 66D of I.T.Act.
- [2] Applicant Cybiz Call (International) Pvt. Ltd. is hereby directed not to withdraw the deposit amount till the date of its freeze of bank account, till disposal of the case.
- [3] Concerned bank authority is hereby directed not to release the amount lying in the account of applicant bearing No. 04852320000166 till the date of its freeze, till trial is over.
- [4] Applicant Cybiz Call (International) Pvt. Ltd. is at liberty to operate its bank account no. 04852320000166.”

4. After that, again a fresh application was moved by the appellant because the operative part of the order dated 04/02/2019 was not effective for him for using the amount deposited in that particular Account. The second application was preferred vide Exhibit 328. It was rejected on 24/01/2022 by

passing the following order:

“This application is not maintainable in view of order below Exhibit 48 hence, this application stands rejected.”

5. Being aggrieved by these orders, the appellant has approached this Court. His contention is that, merely de-freezing the account without permitting him to withdraw the amount is causing prejudice to the appellant and the direction to de-freeze the account is not really effective.

6. I have considered these submissions and I have called for the say of the Investigating Agency. Learned APP Smt. Tidke has produced a report dated 12/10/2022 before the Court. It is categorically mentioned in that report that the Senior Inspector of Police of Cyber police station, Pune City has no objection if the permission is granted to the appellant to withdraw the money from that particular account and to use it for further transactions in that account. A copy of that report is taken on record and marked 'X' for identification. The appellant is not an accused. The Appellant had given those particular premises on lease in a commercial

transaction, it appears that the appellant is not at fault. In this background, since the investigating agency has given no objection for operating the bank account and also for withdrawing the money from that account, the Appeal can be allowed. The account is already de-freezed vide order dated 04/02/2019 passed by the trial Court.

7. Hence, the order:

O R D E R

- i) The Appellant is permitted to withdraw the amount which is deposited in the Account No. 04852320000166 maintained with HDFC bank, Udyog Vihar branch, Vijaykunj, Gudgaon 122001.
- ii) The Appeal is disposed of in the aforesaid terms.

(SARANG V. KOTWAL, J.)