

**IN THE HIGH COURT OF UTTARAKHAND
AT NAINITAL**

ON THE 17TH DAY OF JUNE, 2021

BEFORE:

HON'BLE SHRI JUSTICE MANOJ KUMAR TIWARI

Writ Petition (M/S) No. 699 of 2021

BETWEEN:

Mohd Rizwan Ansari ...Petitioner

(By Mr. Kurban Ali, Advocate)

AND:

State of Uttarakhand & others ...Opp. Parties

(By Mr. G.S. Sandhu, learned Government Advocate with Mr. G.S. Negi, learned Additional C.S.C. for the State of Uttarakhand and Mr. Ashish Joshi, learned counsel for respondent nos. 2 & 3)

JUDGMENT

1. By means of this writ petition, petitioner has sought following relief: -

- (i) Issue a writ order or direction in the nature of Mandamus commanding and directing the respondents Bank concerned to immediate defreeze he Bank accounts of the petitioner and further permit the petitioner to operate both bank accounts in the name of the petitioner.
- (ii) Issue a writ, order or direction in the nature of mandamus commanding and directing the respondents concerned to compensate the petitioner with regard to financial losses occurred on account of illegally imposed hold in the bank account of the petitioner.

2. Petitioner's Saving Bank Accounts with State Bank of India, Branch Ramnagar and Canara Bank, Branch Ramnagar have been frozen pursuant to a notice under Section 91 Cr.P.C. issued by

Investigating Officer/Sub-Inspector, Police Station, Haldwani, District Nainital. Thus, feeling aggrieved, petitioner has approached this Court.

3. A copy of the said notice has been brought on record along with counter affidavits filed by respondent nos. 2 & 3.

4. A perusal of the said notice dated 11.02.2021 reveals that Investigating Officer has directed the Branch Managers of the concerned Banks to keep on hold all transactions in the Saving Bank Account of the petitioner and also to forthwith freeze the Saving Bank Accounts of the petitioner till conclusion of investigation pending against him. It has been further provided in the notice that if the Branch Managers fail to comply with the direction, then necessary punitive action under Section 175 I.P.C. shall be taken against them.

5. Section 91 of Cr.P.C. is reproduced below: -

"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."

6. Perusal of Section 91 of Cr.P.C. reveals that it does not authorise a Court or any Police Officer to freeze the Bank Account of any person. Such power, however, is available to a Police Officer under Section 102 of Cr.P.C., with a caveat as provided in Sub-Section (3) of Section 102 of Cr.P.C., namely, the Police Officer, who has seized any property, has to forthwith report the seizure to the concerned jurisdictional Magistrate.

7. In the present case, no intimation has been given to the concerned Magistrate. The Investigating Officer has referred to Section 175 of I.P.C. in the notice issued under Section 91 of Cr.P.C. The Investigating Officer has warned the Branch Managers that in case they fail to comply the direction issued in the notice, then action may be taken against them under Section 175 of I.P.C.

8. Section 175 of I.P.C. is reproduced below for ready reference: -

"175. Omission to produce document to public servant by person legally bound to produce it— Whoever, being legally bound to produce or deliver up any 5 [document or electronic record] to any public servant, as such, intentionally omits so to produce or deliver up the same, shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to

five hundred rupees, or with both; or, if the 4 [document or electronic record] is to be produced or delivered up to a Court of Justice, with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

9. Perusal of Section 175 of I.P.C. also indicates that it does not empower the Investigating Officer to freeze the Saving Bank Account of any person.

10. In view of the aforesaid legal position, this Court has no hesitation in holding that the direction issued by the Investigating Officer under Section 91 of Cr.P.C. to the Branch Managers to freeze the Bank Accounts of the petitioner, is not sustainable in the eyes of law.

11. In such view of the matter, the Banks are not bound to comply with such direction as regards freezing of Saving Bank Accounts of the petitioner.

12. Accordingly, the writ petition is allowed. The respondent banks are directed to de-freeze the Saving Bank Account of the petitioner within 24 hours from the date of receipt of certified copy of this order. However, this order will not preclude the Investigating Officer from having recourse to the powers available to him under any other provision of Code of Criminal Procedure.

(MANOJ KUMAR TIWARI, J.)