# IN THE HIGH COURT AT CALCUTTA
## (CRIMINAL REVISIONAL JURISDICTION)

PRESENT:

**THE HON'BLE JUSTICE SIDDHARTHA ROY CHOWDHURY**

**CRR 4069 of 2011**

***MOTILAL OSWAL SECURITIES LTD. & ORS.***
***VS.***
***CENTRAL BANK OF INDIA***

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| For the Petitioners | : Mr. Ayan Bhattacharyya, Adv.<br>Mr. Shaunak Mitra, Adv.<br>Mr. Srinjoy Bhattacharya, Adv. |
| For the O.P. | : None appear |
| Hearing concluded on | : 28th April, 2023 |
| Judgement on | : 28th April, 2023 |

**Siddhartha Roy Chowdhury, J.:**

1. Despite service of notice opposite party Central Bank of India remains un-represented.

2. Heard Mr. Ayan Bhattacharya, learned Advocate representing the petitioner.

3. This revisional application impeaches the order dated 6th September, 2011 passed by the learned Metropolitan Magistrate, 8th Court, Calcutta in Complaint case no. C/631 of 2010 under Section 109/414/420/406/120B of the Indian Penal Code read with Section 12A and 12(1) (c ) of the PMLA Act, 2002.

4. Briefly stated Central Bank of India represented by authorized representative Mr. Parimal Dhar Gupta, Senior Manager, Burra Bazar Branch filed petition of complaint before the Learned Additional Chief Metropolitan Magistragte against M/s Motilal Oswal Securities

Limited, Mr. Bijoy Goyal, Director of the said company and Sri Rajesh Kumar Jain AVP Motilal Oswal Securities Limited, alleging, inter alia, that one Kavita Saraff, housewife, resident of 136, Cotton Street, Kolkata 700007 opened a current account (No. 3014933837) on 21st January, 2008 with Burrabazar Branch at Kolkata of the complainant Bank. The account was used as a conduit for siphoning of the funds to the tune of Rs. 63.45 crores. The amount was transferred to M/s Motilal Securities Limited during the period 24th January, 2008 and 27th October, 2008. M/s Rajco Steel Enterprises transferred to the tune of Rs. 33.33 Crores, M/s Kali International Private Limited transferred to sum of Rs. 18.56 Crores besides there were two direct transfer from the two cash credit accounts to Smt. Kavita Saraff. It is further contended the accused persons accepted deposit to the tune of Rs. 63.45 crores from said Kavita Saraff. The accused company, it is adverted by the complainant, might have acted in the instant case with lack of diligence and character in the maintenance of record and the accused persons contravened the provisions of PMLA rules and SEBI guidelines on AML and the Code of conduct under the concerned regulation. The accused company even ignored to take the applicability of KYC norms as provided under guidelines for anti Money-Laundering measures issued by SEBI on 18.1.2006 read with relevant regulations and circular dated 30.09.2002.

5. It is further contended by the complainant that the accused persons deliberately permitted to Money-Launder to invest to the

extent of 63.45 crores through the accused for wrongful gains ignoring and disregarding the various provision of KYC norms and anti Money-Laundering standards.

6. Learned Additional Chief Metropolitan Magistrate was pleased to invoke the provision conferred under Section 200 of the Cr.P.C. and upon examination of authorized representative of the complainant bank, Sri Parimal Dhar was pleased to issue process under Section 414/420/120 IPC read with Section 12(1) (a) and 12 (1) ( c) of the Prevention of Money Laundering Act, 2002.

7. Mr. Ayan Bhattacharya, learned counsel for the petitioner drawing my attention to the averments of petition of complaint, submits that Central Bank of India cannot be considered to be authority authorized under the Prevention of Money Laundering Act, 2002. Therefore, the complainant bank does not have the locus standi to take out such petition of complaint. Learned trial judge failed to appreciate this fact. Learned Magistrate had no reason to take cognizance and to issue process upon the petitioners, who had been arrayed as accused persons before the learned trial court.

8. I have gone through the petition of complaint and I do not find any ingredient of offence within the meaning of Section 414 of the IPC or 415 of the IPC. There is nothing to suggest that the accused persons induced anyone and duped even there is no whisper regarding entrustment. Therefore, it can safely be said that none of the penal provisions can be made applicable in this case.

9. The sum and substance of the petition of complaint is that the accused person failed to adhere to the statutory provision as laid down under the Prevention of Money laundering Act and rules made thereunder, there was infraction of SEBI guideline on AML. My attention is drawn to the fact that on 7th of March, 2009 CBI registered a case being FIR no. RCBSK 2009E0004 and RCBSK 2009E0005 on 27th March, 2009 and submitted a charge-sheet against accused persons including Sri R.S Shaw, the then Assistant General Manager, Central Bank of India and Sri K. N. Mondal, the then Senior Manager, Central Bank of India, Burra Bazar Branch. The petition of complaint was filed on 16th July, 2010, subsequent to the submission of charge-sheet by CBI. Thus it appears that this petition of complaint is not attended with absolute bonafide.

10. Section 44 of the Prevention of Money-Laundering Act,2002 reads as follows:-

> *"44. Offences triable by Special Courts.- (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-*
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> (a) *an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed: Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence;*
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> (b) *a Special Court may upon a complaint made by an authorities authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial : Provided that after conclusion*

*of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or*

(c) *if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special court and the Special Court shall, on receipt of such case3 proceed to deal with it from the stage at which it is committed.*

(d) *A Special court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a court of session.*

*[Explanation- For the removal of doubts, it is clarified that-*

i) *the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upo0n any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;*

ii) *the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.*

*(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of*

*the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a 'Special Court" designated under section 43."*

11. Sub section 1(b) of the Section 44 envisages that a Special Court upon a complaint made by an authority authorized in this behalf under this Act can take cognizance of the offence under section 3 of the Act without the accused being committed to it for trial.
12. Section 2(d) (a) of the Act defines authorized persons which means authorized person as defined in clause C of Section 2 of the Foreign Exchange Management Act, 1999 (42 of 1999). The Central Bank of India being complaining, has not disclosed that the bank has been designated as authorized person to take out any proceeding under the PMLA, 2002.
13. The facts and circumstances of the case I am of the view that this proceeding pending before the learned trial court in C/631 of 2010 is attended with mala fide and it manifests an abuse of process of law, therefore, it should not be allowed in remaining force and should be quashed which I accordingly do.
14. Consequently, the Criminal Revision is allowed.
15. The proceeding being C/631 of 2010 pending before the learned 8$^{th}$ Court, Metropolitan Magistrate stands quashed. However, there will be no order as to costs.
16. Let a copy of this judgement be sent down to the learned Trial Court for information and necessary compliance.

17. Urgent photostat certified copy of this judgement, if applied for, should be made available to the parties upon compliance with the requisite formalities.

***(SIDDHARTHA ROY CHOWDHURY, J.)***