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

+ **W.P.(CRL) 370/2019, CrI. M.As. 2619-20/2019**

GYAN SWAROOP GARG

..... Petitioner

Through: Mr. N. Hariharan, Sr. Adv. with Mr.
Hemant Shah and Mr. Nitin Saluja, Advs.

versus

UNION OF INDIA AND ANR

..... Respondent

Through: Mr. Amit Mahajan, CGSC with Ms.
Tarannum Cheema, Ms. Mallika Hiremath, Advs.
and Mr. Arun Kumar, ED.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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05.02.2019

This petition seeks the following reliefs:

A. Pass an Order quashing the Complaint dated 13.07.2018, bearing CC No. 08/2018 in ECIR No.12/DLZO/2014 filed by the Respondent No.2 in the Court of the Hon'ble Special Judge, Special Court for Coal Allocation matters, Patiala House;

B. Pass a Writ/Order/Direction to read down Section 50 of the Prevention of Money Laundering Act, 2002 (PMLA) and hold that any statement of a person recorded in terms of the said provision, who is an accused either in the scheduled offence which forms the basis of the PMLA case and/or in the PMLA case itself, would be hit by Article 20 (3) of the Constitution of India and, thus,

wholly inadmissible;

C. Pass a Writ/Order/Direction to further, read down Section 50 of the PMLA to bring it in harmony and consonance with the Article 20(3) of the Constitution.

D. Pass a Writ/Order/Direction to further read down Section 50 of the PIVILA and hold that in view of the scheme of PMLA which contemplates that the investigation thereunder could legitimately commence only after 'a criminal activity relating to a Scheduled Offence' comes to fore and the occurrence of the Scheduled Offence is a pre-requisite for initiating investigation into the offence of money laundering, any statement made thereunder would automatically invoke the protection of Article 20(3) of the Constitution of India and, thus, neither can such a person be compelled to be a witness against himself nor can he be forced or compelled to incriminate himself.

E. Pass a Writ/Order/Direction that the statement of the petitioner or any other person who is an accused either in the Scheduled Offences registered by officers of Enforcement in the respective Enforcement Case Investigation Report (ECIR) registered, to be excluded from consideration by respective Investigating Agencies concerned with the investigations into the scheduled offences on the touchstone of Article 20(3) of the Constitution.

F. Pass any other Writ, Order(s) or Direction(s), which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case, may kindly be passed in favour of the petitioner.

At the outset, Mr. Amit Mahajan, the learned counsel for the respondent submits that the petition is not maintainable in view of the

order of the Supreme Court on 25.07.2014 in “*Manohar Lal Sharma v. The Principal Secretary & Ors.*” [W.P. (Crl.) 120/2012] which directed, inter alia, as under:

6. We also order the Mr. R.S. Cheema, senior advocate shall be appointed as Special Public Prosecutor by the Government of India to conduct the prosecution of the offences pertaining to coal block allocation matters on behalf of CBI and Enforcement Directorate. On such appointment, Mr. R.S. Cheema may choose two other advocates, who, in his opinion, will be of assistance in the matter. While doing so, Mr. R.S. Cheema may keep in view the magnitude and complexities of the case.

7. The Special Public Prosecutor shall have access to the entire evidence/material including case diaries collected in the course of investigation.

8. We direct the CBI to render all necessary assistance to Special Public Prosecutor.

9. All cases pending before different courts in Delhi pertaining to coal block allocation matters shall stand transferred to the Court of Special Judge as afore-noted.

10. We also make it clear that any prayer for stay or impeding the progress in the investigation/trial can be made only before this court and no other court shall entertain the same.”

Mr. Mahajan submits that the present case relates to crimes predicated in the coal block allocation, therefore, the reliefs sought cannot be granted by this Court.

Mr. Hariharan, the learned Senior Advocate for the petitioner submits that the Supreme Court’s order is only a bar for issuance of stay or creation of an impediment in the progress of the investigation or the trial. However, in the present case since the investigation is over, no stay or bar of investigation is sought; nor the petitioner is impugning any order of the Trial

Court.

This Court is of the view that the import of the Supreme Court order is, that matters relating to the coal block allocation should not be entertained by any other Court but itself.

In view of the above, the learned Senior Advocate for the petitioner seeks to withdraw the petition with liberty to approach the Supreme Court.

The petition is dismissed as withdrawn. Liberty granted.

NAJMI WAZIRI, J

FEBRUARY 05, 2019/acm