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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 08th December, 2025

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CRL.REF. 13/2025**COURT ON ITS OWN MOTION****.....Petitioner****Through: None.****versus****STATE GOVT. OF NCT OF DELHI****.....Respondent****Through: Mr. Yudhvir Singh Chauhan, APP for
the State.****CORAM:****HON'BLE MR. JUSTICE VIVEK CHAUDHARY****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T**

1. The present Criminal Reference under Section 436 of *Bharatiya Nagarik Suraksha Sanhita, 2023*, (hereinafter referred to as 'BNSS') has been received from the court of learned Judicial Magistrate-08, West Delhi District, Tis Hazari Courts, Delhi, (hereinafter referred to as 'Referral Magistrate') and the reference is sought on the following six points:-

"1. Whether banks / financial institutions are compelled to release the amount in cyber complaints on first come first serve basis or on the basis of earlier complaint or on the basis of earlier order of the court ?

2. Whether banks / financial institutions can be compelled by the court to release the amount in the fraudster's account despite lien not being created due to technical error?

3. Whether the innocent citizens in whose account the fraudsters has sent the money to save his skin or for any other reason, should approach the court where his account is created or where the complaint is lodged by the complainant?

4. Whether the IO or the State can create lien above the first layer without intimation to the account holders?

5. When the release order has been passed by the court then what mechanism is available with the criminal court to enforce



such an order if the bank/financial institution fail to comply with the same?

6. Whether the procedure of the state in freezing the accounts above first layer instead of mere lien of the disputed amount is correct procedure or not?"

2. The material placed before us reflects that one Sh. Rishi Galhotra filed an application before the Referral Magistrate. He claimed himself to be victim of ‘*online fraud*’ and wanted release of sum of Rs. 12,660/-. He had paid said amount on OLX platform to buy one mobile.
3. The concerned police station i.e. PS Cyber West, in its reply, apprised the court that no money trail was available on the portal and since Paytm had been used as Payment Service Provider (PSP), the alleged cheated money was not credited in any account or wallet. As per subsequent reply, it was, however, apprised that the cheated amount had further been transferred to one account held by one Ranjeet Kumar Jha with RBL Bank, which account was inactive and was reported in eleven other cyber complaints.
4. The predecessor magisterial court was of the view that no adjudication was required in view of the aforesaid reply.
5. However, when the matter was taken up by the new incumbent i.e. Referral Magistrate, it took note of the fact that cyber complaints were rising at an alarming rate and the complaints in most of such cases did not get converted into formal registration of FIR and the inquiries were being conducted by the police, without following the prescribed procedure. It also noted that the complainants in such type of matters were facing difficulty in release of amount due to multiple orders from different Courts, all over India.



6. Resultantly, Referral Magistrate formed an opinion that there was requirement of having clarity with regard to aforesaid issues so that no victim of ‘*online fraud*’ is made to run from pillar to post and, therefore, the aforesaid points for consideration have been forwarded for appropriate decision.

7. Section 436 of BNSS reads as under:

Section 436: Reference to High Court

(1) Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the decision of the High Court.

Explanation.—In this section, Regulation means any Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.

(2) A Court of Session may, if it or he thinks fit in any case pending before it or him to which the provisions of sub-section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.

(3) Any Court making a reference to the High Court under sub-section (1) or sub-section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.

8. The erstwhile provision, as provided in Section 395 of the Code of Criminal Procedure (CrPC), reads as under:

“Section 395 Reference to High Court:

1. Where any Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is



subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefore, and refer the same for the decision of the High Court.

Explanation.—In this section, Regulation means any Regulation as defined in the General Clauses Act, 1897, or in the General Clauses Act of a State.

2. *A Court of Session or a Metropolitan Magistrate may, if it or he thinks fit in any case pending before it or him to which the provisions of Sub-Section (1) do not apply, refer for the decision of the High Court any question of law arising in the hearing of such case.*
3. *Any Court making a reference to the High Court under Sub-Section (1) or Sub-Section (2) may, pending the decision of the High Court thereon, either commit the accused to jail or release him on bail to appear when called upon.*

(emphasis supplied)

9. Section 436(1) of BNSS comes into play when Referral Court is of the opinion that *any Act, Ordinance, Regulation or any provision is invalid or inoperative*. In addition to the above, as per Section 436(2) of BNSS, Court of Session may refer for the decision of the High Court *any question of law arising in the hearing of such case*.

10. It is very much obvious from the bare perusal of the material placed before us that the learned Referral Magistrate has not come to any conclusion that *any Act, Ordinance, Regulation or any provision thereof is invalid or inoperative and has not been so declared by the Constitutional Courts* and that determination of the same is necessary for disposal of the pending application.

11. Any question of law, in terms of Section 436(2) BNSS, can only be referred by a Court of Session.

12. Under the old provision i.e. under Section 395 Cr.P.C., even a Magisterial Court was competent to do so but such power has been curtailed



and as per bare reading of Section 436(2) BNSS, such power, now, vests with Court of Session only. Moreover, the issues raised herein are not, even otherwise, questions of law. Needless to say, a magisterial court has ample powers to pass appropriate order(s), including ordering attachment and seizure. These powers have to be, of course, exercised after keeping in mind the factual matrix of any given case.

13. Be that as it may, since, no question as to the validity of any law has been raised in the present matter and since ‘question of law’ can be forwarded only by a ‘Court of Session’, the Reference is not maintainable.

14. Reference petition stands disposed of accordingly.

15. A copy of this order be forwarded to learned Referral Magistrate for information.

(VIVEK CHAUDHARY)
JUDGE

(MANOJ JAIN)
JUDGE

DECEMBER 8, 2025/st/pb