AGK

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.397 OF 2022

Mukund Balwant Athavale ... Applicant

V/s.

Enforcement Directorate & Anr. ... Respondents

Mr. Shubhankar Awhad with Mr. Pratik Karande i/by Mr. Anuj Tiwari for the applicant.

Ms. G.P. Mulekar, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : OCTOBER 17, 2022

P.C.:

1. The applicant is challenging the order dated 6th July 2022 passed by the Special Judge P.M.L.A., Greater Bombay, rejecting the application for discharge.

2. The applicant is the original accused no.5, who claims discharge on the ground that he was not related to the offence alleged in the complaint, and there is no material on record to proceed against him.

3. In **Dipakbhai Jagdishchandra Patel v. State of Gujarat**, reported in (2019) 16 SCC 547, the Apex Court Court recapitulated the principles on discharge under Section 227 of the Cr. P.C as follows:

> "***23.*** *At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office. The court must indeed sift the material before it. The material to be sifted would be the material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense that the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused. All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices. However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."*
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> *(emphasis supplied)*

4. For considering the material on record, it would be relevant to note the applicable provision of Prevention of Money Laundering Act which is as under:

> **Section 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.
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> [*Explanation*.—For the removal of doubts, it is hereby clarified that,—

(*i*) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely—

(*a*) concealment; or

(*b*) possession; or

(*c*) acquisition; or

(*d*) use; or

(*e*) projecting as untainted property; or

(*f*) claiming as untainted property,

in any manner whatsoever;

(*ii*) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

5. In the light of principles laid down by the Apex Court, it is necessary to scrutinize the material on record. During the investigation, ED recorded statements of various persons under section 50 of the PML Act. Mr. Uday Kumar Mehta, informant *inter alia,* stated that the present applicant (accused no.5) gave him two money orders for US $2500/- each and one forged money order for US $650/- on 14th September 2005. Again, due to relations with accused no.5, he arranged the amount in cash with his friends and relatives and paid money to the accused no.6 between 16th to 20th November 2005 in installments amounting to Rs.57 Lakh.

6. Mr. Ayub Khan's statement demonstrates how he came in contact with the applicant (accused no.5), who introduced him to Mr. Uday Kumar Mehta.

7. The statement of Mr. Nelson Menacherry (A3) also indicates the circumstances of the transaction leading to the offence. The investigation revealed that the present applicant, Mr. Mukund Balwant Athavale (A5) and Mr. Ayub Khan (A6), informed advocate Mr. Mehta that said Ram Chaudhury did not wish to open an office in Dubai and that the amount transferred into his account be returned at the earliest as said Mr. Ram Choudhury needed money in India. The applicant M.B. Athavale (A5), visited the office of Mr. Mehta along with accused Nos.6, 7 and 8 to collect money amounting to Rs.57 Lakh on the instructions of Mr. Ram Chaudhury. Mr. Iyer Sundereswaram Ramaswamy (A7) visited the office of Mr. Mehta along with applicant, Athavale (A5), accused Nos.6 and 8, to collect money amounting to Rs.57 Lakh on the instructions of Mr. Ram Choudhury. Dharmesh Salian (A8) visited the office of Mr. Mehta along with the applicant (A5), accused Nos.6 and 7, to collect money amounting to Rs.57 Lakh on the instructions of Mr. Ram Choudhury and accused No.6 handed over the money to Dharmesh Salian (A8).

8. The applicant's role (A5) indicates the material link in the offence of money laundering under section 3 of the PML Act. It is material to note that, in PMLA investigation, the statement of applicant-accused No.5 was recorded. He clearly stated how he introduced Ayub Khan (A6). It is also revealed that the complainant also kept under impression that his amount was in Dubai Bank. This is how the proceeds of crime were generated.

9. The applicant's role (A5), based on the record, and statements recorded under Section 50 PML Act, including his own statement, clearly demonstrates how he assisted generation of proceeds of crime and directly or indirectly and further played an important role in money laundering under Section 3 of PML Act. 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 can be prosecuted under Section 3 Read with Section 2(1)(u) of PML Act.

10. The learned Special Court in paragraphs 10 and 11 has considered the material on record to record a finding that it is on the advice of the applicant that the complainant invested the amount with the other accused. In paragraphs 12 and 13 of the order, the learned Special Judge has considered the witness statement to demonstrate the present applicant's role. The learned Special Judge thereafter recorded a finding that the applicant's role is a material link in the offence of money laundering under section 3 of the Money Laundering Act.

11. The learned Special Judge also recorded a finding that the earlier application for discharge was not pressed, and the present application is the second application. The learned Special Judge held that the complainant assisted in generating proceeds of the crime, and, therefore, it would be covered under the expression 'money laundering'.

12. Thus, in my opinion, the learned Special Judge was justified in rejecting the application for discharge.

13. No error of jurisdiction or perversity is pointed out.

14. The criminal revision application stands dismissed. No costs.

ATUL GANESH KULKARNI Digitally signed by ATUL GANESH KULKARNI Date: 2022.10.21 13:24:45 +0530

(AMIT BORKAR, J.)