

**In the Court of Sh. Ashwani Kumar Sarpal, Special Judge  
(P.C. Act), CBI-08, Rouse Avenue Court, New Delhi**

Enforcement of Directorate vs. Raj Kumar & Another

ECIR No. 311/DZ/2009

CIS No. 8/2021

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18.03.2023

**ORDER ON SENTENCE**

1. Accused No.1 Raj Kumar Sharma and accused No.2 Ramesh Chand Chaturvedi were working as UDC/Cashier as well as Assistant Meter Reader respectively in West Zone of Delhi Jal Board during the year 2008. During the period from February 2008 to December 2008, they in conspiracy with each other falsified and forged the record and misappropriated/cheated sum of Rs. 47,76,622/- belonging to Delhi Jal Board by not depositing the same with the concerned bank. CBI registered FIR against them on 30.06.2009 and ultimately filed the chargesheet in the court on 29.07.2010.

2. The Special Court- CBI after trial convicted both the accused persons under Section 120-B r/w Section 409, 420, 468, 471, 477-A IPC and Section 13 (a) (c) r/w Section 13 (2) PC Act as well as the substantive sentences under these provisions vide judgment dated 07.12.2012. Accused No.1 Raj Kumar Sharma was sentenced to undergo rigorous imprisonment of five years and was sentenced to pay fine of Rs. 6,00,000/-, whereas

accused no. 2 Ramesh Chand Chaturvedi was sentenced to imprisonment of four years and was sentenced to pay fine of Rs. 3,50,000/- vide order dated 12.12.2012 by Id. Special Judge- CBI.

3. Both the accused persons challenged their conviction and sentence in the Hon'ble High Court but their appeal was dismissed on 17.09.2015. They filed SLP in the Hon'ble Supreme Court which was also dismissed on 22.04.2016. Both the accused persons undergone the complete sentence of imprisonment and accused No. 1 Raj Kumar even deposited the fine amount. Accused No. 2 Ramesh Chand could not deposit the fine amount, so he had further undergone the sentence in default. After pronouncing the order on sentence on 12.12.2012, the Id. Special Judge- CBI took the accused persons in custody and by the time, their SLP was dismissed by Hon'ble Supreme Court, they had undergone the major portion of their sentence. Accused persons informed that they were released from custody in the year 2016 itself after completion of sentence and after getting some remission.

4. After the completion of sentence of imprisonment and after getting some rebate in the imprisonment due to good conduct, accused persons were enjoying their life and were adjusting in the society again, then the ED suddenly filed the present complaint under PML Act on 30.03.2021 for commission of offence under Section 4 r/w Section 3 of the Act. It is important to mention here that ECIR was registered by the Enforcement Directorate in this matter on 17.12.2009 and it took about 11¼

years to file the present complaint in the court. This complaint was filed almost after about 4½ years of the completion of the sentence by accused persons in CBI case. No explanation has been given in the complaint by the ED why it took several years to file the same in the court. No doubt, there is no limitation period for filing the complaint in the court by the ED under PML Act but certainly in the present situation, it can be said that the ED slept over the matter for several years and suddenly come to the court to harass the accused persons and to upset their settled lives and has caused some prejudice to them.

5. Vide order dated 28.11.2022, the cognizance on the complaint was taken and accused persons were summoned who appeared and were released on bail. After completion of formalities regarding supply of copies, they were heard on the point of charge and ultimately the charge under Section 4 r/w Section 3 of PML Act was ordered to be framed against them vide order dated 03.03.2023. The formal charge was framed against both the accused to which they pleaded guilty and did not chose to claim trial. Accused No. 1 even submitted an application containing some grounds for taking lenient view and to consider the sentence already undergone in CBI case in the present matter. Accused No. 2 who has also pleaded guilty supported the application of the accused No. 1 qua himself also. Accused persons had also stated that they were pleading guilty voluntarily after discussing about it with their family members and counsels. Even counsels for accused persons informed the court that they had told the accused persons regarding the

consequences of pleading guilty and its pros and cons but still they chose not to contest the case and to accept their guilt because they have realized that after the order of Hon'ble Supreme Court upholding their conviction in scheduled offences, they have left with no defence. Since, the accused persons pleaded guilty voluntarily, so they were convicted under Section 4 of PML Act r/w Section 3 of the Act vide order of the same day.

6. The arguments on sentence was heard on behalf of both the accused persons and I have also gone through the written applications cum submissions filed by accused No.1 which was adopted by accused No. 2 also for taking lenient view. No doubt in this application, certain grounds have been taken which are not concerned in respect of sentencing issue but still I deem it proper to deal with the same in brief.

7. The offences for which the accused persons were convicted by Spl. CBI Court vide order dated 07.12.2012 and sentenced on 12.12.2012 are the scheduled offences as per provisions of PML Act. It is a separate legislation which relates to tainted money or other assets collected, concealed, used, claimed etc. while committing the scheduled offences. The minimum punishment under Section 4 of the Act is 3 years which can be extended upto 7 years and some fine has to be compulsorily imposed. The wording of Section 4 of the PML Act also point out that the punishment shall be of rigorous imprisonment which shall not be less than three years. It means the court even if takes very lenient view, then also not less than three years imprisonment

can be given to the accused persons which is mandatory. When there is a minimum punishment prescribed under any law, then the accused cannot be given any benefit of Probation of Offenders Act and no discretion is left with the court to award sentence less than minimum.

8. According to the ED, no misappropriated/cheated amount could be recovered from the accused persons during investigation as they had spent the same upon their personal expenses and for defending themselves in CBI case. However, non recovery of any amount is not a ground to exonerate the accused persons from the offence under PML Act or to impose punishment even less than three years. Infact after conviction in CBI case which was upheld upto Hon'ble Supreme Court, accused persons virtually had left no defence that is why they had chosen to plead guilty in the present complaint and not to contest the case.

9. It is argued on behalf of the accused persons that if the accused are again sent to imprisonment in this PMLA Complaint case, then that will amount to double jeopardy because once they had convicted and sentenced in scheduled offence on the basis of certain allegations of misappropriation and cheating which sentence was upheld upto Hon'ble Supreme Court, then sentencing again under different Act on the same facts and circumstances will cause serious prejudice to the accused as they could have been charged for all offences at one time but now, if they are sentenced differently at different time for different offences under same facts and circumstances, then it will be a

double jeopardy for them. However, this submission is not acceptable because to operate as a bar of double jeopardy, the second prosecution and consequential punishment must be for the same offence. If the two offences are distinct, then notwithstanding that the allegations of facts in both the matters may be substantially similar, the benefit of the ban under Section 300 Cr.P.C. cannot be invoked. The CBI case was relating to committing offences of cheating, misappropriation, criminal misconduct of the public servant while discharging official duty but the present complaint is relating to using, acquiring, concealing or claiming etc. of the proceeds of the said offences which amounts to Money Laundering and thus constitute a different offence. In such situation, the question of double jeopardy does not arise. This point had already been dealt with while passing an order on charge.

**10.** It was also argued on behalf of the accused persons that filing of delayed complaint by the ED has caused prejudice to them because had this complaint was filed during pendency of the CBI case, then the trial of both matters might have been conducted simultaneously and there was possibility of passing of the final judgment on the same day by the same court. In that situation, if the court concerned had passed conviction order and sentenced in both CBI case and ED complaint case, then the benefit of undergoing concurrent sentence might have been given to the accused persons but now when the accused persons had already undergone sentence in CBI case, then giving further sentence in PMLA case will deprive them the benefit of

concurrent sentence and it also deprive them the benefit of Section 44 (1) (c) of the PML Act.

11. Section 44 deals with the PMLA offences triable by the Special Courts. Clause 1 (c) of this section requires that scheduled offence case has to be tried in the Special Courts where PMLA matter is pending. Thus, this provision infact mandates that PMLA complaint as well as scheduled offence matters should be tried by one court and that court will be the court where the PMLA case is instituted. However, this provision applies only in situation where both the matters are pending and not finally disposed off or atleast one prosecution is not instituted. Here in the present situation, the CBI case was already decided much prior to filing of the present complaint so no question of any prejudice as claimed under Section 44 (1) (c) PML Act or applicability of this provision arises against the present accused persons when the law does not give any directions that PMLA complaint should be filed only during pendency of scheduled offence case.

12. The accused persons are right to some extent that had the present ED complaint filed during the pendency of CBI case, then there was every possibility that both cases were dealt with by one court and if convicted on the same day, the accused might have been given the benefit of undergoing concurrent sentence. Though it was a strong possibility but the concerned court was not bound to impose concurrent sentences in all the situation. No doubt, this strong possibility of awarding concurrent sentences now has been snatched from the accused

persons due to delayed complaint filed by ED but there was no limitation for filing the present complaint case and accordingly, mere fact that ED has woke up after several years itself is not a ground to impose any sentence less than three years or to adjust this sentence with the earlier sentence undergone in CBI matter. The plea taken in this regard by the accused persons has no merits and the sentence awarded and undergone in CBI matter cannot be adjusted in the present complaint case.

13. It is stated on behalf of accused persons that they have already lost their government jobs, did not got their terminal benefits, have the responsibility of their family members, earning very meager income and are still are not able to pay the loan taken for the purpose of depositing the fine amount as directed by the CBI court, have after undergoing sentence in CBI case now have been reformed and are adjusting in the society, approaching to the stage of Sr. Citizen etc. may be the genuine reasons but this court is helpless and cannot impose any sentence less than three years nor can give any benefit under Probation of Offenders Act as requested.

14. The accused persons after realizing that they have no defence in this present PMLA matter after conviction in scheduled offences by the CBI court which was upheld upto Hon'ble Supreme Court of India have pleaded guilty voluntarily. They have already undergone sentence of 5 and 4 years respectively in scheduled offences as well as have already spent the misappropriated/cheated money for their defence in CBI case and other circumstances mentioned above so by taking



lenient view, both the accused persons are hereby sentenced to undergo rigorous imprisonment of 3 years and also liable to pay fine of Rs. 5,000/- each. In case of non deposit of the fine, they will also undergo simple imprisonment of seven days. This is the minimum sentence which court can impose upon the accused persons as per law. The copy of this order as well as the order dated 03.03.2023 by which accused persons were convicted be given to them free of cost. File be consigned to record room.

**Dated : 18.03.2023                      (Ashwani Kumar Sarpal)**  
**Special Judge (P.C. Act), CBI-08.**