IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 1311 OF 2019

Mr. Vishwanathan Venugopal. ..Petitioner.
v/s.
The State of Maharashtra & anr. ..Respondents.

Mr. Giriraj Subramanium i/b. Mr. Yakshay Chheda, advocate for petitioner.
Mr. H.S. Venegaokar, advocate for respondent No. 2.
Mr. P.H. Gaikwad-Patil, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MARCH 13, 2020.

P. C. :

1 Heard the learned Counsel for the petitioner and the learned APP for State.

2 The petitioner herein is taking exception to the order dated 22/11/2018 passed by Special Judge, Greater Mumbai, thereby issuing process against the petitioner(accused No.11) in PMLA Special Case No. 24 of 2018 for the offence punishable under section 3 and punishable under section 4 of the Prevention of Money-Laundering Act, 2002. The petitioner is challenging the issuance of summons in pursuance of process issued against the present petitioner.

3 The Enforcement Directorate filed a complaint before the Special Court on 17/7/2018 requesting the Court to take cognizance of the offencce of money laundering punishable under section 3 and 4 of the PMLA Act against the petitioner and 10 other accused persons. The Enforcement Directorate had also requested the Court to pass an order in respect of confiscation of the properties attached vide provisional attachment order dated 30/6/2011.

4 It is the case of the prosecution that Directorate of Enforcement had registered a case against one Hasan Ali Khan on 8/1/2007 under PMLA Act. In the course of investigation, the statement of the present petitioner was recorded. At the end of the investigation, it was the conclusion of the Enforcement Directorate that the present Petitioner being an account opening official in SBC Bank at Singapore, had aided Hasan Ali Khan in opening bank account in the said bank and thereby enabling him to conceal the proceeds of the crime.

5 The complainant had placed, before Special Judge, the statements of the witnesses recorded in the course of investigation, including the statement of the present petitioner and upon perusing the papers of the investigation, Learned

Special Judge had issued process against the proposed accused persons.

6 As on today, it is the contention of the learned Counsel for the applicant that the Enforcement Directorate had sent a letter of request to Competent Authority of Singapore on 5/8/2013, reply of which is awaited. It is also submitted that further letter was also sent to SBC Bank on 15/9/2014 in which some technical query had been raised by the Switzerland authorities.

7 Learned Counsel submits that the reply given by the said authorities is not disclosed before the Special Judge and therefore, order of issuance of process is not passed after application of mind, to the documents placed on record.

8 Learned Counsel Mr. Venegaokar appearing for the respondent No. 2 has submitted that this was a communication between the two countries and the accused at this stage is not entitled to peruse the said documents.

9 As against this, learned Counsel for the Petitioner submits that the petitioner had approached the Ministry of External Affairs, Singapore to enquire as to whether such communication was replied and he was informed that the

communication has been replied. However, it is the contention of the petitioner that he had no occasion to learn, as to what is reply.

10 This court has perused the reply, as it was placed before this Court and at the request of respondent, the same is not made available to the Petitioner.

11 Upon query made by this Court to the learned Counsel for the Petitioner, it is submitted that normally, bank maintains the record for a measurable time, which may be 15 to 20 years. This needs to be taken into consideration at a subsequent stage. The reply given by the Bank needs to be appreciated in view of a responsible statement made by the petitioner.

12 Learned Counsel for the petitioner further submits that there is no sufficient material on record to even remotely indicate, that process could be issued against the present applicant under section 3 punishable under section 4 of the PMLA Act.

13 Perused the orders. The learned Special Judge has observed that he had perused the statements of the witnesses including the statement of the petitioner. As far as the present Petitioner is concerned, it is observed that accused No. 11 has

been intentionally concealing the material facts, in order to assist accused No. 1 in laundering the proceeds of the crime.

14 It is admitted position in law that at the stage of quashing of process, it would not be appropriate for any court to have a roving enquiry into the investigation paper. All that is expected by the Court is to ascertain as to whether prima facie case is made out against the accused and that is based upon substantive satisfaction of the Special Judge at the stage of considering the avernments in the complaint on the basis of material collected in the course of investigation. The Petitioner was enlarged on bail. Learned Court had observed at that stage that although the applicant was available for 2 years, he was not arrested under section 19 of PMLA Act in the course of investigation and after completion of investigation, incarceration of the applicant would serve no purpose. Hence, the applicant was enlarged on bail vide order dated 18/1/2019.

15 The complainant has specifically stated in the complaint that the petitioner herein had opened an account with SBC Bank at Singapore on the basis of forged and fabricated documents and the said facts have been confirmed by the principal accused Hasan Ali Khan and Kashinath Tapuriah as well as Amlendu Pandey. It was also averred that the present

Petitioner was intentionally concealing material facts although it was a matter of record that he had visited India several times during the period 2006 to 2008. Learned Counsel for the Petitioner submits that concealing of facts/suppression of facts or not cooperating with the investigation is not an offence under section 3 of the PMLA Act and therefore, not punishable under section 4 of PMLA Act.

16 At this stage, it cannot be said that respondent No. 2 had filed a complaint in the absence of any material on record and therefore, the Enforcement Directorate deserves an opportunity to substantiate their allegations, which can be done only after adducing substantive evidence and the documents collected by the investigating agency in the course of investigation. The Court cannot be oblivious of the fact that this is an economic offence which is affecting not only an individual but to a society at large. It affects economic health of the society as well as national economy and therefore, it would not be appropriate to quash the order of issuance of process at this stage.

17 Learned Counsel for the Petitioner has placed reliance upon the Judgment of the Hon'ble Apex Court in the case of **K.K. Kuda vs. Chief Enforcement Officer reported in (2015) 12**

SCC 298. The learned Counsel has drawn attention of this Court to paragraph-8 which reads as under :

> *"In spite of having dropped the allegations of 'consent' and 'connivance', the respondent in their complaint levelled allegations of all the three components, namely, consent, connivance and negligence. The contention of the appellant that the cognizance was taken on irrelevant consideration, is to be countenanced. There was suppression and also material omission in non-mentioning of reply sent by the appellant to the Opportunity Notice, in the complaint. Further, to substantiate the averments in the complaint, not even a single original document was enclosed. It is not known as to, on what material the Additional Chief Metropolitan Magistrate applied his mind, while taking cognizance of the statutory offence. Though the allegation of negligence can be independently looked into, considering the standard of proof in criminal prosecution, we are of the view that, in the present case, the continuance of prosecution against the appellant is not tenable in law and the proceedings are liable to be quashed."*

The said observation of the Hon'ble Apex Court may be of no assistance to this Court in the present case, as there is variance of facts.

Learned Counsel harped upon the observation that-

"There was suppression and also material omission in non-mentioning of reply sent by the appellant to the Opportunity Notice, in the complaint."

In fact, in the present case, there was no question of issuing any opportunity notice. The statement of petitioner was recorded. In any case, it appears that bank officials are also deliberately not cooperating with the Indian Government for the reasons best known to them. As is seen from the reply given to the Enforcement Directorate, more particularly, the period in which the records are maintained by the bank. Economic offences are well manipulated offences, and that such offences pose a serious threat to the health of national economy. There is no reason to quash the proceedings or take a different view from that of the Special Court. There is neither any reason to hold that there is no application of mind at the stage of issuance of process. The subjective satisfaction of the Court is based on the material placed on record.

18 In view of the above, the Writ Petition stands rejected and disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]

Talwalkar