

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 17<sup>TH</sup> DAY OF OCTOBER, 2022

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.2865 OF 2022 (GM-RES)



R

**BETWEEN:**

- 1 . SRI RAHUL CHARI  
S/O VARDHA KRISHNAMA CHARI  
AGED 44 YEARS  
WHOLE-TIME DIRECTOR OF  
PHONEPE PRIVATE LIMITED  
HAVING ITS CORPORATE OFFICE AT  
OFFICE-2, FLOOR 4,5,6,7  
WING A BLOCK A  
SALARPURAI SOFTZONE  
SERVICE ROAD, GREEN GLEN LAYOUT  
BELLANDUR  
BENGALURU – 560 013.
- 2 . PHONEPE PRIVATE LIMITED  
A COMPANY INCORPORATED UNDER  
THE PROVISIONS OF THE COMPANIES  
ACT 1956, HAVING ITS REGISTERED  
ADDRESS AT UNIT NO.001  
GROUND FLOOR, BOSTON HOUSE  
SUREN ROAD  
OFF. ANDHERI- KURLA ROAD  
ANDHERI (EAST) MUMBAI – 400 093  
  
AND ITS CORPORATE OFFICE AT  
OFFICE-2, FLOOR 4,5,6,7  
WING A, BLOCK A

SALARPURIA SOFTZONE  
SERVICE ROAD  
GREEN GLEN LAYOUT  
BELLANDUR, BENGALURU – 560 103  
REPRESENTED BY ITS  
AUTHORIZED SIGNATROY  
MR. VIJAY ARORA

... PETITIONERS

(BY SRI NITIN RAMESH, ADVOCATE)

**AND:**

- 1 . STATE OF KARNATAKA  
BY NORTH CEN POLICE  
DEPUTY COMMISSIONER  
OFFICE BUILDING  
2<sup>ND</sup> FLOOR, NORTH DIVISION  
BENGALURU – 560 021.
- 2 . MS.MADHURI R.K.,  
D/O RAGHAVEDNRA K.,  
AGED ABOUT 25 YEARS  
RESIDING AT NO.865/19  
3<sup>RD</sup> CROSS, 3<sup>RD</sup> MAIN,  
TRIVENI ROAD, K.N.ROAD  
K.N. EXTENSION  
YESHWANTHPURA  
BENGALURU – 560 022.
- 3 . M/S YES BANK LIMITED  
A COMPANY INCORPORATED UNDER  
COMPANIES ACT  
OFFICE AT-NORTH BLOCK  
DB DIVISON, YES BANK HOUSE  
PRABHAT NAGAR  
OFF WESTERN EXPRESS HIGHWAY

SANTACRUZ EAST  
MUMBAI – 400 055  
REPRESENTED BY ITS  
AUTHORISED SIGNATORY.

- 4 . M/S HDFC BANK LIMITED  
A COMPANY INCORPORATED UNDER  
COMPANIES ACT  
OFFICE AT 8/24, SALCO CENTRE  
RICHMOND ROAD  
BENGALURU – 560 025  
REPRESENTED BY ITS  
AUTHORISED SIGNATORY.

... RESPONDENTS

(BY SRI K.S.ABHIJITH, HCGP FOR R1;  
SRI VIKRAM UNNI RAJAGOPAL, ADVOCATE FOR R3;  
R2 AND R4 ARE SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE IMPUGNED ORDER IN CR.NO. 256/2021, PASSED BY THE I ADDITIONAL CHIEF METROPOLITAN MAGISTRATE, DATED DECEMBER 23, 2021 AT BENGALURU (ANNX-A) THEREBY REVERSING THE AMOUNT TRANSFERRED TO THE R-2s ACCOUNT BACK TO THE PERSONAL ACCOUNT HELD BY THE P-1 AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 22.09.2022, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

**ORDER**

The petitioners are before this Court calling in question order dated 23-12-2021 passed by the I Additional Chief Metropolitan Magistrate, Bengaluru in Crime No.256 of 2021 whereby the amount from the personal account of the 1<sup>st</sup> petitioner is transferred to the account of the 2<sup>nd</sup> respondent.

2. Brief facts that lead the petitioners to this Court, as borne out from the pleadings, are as follows:-

The 1<sup>st</sup> petitioner is the whole time Director of "PhonePe Private Limited"/2<sup>nd</sup> petitioner. The 2<sup>nd</sup> petitioner is a pioneer in digital payments and financial services and is also engaged in the business of providing digital payment platform services enabling end users and customers to make payment and merchant/business entities to accept payment by card which is popularly known as "Unified Payment Interface" ('UPI'). The 2<sup>nd</sup> petitioner is the Company and as observed hereinabove claimed to be a leading player in the digital payment ecosystem.

3. The 2<sup>nd</sup> petitioner maintains a bank account with respondent No.3/Yes Bank Limited ('Nodal Account Bank' for short), a Banking Company established under the Companies Act, 1956. The Nodal Account Bank is expected to carry out business for the nodal account holder i.e., PhonePe which is for a special purpose created for receiving monies from the participating Banks and remitting to specific merchants, in terms of the Reserve Bank of India mandate. The 2<sup>nd</sup> petitioner is thus an intermediary receiving on line payments and those payments getting into nodal account and payments to the seller moving out from the nodal account instantaneously.

4. The 2<sup>nd</sup> respondent one Ms. Madhuri R.K. attempts to order some items online through her bank account on 02.04.2021 and in order to enquire about the order, contacts customer care of e-commerce app on the number obtained on Google website. On doing so, an unknown person appears to have fraudulently gathered the bank account details of the 2<sup>nd</sup> respondent and falling prey to such fraud, the 2<sup>nd</sup> respondent transfers a sum of Rs.69,143/- to the said unknown person not by one but through

fifteen transactions. All the transactions were collect requests which were approved by the 2<sup>nd</sup> respondent. A complaint then comes to be registered on 03-04-2021 and a Cyber Crime Incident Report (CCIR) comes to be filed by the 2<sup>nd</sup> respondent reporting such online financial fraud/UPI fraud with suspect name as Amith Mishra and suspect's phone number was also provided by the 2<sup>nd</sup> respondent.

5. Upon receipt of the complaint from the 2<sup>nd</sup> respondent, the 1<sup>st</sup> respondent North CEN Police sent an e-mail to the cyber cell of the Nodal Account Bank i.e., Yes Bank to freeze the account belonging to the 2<sup>nd</sup> petitioner i.e., PhonePe and sought certain information which included the statement of account; closing balance statement and Linked ID card/KYC details. Upon receipt of the request from the Police, the Yes Bank followed the instructions and provided the information that was sought for. At this point in time, while furnishing information, the linked bank account leads to the account number of petitioner No.1. Later, the 2<sup>nd</sup> respondent/complainant files an application on 27-05-2021 with the 1<sup>st</sup> respondent informing them about the transaction that took place

on 02-04-2021 and on receipt of the said information an FIR comes to be registered for offences punishable under Sections 66C and 66D of the Information Technology Act, 2000 against unknown person.

6. Respondent No.2 who had her account in ICICI Bank files an application before the concerned Court invoking Sections 451 and 457 of the CrPC praying to defreeze the personal account of the 1<sup>st</sup> petitioner and transfer the amount to the account of the 2<sup>nd</sup> respondent. The Investigating Officer submits his no objection and by an order dated 23-12-2021 the learned magistrate disposed of the application by issuing a direction to defreeze the account of the 1<sup>st</sup> petitioner and transfer the amount of Rs.69,143/- from his personal account to the account of the 2<sup>nd</sup> respondent. After such transfer, the 1<sup>st</sup> petitioner comes to know that the amounts have been debited from his personal account and sought details from the 4<sup>th</sup> respondent to whom the amount was transferred. It is then the 1<sup>st</sup> petitioner comes to know that the amount has been transferred to the account of the 2<sup>nd</sup> respondent upon an order passed by the

learned Magistrate. No alternatives being available, the petitioners have knocked the doors of this Court in the subject petition.

7. Heard Sri Nitin Ramesh, learned counsel appearing for the petitioners, Sri K.S.Abhijith, learned High Court Government Pleader appearing for respondent No.1 and Sri Vikram Unni Rajagopal, learned counsel appearing for respondent No.3.

8. The learned counsel appearing for the petitioners would contend that the complainant had indicated who the suspect is. If at all the amount had to be recovered, it had to be from the hands of the suspect. The 1<sup>st</sup> petitioner is not an aggregator like other platforms. The 2<sup>nd</sup> petitioner is only a mediator through whom payments move but no money is retained with the Company and above all, the personal account of the 1<sup>st</sup> petitioner could not have been frozen and the amount of Rs.69,143/- transferred to the complainant. He would submit that the entire process smacks of arbitrariness. Deliberate misuse of power is conferred upon the Police to freeze the account and erroneous order is passed by the learned Magistrate without even verifying any of the details. He



would seek quashment of the order and refund of the entire amount to the hands of the 1<sup>st</sup> petitioner with costs.

9. On the other hand, the learned High Court Government Pleader would seek to refute the submissions to contend that admittedly there had been fraud played in the account. Therefore, an application is filed by the complainant when her money is lost. Since money is routed through PhonePe, it is the PhonePe which becomes responsible for generation of the transaction as in several cases such intermediaries have indulged in such frauds as a result of which many people have lost their money. Therefore, the Court should not interfere with the order that is passed.

10. The representatives of the Bank would only submit that they are formal parties and whatever the Police have directed, it was faithfully implemented by the Bank.

11. I have given my anxious consideration to the submissions made by the respective learned counsel and perused the material on record.

12. The afore-narrated facts are not in dispute and therefore not reiterated. The 2<sup>nd</sup> petitioner is a Unified Payment Interface platform. All such UPI platforms are not owned by them. They are owned by the National Payments Corporation of India ('NPCI' for short) and legally the petitioners are considered as third party application provider by the NPCI or a system provider. In effect, regardless of different nomenclatures under different enactments, the UPI service providing entities like the 2<sup>nd</sup> petitioner/PhonePe have the status of intermediaries as obtaining under the Information Technology Act, 2000 ('IT Act' for short). Section 79 of the IT Act protects the intermediaries to the extent as obtaining under the provision. Section 79 of the IT Act reads as follows:

**"79. Exemption from liability of intermediary in certain cases.**—(1) Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

(2) The provisions of sub-section (1) shall apply if—

- (a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or
- (b) the intermediary does not—

- (i) *initiate the transmission,*
  - (ii) *select the receiver of the transmission, and*
  - (iii) *select or modify the information contained in the transmission;*
- (c) *the intermediary observes due diligence while discharging his duties under this Act and also observes such other guidelines as the Central Government may prescribe in this behalf.*
- (3) *The provisions of sub-section (1) shall not apply if-*
- (a) *the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;*
  - (b) *upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.*

*Explanation.-For the purposes of this section, the expression "third party information" means any information dealt with by an intermediary in his capacity as an intermediary".*

Section 79 (*supra*) directs that notwithstanding anything contained in any law, an intermediary shall not be liable for any third party information, data or communication link made available or hosted by him and application of the provision is in terms of what is

observed in the provision itself. The intermediary would not become liable if the intermediary has not initiated the transmission, selected the receiver of the transmission or selected or modified any information contained in the transmission. The expression third party information under Section 79 of the IT Act is explained to be information dealt with by the intermediary in the capacity as an intermediary.

13. It is not in dispute that the 2<sup>nd</sup> petitioner is an intermediary and the 1<sup>st</sup> petitioner is the whole time Director of the 2<sup>nd</sup> petitioner. A transaction is made by the 2<sup>nd</sup> respondent, online, for an amount of Rs.69,143/- with one suspect Amith Mishra. The payment is routed through "PhonePe". It appears that the said Amith Mishra turns out to be a fraud and the amount so transacted becomes a fraudulent transaction. An e-mail is sent by the 2<sup>nd</sup> respondent to the cyber cell reporting the incident of such UPI fraud. Pursuant to the e-mail so sent by the 2<sup>nd</sup> respondent, the nodal account of PhonePe was directed to be freezed. Later the

complainant registers a complaint before the jurisdictional Police informing them about the transaction that took place on 02.04.2021, pursuant to which, a crime comes to be registered against unknown person in Crime No.256 of 2021. While registering the crime, the CCIR is also placed on record. In the CCIR the suspect details are also forthcoming. The name of the suspect is Amith Mishra and the number of the suspect is also indicated.

14. After registration of crime and freezing of nodal account, an application is filed by the 2<sup>nd</sup> respondent/complainant before the concerned Court under Sections 451 and 457 of the CrPC claiming that the amount she has lost should be refunded to her by defreezing the nodal account. The learned Magistrate directs defreezement of the account and transfer of money to the account of the complainant. It is only then that the 1<sup>st</sup> petitioner comes to know that his account was frozen, later the account was de-frozen, an amount of Rs.69,143/- is debited from his personal account and transferred to the account of 2<sup>nd</sup> respondent held at ICICI Bank. It is not that the 1<sup>st</sup> petitioner was intimated about the debit from his

account by any authority. When he noticed the debit transaction in his account he got to know link in the chain of events and comes to know that it is pursuant to the order passed by the learned Magistrate.

15. One glaring factor is that both the petitioners are not the accused; though for freezing of account one need not be an accused. It is only money trail that leads to suspicion as also freezing of account. Therefore nobody need be heard as Section 102 of the Cr.P.C. empowers Investigating Agency to direct freezing of account within its sweep. The case at hand is not of that kind.

16. It not a case even where the suspect is not known. The name of the suspect is intimated in CCIR and also phone number of the suspect is indicated. The investigation ought to have been made for unearthing the fraud *qua* the alleged fraudster. The complainant files an application before the concerned Court seeking recovery of money and from the personal account of 1<sup>st</sup> petitioner the amount is directed to be transferred by the order of the learned Magistrate. The order passed on the application reads as follows:

"ORDER ON THE APPLICATION FILED BY PETITIONER UNDER  
SECTIONS 451 AND 457 OF Cr.P.C."

The petitioner by name Madhuri R.K. has filed recent application to direct the I.O. to defreeze the bank account No.05231140029395, HDFC Bank and transfer the freezed amount to the account of the petitioner.

According to the petitioner, during the course of investigation, the IO has freezed the above said account. The petitioner is the complainant and the freezed amount belonging to the petitioner and there is no claim by others. The seized amount is very much necessary and required by the petitioner for her necessities. The petitioner is ready and willing to abide by any conditions that may be imposed by this Court and sought to allow the present application.

On the said application, the report from the I.O. is called for and the I.O. has submitted the report, stating that he has no objection to release the freezed amount in favour of the petitioner on conditions.

Learned Senior APP has filed objections  
Heard arguments of both sides.

**After hearing the arguments and perusal of the records reveals that the amount seized by the I.O. by freezing the account belongs to the accused and there is no rival claim by others. Therefore, the petitioner has made out grounds to allow the present application. Therefore, in view of the above, it is just and proper to allow the application filed by the petitioner. Accordingly, I proceed to pass the following:**

**ORDER**

**The application filed by the petitioner by name Madhuri R.K. under Section 451 and 457 of Cr.P.C. is hereby allowed.**

**Accordingly, the offence is hereby directed to issue intimation to the HDFC Bank to defreeze the amount of Rs.69,143/- from the account**

**No.05231140029395 and to transfer the said amount to the account of the petitioner namely ICICI Bank Account No.004701626126.**

*Accordingly, the petitioner is hereby directed to execute indemnity bond for Rs.69,143/- with a condition to indemnifying the said amount against third party claim and shall deposit the said amount as and when directed by this Court.*

*Office to issue release order after execution of indemnity bond. Put up after final report."*

*(Emphasis added)*

The afore-quoted is the order passed by the learned Magistrate by which the amount that is held in the personal account of the 1<sup>st</sup> petitioner is debited and transferred. The reason rendered would indicate that after hearing arguments and perusal of the records, it would reveal that the amount seized by the Investigating Officer is by freezing the account which belonged to the accused. The petitioners are not the accused and there is no rival claim by others. The petitioners are not even notified for any rival claim. It is only on these two grounds it is held that the petitioner therein has made out grounds to allow the application. Accordingly, the learned Magistrate directs the amount that is in the account and that has already been frozen should be defrozen and Rs.69,143/- should be



immediately transferred to the account of the 2<sup>nd</sup> respondent on execution of indemnity bond.

17. In the entire process the 1<sup>st</sup> petitioner from whose account the amount is transferred is not even heard in the matter. Though the Court notices that the amount belongs to the victim/complainant, which accused is even known and there are no rival claimants, if notice is not issued to the account holder from whom debit is sought, there cannot be a rival claim. This rudimentary fact is given a go-bye by the learned Magistrate. The application under Sections 451 and 457 of the Cr.P.C. is dealt with by the learned Magistrate in a casual and cavalier manner. The amount however small it is, is the property of an individual in whose account, it is held. Such amount which is a right to property of the account holder cannot be taken away without even bringing to his knowledge. There has been a debit from the account of the 1<sup>st</sup> petitioner for the purpose of satisfying the complainant. While the right of a complainant is to be looked into, since the complainant is a victim of a fraud, but the investigation cannot be cut short without unearthing the fraud and closing the issue, by transfer of

amount from a third party, in the case at hand, from the personal account of the 1<sup>st</sup> petitioner. All the factors will have to be borne in mind by the Magistrates while dealing with an application under Sections 451 and 457 Cr.P.C. Therefore, the impugned order, on the face of it, is arbitrary and cannot stand the scrutiny of law.

18. This Court is coming across scores and scores of cases where the account is frozen, defrozen and the amount that the complainant is due from a suspect or an accused is transferred to the account of the complainant from the account of third parties which action is contrary to all canons of law. It has therefore, become necessary for this Court to direct the learned Magistrates that while dealing with applications under Sections 451 and 457 of the Cr.P.C., particularly in cases where it involves intermediaries like the petitioners, to hear those intermediaries and then direct transfer of the amount, and not allow the application filed under Sections 451 and 457 of the Cr.P.C in a casual manner.

19. The learned Magistrates are required to note that they are dealing with the properties of third parties. Decision on an

application under Sections 451 and 457 Cr.P.C. cannot become a frolicsome act on the part of the learned Magistrates merely because it is subject to indemnity. It is not the question of security but it is the question of right to property of an individual, from whose account the money is transferred without any information to him. Therefore, the learned Magistrates while considering the applications of the kind shall notice the following:

- (a) Whether the accused has been identified by the Investigating Officer?**
- (b) Whether the account of the accused is identified by the Investigating Officer?**
- (c) If the rival claimant is not an accused, whether intimation is given to the account holder, from whose account the money is sought to be transferred to the account of the complainant and such order of transfer of amount from the particular account shall only be after hearing the person, from whose account the money is sought to be transferred to the account of the complainant, before its transfer.**

20. Freezing of account in terms of Section 102 of the Cr.P.C. is a power that is available, but if the amount is sought to be transferred to any other account, the account holder whose account is frozen or de-frozen for the purpose of transfer of the amount

shall be heard. The learned Magistrates considering the applications under Sections 451 and 457 of the Cr.P.C. shall bear in mind the aforesaid directions, while passing orders under the said provisions, only in the cases of the kind aforementioned. In the light of the preceding analysis, the purpose of Section 79 of the IT Act is not gone into. The contentions remain open.

21. For the aforesaid reasons, I pass the following:

**ORDER**

- (i) The Writ Petition is allowed and the order dated 23.12.2021 passed by the I Additional Chief Metropolitan Magistrate, Bengaluru in Cr.No.256 of 2021 is quashed.
- (ii) The amount debited from the account of the 1<sup>st</sup> petitioner shall be refunded to his account forthwith.
- (iii) The 1<sup>st</sup> respondent is directed to pursue the investigation pursuant to the complaint of the 2<sup>nd</sup> respondent registered in Crime No.256 of 2021 dated 27-05-2021.

- (iv) Registry is directed to circulate the order to all the Magistrates.

**Sd/-  
JUDGE**

bkp  
CT:MJ