

**IN THE COURT OF SH. AMITABH RAWAT,
ADDITIONAL SESSIONS JUDGE-03
(SHAHDARA), KARKARDOOMA COURT, DELHI**

SC No. 181/2020

Case No. ECIR/05-STF/2020

PS- Directorate of Enforcement, Delhi

U/S. 3,4 & 70 of Prevention of Money Laundering Act, 2002

State Vs. Tahir Hussain & Anr.

14.12.2023

ORDER

1. Vide this order, I shall dispose off the application moved by the applicant/accused Tahir Hussain for adjournment/stay the proceedings till the framing of charge/discharge in FIR No. 59/2020 .

2. I have heard Ld. Counsel for the accused/applicant Tahir Hussain and Ld. Special Public Prosecutor for Enforcement of Directorate. I have perused the record including the judgments filed and written arguments.

3. **3.1** Ld. Counsel for applicant/accused had argued that in the predicate offence in FIR No. 59/2020, no charges has been framed and as such, trial cannot proceed in PMLA case on the following grounds :-

a. The schedule offence must result in a profit or proceed of crime, proceed of crime must be laundered and crime must be resulted in money laundering. However, proceeds of crime and money laundering is not made out in this case.

b. Ideal way is that the predicated offence has to be tried first

and complainant/ ED never said that the schedule offence has to be tried independently and earlier there to, ED said that it can be tried simultaneously.

c. Without conviction in the schedule offence, proceed of crime will not arise and PMLA case cannot be tried first and independently.

d. Simultaneously means whether both have to be heard together or one be heard in immediately succession of the other i.e. schedule offence and PMLA case which qualify for simultaneously hearing in predicate offence, if the accused acquitted offence of money laundering cannot continue. There is no material and allegation in the complaint touch money laundering as such prosecution under PMLA does not arise.

e. There is no definition in PMLA about stand alone offence. Schedule offence/ predicate offence and offences under money laundering are inextricably linked to each other, under section 44 (1) (d), explanation is orders not judgment.

3.2 Ld. Counsel for accused has referred to the judgment of Hon'ble Telangana High Court passed in Crl. Revision Petition No. 87/21 titled as *Bharti Cement Corporation Private Limited vs. Directorate of Enforcement & Others*. He also argued that PMLA offence is not a stand alone offence and based upon a predicate/scheduled offence. The following judgments were relied upon :-

- i) Tahir Hussain Vs. Assistant Director SLP CRL 606/2023;
- ii) Vijay MadanLal Chaudhary VS UOI 2022 SCC Online SC 929;
- iii) Parvati Kollur Vs Directorate of ED 2022 SCC Online SC 1975;
- iv) DOE Vs Gagandeep Singh 2022 SCC Online DEL 514;
- v) DOE Vs. Gagandeep Singh SLP CRL No. 42315/2022

- vi) Indrani Patnaik Vs ED WP (c) No. 368/2021;
- vii) Adjudicating authority PMLA vs Ajay Kumar Gupta;
- viii) Directorate of Enforcement Vs Oblapuram;
- ix) M/s Niknish Retail Ltd Vs Assistant Director ED
- x) Harsh fabiana vs ED 2022 SCC Online DEL 3121;
- xi) Emta coal Ltd Vs Deputy Director, ED;
- xii) ED Vs Vinay Rai, CrI. Revision Petition No. 01/2020 ;
- xiii) UOI Vs. J. Shekhar SLP C NO. 12865/2018
- xiv) Manturi Shashi Kumar & Another vs. The Director, Directorate of Enforcement & Others, Writ Appeal No. 107 of 2023.

4. Reply was filed on behalf of the Enforcement of Directorate (ED).

Ld. Special Public Prosecutor Sh. Zoheb Hossain had argued that :-

i) The application is based on an erroneous interpretation of law. There is no bar on proceeding with the trial under PMLA unless the accused is acquitted / absolved from allegations of criminal activity relating to the scheduled offence in view of the judgment passed by the Hon'ble Supreme Court in the case of Vijay Madanlal Choudhary & Ors. Vs Union of India & Ors. SLP(CrI.) No. 4634 of 2014. The judgment clearly says that only in the event of acquittal of the person concerned or being absolved from allegations of criminal activity relating to the scheduled offence, and if it is established in the Court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex- consequenti proceeds of crime within the meaning of section 2(1) (u).

Ld. SPP argued that in this case, the scheduled offences against the applicant have not been quashed neither he has been discharged by this Ld. Court. On the contrary, this Court has already taken cognizance upon the

charge-sheet filed by Delhi Police which clearly shows that prima facie offences against the applicant stand established. There is sufficient evidence to show prima facie involvement of the applicant that he was actively involved in converting the tainted money in to legal money or in projecting tainted money as untainted one. Therefore, this Court has rightly framed the charges and there is no scope for interference in the trial which is at the crucial stage of prosecution evidence.

ii) Hon'ble High Court of Madhya Pradesh in the case of Hari Shankar Gurjar & Anr. Vs. Directorate of Enforcement Criminal Revision No. 2536 of 2022 has held that scheduled offence is only a trigger point to initiate investigation under PMLA and once ECIR is recorded, case registered under PMLA is independent, distinct and stand alone and it has nothing to do with the continuation of the scheduled offence.

Relevant para of the judgement is reproduced below:-

"15. A bare reading of the aforesaid provisions would show that the scheme of the PMLA indicates that it deals only with laundering of money acquired by committing a scheduled offence. In other words, PMLA deals only with the process or activity connected with the proceeds of a scheduled crime, including its concealment, possession, acquisition or use and it has nothing to do with the launch of prosecution for scheduled offence and continuation thereof. Scheduled offence is only a trigger point to initiate investigation under PMLA and once ECIR is recorded, case registered under PMLA is independent, distinct and stand alone... "

iii) It was also argued that explanation to Section 44 PMLA provides that the jurisdiction of the special court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act shall not depend upon any orders passed in respect of the schedule offence and the trial of the two offences shall not be construed as joint trial.

This explanation was not challenged in the case of Vijay Madanlal Chaudhary(supra) therefore in accordance with this explanation trial in the case of trial under PMLA may be proceeded with and it is not dependent upon the order of framing of charges in the case of scheduled offence.

iv) Moreover, the judgment of M/s Bharathi Cements Corporation Private Limited Vs. Directorate of Enforcement, CRL Revision No. 87/2021 relied upon by the applicant has been passed by a Single Judge which is in clear conflict with the Order dated 10.08.2021 passed by the coordinate bench of the same High Court in relation to the same question of law. The coordinate bench in the case of M/S. Jagati Publication Ltd. vs The Enforcement Directorate, Criminal Revision Case No. 83 of 2021 has held that PMLA case can be proceeded with independently without awaiting the outcome of result of scheduled offences or commencement of trial in the predicate/scheduled offences. Therefore the Court order dated 18.09.2022 passed in M/s Bharathi Cements Corporation Private Limited (supra) cannot be said to have a binding effect being in conflict with the set principles of law laid down by the Hon'ble Supreme Court in the matter of "Sundaradas

Kanyalal Bhathija v. The Collector, Thane" reported in AIR 1991 SC 1893 wherein it has been observed as follows;

"It would be difficult for us to appreciate the judgment of the High Court. One must remember the pursuit of law, however glamorous it is, has its own limitation on the Bench. In a multi-judge Court, the Judges are bound by precedents and procedure. They could use their discretion only when there is no declared principle to be found, no rule, and no authority. The judicial decorum and legal propriety demand that where a Learned Single Judge or a Division Bench does not agree with the decision of a Bench of coordinate jurisdiction, the matter shall be referred to a larger Bench. It is a subversion of judicial process not to follow this procedure."

v) Further, the judgment of M/s Bharathi Cements Corporation Private Limited Vs. Directorate of Enforcement CRL Revision No. 87/2021 relied upon by the applicant has already been assailed in the Hon'ble Supreme Court in Diary No. 22328/2923 wherein the Hon'ble Supreme Court was pleased to issue notice against the respondent vide order dated 05.07.2023.

vi) It was also argued that right of speedy trial vests not just in accused but also in prosecution. The present application is a dilatory tactic. In a earlier petition No. Crl. MA No. 23452, before Hon'ble Delhi High Court has rejected his application for stay of proceedings. There are three FIRs which are the predicate offence i.e. FIR No. 65/20, 59/20 & 88/20

Ld. Special Public Prosecutor has filed following judgments :-

- i) Vijay Madanlal Choudhary & Ors Vs. Union of India & Ors. 2022 SCC Online SC 929;
- ii) Y Balaji vs Karthik Desai & Anr;
- iii) P. Rajendran vs. Directorate of Enforcement Judgment dated

14.09.2022 passed by the Hon'ble Madras High Court in Criminal Original Petition No. 19880 of 2022;
iv) J. Sekar vs. Union of India & Ors. 2018 SCC OnLine Del 6523;
v) Radha Mohan Lakhota vs. Directorate of Enforcement 2010 SCC OnLine Bom 1116 ;
vi) Directorate of Enforcement vs. Aditya Tripathi 2023 SCC OnLine SC 619;
vii) Dr. Manik Bhattacharya vs Ramesh Malik and Others 2022 SCC OnLine SC 1465;
viii) Hari Shankar Gurjar & Anr. Vs. Directorate of Enforcement through Assistant Director, 2023 SCC OnLine MP 816;
ix) M/S. Jagati Publication Ltd. vs The Enforcement Directorate,, 2021 SCC OnLine TS 3293;
x) Sundeep Kumar Bafna vs State of Maharashtra, (2014) 16 SCC 623;
xi) Pavana Dibbur vs. The Directorate of Enforcement, Criminal Appeal No. 2779 of 2023 dated November 29, 2023.

5. **5.1** In the present case under Prevention of Money Laundering Act, 2002 (PMLA), the complaint was filed on 16.10.2020. The cognizance was taken. The investigation is complete. Arguments on charge were heard at length and vide order dated 03.11.2022, order on charge was passed and charges under Section 3 of the Prevention of Money Laundering Act, 2002 punishable under Section 4 of the Prevention of Money Laundering Act, 2002 were accordingly framed against the applicant/accused Tahir Hussain on 11.01.2023. The accused challenged the said order on charge before Hon'ble High Court of Delhi which vide order dated 24.11.2022 in Criminal Revision Case No. 775/2022 upheld the order on charge. Accused, thereafter, preferred a SLP before Hon'ble Supreme Court of India against the said order of Hon'ble High Court of Delhi but same was dismissed vide order dated 20.02.2023.

5.2 The contention of the accused to the extent that there is no proceeds of crime or money laundering in the present case or the offence of PMLA is not made out, is contrary to records as detailed order on charge was passed by this Court and same was upheld till Hon'ble Supreme Court of India. Thus, the accused, through this application, cannot contend that there is no proceeds of crime or there is no money laundering.

5.3 The contention of the counsel for accused is that the present PMLA case must be stayed till the time order on charge/discharge are passed in the predicate offence.

5.4 The law of PMLA has been elaborately dealt with by the judgment of Hon'ble Supreme Court of India in *Vijay Madan Lal Chaudhary (Supra)*. Hon'ble Supreme Court of India while dismissing the SLP in the present case against the order on charge had also observed that directions contained in *Vijay Madan Lal Chaudhary* be followed.

5.5 It has been held that a case under PMLA can only be registered if there exists a predicate offence. Thus, the existence of a predicate offence is quintessential for initiation of a complaint/ECIR in PMLA. However, the investigation in the PMLA matter is done by the Directorate of Enforcement while investigation into the predicate offence is done by other agency. Once the investigation in the PMLA has been initiated, it is tried as a separate case as well. Thus, predicate offence triggers an initiation of a case under PMLA

but is not only independently investigated but also independently and separately tried.

It is also clear that if there is an order of discharge or acquittal in the predicate offence, then the proceedings in the PMLA case shall come to a stop. That does not mean that if there is an order on charge or conviction, there would also be an automatic conviction in PMLA case.

The case against an accused in PMLA has to be investigated, tried and proved independently of a predicate offence. Thus, the threshold created is that discharge or acquittal automatically puts an end to the proceedings under PMLA regardless of the stage of the case or the nature of the evidence.

5.6 In such circumstances, to contend that till the time there is no charge or the conviction, the proceedings under PMLA should be stayed, is not mandated by law. If PMLA matter is stayed till charge or by the same logic till conclusion of the case by way of conviction, then witnesses, particularly, public witnesses may be lost.

5.7 One may also see that witnesses in PMLA case and predicate case may be common but not necessarily the same. It is also not necessary that accused in predicate and PMLA case may be same.

5.8 There is some logic in the argument of the counsel for accused that if there is no conviction or acquittal, the judgment in PMLA case cannot

be passed. That does not mean that till the time charges are framed or judgment in the form of conviction or acquittal is passed, the evidence in the PMLA matter cannot be recorded as it would unnecessarily put an embargo on the case itself despite the fact that witnesses are available. There is no judgment of Hon'ble Supreme Court of India or Hon'ble High Court of Delhi to buttress the contention that the PMLA matter needs to be stayed till the time order on charge/conviction or acquittal is passed.

6. In view of the above discussion, the application filed by accused Tahir Hussain for stay of the proceedings stands dismissed.

The application is accordingly disposed off.

Copy of this order be e-mailed to the Ld. Counsel for accused, Ld. Special Public Prosecutor as also to worthy Director (ED).

(Amitabh Rawat)
Addl. Sessions Judge-03
Shahdara District, Karkardooma Courts,
Dated: 14.12.2023