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

\+   **<u>W.P.(CRL) 1093/2021</u>**

Date of decision: <u>3rd AUGUST, 2021</u>

<u>IN THE MATTER OF:</u>

DR VIJAY KUMAR SHARMA & ANR. ..... Petitioners
Through Mr. Praveen Chaturvedi, Advocate

versus

DY COMMISSIONER OF POLICE, ECONOMIC OFFENCE WING & ANR. ..... Respondents
Through Mr. Avi Singh, ASC with Mr. Tanuj Bhadana, Advocate
Mr. Amit Mahajan, CGSC for respondent No.2

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

<u>SUBRAMONIUM PRASAD, J.</u>

1. This writ petition under Article 226 of the Constitution of India has been filed with the following prayers:

> *"(a) issue a Writ of Prohibition or any other Writ of like nature thereby Prohibiting the Respondent No. 1, to proceed with the investigation in FIR No. 123/2019, PS: EOW, Delhi against the Petitioners herein, being excluded per se Section 45(1A) of the Prevention of Money Laundering Act, 2002; in view of ensuing Proceedings being OA no. 38812020 pending before Hon'ble Adjudicating Authority (PMLA); and*
> *(b) issue a Writ of Mandamus or any other Writ of like nature thereby commanding the Respondent No. 1 to abstain from taking any coercive action, enquiry against the Petitioners, pursuant to investigation in FIR No. 123/2019, PS: EOW, Delhi; and*
> *(c) issue a Writ of Certiorari or any other Writ of*

like nature and quash the notices dated 15.02.2021, 30.03.2021 15.04.2021 [Annexure(s) P-8, P-9 & P-1 l respectively] issued by the Respondent No. 1 to the Petitioner No. 2; and

(d) To pass such other direction/order as deemed appropriate in order to meet the ends of justice and in the interest of law."

2. Notice was issued on 04.06.2021. Status Report has been filed. As per the Status Report, a number of complaints were received against one Sanjay Bhati and others of M/s Garvit Innovative Promoters Limited, having its registered office at Plot No.1, Chiti, Dadri, District Gautam Budh Nagar, Uttar Pradesh, regarding cheating of approximately Rs.42 thousand crores. The Status Report reveals that the accused induced gullible victims to invest in a bike and receive monthly pay back, including principle and rental income on that bike for one year under the scheme. It is stated that being lured by the said scheme a number of persons invested money. It is stated that the accused absconded with the money and, on the basis of the allegation and inquiry conducted, FIR No.123/2019 dated 06.07.2019, was registered at Police Station Economic Offences Wing for offences under Sections 420/406/120B IPC. Investigation was carried out. During investigation it was found that M/s Garvit Innovative Promoters Limited, was not registered as a NBFC with the RBI and hence it was not authorized to initiate any collective investment scheme. Total 1544 complaints have been received from multiple victims till the filing of the Status Report. The role of the petitioner has been stated in the Status Report and the same reads as under:

"1. During the course of investigation it has been revealed that though accounts of accused companies i.e. M/s Garvit Innovative Promoter Limited (GIPL) and M/s Independent TV Ltd were already maintained with other Banks, but due to connivance by applicant/accused Vijay Sharma, account of the said companies were opened in M/s Noble cooperative Bank, of which accused Vijay Kumar Sharma was C.E.O. These accounts were used for remitting the money collected from the investors of "Bike Bot" without completion of KYC guidelines by the bank, of which petitioner was CEO.

2. Accused/Petitioner- Vijay Kumar Sharma facilitated main accused- Sanjay Bhati in getting cheque books in favor of M/s GIPL in bulk without due diligence, cheques from which were delivered to investors of GIPL, which later on bounced. These post-dated cheques resulted in appeasing the investors for long, thereby buying more time for the accused persons and delaying the reporting of the matter to the law enforcing agencies.

3. On 04.08.2018, Rs. 5 Crore was fraudulently transferred to M/s Noble Buildtech LLP from the accused company M/s Independent TV Ltd. Later on, it was revealed that said beneficiary firm i.e. M/s Noble Buildtech LLP was a partnership firm and accused Vijay Kumar Sharma and his son are partners of the said firm. Applicant/accused was examined regarding this fraudulent withdrawal, but he could not satisfactorily explain the said transactions."

3. Material on record indicates that the proceedings under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'The PMLA') have been initiated against the petitioner. An application under Section 17(4) of the PMLA was made by the petitioner on 23.03.2021 for retention of the seized records and properties. Show cause notices have been issued to the

petitioner. The material on record indicates that proceedings under Section 5 of the PMLA have been initiated against the accused persons, including the petitioner herein, attaching various movable and immovable properties. Show cause notices have also been issued against the accused persons including the petitioner herein, under Section 5(5) of the PMLA stating as to why the properties attached on 20.07.2020 should not be confirmed. The petitioner approached this Court by filing W.P.(C) 3565/2021 with the following prayers:

> *"A). issue a Writ of Mandamus or any other writ of like nature thereby directing that the Respondent No. 1 to dispense with the pronouncement of the order under Section 8(2) of Prevention of Money Laundering Act, 2002 in Original Application No. 388/2020 filed by the Respondent ho. 2 on 23.03.2020, and;*
>
> *B) issue a Writ of Mandamus or any other writ of like nature thereby direct the Respondent No. I to provide free certified copies of the orders so pronounced in OA No. 3880020 to the Petitioners,"*

W.P.(C) 3565/2021 is pending.

4. The instant writ petition has been filed by the petitioner stating that the Economic Offence Wing (hereinafter referred to as "the EOW") cannot continue the investigation on the ground that parallel investigation is being undertaken by the respondent No.2 under the PMLA.

5. Heard Mr. Praveen Chaturvedi, learned counsel for the petitioner, Mr. Avi Singh, learned ASC for the State and Mr. Amit Mahajan, learned CGSC appearing for the respondent No.2 and perused the material on record.

6. The learned counsel for the petitioner states that EOW is conducting parallel proceedings *qua* Respondent No. 2, which amounts to infringing the

fundamental rights of the Petitioner under Article 20(2) of the Constitution of India. The learned counsel for the petitioner contends that the matter being investigated by the EOW is already being undertaken by the respondent No.2 under the PMLA. The learned counsel for the petitioner relies on Section 45(1A) PMLA to contend that investigation by EOW is excluded when investigation is being undertaken by the respondent No.2 under the PMLA.

7. The provision of PMLA was brought in for preventing money laundering. Section 3 of PMLA which defines the offence of money laundering, reads as under:

> *"**3**. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the **proceeds of crime** including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering."* (emphasis supplied)

8. Proceeds of crime has been defined under Section 2(u) of the PMLA which reads as under:

> *"2.(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a **scheduled offence** or the value of any such property."*

9. Scheduled offence has been defined under Section 2(y) of the PMLA which reads as under:

> *"2(y). "scheduled offence" means—*
>
> *(i) the offences specified under Part A of the Schedule; or*

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or
(iii) the offences specified under Part C of the Schedule;"

10. Section 5 of the PMLA provides of attachment of property. Section 5(1) of the PMLA, which is relevant of the case reads as under:

> *"5(1). Where the Director, or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that—*
>
> *(a) any person is in possession of any* ***proceeds of crime****;*
> *(b) such person has been charged of having committed a scheduled offence; and*
> *(c) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding 9 [one hundred and fifty days] from the date of the order, in the manner provided in the Second Schedule to the Income-tax Act, 1961 (43 of 1961) and the Director or the other officer so authorised by him, as the case may be, shall be deemed to be an officer under sub-rule (e) of rule 1 of that Schedule:*
>
> *[Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173*

of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be: Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]"

(emphasis supplied)

11. Section 19 of the PMLA which provides for power to arrest reads as under:

"19. Power to arrest.—

(1) If the Director, Deputy Director, Assistant Director, or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of ***an offence punishable under this Act,*** *he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.*

(2) The Director, Deputy Director, Assistant Director or any other officer shall, immediately

after arrest of such person under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section (1) shall within twenty-four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction: Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Magistrate's Court." (emphasis supplied)

12. Section 45(1A) of the PMLA on which reliance has been placed by the learned counsel for the petitioner reads as under:

"45. Offences to be cognizable and non-bailable.—

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(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into ***an offence under this Act*** *unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed......."*

13. A perusal of the above mentioned provisions makes it clear that the purpose of enacting the PMLA was to prevent money laundering and to prevent confiscation of property derived from or involved in money-laundering. The purpose of investigation under the PMLA is to unearth the proceeds of crime and attach the same and to punish the offenders who are involved in committing the offence of money-laundering. Section 45 (1A)

mandates that no Police Officer shall investigate into an offence under the PMLA unless specifically authorised by a general or special order issued by the Central Government. Just because an investigation for an offence under the PMLA has to be conducted by an officer, unless specifically authorized, it cannot be said that no investigation can be conducted for offences which are mentioned in the schedule of the PMLA by other investigating agencies and that they are precluded from investigating those offences. The offences are distinct and a person can be convicted and sentenced to punishment under the IPC as well as under the PMLA. This Court, at this juncture, is not entering into the debate as to whether an offence under the PMLA is a "standalone" offence or not, and as to whether a person, even if he is acquitted of an offence mentioned in the first schedule, can still be convicted for an offence under the PMLA.

14. Be that as it may, since the offence under the IPC and the offence under the PMLA are distinct offences, investigations for offences under the IPC and for offences under Section 3 of the PMLA can be carried out by different agencies. Section 45(1A) of the PMLA does not exclude other agencies from conducting investigations into the offences mentioned in the schedule of the PMLA.

15. The prosecution for the offences under the IPC and other offences mentioned in the schedule of the PMLA, under which the petitioner is charged, are entirely different and mutually exclusive. It cannot be said that the rights of the petitioner under Article 20 (2) of the Constitution of India are infringed. The contention of the learned counsel for the petitioner that conducting two parallel investigations would infringe the rights of the petitioner under Article 20(2) of the Constitution of India is completely

unfounded. The attempt of the petitioner is only to stall the investigation which is completely untenable and frivolous.

16. With these observations the writ petition is dismissed.

SUBRAMONIUM PRASAD, J.

AUGUST 03, 2021
Rahul