

HIGH COURT OF MADHYA PRADESH
BENCH AT INDORE
(SB: HON. SHRI JUSTICE PRAKASH SHRIVASTAVA)

W.P. No.4336/2015

Vijay Madanlal Choudhary Vs. Union of India & Anr.

W.P. No.4341/2015

Vijay Madanlal Choudhary Vs. Union of India & Anr.

W.P. No.4344/2015

Vijay Madanlal Choudhary Vs. Union of India & Anr.

W.P. No.4347/2015

Vijay Madanlal Choudhary Vs. Union of India & Anr.

W.P. No.4350/2015

Vijay Madanlal Choudhary Vs. Union of India & Anr.

W.P. No.5089/2015

Vijay Madanlal Choudhary Vs. Union of India & Anr.

W.P. No.5091/2015

Vijay Madanlal Choudhary Vs. Union of India & Anr.

W.P. No.5625/2015

Sharad Tikamdas Kabra Vs. Union of India & Anr.

Shri Vikram Choudhary learned senior counsel with Shri Dinesh Tiwari, M. Ramesh, Sudhanshu Vyas, Ms. S. Vyas learned counsel for petitioners.

Shri Vikas Garg with Shri V. Phadke, learned counsel for respondents.

Whether approved for reporting :

ORDER

(Passed on 20/10/2015)

1/ This order will govern the disposal of W.P. Nos.4336/15, 4341/15, 4344/15, 4347/15, 4350/15, 5089/15, 5091/15 & 5625/15 since it is submitted by counsel for both the parties that the issue involved in all these writ petitions is identical.

2/ The writ petition Nos.4336/15, 4341/15, 4344/15, 4347/15, 4350/15, 5089/15 & 5091/15 have been filed by the petitioner for quashing the proceeding and investigation initiated under Prevention of Money Laundering Act (in short PMLA) whereas in W.P. No.5625/2015 additionally writ of Habeas Corpus has been prayed.

3/ In brief the case of petitioner in W.P. Nos.4336/15, 4341/15, 4344/15, 4347/15, 4350/15, 5089/15 & 5091/15 is that petitioner No. 1 is promoter and Group Chief Executive of Zoom Group of Companies, petitioner No.2. Petitioner No.2 had availed non-fund based bank guarantee facilities from Punjab National Bank and other banks and when number of lending banks increased, a consortium was formed under the leadership of Punjab National Bank as PNB consortium and credit limits were sanctioned to respondent No. 2. Due to the global economic meltdown of 2008, the bank guarantees were invoked by the bankers which brought the business activities of petitioner at a halt in November 2009. When the CDR process was going on at that stage complaints were filed by PNB and other banks, as a result of which five cases were registered under Section 120-B read with Section 420 of IPC against the petitioners being (1) RC BD1/2011/E/0005 at the instance of

PNB; (2) RC BD1/2011/E/0009 by Syndicate Bank Mumbai; (3) RC BD1/2011/E/0010 at the instance of Canara Bank Mumbai; (4) RC BD1/2012/E/0007 at the instance of United Bank of India Mumbai & (5) RC BD1/2013/E/0001 by Union Bank of India Mumbai. In these cases, the investigation has been done by CBI and the charge sheets have been filed before the competent court and petitioner No.1 was enlarged on bail. The respondents thereafter based upon the above five FIRs registered by CBI have suo motu registered five cases i.e. (i) ECIR/INSZO/7/2013; (ii) ECIR/INSZO/8/2013; (iii) ECIR/INSZO/9/2013; (iv) ECIR/INSZO/10/2013; & (v) ECIR/INSZO/11/2013 under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 at Indore Sub Zonal Office.

4/ The petitioners have approached this Court with a prayer to quash the case registered and proceedings initiated against them under the PMLA and alternatively to restrain the respondents from subjecting the petitioner to coercive and custodial interrogation.

5/ The respondents No. 1 & 2 had filed preliminary reply to the writ petition raising the objection that petitioner No. 1 is not cooperating and inspite of issuance of summons on five occasions he had not appeared and a further plea has been raised that non-bailable warrants have been issued by the Court of competent jurisdiction against the petitioner No. 1 under PMLA and the petitioner No. 1 is not traceable and that the Special Court CBI has also issued the non bailable warrant which is pending for execution. It is stated in the reply that the CBI had registered the FIR against the petitioner and in the investigation by the CBI it was revealed that petitioners had misrepresented their financial health before the PNB

consortium of banks by resorting to illegal activities and that the offence under Sections 120-B and 420 of IPC are scheduled offences under PMLA in respect of which CBI has already filed charge sheet against the petitioner. The material which has been gathered during investigation has been disclosed in the reply. It has further been stated that even after 1/6/2009 the funds were siphoned off and scheduled offences were committed, the details thereof have also been disclosed in the reply and a plea has been raised that the investigation is being rightly done under PMLA.

6/ The petitioners have filed rejoinder as well as additional rejoinder and the respondents have filed the second preliminary reply on 20th August 2015 and an application for raising additional grounds has also been filed by petitioner.

7/ The same issue is involved in W.P. No.5625/2015 which has been filed by one Sharad Tikamdas Kabra seeking the writ of habeas corpus challenging the arrest order dated 20.5.2015 and raising the additional ground that the Special Court of Additional Sessions Judge is not the designated court under Section 43 and 44 of the PMLA and that the proceedings before the said Special Court are not competent.

8/ Learned counsel for petitioner submits that in the Bill as well as the Act which was originally enacted on 17/1/2003 under Section 45 the offences were cognizable offences but subsequently on 21/5/05 Section 45 was amended and the offences were made non cognizable. He further submits that in respect of non cognizable offences under Section 2(l) Cr.P.C. the police officer has no authority to arrest a person without warrant and under Section 155 of Cr.P.C.the procedure has been prescribed for information as to non cognizable cases and

investigation of such cases and without following the said procedure the respondents cannot be allowed to proceed with the investigation. He further submits that even assuming the offence in question is a cognizable offence then also in terms of Section 154 of Cr.P.C. the FIR is required to be registered and under Section 157 the report is required to be sent to the Magistrate and under Section 167 of Cr.P.C. case diary is required to be maintained and submitted before the Magistrate for taking remand and under Section 172 Cr.P.C. the case diary is required to be maintained and under Section 173 the report is to be submitted after completion of investigation. He has raised a submission that all these procedure has not been followed therefore, the investigation is not sustainable.

9/ Learned counsel for respondents has opposed the writ petition and has submitted that on account of their conduct, the petitioners are not entitled for any relief since they are not cooperating in the investigation and they have given incorrect address of the company and they are not appearing despite of service of summons. He further submits that petitioners are required to appear under Section 8 of PMLA Act before the adjudicating authority and raise all preliminary objections. He further submits that non-bailable warrant has been issued in June, 2015 by the Special Court but the petitioner No. 1 is not appearing before the Special court nor he has applied for cancellation of non-bailable warrant. He has also submitted that in terms of Section 19 of PMLA reasons have been submitted before the Special court in sealed cover and under Section 45(1A) the officers of respondents are not the police officers. He has also submitted that in terms of Section 65 of PMLA, the provisions of Cr.P.C. is not attracted to the extent the provisions

are contained in PMLA. He has also submitted that Section 71 of PMLA has overriding effect. He has further submitted that at this stage only summons have been issued under Section 40 therefore, the petitioner cannot raise an issue in respect of arrest and that investigation is being done in accordance with law.

10/ Pressing W.P. No.5625/2015, learned counsel appearing for the petitioner submits that the offence is triable by the Special Court established in terms of Section 43 and 44 of PMLA but in the present case though the Sessions Judge has been notified as Special Court, but in the work distribution memo the case has been assigned to the Additional Sessions Judge which is not the designated Court and the bail application of the petitioner has been rejected by order dated 1.7.2015 by the Court of Additional Sessions Judge, which was not the competent court.

11/ As against this learned counsel for the respondent opposing the writ petition has submitted that the Sessions Court is the designated court, hence the Additional Sessions Judge is competent to consider the matter.

12/ I have heard the learned counsel for the parties and perused the record.

13/ The first issue is if the offence under PMLA is cognizable offence or it is non-cognizable offence? In terms of Section 2(l) of the Cr.P.C., non-cognizable offence is one in which a police officer has no authority to arrest without warrant, whereas in terms of Section 2(c) of the Cr.P.C. cognizable offence is one in which a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. In terms of Section 4 of PMLA

offence of money laundering is punishable with rigorous imprisonment for a term not less than 3 years extending to 7 years and with fine. The Second Schedule to the Cr.P.C. relates to classification of offences under other laws and in terms of the Second Schedule of the Cr.P.C. an offence which is punishable with imprisonment for 3 years and upward but not more than 7 years, is a cognizable and non-bailable offence. Thus, Section 4 of the PMLA read with Second Schedule of the Cr.P.C., makes it clear that the offences under PMLA are cognizable offences. Section 45 of the PMLA also provides that offences under the PMLA are cognizable and non-bailable. So far as the second proviso to sub-section 1 of Section 45 of PMLA is concerned, that relates to the taking cognizance of offence by the Special Court and from that it alone cannot be inferred that the offence is not cognizable.

14/ Learned counsel for the petitioner has placed reliance upon the judgment of the Supreme Court in the matter of **Om Prakash and Another Vs. Union of India and Another**, reported in **(2011) 14 SCC 1** in support of his submission that the offences under PMLA are non-cognizable offences but in the case of **Omprakash** (supra) the Supreme Court considering the provisions contained in Section 9-A(1) of Central Excise Act, 1944 which in clear terms provides that the offences under Section 9 are deemed to be non-cognizable within the meaning of the Cr.P.C. as also considering Section 20 of the Act and the object of the Excise Act relating to recovery of excise duty and not to punish for infringement of provisions of the Act, has held that the offences under the Excise Act are not cognizable offences but in the PMLA no such deeming fiction as contained in Section 9-A of the Central Excise Act, 1944 is available and

the object of PMLA is also different, therefore, the reasoning given in the judgment of the Supreme Court in the matter of **Omprakash** (supra) cannot be applied in the present case and the benefit of the said judgment cannot be granted to the petitioner.

15/ Counsel for the petitioner has also relied upon the judgment of the Gujarat High Court in the matter of **Rakesh Manekchand Kothari Vs. Union of India dated 3.8.2015**, passed in Special Criminal Application (Habeas Corpus) No.4247/2015 but in that judgment the Gujarat High Court has considered and stated about the procedure to be followed in both the eventualities, i.e. if the offence under PMLA is treated to be cognizable and if it is not treated to be cognizable. At one place the Gujarat High Court has, in one sentence, said that offence under provisions of PMLA is non-cognizable, but in my humble opinion the said finding is not supported by reasons. Even otherwise the said judgment only has persuasive value and considering the provisions of Section 4 of PMLA read with Part-II of First Schedule to Cr.P.C., I am of the opinion that the offence under PMLA is cognizable.

16/ Having held so the next question arises whether the procedure prescribed in Cr.P.C. for investigation of cognizable offence i.e. Section 154 of the Cr.P.C. relating to registering the FIR, Section 157 & 167 relating to investigation, Section 172 of the Cr.P.C. relating to maintaining the case diary is required to be followed while investigating the offence under the PMLA?

17/ Section 71 of PMLA gives overriding effect to the Act and provides as under :-

“71. 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.

18/ Section 65 of the PMLA relates to applicability of the Cr.P.C. and provides as under :-

“65. Code of Criminal Procedure, 1973 to apply.- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.”

19/ Since PMLA is a special act and the provisions of this Act have been given overriding effect, therefore, they will prevail in case if there is any inconsistency with the general Act. In terms of Section 65 of PMLA, the provisions of PMLA relating to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under PMLA have the overriding effect and the provisions of the Cr.P.C. not inconsistent with the provisions of PMLA in this regard, only are made applicable.

20/ So far as the search and seizure is concerned, Section 16 and 17 starting with the non-obstante clause provide a detailed power of survey and procedure of search & seizure. Section 19 of PMLA provides for power to arrest. In respect of attachment, Section 5 of PMLA provides for attachment of property involved in money laundering and for confiscation Section 8(5) of PMLA gives the power. Section 45 of PMLA provides for the prosecution by Special Court on complaint in writing made by the specified officer. In terms of Section 46 of the PMLA, the provisions of Cr.P.C. are applicable in the proceedings before the Special Court.

21/ So far as the issue of investigation is concerned, the PMLA does not contain any provision parallel to Section 154 of the Cr.P.C. for registration of FIR, Section 157 of the Cr.P.C. relating to sending the report to the Magistrate, Section 167 Cr.P.C. relating to the procedure when investigation cannot be completed within 24 hours and Section 172 of the Cr.P.C. relating to maintaining the case diary. If the offence is registered against a person under the PMLA then the investigation is to be carried out by following some reasonable procedure. Such a course is also necessary keeping in view the issue of personal liberty and fair and proper investigation. The judgment of the Supreme Court in the matter of **State of Haryana and others Vs. Bhajan Lal and others, reported in (1992) Supp(1) SCC 335** also supports the petitioner's contention that unfettered power cannot be given in respect of investigation. Though in the said judgment it has been observed that the investigation of the offence is the field exclusively reserved for the police officers, but the said observation has been made in respect of offence registered under the IPC whereas in the present case the offence is registered under PMLA. Under the provisions of PMLA, the investigating officers are not the police officers but since for investigation of offence Provisions of Cr.P.C. are held to be applicable, therefore, they are required to follow the same. Keeping in view the provisions of Section 65 of PMLA and also the fact that there is no procedure prescribed in PMLA for investigation of the offence, I am of the opinion that the procedure which has been prescribed under the Cr.P.C. is required to be followed while investigating the offence under PMLA.

22/ So far as the present case is concerned, in the case of Vijay Madanlal Choudhary in W.P. Nos.4336/15, 4341/15, 4344/15, 4347/15, 4350/15, 5089/15 & 5091/15, the matter is at the investigation stage, therefore, the investigating authorities are directed to carry out the investigation in accordance with the provisions contained in the Cr.P.C.

23/ So far as the W.P. No.5625/2015 of Sharad Tikamdas Kabra is concerned, the Challan has already been filed before the Special Court, therefore, it would be open to the petitioner to raise an objection in respect of defect in investigation under Section 173(8) of the Cr.P.C. before the Special Judge and if the Special Judge reaches to the conclusion that the investigation has not been done in accordance with the procedure prescribed in the Cr.P.C., then it would be open to him to pass the appropriate orders in this regard.

24/ The next issue which has been raised is, whether the Court of Additional Sessions Judge is the Special Court within the meaning of Section 43 of PMLA? Section 43 of PMLA empowers Central Government to designate one or more courts of Sessions as Special Court or special courts for notified areas and places for trial of the offences punishable under Section 4. The Central Government vide notification dated 1.6.2006 issued under Section 43(1) of the PMLA has designated the Courts of Sessions at Gwalior, Indore, Bhopal, Sagar and Jabalpur as Special Courts for trial of offences punishable under Section 4 of the Act. Exercising the power under Section 43 of PMLA, Central Government vide Notification dated 1.6.2006 has designated the Sessions Court at Gwalior, Indore, Bhopal, Sagar and Jabalpur as Special

Court, therefore, the Additional Sessions Judge who in terms of Section 9 of Cr.P.C. is covered within the meaning of Court of Sessions, is empowered to try the offences under Section 4 of PMLA being the designated Court. The Central Government has not confined the designation of the Special Court to "Sessions Judge" only but it has notified Sessions Court as designated court, therefore, the contention of the petitioner that the Additional Sessions Judge is not the designated court, cannot be accepted.

25/ In W.P. No.5625/2015 filed by Sharad Tikamdas Kabra, a prayer for issuance of writ of Habeas Corpus has been made alleging that the said petitioner has been kept in illegal custody.

26/ Section 19 of PMLA deals with the power of arrest under PMLA by the specified officer and provides as under :-

"19. Power to arrest.-(1) If the Director, Dy. Director, Assistant Director, or any other officer authorized in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately after arrest of such person under sub-section(1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the matter, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-

section (1) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court.”

27/ Under sub-section 1 of Section 19 the specified officers on the basis of the material in possession, having reason to believe which is to be recorded in writing that the person has been guilty of offence under the Act, has power to arrest such person and he is required to inform the grounds for such arrest at the earliest and in terms of sub-section 3 of Section 19, the arrested person is required to be produced to the jurisdictional judicial magistrate or metropolitan magistrate within 24 hours excluding the journey time from the place of arrest to the Magistrate's Court. Exercising the rule making power under Section 73, Central Government has framed the rules namely “THE PREVENTION OF MONEY-LAUNDERING (THE FORMS AND THE MANNER OF FORWARDING A COPY OF ORDER OF ARREST OF A PERSON ALONG WITH THE MATERIAL TO THE ADJUDICATING AUTHORITY AND ITS PERIOD OF RETENTION) RULES, 2005 which required the arresting officer to forward a copy of order of arrest and the material to the adjudicating officer in sealed cover.

28/ By virtue of the aforesaid provisions, the specified officers under PMLA are empowered to arrest a person by following the prescribed procedure under Section 19 of PMLA read with the rules mentioned above.

29/ So far as issue of grant of bail is concerned, Section 45(i) of PMLA which again starts with the non-obstante clause,

relates to the power to grant bail and reads as under :-

“45. Offences to be cognizable and non-bailable.-(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) Where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail;

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm, may be released on bail, if the special court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

- (i) the Director; or
- (ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.”

30/ In the present case nothing has been pointed out to show that the respondents have acted in contravention of the aforesaid provision relating to arrest as contained in Section 19 or the bail has been rejected in violation of Section 45 of the Act. Hence, it cannot be held that the petitioner is in illegal custody. The Special Court, which has been found to be the competent Court, has already rejected the application for bail, hence no ground is made out for issuing the writ of Habeas

Corpus.

31/ For the reasons mentioned above, I am of the opinion that no case is made out for quashing the offence which has been registered against the petitioner under PMLA and so far as the issue of investigation is concerned, the parties are required to take appropriate steps in terms of Paragraph 22 & 23 of the judgment.

32/ So far as the W.P. No.5625/2015 of Sharad Tikamdas Kabra is concerned in which the prayer for habeas corpus has been made but since the arrest of the petitioner is in accordance with the provisions of PMLA and the Special Court (which has found to be competent) has already rejected the application for bail, therefore, it cannot be held that the writ petitioner in W.P. No.5625/2015 is in illegal custody, especially when this Court has held that Special Court includes the Court of Additional Sessions Judge. Hence, the writ of habeas corpus cannot be issued in the matter.

33/ The writ petitions are accordingly disposed off.

34/ Signed order be kept in the file of W.P. No.4336/2015 and a copy whereof be placed in the file of connected W.P. Nos. 4341/15, 4344/15, 4347/15, 4350/15, 5089/15, 5091/15 & 5625/15.

(PRAKASH SHRIVASTAVA)
J u d g e

Trilok.