

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA

Criminal Petition No.2724 OF 2019

Between:

Nitin Gupta & others

... Petitioners

Vs.

The Directorate of Enforcement,
Rep. by its Deputy Director,
Government of India,
Through Special Public Prosecutor.

... Respondent

Submitted for approval.

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

- 1 Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/ No
- 2 Whether the copies of judgment may be marked to Law Reporters/ Journals Yes/ No
- 3 Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? Yes/ No

* THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

+ CrI.P. No.2724 of 2019

% Dated 22.05.2019

Nitin Gupta & others

... **Petitioners**

Vs.

**\$ The Directorate of Enforcement,
Rep. by its Deputy Director,
Government of India,
Through Special Public Prosecutor. ..Respondent**

! **Counsel for the Petitioners:** Sri B.Chandrasen Reddy

^ **Counsel for the Respondent:** Sri K.Lakshman,
Learned Assistant Solicitor
General.

> HEAD NOTE:

? Cases referred
2017 SCC Online Del 8930

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**CRIMINAL PETITION No.2724 of 2019****ORDER:**

This Criminal Petition is filed to quash the summons dated 03.05.2019 issued by the respondent in F.No. ECIR No.11/HYZO/2016 on the file of the Directorate of Enforcement, Hyderabad, wherein the petitioners were directed to appear before him, after filing complaint in S.C.No.474 of 2018 on the file of Metropolitan Sessions Judge-cum-Special Court, under Prevention of Money Laundering Act, at Nampally.

It is stated that one Mr.N.Srikanth, Deputy Director of Income Tax (Investigation) Unit II (2), Hyderabad, had made a complaint to the Station House Officer, Jubilee Hills Police Station, Hyderabad on 07.12.2016 stating that as per the terms of Gazette Notification No.2652 dated 08.11.2016 issued by the Government of India, Rs.500 and Rs.1000 denomination of bank notes of the existing series issued by Reserve Bank of India shall cease to be legal tender with effect from 09.11.2016 to the extent specified in the notification. Based on the information that Mussaddilal Gems and Jewellers Pvt. Ltd., and M/s.Vaishnavi Bullion Pvt. Ltd., Hyderabad have deposited an amount of Rs.57 crores and Rs.40 crores in State Bank

of India, Industrial Finance Branch, Panjagutta, Hyderabad and Axis Bank, Jubilee Hills, Hyderabad respectively, after the demonetization of Rs.500 and Rs.1000 notes by raising around 5200 cash advance receipts on 08.11.2016. Since the aforesaid companies and their management have indulged into illegal practice by converting old demonetization of high value notes in the name of sale of gold bullion/jewelers on or after 8.00 p.m of 08.11.2016, causing loss to the government exchequer in the form of direct taxes, the respondent initiated crime proceedings under Sections 44 and 45 r/w Sections 70 and 8(5) of Prevention of Money Laundering Act, 2002 (for short 'the Act of 2002'). The respondent filed charge sheet before the Metropolitan Sessions Judge-cum-Special Court, under the Act of 2002, at Nampally, Hyderabad. On such complaint, the Special Court issued summons in SC No.474 of 2018 and the same is pending. However, the respondent, who is investigating officer issued summons under sub sections (2) and (3) of Section 50 of the Act, directing the petitioners to appear before him. Aggrieved by the same, present petition is filed to quash the said summons.

Heard Sri B.Chandrasen Reddy, learned counsel for the petitioners and Sri K.Lakshman, learned Assistant Solicitor General of India appearing for the respondent.

Sri B.Chandrasen Reddy, learned counsel for the petitioner submits that the role of investigating officer ceased after filing of the complaint before the Sessions Court, as such, issuance of impugned summons by the respondent is without jurisdiction and illegal. He further submits that in the complaint itself, it is mentioned that additional complaint will be filed only after obtaining permission from the concerned Court, but without obtaining any such permission, impugned summons have been issued. He submits that the procedure envisaged under Section 173 (8) of Cr.P.C to file additional charge sheet is not available to the authorities under the Act of 2002, and that the said procedure is not applicable to the proceedings under the Act of 2002 since Section 44 of the Act of 2002 begins with *non-abstante* clause stating that 'Notwithstanding anything contained in the Code of Criminal Procedure, 1973'. He also submits that the procedure is envisaged under Section 44 of the Act of 2002 and the respondent followed the same and filed the complaint under Section 44 of the Act of 2002.

On the other hand, Sri K.Lakshman, learned Assistant Solicitor General submits that there is no bar in conducting further investigation after filing of the complaint/charge sheet, if any new material is available and further investigation is required. He submits that only part of the fraud played by the petitioners is detected, as such, further investigation is required. He further submits that investigation in respect of

some of the petitioners is almost complete after issuance of summons and one of the petitioners took time for giving a statement. He submits that Section 65 of the Act of 2002 provides that the provisions of Cr.P.C will apply to the proceedings under the Act of 2002 insofar as they are not inconsistent with the provisions of the Act of 2002. In support of his contention, he relied on the judgment of Division Bench of this Court in W.P.No.8296 of 2019, dated 01.05.2019.

Since both the learned counsel argued the main criminal petition itself and that only question of law is involved, this Writ Petition is disposed of at the stage of admission.

In view of rival contentions of both parties, the only issue that arises for consideration is whether the Investigating Officer-respondent can issue summons under Section 50 of the Act of 2002, after filing of the complaint under Section 44 of the Act, that too after taking cognizance of the said complaint by the Special Court or not?

In this case, admittedly, complaint is filed by the respondent officials against the petitioners before the Special Court i.e., Metropolitan Sessions Judge-cum-Special Court under the Prevention of Money Laundering Act, 2002 at Nampally, Hyderabad and the said court has taken cognizance of the complaint filed by the respondent and summons were also issued to the petitioners. Thereafter, impugned summons were issued to the petitioners by the respondent. Learned

Assistant Solicitor General appearing for respondent submits that some of the petitioners appeared and gave their statements and one of the petitioners took further time to give statement.

Before considering the rival contentions of both parties, it is necessary to extract relevant provisions of the Act of 2002 as well as Code of Criminal Procedure, 1973.

44. Offences triable by Special Courts.—

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

(a) the scheduled offence and 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 continue to try such scheduled offence; or

(b) a Special Court may, ²⁶ [***] upon a complaint made by an authority authorised in this behalf under this Act take cognizance of the offence for which the accused is committed to it for trial.

No doubt, Section 44 of the Act starts with *non obstante* clause, i.e., Notwithstanding anything contained in the Code of Criminal Procedure, 1973, but clause (a) of sub section (1) of Section 44 provides that the scheduled offence and offence punishable under section 4 shall be triable only by the Special Court constituted for the area in which the offence has been committed and the Special Court can take cognizance of the offences upon the complaint made by the authority authorized in this behalf under this Act. In **Virbhadra Singh v.**

Enforcement Directorate¹, it is held as follows:

“79. Though Section 71 declares unequivocally that provisions of PMLA “shall have effect notwithstanding anything inconsistent therewith contained in any other law

¹ 2017 SCC Online Del 8930

for the time being in force” which resonates what in effect is the import of Section 4(2) Cr.PC. which has already been taken note of, at the same time it further brings out, for clarity, by Sections 46 and 65 that the provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this law, to the proceedings before the special court and in the matters relating to “arrest, search and seizure, attachment, confiscation, investigation, prosecution” and all other proceedings. Perhaps in order to allay further doubts, if any entertained in this regard, various other provisions of this special legislation make it abundantly clear that the Code of Criminal Procedure, 1973 would regulate the criminal action unless there is a special provision in PMLA to the contrary or inconsistent with the general procedural law, such clauses including Section 43(2), Section 44(1)(d), Section 44 (2), Section 45(1)(1a)(2) and Section 47.”

Sub-section 2 of Section 44 of the Act of 2002 provides in effect that the scheduled offence and offence punishable under clause (d) of sub-section 1 of Section 44 shall be triable only by the Special Court and the special powers of the High Court regarding grant of bail etc., are not affected by this provision. This section nowhere prohibits further investigation or filing of further complaint or charge sheet against the accused. In fact, Section 46 of the Act of 2002 provides an application of the Code of Criminal Procedure, 1973 to proceedings before Special Court. Section reads as follows:

“46. Application of the Code of Criminal Procedure, 1973 to proceedings before Special Court.(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:

Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.”

Section 65 of the Act of 2002 provides that the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, regarding arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act. For the sake of convenience, Section 65 of the Act of 2002 is extracted hereunder:

“65. Code of Criminal Procedure, 1973 to apply.—The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.”

The aforesaid provision clearly states that the provisions of the Cr.P.C will apply to arrest, search, seizure, attachment, confiscation, investigation, prosecution and all other proceedings under the Act of 2002. This provision further goes to show that the proceedings of investigation with which we are concerned i.e., Section 173(8) of Cr.P.C regarding further investigation, applies to the provisions of the Act of 2002. By virtue of Section 65 of the Act of 2002, the Investigating Officer has power to conduct further investigation and lay further report. Learned counsel for the petitioners could not point out any provision of law which bars further investigation and filing of further report, except relying on Section 44 of the Act of 2002, which in the opinion of this Court, does not bar for conducting further investigation by the officer authorized in this behalf or filing of further report. By virtue of Section 65 of the

Act of 2002, sub section 8 of Section 173 of Cr.P.C empowers the Investigating Officer to further investigate and file supplementary report. That apart, Section 50 of the Act of 2002 empowers the authorities to issue summons to the accused. For better understanding Section 50 of the Act of 2002 is extracted hereunder:

“50. Powers of authorities regarding summons, production of documents and to give evidence, etc.—

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

- (a) discovery and inspection;
- (b) enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company, and examining him on oath;
- (c) compelling the production of records;
- (d) receiving evidence on affidavits;
- (e) issuing commissions for examination of witnesses and documents; and
- (f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act: Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Director.”

Sub section (2) of Section 50 of the Act empowers the authorities mentioned therein to issue summons in respect of

mattes specified under sub-section (1) of Section 50. While dealing with similar issue, a Division Bench of this Court in I.A.No.1 of 2019 in WP No.8296 of 2019, vide order dated 01.05.2019 held as follows:

“21. Insofar as the second contention is concerned, the Act entitles the Enforcement Directorate to trace the trail of money, representing the proceeds of crime. The search conducted once in December, 2016 and the filing of an original application before the Adjudicating Authority in 2017, will not operate as a bar for the respondents to conduct a fresh search and seize additional material. Hence, the second contention is liable to be rejected.”

In view of above facts and circumstances, this Court is not inclined to quash the summons issued by the respondent on the ground of lack of jurisdiction.

Accordingly, this Criminal Petition is dismissed. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, shall stand dismissed.

A.RAJASHEKER REDDY, J

22-05-2019
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

Criminal Petition No.2724 of 2019



Date: 22.05.2019

kvs