In the High Court at Calcutta
Constitutional Writ Jurisdiction
Appellate Side

The Hon'ble Justice Sabyasachi Bhattacharyya

WPA No. 13010 of 2023

Ayesha Creations Private Limited and another
Vs.
State Bank of India and others

For the petitioners	:	Mr. Reetobroto Kr. Mitra, Mr. Rupak Ghosh, Mr. Pradip Kr. Sarawagi
For the respondent nos. 1 to 4	:	Mr. Souma Sil
Hearing concluded on	:	03.08.2023
Judgment on	:	04.08.2023

Sabyasachi Bhattacharyya, J:-

1. The ambit of the present challenge is short. The petitioners have a bank account with the State Bank of India (SBI) in Kolkata.

2. The petitioners also run their business in Kolkata.

3. The present challenge has been preferred against a decision of the respondent no. 1-Bank that is the SBI to put a "Hold" lien with regard to the petitioners' Account No. 33722305271.

4. The ground for such imposition by the Bank, as communicated in an e-mail to the petitioners, is apparently an instruction from the Office of the Inspector of Police, Konankunte Police Station, South Division, Bengaluru City.

5. As per the Bank, the lien of Rs.28,08,000/- in the petitioners' account was sought under Section 91 of the Criminal Procedure Code, read with Section 2(A) of Bankers' Books of Evidence Act, 1891 (hereinafter referred to as, "the 1891 Act"), in connection with a complaint under Sections 406, 420, 403, 120(B) Indian Penal Code and under Section 5 and 21(3) of the Banning of Unregulated Deposits Schemes Act, 2019 (for short, "the 2019 Act").

6. A copy of such intimation by the Bank is annexed at page 23 of the writ petition.

7. A copy of the trail mail indicates that the said Police Station is allegedly investigating a fraud case registered in Bengaluru. In course of the investigation, information has been requested to be furnished by the respondent no. 1-Bank, along with certified documents, which include certified copies of Account Opening Form, KYC documents, etc. One of the instructions speak about putting a hold/lien mark on the said account from immediate effect until further notice.

8. A complaint lodged in local vernacular with the said Police Station, which has been translated to English from the Bengaluru end, has also been furnished to the petitioners upon enquiry being made by the petitioners. The said application, seeking police custody at page 197, however, pertains entirely to alleged threats issued to a person for vacating a particular premise and

demanding money from the said occupant, and has no connection with the petitioners' account.

9. Despite service, the respondents chose not to appear when the matter was heard on July 26, 2023.

10. A bare perusal of the documents furnished to the petitioners indicate that there is no order of any competent court of law restraining the petitioner from operating the Account and/or imposing hold/lien and/or freezing the said Account.

11. The Sections of law quoted by the concerned Police Station of Bengaluru in their e-mail, issued to the respondent no. 1-Bank, also do not provide for imposing such a lien.

12. Section 91 of the Code of Criminal Procedure pertains to summons to produce documents or other materials.

13. Insofar as the request on the Bank by the Police Authorities of Bengaluru, to produce certain documents, it would be premature to comment on the same at this juncture.

14. However, nothing in Section 91 empowers any police authority to ask for a lien on any bank account of a third party, which has not even been named as an accused in any criminal complaint.

15. Insofar as Section 3 of the 2019 Act is concerned, the same pertains, as suggested by the name of the Act, to unregulated deposits schemes being banned and provides that no deposit taker shall, directly or indirectly, promote, operate, issue any advertisement soliciting participation or enrolment in or accept deposits in pursuance of an unregulated deposits scheme.

16. Section 21(3) of the said Act provides for the punishment of any deposit taker who accepts deposits in contravention of Section 3 and fraudulently defaults in repayment of such deposits.

17. In the present case, there is no allegation under the 2019 Act against the petitioners at all.

18. Insofar as Section 2(A) of the 1891 Act is concerned, nothing in the said provision empowers the police or any investigating agency or the bank to put a hold or freeze an account of a customer. The entire Act of 1891 revolves around record keeping by the bank.

19. Section 2(A) deals with conditions regarding the printout of such records. Section 4 of the same stipulates that, subject to the provisions of the Act, a certified copy of any entry in a banker's book shall, in all legal proceedings, be received as *prima facie* evidence of the existence of such entry.

20. Section 5 provides that no officer of a bank shall, in any legal proceeding to which the bank is not a party, be compelled to produce any banker's book, the contents of which can be proved under the Act, or to appear as a witness to prove the matters.

21. Section 6 of the 1891 Act provides for inspection of books by order of court or judge, but does not, in any manner, contemplate putting a hold on any account.

22. The provisions of the Indian Penal Code have not been shown to be applicable in any manner to the petitioners or their account-in-question.

23. Thus, even as per the information furnished by the Bank, the provisions cited and information furnished by the Bengaluru Police regarding their investigation do not, in any manner, entitle either the said police authorities or the Bank to put the account of the petitioners in Kolkata on hold and/or to mark lien on the same.

24. Hence, the impugned action of the respondent no. 1-Bank in keeping the petitioners' Account on hold and placing a lien thereon is palpably *de hors* the law and vitiated by principles of natural justice.

25. Hence, the same cannot survive the scrutiny of law.

26. Accordingly, WPA No. 13010 of 2023 is allowed, thereby setting aside the lien imposed by the respondent no. 1-Bank on the account of the petitioners and directing the Bank to remove the hold thereon immediately. The petitioners are permitted to operate the said account, being Account No. 33722205271 freely, otherwise in accordance with law.

27. There will be no order as to costs.

28. Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)