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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% DATE OF DECISION : JULY 13, 2012

+ CRL.M.C. 1452/2012 & CRL.M.A. 5139/2012 (Stay)

TARIQ AHMED DAR Petitioner
Through : Mr.Satish Tamta, Adv.

versus

ENFORCEMENT DIRECTORATE Respondent
Through : Mr.Rajeev Mehra, ASG with
Mr.Neeraj Chaudhary, CGSC,
Mr.Kunal Kumar, Mr. Akshay
Chandra and Mr.Ravjot Singh,
Adv.

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

PRATIBHA RANI, J. (Oral)

1. Learned ASG has placed on record the copy of the Gazette Notification notifying that in exercise of the powers conferred by sub-section (1) of Section 43 of the Prevention of Money Laundering Act, 2002 (15 of 2003), (in short "PMLA") the Court of District Judge-cum-Additional Sessions Judge (East), Karkardooma, Delhi has been designated as Special Judge, PMLA for entire National Capital Territory of Delhi.

2. The Criminal M.C. No.1452/2012 has been filed for quashing the proceedings in Complaint Case No.4/2011 titled as Directorate of Enforcement vs. Tariq Ahmed Dar. The contention of the petitioner is that the impugned order does not show application of mind or taking

cognizance of the matter. It also does not reflect that any summoning order was passed by the Court summoning the petitioner as an accused after recording pre-summoning evidence as required under Section 200 CrPC.

3. The impugned order dated 07.09.2011 is as under :-

'Directorate of Enforcement Vs. Tarique Ahmed Dar

07.09.11

Fresh complaint u/s 44 r/w section 45 of Prevention of Money Laundering Act, 2002 received. It be checked and registered.

Present : Sh.Bipul Kumar, Ld. Spl. PP for the Directorate of Enforcement.

Accused is stated to be in Tihar Jail in case FIR Nos. 149/05, 533/06, 560/06 and 1120/05.

Production warrant be issued against the accused for 26.09.11.

*(P.S. Teji)
Special Judge – PMLA
DJ& ASJ (I/C), East
Karkardooma Courts, Delhi/07.09.11'*

3. Mr.Satish Tamta, learned counsel for the petitioner has submitted that he has annexed the copy of the complaint alongwith his petition which would reflect that there is not even a prayer by the complainant seeking exemption in the matter being public servant or request that he be represented in the complaint through State. There is not even a prayer in the entire complaint for summoning of the accused for having committed the offence punishable under Sections 3 and 4 of Prevention of Money

Laundering Act, 2002. Learned counsel has also submitted that although while taking cognizance, no specific format of the order to be passed by the Court is prescribed but from the order passed, it must be reflected that the Court has exercised its mind to the facts of the case and then order for summoning of the accused. In the instant case, there is no summoning order. The petitioner was not even in custody in the complaint case. The Court should have ordered for issuance of summons to the accused at his address. It is only on getting report on the summons of the accused that he is in custody that the Court could issue production warrants to secure his presence. While issuing production warrant, it is not even mentioned as to in what capacity he has been asked to appear before the Court i.e. whether as an accused or as a witness.

4. Mr.Satish Tamta, learned counsel for the petitioner urged that a bare reading of the impugned order reflects that when the complaint was filed before the learned Special Judge-PMLA, no pre-summoning evidence was recorded by the Court. Even there is no specific order passed by learned Special Judge taking cognizance of the offence, as Court of the original jurisdiction. Further he also did not pass any order summoning the petitioner as an accused. Not only that, learned Special Judge has also not passed any specific order granting exemption to the complainant/public servant from appearance before the Court. In the absence of any specific order taking cognizance of the offence by learned Special Judge, order dated 07.09.2011 may be set aside and the proceedings arising out of complaint case No.4/2011 titled as Enforcement Directorate vs. Tariq Ahmed Dar may be quashed.

5. On behalf of State, Mr.Rajeev Mehra, learned ASG has

submitted that the title of the complaint itself shows that it is by Mr.Prabhakant, Deputy Director, Directorate of Enforcement. The very first paragraph of the complaint contains the necessary averments that the complainant is a public servant and this complaint is being filed by him in his official capacity based on official record as a public servant in the discharge of his official duty. It is further mentioned in paragraph 1 of the complaint that the complainant is empowered and competent to file the present complaint under Section 45 (1) of the Prevention of Money Laundering Act, 2002, as amended in 2005 & 2009 read with notification vide No.S.O.1274(E) dated 13th September, 2005, issued by the Central Government. Learned ASG for the State further referred to the impugned order wherein the Court has referred to the provisions and the Act under which this complaint has been filed and the details of the case in which the accused is already in custody and thereafter production warrants have been ordered to be issued. Learned ASG has relied upon **Kamal Kishore Vs. S.D.Mathur** 1996(2) AD (Delhi) 553 and **Moti Ram Bhasin Vs. Assistant Director, Enforcement** 1993 (51) DLT 81 in support of his contention that in a complaint filed by public servant, the Court need not examine the complainant or the witnesses and cognizance can be taken by the Court on the basis of such complaint. It is further submitted that in view of the judgment of this Court in **Basab Ghosh vs. Outlook Publishing (India) Pvt. Ltd.** 2010(3) AD (Delhi) 551 the alleged infirmities pointed out, at the most, can be termed as irregularities and that itself is no sufficient to quash the complaint and the proceedings emanating therefrom. Further in this case, charge had already been framed and the trial is going on.

6. I have considered the rival contentions. No doubt, the learned Special Judge has not mentioned in so many words that there is no requirement to examine witnesses at pre-summoning stage as the complaint is being filed by a public servant. There is also no specific order granting exemption to the public servant from personal appearance in the Court and that the complainant be represented through Special PP for Directorate of Enforcement. But at the same time that in itself is not sufficient to quash the impugned order.

7. The issue of taking cognizance has been dealt with by this Court in **Vinay Chaudhary vs. The State** 1989 Cri.L.J. 1490. In that case, the challan was filed by the police on the 90th day before the Duty Magistrate. While accepting the challan, the Duty Magistrate directed submission of the same before regular Magistrate, the next day without passing any further order. The issue raised before the Court was that no cognizance has been taken by the Magistrate while passing the order by which he accepted the challan and thus, within 90 days of the detention of the petitioner, the cognizance having being taken by the Magistrate, the petitioner has become entitled to bail. While dealing with the above contentions, in para 4 of the judgment, it was held as under :-

'The first contention raised by the learned counsel for petitioner is that no cognizance has been taken by the Magistrate while passing the order by which he accepted the challan and thus, it should be held that within 90 days of the detention or the petitioner the cognizance having been not taken by the Magistrate the petitioner has become entitled to bail. He has cited (1) Ajit Kumar v. State of West Bengal.: AIR1963SC765 , wherein it has been observed that the word "cognizance" has no esoteric or mystic significance in criminal law or procedure, and it merely means become aware of and when used with reference to Court or Judge, to take notice of

judicially. It was observed that taking cognizance does not involve any formal action or indeed action of any kind, but occurs as soon as a Magistrate, as such, applies his mind to the suspected commission of an offence. Then, reference is made to (2) Devarapalli Lakshminarayana Reddy & others v. Narayana Reddy & others, 1976CriLJ1361 , in which it was held that the expression "taking cognizance of an offence" by the Magistrate has not been defined in the Criminal Procedure Code . and the ways in which such cognizance can be taken are set out in clauses (a), (b) and (e) of Section 390(1) and the question whether the Magistrate has or has not taken cognizance of the offence will depend on the circumstances of the particular case including the mode in which the case is sought to be instituted and the nature of the preliminary action. It was held that broadly speaking, when on receiving a complaint, the Magistrate applies his mind for the purposes of proceeding under Section 200 and the succeeding Sections in Chapter Xv of the Code of Criminal Procedure 1973, he is said to have taken cognizance of the offence within the meaning of Section 190(1)(a). Then it was laid down that if instead of proceeding under Chapter IX he has, in the judicial exercise of his discretion, taken action of some other kind, such as issuing a search warrant for the purpose of investigation, or ordering investigation by the police under Section 156(3), he cannot be said to have taken cognizance of any offence. I do not think that these two judgments help the contention of the petitioner in any manner." After all a challan could be filed before the Metropolitan Magistrate having the jurisdiction. It is also not disputed before me that the Duty Magistrate, before whom the A challan was filed, was having the jurisdiction all over Delhi. Hence, the Duty Magistrate having accepted the challan would mean that the Magistrate had applied his mind to the challan and taken cognizance and gave the directions for putting the challan before the regular concerned Metropolitan Magistrate on the following day. As already laid down by the Supreme Court, there are no special or specified orders to be made by the Magistrate while taking cognizance of a particular matter. It will depend on the facts of each case to see whether the Magistrate had applied his judicial mind or not for taking cognizance of the offence. (3) In Babulal Yadav & others v. State of Bihar. 1980 Cri. L. L 170, the question which arose for decision was whether the accused could be

remained to judicial custody or not before the challan had been filed and before the Magistrate had taken cognizance. It was held that after the receipt of the charge-sheet and before taking cognizance the Magistrate has power to remand the accused and the accused cannot be released on bail under Section 439 Criminal Procedure Code only on the averment that his remand is not proper. At any rate, keeping in view the fact that the Magistrate had clearly mentioned in his order that he accepted the challan would mean that he was applying his judicial mind to the charge sheet and thus, had taken cognizance. Hence, the petitioner had not become entitled to bail on this ground.'

8. Reverting to the facts of the complaint case filed against the petitioner, in para 2 of the complaint, the allegations were made against the accused to the following effect :-

'2. That on 29-10-2005 at about 5.30 pm to 06.00 pm bomb blasts took place at various places including Sarojini Nagar Market, near Shop No.S-21, Paharganj Market area, near Tuti Shop and in Govindpuri Area, New Delhi in which a number of persons were killed and injured. The special cell of Delhi police registered three FIR's No.533/2005 dated 29.10.2005, 560/2005 dated 29.10.2005 and 149/2005 dated 18.11.2005. It filed the police report dated 17.03.2006 and 12.01.2006 in the concerned courts for contravention of Section 302, 307, 121, 121-A and 120-B of IPC r/w Section 3/4/5 Explosive Substances Act and 16/17/18/20/23 Unlawful Activity Prevention Act.'

9. The impugned order thus refers that accused is stated to be in Tihar Jail in case FIRs No. No.533/2005, 560/2005 and 149/2005 which further shows that the Court has gone through the complaint, applied its mind and was fully conscious of the fact that the accused was already in custody in the aforementioned FIRs. In that circumstance, the Court was only required to secure the presence of the accused through production warrants and no formal summoning order was required to be passed. There was also no need to send

the summon to accused at his house i.e. 33, Solina Bala (Near Ram Bagh), Srinagar, J &K, and then wait for the report that he is in custody in case FIRs No. No.533/2005, 560/2005 and 149/2005 and then send the production warrants. The impugned order rather reveals that the Court has gone through the complaint in detail and thereafter to secure the presence of the petitioner as an accused, production warrant was ordered to be sent.

10. The grievance of the petitioner is also that as required under Section 200 CrPC, the Court should have recorded the pre-summoning evidence and after considering the same, if there was sufficient ground to proceed against him, should have ordered for summoning of the accused. Section 200 CrPC needs to be reproduced to deal with this contention which is as follows :-

'Sec. 200. A Magistrate taking cognizance of an offence on complaint shall examine upon oath the complainant and the witnesses present, if any, and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate : Provided that, when the complaint is made in writing, the Magistrate need not examine the complainant and the witnesses – (a) if a public servant acting or purporting to act in the discharge of his official duties or a Court has made the complaint.'

11. Since the complainant in this case was a public servant duly competent to file the complaint under Section 45(1) of the Prevention of Money Laundering Act, 2002 as amended in 2005 & 2009 read with notification vide No.S.O. 1274(E) dated 13.09.2005 issued by the Central Government, there was no legal requirement to record pre-summoning evidence.

12. The complaint has been filed against Tariq Ahmed Dar as an accused and it was so mentioned not only in the title of the

complaint but also in the body of the complaint in para 1 itself. Issuance of production warrants to secure the presence was only as an accused and it was so mentioned while ordering i.e. 'Production warrant be issued against the accused for 26.09.2011' leaving no doubt in the mind of the petitioner as to in what capacity he had been ordered to appear before the learned Special Judge, PMLA.

13. While dealing with similar contentions in the case **Dy. Chief Controller of Imports & Exports vs. Roshan Lal Agarwal & Ors.** JT 2003 (2) SC 370, the Apex Court observed as under :-

'8. The second reason given by the High Court for allowing the petition filed by the respondents (accused) is that the order passed by the Special Court taking cognizance of the offence does not show that the learned Magistrate had even perused the complaint or that he had applied his judicial mind before taking of the cognizance. The order passed by the learned Magistrate reads as under:

*"Cognizance taken. Register the case,
Issue summons to the accused."*

9. In determining the question whether any process is to be issued or not, what the Magistrate has to be satisfied is whether there is sufficient ground for proceeding and not, whether there is sufficient ground for conviction. Whether the evidence is adequate for supporting the conviction, can be determined only at the trial and not at the stage of inquiry. At the stage of issuing the process to the accused, the Magistrate is not required to record reasons. This question was considered recently in U.P. Pollution Control Board v. M/s Mohan Meakins Ltd. and Ors., MANU/SC/0199/2000 : 2000CriLJ1799 and after noticing the law laid down in Kanti Bhadra Shah v. State of West Bengal, MANU/SC/0004/2000 : 2000CriLJ746 , it was held as follows:

"The legislature has stressed the need to record reasons in certain situations such as dismissal of a complaint

without issuing process. There is no such legal requirement imposed on a Magistrate for passing detailed order while issuing summons. The process issued to accused cannot be quashed merely on the ground that the Magistrate had not passed a speaking order."

10. This being the settled legal position, the order passed by the learned Magistrate could not be faulted on the ground given by the High Court.

11. The High Court has gone to the extent of saying that as the Deputy Chief Controller of Imports and Exports had not been examined as a witness, the procedure prescribed by Section 200 Cr.P.C. had not been followed and, therefore, the order passed by the Magistrate taking cognizance of the offences was illegal. With respect, we find it difficult to comprehend the aforesaid reasoning of the High Court. Section 6 of the Imports and Exports (Control) Act provides that no Court shall take cognizance of any offence punishable under Section 5 except upon a complaint in writing made by an officer authorised in this behalf by the Central Government by a general or a special order. That the Deputy Chief Controller of Imports and Exports had been so authorised by the Central Government is not in dispute. Proviso (a) to Section 200 Cr.P.C. lays down that if a public servant acting or purporting to act in the discharge of his official duties had made the complaint in writing, the Magistrate need not examine the complainant and the witnesses. In view of Twelfth clause of Section 21 IPC which provides that every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government shall be a public servant, the Deputy Chief Controller of Imports and Exports is a public servant. It is also not the case of the accused-respondents that the Deputy Chief Controller of Imports and Exports is not a public servant. The complaint was filed by him in discharge of his official duty. The learned Magistrate was, therefore, fully justified in taking cognizance of the offences without recording the statement of the complainant.

14. In the instant case, the petitioner is praying for setting aside of

order dated 07.09.2011 and quashing of complaint case No.4/2011 titled as Enforcement Directorate vs. Tariq Ahmed Dar and the proceedings emanating therefrom by this Court in exercise of its inherent power. In the case **State of Andhra Pradesh vs. Golconda Linga Swamy & Anr.** AIR 2004 SC 3967, in para 8 of the judgment, the Apex Court dealt with the situation in which such power should be exercised by the High Court:-

'8. As noted above, the powers possessed by the High Court under Section 482 of the Code are very wide and the very plenitude of the power requires great caution in its exercise. Court must be careful to see that its decision in exercise of this power is based on sound principles. The inherent power should not be exercised to stifle a legitimate prosecution. High Court being the highest Court of a State should normally refrain from giving a prima facie decision in a case where the entire facts are incomplete and hazy, more so when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of magnitude and cannot be seen in their true perspective without sufficient material.'

15. In view of the legal position discussed above, I do not find any illegality or infirmity in the impugned order dated 07.09.2011 calling for its setting aside and quashing of complaint case No.4/2011 and the proceedings emanating therefrom. The present petition being devoid of any merit, is hereby dismissed.

PRATIBHA RANI, J

JULY 13, 2012

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