

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION**

Present:

The Hon'ble Justice Tirthankar Ghosh

C.R.R. 2653 of 2023

***Abhishek Banerjee*
versus
*The Directorate of Enforcement (ED)***

For the Petitioner	:	Dr. Abhishek Manu Singhvi, Sr. Adv., Mr. Kishore Datta, Sr. Adv., Mr. Sanjay Basu, Adv., Mr. Soumen Mohanty, Adv., Mr. Ayan Poddar, Adv., Mr. Piyush Kumar Ray, Adv., Mr. Agnish Basu, Adv., Ms. Riddhi Jain, Adv.
For the Enforcement Directorate	:	Mr. S. V. Raju, Ld. A.S.G., Mr. Phiroze Edulji, Adv., Mr. Samrat Goswami, Adv., Mr. Zoheb Hossain, Adv., Ms. Anamika Pandey, Adv., Ms. Amrita Pandey, Adv., Mr. Ghanashyam Pandey, Adv.
For the affected party (Soumen Nandy)	:	Mr. Bikash Ranjan Bhattacharya, Sr. Adv., Mr. Firdous Samim, Adv., Ms. Gopa Biswas, Adv., Ms. Payel Shome, Adv., Ms. Sampriiti Saha, Adv.
For the affected party (Ramesh Malik)	:	Mr. Bikash Ranjan Bhattacharya, Sr. Adv., Mr. Arindam Jana, Adv., Mr. Sudipta Dasgupta, Adv., Mr. Bikram Banerjee, Adv., Mr. Arka Nandy, Adv., Mr. Sagar Dey, Adv., Mr. Sutirtha Nayek, Adv.

Reserved On : 20.09.2021

Judgement On : 22.09.2023

Tirthankar Ghosh, J. :

The present revisional application has been preferred challenging the proceedings being ECIR/KLZO-II/19/2022 under Sections 3 and 4 of the

Prevention of Money Laundering Act, 2002 dated 24.6.2022 along with the summons issued by Enforcement Directorate under Sections 50(2) and 50(3) dated 8.6.2023 under the said Act against the petitioner.

The prayers which have been advanced in the present revisional application are two- fold. Firstly, relating to the quashing of the ECIR and, secondly, relating to the summons dated 8.6.2023 issued by the Enforcement Directorate.

The background of the case relates to an order dated 10.7.2023 passed by the Hon'ble Supreme Court in SLP (C) No. 11588-11589/2023, which was preferred by the petitioner and the relevant part of the said judgment/order, necessitated for the purpose of the present litigation, is set out as follows:

“9 we are inclined not to interfere with the impugned order since the consequence of doing so would be to stifle the investigation at the incipient stage. However, the petitioner is at liberty to pursue all remedies which are available in law, including under Section 482 of the Code of Criminal Procedure 1973. In the event that the petitioner takes recourse to such remedies as are available in law, the observations which are contained in the order dated 13 April 2023 or in the impugned order dated 28 May 2023 shall not stand in the way of the competent court dealing with such an application on its own merits.”

The revisional application was initially heard on 20th of July, 2023 and it was submitted on behalf of the petitioner that summons have been issued against him under Section 50 of the PMLA Act, 2002, which were pursuant to the orders dated 13th April, 2023 and 18th May, 2023 and the Hon'ble

Apex Court granted leave to prefer the present application under Section 482 of the Cr.P.C. holding that the aforesaid orders should not stand in the way of the statutory remedies available.

On behalf of the Enforcement Directorate (hereinafter referred to as 'E.D.' for sake of brevity), it was contended that on 8th June, 2023, the petitioner was summoned to appear on 13th June, 2023 and documents were furnished by the petitioner on 26th June, 2023. The scrutiny of which were under process.

It was further contended that the petitioner did not appear but only communicated to the officer of the E.D. in respect of the documents which were called for. Next date was fixed on 24th of July, 2023 and, this Court directed that till 24th July, 2023 until and unless any money trail is discovered against the petitioner, no coercive steps should be taken against him.

On 24th of July, 2023, Mr. S.V. Raju, Learned Additional Solicitor General appearing on behalf of the E.D. took a preliminary objection regarding the authority of this Court to take up the application under Section 482 of the Cr.P.C. and to that effect drew the attention of this Court to the order dated 28.4.2023 passed by the Hon'ble Supreme Court in SLP (Civil) Diary Nos. 15883/2023.

A reference was made from paragraph 3 of the said order which is as follows:

“3. Having considered the transcript, we direct that the Acting Chief Justice of the High Court at Calcutta shall reassign the pending proceedings in the case to some other Judge of the Calcutta High Court. The Judge to whom the proceedings are reassigned by the Acting Chief Justice would be at liberty to take up all applications which may be moved in that regard.”

The attention of this Court was drawn to the assignment order dated 1st May, 2023 passed by the Hon’ble the Chief Justice, High Court, Calcutta, wherein it was directed that *“The Writ Petitions, all application filed in the writ petitions and any further application/s that may be filed including Review Application/s are assigned to Hon’ble Justice Amrita Sinha.”*

The Learned ASG also pointed out that the order dated 14.7.2023 passed by the Hon’ble Justice Amrita Sinha in WPA 9979 of 2022, which is as follows:

“On the adjourned date the learned advocates appearing for the CBI and the ED shall give the details of the Investigating Officers who are investigating the municipal scam case.”

This Court enquired from the learned ASG as to whether bail application and other related criminal matters should be taken up by the same Hon’ble Judge, who is *in seisin*, of WPA 9979 of 2022. To this, Learned ASG submitted that according to his understanding of the orders it is the same Hon’ble Judge who is *in seisin* of WPA 9979 of 2022, who should take up the bail matters relating to this case.

There were counter arguments by Dr. Singhvi, Learned Advocate appearing for the petitioner, which need not be gone into. But, it is a fact

when earlier bail applications in connection with the same ECIR in respect of the other accused persons were taken up by this Court, the E.D. never took up this issue relating to the authority of this Court in adjudicating the bail applications.

However, in view of the stand taken by the E.D., this Court thought it fit and proper in the circumstances to place the records before the Hon'ble the Chief Justice, High Court, Calcutta for deciding on the issue as to whether this Court had the determination to take up the revisional application. The Hon'ble the Chief Justice, High Court, Calcutta by his order dated 25.7.2023 was pleased to observe as follows:

“To be heard by the Hon'ble Justice Tirthankar Ghosh having determination to hear application under Section 482 Cr.P.C.”

This Court thereafter sought clarification from the E.D. as to whether they intend to move the Hon'ble Supreme Court against the Administrative Order/Assignment Order dated 25.7.2023 passed by the Hon'ble the Chief Justice, High Court, Calcutta and submit written instruction and then, this Court, would proceed with the hearing of the application under Section 482 Cr.P.C.

Accordingly, a written instruction was submitted by the investigating officer of the case dated 02.08.2023 that they have been advised not to challenge the Administrative order of the Hon'ble The Chief Justice, High Court, Calcutta.

The application thereafter was taken up for hearing/final disposal on and from 03.08.2023.

Dr. Singhvi initially drew the attention of this Court to the relevant documents and paragraph of the application which referred to various instances when the petitioner and his relatives were forced to face inconvenience by the Central Investigating Agencies. It was submitted that the petitioner and his family members have been at the receiving end of various mala fide acts perpetrated by Central Government agencies including the opposite party herein (ED), CBI and others. The petitioner and his family members have been targeted only because the petitioner is a member of AITC, which is the ruling party in the State of West Bengal. The attempts made by the central investigating agencies to repeatedly attack and badger the petitioner and his family is part of a nefarious design undertaken by the Central Government to destabilize and subvert the democratically elected government in the State of West Bengal. The petitioner and his family are victims of a political vendetta, with the sole intention to harass them for oblique purposes.

The Learned Senior Advocate relied upon certain instances which are summarised as follows:

Sl.	Date	Particulars of Incident
1.	March, 2019	INSTANCE 1: Petitioner's wife and sister-in-law were detained in Kolkata by Customs Officials.
2.	March, 2019	INSTANCE 2: Petitioner's wife threatened with cancellation of her OCI Card.
3.	February, 2021	INSTANCE 3: Petitioner's wife and Sister-in-law

		summoned by CBI in coal scam matter.
4.	September 2021	INSTANCE 4: Movement of petitioner's wife monitored by Central Investigating Agency.
5.	July 2021	INSTANCE 5: Petitioner and his close aides' phones were targeted by Pegasus spyware.
6.	August 2021	INSTANCE 6: Petitioner and his wife summoned to appear in New Delhi by ED, while cause of action for investigation arose in West Bengal.
7.	September 2021	INSTANCE 7: Petitioner's personal secretary summoned by ED in New Delhi in coal scam.
8.	June 2022	INSTANCE 8: Petitioner and his wife prohibited from travelling abroad seeking medical treatment.
9.	February – April 2021	INSTANCE 9: Sensitive information about investigation leaked to media by Central Investigating Agency targeting the petitioner.
10.	July 2022	INSTANCE 10: Petitioner's sister-in-law summoned by ED to appear at New Delhi.
11.	September 2022	INSTANCE 11: Petitioner's sister-in-law detained at Kolkata Airport and prohibited from travelling abroad.
12.	June 2023	INSTANCE 12: Petitioner's wife and minor children detained at Kolkata Airport and prohibited from travelling abroad.

Dr. Singhvi, Learned Senior Advocate submitted that the petitioner has been dragged under the ambit of WPA 9979 of 2022, which has been colloquially referred to as "Teachers Recruitment Scam". It was submitted that on 29.3.2023 petitioner delivered a speech in a public meeting, wherein he alleged that the Central Investigating Agency had previously pressurised people to implicate him in pending cases and an application being CAN 1 of

2023 was taken out in WPA 9979 of 2023 (Soumen Nandy –Vs- State of West Bengal), wherein it was alleged that the accused named Kuntal Ghosh in the aforesaid scam alleged that he had to face custodial torture to wrongly implicate the petitioner. The said application was preferred before the Hon'ble Justice Abhijit Gangopadhyay, who directed that *“all the aspects which have been indicated above including the public speech of one Abhishek Banerjee should also not be outside the investigation of CBI and if necessary by E.D.”*

Aggrieved by the said order the petitioner preferred SLP being SLP (C) Diary No. 15883 dated 2023 titled as Abhishek Banerjee –Vs- Soumen Nandy and Ors.

After hearing the parties, the Hon'ble Apex Court disposed of the aforesaid SLP, *vide* order dated 28.4.2023 with a direction upon the then Acting Chief Justice, High Court, Calcutta to reassign WPA 9979 of 2022 to another Bench and further gave liberty to the petitioner to file relevant application before the Assignee Judge. The petitioner filed two applications being CAN 5 of 2023 and CAN 6 of 2023 in WPA 9979 of 2022 in terms of the order dated 28.4.2023 passed by the Hon'ble Apex Court praying for intervention and recalling of the order dated 13.4.2023. *Vide* order dated 18.5.2023, the Hon'ble Justice Amrita Sinha dismissed the petitioner's applications and imposed exemplary cost of Rs.25 lakhs upon the petitioner.

The said order dated 18.5.2023 was challenged before the Hon'ble Supreme Court in SLP(C) 11588-11589/2023, and by order dated 10.7.2023 the Hon'ble Apex Court was pleased to dispose of the SLP by setting aside

the cost of Rs. 25 lakhs imposed by the Hon'ble Single Judge granting liberty to the petitioner to take recourse before the Hon'ble High Court, Calcutta including filing petition under Section 482 of the Cr.P.C.

It was submitted that pursuant to the order dated 18.5.2023, the petitioner was summoned by the CBI at its office at Calcutta on 20.5.2023 by serving 24 hours notice. The petitioner at the relevant point of time was involved in a political rally throughout the State and in the midst of the same, the petitioner had to return to Calcutta.

The petitioner made himself available for examination before the CBI office on 20.5.2023. The petitioner thereafter resumed his State wide rally when he was served with another summon on 8.6.2023 by the E.D. to provide voluminous information and documents, which included documents, dated back to 2012 and had nothing to do with the petitioner's speech and his association with Kuntal Ghosh.

Vide letter dated 13.6.2023 the petitioner responded to the summons issued by the E.D. thereby seeking clarification regarding the scope and purport of investigation and deliver time to compile the voluminous information of the documents sought by the agency. The E.D. *vide* its letter dated 14.6.23 responded by stating that summons dated 8.6.2023 was issued for enquiry into the money laundering trail and proceeds of crime generated in the Primary Teachers Recruitment Scam under the PMLA Act, 2002.

Subsequently, *vide* letter dated 26.6.2023, the petitioner intended to cooperate with the investigation submitted information and documents and made it clear that the E.D. travelled beyond the scope of the order passed on 13.4.2023.

It has been contended that the petitioner was never named as an accused in the predicate offence being RC 0102022A0006 dated 9.6.2022 registered under Sections 7/7A/8 of the Prevention of Corruption Act and Sections 120B/420/467/468/506/34 of the IPC by the CBI, ECB, Calcutta, which is investigating the Teachers' Recruitment Scam of the Primary Education Board in the State of West Bengal.

Dr. Singhvi reiterated that the Hon'ble Supreme Court granted liberty to the petitioner to exercise his rights under Section 482 of the Cr.P.C., against the overzealousness showcased by the opposite party towards the petitioner. It was urged that the act of giving a public speech and its alleged link to Kuntal Ghosh's complaint has no nexus to the offence of money laundering or proceeds of crime. The E.D.'s investigation is based on guess work, surmises, illusory assumptions and speculations and the same is evident from the fishing and roving investigation it is conducting by seeking documents relating as far back as 2012 that too only after Hon'ble High Court *vide* order dated 13.04.2023 directed the Opposite Party to investigate the aspect of the political speech delivered by the petitioner with respect to the complaint of custodial torture filed by one Kuntal Ghosh against the Opposite Party. As such Learned Senior Advocate submits that the

purported investigation under PMLA against the petitioner is without any cogent reason or basis.

So far as the dictum of the Hon'ble Supreme Court in *Vijay Madanlal Choudhury & Ors. –Vs- Union of India*, according to the petitioner, only when there is a predicate offence, then, there will be an ECIR and subsequent investigation is maintainable. In the instant case on 13.4.2023, there was no predicate offence allegedly or otherwise against the petitioner, which, therefore, nullifies the purported investigation carried out by the E.D. vis-vis the petitioner.

In *Parvati Kollur –vs- Directorate of Enforcement*, the Hon'ble Supreme Court has held that a person cannot be prosecuted under PMLA Act on any notional basis on the assumption that a scheduled offence has been committed unless a predicate case is registered. It was submitted that considering the facts and circumstances of the instant case as on 13.4.2023 neither there was any complaint registered against the petitioner nor there was any pending enquiry or trial. It was further contended that a Joint reading of Section 2(u) and Section 3 of PMLA Act requires a person to be directly or indirectly involved with proceeds of crime. In the instant case, the petitioner's act of giving public speech has no relevance with any financial transaction/scam/proceeds of crime. Thus, the ED do not have any materials against the petitioner to indicate that there is any alleged money trail leading to the petitioner herein, which justifies the petitioner's stand that the entire investigation reeks of malice and has been initiated with oblique motives.

The learned senior advocate submits that not only in the instant case, but taking into account other surrounding facts and circumstances, it would reflect that opposite party is proceeding against the petitioner with manifest malafides and to that effect assigns the following reasons :

- (a) The CBI and the ED have been investigating the alleged Teachers Recruitment Scam since June 2022. However, suddenly after the order dated 13.04.2023, there has been a sudden requirement of the opposite party to investigate the petitioner.
- (b) The petitioner is not named as an accused by the CBI in – (i) the alleged predicate offence being RC0102022A0006 or in (ii) any of their chargesheet/supplementary chargesheet till date.
- (c) The petitioner is not named as an accused in – (i) ECIR registered by opposite party, or in (ii) their prosecution complaint or in (iii) their supplementary chargesheet.
- (d) The information/documents sought for by the opposite party vide its summons had no connection with the limited scope of investigation directed vide order dated 13.04.2023 passed by the Hon'ble High Court at Calcutta.
- (e) The opposite party has itself admitted that it has travelled beyond the spirit and purport of the order dated 13.04.2023 passed by the Hon'ble High Court at Calcutta by stating that the summons issued on 08.06.2023 was for enquiry into the money trail of proceeds of crimes generated in the primary teacher recruitment scam under the provisions of the Prevention of Money Laundering Act, 2002.

- (f) Numerous instances of malafide acts against the petitioner, his family and associates by the Central Government through various agencies have been demonstrated as stated earlier.

It was submitted that on a bare perusal of the facts and circumstances, it would be evident that the petitioner is aggrieved by the persistent harassment by the Central Investigating agencies i.e. CBI and ED and continued attempt to implicate the petitioner in the Teacher's Recruitment Scam for political reasons. It was submitted further, that the summons issued under Section 50 of the PMLA during an investigation must have a basis which indicates a connection between the person summoned and the ongoing investigation. The ED submitted several reports in the Hon'ble High Court about its ongoing investigation and also before the Hon'ble Supreme Court in matters pertaining to the alleged education scam coupled with subsequent chargesheets filed in the matter and there has been no mention about the petitioner. However, immediately after the order dated 13.04.2023 and 18.05.2023 was passed by the Hon'ble High Court, the petitioner received the first summons on 08.06.2023 which according to the petitioner, is clearly in furtherance of the High Court order.

It was submitted that the clarification by the ED that the petitioner is not called pursuant to the High Court's order but in course of the ongoing investigation, is merely an afterthought for the purposes of implicating the petitioner in the alleged scam without there being any material to show that the petitioner is privy to any information or evidence relating to the proceeds of crime.

It was submitted that the Central Agencies are being misused by the Central Government to specifically target and harass the petitioner and his family members as they belong to an opposition political party.

Learned senior advocate in order to substantiate his argument relied upon the following decisions:

Reference was made to Vijay Madanlal Chaudhary Vs. Union of India, reported in 2022 SCC Online 929, paragraphs 253 and 283 which have been relied upon are as follows:

“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 inquiry 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 (scheduled 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.

283. *Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.”*

Attention was drawn to paragraphs 7 and 9 of Parvati Kollur Vs. Directorate of Enforcement, reported in 2022 SCC Online SC 1975, which are as follows:

“7. Learned counsel for the appellants has contended that the issue as involved in this matter is no more res integra, particularly for the view taken by a 3-Judge Bench of this Court in the case of Vijay Madanlal Choudhary v. Union of India decided on 27.07.2022 where, the consequence of failure of prosecution for the scheduled offence has been clearly provided in the following terms:

“187.(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of

competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.”

9. *The result of the discussion aforesaid is that the view as taken by the Trial Court in this matter had been a justified view of the matter and the High Court was not right in setting aside the discharge order despite the fact that the accused No. 1 had already been acquitted in relation to the scheduled offence and the present appellants were not accused of any scheduled offence.*

Attention of the Court was drawn to State of Haryana Vs. Bhajan Lal, reported in 1992 Suppl (1) SCC 335, paragraph 102, with emphasis on subparagraphs (3) and (7) which held as follows:

“102.

(3) *Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*

.....

(7) *Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”*

In State of Punjab Vs. Davinder Pal Singh Bhullar, reported in (2011) 14 SCC 770 reference was made to, paragraph 107 which states:

“107. *It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential*

proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublato fundamento cadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.”

Petitioner referred to Vineet Kumar -Vs. - State of U.P. reported in (2017) 13 SCC 369, in order to substantiate its stand and relied upon the following paragraphs:

“22. *Before we enter into the facts of the present case it is necessary to consider the ambit and scope of jurisdiction under Section 482 CrPC vested in the High Court. Section 482 CrPC saves the inherent power of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice.*

23. *This Court time and again has examined the scope of jurisdiction of the High Court under Section 482 CrPC and laid down several principles which govern the exercise of jurisdiction of the High Court under Section 482 CrPC. A three-Judge Bench of this Court in State of Karnataka v. L. Muniswamy [State of Karnataka v. L. Muniswamy, (1977) 2 SCC 699 : 1977 SCC (Cri) 404] held that the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. In para 7 of the judgment, the following has been stated: (SCC p. 703)*

“7. *... In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's*

inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice. The ends of justice are higher than the ends of mere law though justice has got to be administered according to laws made by the legislature. The compelling necessity for making these observations is that without a proper realisation of the object and purpose of the provision which seeks to save the inherent powers of the High Court to do justice, between the State and its subjects, it would be impossible to appreciate the width and contours of that salient jurisdiction.”

24. *The judgment of this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] has elaborately considered the scope and ambit of Section 482 CrPC. Although in the above case this Court was considering the power of the High Court to quash the entire criminal proceeding including the FIR, the case arose out of an FIR registered under Sections 161, 165 IPC and Section 5(2) of the Prevention of Corruption Act, 1947. This Court elaborately considered the scope of Section 482 CrPC/Article 226 of the Constitution in the context of quashing the proceedings in criminal investigation. After noticing various earlier pronouncements of this Court, this Court enumerated certain categories of cases by way of illustration where power under Section 482 CrPC can be exercised to prevent abuse of the process of the Court or secure the ends of justice.*

26. *A three-Judge Bench in State of Karnataka v. M. Devendrappa [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] had the occasion to consider the ambit of*

Section 482 CrPC. By analysing the scope of Section 482 CrPC, this Court laid down that authority of the Court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice the Court has power to prevent abuse. It further held that Court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. The following was laid down in para 6: (SCC p. 94)

“6. ... All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what

the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.”

27. *Further in para 8 the following was stated: (Devendrappa case [State of Karnataka v. M. Devendrappa, (2002) 3 SCC 89 : 2002 SCC (Cri) 539] , SCC p. 95)*

“8. ... Judicial process should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death. The scope of exercise of power under Section 482 of the Code and the categories of cases where the High Court may exercise its power under it relating to cognizable offences to prevent abuse of process of any court or otherwise to secure the ends of justice were set out in some detail by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] .”

41. *Inherent power given to the High Court under Section 482 CrPC is with the purpose and object of advancement of justice. In case solemn process of Court is sought to be abused by a person with some oblique motive, the Court has to thwart the attempt at the very threshold. The Court cannot permit a prosecution to go on if the case falls in one of the categories as illustratively enumerated by this Court in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426] . Judicial process is a solemn proceeding which cannot be allowed to be converted into an instrument of operation or harassment. When there are materials to indicate that a criminal proceeding is manifestly attended with*

mala fide and proceeding is maliciously instituted with an ulterior motive, the High Court will not hesitate in exercise of its jurisdiction under Section 482 CrPC to quash the proceeding under Category 7 as enumerated in State of Haryana v. Bhajan Lal....”

Reliance was placed on Haji Iqbal alias Bala Through S.P.O.A. –Vs. – State of U.P. & Ors. Reported in 2023 SCC OnLine SC 946 and the attention of the Court was drawn to the following paragraphs:

“15. *At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while*

exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

16. *In State of Andhra Pradesh v. Golconda Linga Swamy, (2004) 6 SCC 522, a two-Judge Bench of this Court elaborated on the types of materials the High Court can assess to quash an FIR. The Court drew a fine distinction between consideration of materials that were tendered as evidence and appreciation of such evidence. Only such material that manifestly fails to prove the accusation in the FIR can be considered for quashing an FIR. The Court held:—*

“5. ...Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent such abuse. It would be an abuse of the process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation or continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto.

6. In *R.P. Kapur v. State of Punjab*, AIR 1960 SC 866 : 1960 Cri LJ 1239, this Court summarised some categories of cases where inherent power can and should be exercised to quash the proceedings : (AIR p. 869, para 6)

(i) where it manifestly appears that there is a legal bar against the institution or continuance e.g. want of sanction;

(ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

7. In dealing with the last category, it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is clearly inconsistent with the accusations made, and a case where there is legal evidence which, on appreciation, may or may not support the accusations. When exercising jurisdiction under Section 482 of the Code, the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is the function of the trial Judge. Judicial process, no doubt should not be an instrument of oppression, or, needless harassment. Court should be circumspect and judicious in exercising discretion and should take all relevant facts and circumstances into consideration before issuing process, lest it would be an instrument in the hands of a private complainant to unleash vendetta to harass any person needlessly. At the same time the section is not an instrument handed over to an accused to short-circuit a prosecution and bring about its sudden death.....”

Dr. Singhvi also emphasized on Mahmood Ali & Ors. –Vs. – State of U.P. & Ors. Reported in 2023 SCC OnLine SC 950 wherein reliance was placed in the case of Bhajan Lal (supra) and the principles referred to in Haji Iqbal (supra) was reiterated.

Learned Senior Advocate for the petitioner referred to Neeharika Infrastructure Pvt. Ltd. –Vs.- State of Maharashtra & Ors. reported in 2021 SCC OnLine SC 315 to demonstrate the extent of powers vested in the High Court under Section 482 of Cr.P.C.

While concluding his arguments on behalf of the petitioner learned Senior Advocate submitted that the petitioner is constrained to prefer the present petition under Section 482 of the Code of Criminal Procedure, 1973, to challenge the unfair and biased investigation that is being conducted by the Directorate of Enforcement i.e. the opposite party, as against the petitioner herein and if the same is allowed to continue, it would amount to grave miscarriage of justice and prejudice the petitioner in respect of the fishing and roving enquiry and malicious proceeding conducted by the E.D.

Mr. S. V. Raju, learned Additional Solicitor General appearing for the Enforcement Directorate opposed the contention advanced on behalf of the petitioner. He commenced his argument on the issue relating to the maintainability of the application and the prayers so advanced therein. Before proceeding with the issues relating to law as canvased by the learned Additional Solicitor General, the factual matrix which was summarised in the written notes of arguments filed by him is set out as follows:

“That the Petitioner Abhishek Banerjee was summoned on 08.06.2023 in the Primary Teachers Recruitment Scam (ECIR/KLZO-II/19/2022 dated 24.06.2022) for his appearance on 13.06.2023. The ED recorded the ECIR in the matter on the basis of the CBI FIR RC 06 of 2022 dated 09.06.2022 for illegalities and irregularities in the selection and appointment of primary teachers. The said selection and appointment of teachers was done on the basis of Teachers Eligibility Test (TET- 2014) exam. That the investigation into this scam started only with the registration of the FIR by CBI ACB Kolkata and thereafter recording of ECIR by the ED for investigation into the offence of money laundering.

During the course of the investigation of this case under PMLA, a Prosecution Complaint against 8 accused persons including Shri Partha Chatterjee and Ms. Arpita Mukherjee was filed on 19.09.2022 before the Hon'ble Special Court (PMLA), Calcutta. Further, the 1st Supplementary Prosecution Complaint against 6 accused persons and entities including Shri Manik Bhattacharya, MLA and the Ex-President of the West Bengal Board of Primary Education, Shri Tapas Kumar Mondal and others was filed in the Teachers Recruitment Scam in West Bengal before the Hon'ble Special Court (PMLA), Calcutta on 07.12.2022. The 2nd Supplementary Prosecution Complaint in the case has been filed on 21.03.2023 against Kuntal Ghosh and the 3rd Supplementary Prosecution Complaint was filed on 08.05.2023 against Shri Shantanu Banerjee and Shri Ayan Sil amongst others. That 4th supplementary Prosecution Complaint dated 28.07.2023 has also been filed against Shri Sujay Krishna Bhadra and others. The Hon'ble Special Court, Calcutta has taken cognizance of the Prosecution Complaint as well as all the Supplementary Prosecution Complaints after finding that a prime-facie case has been made out against the accused persons.

It is further submitted that 1 (one) Prosecution Complaint 4 Supplementary Prosecution Complaints have already been filed arraying a total 25 accused out of which 9 are individual persons in relation to the offence of money laundering under investigation (in connection with which petitioner's presence was sought) and the competent Court has also taken cognizance of the offence and summoned the concerned accused persons. Therefore, there is no occasion of quashing an ECIR once the complaint has been filed and matter is under further investigation in terms of Section 44 Explanation (ii) of PMLA.

In the instant case, cash amounting to a total of Rs. 49.80 Crore and gold & jewellery valued at more than Rs. 5.08 Crore has already been seized from Ms. Arpita Mukherjee, a close associate of Shri Partha Chatterjee. The ED has also provisionally attached properties worth Rs. 71.18 Crores in this recruitment scam by way of issuance of 3 Provisional Attachment Orders (PAOs) so far in addition to the cash and gold seizure. The total seizure and attachment in the case stands at Rs. 126 Crore (approx.).

The investigation against accused Sujay Krishna Bhadra revealed that he was looking after the finance related matters of Shri Abhishek Banerjee and that there are dubious financial transactions between both of them through companies/firms controlled by accused Sujay Krishna Bhadra. Thus, it is in this context and background that the petitioner Abhishek Banerjee was summoned by the ED for appearance on 13.06.2023 by way of summons dated 08.06.2023.

The petitioner has prayed for getting the proceedings of ECIR/KLZO-II/19/2022 under section 3 and 4 of PMLA and the summons dated 08.06.2023 issued to him for appearing before the ED on 13.06.2023 in so far as it relates to him quashed. It is pertinent to mention that Petitioner did not comply with the summons and had

instead sought to know the scope and purport of the investigation conducted by ED vide his letter dated 13.06.2023. The Petitioner was informed vide letter dated 14.06.2023 that the summons was issued for making inquiry into the money trail of proceeds of crime generated in the Primary Teachers Recruitment Scam under the provisions of PMLA.

The matter was first taken up on 20.07.2023 by the Hon'ble High Court of Calcutta wherein it has been observed that the documents are to be placed before the court for assessment in respect of materials appearing against the petitioner. In this respect, attention of the Hon'ble High Court of Calcutta was invited towards the copy of the 4th Supplementary Prosecution Complaint dated 28.07.2023 filed by the ED against Sujay Krishna Bhadra and other before the Ld. Special Court (PMLA).

It is pertinent to mention that the present matter has already travelled to the Hon'ble Supreme Court wherein the instant petitioner had challenged the order dated 18.05.2023 of the Hon 'ble High Court of Calcutta passed in CAN 5 & CAN 6 in WPA No. 9979 of 2022 in the matter of Soumen Nandy Vs State of West Bengal & Ors. The Hon'ble Supreme Court in SLP (C) No 11588-11589/2023 had disposed of the said matter by refusing to interfere with the order dated 18.05.2023 of the Hon'ble High Court of Calcutta since the consequence of doing so would be to stifle the investigation at the incipient stage. The grounds taken by the Petitioner in the instant CRR application are similar to the grounds put forth by him before the Hon'ble Supreme Court of India.

That the Petitioner has merely tried to confuse and mislead the Hon'ble High Court by mixing facts from the investigation being conducted against him in the Coal smuggling scam by the ED and CBI. The Petitioner has also cited some incidents of purported harassment by the Central Government, however, the same are

completely immaterial and irrelevant to the present case being investigated by ED Kolkata Zonal Office-II in ECIR/KLZO-II/19/2022 (Primary Teachers Recruitment Scam).

The Petitioner has appeared only once before the 10 in the Primary Teachers Recruitment Scam on 13.09.2023 after getting a verbal assurance from ED during the course of proceeding before this Hon'ble High Court that no coercive steps will be taken against him pending adjudication of the instant criminal revision application. The Petitioner has only tried to avoid the investigation at any cost by filing various applications before the courts. The Petitioner was summoned on 08.06.2023 to appear on 13.06.2023 along with documents, however, the petitioner decided not to appear on the said date on the grounds on being busy with campaigning for the Panchayat elections in the state of West Bengal. It is pertinent to mention that the petitioner has not even submitted complete documents as has been claimed by him in the CRR application. The Petitioner has submitted incomplete documents vide his letter dated 26.06.2023 to the ED Kolkata.

That the Petitioner although assured of his cooperation in the investigation vide his letter dated 14.06.2023, however, he did not appear before the ED in compliance of the summons dated 08.06.2023. The Petitioner earlier defied the summons on the pretext of a purported Yatra being undertaken by him to connect with the masses of West Bengal and the Panchayat elections which got over on 08.07.2023. Thereafter, the Petitioner left for USA from 26.07.2023 to 20.08.2023 for a post-surgery medical review. It appears that the Petitioner is hellbent on not cooperating with the investigation and is merely finding ways to avoid facing the investigation in the biggest scam of West Bengal in terms of candidates being fleeced and cheated by politicians and their agents. It appears that the Petitioner wants to fix the date, time, venue and the manner of investigation as per his convenience. The

said actions of the Petitioner are completely contrary to the judgement of the Hon'ble Supreme Court in the case of Dukhishyam Benupani, AD, ED (FERA) Vs. Arun Kumar Bajoria in Appeal (Crl) 1116 of 1997 wherein it has been held that it must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in offences.

That it is also pertinent to mention that the accused Shri Sujay Krishna Bhadra having a close financial association with the Petitioner Abhishek Banerjee is also trying his best to somehow avoid and scuttle the investigation. In this regard, it is informed that the accused Shri Sujay Krishna Bhadra was to be interrogated in Judicial Custody under the orders of the Hon'ble Special Court under PMLA on 27.06.2023, however, the same could not be done as the wife of the accused passed away in the early hours of 27.06.2023. Thereafter, the accused was granted a parole of 3 days by the Jail authorities under the West Bengal Jail Code. The accused contemporaneously on 27.06.2023 filed a bail application before the Hon'ble High Court at Calcutta on the grounds of passing away of his wife, however, the same was listed for 30.06.2023. On 30.06.2023, the Hon'ble High Court granted 16 days of parole ending on 17.07.2023 to the accused Sujay Krishna Bhadra.

That the accused was handed over to the Presidency Correctional Home Jail authorities on the morning of 17.07.2023, however, the accused immediately complained of some illness, and he was readily admitted to the state government run SSKM hospital. The accused continues to remain in Hospital till date and the IO has not been able to further interrogate him resulting into stalling of investigation. It is pertinent to mention that the accused Sujay Krishna Bhadra, in the interim, got admitted in BM Birla Heart Research Centre, Kolkata for his surgery after the order of the Hon'ble High Court. The said order was passed by the Hon'ble High

Court of Calcutta after concurrence on this aspect was given by a medical board constituted by ED.

That the ED had also prayed for getting the voice sample of accused Sujay Krishna Bhadra before the Ld. Special Court (PMLA) and the same was allowed by the Special Court vide order dated 14.07.2023 preferably within 3 days of the parole ending on 17.07.2023. The ED tried to obtain the voice sample of the accused Sujay Krishna Bhadra on 18.07.2023 with the assistance of CFSL Kolkata but the same could not be done owing to the admission of the accused Sujay Krishna Bhadra in SSKM Hospital, Kolkata. That the entire sequence of events including the filing of the instant CRR by Abhishek Banerjee shows a coordinated and devious attempt on the part of suspects/accused to scuttle the investigation.

That the ED has already submitted 4 reports dated 14.06.2023, 14.07.2023, 29.08.2023 and 14.09.2023 before the bench of Justice Amrita Sinha of the Hon'ble High Court on the progress of investigation in this case. The Hon'ble High Court has directed to submit a further report on 21.09.2023 and submit the details of the M/s Leaps and Bounds Pvt Ltd of which the instant Petitioner is the CEO. The Hon'ble High Court on earlier occasions too had directed to leave no stone unturned to find out the money trail and the beneficiaries.

That a summons under the PMLA is issued for collection of information and evidence. That the persons summoned need not necessarily be prosecuted and it is only after the investigation into the affairs of the persons summoned vis-a-vis the offence of money laundering that a decision regarding their prosecution or otherwise is taken.

That a total of 184 summons have been issued in the Primary Teachers Recruitment Scam so far for collection of information and evidence. That a total of 5 Prosecution Complaints (1 PC and 4

Supplementary PC have been filed in the case so far with 25 persons and entities being made accused. That only 9 persons (individuals) have been prosecuted so far in the case out of the total of more than 100 persons examined. Therefore, the apprehension of the Petitioner and criminal revision in itself is premature at this stage. The Petitioner ought to cooperate with the agency at such an incipient stage of the investigation qua him.

That evidence in the present investigation is emerging on a daily basis. That this is the biggest scam in the history of education department of West Bengal wherein thousands of candidates have been looted and cheated by the agents/middlemen at the behest of the politically powerful including the Ex-Cabinet Minister of Education. That the Petitioner herein is also one of the most powerful politicians of the state of West Bengal wielding enormous clout and influence in the ruling party as well as the state government. That a number of persons are further required to be interrogated by way of issuance of summons in this case and any relief of whatsoever manner will only embolden the perpetrators of the criminal scam to file such premature applications to scuttle the investigation which has brought to light the nefarious activities of the high and mighty of the state of West Bengal.”

Learned Additional Solicitor General submitted that ECIR is merely an internal document and is not even a statutory document. Therefore it cannot be quashed. To that effect, learned ASG drew the attention of the Court to paragraph 457 of *Vijay Madanlal Chaudhary & Ors. Vs. Union of India*, reported in 2022 SCC Online 929. The relevant paragraph is set out as follows :

“457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from

the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.”

It was contended that the prayer for quashing by any person other than an accused named in ECIR/FIR/Complaint is not maintainable. The reliance in this regard was placed in the judgement of the Hon’ble Supreme Court in *Hukum Chand Garg & Anr. Vs. The State of Uttar Pradesh & Ors.*

[order dated 07.02.2022 passed by the Hon'ble Supreme Court in SLP (Crl) 762/2020]. The relevant paragraph is set out as follows :

“It is not in dispute that the petitioners have not been named as accused in the said crime. If the petitioners have not been named as accused in the said crime, the question of quashing of stated FIR or the case now under investigation by the Central Bureau of Investigation (CBI) arising from the said crime, does not arise as the petitioners will have no locus to seek such a relief.

In other words, the petitioners not being named as accused in the said crime or the case now registered by the CBI on the basis of the said crime, cannot be permitted to ask for quashing of the proceedings concerning some other persons (accused).

For the same reason, we do not intend to examine the correctness of the relief claimed under Section 438 of the Criminal Procedure Code at the instance of the petitioners herein.”

On this issue reference was also made to Sanjay Tiwari Vs. State of Uttar Pradesh & Anr. reported in 2020 SCC OnLine SC 1027. The relevant paragraph 11 of the said judgement is set out as follows:

“11. *It is well settled that criminal trial where offences involved are under the Prevention of Corruption Act have to be conducted and concluded at the earliest since the offences under the Prevention of Corruption Act are offences which affect not only the accused but the entire society and administration. It is also well settled that the High Court in appropriate cases can very well under Section 482CrPC or in any other proceeding can always direct the trial court to expedite the criminal trial and issue such order as may be necessary. But the present is a case where proceeding initiated by Respondent 2 does not appear to be a bona fide proceeding. Respondent 2 is in no way connected with initiation of criminal proceeding against the appellant.*

Respondent 2 in his application under Section 482CrPC in para 6 has described him as a social activist and an advocate.”

Reliance was also placed on Janata Dal Vs. H. S. Chowdhary, reported in (1991) 3 SCC 756. The relevant paragraph cited by the Opposite Party is set out as follows :

“26. Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under the garb of public interest litigants.”

At the stage of summons a person do not qualify as a ‘person aggrieved’ and as such the present petition is premature to that effect reliance was placed on Kirit Shrimankar Vs. Union of India & Ors. in WP (Crl.) No. 109/2013, the relevant paragraph of which is set out as follows :

“In the course of hearing of the Writ Petition, we find that the writ petition was premature. The petitioners seek for the prayers as have been couched in the writ petition where the petitioners pray for issuance of mandamus to determine the 1 question of law, as to whether the allegation of commission of offence under Section 135 of the Customs Act, 1962 would construe a bailable offence with further directions to comply with Sections 154, 155 and 157 of the Code of Criminal Procedure to investigate a cognizable/non-cognizable offence, if any, under Section 135 of the Customs Act. In fact, when we perused the averments contained in the Writ Petition the provocation for the petitioner to file this writ petition was the so-called search conducted in the residential premises of the petitioner's ex-wife on 11.06.2013, who was residing at C-103, Gokul Divine, James Wadi, Irla, Ville

Parle (West), Mumbai-400 056 and nothing incriminating was detected in the said search. It was further averred therein that the Officers threatened that the petitioner would be arrested, incarcerated in jail and would face dire consequence if he would not submit to their dictates. On that basis the writ petition came to be filed in this Court under Article 32 of the Constitution of India. We, therefore, expressed that it was highly premature for the petitioner to seek for extraordinary constitutional remedy under Article 32 of the Constitution of India based on such flimsy averments contained in the writ petition, inasmuch as such averments cannot form the basis for a prima facie apprehension of arrest. We, therefore, also expressed that the writ petition does not merit any consideration to be dealt with on the various issues raised, inasmuch as it will be for the petitioner to work out his remedy as and when any appropriate positive action is taken against the petitioner. In the course of hearing, learned Senior Counsel appearing for the petitioner now seeks to withdraw the writ petition reserving petitioner's liberty to work out his remedy in future, if any such situation arises.”

Reference was made to Commissioner of Customs, Calcutta & Ors. Vs. M/s M.M. Exports & Anr. reported in (2010) 15 SCC 647, the relevant paragraph referred by the Opposite party is set out as follows :

“1. *By consent the impugned order [M.M. Exports v. Zonal Director General of Foreign Trade, (2001) 3 Cal LT 12] is set aside. However, we wish to make it clear that as far as possible the High Court should not interfere at the stage when the Department has issued the summons. This is not one of those exceptional cases where the High Court should have interfered at the stage of issuance of the summons. It may be mentioned that all other questions on merits are expressly kept open. We have not examined the merits of the*

case. The Department is entitled to proceed in accordance with law. The appeals are accordingly disposed of.”

Reliance was placed on C.M. Raveendran Vs. Union of India reported in 2020 SCC OnLine Ker 7555, the relevant paragraph of which is set out as follows :

“6. I find substantial force in the preliminary objection regarding maintainability raised by the learned ASG. Exhibit P11 summons is issued under Section 50(2) of the Act. A person issued with summons is bound to attend in person or through authorised agents, as the officer issuing the summons directs, and is bound to state the truth upon any subject respecting which he is examined or makes statements and to produce such documents as may be required. As held by the Apex Court in Kirit Shrimankar, no cause of action arises merely for reason of a person being called upon to state the truth or to make statements and produce documents. I am unable to accept the submission of the learned counsel for the petitioner that the cause of action is based on the repeated summoning of the petitioner in spite of his illness, which gave rise to the reasonable apprehension that the petitioner will be forced to give statements against his will. I find no basis for such apprehension inasmuch as the date for appearance was changed by the 2nd respondent on three occasions, acceding to the request made by the petitioner. Having commenced an investigation or proceeding, the 2nd respondent cannot be expected to wait indefinitely to suit the petitioner's convenience. As held by the Apex Court in Dukhishyam Benupani, it is not for this Court to monitor the investigation and to decide the venue, the timings, the questions and the manner of questioning.....”

Learned Additional Solicitor General also relied upon paragraph 143 of the judgement of Virbhadr Singh Vs. Enforcement Directorate reported

in 2017 SCC OnLine Del 8930, the relevant paragraph of which is as follows
:

“143.... *The powers conferred on the Enforcement Officers for the purpose of complete and effective investigation include the power to summon and examine "any person". The law declares that every such person who is summoned is bound to state the truth. At the time of such investigative process, the person summoned is not an accused. Mere recording of ECIR by giving a file number does not make a person an accused. Therefore, the present Petitions are highly premature and it is well-settled that the Courts do not interdict the powers of investigating agencies conferred upon them by the statutes...."*

Reliance was also placed on Raghav Bahl Vs. Enforcement Directorate wherein in the order dated 23.01.2023 in W.P. (Crl) 2392/2021, the Hon'ble Delhi High Court was pleased to hold as follows:

11. *In the present case, I am of the view that the petition itself is premature.*

12. *The petitioner is seeking quashing of ECIR and according to the Supreme Court in „Kirit Shrimankar vs U.O.I" in W.P.(Crl) 109/2013 has held that a writ remedy on account of issuance of summons at the stage of investigation/enquiry is highly premature.*

14. *There is no violation of any fundamental right or even legal right of the petitioner warranting interference of this Hon'ble Court at the stage of summons. Reliance is placed on „Virbhadr Singh & Anr. vs. Directorate of Enforcement & Anr." 2017 SCC OnLine Del 8930.....*

16. Hence, the prayer for quashing of the ECIR, is premature and is hereby rejected.”

It was further submitted that at the stage of summons, an application for anticipatory bail is also not maintainable and to that effect the observations of the Hon’ble Supreme Court in SLP (Crl.) 4212 of 2019 titled State of Gujarat vs. Choodamani Pareshwaran Iyer was referred to which is as follows :

“16. Thus, the position of law is that if any person is summoned under Section 69 of the CGST Act, 2017 for the purpose of recording of his statement, the provisions of Section 438 of Criminal Procedure Code, 1908 cannot be invoked. We say so as no First Information Report gets registered before the power of 7 arrest under Section 69(1) of the CGST Act, 2017 is invoked and in such circumstances, the person summoned cannot invoke Section 438 of the Code of Criminal Procedure for anticipatory bail. The only way a person summoned can seek protection against the pre-trial arrest is to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India. Undoubtedly, this is exactly what the respondents did in the present case. What the respondents sought by filing two criminal applications under Article 226 of the Constitution before the High Court was the direction to the appellant herein not to arrest them in exercise of the power conferred by Section 69(1) of the GST Act, 2017. This, in essence, is key to prayer for anticipatory bail. However, as we have explained aforesaid, at the stage of summons, the person summoned cannot invoke Section 438 of the Code of Criminal Procedure.”

Additionally, it was submitted that in the present case also the Hon'ble Supreme Court has observed that the investigation being at the incipient stage cannot be stultified.

Learned Additional Solicitor General contended that the Investigating Agency has independent powers of enquiry/investigation which is not dependent on any court orders.

Reliance was also placed on State of Bihar vs. J.A.C Saldanha reported in (1980) 1 SCC 554 wherein it was held as follows:-

“19. The power of the Magistrate under Section 156(3) to direct further investigation is clearly an independent power and does not stand in conflict with the power of the State Government as spelt out hereinbefore. The power conferred upon the Magistrate under Section 156(3) can be exercised by the Magistrate even after submission of a report by the investigating officer which would mean that it would be open to the Magistrate not to accept the conclusion of the investigating officer and direct further investigation. This provision does not in any way affect the power of the investigating officer to further investigate the case even after submission of the report as provided in Section 173(8). Therefore, the High Court was in error in holding that the State Government in exercise of the power of superintendence under Section 3 of the Act lacked the power to direct further investigation into the case. In reaching this conclusion we have kept out of consideration the provision contained in Section 156(2) that an investigation by an officer in charge of a police station, which expression includes police officer superior in rank to such officer, cannot be questioned on the ground that such investigating officer had no jurisdiction to carry on the

investigation; otherwise that provision would have been a short answer to the contention raised on behalf of Respondent 1.

27. Some attempt was made to impress us with utterly irrelevant factors as to how much freight TISCO is paying to the Railways every year and even the amount which may become payable in view of the disputed facts was also paid some time prior to the filing of the first information report. We would refrain from making even an implied observation on any facts involved in the dispute. The case is not at a stage where the Court is called upon to quash the proceedings as disclosing no offence but the case is at a stage where further investigation into the offence is sought to be thwarted by interference in exercise of the extraordinary jurisdiction. Apart from reiterating the caution administered way back in Khwaja Nazir Ahmad case [AIR 1944 PC 18 : 1944 LR 71 IA 203, 213] that unless an extraordinary case of gross abuse of power is made out by those in charge of investigation as noted in S.M. Sharma v. Bipen Kumar Tiwari [(1970) 1 SCC 653, 657 : 1970 SCC (Cri) 258 : (1970) 3 SCR 946] the Court should be quite loath to interfere at the stage of investigation, a field of activity reserved for police and the executive....”

It was submitted that the petitioner has not appeared once before the Investigating Officer in the primary recruitment scam and has only tried to avoid the investigation at any cost by filing various applications before the courts. The petitioner was last summoned on 08.06.2023 to appear on 13.06.2023 along with the documents. However the petitioner decided not to appear on the said date on the grounds on being busy with campaigning for the Panchayat elections in the State of West Bengal. It was stated that the petitioner did not even submit complete documents as has been claimed

by him in the revisional application. The documents which were submitted on 26.06.2023 before the Office of the Enforcement Directorate at Kolkata was incomplete. The petitioner's action itself speaks that he is not cooperating with the investigating agency and as such after defying the summons on the garb of Panchayat elections and political rally, he left for USA. The action of the petitioner is contrary to the judgement laid down by the Hon'ble Supreme Court in the case of *Dukhishyam Benupani, AD, ED(Fera) Vs. Arun Kumar Bajoria* reported in (1998) 1 SCC 52, the relevant paragraph no.7 as relied upon, is as follows:

“7. It seems rather unusual that when the aggrieved party approached the High Court challenging the order passed by a subordinate court the High Court made the position worse for the aggrieved party. The officials of the Directorate are now enjoined by the Division Bench from arresting the respondent and the time and places for carrying out the interrogations were also fixed by the Division Bench. Such kind of supervision on the enquiry or investigation under a statute is uncalled for. We have no doubt that such type of interference would impede the even course of enquiry or investigation into the serious allegations now pending. For what purpose the Division Bench made such interference with the functions of the statutory authorities, which they are bound to exercise under law, is not discernible from the order under challenge. It is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences. A blanket order fully insulating a person from arrest would make his interrogation a mere ritual,

(vide State rep. by the CBI v. Anil Sharma [(1997) 7 SCC 187 : 1997 SCC (Cri) 1039 : JT (1997) 7 SC 651]).”

It was also submitted that the Hon'ble Supreme Court has deprecated the practice of granting blanket no coercive action orders. To that effect reliance was placed on Union of India vs. Sapna Jain and ors., SLP (Crl) 4322-4324 of 2019; Union of India vs. Padam Narain Aggarwal, (2008) 13 SCC 305; State of Telangana vs. Habib Abdullah Jeelani, (2017) 2 SCC 779; Hema Mishra v. State of U. P, (2014) 4 SCC 453; Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and ors., 2021 SCC OnLine SC 315; the order dated 5.12.2022 passed by the Hon'ble Supreme Court in SLP (Crl) 9092 of 2022 titled as Vijaykumar Gopichand Ramachandani vs. Amar Sadhuran Mulchandani and ors.; The State of Gujarat etc. vs. Choodamani Parmeshwaram Iyer & Anr. etc SLP(Crl) 4212-4213/2023.

The learned Additional Solicitor General on the basis of the aforesaid judgements and issues stressed by submitting that the petitioner is attempting to obtain an order of no coercive action as he is apprehending arrest. However, the grounds so assigned in the application are lacking merits for any interference by this Court.

Mr. Bikash Ranjan Bhattacharya, learned senior Advocate appearing for the affected parties submitted that there has been a recruitment scam which relates to the appointment of teachers. The investigation commenced on the direction passed by a Co-ordinate Bench exercising its powers under Article 226 of the Constitution of India. The said investigation presently is a Court monitored investigation wherein Special Investigating Team has been

constituted to unearth the mode and manner in which ineligible candidates were appointed and successful/competent candidates were denied their rightful claim. It has also been brought to the notice of this Court that the authorities thickly connected with the education system which includes Cabinet Minister, the President of Board of Primary Education, senior functionaries in the education system as also political personalities have been arrested and detained for their involvement in the scam. The investigating authorities are working for unearthing the truth. Additionally it has been submitted that orders are being passed on reports being submitted in WPA 7907 of 2019 with WPA 9979 of 2022. The investigation is still in progress and as such in a case where the provisions have been invoked under Section 482 of Cr.P.C., for ends of justice interference may not be made.

Rebutting the contentions advanced by the learned Additional Solicitor General and the decisions relied upon by him, Dr. Singhvi, learned Senior Advocate for the petitioner submitted that the judgement of *Kirit Shrimankar v. Union of India and ors.* (supra) is distinguishable both on facts and law, as the present application is under Section 482 of the Code of Criminal Procedure and not under Article 32 of the Constitution of India and in the instant case the quashing has been sought for on malicious initiations and continuation which is not limited to the roving enquiry being conducted by the Enforcement Directorate so far as the present petitioner is concerned.

With regard to the reliance in respect of the judgement of the Hon'ble Supreme Court in Commissioner of Customs, Calcutta and ors.(supra) it was submitted on behalf of the petitioner that the case related to a departmental enquiry and in this case the petitioner has challenged not an enquiry but an investigation being carried out. Distinguishing the paragraph relied upon by the Enforcement Directorate in Virbhadra Singh (supra) it was submitted on behalf of the petitioner that the opposite party has conveniently relied only upon paragraph 143 and not upon paragraph 145 which specifically stated that the case before the Hon'ble Supreme Court did not relate to political vendetta which is completely different from the factual circumstances of the case wherein the petitioner has pleaded for initiation of the case on malice and political vendetta.

It was further submitted on behalf of the petitioner that the present application under Section 482 of the Code of Criminal Procedure has been filed after liberty was granted by the Hon'ble Supreme Court by its order dated 10.07.2023 and as such, the issue dealt with in Raghav Bahl (supra) relating to the application being premature is not applicable to the present case. Paragraph 435 in the case of Vijay Madanlal Choudahry and ors. (supra) has clearly demarcated between police officials and Enforcement Directorate officials and, therefore, the judgement of State of Bihar and Anr. vs. J.A.C Saldhana and ors.(supra) which restricts the powers of the police to investigate do not apply in the facts and circumstances of the present case. The judgement of the Hon'ble Supreme Court in Dukhishyam Benupani, Asst. Director, Enforcement Directorate vs. Arun Kumar Bajoria

(supra) relied upon by the Enforcement Directorate was distinguished by the petitioner on the facts that the said case related to anticipatory bail while the present application is being considered under Section 482 of the Code of Criminal Procedure. It was also submitted that there being distinction between the FERA, 1973 and the PMLA, 2002, the ratio set out therein is not applicable to the facts of the present case.

Reference to paragraph 86 in King Emperor vs. Khwaja Nazir Ahmad (supra) was also distinguished by contending that the demarcation between the police officials and Enforcement Directorate Officials have been curved out in the case of Vijay Madanlal Choudhary & ors. (supra) and the same cannot be made applicable in the present case.

Learned advocate for the petitioner also distinguished the judgements of P. Chidambaram vs. Directorate of Enforcement (supra) and Hema Mishra (supra) which related to Section 438 of the Code of Criminal Procedure and submitted that each and every case so relied upon by the Enforcement Directorate are on different set of facts and circumstances and the petitioner having made out a case of its own which do not have its genesis on a predicate offence. The judgment so relied upon by the Enforcement Directorate to substantiate their claim of issuing the summons is against the settled propositions of law and the same is to be ignored in the light of the facts which have been set out by the petitioner herein.

After completing the arguments initially learned ASG intended to add to his arguments the issues relating to malice. It was argued that the E.D.

having material in its possession is entitled to investigate and the proceeding cannot be quashed on grounds of malafide, to this aspect reliance was placed on State of Bihar –Vs. – P.P. Sharma reported in 1992 Supp (1) 222 which is as follows:

“23. *The informant, being in a peculiar position having lodged the accusation, is bound to be looked down upon by the accused persons. The allegations of mala fide, therefore, against the informant based on the facts after the lodging of the FIR are of no consequence and cannot be the basis for quashing the proceedings. As regards the Investigating Officer, he has wide powers under the Criminal Procedure Code. He has to perform his duties with the sole object of investigating the allegations and in the course of the investigation he has to take into consideration the relevant material whether against or in favour of the accused. Simply because the Investigating Officer, while acting bona fide, rules out certain documents as irrelevant, it is no ground to assume that he acted mala fide. The police report submitted by the Investigating Officer has to pass through the judicial scrutiny of a Magistrate at the stage of taking cognisance. Although the accused person has no right to be heard at that stage but in case the accused person has any grouse against the Investigating Officer or with the method of investigation he can bring to the notice of the Magistrate his grievances which can be looked into by the Magistrate. When the police report under Section 173 CrPC has to go through the judicial scrutiny it is not open to the High Court to find fault with the same on the ground that certain documents were not taken into consideration by the Investigating Officer. We do not, therefore, agree with the High Court that the FIR and the investigation is vitiated because of the mala fide on the part of the informant and the Investigating Officer. We may, however, notice the factual matrix on the basis of which the High*

Court has reached the findings of mala fide against the informant and the Investigating Officer.....”

Additionally reliance was placed on State of Maharashtra –Vs. – Ishwar Piraji Kalpatri & Ors. reported in (1996) 1 SCC 542 which is as follows:

“22. *In fact, the question of mala fides in a case like the present is not at all relevant. If the complaint which is made is correct and an offence had been committed which will have to be established in a court of law, it is of no consequence that the complainant was a person who was inimical or that he was guilty of mala fides. If the ingredients which establish the commission of the offence or misconduct exist then, the prosecution cannot fail merely because there was an animus of the complainant or the prosecution against the accused. Allegations of mala fides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides, would be no ground for quashing the prosecution. In the instant case, specific averments of facts have been made whereby it was alleged that the respondent had disproportionately large assets. Mala fide intention of the appellant in launching prosecution against the respondent with a view to punish him cannot be a reason for preventing the court of competent jurisdiction from examining the evidence which may be led before it, for coming to the conclusion whether an offence had been committed or not. Allegations of mala fides were also made in P.P. Sharma case [1992 Supp (1) SCC 222 : 1992 SCC (Cri) 192] against the informer. It was held by this Court that when an information is lodged at the police station and an offence is registered, then the mala fides of the informant would be of secondary importance. It is the material collected during the investigation and evidence led in court which decides the fate of*

the accused person. The allegations of mala fides against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings.”

It has been emphasized on behalf of the E.D. that aforesaid view has been reiterated by the Hon'ble Supreme Court time and again, as also in the judgment of the Hon'ble Supreme Court in *State of Haryana v. Bhajan Lal*, 1992 Supp (1) SCC 335 in relation to quashing on the grounds of mala fides. Reference in this regard was made by drawing the attention of the Court to the decisions in *Monica Kumar (Dr.) v. State of UP*, (2008) 8 SCC 781; *CBI v. Ravi Shankar Srivastava*, (2006) 7 SCC 188; *State of A.P. v. U. Golconda Linga Swamy*, (2004) 6 SCC 522 and *Parkash Singh Badal v. State of Punjab*, (2007) 1 SCC 1 wherein the Hon'ble Supreme Court while noting the observations in *Bhajan Lal (Supra)* has refused to quash proceedings on the ground of mala fides.

Dr. Singhvi in order to refute the contentions advanced on behalf of the E.D. relied upon the following factual circumstances which in a tabular form was placed in his written notes of arguments. The same is set out as follows:

Sl.	Date	INCIDENT OF MALICE IN THE PRESENT INVESTIGATION
1.	March, 2023	INSTANCE 1: One of the accused in the alleged teacher recruitment scam, being Kuntal Ghosh, had lodged complaints before the Special Court, CBI, Alipore and the Hastings Police Station, complaining of custodial torture by the opposite party as well as the CBI to name the petitioner herein in connection with the illegal activities of the alleged teacher

		recruitment scam.
2.	April, 2023	INSTANCE 2: The Opposite Party has traversed well beyond the limited scope of investigation as directed by this Hon'ble Court vide order dated 13.04.2023 as it has initiated a fishing and roving enquiry pursuant to the aforesaid order which is unconnected to any linkage between the speech delivered by the Petitioner and Kuntal Ghosh's complaints.
3.	22.08.2023	INSTANCE NO.3 i. The Opposite Party had conducted search at the office of Leaps & Bounds Pvt. Ltd., wherein the Petitioner is one of the directors. ED has maliciously recorded in the Panchnama dated 22.08.2023, that the search and seizure operation was concluded at 00:15 hrs on 22.08.2023. ii. In fact, the raid ended at 05:55 hrs on 22.08.2023, which shows the Opposite Party had illegally camped itself at the said office for over additional six hours unauthorizedly. The employees of Leaps & Bounds Pvt Ltd were wrongfully restrained from leaving the office and going home for the said six hours.
4.	22.08.2023	INSTANCE NO.4 i. The raiding officers of the Opposite Party deliberately downloaded foreign files and clandestinely altered data of one of the computers of Leaps & Bounds Pvt. Ltd. ii. The Opposite Party seeks to defend such illegal acts by giving an undertaking before this Court that the concerned electronic devices in which the

		foreign files were downloaded has not been seized and that they shall not use it as evidence in any proceeding. iii. Notwithstanding the undertaking given by Opposite Party, the aforesaid illegal action of ED officers reeks of malice.
5.	22.08.2023	INSTANCE NO.5 i. The aforesaid foreign files illegally downloaded by the officers of Opposite Party during raid seems to be related to an educational institution, whereas the Opposite Party is also investigating the petitioner in connection with a scam purported to be related to the education department. ii. It is not uncommon for a particular premises to be raided multiple times by the same investigating agency or by another one. iii. Therefore, there is no clarity as to what could have induced the officers of the opposite party to leave such education related documents in the electronic devices. iv. It leaves enough apprehension for the petitioner to believe that such files/data/documents/ information were purposely left behind for another raiding party to stumble upon the same and cause unwarranted harassment to the petitioner.
6.	23.08.2023	INSTANCE NO.6 i. The Opposite Party's malice is evident from its action of publishing and circulating a press release dated 23.08.2023, in which they maliciously stated that the company wherein the petitioner serves as the CEO, is involved in the alleged scam which runs into crores of rupees without any investigation, trial or judgment passed by a competent court. ii. Such publication not only jeopardizes the pending

7.	26.08.2023	investigation but it is de hors the established position of law. iii. The said Press Release is specifically intended to assassinate Petitioner's character and discredit his political actions. iv. The said Press Release also encourages media trial and create mass hysteria against the Petitioner. v. Hence, such press release is not only misleading and frustrates the pending investigation, but it also intends to demonize the petitioner and garner public sentiment against him. INSTANCE NO.7 i. The Opposite Party's conduct is more suspicious as it didn't inform the Petitioner about the illegal downloading of files for almost 4 days since the raid. ii. However, when an employee of Leaps & Bounds Pvt. Ltd. discovered the said illegal downloads in the computer it immediately lodged a criminal complaint before the Police. iii. Thereafter, the Opposite Party deemed it fit to send an email dated 26.08.2023 justifying its illegal acts and stated that: "That, while the search operation was about to conclude, one team member of the search team had checked the status of hostel accommodation of his 18-year old daughter on the website of Indian Institute of Engineering, Science and Technology (IEST), Shibpur, Howrah on the office computer, installed at the Office premises of Ms. Leaps & Bounds Private Limited in the presence of staff of the company. The said office computer has not been seized by the Opposite Party. Hence, there can be no allegations of foul play"
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		In this regard, it is stated that the contents of the opposite party's letter are false, make belief and a desperate attempt at salvaging its illegal acts. The whole premises and the computer devices were under the full control of the opposite party and its officials. This creates doubts about the real intention behind such downloads. Furthermore, the opposite party has stated that one of their team members were checking the status of hostel accommodation for his daughter. However, interestingly, it has been brought to light that the opposite party's officer was browsing hostel allotment lists for men's hostels. As such, it is absurd that an officer would be searching for men's hostel for his daughter and the same does not make any sense.
8.	26.08.2023	INSTANCE NO.8 i. The Opposite Party in its Letter dated 26.08.2023 intentionally suppressed and/or failed to mention in its letter dated 26.08.2023 that Ms. Sushmita Chakraborty, of Leaps & Bounds Pvt. Ltd., had left at about 10:15 hrs., on 21.08.2023. ii. On the contrary, in paragraph 3 of the said letter, the opposite party claimed that "while the search operation was about to conclude, one team member had checked the status of hostel accommodation... on the office computer, installed at the office premises of Ms. Leaps & Bounds Private Limited in the presence of staff of the company." ii. However, such statement is incorrect, and a premier investigating agency ought not to have withheld the fact that Ms. Sushmita Chakraborty had left long before one of the officers decided to tamper with the computer system.
9.	NA	INSTANCE NO.9 i. The Digital Evidence Investigation Manual (hereinafter

10	10.09.2023	referred to as "DEI Manual") as prepared by the Central Board of Direct Taxes, Department of Revenue, Ministry of Finance expressly mentions in Chapter 8 which discusses "Guidelines for Documentation and Seizure of Digital Evidences" at page 88 in paragraph 8.2 by stating that: "Before seizing any of the digital evidence, their hash value must be calculated using forensic tools such as cyber check or duplicator or anything else. There will be a report generated by these tools which can be attached along with the panchnama" ii. It is evident from Pachamama dated 22.08.2023, that the Opposite Party has deliberately and illegally chosen not to calculate the Hash Value of the seized electronic device/hard disk drive that is presently in custody of the opposite party, contrary to DEI Manual. iii. Hence, the Opposite Party has deliberately created the scope for tampering and/or introduced malware and/or altering the date contained in the hard disk drive. INSTANCE NO. 10 i. While Opposite Party has failed to show any material against the petitioner or even the case diary, but while the instant criminal revisional application is subjudice before this Hon'ble Court, the Opposite Party has served the petitioner with a fresh Summons dated 10.09.2023 under Section 50 (2) and (3) of the PMLA. ii. As per the said Summons, the petitioner has been directed to appear before the Opposite Party on 13.09.2023 to give evidence. iii. It is apposite to mention that the petitioner has not only challenged the entire investigation, but also the previous Summons issued to him by the opposite party
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	under Section 50 (2) and (3) of PMLA. iv. While the instant case was being argued, specific submissions have been made on behalf of the Opposite Party that the petitioner cannot challenge the previously issued Summons since they have become infructuous due to elapse of time. v. However, while trying to bypass the petitioner's challenge in the courtroom, the Opposite Party's issuance of fresh Summons is bad in law. vi. While this Hon'ble Court is yet to determine the fate of not only the entire investigation qua the petitioner and also the legality of the previously Summons, the opposite party has attempted to overreach this Hon'ble Court's majesty.
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It was additionally submitted that the Enforcement Directorate has statutory right to investigate into the money trail leading to the proceeds of crime but in this case despite repeated queries from the court, the Enforcement Directorate did not produce any materials to show/relate any money trail which has been *prima facie* established so far as the present petitioner is concerned.

Apart from the submissions and counter-submissions advanced on behalf of the petitioner and the E.D. the other facts which require consideration is that what are the materials produced before this Court from which it has to be inferred whether the application under Section 482 of Cr.P.C. is justified to be interfered with or to what extent if any such prayers can be considered.

The E.D. has referred only to the 4th Supplementary complaint which has been filed before the Special Court and drawn the attention of this Court to Page 40 which is in respect of the statement of a co-accused namely Sujay Krishna Bhadra. The relevant paragraph as appearing in the complaint is quoted below:

“He (Sujay Kirshna Bhadra) also submitted that he was not associated with the Education Department or with the West Bengal Board of Primary Education and also never held any political position; that the candidates of Primary Teacher used to go to the office of the West Bengal Board of Primary Education at Salt Lake for redressal of their grievances, however, they were not getting the desired result. Therefore, they approached him or party officials through letters; that he has relationship with Shri Abhishek Banerjee who was the president of Trinamool Youth Congress so they thought that he (Sujay Krishna Bhadra) could pursue their matter to the authority concerned.”

The petitioner also took out an application being CRAN 1 of 2023 wherein he submitted to be the ex-director of Leaps & Bounds Pvt. Ltd. and continued there till 31.01.2014, subsequently he has been serving as the CEO of the said company. In the application it has been contended that a search and seizure operation was carried out on 21.08.2023 (started at 11.35 am) and continued till 22.08.2023 (till 6.00 am). The said application was taken out alleging that in respect of the computer systems whose Hard Disk Drives were not seized by the Opposite Party/E.D., 16 new Microsoft Excel files were downloaded and introduced in the computer system. To that extent a general diary entry was lodged, the hard disk was seized by the Cyber Cell of Kolkata Police and the same were sent to CFSL, Kolkata.

The E.D. took a plea that the same was accidental as one of its Officers were searching for hostel accommodation for his child and inadvertently the said files may have been downloaded. On the other hand the petitioner's took the plea of malice as subsequently some other Central Agency could have conducted search and considered the same to be a part of the 'Teachers Recruitment Scam' leading to further harassment as the list(s) only consisted names of students in the downloaded files. However, after CFSL, Kolkata gave its opinion the Investigating Officer gave an undertaking that these materials will not be used in any investigation. The approach of the E.D. Officers were casual but the Court had to intervene to stop canvassing and stretch the issue as the core subject relating to the present application under Section 482 of Cr.P.C. was being deviated towards the end of the hearing.

Now, so far as the mainstream argument is concerned the spirit of petitioner's argument is the apprehension arising out of the previous instances of being harassed or inconvenience caused to him or his family members based on instances which have been cited on his behalf. The petitioner as such apprehended that the Enforcement Directorate may behave as police authorities pursuant to the directions passed by the High Court in its order dated 13.04.2023 and 18.05.2023. This is the reason why Dr. Singhvi on facts repeatedly canvassed that there cannot be any relation between the 'speech of the petitioner', 'letter of Kuntal Ghosh' and 'proceeds of crime' as defined under the PMLA. On the other hand the Enforcement Directorate has tried to disown such contentions of the petitioner and

maintained their stand that the notice under Section 50 of PMLA issued is in relation to the Teachers Recruitment Scam.

So far as Teachers Recruitment Scam which has been referred to in this case the investigation of the case is in progress as such the stage at which the petitioner approached this Court challenging ECIR/KLZO-II/19/2022 was prematured compared to the present stage as in between admittedly petitioner attended the Office of E.D. pursuant to the summons being issued. Further search and seizure has also been carried out in an office where he admits to be an Ex-director and present CEO.

The material which was only produced by E.D. before this Court is the statement of Sujay Krishna Bhadra, a co-accused.

In an order dated 29.08.2023 in WPA 7907 of 2019 with WPA 9979 of 2022 The Hon'ble Justice Amrita Sinha was pleased to hold as follows:

“The Enforcement Directorate is directed to file a report with regard to the progress of the investigation in respect of the Chief Executive Officer of the Company.”

The same Hon'ble Court in an order dated 14.09.2023 was pleased to pass the following directions:

“The Enforcement Directorate is investigating the offences under the PMLA. Let the following documents be placed before this Court on the adjourned date.

- 1. The list of assets of M/S. Leaps and Bounds Private Limited from the date of its inception.*
- 2. The list of assets of all the Directors, the CEO and all the members of M/S. Leaps and Bounds Private Limited.*

3. *The Memorandum of Association of M/S. Leaps and Bounds Private Limited.*
4. *The Articles of Association of M/S. Leaps and Bounds Private Limited.*
5. *The date of registration of M/S. Leaps and Bounds Private Limited.”*

In view of the aforesaid order dated 14.09.2023 passed in WPA 7907 of 2019 with WPA 9979 of 2022 there has been complete change of circumstance from the stage when the petitioner approached this Court when the agony was the summon issued by the E.D. on 08.06.2023.

The E.D. in this case before this Court has relied upon only the 4th Supplementary Complaint. As such, except the statement of Sujay Krishna Bhadra (an accused who is in custody) no materials were produced by E.D. before this Court to relate the petitioner with the ECIR under challenge. Having regard to the same I direct that no coercive measures would be taken against the petitioner by the E.D. without adhering to Section 19 of the PMLA, 2002 as explained in paragraph 39 of the judgment of the Hon’ble Supreme Court in V. Senthil Balaji –Vs. – State Represented by Deputy Director & Ors. reported in 2023 SCC OnLine SC 934, for the purposes of convenience which is set out as follows:

“39. *To effect an arrest, an officer authorised has to assess and evaluate the materials in his possession. Through such materials, he is expected to form a reason to believe that a person has been guilty of an offence punishable under the PMLA, 2002. Thereafter, he is at liberty to arrest, while performing his mandatory duty of recording the reasons. The said exercise has to be followed by way of an information being served on the arrestee of the grounds of arrest. Any non-compliance of the mandate of Section 19(1) of*

the PMLA, 2002 would vitiate the very arrest itself. Under sub-section (2), the Authorised Officer shall immediately, after the arrest, forward a copy of the order as mandated under sub-section (1) together with the materials in his custody, forming the basis of his belief, to the Adjudicating Authority, in a sealed envelope. Needless to state, compliance of sub-section (2) is also a solemn function of the arresting authority which brooks no exception.”

So far as the prayer for quashing of ECIR/KLZO-II/19/2022, I am of the view that the stage at which the petitioner approached this Court was prematured compared to the present stage of investigation and as such the same cannot be interfered with.

With the aforesaid observations CRR 2653 of 2023 is disposed of.

Pending connected application, if any, is consequently disposed of.

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

Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Tirthankar Ghosh, J.)