

C.R.R. No. 3880 of 2022

In Re : An application under Section 397/401 read with Section 482 of Code of Criminal Procedure 1973 and Article 227 of the Constitution of India.

**In the matter of: Enforcement Directorate
...Petitioner**

**Mr. Phiroze Edulji
Ms. Anamika Pandey
Ms. Amrita Pandey
Mr. Ghanshyam Pandey
Ms. Sneha Singh
Ms. Shikha Kashyap**

....for the Enforcement Directorate

Mr. Billwadal Bhattacharyya, Ld. Deputy Solicitor General

...for the CBI

**Mr. Dipak Sengupta
Mr. Farook Rezzak
Mr. Sabir Ahmed
Mr. Anirban Guhathakurta
Mr. Sanjib Dan
Mr. Sujan Chatterjee
Ms. Nayana Mitter
Mr. Debayan Mukherjee**

...for the Opposite Party

The present application has been preferred challenging the order dated 7th October, 2022 passed by the learned Vacation Judge, Paschim Bradhaman in respect of ECIR-KLZO/41/2020 thereby rejecting the prayer of the petitioner/ Enforcement Directorate in respect of issuance of production warrant and grant of transit remand to the accused Sehegal Hossain.

Mr. Phiroze Edulji, learned advocate appearing for the Enforcement Directorate draws attention of the Court to the

application which was preferred under Section 267 read with Section 167 of the Code of Criminal Procedure, 1973 read with Section 65 of the Prevention of Money Laundering Act, 2002 for seeking production warrant cum transit remand of the accused named above. In the said application two prayers were advanced, firstly, issuance of production warrant of the accused Sehegal Hossain, secondly, grant of transit remand of the accused to be produced before the Learned Special Judge (PC Act) (CBI)-18, Rouse Avenue District Courts, New Delhi.

The application contained amongst others the merit of the cases particularly with the reference to the complaint and the supplementary complaint which was filed before the designated Learned Special Judge (PC Act) (CBI)-18, Rouse Avenue District Courts, New Delhi wherein option was kept open for further investigation of the case. Details of the fact which surfaced in course of the earlier investigation was narrated in the application so filed and it was contended that a prayer was advanced before the CBI Special Court, Asansol on 28th September, 2022 for interrogating the accused Sehegal Hossain in jail which was granted by the learned Special Court Asansol and pursuant to which statement was recorded under Section 50 (2) and Section 50 (3) of the PMLA ACT, 2002. The investigating agency/petitioner claimed that having regard to the materials which surfaced on interrogation of the accused, his custody was required for further interrogation and for production before the designated Court at Delhi.

Learned advocate appearing for Enforcement Directorate produced the record before this Court regarding the schedule of some properties as also the statement of the accused which was recorded in jail and by pointing out the differences prayed before this Court for custody of the accused.

Mr. Billwadal Bhattacharya, learned Deputy Solicitor General was directed to be served for the purpose of ascertaining from CBI as to whether the accused who has been detained in connection with the RC 0102020A0019 dated 21.09.2020 for commission of offences punishable Under Section 120B IPC read with Section 7,11,12 of the PC ACT is any further required by the CBI for the purpose of the investigation which is pending or continuing in connection with the said case.

Learned Deputy Solicitor General on instruction from Mr. Rajiv Mishra Superintendent of Police, Anti-Corruption Branch submitted that the CBI has got no objection if in the interest of justice the accused/opposite party is handed over to the Enforcement Directorate for the sake of their investigation in this particular case.

Mr. Farook Rezzak, learned senior advocate appearing on behalf of the accused/opposite party, namely Sehegal Hossain pointed out to this Court that it is an admitted position that the production warrant which was sought for before the Learned Special Judge (PC Act) (CBI)-18, Rouse Avenue District Courts, New Delhi by the Enforcement Directorate was refused on 05.09.2022. The prayer for

interrogating the accused was also refused on 09.09.2022. The petitioner has proceeded thereafter to the CBI Special Court at Asansol and prayed for interrogating the accused which was granted and consequently the petitioner was shown arrested thereafter a prayer was advanced before the learned Vacation Judge, Paschim Bardhaman for production warrant and transit remand.

It was pointed out by the accused that before the learned Vacation Judge, Paschim Bardhaman the orders dated 05.09.2022 and 09.09.2022 were suppressed. It has further been contended by the opposite party that the production warrant and transit remand which was sought for before the Court which did not have any jurisdiction. Prayer as such has been made before this Court for dismissing the revisional application, until and unless proper production warrant is issued by the jurisdictional Court.

Mr. Phiroze Edulji, on other hand produced a notification by the Judicial Secretary which reflects that the authority was vested with the Vacation Judge, Paschim Bardhaman in respect of offences under the P.C. Act, NDPS Act as also other special act. To that aspect the notification so placed before this court suffices the fact that the Vacation Judge, Paschim Bardhaman had the authority to consider the prayer as advanced by the Enforcement Directorate.

However coming back to the prayers which were advanced in this revisional application certain issues are to be considered as contained in this revisional application itself. So far as ECIR/KLZO/41/2020 is concerned the Court

having jurisdiction or the designated Court having authority to decide the merits of the case and where complaint and supplementary complaint was filed is the Court at Delhi being Learned Special Judge (PC Act) (CBI)-18, Rouse Avenue District Courts, New Delhi. The said Court refused to grant production warrant relying upon the decision of Harshad S. Mehta Vs. CBI and it was the opinion of the Special Court that the provisions of Section 267 of the Cr.P.C. for production of the accused cannot be taken assistance of in view of the pronouncement made therein by the Hon'ble Delhi High Court in its order dated 01.10.1992. The decision relied upon by the learned Special Court is debatable in view of the Division Bench judgement of this Court in Ram Swarath Yadav Vs. State reported in 2005 SCC OnLine Cal 17: (2007) 1 CHN 289. The very starting sentence of sub-section (1) of Section 267 and Clause (a) of Section 267(1) refers to the terms "enquiry, trial or other proceeding" and "for the purpose of any proceeding against him". The Calcutta High Court judgment in paragraph 79 held as follows:

"79. In conclusion, we are of the view that the phrase "or other proceeding" in section 267 of the said Code would also include the concept of investigation."

The provision of Section 267 of Cr.P.C. relating to production warrant in course of investigation has also been referred to while deciding criminal appeals by the Hon'ble Supreme Court in Mohd. Jalees Ansari and Ors. Vs. CBI reported in (2016) 11 SCC 544; in paragraph 68 and 69 of the said judgment it is reflected that the designated Court issued production warrant and after production of the

accused before the designated Court from the Court having custody, the investigating agency prayed for police custody in the designated Court. Thus, the concept of issuing production warrant at the time of investigation is no more an issue to be decided.

However, Mr. Phiroze Edulji, learned advocate appearing for Enforcement Directorate was repeatedly asked as to whether the order dated 05.09.2022 passed by the Learned Special Judge (PC Act) (CBI)-18, Rouse Avenue District Courts, New Delhi would be pursued by the Enforcement Directorate before the High Court at Delhi as there was a specific averment in the Revisional Application made in paragraph-29.

Mr. Edulji submitted on instruction that he has been instructed to submit before this Court that the remedy for challenging the legality of the orders passed on 05.09.2022 and 09.09.2022 refusing the prayer under Section 267 of the Code of Criminal Procedure would be proceeded by the Department before the Hon'ble High Court at Delhi.

Having regard to such contention of the Enforcement Directorate who till date has not pursued the remedy, and are yet to decide as to whether their prayer was under Section 267 of the Code of Criminal Procedure or under Section 167 of the Code of Criminal Procedure before the Learned Vacation Judge, Paschim Bardhaman, I am of the opinion that the Court at Paschim Bardhaman did not have the power to adjudicate the issue of Section 267 of the Code of Criminal Procedure while considering the application so

filed before the said Court, as the production warrant was to be issued by the Court at Delhi which is in seisin of the merits of the case.

However, the Vacation Judge, Paschim Bardhaman had the power to decide on the issue of transit remand under Section 167 of the Code of Criminal Procedure.

The provisions of the Code are not just printed words but there must be flesh and blood attached to the interpretation of the provisions, whether the provisions of Section 267 of the Code of Criminal Procedure is to be applied or Section 167 of the Code of Criminal Procedure is to be invoked is in respect of the same person who is to be sent to the Court at Delhi. The two Courts are different one at Delhi which is in seisin of the PMLA matter while the CBI Court is at Asansol within the domain of Calcutta High Court. It would have been easier to decide the issue in case the Enforcement Directorate decided that they would not pursue their remedy under Section 267 of the Code of Criminal Procedure before the Hon'ble High Court at Delhi (as it has been submitted that the legality of the production warrant which was refused by the Special Court at Delhi would be challenged).

The next issue remains that whether this Court would in the circumstance be empowered to grant a transit remand in the absence of specific order from the Court at Delhi. An apprehension has been expressed by the learned advocate that since the accused has already been shown arrested on 7th October, 2022 it may be difficult for interrogating the

accused in police custody in view of the first fourteen days running out of time. The issue has been settled by the Hon'ble Supreme Court in State of West Bengal Vs. Dinesh Dalmia reported in (2007) 5 SCC 773 wherein Hon'ble Supreme Court was pleased to hold that the date for police custody would be reckoned/counted from the day when the accused is produced before the jurisdictional Court.

However, taking into account the totality of the circumstances, the petition/application which has been filed before the Vacation Judge, Paschim Bardhaman, the nature of the prayers sought for and the multiple proceedings initiated by the Enforcement Directorate and the remedy under Section 267 of the Cr. P.C. being still pursued before the High Court at Delhi, I am of the opinion that the application so filed before the learned Vacation Judge, Paschim Bardhaman and rejected by the order dated 07.10.2022 do not call for interference as the said application before the Vacation Judge, Paschim Bardhaman was misconceived.

Consequently, the revisional application being CRR 3880 of 2022 is dismissed.

Pending connected application, if any, also stands disposed of.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

(Tirthankar Ghosh, J.)