

**IN THE HIGH COURT OF ORISSA AT CUTTACK**  
**CRLMC No. 42 of 2022**

***Ajay Kumar Das***

....

***Petitioner***

***Mr. Sourya Sundar Das , Senior  
Advocate and Ms. Suman Modi  
Advocate***

*Versus*

***1. State of Odisha***

***2. Union of India***

***3. Assistant Director, Directorate of  
Enforcement, Bhubaneswar***

....

***Opposite Parties***

***Mr. P.K. Mohanty, A.S.C.***

***For Opp. Party No.1)***

***Mr. Gopal Agarwal, Advocate  
(For Opp. Party Nos. 3)***

**CORAM:  
JUSTICE SAVITRI RATHO**

**ORDER  
12.01.2022**

**Order No.**

01. 1. Heard Mr. Sourya Sundar Das, learned Senior Advocate alongwith Ms. Suman Modi, learned counsel for the petitioner, Mr. P.K. Mohanty, learned Addl. Standing Counsel for the Opp. Party No.1 and Mr. Gopal Agarwal, learned counsel for the Opp. Party No.3 through virtual mode.
2. This application under Section 482 Cr.P.C. has been filed by the petitioner Ajay Kumar Das praying for quashing the proceedings and the summons dated 27.12.2021 (Annexure-2) issued by the Assistant Director, Enforcement Directorate, Opp. Party No.3 for attendance and production of documents indicated in the annexure to the summons.
3. Mr. Das, learned Senior Advocate raises the following main contentions amongst others in support of his prayer for quashing

the summons issued by the Assistant Director, Enforcement Directorate dated 27.12.2021.

(i) In view of the provisions of Article 20 (1) of the Constitution of India, the proceeding under the Prevention of Money Laundering Act, 2002 (in short “PML Act”) is not maintainable as Section- 7, 7-A, 8, 9, 10, 11, 12, 13 and 14 Prevention of Corruption Act, 1988 (in short “PC Act”) were included in Scheduled Offences in Paragraph 8 of the PML Act on 16.07.2018 and will not apply to offences committed prior to that date .

(ii) The summons has been issued on the basis of the same F.I.R. on which the investigation for commission of offences under Section – 13 (2) read with 13 (1) (b) / 12 of the PC Act was continuing in Bhubaneswar Vigilance P.S case No 23 of 2020.

(iii) A conjoint reading of Section 3 (38) and Section 26 of the General Clauses Act, 1897 makes it abundantly clear that if an offence is committed under two enactments , the offender can only be prosecuted and punished under either of the two enactments, but shall not be liable to be punished twice for the same offence.

(iv) Under Section 2 (na) of the PML Act , investigation includes all the proceedings under the PML Act conducted by the Director or by an Authority authorized by the Central Govt. under the Act for collection of evidence. The summons vide Annexure-2 issued by the Assistant Director, Enforcement Directorate is based on only the FIR under the PC Act and such FIR cannot, by any stretch of imagination be construed as a proceeding under the PML Act, 2002.

4. Mr. Das, learned Senior counsel further submits that in the summons (**Annexure-2**), Opp. Party No.3 had asked him to attend

on 17.12.2021 with a number of documents indicated in the Annexure to the summons. But only his Aadhaar Card is available with him, while the originals of the other documents referred to in the Annexure, have been seized by the officials of the Vigilance Directorate during investigation of Bhubaneswar Vigilance P.S. Case No.23 of 2020 without giving him photostat copies, he had sought for two months time vide letter dated 28.12.2021 and had been granted time till 13.01.2022 by Opp. Party No.3 for his attendance. In the meanwhile although an application under Section 457 Cr.P.C. (CMC No.19 of 2021, CMC No.20 of 2021 and CMC No.30 of 2021) had been filed by the petitioner and his family members for unfreezing bank accounts and for return of various documents, the applications are still pending. Copies of the petitions have been annexed as **Annexure-3 (Colly)** to this CRLMC.

5. Mr. Gopal Agarwal, learned counsel for the Opp. Party no. 3 submits that the challenge to the summons and proceedings at this stage is premature as the summons in exercise of power under Section - 50 (2) and (3) of the PML Act has been issued for the purpose of enquiry and investigation only and the petitioner is not an accused in the case. He should therefore have no apprehension of being arrested on his appearance before Opp. Party No.3 in response to the summons vide Annexure-2 with the documents sought for. A complaint under Section 44 (1) (b) of the PML Act will be filed against him after examining the materials available against him. The petitioner is yet to submit the copies of the documents sought for the Opp. Party No.3 although time has been allowed till tomorrow, i.e 13.01.2022. He further submits that he will instruct the Opp. Party No.3 to grant further time to the

petitioner for his attendance with the documents indicated in the annexure to the summons, if the petitioner files an application or sends an email with such prayer, but the petitioner should comply with the summons and attend with the necessary documents.

6. In view of the submissions of Mr. Gopal Agarwal, learned counsel for the Enforcement Directorate, I do not think it is necessary to deal with the contentions raised by learned counsel for the petitioner at this stage. However liberty is granted to him to raise all his contentions, if such necessity arises in the future in an appropriate application.

7 The petitioner should however take expeditious and effective steps for obtaining the documents indicated in the Annexure to the summons vide Annexure 2, for submission before Opp. Party No 3 including a request to the Vigilance Directorate/official to supply him photostat copies of such documents.

8. With the aforesaid observations, the CRLMC is disposed of.

In view of the restrictions imposed due to resurgence of COVID-19 situation, learned counsel for the parties may utilize a printout of the order available in the High Court's website, at par with certified copy, subject to attestation by the concerned advocate, in the manner prescribed vide Court's Notice No.4587, dated 25<sup>th</sup> March, 2020, modified by Notice No.4798 dated 15<sup>th</sup> April, 2021, and Court's Office Order circulated vide Memo Nos.514 and 515 dated 7<sup>th</sup> January, 2022.

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**(Savitri Ratho)**  
**Judge**