

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION No. 510 OF 2019

Ashok Chugani

...Petitioner

Versus

State of Maharashtra & Ors.

...Respondents

Mr.Deore a/w. Mr.Joel D'souza I/b. Mr. Aaditya A. Gore for the Petitioner.

Mr.A.R.Patil, APP for Respondent No.1-State.

Ms.Priyamvada Singhania I/b. Mr.H.S.Venegavkar for Respondent No.2.

CORAM : MRS. MRIDULA BHATKAR, J.

DATE : 27 FEBRUARY 2019

P.C.:

1. Rule. Rule made returnable forthwith. By consent of the parties, the Petition is heard finally and disposed of at the stage of admission, as short issue is involved.

2. In this Petition, the petitioner is challenging the order dated 17th September, 2018 passed by the learned Additional C.M.M. 47th Court, Esplanade, Mumbai in C.C. No. 113/PW/2007 so also the order dated 12th October, 2018 passed by the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai in C.C. No. 32/PW/2007, and praying that Sessions Case No. 633 of 2018 be quashed and the matter be remanded back to

the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai and also Sessions Case No. 654 of 2018 be quashed and the matter be remanded back to the learned Metropolitan Magistrate 18th Court, Girgaon, Mumbai.

3. Heard submissions of the learned counsel for the petitioner, the learned APP for the State and the learned counsel for respondent No.2.

4. The petitioner/accused is facing prosecution in two cases i.e., C.C. No. 113/PW/2007 before the learned Additional Chief Metropolitan Magistrate 47th Court, Esplanade Mumbai and C.C. No. 32/PW/2007 before the learned Metropolitan Magistrate, 18th Court, Girgaon, Mumbai. During the pendency of these case, section 44 (c) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “the said Act”) is amended with effect from 15th February, 2013. The investigating authority, who is authorized to file a complaint under the said Act, moved an application before the respective Magistrates for committing those cases before the Special Court functioning under section 44 (c) of the said Act. These applications have been filed by the Assistant Director, Directorate of Enforcement for transfer of the cases to the Special Court i.e., designated Court under the said Act.

5. Pursuant to the said applications, both the learned Magistrates committed those two cases to the Special Court under section 44 (1) (c) of the said Act. These orders of committal passed by the learned Magistrates are challenged on a sole ground that earlier when these two cases were called by the Special Court in P.M.L.A. Case No. 01 of 2009, the learned Special Judge by an order dated 31st August, 2010 sent back the chargesheets of C.C. No. 113/PW/2007, which was numbered as P.M.L.A. No. 01 of 2010 and also C.C.No. 32/PW/2007, which was numbered as P.M.L.A. No. 02 of 2010. The said order was passed by the learned Special Judge under the said Act.

6. In C.C. No. 113/PW/2007, the petitioner is charged and prosecuted for the offences punishable under sections 420, 465, 467, 468, 471 read with 120B of the Indian Penal Code registered with EOW, CBCID, Mumbai at C.R.No. 78 of 2006.

7. In C.C. No. 32/PW/ 2007, the petitioner is charged and prosecuted for the offences punishable under sections 464, 465, 467, 468, 471, 420 read with 34 of the Indian Penal Code registered with D.B. Marg Police Station, Mumbai at C.R. No. 244 of 2006.

8. In the order dated 31st August, 2010, the learned Special Judge has taken a view that the Special Courts constituted under the said Act can take cognizance of the complaint made by an authorized person and not on the basis of the police chargesheets and, therefore, he returned those chargesheets, which was in fact called by his earlier predecessor. It is true that the said order was challenged before this Court by CBI and the matter was pending till 2017 and subsequently, it was withdrawn and thereafter, the applications were moved under section 44 (1) (c) of the said Act before the respective Magistrates of committal of their cases. However, giving challenge to the order passed by the Special Judge and subsequent withdrawal of the the Revision Application without seeking permission to file an application under section 44 (c) of the said Act is not illegal, and will not bar the authority to file applications under section 44 (c) of the said Act.

9. It is to be noted that the order passed by the learned Special Judge is not set aside and holds field as on today. However, at that time i.e., in the year 2010, section 44 (c) of the said Act was not enacted, it came into force on 14th December, 2013. This amended section i.e., 44 (c) enables the authority for filing complaint, to move application to the Court who took cognizance of the scheduled offence and request to commit cases to the

Special Court. Thus, due to this section, all the cases against the accused under the said Act and also cases filed for the offences which are scheduled under the said Act can be brought under one umbrella. Undoubtedly, this will save time of the witnesses, accused so also the prosecuting agency and will curtail the time of the Court trials. In the absence of said section, the order dated 31st August, 2010 passed by the learned Special Judge cannot be said illegal. However, as the section is introduced in the year 2013 and it being procedural one, it is implemented retrospectively.

10. In the present two criminal cases, there was no progress in the matter. The petitioner/accused is prosecuted in those criminal cases for the offences of cheating and forgery. However, one or two sections related to forgery are not scheduled in paragraph 1 of the said Act. The petitioner/accused is prosecuted for the offences punishable under sections 464, 465, 467, 468, 471, 420, 120B read with 34 of the Indian Penal Code. Out of which, sections 464, 465 and 468 are not the scheduled offences. However, non-scheduled offences can be tried together by the Special Court along with the scheduled offences. It can be a composite trial of all the offences. It is also to be noted that in section 44

(c) of the said Act, the legislature has used the word 'shall' and thus, when the applications are moved by the authority, the learned Magistrates are required to commit those cases before the Special Court.

11. Hence, I am of the view that the orders passed by the learned Magistrates under section 44 (1) (c) of the said Act are legal. No illegality is found in the orders passed by the learned Magistrates.

12. Writ Petition is dismissed. Rule is discharged.

(MRIDULA BHATKAR, J.)