

Court No. - 11

Case :- APPLICATION U/S 482 No. - 5145 of 2024

Applicant :- Sandeep Miglani

Opposite Party :- Union Of India Thru. Deputy Commissioner Of
Income Tax Kanpur And Another

Counsel for Applicant :- Rama Soni,Rohit Kumar
Tripathi,Shubhanjali Shukla

Counsel for Opposite Party :- Kushagra Dikshit

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Rohit Kumar Tripathi, the learned counsel for the petitioner, Sri Neerav Chitravanshi and Sri Kushagra Dixit, the learned counsel for the opposite parties.
2. By means of the instant application filed under Section 482 Cr.P.C., the petitioner has challenged validity of an order dated 27.02.2024 passed by the IX Additional Sessions Judge, Lucknow in Complaint Case No. 277 of 2024 whereby the trial court has taken cognizance of offence under Section 53 read with Section 3 of the Prohibition of Benami Property Transaction Act, 1988 (hereinafter referred to as 'Benami Act') and he has been summoned to face trial.
3. The opposite party no. 1-Union of India has filed a complaint under Section 53 of Benami Act through a Deputy Commissioner of Income Tax/Initiating Officer, Benami Prohibition, Benami Unit, Kanpur, after obtaining sanction for prosecution from the Principal Director of Income Tax (Investigation) Kanpur under Section 55 of the Benami Act on 29.01.2024.
4. The complaint states that a search and seizure under Section 132 of the Income Tax Act, 1961 was conducted on 18.01.2017, which revealed that M/s Shyam Trading Company (a proprietorship concern of Ghanshyam Patel) had used its bank account maintained with J &

K Bank, Ghaziabad to deposit a cash amount of Rs.30,00,000/- on 12.11.2016. Out of the aforesaid amount, Rs.7,50,000/- were transferred to the bank account of the applicant being maintained with Axis Bank, Delhi through NEFT on 12.11.2016. Ghanshyam Patel denied ownership of the amount deposited in his bank account. After inquiry, the matter was transferred to the Benami Prohibition Unit, Kanpur for initiating proceedings under Benami Act. During further inquiry held by the Benami Prohibition Unit, Kanpur, the applicant admitted on oath that the aforesaid sum of Rs. 7,50,000/- deposited into the bank account of M/s Shyam Trading Company was the applicant's unaccounted cash, which was deposited during demonetization period and had been transferred to his bank account. Ghanshyam Patel, proprietor of M/s Ghanshyam Trading Company, also admitted in his statement that the amount of Rs. 7,50,000/- deposited in his bank account in cash was a benami transaction.

5. The Deputy Commissioner of Income Tax/ Initiating Officer, Benami Prohibition Benami Unit, Kanpur filed a complaint dated 25.02.2024 on the basis of the aforesaid facts. The learned IX Additional Session Judge, Lucknow took cognizance of the alleged offence on the same date i.e. 27.02.2024 and summoned the applicant to face the trial.
6. The learned counsel for the applicant has assailed the validity of the summoning order dated 27.02.2024 on the sole ground that the applicant resides at New Delhi, i.e. beyond the territorial jurisdiction of the Court which has passed the summoning order and, therefore, as per the statutory provision contained in Section 202 Cr.P.C., it was mandatory for the Court to have conducted an inquiry before taking cognizance of the offence and summoning the applicant.
7. In support of his contention, the learned counsel for the applicant has relied upon a decisions in **Vishwakalyan Multistate Credit Coop. Society Ltd. v. Oneup Entertainment (P) Ltd.**, 2023 SCC OnLine SC 1749, a decision rendered by a coordinate Bench of this Court in **Azim Premji v. State of U.P.**, 2024 SCC OnLine All 1956 and a decision rendered by an Hon'ble Single Judge of Calcutta High Court

in **Divyajot Singh Jendu v. Manikaran Analytics Ltd.**: 2022 SCC OnLine Cal 200.

8. Per contra, Sri Neerav Chitravanshi, the learned counsel for the opposite parties has submitted that the Proviso (a) appended to Section 200 Cr.P.C. provides that the Magistrate need not examine the complaint and the witnesses, if a complaint has been made by a public servant. He has relied upon a decision of the Hon'ble Supreme Court in the case of **Cheminova India Limited v. State of Punjab**: 2021 SCC OnLine SC 573.
9. Before proceeding with the matter, it would be appropriate to have a look to the relevant statutory provisions. Section 50 of the Benami Act reads as under:-

50. Special Courts.—(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of an offence punishable under this Act, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

(2) While trying an offence under this Act, a Special Court shall also try an offence other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

(3) The Special Court shall not take cognizance of any offence punishable under this Act except upon a complaint in writing made by—

(i) the authority; or

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

(4) Every trial under this section shall be conducted as expeditiously as possible and every endeavour shall be made by the Special Court to conclude the trial within six months from the date of filing of the complaint.

10. In exercise of powers conferred by Section 50 of the Benami Act, the Ministry of Finance, Government Of India has issued a Notification dated 16.10.2018 whereby IX Additional District & Sessions Judge,

Lucknow has been designated as the Special Court for the purpose of trial of offences punishable under the Benami Act for certain Districts, including Ghaziabad District, where the cash amount of Rs.30,00,000/- was deposited in the Bank account of M/s Shyam Trading Company and from where an amount of Rs.7,50,000/- was transferred to the Bank account of the applicant. Therefore, the Complaint has rightly been filed before the Special Court constituted under Section 50 of the Benami Act.

11. Sections 200 & 202 of Criminal Procedure Code, 1973 read as under:-

“200. Examination of complainant.—*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; or

(b) if the Magistrate makes over the case for inquiry or trial to another Magistrate under Section 192:

Provided further that if the Magistrate makes over the case to another Magistrate under Section 192 after examining the complainant and the witnesses, the latter Magistrate need not re-examine them.

* * *

202. Postponement of issue of process.—*(1) Any Magistrate, on receipt of a complaint of an offence of which he is authorised to take cognizance or which has been made over to him under Section 192, may, if he thinks fit, and shall, in a case where the accused is residing at a place beyond the area in which he exercises his jurisdiction, postpone the issue of process against the accused, and either inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding:*

Provided that no such direction for investigation shall be made,

(a) where it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session; or

(b) where the complaint has not been made by a Court, unless the complainant and the witnesses present (if any) have been examined on oath under Section 200.

(2) In an inquiry under sub-section (1), the Magistrate may, if he thinks fit, take evidence of witnesses on oath:

Provided that if it appears to the Magistrate that the offence complained of is triable exclusively by the Court of Session, he shall call upon the complainant to produce all his witnesses and examine them on oath.

(3) If an investigation under sub-section (1) is made by a person not being a police officer, he shall have for that investigation all the powers conferred by this Code on an officer in charge of a police station except the power to arrest without warrant.”

12. In **Cheminova India Limited v. State of Punjab**: 2021 SCC OnLine SC 573, the Hon’ble Supreme Court held that: -

“18. The legislature in its wisdom has itself placed the public servant on a different pedestal, as would be evident from a perusal of proviso to Section 200 of the Code of Criminal Procedure. Object of holding an inquiry/investigation before taking cognizance, in cases where the accused resides outside the territorial jurisdiction of such Magistrate, is to ensure that innocents are not harassed unnecessarily. By virtue of proviso to Section 200 of the Code of Criminal Procedure, the Magistrate, while taking cognizance, need not record statement of such public servant, who has filed the complaint in discharge of his official duty. Further, by virtue of Section 293 of Code of Criminal Procedure, report of the Government Scientific Expert is, per se, admissible in evidence. The Code of Criminal Procedure itself provides for exemption from examination of such witnesses, when the complaint is filed by a public servant.”

13. In **Vishwakalyan Multistate Credit Coop. Society Ltd. v. Oneup Entertainment (P) Ltd.**, 2023 SCC OnLine SC 1749, the appellant had filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 . On 26.06.2021, the Judicial Magistrate issued process on the complaint. The High Court held that as the respondent was having its office outside the jurisdiction of the Magistrate, it was necessary for the Magistrate to hold an inquiry under Section 202 Cr.P.C. and non-compliance with the mandate of Section 202 Cr.P.C. vitiates the

order issuing process. Therefore, the High Court set aside the order issuing process, without issuing any further direction to the Magistrate to hold an inquiry under Section 202 Cr.P.C. The Hon'ble Supreme Court referred to its Constitution Bench decision in the case of “**In Re : Expeditious Trial of Cases Under Section 138 of N.I. Act, 1881**”: 2021 SCC OnLine SC 325, in which the Constitution Bench has directed as under: -

“3) For the conduct of inquiry under Section 202 of the Code, evidence of witnesses on behalf of the complainant shall be permitted to be taken on affidavit. In suitable cases, the Magistrate can restrict the inquiry to examination of documents without insisting for examination of witnesses.”

The aforesaid decision given in the background of a private complaint filed under Section 138 of the Negotiable Instruments Act cannot apply to the facts of the present case, where the complaint has been filed by a public servant under the Benami Act.

14. In **Azim Premji v. State of U.P.**, 2024 SCC OnLine All 1956, a coordinate Bench of this Court held that where the Magistrate, failed to ensure the compliance of Section 202 Cr.P.C., although the accused resides outside the jurisdiction of the court concerned, an enquiry on fact is mandatory before issuing a summoning order. However, this judgment does not take into consideration the provision contained in Section 200 Cr.P.C. granting exemption to public servants or the judgment of the Hon'ble Supreme Court in the case of **Cheminova India Limited** (Supra).
15. In **Divyajot Singh Jendu v. Manikaran Analytics Ltd.**, 2022 SCC OnLine Cal 200, while dealing with a complaint filed by a person other than a public servant, the Calcutta High Court held that as the learned Magistrate did not hold any inquiry under Section 202 of Cr.P.C though the accused resided outside the jurisdiction of the court where the complaint has been lodged and the Magistrate merely held an inquiry under section 200 of Cr. P.C simpliciter and only examined the complainant and no other witness or document, the summoning order was vitiated. This judgment also does not take into consideration the provision contained in Section 200 Cr.P.C. granting

exemption to public servants or the judgment of the Hon'ble Supreme Court in the case of **Cheminova India Limited** (Supra).

In **Rosy v. State of Kerala**: (2000) 2 SCC 230, the Hon'ble Supreme Court explained the nature and purpose of the enquiry under Section 202 Cr.P.C. in the following words: -

“11...it is settled law that the inquiry under Section 202 is of a limited nature. Firstly, to find out whether there is a prima facie case in issuing process against the person accused of the offence in the complaint and secondly, to prevent the issue of process in the complaint which is either false or vexatious or intended only to harass such a person. At that stage, the evidence is not to be meticulously appreciated, as the limited purpose being of finding out “whether or not there is sufficient ground for proceeding against the accused”. The standard to be adopted by the Magistrate in scrutinising the evidence is also not the same as the one which is to be kept in view at the stage of framing charges. At the stage of inquiry under Section 202 CrPC the accused has no right to intervene and that it is the duty of the Magistrate while making an inquiry to elicit all facts not merely with a view to protect the interests of an absent accused person, but also with a view to bring to book a person or persons against whom grave allegations are made.”

16. When we examine the impugned cognizance and summoning order dated 27.02.2024 in light of the law laid down in the above referred cases, it appears that the complaint has been filed by the Union of India through Deputy Commissioner of Income Tax / Initiating Officer, Benami Prohibition, Benami Prohibition Unit, Kanpur. The Special Court has referred to the contents of the complaint that during a search and seizure operation conducted under Section 132 of the Income tax Act, 1961, it transpired that a cash amount of Rs.30,00,000/- had been deposited in the account of M/s Shyam Trading Company maintained with J & K Bank, Ghaziabad on 12.11.2016 and on the same date, an amount of Rs.7,50,000/- was transferred from that account through NEFT to the bank account of the applicant. Ghanshyam Patel, Proprietor of M/s Shyam Trading Company, has denied ownership of the amount and he stated that his account was misused by Rahul Chaudhary. The Initiating Officer, Benami Prohibition Unit conducted an enquiry, during which the applicant admitted that the amount deposited in the bank account of

M/s Shyam Trading Company was unaccounted cash, which was deposited during demonetization. After enquiry, the Initiating Officer found that the aforesaid property was Benami property and he passed an attachment order under Section 24(4) of the Benami Act. The adjudicating Authority gave an opportunity of hearing to the applicant, during which the applicant admitted on oath that the aforesaid sum of Rs. 7,50,000/- deposited into the bank account of M/s Shyam Trading Company was the applicant's unaccounted cash, which was deposited during demonetization period and had been transferred to his bank account. Thereafter the complaint was filed after obtaining sanction from Principal Director, Income Tax (Investigation) before the Special Court having jurisdiction under the Act.

17. Section 202 Cr.P.C. merely directs that the Magistrate shall hold an enquiry inquire into the case himself or direct an investigation to be made by a police officer or by such other person as he thinks fit, for the purpose of deciding whether or not there is sufficient ground for proceeding. Section 202 Cr.P.C. does not prescribe the manner of holding an enquiry under this provision. The Special Court has passed the impugned order dated 27.02.2024 taking cognizance of the offence and summoning the applicant after taking into consideration the aforesaid facts and after recording a satisfaction that from the averments made in the complaint and the documents filed with the complaint, there is sufficient ground for proceeding against the applicant.
18. The limited enquiry which the Magistrate can hold at this stage is meant to ascertain whether any case for summoning the accused person is made out. The perusal of the averments made in the complaint made by the Union of India through a Public Servant and examination of the documents accompanying the complaint was sufficient for holding an enquiry under Section 202 Cr.P.C. for recording a satisfaction that there is sufficient ground for proceeding against the applicant. The summoning order passed after taking into consideration the averments made in a complainant filed by the Union

of India through a public servant, after perusing the documents filed with the complaint and after recording a satisfaction that there is sufficient ground for proceeding against the applicant, fulfills the requirement of holding an enquiry under Section 202 Cr.P.C.

19. In view of the aforesaid discussion, there appears to be no illegality in the impugned order dated 27.02.2024 taking cognizance of the offence and summoning the applicant to face the trial and in any case, it does not cause a failure of justice to the applicant.
20. The application under Section 482 Cr.P.C. filed by the applicant lacks merit and the same is hereby *dismissed*.

(Subhash Vidyarthi J)

Order Date: 04.06.2024

Pradeep/-