

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.554 of 2017

and Crl.M.P.No.473 of 2017

Parasmal Lodha

... Petitioner

Vs

Union of India, rep. By
The Enforcement Directorate,
Chennai.

... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the same in Crl.M.P.No.48 of 2017 on the file of the learned XI Additional Sessions Judge for CBI Cases dated 5.1.2017 in ECIR No.19 of 2016 on the file of the respondent.

For Petitioners : Mr.A.Ramesh, SC,
for Mr.K.P.Ananthakrishna

For respondent : Mr.N.Ramesh,
Addl. Public Prosecutor
(Directorate of Enforcement)

ORDER

The present criminal original petition has been filed to call for the records and quash the same in Crl.M.P.No.48 of 2017 on the file of the learned XI Additional Sessions Judge for CBI Cases dated 5.1.2017 in ECIR No.19 of 2016 on the file of the respondent.

2. It is the case of the petitioner that he is one of the major shareholders of M/s.Peerless General Finance and Investment Co. Ltd. and his accounts are audited in accordance with law. While so, the Income Tax Department conducted raid at his premises and thereafter, the petitioner was detained by the Enforcement Directorate, Delhi, on 19.12.2016. Subsequently, he was arrested on 21.12.2016 by the Enforcement Directorate, Delhi, pursuant to the registration of ECIR No.14/DZO - II/2016 dated 16.12.2016. Thereafter, he was produced before the learned Additional Sessions Judge, New Delhi, and remanded to judicial custody. Thereafter, on 4.1.2017, pursuant to the application made by the Enforcement Directorate, the learned Special Judge

permitted the petitioner to be produced before the XI Additional Sessions Court for CBI Cases, City Civil Court, Chennai, in respect of production warrant under Section 267 of Cr.P.C. issued by the XI Additional Sessions Court for CBI Cases, City Civil Court, Chennai. On the strength of the said production warrant, the Enforcement Directorate, Chennai, took physical control of the petitioner and produced him before the learned XI Additional Sessions Judge for CBI Cases, City Civil Court, Chennai, on 5.1.2017. Upon production, the Enforcement Directorate, Chennai, sought judicial custody of the petitioner in respect of ECIR No.19 of 2016 and the learned Judge has also passed a detailed order remanding the petitioner to judicial custody in respect of the said case till 19.1.2017. Challenging the same, the petitioner has come up with the present petition.

3. Learned senior counsel appearing for the petitioner mainly submitted that the petitioner has been remanded for the offence under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA). The power to remand a person prior to cognizance, is traceable to Section 167 Cr.P.C. According to Section 167 Cr.P.C., a person can be arrested and remanded to judicial custody by a Magistrate who does not have jurisdiction to try the case. However, this power is limited to the period of first remand. Subsequent thereto, only the jurisdictional Court has the power to remand the accused and other Courts cease to have jurisdiction to interfere in the matter in any manner. However, in the case on hand, the learned XI Additional Sessions Judge for CBI Cases, City Civil Court, Chennai, has not been notified under Section 43 of the PMLA to try such scheduled offence. In this regard, learned senior counsel has brought to the attention of this Court to Sections 43 and 44 of PMLA, which read as follows:-

"Special Courts: (1) The Central Government in consultation with the Chief Justice of the High Court, shall for trial of offence punishable under Section A 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) ...

Section 44: Offence triable by Special Courts:-

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) the scheduled offence and the offence punishable under Section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed.

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall contribute to try such scheduled offence; or

(b) ... "

By relying upon the said sections, learned senior counsel appearing for the petitioner submitted that insofar as the District of Chennai, there are six notified Courts under PMLA viz.,

1. The Principal Sessions Judge, Chennai,
2. The VII Additional Sessions Judge,
3. The IX Additional Sessions Judge,
4. The XII Additional Sessions Judge,
5. The XIII Additional Sessions Judge,
6. The XIV Additional Sessions Judge.

Admittedly, the learned XI Additional Sessions Judge, Chennai has not been notified under Section 43 of the PMLA and hence, the learned XI Additional Sessions Judge for CBI Cases, City Civil Court, Chennai, is not competent to try the offence under the PMLA. Therefore, he has no jurisdiction to remand the petitioner.

4. Further, learned senior counsel appearing for the petitioner submitted that the issuance of PT warrant is traceable to Section 267 Cr.P.C. Therefore, the power to seek production of a person can be for the purpose of (a) any inquiry, trial or other proceedings or (b) to be a witness in some other proceedings. Admittedly, the XI Additional Sessions Court has not been notified under Section 43 of the PMLA and hence, the XI Additional Sessions Court for CBI Cases, City Civil Court, Chennai, without jurisdiction, had issued PT Warrant. Thus, he sought to quash the order of the learned XI Additional Sessions Judge for CBI Cases, City Civil Court, Chennai, dated 5.1.2017, remanding the petitioner to judicial custody.

5. On the above said submissions, I have heard the learned Additional Public Prosecutor, Enforcement Directorate, who has fairly admitted that the XI Additional Sessions Court for CBI Cases, City Civil Court, Chennai, has not been notified under Section 43 of the PMLA. Further, he has submitted that the respondent has already moved the learned XI Additional Sessions Judge for CBI Cases, City Civil Court, Chennai, by filing an application to transfer the case to the file of the learned Principal Sessions Judge, City Civil Court, Chennai and he seeks necessary directions of this Court to the learned XI Additional Sessions Judge for CBI Cases, City Civil Court,

Chennai, to transfer the case to the learned Principal Sessions Judge, Chennai.

6. For all the reasons stated above, this Court directs the learned XI Additional Sessions Judge for CBI Cases, City Civil Court, Chennai, to transfer the case in Crl.M.P.No.48 of 2017 in ECIR No.19 of 2016 pending on his file, to the learned Principal Sessions Judge, City Civil Court, Chennai, forthwith. The criminal original petition is disposed of accordingly. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

sbi

To

- 1.The Principal Sessions Judge,
City Civil Court, Chennai.
2. The XI Additional Sessions Judge for CBI Cases,
City Civil Court, Chennai,
- 3.Union of India
rep by The Enforcement Directorate,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

+2 ccs to Mr.K.P.Ananthakrishna Advocate sr 2451
+1 cc to Mr.N.Ramesh Advocate sr 2336

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