

(2024) 12 DEL CK 0061

Delhi High Court

Case No: Writ Petition (C) No. 15066 Of 2024 & Civil Miscellaneous Application No. 63159 Of 2024

Pawan Kumar Rai

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision: Dec. 17, 2024

Acts Referred:

- Constitution of India, 1950 - Article 21
- Code of Criminal Procedure, 1973 - Section 102
- Bharatiya Nagarik Suraksha Sanhita, 2023 - Section 106

Hon'ble Judges: Manoj Jain, J

Bench: Single Bench

Advocate: Anil Goel, Aditya Goel, Amit Gupta, Vidur Dwivedi, OP Gaggar, Sachindra Karn

Final Decision: Disposed Of

Judgement

Manoj Jain, J

1. Issue raised in the present petition is, though, a short one but, nonetheless, a substantial one.
2. Petitioner is a small-time vendor, who earns his livelihood by selling chhole-bhature on a rehri in Ashok Vihar, Delhi.
3. He is maintaining a saving bank account no. 058710100005598 with Union Bank of India having its Branch at C-9/116, Sector-8, Rohini, Delhi-85.
4. Petitioner, when tried to operate his aforesaid bank account on 01.10.2024, to his utter surprise, could not do the same.

5. He immediately rushed to his bank and after repeated follow-ups, he was apprised that some unknown person had remitted a sum of Rs. 105/- in his bank account and that such amount was connected with some cyber-fraud and, therefore, his entire bank account had been freezed in terms of intimation received from the concerned Investigating Agency.

6. According to the petitioner, he has neither any knowledge nor has any complicity with commission of any cyber-fraud. He also states that without giving any prior notice to him, his bank account could not have been attached. It is also submitted that without hearing him and without following the basic principles of natural justice and audi alteram partem, the bank had no business to seize his entire savings account.

7. According to him, when the aforesaid bank account was frozen, there was a balance of Rs. 1,22,556/- lacs and laments that he is in no position to utilize any amount lying in his bank account, even for meeting his day-to-day expenses.

8. Petitioner contends that he had no reason to take the aforesaid credit suspiciously as he rather apprehended that some customer might have purchased chhole-bhature from him which he sells @ Rs. 35/- per plate and towards the sale consideration of three plates, there might have been a deposit of Rs. 105/- in his bank account, by electronic mode.

9. During course of the arguments, Mr. Anil Goel, learned counsel for petitioner also submitted that it is not clear whether the concerned Investigating Agency ever informed about the aforesaid seizure/freezing of the account to the concerned jurisdictional Magistrate/Court or not, which is mandatory in terms of Section 102 of Cr.P.C. (now, Section 106 of Bharatiya Nagarik Suraksha Sanhita, 2023).

10. It is also claimed that even if the version of investigating agency is assumed to be true, since only a sum of Rs. 105/- had landed in the bank account of the petitioner, the bank could have, at best, put a lien with respect to the aforesaid extent of Rs. 105/-, instead of freezing his entire account, thereby bringing his life to a virtual standstill.

11. Learned counsel for the respondent bank submits that they had freezed the account, based on communication received from Anantapur IV Town Police Station, Ananthapuram, Andhra Pradesh whereby they were informed that the police had lodged FIR pertaining to UPI related fraud on the basis of complaint lodged with them by one Mr. Lokesh on 30.09.2024.

12. It is admitted by learned counsel for respondent-bank that thereafter, they have not received any communication from the concerned police station.

13. Undoubtedly, the Investigating Agency is fully empowered to conduct investigation. It can also, under appropriate circumstances, send request to the concerned bank,

directing freezing of account, pending investigation.

14. This is generally done so that cheated money remains secured and intact.

15. The communication which has been received from the concerned Investigating Agency by the respondent bank itself suggests that the cyber fraud was of Rs.71,000/- and out of the above said amount, it appears that a sum of Rs.105/-only landed in the account of the petitioner.

16. There is nothing, at least as of now, to indicate or to suggest that the petitioner is part of any conspiracy or is himself a cyber criminal.

17. The petitioner, quite possibly, may not even be connected with the above said offence at all and might be innocent and unintended beneficiary only.

18. When asked, it was apprised by learned counsel for the petitioner that till date, the petitioner has not even received any communication from the concerned Investigating Agency to join any investigation. It is supplemented that as and when any such communication is received, the petitioner, as a law-abiding citizen, would come forward and participate with the investigation.

19. Learned counsel for the respondent – Union of India submits that he has not received any further instructions from the concerned police station, despite his best efforts.

20. On the date of such attachment, there was an amount of Rs.1,22,556/-in the bank account of petitioner.

21. The situation is very perplexing for him because if he keeps on doing his business of selling food items and if any customer makes any payment through electronic mode, such amount would eventually go to his aforesaid savings bank account, being linked with the concerned UPI, but he would be, obviously, in no position to make use of such amount because of the fact that the saving bank account has been frozen, as a whole, by the respondent No. 2/bank.

22. Learned counsel for the respondent No.2/bank submits that they would abide by any direction or condition to be imposed in this regard.

23. This Court can understand the difficulty which the petitioner must be facing because of the fact that his bank account has been frozen.

24. The petitioner is a small-scale vendor, engaged in sale of food items and dependent on his daily earnings to sustain his family.

25. Indubitably, passing of an order of freezing the entire bank account of the petitioner has a serious and adverse implication and invades and encroaches upon his

invaluable right to earn and live with dignity. The impugned action, in essence, amounts to a violation of fundamental right of the petitioner, as it directly undermines his right to livelihood, which is integral part of the Right to Life guaranteed under Article 21 of the Constitution.

26. Furthermore, when the Investigating Agency has identified a specific sum credited to the bank account of the petitioner, it is difficult to comprehend as to why the entire bank account of petitioner has been freezed.

27. Thus, the continued freezing of the entire bank account of the petitioner, without even hinting that the petitioner was either mastermind or accomplice in the cybercrime or knowingly received the funds as part of any illegal activity will not be justifiable and sustainable, at the moment.

28. In view of the above, it would be in the fitness of the things if the present petition is disposed of by directing respondent No.2/bank to de-freeze the account by marking a lien restricted to the disputed amount credited in his account, which is stated to be Rs.105/-.

29. This is being done to ensure that a small-scale vendor like petitioner herein is in a position to continue to do his business and there is no violation of his valuable right of livelihood.

30. Since the lien of Rs.105/- has been directed to be marked in his account, the petitioner, as a necessary corollary, would be permitted to operate his bank account in whatever manner he wants.

31. Respondent bank shall do the needful and send intimation in this regard to the concerned investigating agency alongwith copy of this order.

32. The petition stands disposed of in aforesaid terms.

33. Order dasti under the signatures of the Court Master.