

Court No. - 15

Case :- APPLICATION U/S 482 No. - 2374 of 2024

Applicant :- Siraj Ahmed Alias Shiraj Ahamad And Another

Opposite Party :- Directorate Of Enforcement Lko. Zonal Office Lko.

Counsel for Applicant :- Purnendu Chakravarty

Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Purnendu Chakravarty, learned counsel for the applicants, as well as Shri Rohit Tripathi, learned counsel for the respondent- Enforcement Directorate, and perused the record.

2. Heard Shri Purnendu Chakravarty, learned counsel for the applicants, submits that the trial court has committed material illegality in passing orders dated 14.02.2024 and 22.11.2023 whereby the discharge application of the applicants has been rejected by the trial court and charges under section 3/4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA") have been framed. It is submitted that the trial court has failed to consider that in fact no proceeds of crime has been generated from the goods allegedly seized from the premises of the applicants and, at the time of submitting the charge-sheet in the predicate offence, the valuation of the alleged seized goods was not calculated while during the proceedings under PMLA the Enforcement Directorate has arbitrarily relied on the report of TEW Environmental Watch Reports as available on its website www.legalserviceindia.com/articles/pooch.

3. It is vehemently submitted that the articles, which are alleged to have been recovered from the premises of the applicants, have not been properly valued by the Enforcement Directorate or by the investigating agency and the report which has been made the basis of valuation is not an authenticated report, thus, in absence of proper valuation of the articles recovered from the premises of the applicant by a registered valuer and without any cogent evidence with regard to generation of proceeds of crime from these goods, the order, rejecting the discharge application of the applicants, has resulted into serious miscarriage of justice to the applicants.

4. It is vehemently submitted that ECIR of the instant case has been registered on the basis of schedule offence bearing FIR No.0230 of 2007 dated 04.12.2007 registered at police station Kareli, district Allahabad (now Prayagraj) under sections

9, 39, 44, 44-A, 48-A, 49-B, 51 and 58-B of the Wild Life (Protection) Act, 1972 read with section 26 of the Indian Forest Act, 1920 and section 3(1) The Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986 and after submission of charge-sheet therein ECIR of the instant case was registered and on the basis of this ECIR vide order dated 18.03.2009 properties of co-accused, Smt. Zaibunnisha is shown to have been attached provisionally, while no property of the applicants has been attached by the Enforcement Directorate.

5. It is further submitted that it has been mentioned in the complaint filed by the Enforcement Directorate that in order to ascertain the market value of the seized goods the Principal Chief Conservator of the Forest, Wild Life was approached and, it is informed that there is no mechanism to estimate the value of the seized goods as the same are banned items, thus, the Enforcement Directorate has arbitrarily calculated the value of goods allegedly seized to the tune of Rs. 1.12 Crores. While relying on Section 2(y) of the PMLA, it is vehemently submitted that at the relevant point of time this offence pertaining to the Wild Life Act was in part-B of the Schedule and with regard to the offence specified under part-B of the Schedule if the total value of items in such offence is Rs.30 Lakh or more, it is only in that condition the prosecution may be launched under PMLA and when the value of the seized articles is shown to have been exaggerated and has been fixed without adopting any due procedure, the prosecution of the applicants under PMLA is bad and no charge could be framed under section 3/4 PMLA.

6. It is also submitted that the another basis of launching the prosecution against the applicants is that income tax returns of co-accused- Smt. Zaibunnisha have been doubted by the Enforcement Directorate, however, till date the income tax returns filed by the co-accused- Smt. Zaibunnisha have not been opened by the income tax authorities and no information in this regard has been received by co-accused- Smt. Zaibunnisha moreover, Smt. Zaibunnisha is not a co-accused in the predicate offence and the theory, as developed by the Enforcement Directorate that the proceeds of crime earned by the applicants have been deposited (parked) in the bank-account of co-accused- Smt. Zaibunnisha, may not be believed. It is vehemently submitted that there is no material or evidence which may warrant framing of charges against the applicants and it is a case where the applicants should have been discharged and, thus, the trial/special court has committed a manifest illegality in passing the impugned orders and also by framing the charges

against the applicants and, therefore, the impugned orders be set-aside and all the proceedings pending before the trial/special court be quashed.

7. On the other hand, Shri Rohit Tripathi, learned counsel for the respondent-Enforcement Directorate, vehemently submits that at the stage of framing of charges only a *prima facie* case and sufficient grounds are required to be seen and, it is not a stage where meticulous exercise of appreciating the material/evidence produced by the Enforcement Directorate should be made. It is also submitted that at the stage of framing of charge only sufficiency of evidence/material collected by the investigating agency should be assessed and probative value of such material could not be gone into at the stage of framing of charges and, at this stage the sufficient ground or material must not be of the standard as required for conviction. It is also submitted that the market value of the properties pertaining to which offence is shown to have been committed has been defined under section 2(zb) PMLA which means the market value of any property on the date of its acquisition and if the date of acquisition cannot be determined, the date on which such property is possessed by such person.

8. It is vehemently submitted that the trial court, while rejecting the plea of discharge of the applicants, has not committed any illegality or to say any irregularity and the charges have been property framed against the applicants. Reliance has been placed on the law laid down by the Hon'ble Supreme Court in the case reported in MANU/SC/0210/1993 (***State of Harhayana and another Vs. Bhajn Lal***) in order to show that quashing of the proceedings may only be possible with regard to the guidelines provided therein and the case of the applicants is not covered under the directions given by the Hon'ble Supreme Court in the case of *State of Haryana and another Vs. Bhajan Lal* (supra).

9. Having heard learned counsel for the parties and having perused the record, it is transpired that the applicants are aggrieved by the rejection of their discharge application by the trial/special court as, according to the learned counsel for the applicants, at first the property/material/article which has been seized from the premises of the applicants was not of the value of more than Rs. 30 Lakh and in this regard the value of the articles assessed by the Enforcement Directorate is stated to be exorbitant as according to the learned counsel for the applicants these items have not been properly valued and, thus, it is submitted that having regard to the Part-B which was existing at that point of time of the PMLA and the definition

provided under section 2(y) of the PMLA the prosecution of the application with regard to PMLA could not be launched for the offences wherein value of such offence is less than Rs. 30 Lakh.

10. Another leg of submission made by the learned counsel for the applicants is that income tax returns of co-accused- Smt. Zaibunnisha have been doubted by the Enforcement Directorate in order to canvass that the proceeds of crime earned by the applicants was parked in the bank-account of co-accused- Smt. Zaibunnisha (mother of the applicants) and the same has been used for the purpose of purchasing of some houses.

11. Hon'ble Supreme Court in the case of **State of Orissa Vs. Debendra Nath Padhi (2005) 1 SCC 568** has held as under:

6. At the stage of framing charge, the trial court is required to consider whether there are sufficient grounds to proceed against the accused. Section 227 of the Code provides for the eventuality when the accused shall be discharged. If not discharged, the charge against the accused is required to be framed under Section 228. ..

7. Similarly, in respect of warrant cases triable by Magistrates, instituted on a police report, Sections 239 and 240 of the Code are the relevant statutory provisions. Section 239 requires the Magistrate, to consider 'the police report and the documents sent with it under Section 173' and, if necessary, examine the accused and after giving accused an opportunity of being heard, if the Magistrate considers the charge against the accused to be groundless, the accused is liable to be discharged by recording reasons thereof.

8. What is to the meaning of the expression 'the record of the case' as used in Section 227 of the Code. Though the word 'case' is not defined in the Code but Section 209 throws light on the interpretation to be placed on the said word. Section 209 which deals with the commitment of case to Court of Session when offence is triable exclusively by it, inter alia, provides that when it appears to the Magistrate that the offence is triable exclusively by the Court of Session, he shall commit 'the case' to the Court of Session and send to that court 'the record of the case' and the document and articles, if any, which are to be produced in evidence and notify the Public Prosecutor of the commitment of the case to the Court of Session. It is evident that the record of the case and documents submitted therewith as postulated in Section 227 relate to the case and the documents referred in Section 209. That is the plain meaning of Section 227 read with Section 209 of the Code, No provision in the Code grants to the accused any right to file any material or document at the stage of framing of charge. That right is granted only at the stage of the trial.

9. Further, the scheme of the Code when examined in the light of the provisions of the old code of 1898, makes the position more clear. In the old code, there was no provision similar to Section 227. Section 227 was incorporated in the Code with a view to save the accused from prolonged harassment which is a necessary concomitant of a protracted criminal trial. It

is calculated to eliminate harassment to accused persons when the evidential materials gathered after investigation fall short of minimum legal requirements. If the evidence even if fully accepted cannot show that the accused committed the offence, the accused deserves to be discharged. In the old Code, the procedure as contained in Sections 207 and 207(a) was fairly lengthy. Section 207, inter alia, provided that the Magistrate, where the case is exclusively triable by a Court of Session in any proceedings instituted on a police report, shall follow the procedure specified in Section 207(a). Under Section 207(a) in any proceeding instituted on a police report the Magistrate was required to hold inquiry in terms provided under Sub-section (1), to take evidence as provided in Sub-section (4), the accused could cross-examine and the prosecution could re-examine the witnesses as provided in Sub-section (5), discharge the accused if in the opinion of the Magistrate the evidence and documents disclosed no grounds for committing him for trial, as provided in Sub-section (6) and to commit the accused for trial after framing of charge as provided in Sub-section (7), summon the witnesses of the accused to appear before the court to which he has been committed as provided in Sub-section (11) and send the record of the inquiry and any weapon or other thing which is to be produced in evidence, to the Court of Session as provided in Sub-section (14). The aforesaid Sections 207 and 207(a) have been omitted from the Code and a new Section 209 enacted on the recommendation of the Law Commission contained in its 41st Report. It was realised that the commitment inquiry under the old Code was resulting in inordinate delay and served no useful purpose. That inquiry has, therefore, been dispensed with in the Code with the object of expeditious disposal of cases. Instead of committal Magistrate framing the charge, it is now to be framed by Court of Session under Section 228 in case the accused is not discharged under Section 227. This change brought out in the code is also required to be kept in view while determining the question. Under the Code, the evidence can be taken only after framing of charge."

12. Thereafter Honble Apex Court by referring to the ratio laid down in ***State of Bihar v. Ramesh Singh MANU/SC/0139/1977 : 1977CriLJ1606, State of Delhi v. Gyan Devi and Ors. MANU/SC/0649/2000, State of Madhya Pradesh v. S.B. Johari and Ors. MANU/SC/0025/2000 : 2000CriLJ944 State of Maharashtra v. Priya Sharan Maharaj and Ors. MANU/SC/1146/1997: 1997CriLJ2248 and State Anti-Corruption Bureau, Hyderabad and Anr. v. P. Suryaprakasam 1999 SCC (Crl.) 373*** wherein the Supreme Court reiterated that at the stage of framing of charge the trial court is not to examine and assess in detail the materials placed on record by the prosecution nor is it for the court to consider the sufficiency of the materials to establish the offence alleged against the accused persons and also held that the charge can be quashed if the evidence which the prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted, can not show that the accused committed the particular offence. In that case, there would be no sufficient ground for proceeding with the trial and at the stage of framing of charge

there can only be limited evaluation of materials and documents on record and sifting of evidence to prima facie find out whether sufficient ground exists or not for the purpose of proceeding further with the trial, have so held with reference to materials and documents produced by the prosecution and not the accused. The above mentioned decisions proceed on the basis of settled legal position that the material as produced by the prosecution alone is to be considered and not the one produced by the accused. The latter aspect relating to the accused though has not been specifically stated, yet it is implicit in the decisions. It seems to have not been specifically so stated as it was taken to be well settled proposition. This aspect, however, has been adverted to in where considering the scope of Sections 239 and 240 of the Code it was held that at the time of framing of charge, what the trial court is required to, and can consider are only the police report referred to under Section 173 of the Code and the documents sent with it. The only right the accused has at that stage is of being heard and nothing beyond that.

13. It was, thus, concluded that at the stage of Sections 227 and 228 stage the court is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. The court may, for this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case.

14. Hon'ble Supreme Court in the case of ***State of Supt. And Remembrancer of Legal Affairs, West Bengal Vs. Anil Kumar Bhunja and others (1979) 4 SCC 274*** has held as under:-

"18. It may be remembered that the case was at the stage of framing charges; the prosecution evidence had not yet commenced. The Magistrate had therefore, to consider the above question on a general consideration of the materials placed before him by the investigating police officer. At this stage, as was pointed out by this Court in State of Bihar v. Ramesh Singh MANU/SC/0139/1977 : 1977CriLJ1606 , the truth, veracity and effect of the evidence which the prosecutor proposes to adduce are not to be meticulously judged. The standard of test, proof and judgment which is to be applied finally before finding the accused guilty or otherwise, is not exactly to be applied at the stage of Section 227 or 228 of the CrPC, 1973. At this stage, even a very strong suspicion founded upon materials before the Magistrate, which leads him to form a presumptive opinion as the existence of the factual ingredients constituting the offence alleged; may justify the framing of charge against the accused in respect of the commission of the offence."

15. Hon'ble Supreme Court in the case of ***State of Tamil Nadu Vs. N. Suresh Rajan and others (2014) 11 SCC 709*** has held as under:-

"The aforesaid decisions consider the provision of Section 227 of the Code and make it clear that at the stage of discharge the Court can not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if it was conducting a trial. It is worth mentioning that the Code contemplates discharge of the accused by the Court of Sessions under Section 227 in a case triable by it; cases instituted upon a police report are covered by Section 239 and cases instituted otherwise than on a police report are dealt with in Section 245. From a reading of the aforesaid sections it is evident that they contain somewhat different provisions with regard to discharge of an accused.

31.1 Under Section 227 of the Code, the trial Court is required to discharge the accused if it "considers that there is not sufficient ground for proceeding against the accused". However, discharge under Section 239 can be ordered when "the Magistrate considers the charge against the accused to be groundless". The power to discharge is exercisable under Section 245(1) when, "the Magistrate considers, for reasons to be recorded that no case against the accused has been made out which, if not repudiated, would warrant his conviction".

31.2 Section 227 and 239 provide for discharge before the recording of evidence on the basis of the police report, the documents sent along with it and examination of the accused after giving an opportunity to the parties to be heard. However, the stage of discharge under Section 245, on the other hand, is reached only after the evidence referred in Section 244 has been taken.

*31.3 Thus, there is difference in the language employed in these provisions. But, in our opinion, notwithstanding these differences, and whichever provision may be applicable, the Court is required at this stage to see that there is a prima facie case for proceeding against the accused. Reference in this connection can be made to a judgment of this Court in the case of **R.S. Nayak v. A.R. Antulay MANU/SC/0198/1986 : (1986) 2 SCC 716**. The same reads as follows:*

43...Notwithstanding this difference in the position there is no scope for doubt that the stage at which the magistrate is required to consider the question of framing of charge under Section 245(1) is a preliminary one and the test of "prima facie" case has to be applied. In spite of the difference in the language of the three sections, the legal position is that if the Trial Court is satisfied that a prima facie case is made out, charge has to be framed."

16. The above-mentioned law reports would demonstrate evidently that the duty of the trial court at the stage of discharge or framing of charges is to assess the sufficiency of the material for the purpose of framing of charges. It is also to be recalled that the sufficiency of evidence or material should not be so as is required for the purpose of conviction. It is only with regard to the moving further in the proceedings.

17. The allegations against the applicants are to tune that they were indulged in dealing with the skin and organs of prohibited animals from before the year 2007 and the same is punishable under various provisions of the Wildlife Act and the Indian Forest Act. It is also alleged that applicants have parked proceeds of crime earned by them in the bank-account of their mother, which has been used by her in purchasing two properties. Sudden inflation in income tax returns of Smt. Zaibunnisha is also highlighted in order to substantiate the allegations of money laundering. It is also the case of the Enforcement Directorate that these properties were earned after enactment of PMLA.

18. The whole case of the applicants rests on presumption that the valuation of the certain articles seized from the houses of applicants has not been properly done and as per the definition of property contained in section 2(y) of the PMLA, the offence, if is committed, pertaining to the value of more than 30 Lakh, the applicants only in that condition may be prosecuted under PMLA, and at the relevant time, the offence under Wildlife Act was fallilng under Chapter 'B' of Schedule appended with PMLA.

19. The value has been defined under section 2(zb) of the PMLA which is the market value of the property.

20. Much emphasis has been given on the fact that the valuation of the seized articles is based on a website run by an NGO. However, allegations are also to tune that apart from seized articles the proceeds of crime has also been used for purchase of some properties by mother of the applicants. Thus, it is not the seized articles alone whose valuation is to be seen. Moreover, when there is no known mode of assessing the value of seized articles as they could not be sold in open market legally, the value of these articles may be what these articles may fetch anywhere may be taken as the market value of the same and it is why the emphasis has been given in section 2(zb) on market value. Thus, it could not be appreciated at this stage that the value of the recovered articles has not been properly assessed by the Enforcement Directorate and it could also not be taken that the value of the same is less than 30 lacs. The applicants have not declared in thier application as to on what basis they are claiming the value of proceeds of crime less than 30 Lakh. Thus, what is the market value of the articles seized from the premises of the applilcants is a disputed question of fact which could only be adjudicated by the trial court, during the course of trial.

21. Similarly, if the income tax returns filed by the mother of the applicants has not been disputed, the same may not be the sole ground of the discharge of applicants. Law leans in favour of trial and an accused could only be discharged if there is no *prima facie* case available against him. At the stage of discharge or framing of charge the trial court was only required to sift the material sent with the complaint in order to assess whether there is a *prima facie* case against the applicants and meticulous exercise of appreciating evidence or material, in order to assess the probative value of the evidence collected by the prosecution, was not required. Thus, having regard to the above factual matrix and legal position, the trial court appears to have not committed any illegality and the proceedings pending against the applicants and framing of charges could not be termed as abuse of process of court.

22. In result, this application moved by the applicants under section 482 CrPC is *dismissed*.

[Mohd. Faiz Alam Khan,J.]

Order Date :- 15.3.2024

MVS/-