

Neutral Citation No. - 2024:AHC-LKO:56017

RESERVED ON 24.5.2024

DELIVERED ON 14.8.2024

Court No. - 14

Case :- APPLICATION U/S 482 No. - 4782 of 2024

Applicant :- Keshav Lal

**Opposite Party :- Union Of India Thru. Gaurav Garg Deputy
Commissioner Of Income Tax And Another**

Counsel for Applicant :- Rajat Gangwar, Ashmita Singh

Counsel for Opposite Party :- Kushagra Dikshit

Hon'ble Karunesh Singh Pawar, J.

1. Heard Shri Rahul Agrawal, learned Counsel for the applicant and Shri Nirav Chitravanshi, learned Counsel for the Union of India.

2. The applicant-Keshav Lal, feeling aggrieved by the impugned summoning order dated 27.02.2024 passed by learned IXth Additional Sessions Judge, Lucknow in Criminal Complaint Case No.276 of 2024, Union of India vs. Keshav Lal, under Section 53 and 3 of the Prohibition of Benami Property Transaction Act, 1988 as amended now and known as The Benami Transaction (Prohibition) Amendment Act, 2016 and the complaint dated 27.02.2024 filed by the respondents and entire proceedings of the Criminal Complaint Case, has filed the present application.

3. In brief, the facts of this case are that a search and seizure under Section 132 of the Income Tax Act, 1861 was conducted in the case of the applicant and his wife Indu Srivastava on 19.04.2017. During search, the wife of the applicant was found in the possession of cash

amounting to Rs. 10,74,91,000/- (Rupees Ten Crores Seventy Four Lakhs and Ninety One Thousand Only). Thereafter the matter was referred to the Assessing Officer to initiate proceedings against the applicant under the Prohibition of Benami Property Transaction Act, 1988 (hereinafter referred to as PBPT Act).

4. Acting upon the assumption that the cash amounting to Rs. 10,74,91,000/- was the beneficial property of the applicant, who accumulated cash out of illegal gratification by misuse of official possession, it was attached under Section 24(4) of the PBPT Act on 25.07.2018 by the Initiating Officer and the said cash was treated to be the Benami property.

5. A reference was filed before the Adjudicatory Authority under Section 24(5) of the PBPT Act, which upheld the provisional attachment order dated 28.08.2019. The order dated 28.08.2019 was challenged in Appeal by the applicant bearing No. PBPT/991/2019, Indu Srivastava & Keshav Lal vs. Shri Aravind Trivedi, Initiating Officer before the learned Appellate Tribunal under PBPT Act, New Delhi, which is pending. In the meanwhile, a show cause notice dated 19.11.2019 was initially issued to the applicant seeking his explanation, vide proceedings under Section 53 readwith Section 55 of the PBPT Act, as to why prosecution may not be initiated, which notice was duly replied by the applicant. In the meantime, Interim Board of Settlement VII, Chennai passed an order dated 15.12.2023 treating the seized subject cash as income of the wife of the applicant

and assessed as such, however, the Principal Director of Income Tax (Investigation) U.P. (West) & Uttarakhand issued sanction order dated 30.01.2024 in the most mechanical and perverse manner on the basis of aforesaid sanction order dated 30.01.2024. The impugned complaint dated 27.02.2024 has been filed against the applicant.

6. Learned counsel for the applicant submits that the impugned summoning order dated 27.02.2024 is perverse and suffers from total non-application of mind. It is unseasoned and cryptic order. It is submitted that the proceedings under PBPT Act, which were initiated against the applicant solely on the basis of seizure of subject cash during income tax search against the wife of the applicant, could not have been initiated against the applicant in view of order dated 15.12.2023 passed by the Interim Board of Settlement under the provisions of Section 245 of the Income tax Act, 1961 as the cash has already been treated as income of the wife of the applicant and not the income of her husband, the applicant before this Court. It is submitted that the applicant is not the beneficial owner of the said cash. It is also submitted that the fact that the order dated 15.12.2023 was passed by the Interim Board of Settlement has been concealed by the respondents although they were aware about the factum of passing of the said order. He further submits that Section 53 of the PBPT Act can be initiated where alleged transaction is either a benami transaction pertaining to a benami property or otherwise. It is submitted that the subject cash of Rs.10,74,91,000/- is not a benami

property so as to invoke PBPT Act and prerequisite of Section 53 of the PBPT Act are not satisfied.

7. Learned counsel for the applicant, in support of his contentions, has relied upon the judgement of Hon'ble Supreme Court in the case of **Lalankumar Singh and Others vs. State of Maharashtra reported in 2022 SCC Online SC 1383; Pepsi Foods Ltd. v. Judicial Magistrate reported in (1998) 5 SCC 749 and Mehmood UL Rehman v. Khazir Mohammad Tunda and Others reported in (2015) 12 SCC 420.**

8. Per contra, learned counsel for the opposite parties has opposed the application and submitted that the impugned summoning order has rightly been passed after considering the relevant provisions of the PBPT Act. He asserts that the seized amount is a benami property. No interference is required. He has drawn attention of this Court towards Section 67 of the PBPT Act shall have an overriding effect.

9. Perused the record.

10. Hon'ble Supreme Court of India in the case of Lalankumar Singh (supra) has specifically held in paragraph 38 that the order of issuance of process is not an empty formality. The Magistrate is required to apply his mind as to whether sufficient ground for proceeding exists in the case or not. Paragraph 38 of Lalankumar Singh (supra) is being quoted hereunder:-

"38. The order of issuance of process is not an empty formality. The Magistrate is required to apply his mind

as to whether sufficient ground for proceeding exists in the case or not. The formation of such an opinion is required to be stated in the order itself. The order is liable to be set aside if no reasons are given therein while coming to the conclusion that there is a prima facie case against the accused. No doubt, that the order need not contain detailed reasons. A reference in this respect could be made to the judgment of this Court in the case of Sunil Bharti Mittal v. Central Bureau of Investigation, which reads thus:

"51. On the other hand, Section 204 of the Code deals with the issue of process, if in the opinion of the Magistrate taking cognizance of an offence, there is sufficient ground for proceeding. This section relates to commencement of a criminal proceeding. If the Magistrate taking cognizance of a case (it may be the Magistrate receiving the complaint or to whom it has been transferred under Section 192), upon a consideration of the materials before him (i.e. the complaint, examination of the complainant and his witnesses, if present, or report of inquiry, if any), thinks that there is a prima facie case for proceeding in respect of an offence, he shall issue process against the accused.

52. A wide discretion has been given as to grant or refusal of process and it must be judicially exercised. A person ought not to be dragged into court merely because a complaint has been filed. If a prima facie case has been made out, the Magistrate ought to issue process and it cannot be refused merely because he thinks that it is unlikely to result in a conviction.

53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

11. Hon'ble Supreme Court of India in the case of **Pepsi Foods Ltd.** (supra) has held that summoning of an accused in a criminal

case is a serious matter and criminal law cannot be set into motion as a matter of course. Relevant paragraph 28 is reproduced as under:-

"28. Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringing charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinise the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

12. Likewise, in the case of **Mehmood UL Rehman** (supra) Hon'ble Supreme Court has held that while issuing process to take judicial notice of certain facts which constitute offence, there has to be definite application of mind as to whether allegation in the complaint would constitute violation of law so as to call a person to appear before the criminal court. Relevant paragraph 20 is reproduced as under:-

"20. The extensive reference to the case law would clearly show that cognizance of an offence on complaint is taken for the purpose of issuing process to the accused. Since it is a process of taking judicial notice of certain facts which constitute an offence, there has to be application of mind as to whether the allegations in the complaint, when considered along with the statements recorded or the inquiry conducted thereon, would constitute violation of law so as to call a

person to appear before the criminal court. It is not a mechanical process or matter of course. As held by this Court in Pepsi Foods Ltd. [Pepsi Foods Ltd. v. Judicial Magistrate, (1998) 5 SCC 749 : 1998 SCC (Cri) 1400] to set in motion the process of criminal law against a person is a serious matter."

13. Having gone through the impugned summoning order this Court finds that learned court below has simply summarized the contents of the complaint, fact that sanction order was passed and the court had jurisdiction to entertain the matter and thereafter without recording any reason or without examining the nature of allegation made in the complaint the evidence regarding truthfulness of the allegation or any reason whatsoever as to why the cognizance is being taken and the accused is summoned has straightaway passed the cognizance and summoning order, even *prima facie* satisfaction or reasons for taking cognizance or proceedings against the petitioner has not been recorded while passing the impugned order dated 27.2.2024, thus, the impugned summoning order dated 27.2.2024 is contrary to the law laid down by Hon'ble Supreme Court of India in the cases of Lalankumar Singh, Pepsi Foods Ltd. and Mehmood UL Rehman (*supra*).

14. Considering the above, the application is ***disposed of***.

The impugned summoning order dated 27.02.2024 passed by learned IXth Additional Sessions Judge, Lucknow in Criminal Complaint Case No.276 of 2024, Union of India vs. Keshav Lal, is set aside.

[8]

The matter is remanded back to the learned court below to pass a fresh speaking and reasoned order in accordance with law after providing opportunity of hearing to the parties, within a period of 60 days' from the date of receipt of a certified copy of this order.

Order Date :- 14.8.2024

Madhu