(123) **IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

CRM-M-13018-2022
Date of Decision:29.03.2022.

Novopay Solutions Private Limited

...Petitioner

Versus

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE VINOD S. BHARDWAJ

Present: Mr. Anuj Dewan, Advocate
for the petitioner.

Ms. A.K. Khurana, DAG, Punjab.

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<u>VINOD S. BHARDWAJ, J.</u>

This petition has been filed under Section 482 Cr.P.C for quashing and setting aside of order dated 20.01.2022, Annexure P-1 as well as order dated 07.02.2022 (Annexure P-2) passed by the learned Judicial Magistrate Ist Class, Pathankot, in CRM-560/2021 titled as State of Punjab through Balwinder Singh Vs. Unknown, whereby the Supardari application filed by respondent no.2-complainant and victim in FIR No.68 dated 20.05.2021, under Section 420 IPC and Section 66D of the IT Act, 200, Police Station, Sadar, District Pathankot, for release of Rs.3,00,000/- from the bank account of the petitioner has been allowed and the Magistrate has directed respondent no.3 to transfer a sum of Rs.3,00,000/- from the account of the petitioners to the account of respondent no.2.

Learned counsel *inter alia* contends that the order in question is illegal and not sustainable in the eyes of law. He submits that the petitioner is a business company which facilitates banking transactions through its network to sub-contractors which includes various shopkeepers and retailers. The petitioner claims to enable retailers with the mobile and web application to conduct banking transactions such as cash deposits to bank accounts, Aadhar based cash withdrawal from bank accounts, cash collections for online merchants like Swiggy, Flipcart etc. It is contended that the sales team of the petitioner appoints distributors to identify and help the retailers run their business by creation of a virtual account (Wallet). It is submitted that the respective sales team collected the KYC documents from interested and prospective distributors. Physical verification of the same is done and thereafter the user gets activated on the platform. It is contended that respondent no.2 complained about a fraudulent activity upon him, as a result whereof, an amount of Rs.3,00,000/- was deducted from his account and was transferred to the account of the petitioner company.

He submits that the amount so received by the platform has been subsequently disbursed by the petitioner.

Learned counsel for the petitioner has however not disputed the factum that the amount in question was debited from the account of respondent no.2 and credited to the account of the petitioner. He has also not been able to show any entitlement of the petitioner company to retain such money. An argument has however been raised by learned counsel for the petitioner that the amount in question has been appropriated by the retailer. However, no such documentary evidence has been appended along with the petition to substantiate the said submission. The complainant has shown his Bank account statement reflecting movement of money to support his claim. The mere appropriation of the amount by the Company does not entitle the petitioner to claim an immunity. Once, the petitioner company is not able to show any entitlement to the amount received in its credit, the right of the petitioner does not get crystallized to retain the same. The petitioner company would at best be at liberty to claim the money from the retailers to whom such funds have been forwarded. Learned counsel also could not point out to any material to show that the appropriation of the amount was on the instructions of the victim.

Even otherwise, the web-based platform is the creation of the petitioner and they are responsible to ensure that the platform is not infiltrated to the prejudice of the users. The maintenance of safety features is an obligation of the petitioner and the same is an integral part of the user charges/fee claimed by the company from its users. Once, the company promotes the digital payments through its platform and portrays it as a safe and secure means of transaction of money, it would not be open to the petitioner company to claim an immunity for itself and refuse to indemnify or protect users of its platform against fraud committed against them by any unauthorized access of the platform.

The entitlement of the victim to his money not being disputed and the petitioner having failed to display its entitlement to retain the said money, the impugned orders passed by the Courts below directing a refund of the money to the victim that stood wrongly credited to the account of the petitioner cannot be held to be bad or liable to be set aside. I find no illegality or infirmity in the orders passed by the learned Courts below.

The instant petition is thus dismissed as devoid of any merit.

(VINOD S. BHARDWAJ)
JUDGE

March 29, 2022
rekha sharma

Whether speaking/reasoned Yes/No
Whether reportable Yes/No