

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRL. MISC. No.M-20765 OF 2014 (O&M)
DATE OF DECISION : 15th DECEMBER, 2017

Karampal Goyal & another

.... Petitioners

Versus

State of Punjab & another

.... Respondents

CORAM : HON'BLE MR. JUSTICE A. B. CHAUDHARI

* * * *

Present : Mr. M. S. Sachdev, Advocate for the petitioners.

Mr. Dhruv Dayal, Sr. D.A.G. Punjab.

Ms. Ranjana Shahi, Senior Panel counsel for respondent
No.2-Directorate of Enforcement, Government of India.

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A. B. CHAUDHARI, J.

By the present petition the petitioners have sought the following reliefs:

“Seeking quashing of order dated 29.05.2014
(Annexure P-11) and Zimni order dated
29.05.2014 (Annexure P- 12) passed by Ld.
Special Judge, S.B.S. Nagar whereby Ld. Special
Judge, S.B.S. Nagar has committed trial in FIR
No.9 dated 22.01.2009, under Section 409, 420,
120-B, 465, 467, 468, 471, 201 IPC and 13(1),
13(2) of PC Act P.S. Rahon to Special Court
(Designated under Prevention of Money
Laundering Act, 2002), Jalandhar;

Direction to Ld. Special Judge, S.B.S. Nagar to decide application of the petitioner; And during the pendency of present petition restrain the Respondent No.2 from taking physical possession of immovable properties of the petitioners:

In support of the petition learned counsel for the petitioners vehemently argued that the impugned order dated 29.05.2014 (Annexure P-11) and zimni dated 29.05.2014 (Annexure P- 12) passed by learned Special Judge, S.B.S. Nagar are liable to be quashed and set aside since the trial Court could not have committed the case in question to the Court of special designated Judge under the Prevention of Money Laundering Act, 2002, (in short, PML Act) looking to the scheme of Section 44(a) and (c) of the PML Act. Learned counsel for the petitioners also contended that the impugned orders as well as Section 44 and in particular clause (c) thereof violates Article 20 of the Constitution of India. He contended that the petitioners cannot be tried or convicted from same offence more than once and the trial by two different courts in the same offence cannot be allowed.

Per contra learned counsel for the respondents opposed the petition and submitted that the impugned orders are legal, correct and proper and cannot be interfered with. Mrs. Ranjana Shahi, Advocate for respondent No.2 relied upon a Divisions Bench judgment of this Court in the case of ***Directorate of Enforcement versus State of Punjab & others***, passed in ***CRR No.4772 of 2016*** and submitted that this Court has upheld the action of committal of the case to the Special Court under the PML

Act. She then contended that notification dated 08.06.2011 issued by Government of Punjab, Department of Home Affairs and Justice (Judicial Branch), empowers all the Sessions Judges and all Additional Sessions Judges to act as Special Judges and the said notification holds the field for over a period of six years. She, therefore, prayed for dismissal of the petition.

I have heard learned counsel for the rival parties at length.

I have perused the entire petition in order to find out the challenge raised by the petitioners qua Article 20 of the Constitution of India. However, after reading of the entire petition I find that there is not even a single ground anywhere in the petition for challenging the same on the ground of violation of Article 20 of the Constitution of India. Nevertheless, since I have heard arguments made by learned counsel for the petitioners, it would be appropriate to deal with the same. Article 20 of the Constitution of India in entirety reads thus:

“20. Protection in respect of conviction for offences – (1) No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

(2) No person shall be prosecuted and punished for the same offence more than once.

(3) No person accused of any offence shall be compelled to be a witness against himself.”

The counsel for the petitioners has emphasized on Clause 2 of Article 20 of the Constitution of India. At the outset, I find on the admitted facts that the petitioners have not been yet punished for offences in question and the prosecution is only pending. Clause 2 of Article 20 requires that the persons should not only be prosecuted but also be punished for the same offence. The requirement is clearly absent in the present case and, therefore, the submission is unacceptable and the same is therefore, rejected.

The next submission can be dealt with upon reproduction of notification issued by the Government of Punjab. The said notification is reproduced below:

“No. S.O.57/ C.A.49/ 1988/ S.4/ 2011 – In suppressions of the Government of Punjab, Department of Home Affairs and Justice, Notification No. 1/22/89-3JUDL (1)/10 Spl., dated the 5th January, 1990. Notification No. 1/22/89-5JUDL (1)/2361, dated the 27th November, 2000, Notification No. 1/22/89-5JUDL (1)/2310, dated the 3rd May, 2003, Notification No. 1/22/89-2JUDL (1)/1281, dated the 25th March, 2008 and Notification No. 1/22/89-2JUDL (1)/2982, dated the 19th August, 2008 and all other Notifications issued in this behalf from time to time and in exercise of

the powers conferred by sub-section 3 read with sub-section (2) of section 4 of the Prevention of Corruption Act, 1988 (Central Act No. 49 of 1988) and all other powers enabling him in this behalf, the Governor of Punjab is pleased to appoint all the Sessions Judges and all the Additional Sessions Judges [except the Additional Sessions Judges (Ad hoc), Fast Track Court] in each Sessions Divisions in the State of Punjab as Special Judges for the area in their respective jurisdiction, for the trial of the offences specified in sub-section (1) of section 3 of the said Act.”

It is thus clear that all the Sessions Judges and Additional Sessions Judges have been empowered under the PML Act to act as Special Judges. The notification is holding the field since 2011 and even in the present petition it has not been put to challenge.

Secondly, paragraphs 6, 7 & 8 of the Division bench judgment passed in ***Directorate of Enforcement (supra)*** cited by Mrs. Ranjana Shahi, Advocate would also be relevant in the present matter to deal with the submissions made by learned counsel for the petitioners. Paras 6, 7, 8 are reproduced as follows:

“(6) The Directorate of Enforcement has filed statutory complaints under Sections 3&4 read with Section 45 of the 2002 Act with reference to the

alleged recoveries effected in the above mentioned NDPS cases.

(7) It is not in dispute that the Government of India vide notification dated 05.02.2016 has set up the Special Courts in exercise of its powers under Section 43 of the 2002 Act including the one at Patiala which has the territorial jurisdiction in relation to the matters arising out of District Fatehgarh Sahib. The Enforcement Directorate accordingly moved an application before the learned Special Judge at Fatehgarh Sahib to transfer the pending trials to Patiala in view of the mandate contained in Section 44 of the 2002 Act. Learned Special Court, Fatehgarh Sahib has disposed of the applications granting liberty to the Enforcement Directorate to approach this Court for the transfer of the pending trials. Hence, these revision petitions.

(8) Having heard learned counsel for the parties and keeping in view the statutory mandate contained in Section 44(1)(a) which provides that “an offence punishable under Section 4 and any scheduled offence connected to the offence under that section” shall be triable only by the Special Court constituted for the area in which the offence has been committed, the instant revision petitions are allowed

and the trials pending before learned Special Court at Fatehgarh Sahib are ordered to be transferred along with records to Special Court at Patiala.”

I respectfully agree with the said Division Bench Judgment. I think the aforesaid decision is an answer to the submission made by learned counsel for the petitioners and there is no need to dilate on the issue any further.

The learned counsel for the petitioners then made a submission that even now the properties in question are under attachment and there is every likelihood of the Directorate of Enforcement-respondent No.2 attempting to sell. The counsel for respondent No.2 candidly stated that there is no evidence on record to show that there has been any attempt made for sale of the attached property of the petitioners. In view of the fact that the attachment of properties of the petitioners has been made by respondent No.2 and is continuing, I do not think that any useful purpose would be served in allowing the sale of the properties attached, particularly when the trials are simply pending and no finding has been arrived at about their complicity as yet. Therefore, I think the attachment of the properties of the petitioners attached by respondent No.2 should be continued till the trials are completed but the same should be made subject to the petitioners filing affidavit/undertaking to this Court that they would not deal with, encumber, mortgage, alienate, sale or damage the attached properties till the trials are completed.

In fact, the learned counsel for the petitioners has made a statement that the petitioners would themselves file affidavit in the form

of undertaking to this Court in the present petition to the above said effect. The statement made by learned counsel for the petitioners is also accepted. In that view of the matter, I think the following operative order would subserve the interest of justice:

ORDER

- (i) CRL. MISC. No.M-20765 OF 2014.doc is dismissed.
- (ii) The physical possession of the attached properties shall remain with the petitioners but subject to the petitioners filing affidavit/undertaking to this Court, within a period of eight weeks from today, not to deal with, encumber, mortgage, alienate, sale or damage the attached properties.
- (iii) The affidavit/undertaking shall be treated as undertaking to this Court, in the event of breach of which action for contempt could be initiated.
- (iv) Respondent No.2 is restrained from taking possession of the attached properties and/or from selling t he same till the trials are completed.

15TH DECEMBER, 2017
'raj'

(A. B. CHAUDHARI)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>