

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Reserved on: 07.09.2017

Delivered on: 10.10.2017

+ W.P(CRL) 1132/2017 & CRL.M.A.6387/2017 (Stay)

RAHUL SARAF

..... Petitioner

versus

U O I & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Dr.A.M. Singhvi & Mr.Sidharth Luthra, Sr.
Advs. with Mr.Anish Dayal, Mr.S.K. Singhi,
Mr.Chayan Sarkar, Mr.Karan Bindra,
Mr.Arjit Pratap Singh, Ms.Rupam Sharma,
Mr.Jaideep Maheshwari, Mr.Ritul Tandon &
Mr.Anupam, Advs.

For the Respondents: Mr.Dev P. Bhardwaj, CGSC with Mr.Satya
Prakash Singh & Mr. Anoop Yadav, Advs.
along with Mr. Khem Singh (Officer) for
R-1/UOI.

Mr.Nikhil Goel, Adv. with Mr.Ashutosh
Ghade, Adv. for CBI.

CORAM:-

HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

ASHUTOSH KUMAR, J

1. This writ petition has been filed for quashing/recalling of the proceedings initiated by the respondents pursuant to the request for

legal assistance dated 18.08.2016 and request for supplementary legal assistance dated 06.09.2016 as well as the letters issued by the Ministry of Home Affairs dated 29.01.2017 and 27.01.2017 issued by the CBI (respondent No.2) and for setting aside of any proceedings initiated pursuant to Note Verbale No.175 dated 08.02.2016 and Note Verbale No.1206-K dated 20.10.2016 issued by the Embassy of Russian Federation for legal assistance in connection with Criminal Case No.385014. A further prayer has been made in the present writ petition for restraining the respondents from taking any steps pursuant to the indictment order dated 06.06.2016, passed by the Special Investigator of the Investigative Department of Major Investigations, Directorate of the Investigative Committee of the Russian Federation.

2. Before advertng to the facts of the case, it would first be necessary to set out in brief the occasion for preferring the present writ petition.

3. The petitioner had earlier approached this Court vide W.P(Crl) No.2572/2016 seeking quashing of the request for legal assistance dated 18.09.2015 issued by the Russian Federation to the Union of India and restraining the respondents from taking any action or steps

in furtherance of such a letter of request. Similar such prayer, as has been made in the present petition, viz. restraining the respondents from taking any coercive steps against the petitioner, was also made in the aforesaid petition.

4. While disposing of the aforesaid writ petition, a bench of this Court took note of the fact that upon receipt of the request for legal assistance, the Central Government directed the CBI to act in terms of the treaty and consequent thereto, the CBI had issued notice under Section 160 Cr.P.C on 14.07.2016 and 04.08.2016 to the petitioner. On receipt of the aforesaid notices, the petitioner had approached the Delhi High Court vide W.P(Crl) No.2422/2016 challenging the aforesaid notices on the ground that the petitioner was absolutely unaware of the nature, purport and content of the case initiated in Russia which was being investigated and that he would be entitled to the disclosure of the information regarding the nature of the case and the allegations, if any, made against him. The aforesaid writ petition [W.P(Crl) No.2422/2016] was disposed of on the basis of a statement made on behalf of the CBI that it had no objection in providing the gist of the case to the petitioner which actually was contained in the

background note of the request for legal assistance. The concession by the CBI however, did not extend to the sharing of the interrogatories with the petitioner in advance. The petitioner was required to answer them only after his personal appearance. The petitioner was provided with the background note but he reserved his rights to contest the matter later, should the situation so demand. Thereafter, W.P(Crl) No.2572/2016 was filed, but with the same ground that the petitioner was still in the dark about the nature of accusation against him.

5. During the pendency of the aforesaid petition, the respondents received Note Verbale No.175 dated 08.02.2016 which was placed on record and a copy of the same was also furnished to the petitioner. The aforesaid Note Verbale contained indictment order dated 06.06.2017 and the interrogatories which the petitioner was to answer. The stand of the CBI before the High Court was that it was not interested in interrogating the petitioner and that the petitioner was required to answer the interrogatories in writing which would, then be transmitted to the Russian Federation. The Court, therefore, was of the view that no grievance of the petitioner survived for passing any order in the aforesaid writ petition. The Court extracted the indictment order and

held that the case before the Russian Federation was still at the stage of investigation, when the Russian Federation had desired legal assistance. The petitioner, even in the Indian context, could not have demanded documents/evidence from the investigating agency and, therefore, since he was not required to depose on solemn affirmation, no such demand of the details could be made by the petitioner in the context of indictment order passed by the Russian Federation. The Court also recorded the statement of the CBI that in case the petitioner did not answer the queries communicated to him along with the Note Verbale within two weeks of the passing of the order, the respondent No.2 (CBI) shall have the liberty to take other steps in accordance with law.

6. The aforesaid order dated 17.02.2017 was challenged before the Supreme Court of India vide SLP (Crl) No.2298/2017 wherein no infirmity was found with the order passed by the Delhi High Court. However, in the order dated 07.04.2017, the Supreme Court observed that the issue as to whether the petitioner could have been investigated, prosecuted and tried with respect to an alleged offence which was admittedly committed on Indian soil, had not been decided

by the High Court. Under such circumstances, it was directed as follows:-

"To the aforesaid extent, we do not find any infirmity in the order. However, it is submitted by Dr. A. M. Singhvi, learned senior counsel appearing for the petitioner, that when the copy of the indictment order was supplied to the petitioner during the course of hearing of the aforesaid writ petition in the High Court, the petitioner realized therefrom that such proceedings in Russian Federation in respect of alleged offences committed on the Indian soil were totally unjust and could not have been taken. He, therefore, wanted to amend the petition and incorporate the said ground. However, since the petition was taken up for hearing and decided, the petitioner could not take up the aforesaid ground.

From the aforesaid it transpires that admittedly the ground which is now sought to be taken was not the ground taken in the writ petition. Of course, as per the petitioner such a thing surfaced when the indictment order was supplied to the petitioner. If that be so, the petitioner can always file a fresh writ petition in the High Court taking up the 3 SLP (Crl.) No. 2298/2017 aforesaid plea.

With these observations, we dispose of the special leave petition.

We may only remark that as far as this Court is concerned, no opinion is expressed on the aforesaid ground sought to be taken by the petitioner and as and when such a writ petition is filed the High Court shall deal with the same, in accordance with law, on its own merits.

7. Hence the present writ petition.
8. The petitioner is the Director of M/s.Saraf Agencies Pvt Ltd, having its registered office at Saraf Office, 4/1, Red Cross Place, Kolkata (hereinafter for convenience will be referred to as SAPL). The SAPL was in the process of setting up a project for production of synthetic rutile and slag at district Ganjam, Odisha. For the aforesaid purpose various agreements were entered into between SAPL, Indian Rare Earth Ltd, Ishihara Sangyo Kaisha Ltd, Japan, and IDOCL, a Government of Odisha undertaking, for supply of raw materials. In the year 2003, lands were acquired by the Government of Odisha for the purposes of setting up of the project by SAPL for which the entire consideration was to be paid by SAPL to Government of Odisha from its own resources. The Russian Federation was also in communication

with the Government of Odisha and had expressed its intention of setting up a Joint Venture project with the two Russian companies namely J.S.C Technochem Holding and Pigment Corporation for production of pigments. Later, the proposal of the Russian Federation was accepted and a Memorandum of Understanding was signed in 2005 between SAPL and the Russian entities, whereby they had agreed to set up an integrated chemical and metallurgical complex to manufacture titanium slag, pig iron and ferro titanium and other products. The project of the SAPL was later accorded SEZ status as well. A Joint Venture agreement, then, came into existence between the Russian entities and SAPL and another. The aforesaid Joint Venture was named Titanium Products (P) Ltd (TPPL). The aforesaid Joint Venture agreement was incorporated in the State of Odisha on 28.03.2008 for setting up of a Titanium Project in the SEZ which was being developed by SAPL. The Russian partners of the Joint Venture were given 55% of the shares and the Indian partners viz. SAPL and TMPL held 45% of the total shares.

9. Later, disputes arose between the partners on various issues including as to in whose name, the land would be leased and on the

issue of reimbursement of expenses. The dispute was taken to arbitration. A request was thereafter made by the Indian partners to the Supreme Court of India for the constitution of a Tribunal to decide the issue. The Tribunal thereafter was constituted and the matter is still being heard by the Tribunal.

10. The differences between the partners, in the meantime led to filing of multiple civil litigations in Kolkata and Odisha. It was during this period that, as has been argued on behalf of the petitioner, summons were received by the petitioner purportedly issued under Section 160 of the Code of Criminal Procedure for him to appear and participate in the investigation.

11. It appears that while the arbitration proceedings were continuing before the Tribunal, a criminal proceeding was initiated in Russia alleging that SAPL had indulged in fraud and swindling of funds. A request thereafter, as has been noted earlier, was made by the Russian Federation under the Treaty of Mutual Legal Assistance in criminal matters dated 21.12.1998 (hereinafter referred to as MLAT) and Articles 453 and 454 of the Russian Criminal Procedure Code, asking the competent authority of the Republic of India to examine the

petitioner and seek answer to the interrogatories which were sent along with the request. Pursuant to the aforesaid request, the notice under Section 160 Cr.P.C was issued by CBI (respondent No.2) seeking the appearance of the petitioner. As has been stated in the earlier paragraphs, the notice as well as the request letters were challenged before this Court as well as the Supreme Court of India. In the meantime, during the pendency of the W.P(Crl) No.2572/2016, referred to above, indictment order dated 06.06.2016 was also issued by the Russian Federation accusing the petitioner and others of offence under Section 159(4) of the Russian Criminal Procedure Code which was received by the petitioner on 08.02.2017.

12. Mr.Abhishek Manu Singhvi, learned senior advocate, assailing the letter of request by the Russian Federation and its acceptance by the Republic of India as well as the notice issued by the CBI to the petitioner, stated that admittedly the petitioner is an accused in a proceeding which has been initiated by the Russian Federation for an alleged offence which has been committed in India and no part whereof has taken place in Russian Federation. Mr.Singhvi recounted that the Joint Venture company was registered as an Indian company

subject to Indian laws; offices of the Joint Venture company are located in India; the machinery and plant is located in India; the accounts of the Joint Venture company are also running in the banks located in India. It has been submitted that the allegation of swindling is said to have taken place on the Indian soil. All the agreements between the parties have been executed in India over which only the laws of India are applicable. The dispute resolution in the agreements between the parties is, therefore, Indian Arbitral Tribunal which is subject to Indian Arbitration laws and the seat of Arbitration is in India.

13. It was submitted that the Indian criminal laws do not prescribe or endorse the extra territorial jurisdiction in criminal matters which is essentially a sovereign function. Section 3 of the IPC provides that any person liable, by any Indian law to be tried for an offence committed beyond India, shall be dealt with according to the provisions of the Indian Penal Code for any act committed beyond India in the same manner as if such act had been committed in India. It was, therefore, explained that any Indian or a foreigner who violates any one of the provisions of the Indian Penal Code or even if such a violation has

been committed beyond the territorial confines of India, it would be an offence under the Indian Penal Code and would be tried as per the Code of Criminal Procedure of India.

14. Similarly, Section 4 enables trial under the Indian law of any Indian citizen for an offence committed outside India or by any person who could be either a citizen of India or a foreigner, for an offence committed on any ship or aircraft registered in India, irrespective of its location. Thus if an offence is committed by a citizen of India outside India, which if committed in India, would be punishable under IPC, would also be triable under the Indian legal system. This means that a foreigner who commits an offence outside India would not be amenable to Indian Code. A conjoint reading of Sections 3 & 4 of the IPC, it has been argued, makes it very clear that a foreigner who has committed an offence outside India would not be bound by the Indian Penal Code unless such offence has been committed on a ship or aircraft which has been registered in India or if the offence targets a computer resource located in India.

15. A reference has been made by Dr.Singhvi to Section 188 of the Code of Criminal Procedure which reads as hereunder:-

“188. Offence committed outside India.—When an offence is committed outside India—

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India,

he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.”

16. This provision in the Indian Criminal Procedure Code only reaffirms the provisions of Section 4 of the IPC and mandates that for such offences as mentioned in Section 188(a) and (b) by an Indian citizen abroad or by any person on an Indian registered ship or aircraft, the previous sanction of the Central Government would be required for inquiry and trial.

17. Chapter VIIA of the Code of Criminal Procedure which deals with reciprocal arrangements for assistance in certain matters and delineates procedure for attachment and forfeiture of property (From Sections 105A to 105L), was added in the Code of Criminal Procedure

in the year 1993 w.e.f 20.07.1994. The reasons for incorporation Chapter VIIA in the Code of Criminal Procedure is to be found in the statement of objects and reasons to the amending Act No.40 of 1993. The objectives for the amendment were:-

“(i) The transfer of persons between the contracting States including persons in custody for the purpose of assisting in investigation or giving evidence in proceedings;
(ii) Attachment and forfeiture of properties obtained or derived from the commission of an offence that may have been or has been committed in the other country; and
(iii) Enforcement of an attachment and forfeiture order issued by a Court in the other country.”

18. Section 105C needs a special reference which inter-alia states that where a letter of request is received by the Central Government from a Court or an authority in a contracting State requesting attachment or forfeiture of the property in India, derived or obtained, directly or indirectly, by any person from the commission of an offence committed in that contracting State, the Central Government may forward such letter of request to the Court, as it thinks fit for execution in accordance with the provisions of Section 105D to 105JJ (both inclusive) or, as the case may be any other law for the time

being in force. Thus, the assistance in relation to orders of attachment or forfeiture of any property would be given by the Central Government only if the offence is committed on the soil of the requesting State/contracting State.

19. In **State of Madhya Pradesh vs. Balram Mihani and Ors: 2010 (2) SCC 602**, the order of the Trial Court which had accepted the request of the Station House Officer of Itarsi for initiating proceedings against the respondents under Chapter VIIA of the Cr.P.C for attachment and forfeiture of their properties on the ground that they were derived from or used in commission of offences and were acquired from criminal activities, was under challenge. The Supreme Court of India, on going through the entire scheme of Chapter VIIA viz. the provisions contained therein and the reasons for inserting the aforesaid Chapter in the Code and by taking note of the posers put by the High Court of Madhya Pradesh, came to the opinion that the provisions of Chapter VIIA would only apply for the purposes of curbing mischief or eliminating terrorist activities and international crimes. The provisions of Chapter VIIA are only supplemental to the special provisions contained in Sections 166A and 166B of the Code

of Criminal Procedure and has nothing to do with the investigation into the offences in general. The provisions of Chapter VIIA are, it was held, not meant for local offences. The Supreme Court was of the view that though the language of Section 105C (1) is extremely general but it had to be seen in the context of the aims and objects of inserting Chapter VIIA in the Code. It was also held that where the language of the Statute is extremely general and not clear, the contextual document has to be taken into consideration for arriving at clear interpretation. The Supreme Court was also clear in its opinion that it was not the intendment of the Legislature while introducing Chapter VIIA of the Code, that it shall have application to local offences. By parity, it is argued by Dr.Singhvi, a request from the requesting State for securing transfer of a person or attachment of a property can only be honoured if the offences are committed on the land of the requesting State.

20. In this context, Dr.Singhvi, read out the provisions of Section 166B of the Code of Criminal Procedure which falls in Chapter XII of the Code of Criminal Procedure, which deals with provisions relating to information to police and their powers to investigate.

21. Section 166B of the Code of Criminal Procedure reads as hereunder:-

***Section 166 B of Criminal Procedure Code of India –
Letter of request from a country or place outside India to a
court or an authority for investigation in India.***

(1) Upon receipt of a letter of request from a court or an authority in a country or place outside India competent to issue such letter in that country or place for the examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government may, if it thinks fit-

(i) Forward the same to the Chief Metropolitan Magistrate or Chief Judicial Magistrate or such Metropolitan Magistrate or Judicial Magistrate as he may appoint in this behalf, who shall thereupon summon the person before him and record his statement or cause the document or thing to be produced, or

(ii) Send the letter to any police officer for investigation, who shall thereupon investigate into the offence in the same manner, as if the offence had been committed within India.

(2) All the evidence taken or collected under sub-section (1), or authenticated copies thereof or the thing so collected, shall be forwarded by the Magistrate or police officer, as the case may be, to the Central Government for

transmission to the court or the authority issuing the letter of request, in such manner as the Central Government may deem fit.]

22. It was urged that the use of the words “*in relation to an offence under investigation in that country or place*” presupposes that the offence must have been committed in the requesting State and not in India (requested State).

23. Since Section 166B(ii) clearly states that on the request of a foreign State, the Central Government may send a letter to any police officer for investigation who shall thereupon investigate into the offences in the same manner as if the offence had been committed within India, a legal fiction is created that such a request can be made for investigation as if the offence had been committed in India. What Dr.Singhvi wishes to communicate is that under Section 166B, a request of the foreign state for providing information can only be granted if the alleged offence has been committed in that State and not in India.

24. Apart from the above, it has been argued that the provisions of MLAT between Russian Federation and the Republic of India also

brook of consideration in correct prospective by the Central Government before acceding to such request.

25. In order to appreciate the contentions of the petitioner, it would be necessary to extract Articles 1, 2 & 3 of the Treaty which falls in Part I (General Provisions):-

Article 1

Obligation to grant mutual legal assistance

1. *The Contracting Parties shall, in accordance with this Treaty, grant each other the widest measure of mutual assistance in criminal matters.*

2. *Mutual assistance for the purpose of paragraph 1 of this Article shall be any assistance given by the Requested Party in respect of investigations or proceedings in the jurisdiction of the Requesting Party in a criminal matter, irrespective of whether the assistance is sought or to be provided by a court or some other authority.*

3. *Criminal matters for the purpose of paragraph 1 of this Article mean, for the Russian Federation, investigations or proceedings relating to any offence enacted by criminal legislation of the Russian Federation, and, for the Republic of India, investigations or proceedings relating to any*

offence created by a law of Parliament or by the legislatures of States.

4. *Criminal matters shall also include investigations or proceedings relating to criminal offences concerning taxation, duties, customs and international transfer of capital or payments, including those for perpetuating terrorism.*

5. *Criminal matters shall further include investigations or proceedings relating to criminal offences concerning terrorism, i.e., use of violence for political ends or for putting public in fear.*

6. *Assistance shall include:*

6.1. *locating and identifying persons and objects;*

6.2. *serving documents, including documents seeking the attendance of persons;*

6.3. *providing information, documents and other records, including criminal records, judicial records and government records;*

6.4. *delivering property;*

6.5. *lending exhibits;*

6.6. *taking evidence and obtaining statements of persons;*

- 6.7. *executing requests for search and seizure;*
- 6.8. *making persons in custody and others, including experts, available to give evidence or assist investigations;*
- 6.9. *taking measures to locate, restrain, seize and confiscate the proceeds of crime;*
- 6.10. *taking measures to locate, identify, restrain, seize and confiscate funds meant for purposes of terrorism; and*
- 6.11. *providing other assistance consistent with the purposes of this Treaty.*

Article 2

Execution of requests

1. *Requests for assistance shall be executed promptly in accordance with the law of the Requested Party and, insofar as it is not prohibited by that law, in the manner specified by the Requesting Party.*
2. *The Requested Party shall, when the Requesting Party specifically requests it, inform the Requesting Party of the time and place of execution of the request.*
3. *The Requested Party shall not decline execution of a request on the ground of bank secrecy.*

Article 3

Refusal or postponement of assistance

1. Assistance may be refused if, in the opinion of the Requested Party the execution of the request would impair its sovereignty, security, public order or any other essential public interest.

2. Assistance may be postponed by the Requested Party if execution of the request would interfere with an ongoing investigation or prosecution in the jurisdiction of the Requested Party.

3. The Requested Party shall promptly inform the Requesting Party of a decision not to comply in whole or in part with a request, or to postpone execution, and shall give reasons for that decision.

4. Before refusing to grant a request for assistance or before postponing the granting of such assistance, the Requested Party shall consider whether assistance may be granted subject to such conditions as it deems necessary. If the Requesting Party accepts assistance subject to these conditions, it shall comply with them.”

26. It has been argued that under Article 3(1), it has been clearly stipulated that the requested country may refuse assistance if in its opinion the execution of the Articles would impair its sovereignty,

security, public order or any other essential public interest. It was postulated that Article 3, which provides further assistance, implies that a request cannot automatically be granted but has to be considered and assessed in its correct perspective by the requested State. It was emphasized by Dr.Singhvi that exercise of penal jurisdiction/criminal jurisdiction is inherent in the concept of sovereignty and the exercise of penal jurisdiction under Criminal law is one of the most important aspects of sovereign function. In an area where a country exercises sovereignty, only the laws prevalent in that sovereign State shall prevail and no other. Any attempt at extra territorial assumption of jurisdiction would be an affront to the sovereignty of the other country. The opinion of International Court of Justice in ***Lotus case (1927) PCIJ (France vs. Turkey)***, has been quoted in support of the aforesaid proposition.

“The Criminal law of a State may extend to crimes and offences committed abroad by its nationals, since such nationals are subject to the law of their own country; but it cannot extend to offences committed by a foreigner in foreign territory, without infringing the sovereign rights of the foreign State concerned, since in that State the State enacting the law has no jurisdiction (M.Loder)”

27. The other limb of argument of Dr.Singhvi is that under the Indian legal framework, the local/municipal law would have primacy and it would even override Treaty obligations in case of any conflict or inconsistency (Refer to Commissioner of Customs, Bangalore vs. G.M.Exports: (2016) 1 SCC 91; Entertainment Network India Limited vs. Super Cassette Industries Limited: (2008) 13 SCC 30; Vishaka vs. State of Rajasthan: (1997) 6 SCC 241 and Bhavesh Lakhani vs. State of Maharashtra: (2009) 9 SCC 551).

28. Coming to the facts of the present case, Dr.Singhvi concluded his arguments by stating that the nature of request made by the Russian Federation is vague and amounts to a roving and fishing inquiry which has been initiated after eight years in Russia, against an Indian citizen for an alleged offence committed in India. It was also pointed out that there is a pending arbitration between the parties and that no criminal proceeding has been initiated in India. As such, any investigation into the conduct of the petitioner or asking the petitioner to deliver up information, which could be incriminating, violates his fundamental right under Article 20(3) of the Constitution of India.

29. The sum and substance of the argument of the petitioner is that for the offence, if any, for which he has been charged, he can only be tried under Indian law by an Indian Court, on the Indian soil. No foreign country, under its law can either investigate or try the petitioner, and consequently, the Central Government ought not to have acceded to the request of the Russian Federation. It was also asserted that, there has been no application of mind on behalf of the Central Government and its decision to adhere to the MLAT and accept the request of the Russian Federation, is an uninformed decision which cannot be countenanced.

30. Mr.Nikhil Goel, learned advocate appearing for the CBI has, on the other hand, submitted that this is the third round of litigation on behalf of the petitioner with respect to the same request of the Russian Federation for legal assistance. The father of the petitioner, against whom also there is a request pending, has preferred a writ petition before the Kolkata High Court for the same reliefs and the aforesaid writ petition is still pending adjudication. It has further been argued that in the first round of litigation, it was asserted by the petitioner that he was not aware of the nature, purport and content of the case

initiated in Russia and that he was unaware of his status, i.e. whether he is an accused or otherwise. Since arbitration between the parties was pending, the notice sent by the CBI under Section 160 Cr.P.C was challenged on the ground of the same being violative of Article 20(3) of the Constitution of India. In the second round of litigation, the same grounds were urged but the petitioner did not succeed. The judgment of the High Court in W.P(Crl) No.2572/2016 was affirmed by the Supreme Court in SLP (Crl) No.2298/2017. However, a new ground was taken by the petitioner before the Supreme Court that the proceedings in Russian Federation with respect to an alleged offence committed on the Indian soil was unjust and could not be countenanced.

31. While negating the contentions of Dr.Singhvi, Mr.Goel submitted that the CBI is only an implementing authority but is contesting the matter because it has partially implemented the letter rogatory in question and has also taken a stand in the two earlier rounds of litigation before the High Court and the Supreme Court of India. He has opened his argument by analyzing the provisions of Section 166B of the Code of Criminal Procedure and has submitted

that any provision of a Statute has to be first interpreted on its literal interpretation and then alternatively only in the context in which it has been enacted. It has been submitted that the reference of the clauses “*in relation to an offence under investigation in that country or place*” is investigation specific. It does not envisage that the offence must have been committed in the requested State. It is precisely for this reason, it has been argued, that the words “*in that country or place*” occurs after the words “*under investigation*” and not after the words “*in relation to an offence*”. The submission on behalf of the petitioner, Mr.Goel says, is against the literal interpretation of the Section.

32. This argument has been bolstered up by pressing into use the principle of *noscitur a sociis* which means that any word or phrase in a Statute has to be interpreted with reference to the meaning of the words and phrase associated with it. It has also been submitted that if the interpretation suggested by the petitioner is given effect to, it would render the words “*under investigation in that country or place*” superfluous or otiose and that is not permissible.

33. In *Rasila S Mehta & Ors vs. Custodian, Nariman Bhavan, Mumbai, (2011) 6 SCC 220*, the Supreme Court had the occasion to examine the provisions of Special Court (Trial of Offences Relating to Transactions in Securities) Act, 1992. The CBI, in that case had issued freeze orders on the accounts of the appellants on the ground that they were the recipients of moneys which was diverted by an accused. The Custodian acting under the provisions of the Act of 1992 (Supra) had notified 29 entities except the appellants. Those persons were notified on the basis of complaint received from the Ministry of Finance which in turn relied upon Jankiraman Committee Report. The other family members of the accused and the appellants were part of the joint family and all the properties were managed by the family members including the appellants. After the notification of 29 entities, the properties of the appellants and the accused were being managed by the Custodian. The Custodian filed an application for treating the appellants as benamidars of the accused and sought permission to utilize their properties for discharge of the liabilities. Such a request was challenged and a prayer was made by the appellants therein to free the properties from attachment. The request of the appellants for

denotification was rejected by the Special Court. Hence, the appellants preferred an appeal before the Supreme Court, questioning the validity of attachment notification and the complaint.

34. The Supreme Court, while dismissing the appeal, repelled the contention of the appellants that since they have not been charged for any offence, they cannot be notified under the Act, as for including the appellants it had to be established that they were “involved in the offence”. While construing the aforesaid phrase in the Act, the Supreme Court applied the principle of *Noscitur a sociis* and held as follows:-

73. The contention of the appellants is that since they have not been charged for any offence, they cannot be notified under the Act. According to the appellants, the phrase “involved in the offence” could only mean “accused of the offence” and since they are not charged with any offence they cannot be notified. In construing the abovementioned words which are used in association with each other, the rule of construction — noscitur a sociis may be applied. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. The actual order of these three words in juxtaposition indicates that meaning of one takes colour

from the other. The rule is explained differently: that meaning of doubtful words may be ascertained by reference to the meaning of words associated with them [vide Ahmedabad (P) Primary Teachers' Assn. v. Administrative Officer [(2004) 1 SCC 755 : 2004 SCC (L&S) 306 : AIR 2004 SC 1426]].

74. Therefore, in the present case the nature of “offence”, in which the appellants are allegedly involved, is to be taken into consideration. The Act does not create an offence for which a particular person has to be charged or held guilty. Thus the phrase “involved in the offence” would not mean “accused of the offence”. Also, the appellants could have been reasonably suspected to have been involved in the offence after consideration of the various reports of the Janakiraman Committee, Joint Parliamentary Committee and the Inter-Disciplinary Group (IDG); and also the fact that 28 members of the M/s Harshad S. Mehta Group including his family members/entities were notified under the Special Act Ordinance itself. The above factual matrix was sufficient for the satisfaction of the Custodian to notify the appellants.

75. The object of the Act is not merely to bring the offender to book but also to recover what are ultimately public funds. Even if there is a nexus between a third party, an offender and/or property the third party can also be

notified. The word “involved” in Section 3(2) of the Special Court Act has to be interpreted in such a manner so as to achieve the purpose of the Act. This Court in Ashwin S. Mehta v. Custodian [(2006) 2 SCC 385] , has observed as under: (SCC p. 400, para 34)

“34. Although, we do not intend to enter into the correctness or otherwise of the said contention of the appellants at this stage, however, there cannot be any doubt whatsoever that they being notified persons, all their properties would be deemed to be automatically attached as a consequence thereto. For the said purpose, it is not necessary that they should be accused of commission of an offence as such.”

35. As against the submission on behalf of the petitioner that Chapter VIIA of the Code was added in the year 1993 (w.e.f.1994) in terms of a Treaty to ensure that the proceeds of crimes are not used in terrorist activities and that the analogy sought to be drawn that such special provision was only meant for offences committed outside Indian soil and not applicable to Municipal laws/local offences, is stated by Mr.Goel to be incorrect. It has been submitted that only in Section 105C (3) the expression “the commission of an offence committed in that contracting State” has been added and that in State

of Madhya Pradesh vs. Balaram Mihani & Ors (Supra) an Indian police officer had sought attachment of properties of an Indian accused under Chapter XII A which was not permitted. The argument of the petitioner, therefore, according to Mr.Goel, is untenable.

36. It has further been argued that the offence in question though may have been committed on Indian soil but it cannot be clothed or termed as a local offence as it has been registered and is being investigated in Russia.

37. A reference also has been made to the judgment delivered by the Supreme Court in Union of India vs. W.N.Chadha, (1993) Suppl.4 SCC 260. In the aforesaid decision, the Supreme Court explained the lexical meaning of letter rogatory as a formal communication in writing sent by a Court in which action is pending, to a foreign Court or Judge requesting that the testimony of a witness residing within the jurisdiction of that foreign Court may be formally taken thereon under its direction and transmitted to the issuing Court making such request for use in a pending legal contest or action. It was held that such request entirely depends upon the comity of Courts

towards each other. In **W.N.Chadha** (Supra) it was conclusively held by the Supreme Court as follows:-

89. Applying the above principle, it may be held that when the investigating officer is not deciding any matter except collecting the materials for ascertaining whether a prima facie case is made out or not and a full enquiry in case of filing a report under Section 173(2) follows in a trial before the Court or Tribunal pursuant to the filing of the report, it cannot be said that at that stage rule of audi alteram partem superimposes an obligation to issue a prior notice and hear the accused which the statute does not expressly recognise. The question is not whether audi alteram partem is implicit, but whether the occasion for its attraction exists at all.

90. Under the scheme of Chapter XII of the Code of Criminal Procedure, there are various provisions under which no prior notice or opportunity of being heard is conferred as a matter of course to an accused person while the proceeding is in the stage of an investigation by a police officer.

92. More so, the accused has no right to have any say as regards the manner and method of investigation. Save under certain exceptions under the entire scheme of the Code, the accused has no participation as a matter of right during the course of the investigation of a case instituted on a police

report till the investigation culminates in filing of a final report under Section 173(2) of the Code or in a proceeding instituted otherwise than on a police report till the process is issued under Section 204 of the Code, as the case may be. Even in cases where cognizance of an offence is taken on a complaint notwithstanding that the said offence is triable by a Magistrate or triable exclusively by the Court of Sessions, the accused has no right to have participation till the process is issued. In case the issue of process is postponed as contemplated under Section 202 of the Code, the accused may attend the subsequent inquiry but cannot participate. There are various judicial pronouncements to this effect but we feel that it is not necessary to recapitulate those decisions. At the same time, we would like to point out that there are certain provisions under the Code empowering the Magistrate to give an opportunity of being heard under certain specified circumstances.

93. XXXX XXXX XXXX

94. XXXX XXXXX XXXX

95. *It is relevant and significant to note that a police officer, in charge of a police station, or a police officer making an investigation can make a search or cause search to be made for the reasons to be recorded without any warrant from the Court or without giving the prior notice to anyone or any*

opportunity of being heard. The basic objective of such a course is to preserve secrecy in the mode of investigation lest the valuable evidence to be unearthed will be either destroyed or lost. We think it unnecessary to make a detailed examination on this aspect except saying that an accused cannot claim any right of prior notice or opportunity of being heard inclusive of his arrest or search of his residence or seizure of any property in his possession connected with the crime unless otherwise provided under the law.

96. *True, there are certain rights conferred on an accused to be enjoyed at certain stages under the Code of Criminal Procedure — such as Section 50 whereunder the person arrested is to be informed of the grounds of his arrest and to his right of bail and under Section 57 dealing with person arrested not to be detained for more than 24 hours and under Section 167 dealing with the procedure if the investigation cannot be completed in 24 hours — which are all in conformity with the ‘Right to Life’ and ‘Personal Liberty’ enshrined in Article 21 of the Constitution and the valuable safeguards ingrained in Article 22 of the Constitution for the protection of an arrestee or detenu in certain cases. But so long as the investigating agency proceeds with his action or investigation in strict compliance with the statutory provisions relating to arrest*

or investigation of a criminal case and according to the procedure established by law, no one can make any legitimate grievance to stifle or to impinge upon the proceedings of arrest or detention during investigation as the case may be, in accordance with the provisions of the Code of Criminal Procedure.”

38. In the present case, the CBI is not even investigating the offence but is only collecting information as directed by the Central Government, pursuant to a request under the MLAT by the Russian Federation. The provisions of Chapter XII have been added in the Cr.P.C to provide and receive assistance based entirely on the principle of reciprocity. The provisions have to be construed, it has been argued, from the point of view of two sovereigns and not from an individualistic point of view. Viewed from this angle, the Central Government is duty bound to comply with the request at its end. It is also submitted that in International law, the increasing trans border conflicts require that such information which can mutually assist sovereign countries be provided. India, it is stated, is a signatory to the United Nations Convention against transnational organized crime. Transnational offence includes an offence which may have been committed in one country but may have an impact in another.

39. Lastly, it was argued that MLAT was entered into between the Republic of India and Russia on 21.12.1998. While the provisions of Sections 166A and 166B provide a statutory power to issue and receive requests, the purpose of the treaty is also the same. Per force, it has been argued, the provisions of the treaty have to be read in consonance with Section 166B of the Cr.P.C. Article 1 of the Treaty mandates that widest measures of mutual assistance be provided and it also specifically incorporates a provision which obliges the mutually sovereign countries to promptly comply with the request.

40. The legal assistance which has been sought in this matter are in the form of certain interrogatories which have already been communicated to the petitioner. Now it is upto the petitioner to answer the queries in the manner in which it considers appropriate. The petitioner is perfectly within his rights to refuse to answer the question if in his opinion, the answer would be self incriminatory. Thus the apprehension of the petitioner is illusory and it need not detain the Court over the issue whether Municipal law is subservient to International Treaty or not.

41. Mr.Dev.P.Bhardwaj, learned Central Government Standing Counsel submitted that in the letter rogatory dated 08.02.2016, there is a reference of investigation against the petitioner under the provisions of Sections 47, 49, 50 to 53, 158, 159 and 201 of the Criminal Code of Russian Federation. It has been argued that the contents of the request letter were sufficient for taking a decision about the implementation of the request and that adherence to the MLAT does not in any manner impinge upon the sovereignty of India because no case is pending against the petitioner before the Indian Courts with respect to the offence alleged against him. With respect to the application of mind of the Central Government over such a request, it was submitted by Mr.Bhardwaj that the request of the Russian Federation was examined thoroughly and only after observing due diligence and bestowing proper consideration, a decision was taken by the competent authority for implementing the request.

42. Mr.Bhardwaj has also argued that the Central Government is required to apply its mind with respect to certain aspects viz. whether an investigation is going on in Russia; whether the information sought to be received pertains to the petitioner and whether such a request is

within the parameters of the MLAT and whether such a request is in contravention/opposition to the sovereignty of India and public interest. It was posited by Mr.Bhardwaj that Article 12 of the Russian Criminal Code sets out that an investigation could be conducted against a person who may have committed a crime outside Russian Federation but such crime would have impacted either the Federation or its citizen. Article 12(3) of the Russian Criminal Code, it has been argued, provides for investigation into a situation (i) where a foreign national does not reside permanently in Russian Federation and he has committed crime outside the boundaries of Russian Federation and; (ii) for a crime which is directed against the interests of Russian Federation or a citizen of Russian Federation or a stateless person primarily residing in the Russian Federation. The Russian Criminal Code shall apply with all force under the aforementioned conditions and also when an accused has not been convicted in a foreign State. It has been reiterated that the provisions of MLAT make it incumbent upon the signatories to accord widest measure of mutual assistance in criminal matters. With respect to the facts of this case, it was contended by Mr.Bhardwaj that Russian investment in the titanium

project in India (TPPL) was based on the Letters of Exchange dated 14.04.2007 between the Russian and the Indian Governments. Misappropriation of investment by the Indian partners, according to the Russian Federation, made it impossible to fulfill the terms of the Letters of Exchange and it hampered the Russian State budget's receivables.

43. From an analysis of the arguments advanced on behalf of the parties, it would appear that the main thrust of the argument of the petitioner is that if at all any offence has been committed by the petitioner, it has been committed on the Indian soil and the petitioner, therefore, would be entitled to be prosecuted under the Indian law and procedure. Nothing prevents the Russian Federation to initiate criminal proceeding against the petitioner in India. Not doing so and conducting an investigation in Russia for an offence which has been committed in India tantamounts to usurping extra territorial jurisdiction in criminal matters which is one of the most important aspects of the sovereignty of a State. The other major argument of the petitioner is that as Chapter VIIA of the Code of Criminal Procedure is not applicable to local offences. Section 166B also can only be

applicable to offences which have not been committed in India. The MLAT contains a refusal clause whereby a request by the foreign State could be turned down on grounds of sovereignty. As such, before accepting the request, the Central Government ought to have applied its mind before forwarding the request to the CBI and finally every treaty is based on the principle of reciprocity and if Indian laws do not provide for extra territorial operation of Indian law, the same principle of reciprocity should be invoked and only those requests should be entertained which can possibly be, under certain circumstances, made by India.

44. All the above arguments do not hold any water for the reason that Section 166B is clear in its import. Any time, upon a request by a foreign Court or authority requesting for examination of any person or production of any document or thing in relation to an offence under investigation in that country or place, the Central Government is required to act on it as it thinks fit. All the evidences taken or collected under this Section is required to be transmitted to the Court or the authority issuing the letter of request. Thus, had the Legislature intended what is being suggested by the petitioner viz that such a

request could only be made with respect to an offence which is committed outside India, it would have been stated so in this Section. This section only refers to "*in relation to an offence under investigation in that country or place*". It does not specify that for the offence which has been committed in a requested State only, can a request be made under Section 166B.

45. In **Lalita Kumari vs. Govt. of Uttar Pradesh, (2014) 2 SCC 1**, it has been held as follows:-

44. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. All that we have to see at the very outset is what does the provision say? As a result, the language employed in Section 154 is the determinative factor of the legislative intent. A plain reading of Section 154(1) of the Code provides that any information relating to the commission of a cognizable offence if given orally to an officer in charge of a police station shall be reduced into writing by him or under his direction. There is no ambiguity in the language of Section 154(1) of the Code.

45. At this juncture, it is apposite to refer to the following observations of this Court in Hiralal

Rattanlal [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307] which are as under: (SCC p. 224, para 22)

“22. ... In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that we have to see at the very outset is what does that provision say? If the provision is unambiguous and if from that provision, the legislative intent is clear, we need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear.”

46. The above decision was followed by this Court in B. Premanand [B. Premanand v. Mohan Koikal, (2011) 4 SCC 266 : (2011) 1 SCC (L&S) 676] and after referring to the abovesaid observations in Hiralal Rattanlal [Hiralal Rattanlal v. State of U.P., (1973) 1 SCC 216 : 1973 SCC (Tax) 307] , this Court observed as under: (B. Premanand case [B. Premanand v. Mohan Koikal, (2011) 4 SCC 266 : (2011) 1 SCC (L&S) 676] , SCC p. 270, para 9)

“9. It may be mentioned in this connection that the first and foremost principle of interpretation of a statute in every system of interpretation is the literal rule of interpretation. The other rules of interpretation e.g. the mischief rule, purposive interpretation, etc. can only be resorted to when the plain words of a statute are ambiguous or lead to no intelligible results or if read literally would nullify the very

object of the statute. Where the words of a statute are absolutely clear and unambiguous, recourse cannot be had to the principles of interpretation other than the literal rule, vide Swedish Match AB v. SEBI [(2004) 11 SCC 641] .”

46. In the aforesaid case, the Supreme Court of India was examining as to whether a police officer is bound to register FIR upon receiving any information relating to commission of a cognizable offence under Section 154 of the Cr.P.C or whether the police officer has the power to conduct a preliminary enquiry in order to test the veracity of such information before registering the same. In the aforesaid judgment, the Supreme Court has laid emphasis on the fact that if a provision in a Statute is unambiguous and from which the legislative intent flows clearly, the provision has to be read in a literal way without taking in any other aid.

47. Thus Section 166B of the Code of Criminal Procedure refers to an offence which is under investigation in the requesting State and not an offence which has been committed in the requesting State. By adhering to the provisions of MLAT and asking the CBI to collect information from the petitioner pursuant to a request made by the Russian Federation, the Central Government cannot at all be said to

have surrendered its sovereignty. As has already been noted, no offence has been registered against the petitioner regarding the subject matter for which request has been made and it would be too much for the petitioner to contend that making a citizen of India deliver up some information with regard to any criminal investigation against him would per se amount to capitulation/relinquishment of the sovereign powers of India.

48. The other argument of the petitioner viz. that since Chapter VIIA of the Code of Criminal Procedure which provides for reciprocal arrangements for assistance in certain matters and procedure for attachment and forfeiture of property is not applicable for local/municipal offences, Section 166B also has to be read with the same caveat, is incorrect. Section 166B forms part of Chapter VIIA of the Code which deals with the provisions relating to information to the police and their powers to investigate. Section 166B has been incorporated in the Code by Act 10 of 1990 and has been made effective from 19.02.1990. This along with Section 166A is based upon reciprocal comity of nations and is aimed towards facilitation of collection of materials for trying the offenders connected with such

crimes. The argument of deeming fiction because of the use of the words viz- “as if the offence had been committed within India”, that such a request may be made only if the offence has not been committed in India, is incorrect.

49. In **Manish Trivedi vs. State of Rajasthan, (2014) 14 SCC 420**, it has been held that:-

"It is well settled that the Legislature is competent to create a legal fiction. A deeming provision is enacted for the purpose of assuming the existence of a fact which does not really exist. When the Legislature creates a legal fiction, the Court has to ascertain for what purpose the fiction is created and after ascertaining this, to assume all those facts and consequences which are incidental or inevitable corollaries for giving effect to the fiction."

50. However, while interpreting Section 166B of the Code of Criminal Procedure, there does not appear to be any indication of it being applicable only on a condition where an offence has been committed outside India. Thus it would not be correct to assume that by deeming fiction, a request under Section 166B could only be

entertained by the Central Government if the offence were committed outside the Indian territorial limits.

51. The legal assistance which has been sought from the petitioner is not by way of any investigation. The petitioner has every right to refuse to answer a question if in his opinion, any answer would incriminate him. The petitioner can, needless to state, exercise his right to silence. Nonetheless, Indian Government, being a signatory to the MLAT, has to accord respect and status to the contents of the Treaty and necessary assistance has to be rendered to the other signatory of the Treaty. The petitioner has been made known the interrogatories which he is required to answer. Since Section 166B falls in Chapter XII of the Code, the petitioner cannot claim that any one of his rights have been violated. The CBI in the present case is not conducting any investigation.

52. Neither Section 166B nor the provisions of MLAT enjoin upon the Central Government to give any reasons/findings for accepting such a request by a foreign/requesting State. All that is contemplated is that if the Central Government thinks fit, such a request may be implemented. This but obviously contemplates an application of mind.

In the absence of any requirement on the part of the Central Government to come out in writing the reasons for accepting the request, such a requirement cannot be read into the provisions of Section 166B of the Code of Criminal Procedure. The application of mind as intended in Section 166B would not be similar or akin to what is required under Section 3 of the Extradition Act. There is a statutory presumption in favour of an official act and as per the terms of the MLAT, secrecy has to be maintained. The provisions of Section 166A of the Code empowers/authorizes the issuance of letter of request to a competent authority for investigation in a country or place outside India. Under that situation also, the Criminal Court also would be bound by the same provisions in the MLAT.

53. I have examined the concerned file of the Central Government. There appears to be an application of mind in as much as after the request was made, a communication was made to the Russian Federation for sending original Note Verbale from the Russian authorities. The notings in the file reveal that only after due deliberation and taking into account the provisions of MLAT that the CBI has been directed to collect information from the petitioner.

54. For the afore-recorded reasons, the writ petition is dismissed but without costs.

Crl. M.A. No.6387/2017 (Stay)

1. In view of the main petition having been dismissed, this application becomes infructuous.
2. This application is disposed of accordingly.

OCTOBER 10, 2017
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ASHUTOSH KUMAR, J



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