

Nikita

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.987 OF 2023

Cashfree Payments India Private Limited ... Petitioner

V/s.

The State of Maharashtra ... Respondent

Mr. Kushal Mor a/w Kunal Bilaney for the Petitioner.

Mr. A.R. Patil, APP for the State.

Mr. S.A. Apet, PI, Tulinj Police Station is present.

CORAM : AMIT BORKAR, J.

DATED : APRIL 18, 2023

P.C.:

1. The petition is directed against the order of Special Judge Vasai, in Criminal Miscellaneous Application No.143 of 2022, refusing prayer of petitioner to defreeze bank account of the petitioner. The reason for rejection of the prayer is that the investigating officer needs to be given an opportunity to investigate into role of petitioner as the petitioner has received huge amount.

2. The petitioner is a company registered under the Companies Act, 2013. A payment system of the name "Cashfree" which acts as intermediary for businesses in accepting online payments made by the customers on their website/mobile application using debit/credit cards, united payments interface mechanism and

various other modes of payment mechanism. It provides paid out services over the internet to disburse. Money/fund transfer of merchants to the beneficiaries upon the merchant's instructions.

3. First Information Report No.1163 of 2021 was lodged with the Tulinj Police Station against Double Q Management and Another person for offenses punishable under Sections 420 read with section 34 of Indian Penal Code, 1860 and Section 66-C and 66-D of the Information Technology Act, 2001. The allegation against the accused is that the informant was made aware of Double Q scheme where a person can deposit money and receive higher returns. He can earn more in the form of bonus if he can procure more members in the said scheme. Accordingly, informant opened a link on the cell phone and deposited Rs.500/- through google pay application. The amount was transferred from her bank. Accordingly, informant's husband and daughter invested money with Double Q's Management application. Accordingly, more members invested amount with Double Q application's owner.

4. Since the Double Q application was suddenly shut down, the investors realized impossibility of repayment. Informant, therefore lodged report against the accused persons, for offence punishable under Section 420 read with 34 of Indian Penal Code. Additionally prosecution was lodged against them for offenses under Section 66-C and 66-D of the Information Technology Act, 2001 and Section 3 and 4 of the Maharashtra Protection of Interest of Depositors (In Financial Establishments) Act, 1999. During the Course of investigation it was found that the funds invested by the

investors were transferred through Nodal account of “Cashfree” maintained with Axis Bank to Well Fin Securities Limited. The gist of offence is that Well Fin Securities had cheated the investors.

5. During the course of investigation, the investigating officer had issued a communication on 18th January 2022 purportedly under Section 91 of Code of Criminal Procedure, 1973 to freeze accounts of petitioner. The petitioner therefore filed an application with the Sessions Judge for defreezing the account which has been dismissed by the impugned order.

6. Aggrieved thereby, the petitioner has filed present petition. The learned advocate for the petitioner submitted that the role of petitioner is only to the extent of intermediary. The amount paid by the investors were transferred through the petitioner's service as intermediary. The petitioner has made statement on oath that as and when investors deposited amount through their mobile application or by using electronic transfer of payment, such amount was transferred to the account of accused on the next day itself. It is submitted that as per the Reserve Bank of India Regulations, the petitioner is duty bound to transfer such amount within cycle of T+3. However, the petitioner has transferred the amount within settlement cycle of T+1.

7. Per contra, learned APP submitted that unless the petitioner produces conclusive material to show that such amount had in fact been transferred within 24 hours, the sessions judge was justified in rejection the application for defreezing of account.

8. I have heard learned advocate for the petitioner and the

respondent. The Apex Court in the case of **State of Maharashtra Vs. Tapas D. Neogy** reported in (1999) 7 SCC 685 has laid down parameters for exercise of power under Section 102 of Code of Criminal Procedure which empowers the investigating officer to freeze bank account. The Apex Court in paragraph 6 as held that the Police Officer has power to seize any property where suspicion is created for commission of offence, provided such property must have been suspicion of commission of any offence. The nexus between the offence and the property to be seized needs to be shown.

9. The Apex Court in the case of **M.T. Enrica Lexie And Another v. Doramma And Others**, reported in (2012) 6 SCC 760 in paragraph 14 has held as under:

“14. The police officer in course of investigation can seize any property under Section 102 if such property is alleged to be stolen or is suspected to be stolen or is the object of the crime under investigation or has direct link with the commission of offence for which the police officer is investigating into. A property not suspected of commission of the offence which is being investigated into by the police officer cannot be seized. Under Section 102 of the Code, the police officer can seize such property which is covered by Section 102(1) and no other.”

10. In the facts of the present case, the prosecution is unable to show that the amount lying in the account of the petitioner is either stolen or suspected to be stolen or is the object of crime needs investigation or as the direct link with commission of offence for which the Police Officer is investigating in absence of satisfaction of essential ingredients of Section 102. Investigating Officer could not be issued an order purportedly under Section 91

of Code of Criminal Procedure, 1973.

11. For the reasons stated above, impugned order cannot be sustained.

12. The writ petition is, therefore, allowed in terms of prayer clause (a).

(AMIT BORKAR, J.)