

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

W.P. No.26276 OF 2023

Between:

K.Sathvik Reddy

... Petitioner

And

Union of India & others

... Respondents

JUDGMENT PRONOUNCED ON: 21.12.2023

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be : Yes
marked to Law Reporters/Journals?
3. Whether Their Lordships wish to : Yes
see the fair copy of the Judgment?

SUREPALLI NANDA, J

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K.Sathvik Reddy

... Petitioner**And**

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... Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner : Mr.N.Paven Krishna Reddy

^ Counsel for Respondent : Mr.Gadi Praveen Kumar,
Ld.Deputy Solicitor
General of India for R1,
R2 & R4.^ Counsel for Respondent No.5 : Mr.T.V.L.Narasimha Rao,
for R3.

? Cases Referred:

(1) (2004) 6 SCC 254

(2) (2022) SCC Online Madras 5124

HON'BLE MRS JUSTICE SUREPALLI NANDA**W.P. No. 26276 of 2023****ORDER:**

Heard Mr.N.Pavan Krishna Reddy, learned counsel for the Petitioner, Mr.Gadi Praveen Kumar, learned Deputy Solicitor General of India for respondent Nos.1, 2 and 4 and Mr.T.V.L.Narasimha Rao, learned Standing Counsel for 3rd Respondent.

2. Petitioner approached the Court seeking prayer as under :

“To issue an appropriate writ or order or direction more particularly a Writ in the nature of Writ of Mandamus by declaring the notice dated 20.07.2023 issued by Respondent No.3 Bank and alleged Notice issued under Section 91 Cr.P.C in FIR No.17/23 Respondent No.4 as arbitrary and illegal and consequentially in freezing the savings bank account bearing Account No. 290010100107723 in IFSC: UTIB0000290 with information/intimation to the Petitioner as illegal arbitrary, highhanded apart from being violative of Articles 14, 19 and 300-A of Constitution of India.”

3. Case of the Petitioner as per the averments made in the affidavit filed in support of the Writ Petition is as under :-

The Petitioner is a software engineer at Big Berry Media Pvt. Ltd., and the Petitioner had recently started a business of Digital Marketing. The Petitioner is using the Petitioner's Savings Bank Account with Respondent No.2 with Account No.290010100100723 as well Petitioner's Business Account. The Petitioner is a user of BINANCE App on Petitioner's mobile phone with the User ID "The Godman" and had some crypto currency (USDT) in Petitioner's wallet/account of the said application. It is submitted that the BINANCE Exchange Application provides facilities to users to sell and purchase crypto currency. The process of sales and purchases of crypto currency is completely online with KYC verification of all the registered users by transferring amounts from one bank to another. The Petitioner herein had placed a request to sell his crypto currency (USDT) of Rs.1,37,312,71 price Rs.86.98 per unit and quantity 1578.67 USDT and Rs.1,49,999.61 price 86.98 per unit and quantity and 1724.53 USDT on BINANCE Exchange Application through his user profile. It is further the case of the Petitioner that upon placing Petitioner's crypto currency for sale any registered user on BINANCE can accept the request and purchase the crypto currency. One person by name Arjun Karam Singh Bahadur approached the Petitioner to purchase crypto currency and

Petitioner agreed to sell crypto currency to said Arjun Karam Singh Bahadur. On 18.02.2023 the Petitioner first sold crypto currency of Rs.1,37,312.71, price Rs.86.98 and quantity 1578.67 USDT and then again sold crypto currency of Rs.1,49,999.61 price Rs.86.98 and quantity 174.53 USDT to the said Arjun Karam Singh Bahadur. It is further the case of the Petitioner that as per the procedure of BINANCE on the same date the user said Arjun paid an amount of Rs.1,37,313/- and Rs.1,50,000/- to Petitioner's Bank i.e., Respondent No.3 to account No.290010100107723 and sent the screen shot of payment proof on the BINANCE chart itself. The Petitioner herein had received the above mentioned amount from the buyer in his bank account as per the legal statutory procedure decided by RBI, India and there is no statutory violation. To the shock of the Petitioner on 06.07.2023 when the Petitioner tried to make an online transaction from his Bank account with Respondent No.3, the transaction did not take place as such and when the Petitioner called the customer care of Respondent No.3 bank, the customer care officer informed that Petitioner's account was marked as Debit Freeze and the Petitioner needed to visit Respondent No.3 bank/branch for further details. Upon Petitioner's repeated requests to provide information related to Petitioner's bank

account, the Operation Manager of the 3rd Respondent Bank informed the Petitioner that they received a statutory order notice U/s.94 Criminal Procedure Code from Respondent No.4 to freeze Petitioner's bank account and several other bank accounts, in view of an FIR being registered against Mr. Arjun Karam Singh by Respondent No.4 and on 20.07.2023 Petitioner received the copy of the letter dated 20.07.2023 from Respondent No.3 branch stating the freezing of the bank account of the Petitioner bearing No.290010100107723. It is further the case of the Petitioner that when the Petitioner enquired with the 4th Respondent the 4th Respondent informed the Petitioner that an FIR was registered on 17.02.2023 at Cyber Police Station/Outer North Delhi. The specific case of the Petitioner is that the Petitioner as on date had not been served with a notice U/s.41-A nor is an accused in the FIR or any averment against the Petitioner has been made. The Respondent No.4 had been calling the Petitioner and harassing the Petitioner to appear before the 4th Respondent at New Delhi. Challenging the action of the Respondent No.3 in freezing the Petitioner's Savings Bank Account No.290010100107723 upon the instructions of the Respondent No.4 Police authorities to freeze the Petitioner's account and challenging the alleged notice issued U/s.91 Cr.P.C.,

in FIR No.17/2023, the Respondent No.4 the Petitioner filed the present writ petition.

4. PERUSED THE RECORD :

A. The impugned notice dated 20.07.2023 reads as under :

“To

Kambham Sathvik Reddy
9-5-120/3, Sapthagiri Colony, Karimnagar,
Telangana – 505 001.

Sub: Notice u/s 91 Cr.P.C. in the FIR No.17/23 Cyber
Police Station, outer North District, Delhi.

* * *

With reference to the above notice from cyber police station, outer north district delhi and provided the below details from you are account (290010100107723)

1) You are account has been marked debit freeze.

This is for your kind information.”

B. Counter affidavit has been filed by the Respondent No.3, in particular, paras 4, 6, 8, 10 and 11, reads as under:

“4) In reply to Para 4, 5, 6, 7, 8, 13 & 14 of the writ affidavit, I submit that Respondent No.3 has privity of cognizance about the Binance Application used by the writ petitioner for his crypto currency transactions.

6) In reply to Para No.11 of the writ affidavit, I deny that the Petitioner visited Respondent No.3 several times while he has been staying at Hyderabad since more than year. Respondent No.3 promptly informed orally to the Petitioner that the account has been freezed with a balance of Rs.4,67,542.04 Ps by the Statutory Notice Department, Axis Bank Limited, Mumbai in response to Notice dated 06.07.2023 received u/s 91 of Cr.P.C. from Respondent No.4 Cyber Police Station, Outer North District, Delhi in FIR No.17/2023 registered against Mr.Arjun Karam Singh.

8) In reply to Para No. 15 of the writ affidavit, I submit that the subject account has not been frozen by Respondent No.3. Such freezing of the subject account by Statutory Notice Department, Axis Bank Limited, Mumbai is neither arbitrary nor illegal and it is in terms of following term and condition agreed by the petitioner at the time of opening the account.

Account Freeze: I authorize the bank to freeze my account in the following circumstances, with intimation to me except where specified otherwise:

- a) When a minor, who is the holder of the account, attains majority.*
- b) If it is suspected by the bank that transaction in my account are not initiated by me (the Bank will not assume any liability for the transactions already executed).*
- c) If it is suspected that my account is being misused as a money mule or as a channel for unauthorised money*

pooling or a conduit for any illegal activity. (I will not receive a notice in this case).

d) Submission of either PAN or Form 60 is mandatory for all individual domestic Savings account opening as per regulatory guidelines.

Further, the Petitioner is bound to send back the alleged illegal amount received by him irrespective of the fact that he knew or did not know the source of remitter. The competent authority of Respondent No.3 is bound to freeze the subject account upon notice from Statutory Authority. Such freezing is neither unwarranted nor beyond its authority of Respondent No.3. 9) In reply to Para No. 16, 17, 18, 19 & 21 of the writ affidavit, I submit that these paragraphs are not concerned to the Respondent No.3.

10) In reply to Para No.20 of the writ affidavit, I submit that the action of freezing by the Respondent No.3 is neither illegal nor arbitrary and is not violation of RBI Rules & Regulations. It is not violation of principles of natural justice because such freezer is within the terms and conditions agreed by the petitioner at the time of opening the subject account. It is immaterial whether the petitioner made several requests for defreezing the account. Respondent No.3 has no power to defreeze the account unless it is cleared by the Respondent No.4.

11) In reply to Para No.22 of the writ affidavit, I submit that the action of the Respondent No.3 would not cause serious and irreparable injury to the Petitioner which was done unavoidably at the behest of Respondent No.4.

Respondent No.3 has no role in infringing the constitutional rights of the writ petitioner. Pursuant to the order dated 04.11.2023 received from Chief Metropolitan Magistrate (North District), Rohini Courts, Delhi, Respondent No.3 remitted Rs. 1,45,000/- out of the disputed amount of Rs.2,87,312.32 Ps to the account of Mr.Krishna Mohan Choudhary on 21.11.2023.”

5. The learned Counsel appearing on behalf of the Petitioner mainly put-forth the following submissions :

- i. The bank account of the Petitioner had been frozen by Respondent No.3 and 4 illegally and arbitrarily without issuing notice or giving an opportunity to the Petitioner.**
- ii. Petitioner is a *bonafide* receiver of the money for the sale of the crypto currency which is completely legal in India.**
- iii. The freezing of the bank account of the Petitioner merely on the alleged suspicion, Petitioner being neither aware that the bank account from which the buyer is transferring the amount online is of theft or fraud nor has any reason to believe that amount is stolen or of theft or fraud.**
- iv. With the illegal freezing of the bank account of the Petitioner the Petitioner is unable to do business and is facing serious difficulties.**

- v. There is no allegation on the part of the Petitioner of cheating or obtaining property by fraud in the FIR and therefore there is no justification on the part of the 4th Respondent to pass orders to freeze the bank account of the Petitioner and the Petitioner did not involve in any criminal activity.
- vi. The amount of Rs.1,50,000/- and Rs.1,37,312/- was received through a valid sale of crypto currency and therefore the proceedings initiated against the Petitioner by 3rd and 4th Respondents are totally unwarranted.
- vii. The Petitioner is not in a position to operate his account and the 4th Respondent had not issued any notice regarding the case to the Petitioner or produced any evidence relating to transfer of funds to Petitioner's account and also have not found any relation of the Petitioner with the accused or in the offence.
- viii. The learned counsel for the Petitioner brought on record an undertaking affidavit dated 18.11.2023 and the two relevant paras of the said undertaking affidavit read as under :
 - (a) I submit that on the last date of hearing i.e., on 17.11.2023, this Hon'ble Court was pleased to direct me to submit an undertaking stating no objection for depositing an amount of Rs.2,87,312.32

received from the sale of crypto currency in a separate fixed deposit account maintained by Respondent No.3.

(b) I submit that in view of the above, I have no objection to the said disputed amount of Rs.2,87,312.32 received from the sale of crypto currency in a separate fixed deposit account maintained by Respondent No.3 and pray this Hon'ble Court to permit me to operate my bank account bearing No.290010100107723 maintained by Respondent No.3 with IFSC : UTIB0000290 in the interest of justice.

ix. The learned counsel for the Petitioner placed reliance on the judgment of the Apex Court in Internet & Mobile Association of India vs. Reserve Bank of India, Writ Petition (Civil) No.528/2018 and Writ Petition (Civil) No.373/ 2018, where under it was observed by the Apex Court that the sale or purchase of crypto currency is not illegal in India and directed for defreezing of all bank accounts that were frozen.

x. The learned counsel for the Petitioner placed reliance on the judgment dated 14.09.2022 reported in (2022) SCC Online Madras 5124 in Sahil Raj Vs. State of Tamilnadu, and contended

that the Petitioner is entitled for the relief prayed for in the present writ petition.

On the basis of the above referred submissions the Learned Counsel for the Petitioner submitted that the writ petition should be allowed as prayed for.

6. The learned counsel appearing on behalf of the 3rd Respondent places reliance on the counter affidavit filed by Respondent No.3 mainly put-forth the following submissions.

- i. The subject account has not been frozen by Respondent No.3.**
- ii. The freezing of the subject account by Statutory Notice Department Axis Bank, Mumbai is not illegal and it is in terms and conditions as agreed by the Petitioner at the time of opening of the account. The said freezing is warranted and within the authority of 3rd Respondent.**
- iii. In response to the undertaking affidavit dated 18.11.2023 filed by the Petitioner the learned counsel filed a Memo dated 23.11.2023 and specifically put-forth the following contentions.**
 - (a) The subject account No.29001010 0107723 of the Petitioner maintained with the Respondent No.3 having outstanding balance**

of Rs.4,67,542.04 Ps has been under attachment since 06.07.2023 as was done by the Statutory Notice Department, Axis Bank Limited, Mumbai and not Respondent No.3 in response to Notice dated 06.07.2023 U/s. 91 Cr.P.C., received from Cyber Police Station, Outer North District, Delhi in FIR No.17/2023.

- (b) The Statutory Notice Department, Axis Bank Limited, Mumbai is not made a party.**
- (c) Pursuant to the order dated 04.11.2023 received from Chief Metropolitan Magistrate (North District), Rohini Courts, Delhi, R-3 remitted Rs.1,45,000/- out of the disputed amount of Rs.2,87,312.32 PS to the account of Mr. Krishna Mohan Choudhary on 21.11.2023.**
- (d) During attachment of the account disputed amount of Rs.2,87,312.12 Ps cannot be transferred to FDR as the amount is subject to the disposal of Delhi Court.**
- (e) We can transfer the remaining disputed amount to suspense account to dispose the same as per the order of Delhi Court.**
- (f) The writ petition is not maintainable on the ground of Jurisdiction.**

DISCUSSION AND CONCLUSION

7. In pursuance to the orders of this Court dated 21.09.2023 the learned Counsel for the Petitioner took out personal notice to the Respondent Nos.2, 3 and 4 in the present writ petition and filed Memo of Proof of Service dated 30.09.2023 along with the original postal receipt and the copy of the personal notice and a perusal of the postal track consignment and the contents of the Memo dated 30.09.2023 indicate that the Notice has been delivered to Respondents No.2, 3 and 4.

8. In so far as the maintainability of the writ petition is concerned in Kusum Ingots and Alloys Limited vs. Union of India & Another reported in (2004) 6 SCC 254 the Supreme Court held by placing reliance on Clause 2 of Article 226 of the Constitution of India and also Sec.20(c) of the CPC that even if a small fraction of cause of action accrues within the jurisdiction of the High Court it would have jurisdiction in the matter.

9. Though counter affidavit has been filed by 3rd Respondent, the 4th Respondent however, did not choose to appear. A bare perusal of the notice issued U/s.91 Cr.P.C., dated 20.07.2023 addressed to the Petitioner

herein indicates that the account of the Petitioner had been marked Debit Freeze.

10. Section 91 of the Criminal Procedure Code reads as under :

“91. Summons to produce document or other thing.—

(1) Whenever any Court or any officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this Code by or before such Court or officer, such Court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it, or to produce it, at the time and place stated in the summons or order.

(2) Any person required under this section merely to produce a document or other thing shall be deemed to have complied with the requisition if he causes such document or thing to be produced instead of attending personally to produce the same.

(3) Nothing in this section shall be deemed—

(a) to affect sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), or the Bankers' Books Evidence Act, 1891 (13 of 1891), or

(b) to apply to a letter, postcard, telegram or other document or any parcel or thing in the custody of the postal or telegraph authority.”

11. A bare perusal of the above referred provision U/s.91 Criminal Procedure Code indicates that the 3rd and 4th Respondents herein cannot direct for the freezing of Petitioner's account on the summons issued U/s.91 of Criminal Procedure Code and the 3rd and 4th Respondents do not have any jurisdiction to direct for freezing of Petitioner's account since in the summons issued U/s.91 of Criminal Procedure Code the investigation officer summons the person to produce the document or other things.

12. In a Writ Petition filed before Madras High Court with prayer to defreeze the bank account of the Petitioner there under which has been freezed in pursuant to the registration of an FIR in Crime No.33 of 2021 P.S. Villupuram, the Madras High Court in the judgment reported in (2022) SCC Online Madras 5124 vide its judgment dated 14.09.2022 under identical circumstances in the case of Sahil Raj Vs. State of Tamilnadu observed at paragraph No.9 as under :

"Para 9 : Thus, it is clear that the first respondent has no jurisdiction. In the summons issued under Section 91 of Cr.P.C., the investigation officer,

summons the person to produce the document or other things. On the summons issued under Section 91 of Cr.P.C., account cannot be freezed. That apart, the first respondent failed to comply with the procedure as contemplated under Section 102(3) of Cr.P.C. Admittedly the first respondent failed to inform the freezing of the petitioner's account to the concerned jurisdictional Magistrate even till now. However, the petitioner himself admitted that he placed order of purchase of USDT (virtual digital asset in the form of crypto currency) from a user named Raj Ghosh on 21.10.2021. He also had made a payment of Rs.89,000/- to his HDFC Bank current account.

13. A bare perusal of the counter affidavit in particular para 6 filed by the Respondent No.3 herein clearly indicates that the account of the Petitioner has been freezed with a balance of Rs.4,67,542.04 Ps by the Statutory Notice Department, Axis Bank Limited, Mumbai in response to Notice dated 06.07.2023 received under Section 91 of Criminal Procedure Code from Respondent No.4, Cyber Police Station, Outer North District, Delhi in FIR No.17/2023 registered against one Mr. Arjun Karam Singh.

14. This Court opines that upon the basis of Notice dated 06.07.2023 under Section 91 of Criminal Procedure Code

received from 4th Respondent the Statutory Notice Department, Axis Bank Limited, Mumbai, had attached the outstanding balance of Rs.4,67,552.04 Ps in Petitioner's subject account No.290010100107723 of the Petitioner maintained with Respondent No.3. This Court opines that on the summons issued under Section 91 of the Criminal Procedure Code account of the Petitioner cannot be frozen.

15. Taking into consideration of the above referred facts and circumstances of the case and duly considering the averments made in Para 6 of the counter affidavit filed by the 3rd Respondent (referred to and extracted above) and duly considering the fact that the petitioner as on date had not been served with a notice under Section 41-A Cr.P.C nor is an accused in the FIR and duly taking into consideration the view taken by the High Court of Madras in Judgment dated 14.09.2022 in "Sahil Raj Vs. State of Tamilnadu" under identical circumstances this Court opines that the Notice issued under Section 91 Criminal Procedure Code against the Petitioner by the 4th Respondent herein to the Statutory Notice Department,

Axis Bank Limited, Mumbai, without any intimation/ prior notice to the Petitioner is illegal and in clear violation of principles of natural justice and without jurisdiction and the same is accordingly set aside. This Court cannot issue any directions against the Statutory Notice Department, Axis Bank Limited, Mumbai, which had ordered for freezing of the Petitioner's subject account since the same is not made a party in the present writ petition. The Petitioner is however at liberty to pursue the remedies as are available to the Petitioner seeking defreezing of the Petitioner's subject Account No.290010100107723 of the Petitioner maintained with the Respondent No.3.

16. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any pending, in this writ petition shall stand closed.

SUREPALLI NANDA, J

Date:21.12.2023

Note : L.R. Copy to be marked.
(B/o) *Yvkr.*