* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 22 December, 2014

% **Date of Decision: 09th April, 2015**

\+ CRL. M.C. No. 5581/2014

M/S AJANTA MERCHANTS PVT. LTD. ....Petitioner

Through: Mr. Siddharth Aggarwal & Mr. Rahul Kumar Advocate.

versus

DIRECTORATE OF ENFORCEMENT ....Respondent

Through: Mr. Sanjay Jain, Sr. Adv. with Mr.Ajay Digpaul, CGSC with Mr. P.K. Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of the present petition under Section 482 of the Code of Criminal Procedure 1973 (hereinafter referred to as 'Cr.P.C.') the petitioner seeks quashing of the proceedings in ECIR No. 03/DZ/2011/AD(SC)/SDS dated 24.02.2011 under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') and the proceedings emanating therefrom.

2. It is the case of the prosecution that the CBI/Dehradun branch received an information that five employees of Punjab National Bank (hereinafter referred to as 'PNB') and other persons had during the period from November 2005 to December 2006 entered into a criminal conspiracy

and made false entries in the accounts of PNB, Vidhan Sabha Branch, Dehradun allowing deposits and withdrawal from five fictitious accounts maintained in the name of non-existent persons at PNB, Arya Vanprastha Ashram Branch, Jwalapur, Haridwar. By doing so, said persons misappropriated the funds of PNB and also caused a pecuniary gain to themselves, other persons and correspondingly a pecuniary loss to the PNB. In the said information it was stated that the said persons had obtained an illegal pecuniary gain of Rs. 10,88,987/- (Rupees Ten lakhs eighty eight thousand nine eighty seven) which was the interest accrued on the principal amount of Rs. 3,30,82,105/- (Rupees Three crore thirty lakhs eighty two thousand one hundred and five) deposited in these accounts and subsequently withdrawn.

3. On the basis of the said information RC No. 0072011A0003 was registered on 21.01.2011, by CBI against five persons namely: M.M. Sharma Manager (Retd.), PNB Vidhan Sabha Branch Dehradun, Harish Kamboj Deputy Manager, PNB, Vidhan Sabha Branch, Dehradun, A.K. Bansal Manager, PNB, Arya Vanprastha Ashram Branch, Jwalapur, Haridwar, Sanjeev Kumar Clerk, PNB, Arya Vanprastha Ashram Branch, Jwalapur, Haridwar, A.K. Chaddha Clerk (Retd.), PNB Vidhan Sabha Branch Dehradun and other unknown persons under Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act'), and Sections 120B, 409, 477A Indian Penal Code (hereinafter referred to as 'IPC'). The said FIR pertained to a total of 71 bank accounts, which were in two groups one pertaining to 5 accounts and the second group pertaining to remaining 66 accounts.

4. On the basis of the aforesaid, a criminal case was registered by the

respondent Enforcement Directorate bearing ECIR No.03/DZ/2011/ AD(SC)/SDS dated 24.02.2011 against the aforementioned five persons and other unknown persons for committing an offence under Section 3 of PMLA punishable under Section 4 of the said Act. On the basis of the said facts, the respondent concluded that as they cheated the PNB by manipulating the records of the bank by abusing their official position for their personal gain, it is therefore essential to conduct investigation under the provisions of PMLA since the amount involved is more than Rs.30 lakhs which is the threshold limit of Part B of PMLA-2002.

5. On the basis of the FIR, CBI, Dehradun investigated the matter and during the course of investigation, CBI arrested Arun Kumar Mishra on 27.04.2011 and his police remand was granted to the respondent on 05.08.2011. However, vide order dated 01.10.2011 passed by learned District & Additional Sessions Judge, Karkardooma Courts, Delhi, bail was granted to him.

6. On completion of investigation into the first set of 5 accounts, CBI filed a charge sheet on 09.09.2011 before the learned Special Judge, CBI, Dehradun against the two original accused and Arun Kumar Mishra for offences committed u/s 13(2) r/w 13(1)(d) PC Act and Sections 120-B, 420, 471 r/w 468, 409 and 477-A IPC. Three other accused were not charge sheeted. In the said charge sheet it was stated that Arun Kumar Mishra's money had been deposited and subsequently withdrawn through fictitious accounts. With regard to the remaining 66 accounts, CBI continued with its investigation.

7. Based on the above charge sheet, respondent proceeded against the

petitioner as well, and proceeded to attach its properties situated at Dehradun and Delhi through separate provisional attachment orders dated 25.10.2012 and 30.08.2013 respectively which were subsequently confirmed vide orders dated 21.03.2013 and 26.02.2014 respectively. The properties of the petitioner were attributed to Arun Kumar Mishra based upon the charge sheet filed by CBI against him and other accused persons. A supplementary charge sheet was filed by CBI on 28.09.2011.

8. Finally, CBI completed its investigation regarding 66 other accounts mentioned in the said FIR and submitted its closure report dated 08.08.2014 with regards to the said accounts. In the said closure report it was concluded that the investigation did not reveal any wrongful loss to the bank or Government of India due to the said 66 accounts and hence no offence was said to be made out. In the said closure report, it was also mentioned that the issue of Arun Kumar Mishra's alleged disproportionate assets and the said false accounts are a subject matter of investigation by the SIT UP Police, Lucknow in FIR No. 4/2011 dated 03.05.2011. The closure report filed by CBI was accepted by learned Special Judge, CBI, Dehradun vide order dated 21.08.2014.

9. Thereafter, pursuant to RC No. 0072011A0003 registered at CBI SPE, Dehradhun, Arun Kumar Mishra moved a petition before the High Court of Uttrakhand seeking quashing of the CBI proceedings pending in the Court of learned Special Judge, Anti Corruption, CBI, Dehradhun. The said petition was allowed by the High Court vide order dated 13.10.2014.

10. It is further the case of the prosecution that as the Mishra family is involved in a business transaction with the petitioner herein, Arun Kumar

Mishra had deposited his alleged ill-gotten gains in the account of the petitioner.

11. In the background of these facts the petitioner has preferred the present petition challenging the attachment of its properties.

12. Learned counsel for the petitioner contended that in order to construct apartment buildings in Dehradun, the petitioner entered into a Joint Development Agreement with S.P. Mishra, Tara Mishra and Anurag Mishra (Mishra family) for construction of the apartment complex on their property bearing address No. 23/22 Balbir Road, Dehradun. To facilitate this transaction, the petitioner inducted Arun Kumar Mishra's brother Anurag Mishra as a Director in the company on 27.06.2006 who resigned barely 9 months later on 07.05.2007. However, following non-compliance by the Mishra family with the terms of the Agreement after the petitioner had cleared their debt through a cheque payment, the petitioner filed a Civil Suit O.S. No. 543/2011 for specific performance against the Mishra family. The petition has been proceeded against only on the basis of allegations made by the respondent that as the Mishra family is involved in a business transaction with the petitioner herein, Arun Kumar Mishra had deposited his alleged ill-gotten gains in the account of the petitioner. The respondent has falsely attributed petitioner's properties to Arun Kumar Mishra based upon CBI's charge sheet. Even if the allegations of laundering are accepted in full, there would have been no necessity to further attach multiple properties when attaching one property would have been sufficient. Respondent after taking over the possession of the property of the petitioner is misusing the same for its own purpose illegally and in contravention to the provisions of law. Otherwise also, by way of

CBI's closure report dated 08.08.2014 and order dated 13.10.2014 of the High Court of Uttrakhand wherein proceedings arising out of RC No. 0072011A0003 dated 21.01.2011 registered by CBI, against Arun Kumar Mishra have been quashed, the very basis for the ECIR has ceased to exist. Without the predicate offence, there can be no question of the Enforcement Directorate proceeding with the investigation against the petitioner, which must be quashed forthwith.

13. Learned counsel for the petitioner further contended that attachment of properties of the petitioner amounts to illegal harassment which is baseless and disproportionate and ought to be quashed so that the injustice is not continued. The attachment has deprived the petitioner of its basic right to property and usage protected by Articles 19 and 21 of the Constitution. There is no commission of scheduled offence by the petitioner as envisaged within the meaning of Section 3 r/w Section 2(u) of PMLA. PMLA is a penal law and the provisions of the Act cannot be given retrospective effect as Article 20(1) of the Constitution of India prohibits the conviction of a person or his being subjected to a penalty under *ex-post facto* laws. The offences punishable under Section 120-B IPC and Section 13 PC Act were inserted in the Schedule of PMLA with effect from 01.06.2009. As a result, when these offences were allegedly committed, they were not money laundering offences and cannot be the subject matter of respondent's investigation.

14. It was lastly contended by the learned counsel for the petitioner that the respondent has also attached the petitioner's property at Prithviraj Road, Delhi, which has absolutely nothing to do with any member of the Mishra family and would be completely unnecessary in the circumstances

when the attachment of the other two properties can take care of the alleged quantum of proceeds that have been apparently laundered. The petitioner has also produced its Directors before the respondent for recording of their statements, after which there has been no response from the respondent to refute the contents of any of them. In an offence it is necessary for each person at each stage to have the necessary *mens rea* to launder money that is tainted. If however, at that point of time, such an act was not contrary to law, then, even if such *mens rea* existed no offence would be made out. The brokers and vendors of the attached properties have made statements under Section 164 Cr.P.C. to the learned Special Judge stating that they were coerced by the respondent enforcement directorate to make false statements and they do not know anybody called Arun Kumar Mishra.

15. *Per Contra,* learned Senior Counsel for the respondent contended that the investigation in the present case is at the final stage and there is every likelihood that the respondent may file a criminal prosecution against the petitioner under PMLA. The order dated 08.12.2014 is causing prejudice to the respondent. Therefore, it may be recalled. The petitioner has filed multiple petitions for release of its property bearing no. 11, Prithviraj Road before this court which have been dismissed. Out of the said writ petitions, Ms. Amrita Rai, petitioner in writ petition bearing number W.P. (C) No. 4013/2014 challenged the judgment of this court by filing LPA No. 99/2014 and LPA No. 100/2014. The said LPAs were also dismissed by the division bench of this Court headed by Chief Justice which fact was not disclosed by the petitioner before this court. The proceedings quashed by the learned Special Judge, CBI, Dehradun, U.P

have been quashed only against Arun Kumar Mishra and no other person. Otherwise also quashing of FIR does not preclude, the respondent, from investigating the case under PMLA. After amendment to the PMLA, there is no doubt that the investigating agency under this act has independent power to investigate the allegations, irrespective of the fact whether the FIR on the basis of which the ECIR was registered is in existence or not. Sufficient evidence both documentary as well as circumstantial is available to draw a reasonable inference that the properties have been purchased by Arun Kumar Mishra in the name of his relatives or associates and in the name of company which have already been provisionally attached. In 2006-2007 after the withdrawal of funds lying in the above mentioned fictitious accounts, a number of shell companies of Kolkata, were purchased, taken over or started. In these so acquired companies, investments of ill gotten money were made, in the form of share money etc. and the relatives/close associates/nominees of Arun Kumar Mishra, were inducted as Directors or authorized signatories, the details of which have been annexed to the reply.

16. Learned Senior Counsel for the respondent further contends that during the investigation of the present ECIR, it has been revealed that there are other FIRs pending against the petitioner. The allegations in those FIRs are similar to the FIRs referred to in the present petition. The Enforcement Directorate is also investigating the allegations made in FIR No. 04/2011 filed by SIT of UP Police. The purpose of the Act is to prevent laundering of money. Quashing of one FIR will have no bearing on the ongoing investigation. Investigating agency under the PMLA has independent power to investigate the allegations, irrespective of the fact that whether

the FIR on the basis of which the ECIR was registered is in existence or not.

17. I have heard the learned counsels for the parties and have also perused the material on record.

18. Before adverting to the facts of the case, it is necessary to consider the relevant provisions of the Prevention of Money Laundering Act. Section 3 of PMLA defines the offence of money laundering as under: -

> "**3. Offence of money-laundering**. – Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering"

19. The term 'proceeds of crime' has been defined in Section 2(u) of PMLA, which reads as under: -

> "**2. Definitions.-** (1)……..
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> xxx xxx xxx
>
> (u) "proceeds of crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property;"

20. At the outset it may be mentioned that the ECIR discloses the commission of the alleged offences during the period from November, 2005 to December, 2006. Section 3 of the PMLA specifically mandates that the act of money laundering should be intentional, therefore, it has to

be traced to the point of time when the actual transactions took place. The offence punishable under Section 120B IPC and Section 13 PC Act were inserted in the schedule of PMLA w.e.f. 01.06.2009 i.e. after the period in which the alleged offences have been committed.

21. In '**Tech Mahindra's case**' **(supra)** it was observed as under: -

> "70. It is settled principle of law that no person can be prosecuted on the allegation which occurred earlier by applying the provision of law which has come into force after the alleged incident. In other words, there can be no retrospective application of criminal liability for the incident occurred prior to introduction of such liability in the statute book.
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> 71. Admittedly, prior to Amendment Act, 2009, none of the provisions which are now invoked by the Enforcement Directorate were on the statute book except Section 467 IPC. Thus, the petitioner cannot be prosecuted by invoking those provisions."

22. It is a settled principle of law that the provisions of law cannot be retrospectively applied as Article 20(1) of the Constitution bars the *ex-post facto* penal laws and no person can be prosecuted on the allegations which occur earlier by applying the provisions of law, which has come into force after the alleged incident.

23. The primary contention of the learned counsel for the petitioner is that the entire basis of the ECIR has been the contents of the FIR filed by the CBI. It has been further contended that since CBI's closure report dated 08.08.2014 and the order dated 13.10.2014 passed by the High Court of Uttrakhand the proceedings arising out of the FIR against Arun Kumar Mishra have been quashed hence the ECIR should also be quashed. A bare

perusal of record shows that on completion of investigation into the first set of 5 accounts CBI filed a charge sheet on 09.09.2011 before the learned Special Judge, CBI, Dehradun against Manmohan Sharma, Arun Kumar Bansal alongwith the petitioner, for offences u/s 13(2) r/w 13(1)(d) of the PC Act and Section 120B, 420, 468, 409, 477A IPC. At that point in time, the investigation pertaining to 66 accounts was in process and subsequently CBI filed a closure report dated 08.08.2014. In the said closure report the reason specified by CBI was that the investigation did not reveal any wrongful loss to the bank or government due to the said 66 accounts and no offence was made out against Arun Kumar Mishra. Another reason specified in the said closure report that the said accounts and disproportionate assets were a subject matter of investigation by the SIT UP Police in FIR No. 04/2013 dated 03.05.2011.

24. Arun Kumar Mishra when challenged the charge sheet dated 09.09.2011 and the entire proceedings pursuant to it before the High Court of Uttrakhand, the said charge sheet and the entire proceedings pursuant to it were quashed qua Mr. Arun Kumar Mishra vide order dated 13.10.2014.

25. The counsel for the petitioner also contended that the petitioner company, M/s. Ajanta Merchants Pvt. Ltd. has no role in the entire FIR except that they are being used as a scapegoat to avenge the accused Arun Kumar Mishra.

26. Learned counsel for the petitioner referred to the statements of witnesses relied upon by the Enforcement Directorate and has further submitted that the statements of witnesses have exposed the investigating officer, who in spite of knowing the truth has used illegal means in an

attempt to implicate the petitioner to serve some larger interests. The witnesses namely Anil Vaid, Devki Nandan Taneja and Ravindra Taneja in their statements under Section 164 of Cr.P.C. made before Special JM, CBI, Lucknow have categorically mentioned that they were pressurized to help the investigating officer to wrongfully implicate Arun Kumar Mishra and they were even threatened for that purpose and their signatures were obtained on the statements under pressure.

27. Admittedly, the petitioner was never an accused in the CBI case nor any finger was pointed at the petitioner in the charge sheet filed by CBI. Perusal of the facts including the statement of witnesses under Section 164 Cr.P.C. makes it clear that the petitioner has been falsely implicated in the case.

28. The Court cannot overlook the facts that the properties of the petitioner were purchased in the year 2007 and duly reflected in the income tax returns.

29. After perusal of the statement of witnesses under Section 164 Cr.P.C. the Court cannot act like a mute spectator to the illegal acts of the agency. Admittedly, the respondent, Enforcement Directorate has no other legally admissible evidence against the petitioner. After carefully examining all the facts and records of the case including statements under Section 164 Cr.P.C. of the witnesses relied upon by the respondent and the closure report filed by CBI before the Special Judge, CBI, Dehradun which was accepted vide order dated 21.08.2014 as well as the order of the High Court of Uttrakhand dated 13.10.2014 quashing the entire proceedings qua the accused, Mr. Arun Kumar Mishra in the said case and in the light of

the retrospective aspect this Court finds no merit in the allegation of the respondent.

30. Consequently, the provisional attachment of properties of the petitioner vide provisional attachment order No.01/2012 dated 25.10.2012 and vide provisional attachment order No.02/2013 dated 30.08.2013 does not hold good and the respondent is directed to release the properties and give the possession back to the petitioner.

31. With the aforesaid observations, the petition stands disposed of.

Crl. M.A. No.19048/2014

The application is dismissed as infructuous.

(VED PRAKASH VAISH)
JUDGE

APRIL 09th, 2015
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