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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 2961 OF 2015

Mrs. Charu Kishor Mehta ….Petitioner
versus
1. State of Maharashtra
2. Asst. Director, FEMA/PMLA
   Directorate of Enforcement,
   Govt. of India ….Respondents

Mr. A. H. Ponda along with Mr. Hemant Ingale i/b. Mr. Prashant Goyal, advocate for the petitioner.
Mr. K. V. Saste, APP for the State.
Ms. Rebecca Gonsalvez, advocate for respondent No.2.

CORAM : RANJIT MORE &
ANUJA PRABHUDESSAI, JJ.

DATED : 29th JULY, 2015.

P.C.:

The petition is filed seeking direction to respondent No.2 to produce before the Court and handover to the petitioner all the records and proceedings of the complaints, relevant documents etc. from respondent No.2 - the Assistant Director, Directorate of Enforcement, Govt. of India pertaining to File No. ECIR/06/M20/2015/1992.

2. Mr. Ponda, learned counsel for the petitioner, contends that the petitioner has received summons from respondent No.2 under Section 50 of the Prevention of Money-Laundering Act, 2002, requiring the petitioner's attendance in connection with investigation under the

provisions of the Prevention of Money-Laundering Act, 2002. He contended that the petitioner had filed criminal writ petition No.2788 of 2015 for quashing the summons and also for calling the records pertaining to above referred file. This petition, however, was disposed of by consent order on 20th July, 2015. However, the petitioner proposed and respondent No.2 agreed that the officers of Enforcement Directorate would visit the residence of the petitioner on 30th July, 2015 at 11.00 a.m. to record her statement and to examine the documents, if any, as stated in the schedule attached to the summons. The petitioner thereafter by her letter dated 23rd July, 2015 requested respondent No.2 to furnish all the details of the complaints and relevant documents in connection with which she is being summoned and her statement is being recorded. Since this request was not acceded by respondent No.2, the instant petition is filed.

3. Mr. Ponda further invited our attention to the provisions of Section 50 of the Prevention of Money-Laundering Act, 2002 and submitted that every proceeding under Sub-Sections (2) and (3) of Section 50 of the Prevention of Money-Laundering Act, 2002 are deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code, 1860, and in the event, the petitioner fails to give evidence as mentioned in the schedule attached to the summons, she would be liable to penal proceedings under the Prevention of Money-

Laundering Act, 2002 . He submitted that in the light of these provisions, the petitioner is entitled to know the nature of the proceedings against her or the proceedings, in respect of which, she is being summoned. Mr. Ponda, at this stage, submitted that the ECIR is recorded on the basis of FIR and he would be satisfied if copy of the FIR or number of the FIR is given to him.

4. Mr. Ponda lastly invited our attention to the order dated 2nd December, 2014 and submitted that the petitioner's husband was arrested by the same investigating officer, though the summons was issued in the name of the 3rd person. He alleged *mala fide* on the part of respondent No.2 and, therefore, submitted that the petitioner is entitled to know the nature of the proceedings in relation to which she is being summoned.

5. Ms. Gonsalvez, learned counsel for respondent No.2, opposed the petition vehemently. She submitted that the petition is not maintainable as the petitioner is seeking reliefs similar to the reliefs claimed in earlier criminal writ petition No. 2788 of 2015. She also submitted that the investigation is at a preliminary stage and disclosure of any information regarding the same would hamper the investigation. She also submitted that the petitioner is not entitled to information as, at this stage, it cannot be said whether the petitioner is an accused or

witness. Ms. Gonsalvez also opposed the request of the learned counsel for the petitioner for giving details of FIR on the ground that same would prejudice the investigation severally.

6. Regarding allegation of *mala fide*, Ms. Gonsalvez submitted that the present proceedings and the proceedings which were the subject matter of criminal writ petition No. 4603 of 2014 are distinct and it has no relevance whatsoever to the present proceedings. She rejected the claim of mala fide by submitting that the husband of the petitioner was arrested consequent to the warrant issued by the Court. She lastly prayed for dismissal of the petition.

7. Having considered the rival submissions and having gone through the petition along with compilation thereof, we do not find merit in the petition. Undisputedly, the petitioner had filed criminal writ petition No.2788 of 2015 challenging the very summons issued by respondent No.2 under Section 50 of the 2002 Act. The said petition was disposed of by consent and petitioner and respondent No.2 agreed that the officers of Enforcement Directorate would visit the residential place of the petitioner on 30th July, 2015 at 11.00 a.m. for recording petitioner's statement and for examining the documents as stated in the schedule attached to the summons. In prayer clause (c) of the said petition, the petitioner had also sought direction to call for record and proceedings of the complaints

pertaining to ECIR/06/MZO/2015/1992 from respondent No.2. The prayer of the present petition is similar to prayer clause (c) of the earlier petition except that in the present petition, the petitioner has sought for the copies of the documents relating to ECIR/06/MZO/2015/1992. That apart, ECIR is an internal document of Enforcement Directorate and unlike FIR, it is not a public document. Hence the copy of the same cannot be furnished to the petitioner as of right. The investigation is at the preliminary stage and granting the reliefs as prayed for, in our view, would hamper the investigation. We are, therefore, not inclined to issue directions as sought or to furnish the details of the FIR.

8. It is also pertinent to note that the schedule to the summons requires the petitioner to give 1) details of recent foreign visits; 2) copies of passport since 2000; 3) bank account details- domestic and overseas and 4)Pan number. The summons/schedule, therefore, gives a fair idea of the nature of interrogation as well as the documents required by the agency for the purpose of investigation.

9. Regarding *mala fide* alleged by the petitioner against respondent No.2, at this stage, we do not find any substance inasmuch as, the petitioner's husband was arrested in pursuance of the warrant issued by the Court and the nature of the proceedings in which he was arrested were different from the proceedings in the present case.

10. Mr. Ponda, at this stage, submitted that he wants to test this order before the Supreme Court and, therefore, submitted that recording of the statement as per the order dated 20th July, 2015 passed in criminal writ petition No. 2788 of 2015 may be postponed. The request is opposed by learned counsel for respondent No.2. In the interests of justice and in order to enable the petitioner to approach the higher Court, the date of recording of the petitioner's statement as per the order dated 20th July, 2015, passed in criminal writ petition No.2788 of 2015 is postponed by a period of two weeks from today.

11. All concerned to act upon a copy of this order duly authenticated by the Registry of this Court.

(ANUJA PRABHUDESSAI, J.) **(RANJIT MORE, J.)**