

Relief of De-freezing of Bank Account

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INTRODUCTION

In a landmark ruling, the Hon'ble High Court of Judicature at Allahabad granted relief to the applicant¹ in an application filed under Section 482 of the Criminal Procedure Code, 1973, challenging the freezing of its bank account by the Investigating Officer. The freeze was imposed based on allegations concerning money laundering and other offences under the Prevention of Money Laundering Act, 2002 (PMLA), a critical law aimed at addressing financial crimes in India. The Court highlighted that no formal proceedings had been initiated under the PMLA to sustain the freeze, as required by the law. While Section 17 of the PMLA allows for account attachment, no authorized officer had taken steps to attach the applicant's account or uphold the freeze. Furthermore, the applicant had not been named in the FIR nor charge-sheeted, leading the Court to rule that the freezing order issued under Section 91 of the Criminal Procedure Code was improper.

In the end, the Hon'ble Court quashed the impugned order and allowed the application, subject to the applicant submitting a bank guarantee to the Learned Magistrate. Upon submission of the guarantee, the Court directed the respondent to notify the concerned banks to immediately unfreeze the

applicant's accounts. The Court also acknowledged that the prolonged freeze had caused significant disruption to the applicant's business operations and statutory obligations, resulting in undue hardship.

CASE BACKGROUND

An FIR was lodged on June 14, 2022, alleging offences like forgery and illegal immigration facilitation against two individuals, but the applicant was neither named in the FIR nor in the charge sheet filed on September 9, 2022. Despite this, the Investigating Officer issued a notice under Section 91 of the Cr.P.C. to HDFC Bank, directing the freeze of the client's bank account. This freeze severely impacted the client's operations, including salary payments and tax obligations. In response, the company filed an application under Section 457 of the Cr.P.C. to de-freeze the account, but the lower Court initially rejected the plea.

RATIO DECIDENDI

Upon appreciation of facts, the Hon'ble Court found that the Investigating Officer had exceeded his jurisdiction. The Court highlighted that the applicant, a business entity, was neither named in the FIR nor included in the charge sheet, and thus, no formal charges were made. The Court ruled

¹ Neutral Citation No. - 2024: AHC:141124 M/S Ismartu India Private Limited (Applicant)

that Section 91 of the Criminal Procedure Code (Cr.P.C.) was improperly applied to freeze the account, as this provision is not meant for asset freezing. It emphasized the need for a stronger legal basis when freezing assets, especially for a business not charged with any crime. The Court also stressed the importance of judicial oversight to prevent abuse of power and ensure public trust. Lastly, it recognized the severe impact of the account freeze on the company's operations, calling for a balance between investigations and the rights of businesses.

POWERS OF ENFORCEMENT DIRECTORATE

The Enforcement Directorate (ED) is a specialized agency tasked with investigating offences related to money laundering and violations of foreign exchange laws. Operating under the Ministry of Finance's Department of Revenue, the ED plays a central role in combating financial crimes in India, utilizing a range of investigative tools to trace illicit funds and ensure legal action is taken against offenders. Under Section 5 of the Prevention of Money Laundering Act, 2002 (PMLA), the ED is empowered to attach properties involved in money laundering, investigate assets derived from criminal activity, and ensure the prosecution of offenders.

The ED has extensive powers under the PMLA, including conducting searches and seizures under Sections 16 and 17, and arresting individuals involved in money laundering offences under Section 19. Section 50 also grants the ED the authority to carry out searches without requiring the presence of the accused. Furthermore, the 2019 amendments expanded the ED's power to attach properties acquired through criminal activity. However, the ED cannot act on its

own initiative and requires a complaint to be filed by another agency or the police before commencing its investigation.

While the Civil Procedure Code (CPC) of 1908 allows property attachment under Order 35, Rule 5, the PMLA offers stricter provisions for attaching properties linked to money laundering. These powers enable the ED to act against illicit assets, but must be applied within the PMLA's framework, ensuring protection against arbitrary actions.

In the present case, although an FIR was lodged, no action was taken under Section 17 of the PMLA to freeze the Applicant's bank account, as the Applicant had not been charge-sheeted during the investigation. Judicial oversight plays a crucial role in interpreting and applying the provisions of the PMLA, ensuring that enforcement actions are balanced with the protection of individuals' rights. The judiciary's involvement is essential in refining the law to ensure it serves its original objectives without infringing on constitutional rights, as demonstrated in this case.

CONCLUSION

The Hon'ble High Court of Judicature at Allahabad's ruling sets an important precedent for cases involving asset freezes, reinforcing that businesses should not face arbitrary financial restrictions without clear evidence of wrongdoing. It clarifies the limitations of police powers under the Cr.P.C. and the specific roles of legal frameworks like the Prevention of Money Laundering Act, 2002 (PMLA). The decision underscores the necessity of procedural compliance by investigative authorities, ensuring that actions against businesses are legally grounded and supported by evidence to protect their rights during investigations.
