IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56245 of 2022

Arising Out of PS. Case No.-7 Year-2014 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

==

BHARAT YADAV S/o Shri Parmeshwar Yadav Resident of Jamalpur Dih, Near Avantika Cinema, P.S.- Jamalpur, District- Munger

... ... Petitioner/s

Versus

1. THE UNION OF INDIA New Delhi
2. The Assistant Director, Directorate of Enforcement(Prevention of Money Laundering Act)Govt of India 1st Floor, Chandpura Place, Bank Road, West Gandhi Maidan, Patna, Bihar

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s	:	Mr. Ansul, Advocate
		Mrs. Sagrika, Advocate
		Mr. Aditya Pandey, Advocate
For the Opposite Party/s	:	Mr. K.N. Singh (A.S.G)
For the UOI	:	Mr. Manoj Kumar Singh (E.D.)
		Mr. Ankit Kumar Singh, Advocate

==

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
Date : 09-10-2023

Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State as well as learned counsel for the Enforcement Directorate.

2. The learned counsel for the petitioner submits that the present quashing application has been filed seeking quashing of the order dated 24.08.2018 passed by learned Session Judge, Patna in Special Trial No.(PMLA) 03 of 2018 (Ref: ECIR No. PTZ0/07/2014) dated 07.01.2014 by which the learned Session Judge, Patna has taken cognizance of offence under Section 4 of the Prevention of Money Laundering Act and has issued

summons to the petitioner for his appearance.

3. The learned counsel for the petitioner submits that the issue which arises for consideration in the present case is whether the ECIR instituted under the Prevention of Money Laundering Act (hereinafter referred as the Act) against the petitioner can continue when the petitioner stands acquitted of the charges in a duly constituted criminal trial of the allegations of committing the predicate offence based on which the ECIR under the Act was instituted, as committing predicate offence is sine-quo-non for instituting a case under the Act i.e. unless there is a predicate offence there cannot be a offence of Money Laundering.

4. The learned counsel for the petitioner next submits that mere earning money or obtaining any property by committing a crime does not amount to Money Laundering, but obtaining or deriving any property by committing a crime related to the scheduled offences under the Act and then projecting or claiming such money or property as untainted property amounts to money laundering.

5. The learned counsel for the petitioner next submits that commission of the predicated offence is mandatory for instituting a case under the Act, it is further submitted that

predicate or scheduled offence is defined Section 2(Y) of the Act, as the offences specified under Part-A of the Schedule to the Act or the offence specified under Part-B of the Schedule, if total value involved in such offence in one crore rupee or more.

6. The learned counsel for the petitioner further submits that the schedule lays down a vast list of offences under various penal legislation, but the relevance of such offences is better understood when read along with the definition of money laundering, it is next submits that intrinsic linkage of the scheduled offence with the offence of Money Laundering is also found in the explanation to the definition of 'Proceed of Crime' under Section 2U of the Act, which clarifies that it would include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

7. The learned counsel for the petitioner next submits that the Hon'ble Supreme Court has made it clear that while the offence of Money Laundering is an independent offence, it is still dependent on the underline predicate offence to the extent of the proceed of crime having been derived or obtained as a result of criminal activity relating to or in relation to the

scheduled offence. Further, while the whole quantum of a tainted property need not be regarded as proceed of crime, the property qualifying under the definition clause of Section 2U of the Act will necessarily be treated as crime property or laundered property.

8. It is thus, submitted that in the event a person is acquitted in relation to the scheduled offence who rightfully owns or possesses and alleged tainted property, then such a property cannot be termed as proceeds of crime.

9. The learned counsel for the petitioner further submits that in view of the submissions recorded herein above, the facts of the case be appreciated. It is next submitted that Complaint Case No.3/18 was filed in the Court of Special Judge, PMLA, Patna-cum-Session Judge with an allegation that the list of 27 cases registered against the petitioner was forwarded by the S.P., EOU which revealed that petitioner is a habitual offender indulging in arms, extortion, robbery, murder and other economic offences and has also been convicted in Jamalpur P.S. Case No.50 of 1998. It is next alleged that Letter No.389C dated 04.11.2013 of S.P., EOU further revealed that petitioner has amassed property in his name and the name of his wife and the younger brother Amit Kumar from the proceeds of

the above-mentioned crimes, by investing the same in various movable and immovable properties, in an attempt to project it as untainted, thus an ECIR bearing No.PTZ0/07/2014 dated 07.01.2014 was instituted against the petitioner and others by ED, Patna Zonal Office as offences under Sections 302, 420, 414, 467, 471 and 120B of the I.P.C. being scheduled offences, further it is alleged that petitioner has acquired movable and immovable properties as detailed in the complaint, the total value of the property acquired in the name of the petitioner is Rs.2,16,18,059/- in the name of his wife the property is worth of Rs.1,64,75,500/- both totaling Rs.3,80,93,559/-, further bank account operated by the petitioner had a deposit of Rs.13,59,443/-, LIC policies worth Rs.29,08,988/- and thus total properties were valued at Rs.4,23,61,990/-.

10. The learned counsel for the petitioner further submits that the crux of the allegation is that the petitioner through scheduled offences generated proceed of crime which was used to amass movable and immovable properties. It is next submitted that the petitioner was involved in 27 cases and he has been acquitted in all the cases but when the present ECIR was registered at that time two cases were pending being Jamalpur P.S. Case No.121 of 2010 and Munger Kotwali P.S.

Case No.227 of 2010.

11. The learned counsel for the petitioner next submits that petitioner in a duly constituted trial was acquitted in both the cases i.e. Jamalpur P.S. Case No.121 of 2010 and Munger Kotwali P.S. Case No.227 of 2010. It is thus, submitted that when the petitioner was acquitted of the predicate offence based on which the present ECIR was registered then on what basis the case under the act is being pursued against the petitioner as the presumption is that once an accused is acquitted of the predicate offences which is sine-quo-non for instituting a case under the Act than how the case under the PMLA can proceed.

12. The learned counsel for the petitioner next rely on the judgment of Hon’ble Supreme Court in the case of Vijay Madanlal Chaudhary Vs. Union of India SLP (Civil) No.4634 of 2014 and drawn the attention of the Court to Para-253 and 281 :-

> “253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has

been committed, unless the same is registered with the jurisdictional police or pending injury by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (schedule offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.

281. The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of “proceeds of crime” under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property

> linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter."

13. The learned counsel for the petitioner thus submits that the Hon'ble Supreme Court has clearly observed that such property which is derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence can be recorded as proceeds of crime but the authorities under the 2002 Act cannot resort to action against any person for Money Laundering on an assumption that the property recovered by

them must be proceeds of crime and that a scheduled offence has been committed unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum and in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (schedule offence) against him their can be no action for money laundering against such a person or person claiming through him in relation to the property link to the stated scheduled offences.

14. The learned counsel for the petitioner further submits that in the present case also the ECIR was instituted on the ground that Jamalpur P.S. Case No.121 of 2010 and Munger Kotwali P.S. Case No.227 of 2010 were pending against the petitioner but since the petitioner stands acquitted in both the cases, as such it cannot be presumed that the properties amassed by the petitioner was from the proceeds of crime.

15. The learned Central Government counsel Mr. Manoj Kumar Singh, very fairly submits no doubt counter affidavit has been filed but then the issue raised in the present application, as recorded hereinabove is not answered, further

submits that law as enunciated by the Hon'ble Supreme Court is clear, thus is not in a position to rebut he submission of the learned counsel for the petitioner.

16. Considering the submissions made by the learned counsel for the petitioner and in view of the submissions recorded herein above and after going through the judgment of the Hon'ble Supreme Court, the order dated 24.08.2018 passed by the learned Session Judge, Patna in Special Trial No.(PMLA) 03 of 2018 (Ref: ECIR No. PTZ0/07/2014) dated 07.01.2014 whereby cognizance of offence under Section 4 of the Act has been taken and the petitioner has been summoned is hereby quashed.

(Satyavrat Verma, J)

mdrashid/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	
Transmission Date	