

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

MAT 1762 of 2022

With

CAN 1 of 2022

Reserved on: 01.12.2022

Pronounced on: 23.12.2022

Directorate of Enforcement, Ministry of Finance

...Appellant

-Vs-

Menka Gambhir and Another

...Respondents

Present:-

Mr. Ashok Kumar Chakraborty, Id. ASG,
Mr. Phiroze Edulji,
Ms. Anamika Pandey, Advocates

... for the appellants

Mr. Jishnu Saha, Sr. Advocate
Mr. Ayan Bhattacharjee,
Mr. Soumen Mohanty,
Mr. Piyush Kumar Ray,
Mr. Kush Agarwal, Advocates

... for the Respondent No. 1

Mr. Billwadal Bhattacharyya, Id. DSGI
Mr. Rajendra Banerjee, Advocate

... for the Union of India

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE ANANYA BANDYOPADHYAY
JUDGE

Prakash Shrivastava, CJ:

1. This appeal is directed against the interlocutory orders of the learned Single Judge dated 30th of August, 2022 and 6th of September, 2022 passed in WPA 19748 of 2022. By the subsequent order dated 06.09.2022, certain typographical errors in the earlier order have been corrected.

2. The respondent No. 1 herein (writ petitioner) had approached the learned Single Judge by filing WPA 19748 of 2022, challenging the summons dated 26th of July, 2022 and 12th of August, 2022 with the plea that the writ petitioner was a citizen of India and resident of Kolkata and that the FIR No. RC0102020A0022 was registered by the CBI (ACB) Kolkata on 27.11.2020 under Sections 120B and 409 of the IPC for the alleged illegal excavation, theft and transportation of coal and ECL Coalfields in West Bengal. The writ petitioner has not been named in the said FIR. Thereafter on 28.11.2020 appellant had registered the ECIR for the alleged commission of offence punishable under Sections 3 and 4 of Prevention of Money Laundering Act, 2002 (for short, 'PMLA'). The writ petitioner was issued the summons under Section 50 (2) and (3) of PMLA dated 19th of July, 2022 by Assistant Director, Directorate of Enforcement, New Delhi for appearance in his office on 26.07.2022 at 10:30 A.M. Subsequently, another summon of similar nature was issued by the same Assistant Director on 12th of August, 2022 for appearance in his office on 5th of September, 2022. These summons were subject matter of challenge in the writ petition.

3. Learned Single Judge while passing the impugned interlocutory order has noted that the relief claimed in the writ petition is in respect of the summons under Sections 50(2) and (3) of PMLA. Learned Single Judge has noted that the only issue is whether the writ petitioner should be summoned in Delhi or in Kolkata, and considering the issue, learned Single Judge has also found that the writ petitioner has not been named as an accused in the proceedings. By way of interim direction the appellant has been directed to question the petitioner at its zonal office

at Kolkata. The appellant has been further directed not to take any coercive step in the meantime.

4. Submission of learned Counsel for the appellant is that the impugned order passed by the learned Single Judge is without jurisdiction as on the date of passing the order, learned Single Judge had no determination to hear a petition involving police inaction. He has also submitted that against the impugned summons the petitioner has remedy of filing an appeal and that in compliance of the impugned order the writ petitioner has appeared before the E.D. at Kolkata, therefore, nothing survives in the writ petition which has now become infructuous. He further submits that the petitioner had made a false declaration in the petition that she is a citizen of India whereas she is a citizen of Thailand. He has also submitted that learned Single Judge has in fact exercised the power under Section 438 of the Cr.P.C. and that no reason has been assigned for extending the protection of no coercive action.

5. Learned Counsel for the respondent No.1, writ petitioner has submitted that it is not a case of police inaction, therefore, learned Single Judge has the jurisdiction and that there is typographical error in the writ petition about mentioning the writ petitioner to be Indian citizen, but there is no suppression. He has further submitted that the writ petitioner has no objection in appearing before the appellant at Kolkata and that learned Single Judge has relied upon the order of the Hon'ble Supreme Court passed in respect of other persons in the same ECIR. An objection has also been raised that about 3 months have lapsed after the order of the learned Single Judge, therefore, at this stage, no interference is required.

6. Learned Counsel appearing for the respondent No. 2, Union of India has also supported the appellant by submitting that learned Single Judge has travelled beyond the scope of writ petition and argument advanced while granting the protection about no coercive action. He further submits that no reason has been assigned for granting the relief of no coercive action and that the writ petitioner has not approached the writ Court with clean hands, therefore, the petition is liable to be dismissed.

7. We have heard learned Counsel for the parties and perused the record.

8. First issue is if learned Single Judge had the jurisdiction to pass the order under appeal. If there was no such jurisdiction, then in terms of the judgment of Hon'ble Supreme Court in the matter of **State of Rajasthan vs. Prakash Chand and Others** reported in (1998) 1 SCC 1, in the matter of **Shanti Bhushan vs. Supreme Court of India Through Its Registrar and Another** reported in (2018) 8 SCC 396, in the matter of **Inder Mani and Others vs. Matheshwari Prasad and Others** reported in (1996) 6 SCC 587, the order of learned Single Judge becomes non est. Undisputedly on the date of passing of the order, learned Single Judge had the determination to hear the matters (motion and hearing) under Article 226 of the Constitution of India relating to residuary under Group-IX (excluding matters related to police inaction etc.). The jurisdiction of learned Single Judge has been questioned on the ground that the present matter falls under the category of police inaction, but such a plea cannot be accepted in view of the fact that Hon'ble Supreme Court in the matter of **Vijay Madanlal Choudhary and Others vs. Union of India and Others** reported in 2022 SCC

OnLine SC 929 has settled that the process envisaged by Section 50 of the PMLA is in nature of inquiry against the proceeds of crime and is not “investigation” in strict sense of the term for initiating prosecution and the authorities under the PMLA are not police officers as such. Thus, the contention of the appellant that learned Single Judge has no jurisdiction to hear the writ petition, cannot be accepted.

9. Next argument advanced by the Counsel for the appellant is that on account of subsequent development nothing survives in the writ petition itself.

10. The record reflects that the sole prayer of the petitioner in the writ petition was to quash the summons dated 26th of July, 2022 and 12th of August, 2022. These summons were issued for the limited purpose seeking appearance of the petitioner before E.D. on the given date. The summon for appearing on 26th of July, 2022 contains the summon No. “PMLA/SUMMON/HIU2/2022/616” and the summon dated 12th of August, 2022 contains a different summon No. “PMLA/SUMMON/HIU2/2022/663”. These summons were issued in connection with F.No. ECIR/17/HUI/2020. The summons were in terms of Section 50(2) and (3) of PMLA related to powers of authorities regarding summons, production of documents and to give evidence etc. Sub-Section 2 of Section 50 empowers the specified officer to summon any person whose attendance is considered necessary to give evidence or to produce any records during the course of any investigation or proceeding under the Act. In terms of Sub-Section 3, the persons so summoned are required to attend in person or through authorised agents and they are bound to state the truth in respect of the subject specified

therein. It is undisputed before this Court that after the order of learned Single Judge and in pursuance to the direction of the learned Single Judge, the writ petitioner has appeared before the appellant at Kolkata. There is no further direction to the writ petitioner by the appellant to appear. Hence, the impugned summons have been worked out and have lost their force now. As on date, there is nothing on record indicating that the writ petitioner is further required to appear before the appellant in terms of Section 50 of PMLA. Thus, nothing survives in the pending writ petition. In fact, by way of interim relief, learned Single Judge had granted the final relief to the writ petitioner. Therefore, the writ petition has now become infructuous for all practical purposes.

11. So far as the other issue relating to making false declaration in the writ petition that the writ petitioner is a citizen of India and claiming the relief under Article 19 and 15(3) of the Constitution on that basis which are only available to the citizens of the country, we find that undisputedly writ petitioner is not a citizen of India but we need not go into that issue because the issue has become academic on account of subsequent development noted above. Similarly we also find in the impugned order, while extending the interim protection for no coercive action, no reasons have been assigned by the learned Single, but this issue has also becomes academic now because the summons impugned in the petition have lost their force on account of subsequent appearance of the writ petitioner at Kolkata in compliance of the summons in pursuance to the order of the learned Single Judge.

12. Learned Counsel for the appellant has also placed reliance upon the order of the Single Bench of the Court in the matter of **Menka Gambhir vs. Union of India and Others** reported in (2020) 2 Cal LT

158 wherein the summons issued to the present petitioner by the Joint Commissioner of Customs, AIU, NSCBI, Airport, Kolkata was subject matter of challenge. Referring to the same, he has raised the submission that the writ petitioner resides at Rajouri Garden, New Delhi, but such an issue also at this stage need not be gone into.

13. Thus, we find that nothing survives in the present writ petition pending before the learned Single Judge which has become infructuous on account of subsequent development noted above. Thus, we permit the appellant to approach the learned Single Judge for formal disposal of the petition in terms of the observations made above. Liberty to mention before the learned Single Judge. The appeal is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(ANANYA BANDYOPADHYAY)
JUDGE

Kolkata
23.12.2022

PA(SS)

(A.F.R. / N.A.F.R.)