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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 13.04.2022

\+ **W.P.(CRL) 2482/2021**

V PLUS TECHNOLOGY PVT LTD ..... Petitioner
Through: Mr. Amit Mahajan, Mr. Pulkit Prakash, Mr. Rajeev Ranjan, Mr. Saimon Farooqui, Advs.

versus

THE STATE (NCT OF DELHI) & ANR. ..... Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH, J (*ORAL*)**

1. This is writ petition seeking a writ in the nature of Mandamus cancelling/ staying the debit freeze order of bank account No. 407411212776 maintained at RBL Bank at Banglore, where the debit freeze order has been passed. That the order of debit freeze was informed to the petitioner by letter of 07.10.2021 by RBL Bank which reads as under:

> *"Date: 07/10/2021*
> *Place: Bangalore*
> *To*
> *M/s V PLUS TECHNOLOGY PRIVATE LIMITED*
> *4TH FLOOR 133-2 JANARDHAN TOWERS,*
> *RESIDENCY ROAD Bangalore, BENGALURU BANAGLORE URBAN,*
> *BANGALORE, KARNATAKA- 560025.*
> *Sub: you're a/c No: 407411212776 is in Debit Freeze. Based on Notice U/s 91 CrPC.*
> *Dear Sir/ Madam,*
> *This is keeping you informed that we have received*

Notice U/s 91 CrPc from office of the Assistant Commissioner of Police, Cyber Cell, DCP Office Complex, Rohini, New Delhi on 07/10/2021 against Ref No:1367/1nsp./ cyber cell/ Rohini District, New Delhi, Date 07.10.2021. As per the cyber cell order. We have marked debit freeze in your current account a/c no: 407411212776. For More Clarification please contact Branch Manager."

2. It is this order which has been challenged before this Court. The said order was issued on a complaint by one Ms. Payal on the basis of which an FIR was registered on 22.10.2021 with P.S. Kanjhawala. In the FIR, it has been stated that Ms. Payal was defrauded of Rs. 25,000/- through a Cyber fraud. The respondents have filed a status report, wherein it is submitted:

"During the course of enquiry, on 28/09/2021, bank statement of complainant was obtained and same was analyzed, which shows that the deducted amount was transferred into Mobikwik Account. A notice u/s 91 CrPC was sent to Mobikwik on 06/10/2021 through official mail id of Cyber Cell to get the details of account having cheated amount. In its reply, Mobikwik provided the details. After the analysis of given details, it was observed that the cheated amount of Rs. 25,000/- has been further transferred to Ease Buzz. So, a notice u/s 91 CrPC was sent to Ease Buzz on 06/10/2021 to provide the details about cheated amount.
On 07/10/2021, a reply was received from Ease Buzz, in which Ease Buzz provided the details of Merchant beneficiary as account number ***407411212776*** *with IFSC Code: RATN000369 and account holder name as V Plus Technology Private Limited. Further, letter of intent given by V Plus Technology Private Limited to Ease Buzz regarding the deposition of collections, and other relevant documents were also provided by Ease Buzz. So, on 07/10/2021, a notice u/s 91 CrPC was served to RBL Bank to get the transaction history of above noted bank account and to debit freeze the alleged account.*

On 21/10/2021, bank statement of above noted bank account *was received from RBL Bank and same was analyzed. After analysis, it was surfaced that there were huge transactions of money flow (in Crores) on daily basis in this bank account and total credited amount from the period 24/02/2021 to 18/10/2021 is Rs.* ***3,63,29,24,744/****-. Then, on 22/10/2021, a case FIR was registered at PS Kanjhawala with FIR No. 668/21 U/s 420 IPC on above noted complaint of Ms. Payal and the same was uploaded online also on official site of Delhi Police.*

On 22/10/2021, Ease Buzz again replied that the cheated amount of Rs. 25,000/- was credited into Merchant's Virtual bank account No. 10000100000036825 with IFSC Code ***YESB0CMSNOC*** *and this account was found same which was mentioned by V Plus Technology Pvt. Ltd in its letter of intent given to Ease Buzz on 21/06/2021 which is annexed as annexure 'A'. During investigation, on 08/11/2021, notice u/s 91 CrPC was served to Yes bank to provide the transaction history of above noted Virtual bank account but the same couldn't be retrieved since bank cannot provide statement history of virtual bank account as all data regarding the transactions lies with account holder only."*

3. Mr. Mahajan, learned counsel for the petitioner, stated that the order for debit freeze has been passed pursuant to a notice u/s 91 Cr.P.C. which, in law, is impermissible. He submits that the power u/s 91 Cr.P.C. is only to summon documents and an order of debit freeze can only be passed u/s 102 Cr.P.C.

4. Even while passing an order u/s 102 Cr.P.C. the police officer passing an order has to forthwith report to the magistrate having jurisdiction. He submits that even assuming that the order of debit freeze was passed pursuant to the powers u/s 102, the respondent has complied with section 102(3) i.e. to inform the magistrate only on 20.12.2021.

5. Lastly, Mr. Mahajan has argued that a coordinate bench of this Court

in *Muktaben M. Mashru v. State of NCT of Delhi and the Anr.* 2019 SCC OnLine Del 11509 has dealt with the ambit and scope of section 102 and observed as under:

> *"23. Section 102 of the Cr.P.C. defines and deals with the powers of the police officer to seize the property, especially where the allegation of commission of an offence is alleged. Section 102 of the Cr.P.C. provides that the police officer may seize any property which may be alleged or suspected to have been stolen or which may be found under the circumstances which create suspicion of commission of any offence. All movable properties can be seized by a police officer under Section 102 of the Cr.P.C. The basic requirements for the application of the Section 102 of the Cr.P.C. are that the properties sought to be seized or frozen, must be the stolen properties or they should have been found to have some nexus with the alleged offence which is under investigation of the police officer concerned.*
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> *24. In the case of Nemichand Jain v. The Superintendent of Central Excise and Land Customs, Silchar (Cachar), AIR 1963 Manipur 35, it was held that every property seized must be included in the list prepared by the police officer and no property can be detained without including it in the list. The police officer should also report the matter forthwith to a Magistrate.*
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> *25. In the case of Swaran Sabharwal v. Commissioner of Police, (supra), it has been held that where the bank account is seized, the I.O. should inform the concerned Magistrate forthwith regarding the prohibitory order and also give notice to the accused and allow him/her to operate the bank account subject to his/her executing a bond undertaking to produce the amounts in court as and when required or to tell him/her subject to such orders as the court may make regarding the disposal of the same. An order under Section 102 Cr.P.C., without doing so, would be set aside. Relevant portions of the said judgment read as under:*
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> > *"10. We may further point out that no justification seems to exist for "seizing" the amounts in the bank account. All that the*

respondents seem to want to establish from the bank account is that some funds were transferred by the petitioner's husband to her. This can be proved at any time by comparison of the two account and since the entries in the accounts are always available, no purpose seems to be served by restarting the operation of the bank account. Since, as we point out below, it is not the case of the moneys in the bank constitute "case property", i.e., the property involved in the commission of the crimes with which Ram Swarup is charged, the seizure of the monies by the issue of a prohibitory order cannot be upheld.

11. 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 give 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 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."

6. He further submits that even assuming the allegations of Ms. Payal to

be correct, the correct procedure should have been asking the petitioner to execute bond undertaking to produce the amounts in Court as and when required. He submits that the petitioner has always been and is ready and willing to execute that bond.

7. Per contra, Mr. Kundu, learned ASC, appearing for the State submits that the notice was, in fact, issued u/s 102 Cr.P.C. and not u/s 91 and the mention of section 91 was only a procedural irregularity.

8. He further submits that the magistrate was informed on 20.12.2021 after some delay, but the delay is not fatal to the case of the prosecution.

9. As far as the judgment of the *Muktaben* is concerned, Mr. Kundu is unable to show any law taking a contrary view.

10. I have heard arguments and gone through the records. It is an admitted case that u/s 91 Cr.P.C, the order of debit freeze could not have been passed. Mr. Kundu is also correct in stating that it was a procedural lapse on the part of the investigating agency to nomenclature the notice u/s 91 because the prosecuting agency has the power to debit freeze an account even though not u/s 91 Cr.P.C. but u/s 102 Cr.P.C.

11. As far as the compliance of 102(3) is concerned, I am of the view that there has been a delay in compliance of the provision and the magistrate was informed only after more than 2 months of the order of the debit freeze. Section 102(3) reads as under:

> *"Section 102: Power of police officer to seize certain property.*
>
> (1)....
>
> (2)...
>
> (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."*

12. I am unable to subscribe to the contention of Mr. Kundu that the delay in compliance of Section 102(3) is not fatal to the case of the prosecution. In the present case, the delay of more than two months to inform the magistrate is neither explained nor justified by the respondent. In *Manish Khandelwal Vs. State of Maharashtra*, the Bombay High Court held that non-compliance of the procedure laid down u/s 102 Cr.P.C. is not only an irregularity but it is a mandatory provision and if not followed, it will entail the consequence of giving directions to de-freeze the bank account. In Muktaben(*Supra*) the above legal position was observed as follows:

> *"33. Recently, in the case of Manish Khandelwal v. State of Maharashtra, 2019 SCC OnLine Bom 1412, decided on 30.07.2019, 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 any seizure of bank account is case upon the IO as freezing of the bank account prevents the person from operating the bank account pursuant to investigation. If there is any violation in following the procedures under Section 102 Cr. P.C., freezing of account cannot be legally sustained.*
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> *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' requirement goes to the root of the matter. If there is any violation in following the procedures under Section 102 of the Cr.P.C, the freezing of the bank accounts cannot be legally sustained."*

13. I am of the view that in the present case there has been a delay of reporting of freezing of the account to the magistrate. However, in the fact of the present case the course adopted in *Muktaben(supra)* i.e. directing the petitioner to execute bonds before the Trial Court undertaking to produce amount in Court as and when required by the Court is the correct course to follow.

14. Accordingly, it is directed that the order of the IO debit freezing the bank account of the petitioner company is in clear violation of the law and account No. 407411212776 maintained at RBL Bank at Banglore, is directed to be de-freezed, subject to the condition that before de-freezing the account, the petitioner shall execute bonds before the Trial Court undertaking to produce Rs. 25,000/- in the Court as and when required by the Court and also to the extent that if any such order is made by the Court regarding disposal of the same, the same shall be complied by the petitioner.

15. The petition is accordingly allowed.

16. It is further directed that the director and/or any other officer of the petitioner company conversant with the fact of the case shall cooperate with the investigation and shall join the investigation as and when so directed by the IO.

JASMEET SINGH, J

APRIL 13, 2022/dm

Click here to check corrigendum, if any