

Reserved on : 04.03.2025
Pronounced on : 29.04.2025



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 29TH DAY OF APRIL, 2025

BEFORE

THE HON'BLE MR. JUSTICE M. NAGAPRASANNA

WRIT PETITION No.3757 OF 2023 (GM - POLICE)

BETWEEN:

PHONEPE PRIVATE LIMITED
REGISTERED UNDER COMPANIES ACT, 2013
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 SIGNATORY /
SENIOR MANAGER LEGAL
MR. VIJAY ARORA

... PETITIONER

(BY SRI NITIN RAMESH, ADVOCATE)

AND:

- 1 . STATE OF KARNATAKA
REPRESENTED BY THE CEN POLICE STATION,
BENGALURU RURAL DISTRICT
BY: OFFICE OF THE SPECIAL PUBLIC PROSECUTOR,
HIGH COURT OF KARNATAKA,
BENGALURU – 560 001.
- 2 . SUPERINTENDENT OF POLICE
BENGALURU RURAL DISTRICT,
NO.5, MILLERS ROAD, VASANTH NAGAR,
BENGALURU – 560 052.

... RESPONDENTS

(BY SRI MOHAMMED JAFFAR SHAH, AGA)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DIRECTING THE RESPONDENTS-POLICE TO CONDUCT A FAIR AND COMPREHENSIVE INVESTIGATION IN ACCORDANCE WITH LAW IN CRIME NO.193/2022 OF BENGALURU CEN PS AT ANNEXURE-A BENGALURU RURAL DIST. PENDING ON THE FILE OF THE HON'BLE CHIEF JUDICIAL MAGISTRATE (CJ.,) BENGALURU RURAL DIST. AT BENGALURU, STRICTLY AS PER THE PROCEDURE LAID DOWN IN THE PAYMENT AND SETTLEMENT SYSTEMS ACT, 2007, THE BANKERS BOOK EVIDENCE ACT, 1891, THE CRPC ALONG WITH THE RELEVANT PROVISIONS OF LAW AS APPLICABLE TO FINANCIAL TRANSACTIONS/DATA OF THIRD PARTY APPLICATION PROVIDER (TPAPs) IN ACCORDANCE WITH THE LEGALLY BINDING

GUIDELINES OF THE RBI AND NCPI ON UPI INTERMEDIARIES SUCH AS THE PETITIONER AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 04.03.2025, COMING ON FOR PRONOUNCEMENT THIS DAY, THE COURT MADE THE FOLLOWING:-

CORAM: **THE HON'BLE MR JUSTICE M.NAGAPRASANNA**

CAV ORDER

The petitioner/Phonepe Private Limited is before this Court seeking a direction by issuance of writ in the nature of mandamus directing the respondent/Police to conduct a comprehensive investigation in Crime No.193 of 2022 strictly in consonance with several enactments which the petitioner says that it is governed by. A consequent declaration is also sought that the notice under Section 91 of the Cr.P.C., dated 07-12-2022 to be bad in law.

2. Shorn of unnecessary details, the facts germane are as follows:

The petitioner-M/s Phonepe Private Limited is a company incorporated under the Companies Act, 1956. The petitioner is said

to be a leading player in the digital payments ecosystem. The petitioner is a well known for its technology and user interface and is said to be pioneer in developing cutting edge digital payment solution platform. The application software that can be installed on all mobile phones through the operating system called as Phonepe app. The petitioner further avers in the petition that it is only an intermediary as defined under the Information Technology Act, 2000 ('IT Act' for short) and facilitates services as a system provider and petitioner and only provides a platform for users to transfer and receive monies on a day to-day basis.

3. The petitioner, a system provider under the unified payments interface payments ecosystem, is said to be governed and regulated under the Payment and Settlement System Act, 2007. The issue in the *lis* is whether the summons issued by the Investigating Officer invoking Section 91 of the Cr.P.C., directing the petitioner to furnish information involving confidential transaction details/full account credentials of registered phonepe users/merchants for the purpose of freezing of the transactions of a particular registered user without complete investigation is tenable

or otherwise. The issuance of the said notice under Section 91 of the Cr.P.C. has driven the petitioner to this Court in the subject petition.

4. Heard Sri Nitin Ramesh, learned counsel appearing for the petitioner and Sri Mohammed Jaffar Shah, learned Additional Government Advocate for the respondents.

5. The learned counsel Sri Nitin Ramesh would vehemently contend that the petitioner is an intermediary under Section 79 of the IT Act. The owner of the entire UPI platform is National Payments Corporation of India. Neither the petitioner nor its employees are accused in the crime. The petitioner was acting only as a system provider in the UPI payment system. The petitioner is governed under the Payment and Settlement Systems Act, 2007. He has no role to play in any of the transactions leading to filing of the FIR. The Bankers Books Evidence Act, 1891 which is made applicable to the Payment and Settlement Systems Act, 2007 clearly bars divergence of confidential information of the customers. The learned counsel would further submit that any document or

information can be produced only after an order of the Court and not directly summoning the same by the Investigating Officer, invoking power under Section 91 of the Cr.P.C. It is his submission that the provisions of the Bankers Book Evidence Act would completely become applicable to the Payment and Settlement Systems Act and Section 91(3) carves out an exception to the application of the provisions of the Bankers Books Evidence Act which is a special enactment and, therefore, would prevail over general law. The power under Section 91 of the Cr.P.C., is restricted and subject to the provisions of other enactments. The enactments have laid down detailed procedure for inspection of books or fetching information by an order of the Court. In all, he would seek a declaration that the notice is contrary to law and unless the Court directs, no Investigating Officer can summon documents under Section 91 of the Cr.P.C.

6. *Per-contra*, the respondent/State takes this Court through the IT Act to contend that in the day of large number of cyber crimes today, the Police have the power to seek necessary information for conduct of a fair investigation. Central Government

has also issued certain guidelines under Section 87 of the IT Act. Phonepe Private Limited/the petitioner has violated the guidelines of the Central Government to safeguard merchants involved in Cricket betting. The petitioner facilitates online payment as a payment gateway and is engaged in financial business. The Investigating Officer cannot be termed that he has no power to even summon materials for conduct of investigation under Section 91 of the Cr.P.C. The Police is a statutory authority to issue a notice under Section 91 and, therefore, there can be no fault found in the notice issued seeking information. He seeks dismissal of the petition.

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

8. The afore-narrated facts are not in dispute. The fulcrum of the *lis* rests on a **delicate interplay between multiple enactments. The petitioner being an intermediary is regulated under the Payment and Settlement Systems Act,**

2007 (hereinafter referred to as 'the 2007 Act' for short). The claim of the petitioner is that it is protected under the Bankers' Books Evidence Act, 1891 (hereinafter referred to as 'the 1891 Act' for short). The State places heavy reliance upon the IT Act and violation of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2011 ('the Rules' for short).

9. The cause that has driven the petitioner to this Court is a notice issued by the Investigating Officer under Section 91 of the Cr.P.C. The basis for issuance of notice is registration of a crime in Crime No.193 of 2022 for offences punishable under Sections 66C and 66D of the IT Act and Sections 419 and 420 of the IPC. The accused are unknown and the transaction involves several payment gateways. The crime is registered on the basis of a complaint. The complaint reads as follows:

“ರವರಿಗೆ,

ಪೊಲೀಸ್ ಇನ್ಸ್‌ಪೆಕ್ಟರ್
ಸೈಬರ್ ಪೊಲೀಸ್ ಠಾಣೆ
ಬೆಂಗಳೂರು ಜಿಲ್ಲೆ.

ಇಂದ,

ವಿಷಯ:- ಆನ್ ಲೈನ್ ವೆಬ್ ಸೈಟ್ ಮೂಲಕ ಕ್ರಿಕೆಟ್ ಬೆಟ್ಟಿಂಗ್
ಹ್ಯಾಪ್ ನಲ್ಲಿ ಹಣವನ್ನು ಪಡೆದು ಮೋಸ ಮಾಡಿರುವ ಬಗ್ಗೆ.

ನಾನು ಮೇಲ್ಕಂಡ ವಿಳಾಸದಲ್ಲಿ 01 ವರ್ಷಗಳಿಂದ ವಾಸವಾಗಿದ್ದು, ನಾನು ಪೈವೇಟ್ ಕಂಪನಿಯಲ್ಲಿ ಕೆಲಸ ಮಾಡಿಕೊಂಡು ಜೀವನ ಮಾಡಿಕೊಂಡಿರುತ್ತೇನೆ. ನಾನು ದಿನಾಂಕ:-09/09/2022 ರಂದು ಬೆಳಿಗ್ಗೆ ಸುಮಾರು 11-00 ಗಂಟೆಯ ಸಮಯದಲ್ಲಿ ನನ್ನ ಮೊಬೈಲ್ ನಂಬರ್- ನಲ್ಲಿ ಆನ್ ಲೈನ್ ಮೂಲಕ ವೆಬ್ ಸೈಟ್‌ನಲ್ಲಿ ಇಂಡಿಯಾ ಮತ್ತು ಸೌತ್ ಆಫ್ರಿಕಾ ಪಂದ್ಯಗಳು ನಡೆಯುತ್ತಿರುವಾಗ ಕೆಳಕಂಡ 1) ಹ್ಯಾಪ್ ಗಳಿಗೆ 1) Casion Days, gateway Paytem ನಿಂದ 50/- ಹಾಗೂ upi ಮೂಲಕ 500/- 2) Luckyspin, upi ಮೂಲಕ 50/- ರೂ, Mobikwik- 500/- ರೂ ಪೇಟೀಎಂ ನಿಂದ 500/- ರೂ 3) Jeetplay, gate Way ಮೂಲಕ Mobikwik 500/- ರೂ 4) Jeetwin Upi ಮೂಲಕ 500/- ರೂ 5) Big baazi upi 50/- ರೂ 20 ಪೇಟೀಎಂ ಮೂಲಕ 500/- ರೂ (6) Betway upi ಮೂಲಕ 2500/- ರೂ ಗೇಟ್-ವೇ ಮೂಲಕ ಒಟ್ಟು 6150/- ರೂಗಳನ್ನು ವೆಬ್ ಸೈಟ್‌ನಲ್ಲಿ ಕ್ರಿಕೆಟ್ ಬೆಟ್ಟಿಂಗ್‌ಗೆ ಹಣವನ್ನು ಹಾಕಿಸಿಕೊಂಡು ಎಲ್ಲಾ ವೆಬ್-ಸೈಟ್ ನಲ್ಲಿ ವಾಲೇಟ್‌ನಲ್ಲಿ ಚೆಕ್ ಮಾಡಿ ನೋಡಿದಾಗ ಹಣ ಇರುವುದು ಕಂಡು ಬರುತ್ತಿದ್ದು, ನಂತರ ವಾಲೇಟ್ ನಿಂದ ಹಣವನ್ನು ಪಡೆಯಲು ಸಾಧ್ಯವಾಗುತ್ತಿಲ್ಲ, ಕ್ರಿಕೆಟ್ ಬೆಟ್ಟಿಂಗ್‌ನಲ್ಲಿ ಹಣವನ್ನು ಹಾಕಿಸಿಕೊಂಡು ವೆಬ್ ಸೈಟ್ ಬ್ಲಾಕ್ ಮಾಡಿರುತ್ತಾರೆ. ನನಗೆ ಹಣವನ್ನು ವಾಪಸ್ ನೀಡದೆ ಮೋಸ ಮಾಡಿರುತ್ತಾರೆ ಆದ್ದರಿಂದ ಮೇಲ್ಕಂಡ ವೆಬ್ ಸೈಟ್ ನಡೆಸುತ್ತಿರುವವರನ್ನು ಪತ್ತೆ ಮಾಡಿ ಅವರ ವಿರುದ್ಧ ಕಾನೂನು ರೀತ್ಯಾ ಕ್ರಮ ಜರುಗಿಸಬೇಕೆಂದು ಕೋರುತ್ತೇನೆ. ನನಗೆ ತುರ್ತು ಕೆಲಸ ವಿದ್ಧರಿಂದ ಸ್ವಂತ ಉರಿಗೆ ಹೋಗಿದ್ದು, ಈ ದಿನ ರಾಣಿಗೆ ಬಂದು ದೂರುನ್ನು ನೀಡಿರುತ್ತೇನೆ.

ದಿನಾಂಕ:03/11/2022

ತಮ್ಮ ವಿಶ್ವಾಸಿ,
ಸಹಿ/-

ದಿನಾಂಕ 3/11/2022 ರಂದು ಸಂಜೆ 17:30 ಗಂಟೆಗೆ ಪಿರ್ಮಾಡಿ ತಾಣೆಗೆ ಹಾಜರಾಗಿ ನೀಡಿದ ದೂರನ್ನು
ಪಡೆದು ಮೊ.ನಂ.193/22 ಕಲಂ 66 (d) IT Act r/w 419, 420 IPC ರೀತ್ಯಾ ಪ್ರಕರಣ ದಾಖಲು
ಮಾಡಿರುತ್ತೆ.”

It is the case of the complainant that he has lost several funds while transacting through several payment gateways. This results in issuance of notice to the petitioner under Section 91 of the Cr.P.C., seeking divulgence of several information and production of documents. The notice reads as follows:

“REMINDER

To

Date: 07/12/2022

Nodal Officer
PHONEPE PVT LIMITED

Sir/Madarm,

Sub: A case has been registered for providing facilities to Online gambling websites. A set of questions have been asked you, request you to answer with documentations.

Ref: Crime No. 193/2022 U/S 66(C), 66(D) IT ACT R/W 419, 420 IPC C.E.N Police Station Bangalore Rural District.

With reference to above subject, a case has been registered at C.E.N. police station, Bengaluru rural district. Crime No: 193/2022, U/s 66 (C) & 66 (D) IT Act r/w 419, 420 IPC. In this regard the company used your platform to done an illegal financial transaction has happened in the below mentioned account number.

<u>Suspect's Bank Details</u>			
Account holder name : R J INFOTECH			
Account no: 002163300006330			
IFSC Code: YESB0000021			
Sl no	Date	UTR No	Settlement Amount
1	06/09/2022	224917950315	17,400/-

Based on our investigation, came to know that **PHONEPE PVT LIMITED** is providing facilities to merchant for conducting illegal financial transactions. Hence kindly co-operate with us and provide all the documents pertaining to above mentioned fraudulent transactions dated: 06/09/2022

Above transaction got passed from your payment gateway channel. **[Account no:-]**

Kindly answer the list of questions with appropriate documents:-

1. Kindly provide URL/ IP address/Mobile app which was given by merchant at the time of on-boarding.
2. What best practice is followed, and due diligence is carried out during on-boarding merchant, also share SOP's for the same.
3. The source through which the merchant on-boarded, whether he directly on-boarded or he introduced by any Re-seller.?
4. Transaction details of the merchant from on-boarding to till date along with IP log details
5. The URL (Or websites) through which the merchant was transacting and operating.
6. Did you observe previously any gambling related report from any law enforcement agencies and other customers ?
7. Merchant KYC details along with their due diligence.

8. Reseller through which these merchants done the transactions with KYC details of Re-seller.
9. List of other merchants on-boarded through linked with this Re-seller.
10. What are the risk parameters are followed post On-boarding merchant, also share SOP's for the same
11. How settlement process works once you received money from the bank?
12. Whether suspected/fraudulent transactions were detected at the time of post acquisition monitoring.
13. Did you taken any actions against these merchants related to involving in online gambling.
14. Kindly furnish a list of On-boarding merchant those are involved in online Gambling

Investigation
Officer
Sd/- 7/12/2022"

The moment this is issued, the petitioner is at the doors of this Court. Since the notice is issued under Section 91 of the Cr.P.C., I deem it appropriate to notice Section 91 of the Cr.P.C. It reads as follows:

"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."**

(Emphasis supplied)

Section 91 of the Cr.P.C. permits summoning, to produce documents and other things. Whenever a Court or any officer in-charge of a Police Station considers it necessary and desirable of production of a document, the Court or the Officer may direct the noticee to produce the same. Sub-section (3) mandates that nothing in the Section will affect Sections 123 and 124 of the Indian Evidence Act or Bankers Books Evidence Act, 1891.

10. The petitioner claims to be regulated under the 2007 Act. It therefore, becomes necessary to notice certain provisions of the 2007 Act. They read as follows:

"15. Information etc., to be confidential.—(1) Subject to the provisions of sub-section (2), any document or information obtained by the Reserve Bank under Sections 12 to 14 (both inclusive) shall be kept confidential.

(2) Notwithstanding anything contained in sub-section (1), the Reserve Bank may disclose any document or information obtained by it under Section 12 to 14 (both inclusive) **to any person to whom the disclosure of such document or information is considered necessary for protecting the integrity, effectiveness or security of the payment system, or in the interest of banking or monetary policy or the operation of the payment systems generally or in the public interest.**

... ..

20. System provider to act in accordance with the Act, regulations, etc.—Every system provider shall operate the payment system in accordance with the provisions of this Act, the regulations, the contract governing the relationship among the system participants, the rules and regulations which deal with the operation of the payment system and the conditions subject to which the authorisation is issued, and the directions given by the Reserve Bank from time to time.

... ..

22. Duty to keep documents in the payment system confidential.—(1) **A system provider shall not disclose to any other person the existence or contents of any document or part thereof or other information given to him by a system participant, except where such disclosure is required under the provisions of this Act or the disclosure is made with the express or implied consent of the system participant concerned or where such disclosure is in obedience to the orders passed by a**

court of competent jurisdiction or a statutory authority in exercise of the powers conferred by a statute.

(2) The provisions of the Bankers' Book Evidence Act, 1891 (18 of 1991) shall apply in relation to the information or documents or other books in whatever form maintained by the system provider.

...

...

...

32. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

(Emphasis supplied)

Section 15 mandates that subject to provisions of sub-section (2) any document or information obtained by the Reserve Bank of India shall be kept confidential and information that is necessary for protecting integrity, effectiveness or security of the payment system should be adhered, except in public interest. Section 22 mandates that the payment gateway or any entity regulated under the 2007 Act has a duty to keep the documents in the payment system confidential except, where such disclosure is required under the provisions of this Act and the disclosure is made with the express or implied consent of the system participant concerned or where such disclosure is in obedience to the orders passed by a Court or a statutory authority in exercise of powers conferred by a

statute. Sub-section (2) of Section 22 makes the provisions of 1891 Act applicable. Section 32 has overriding effect over other enactments.

11. Since Section 22 makes 1891 Act applicable, I deem it appropriate to notice certain provisions of the **Bankers' Book Evidence Act, 1891**. They read as follows:

"2. Definitions.—In this Act, unless there is something repugnant in the subject or context,—

- (1) "Company" means any company as defined in Section 3 of the Companies Act, 1956, and includes a foreign company within the meaning of Section 591 of that Act;
- (1-A) "corporation" means any body corporate established by any law for the time being in force in India and includes the Reserve Bank of India, the State Bank of India and any subsidiary bank as defined in the State Bank of India (Subsidiary Banks) Act, 1959];
- (2) "bank" and "banker" means—
 - (a) any company or corporation carrying on the business of banking,
 - (b) any partnership or individual to whose books the provisions of this Act shall have been extended as hereinafter provided,
 - (c) any post office savings bank or money order office;

- (3) **"bankers' books" include ledgers, day-books, cash-books, account-books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both;]**
- (4) 'legal proceeding' means,—
- (i) any proceeding or inquiry in which evidence is or may be given;
 - (ii) an arbitration; and
 - (iii) any investigation or inquiry under the Code of Criminal Procedure, 1973 (2 of 1974), or under any other law for the time being in force for the collection of evidence, conducted by a police officer or by any other person (not being a law for the time being in force;
- (5) "the court" means the person or person before whom a legal proceeding is held or taken;
- (6) "Judge" means a Judge of a High Court;
- (7) "trial" means any hearing before the Court at which evidence is taken; and
- (8) "certified copy" means when the books of a bank,—
- (a) are maintained in written form, a copy of any entry in such books together with a certificate written at the foot of such copy that it is a true copy of such entry, that such entry is contained in one of the ordinary books of the bank and was made in the usual and ordinary course of business and that such book is still in the custody of the bank, and where the copy was obtained by a mechanical or other process which in itself ensured the accuracy of the copy, a further certificate to that effect, but

where the book from which such copy was prepared has been destroyed in the usual course of the bank's business after the date on which the copy had been so prepared, a further certificate to that effect, each such certificate being dated and subscribed by the principal accountant or manager of the bank with his name and official title; and

- (b) consist of printouts of data stored in a floppy, disc, tape or any other electro-magnetic data storage device, a printout of such entry or a copy of such printout together with such statements certified in accordance with the provisions of Section 2-A.]
- (c) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of Section 2-A.

...

...

...

4. Mode of proof of entries in bankers' books.—

Subject to the provisions of this Act, a certified copy of any entry in a banker's book shall in all legal proceedings be received as *prima facie* evidence of the existence of such entry, and shall be admitted as evidence of the matters, transactions and accounts therein recorded in every case where, and to the same extent as, the original entry itself is now by law admissible, but not further or otherwise.

5. Case in which officer of bank not compellable to produce books.—No Officer of a bank shall in any legal proceeding to which the bank is not a party be compellable to produce any bankers' book the contents of which can be proved under this Act, or to appear as a witness to prove the matters, transactions and accounts therein recorded, unless by order of the Court or a Judge made for special cause.

6. Inspection of books by order of Court or Judge.—

(1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner herein before directed in reference to certified copies.

(2) An order under this or the preceding sections may be made either with or without summoning the bank, and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

(3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order.

... ..

8. Order of court to be construed to be order made by specified officer.—In the application of Section 5, 6, 7 to any investigation or inquiry referred to in sub-clause (iii) of clause (4) of Section 2, the order of a court or a Judge referred to in the said section shall be construed as referring to an order made by an officer of a rank not lower than the rank of a Superintendent of Police as may be specified in this behalf by the appropriate Government.

Explanation.—In this section, 'appropriate Government' means the Government by which the police officer or any other person conducting the investigation or inquiry is employed."

(Emphasis supplied)

The vehement contention of the petitioner is inspection of books under the 1891 Act is only after the Court passes an order.

12. The Government of India, in exercise of powers conferred under Section 87 of the Information Technology Act, 2000 has notified Rules. Rule 3 of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2011, which deals with due diligence by an intermediary, mandates that information should be given within 72 hours of receipt of an order from the Investigating Officer. Section 87 of the IT Act and Rule 3 of the Rules, read as follows:

“87. Power of Central Government to make rules.—

(1) The Central Government may, by notification in the Official Gazette and in the Electronic Gazette, make rules to carry out the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

Xxxx

xxxxx

xxxx

(zg) the guidelines to be observed by the intermediaries under sub-section (2) of Section 79;”

(Emphasis supplied)

"DUE DILIGENCE BY INTERMEDIARIES AND GRIEVANCE
REDRESSAL MECHANISM

3. (1) *Due diligence by an intermediary:* An intermediary, including a social media intermediary, a significant social media intermediary and an online gaming intermediary, shall observe the following due diligence while discharging its duties, namely—

Xxx

xxxx

xxxx

(j) the intermediary shall, as soon as possible, but not later than seventy two hours and in case of an online gaming intermediary who enables the users to access any permissible online real money game not later than twenty-four hours of the receipt of an order, provide information under its control or possession, or assistance to the Government agency which is lawfully authorised for investigative or protective or cyber security activities, for the purposes of verification of identity, or for the prevention, detection, investigation, or prosecution, of offences under any law for the time being in force, or for cyber security incidents:

Provided that any such order shall be in writing stating clearly the purpose of seeking information or assistance, as the case may be;"

(Emphasis supplied)

The issue now would be harmonizing the interplay between all the enactments quoted hereinabove. Section 91 of the Cr.P.C., a general procedural provision permitting summoning of documents during investigation. The said power is not absolute as Sub-section (3) of Section 91 of the Cr.P.C., expressly protects the sanctity of

the 1891 Act and other statutes; the 2007 Act is a statutory framework governing digital financial architecture, it mandates confidentiality of system data, save and except when statutory authority acting within the confines of its conferred jurisdiction calls for disclosure of information. The Investigating Officer clothed in statutory authority under Cr.P.C. is without doubt, such a functionary; Section 22 of the 2007 Act lays down certain conditions for disclosure. Likewise, the 1891 Act, prescribes that inspection of records by police officers would be only after an order by the Court. Rule 3 of the aforesaid Rules mandates that information should be furnished within 72 hours of receipt of an order from the Investigating Officer. The inference of the submissions so made *qua* the Acts and the Rule is as aforesaid.

13. Today, the conventional crimes have receded and new age crimes have sprung in large number. The new age crimes are cyber crimes – the clandestine modern offences. Such offences demand swift, targeted and effective response. The police must be empowered within the limits of law to unearth digital footprints that could otherwise

vanish. Therefore, while privacy as contended by the petitioner should be maintained, it cannot be wielded as a shield against lawful investigation.

14. The petitioner cannot contend being a digital system payment gateway that it will not divulge any information as sought by the Investigating Officer. As observed hereinabove, the petitioner places much reliance on 2007 Act as a protective shield for non-divulgence of information. Section 22 of the 2007 Act, no doubt, permits a payment gateway to keep the documents involved in payment system confidential. Exceptions are carved out in the statute itself. The provision itself carves out that except where such disclosure would be required in obedience to the orders passed by the Court of competent jurisdiction or a statutory authority in exercise of power conferred under the statute. The Investigating Officer is a statutory authority, who is acting in terms of the powers conferred under the Cr.P.C., while conducting investigation. Therefore, the submission that the documents cannot be divulged is only noted to be rejected, as the provision on which heavy reliance is placed itself permits that all information should be divulged when

sought for by a statutory authority under the statute. Submissions are made with regard to the Act having overriding effect under Section 32. Even if it is construed that 2007 Act has overriding effect, the Act itself permits that the information should be furnished. Therefore, the submission on the basis of the 2007 Act tumbles down.

15. The other Act on which reliance is placed is 1891 Act. The 1891 Act mandates that Officer of the Bank cannot be compelled to produce books except when inspection of books is sought by a Court or a Judge. Section 2(1) and 2(2) of the 1891 Act defines a Company and a Banker. The petitioner is a Company registered under the Companies Act. Section 2(4) defines a legal proceeding. Legal proceeding is one by which an inquiry in which evidence may be required or in which any investigation or inquiry under the Cr.P.C., is contemplated. Therefore, the notice under Section 91 of the Cr.P.C., in pursuance to an investigation or inquiry can be construed to be a notice under Section 2(4) of the 1891 Act, except that Section 91 of the Cr.P.C., notice is issued by the Police Inspector, but the Act mandates of the rank of a Superintendent of

Police. That will not in any way vitiate the action taken by Investigating Officer. The Rules notified by Government of India also mandate that any intermediary not later than 72 hours should provide information. Therefore, the submission of the learned counsel for the petitioner that 2007 Act has overriding effect on 1891 Act and does not permit information to be divulged are all submissions which do not hold water, as those very enactments either of the year 1891 or 2007 or even the Rules clearly provide production of information.

16. It now becomes apposite to refer to certain judgments of constitutional Courts interpreting the interplay between Section 91 of the Cr.P.C., and the 1891 Act. The High Court of Bombay way back in 1937 in the case of **THE CENTRAL BANK OF INDIA v. P.D. SHAMDASANI**¹ has elucidated that 1891 Act being a special Act dealing with Bankers Books and Cr.P.C., being an enactment for procedure of conduct of investigation or trial cannot be in conflict with each other. The High Court of Madras considered this very

¹ 1937 SCC OnLine Bom 44

issue of interplay between the Cr.P.C., and 1891 Act in the case of

A.PONNUSWAMY v. STATE² and has held as follows:

" "

16. Mr. Pitchai referred to a decision in *Textile Traders Syndicate v. State of U.P.*, AIR 1960 Allahabad 405 wherein single Judge of the Allahabad High Court considered in case in which a similar situation arose where the investigating officer issued a prohibitory order to the bank not to pay the amount to the accused as the said amount standing to the credit of the accused was seized under Section 102, Cr.P.C. The learned Judge held that it cannot be done since the property was unidentifiable and the actual money was already parted with and the amount was lying with the Bank as its own money which could be paid back to the accused whenever demanded. According to the view of the learned Judge, unless an identifiable movable property was in the possession of the accused, the same could not be seized under Section 550 of the Old Code. The said view was not accepted by a Division Bench of the Punjab and Haryana High Court in the case above referred to. Mr. Pitchai then referred to the decision in *PrajaSehkari Udyog, Bharatpur Ltd. v. State of Rajasthan* 1979 CrL.L.R. (Raj.) 645 and submitted that the word 'seizure' in Section 102 contemplates actual physical possession and, therefore, a restraint order under it by investigating officer is not warranted. Further he referred to the decision in *Swaran Sabharwal v. Commissioner of Police*, 1988 CrL.L.J. 241 wherein the Delhi High Court held that even assuming that a Bank Account is property within the meaning of the said section, it should be property "found under circumstances which create the suspicion of the commission of an offence to justify action under Section 102. According to the learned Judges, this section would apply where a police officer comes across certain property in circumstances which create in his mind a suspicion that an offence has been committed. With great respect to the learned Judges, we are unable to share the said view for the reasons already discussed above.

² 1990 SCC OnLine Mad 160

In order to understand the real scope of Section 102, Cr.P.C. dealing with the power of a police officer to seize certain property, we have to necessarily refer to Chapter 34 in the Code dealing with disposal of property, as the meaning of the term 'property' has to be understood in a harmonious manner taking into consideration all the provisions contained in the Code. The seizure of property contemplated under Section 102, Cr.P.C. is certainly reflected in Chapter 34 of the Code as is seen from Section 457 under which seizure of property by any police officer has to be reported to a Magistrate and such Magistrate is authorised to make such order as he thinks fit respecting the disposal of such property. This provision deals with the orders that are passed with reference to property recovered during investigation and before the commencement of trial or enquiry. On the other hand, Section 451, Cr.P.C. deals with powers of the Magistrate to pass orders for custody and disposal of property pending trial in certain cases. After the completion of the trial, the Magistrate has to pass an order under Section 452 Cr.P.C. for disposal of that property. The Magistrate are empowered with such jurisdiction not only because the property is produced before them or in their custody but also because it is the property regarding which any offence appeared to have been committed or which was used for the commission of any offence. It provides for delivery of any property to any person claiming to be entitled to possession thereof. Sub-section (5) of that section provides that the term 'property' includes not only such property regarding which an offence appears to have been committed as was originally in the possession of the accused but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise. This sub-section clearly indicates that the Magistrates exercising power under this provision have jurisdiction to dispose of the money available in the Bank account if it is established that the property which was the subject matter of an offence has been subsequently converted or exchanged, whether immediately or otherwise. Section 453, Cr.P.C. provides for payment to innocent purchaser of money found on accused. Under Section 456, Cr.P.C. the Magistrates have power to restore possession of immovable property to a person who has been dispossessed of any immovable property after evicting by force, if necessary, any other person who may be in possession of the property. As rightly pointed out by Padmini Jesudurai, J. in modern days

where commission of white collar crimes and bank frauds are increasing, interpreting the term 'property' in Section 102 Cr.P.C. in such a way as to exclude money in a Bank would certainly have the effect of placing unnecessary hurdles in the process of investigation into such crimes. The very object of the Criminal Procedure Code would be defeated if such a narrow construction is placed on certain terms found in the Code. The object of these provisions is only to detect crimes and effectively deal with criminals. No one can be permitted to evade the process of law by resorting to hypertechnical interpretations to the provisions contained in the Code. We fail to understand as to why the power available to the police to seize the cash in the hands of the accused is not available for seizing the bank account which in effect reflects the money obtained by commission of a crime. **The principle that the relationship between a banker and a customer is that of borrower and a lender cannot be stretched too far and the said principle has no application in so far as the exercise of the power conferred on the police for investigating into crimes is concerned. The principle of a debtor and a creditor applicable in the case of transactions with a Bank stands on an entirely different basis and it is a peculiar relationship existing between a banker and a customer and it will have no application in a case where money obtained by committing a crime is deposited in a bank and the same is available in the accounts of an accused person. It should be noted that the right of a customer as against his banker is not the subject matter here. But we are concerned with the power of the State to seize property involved in a crime. Therefore, on a consideration of the ratio laid down in *R.K. Dalmia's* case above referred to and the provisions contained in Chapter 34 of the Code, we are inclined to hold that money in a bank account is property for the purpose of Section 102 Cr.P.C."**

(Emphasis supplied)

The High Court of Madras holds that relationship between the banker and the customer or the borrower and the lender cannot be stretched too far to contend that the police investigation into the crimes cannot be exercised under those enactments.

17. The High Court of Kerala in the case of **KATTABOMMAN TRANSPORT CORPORATION LIMITED v. STATE BANK OF TRAVANCORE**³, has held as follows:

"....

12. Section 5 of the Bankers' Books Evidence Act, 1891 mentions the cases in which an officer of the bank should not be compellable to produce books. Section 6, however, mentions the cases in which inspection of books could be ordered by a Court of a Judge. That Section reads as follows:

"6. Inspection of books by order of Court of Judge:—

- (1) On the application of any party to a legal proceeding the Court or a Judge may order that such party be at liberty to inspect and take copies of any entries in a banker's book for any of the purposes of such proceeding, or may order the bank to prepare and produce, within a time to be specified in the order, certified copies of all such entries, accompanied by a further certificate that no other entries are to be found in the books of the bank relevant to the matters in issue in such proceeding, and such further certificate shall be dated and subscribed in manner hereinbefore directed in reference to certified copies.
- (2) An order under this or the preceding section may be made either with or without summoning the bank,

³ **1992 SCC OnLine Ker.95**

and shall be served on the bank three clear days (exclusive of bank holidays) before the same is to be obeyed, unless the Court or Judge shall otherwise direct.

- (3) The bank may at any time before the time limited for obedience to any such order as aforesaid either offer to produce their books at the trial or give notice of their intention to show cause against such order, and thereupon the same shall not be enforced without further order."

It is, therefore, clear that on the application of any party to a legal proceeding the Court or a Judge could order such inspection as provided by Section 6 of the Bankers' Books Evidence Act, 1891. But the Court has to take certain precautions as laid down by a Full Bench of the Bombay High Court in *Central Bank of India v. Shamdasani*, AIR 1938 Bom 33. In that case, Beaumont, C.J. observed that the Bank has a statutory right under Sec. 6 of the Bankers' Books Evidence Act, 1891 to object to any order directing inspection of their books though the order is made under S. 94 of the Criminal P.C., 1898 (corresponding to Sec. 91 of the Criminal Procedure Code, 1973). It is necessary to hear the bank before any order is made under the provisions of the Criminal P.C. It is also observed that a prima facie case must be made out for such inspection of the bank accounts and that the Court should not order inspection as a matter of course in every case. Otherwise there is a danger of the provision being abused by business rivals. The effect of the judgment of the Bombay High Court is of two-fold — (1) notice must be given to the bank before any inspection is ordered and (2) before such notice is given, the Court must come to a prima facie conclusion that the facts of the case justify an inspection."

(Emphasis supplied)

The High Court of Kerala interprets Section 5 of the 1891 Act which mandates that the Officer of the Bank should not be compelled to produce books, holding that under Section 94 of the Cr.P.C., 1898, at the time of investigation, a Banker cannot contend that he would not divulge information. I am in respectful agreement with the elucidation of the High Courts of Bombay, Madras and Kerala, which affirms statutory safeguards under 1891 Act, would not immunise institutions from investigatory summons when criminality suspected. **The duty to protect data must yield, where public interest and criminal investigation intersect.**

18. In view of the statutory framework, the elucidation of law of the aforesaid High Courts and the aforesaid reasons, I deem it appropriate to hold: (a) that the petitioners contention of absolute immunity under disclosure under the 2007 Act and the 1891 Act does not withstand judicial scrutiny; (b) the notice under Section 91 of the Cr.P.C. though requires to be specific and not a fishing expedition, is not *per se* illegal on the suspicion of the police to a money trail, which has a link between several accounts, in the facts of the case and (c) the power of the Investigating Officer acting as a statutory authority to issue a notice under Section 91 of the

Cr.P.C. for the purpose of summoning the document of a intermediary is within the bounds of law.

19. In the light of the preceding analysis, the submissions of the learned counsel for the petitioner that information that is to be kept confidential need not be divulged, cannot be accepted. **The protection of consumer privacy cannot eclipse the lawful imperative of investigating officers to secure evidence** and take the investigation to its logical conclusion. ***'Confidentiality must coexist with accountability'***.

20. Finding no merit in the petition, except the observations made in the course of the order, the petition stands ***rejected.***

**Sd/-
(M.NAGAPRASANNA)
JUDGE**

bkp
CT:MJ