

GAHC010186012022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : I.A.(CrI.)/528/2022

VILELIE KHAMO AND ANR.

S/O. LT. SH. M. KHAMO, PERMANENT R/O. H. NO. P-146 LERIE COLONY,
BELOW ST. MARY HIGHER SECONDARY SCHOOL, KOHIMA, NAGALAND.

2: AVITUO SEKHOSE

PROPRIETOR

M/S KHADI TRADE AND DEVELOPMENT AGENCY NEAR TINPATI
JUNCTION

PEZIELIETSIE COLONY

KOHIMA

NAGALAND-797001

VERSUS

REVENUE SECRETARY AND 3 ORS.

GOVERNMENT OF INDIA, MINISTRY OF FINANCE, DEPARTMENT OF
REVENUE, NORTH BLOCK, NEW DELHI-110001.

2:DIRECTOR

ENFORCEMENT DIRECTORATE GOVT. OF INDIA

6TH FLOOR

LOK NAYAK BHAWAN

KHAN MARKET

NEW DELHI-110003.

3:SH. RAJ KUMAR RAM

ASSTT. DIRECTOR ENFORCEMENT DIRECTORATE GOVT OF INDIA

GUWAHATI ZONAL OFFICE-II

GUWAHATI-781003.

4:UNION OF INDIA

REP. BY THE SECRETARY

LEGISLATIVE DEPTT.
MINISTRY OF LAW AND JUSTICE
NEW DELHI-110001

Advocate for the Petitioner : S BORGOHAIN

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 03-01-2024

Heard Mr. S. Borgohain, learned counsel for the applicant Vilelie Khamo and Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India for the respondents.

2. The applicant has prayed for relief as per Clause (B) in the prayer portion of the writ petition in light of the judgment of Hon'ble the Supreme Court in the case of *Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.* The applicant had earlier filed a writ petition W.P. (Crl.) No. 15/2022. The other petitioner, M/S Khedi Trade & Development Agency has been impleaded in the writ petition as per order dated 15.12.2021. The applicant have filed the writ petition challenging the summons issued under Sub-Section (2) and (3) of Section 50 of the Prevention of Money Laundering Act 2002 (PMLA Act for short) dated 18.11.2021. The applicant also challenged the constitutional vires of Section 50 and sought declaration of the same as being violative of Article 20(3) of the Constitution read with Articles 14 and 21 thereof.

3. The respondents No. 2 and 3 have filed an affidavit-in-opposition and on perusal of the said affidavit the fact gets revealed that the respondents have

registered an Enforcement Case Information Report ECIR No. GWZO/09/2020 dated 16.03.2020 on the basis of an FIR registered by Central Bureau of Investigation being FIR No. RC0212019A0002(RC-2A/2019-IMP) dated 17.06.2019 registered under Sections 120(B), 420 of IPC and 13(2) & 13(1)(d) of the Prevention of Corruption Act, 1988.

4. It is submitted that vide order dated 08.12.2021 this Court had issued notice to the respondents and had directed the respondents not to take coercive steps against the applicants.

5. Paragraphs 7, 8 and 9 of the connected writ petition being W.P. (Crl.)/15/2022 reflects that:

“7. The petitioner humbly submits that the ACT applies to a very widely worded and unguided Section 3 called “offence of money-laundering” in the marginal note. In fact, the definition under this Section, as it stands now (post-2019 amendment), lends itself to a reading that the offence of money laundering covers some of the activities such as possession, acquisition etc. of the ‘proceeds of crime’ which may be even without any mens rea.

8. ‘Proceeds of crime’ is defined under Section 2(1)(u), as property derived/obtained by any person, as a result of criminal activity relating to a scheduled offence, and a scheduled offence is that which is mentioned in the Schedule to the PMLA, and includes over 150 offences under the laws such as the Indian Penal Code, 1860; the NDPS Act, 1985; Unlawful Activities Prevention Act, 1967; Arms Act, 1959, Explosive Substances Act, 1908.

9. Therefore, the offence of money laundering under the PMLA is inextricably linked to offences under the other laws, which are predicate offences (scheduled offences), and the offence of money laundering is, in that sense, not a stand-alone offence.”

6. It is also submitted that, the respondents by relying on various judgments of High Courts, has submitted that the offence of money laundering is stand-alone offence and does not depend on the outcome of the investigation in the scheduled offence.

7. It is further submitted on behalf of the applicant that the CBI has filed two charge sheets numbered as 6/2021 and 7/2021 respectively in connection with FIR No. RC-2(A)/2019 before the learned Special Court, CBI, Dimapur, Nagaland that the applicant's name was reflected in the FIR but the CBI has not submitted charge sheet against the applicant and hence the learned Special Judge vide order dated 08.02.2022 has discharged the applicant on prayer made by the Investigating Officer. The applicant has communicated the above fact to the respondents in their official email ids vide email dated 14.03.2022 which was duly acknowledged by the respondents vide email dated 22.03.2022. The said fact was further reiterated vide email dated 11.07.2022 (Annexure-D, E & F).

8. It is further submitted that the summons were issued by the respondents on the basis of the FIR registered against the applicant and on perusal of the affidavit-in-opposition filed by the respondents No. 2 and 3, summons has been issued as a first step for setting the PMLA Act in motion against the applicant. The applicant has referred to the decision of Hon'ble the Supreme Court in *Vijay Madanlal Choudhary & Ors. Vs. Union of India and Ors.* decided on 27.07.2022, where the consequence of failure of prosecution of the scheduled offence has been clearly provided in the following terms:

“187.(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act can not prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of Money-Laundering against him or any one claiming such property being the property linked to stated schedule offence through him.”

9. The applicant has therefore prayed to grant relief as prayed for, in Clause (B) of the prayer portion in the writ petition in the light of the decision laid down in *Vijay Madanlal Choudhary's case (supra)*.

10. Heard the learned Deputy Solicitor General of India Mr. R.K.D. Choudhury for the respondents.

11. It is submitted that he has no objection if the relief as prayed for in clause (B) of the prayer portion of W.P.(Crl.)/15/2022 is granted.

12. I have considered the submission at the bar. The applicant has already been discharged by the learned Special Judge, therefore, the summon dated 18.12.2021 issued by the respondent No. 3 to the petitioner in respect of the entry made in file Directorate of Enforcement Case numbered as File. No. **F.No. GWZO/09/2020 (sd/-illegible)/1861** is hereby set aside and quashed.

Matter stands closed accordingly.

JUDGE

Comparing Assistant