

GRM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 795 OF 2022

Rana Kapoor S/o. Late Raj Kishore
Kapoor ... Applicant

V/s.

Directorate of Enforcement & Anr. ... Respondents

WITH

CRIMINAL APPLICATION NO. 911 OF 2022

Kapil Wadhawan & Anr. ... Applicants

V/s.

Directorate of Enforcement & Ors. ... Respondents

Mr. Vijay Aggarwal a/w Yash Agrawal, Jasmin Purani, Mukul Malik, Sajid Sayed i/b Rahul Agarwal, Adv. for the Applicant in APPLN/795/2022.

Mr. Amit Desai, Sr. Adv. a/w Mr. Gopalakrishna Shenoy, Ms. Pooja Kothari, Ms. Janaki Garde & Ms. Urvi Gupte, Adv. for the Applicants in APPLN/911/2022.

Mr. Shreeram S. Shirsat, Adv. for Respondent No. 1/ED.

Mr. A. R. Patil, APP for the State/Respondent.

Mr. Bharat Mirchandani h/f Mr. H. S. Venegavkar, Adv. For Respondent No. 2/CBI.

CORAM : R. G. AVACHAT, J.

DATED : FEBRUARY 23, 2023

P.C. :

Both these applications are being decided by this common order, since challenge therein is to one and the same order i.e. the order dated 27/07/2022 passed by the learned Special Judge, Central Bureau of Investigation (for short “CBI”), Greater Bombay on the application (Exhibit-144) in CBI Special Case Nos. 830/2021 & 965/2021.

2. This Court vide order dated 24/06/2022 in Criminal Application No. 945/2021 had observed thus

“1.....

2. The applicant has preferred this application seeking transfer of proceedings in CBI Special Case No. 830 of 2021 and Special Case No. 965 of 2021 pending before the CBI Special Judge to the Special PMLA Court hearing Special PMLA Case No. 452 of 2020 and Special Case No. 579 of 2020 in terms of Section 44(1)(c) of PMLA Act, 2002.

3. The Enforcement Directorate had preferred PMLA Miscellaneous Application No. 1640 of 2021 before the learned Sessions Judge seeking transfer of proceedings, which has been rejected by order dated 15th February, 2022 on the ground that it is not maintainable.

4. Mr. Venegavkar appearing for respondent nos. 1 and 2, on instructions, submit that Enforcement Directorate would prefer an application before CBI Special Judge seeking transfer of proceedings pending before CBI Court to the Court of PMLA in terms of order dated 15th February, 2022 passed by Sessions Court.

5. In the event such application is preferred, the concerned Court shall decide such application in accordance with Section 44(1)(c) of PMLA Act and in accordance with law. It is expected that such application would be moved within three weeks from today and concerned Court shall decide such application expeditiously. In these circumstances, this application stands disposed of.”

3. In terms of the statement referred to in clause (4) of the order (referred to hereinabove), the Enforcement Directorate, an authority authorized to file a complaint under Prevention of Money-Laundering Act, 2002 (for short “**PMLA**”), filed the

application (Exhibit-144) before the Special Judge (CBI), Court Room No. 47, Greater Bombay.

4. On hearing the parties to the said proceeding, the learned Special Judge rejected the application mainly on the ground that the Special Court under PMLA, was not competent to try the offences under the Prevention of Corruption Act, 1988 (for short “**PC Act**”), which could be tried only by the Judge Presiding over the Court constituted under Section 3 of PC Act.

5. Heard.

6. Both the learned Senior Advocates appearing for the applicants herein took this Court through the provisions of Sections 43, 44 & 71 of PMLA to submit that the Special Judge erred in interpreting clause (c) of Section 44 of PMLA. According to them, both these applications have therefore been filed to ensure compliance of statutory mandate of Section 44(1)(c) of PMLA.

7. Learned Advocate for the CBI would on the other hand submit that the Special Court constituted under Section 43 of PMLA, may not have jurisdiction to try scheduled/predicate offences, which could only be tried by the Special Court constituted under Section 3 of PC Act. According to him, the application in terms of Section 44(1)(c) of PMLA was moved by the competent authority. On rejection of the said application, the Enforcement Directorate has not taken exception to the impugned

order herein. Thus the said order attained finality. He would also submit that the word “commit” appearing in clause (c), would have a meaning assigned to it under the Code of Criminal Procedure, 1973. Learned Advocate meant to suggest the said would be termed to be like committal of a case by the Court of Magistrate to the Court of Sessions. He therefore urged for rejection of the applications.

8. Considered the submissions advanced. Perused the order impugned herein.

9. PMLA Cases being Nos. 452/2020 & 579/2020 are pending before the Special PMLA Court, Court Room No. 16, Greater Mumbai. While cases pertaining to scheduled/predicate offence, are pending before the Special Judge (CBI), presiding over the Court constituted under Section 3 of PC Act.

10. True, both PC Act and PMLA are special statutes. PMLA being later one, would have overriding effect over the provisions of PC Act. Section 71 of PMLA reads thus

“71. Act to have overriding effect. - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.”

11. Section 43 of PMLA speaks of constitution of Special Courts for trial of offences punishable under Section 4 thereof. Relevant provisions of Section 44 of PMLA need to be adverted to here itself :-

“44. Offences triable by Special Courts. — (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), -

[(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; or;]

(b).....

[(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 case proceed to deal with it from the stage at which it is committed;”

12. The phraseology of clause (c) above indicate, it to be mandatory on the part of Court, which has taken cognizance of a scheduled/predicate offence to commit/transfer the case to the Special Court constituted under Section 43 of PMLA. Learned Advocate for the CBI tried to contend that the word “shall” may even sometimes read as “may” in the context in which, it was used. There can be no dispute over what has been submitted by the learned Advocate.

13. The Hon’ble Apex Court in the case of **Rana Ayyub vs. Directorate of Enforcement through its Assistant Director** reported in the judgment passed in Writ Petition (Criminal) No. 12 of 2023

on 07/02/2023, has observed that

“23. What is dealt with by Section 44(1)(a) is a situation where there is no complication. Section 44(1)(a) lays down the most fundamental rule relating to territorial jurisdiction, by providing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence has been committed. It is relevant to note that Section 44(1)(a) uses the expression “offence” in three places in contradistinction to the expression “scheduled offence” used only once. This usage is not without significance. In all three places where the word “offence” alone is used, it connotes the offence of money-laundering. The place where the expression “scheduled offence” is used, it connotes the predicate offence. By prescribing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which “the offence” has been committed, Section 44(1)(a) makes it crystal clear that it is the Special Court constituted under Section 43(1), which will be empowered to try even the scheduled offence connected to the same.

24. After mapping out/laying down such a general but fundamental rule, the Act then proceeds to deal with a more complicated situation in Section 44(1)(c). The question as to what happens if the Court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the offence of money-laundering, is what is sought to be answered by clause (c) of sub-section (1) of Section 44. If the Court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money-laundering, then the authority authorised to file a complaint under PMLA should make an application to the Court which has taken cognizance of the scheduled offence. On the application so filed, the Court which has taken cognizance of the

scheduled offence, should commit the case relating to the scheduled offence to the Special Court which has taken cognizance of the complaint of money-laundering.

25. Therefore, it is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not *vice versa*.

26. Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (i) to Section 44(1). Explanation (i) clarifies that the trial of both sets of offences by the same Court shall not be construed as joint trial.

27. A careful dissection of clauses (a) and (c) of subsection (1) of Section 44 shows that they confer primacy upon the Special Court constituted under Section 43(1) of the PMLA. These two clauses contain two Rules, namely, (i) that the offence punishable under the PMLA as well as a scheduled offence connected to the Same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and (ii) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money-laundering by the Special Court, the Court trying the scheduled offence shall commit it to the Special Court trying the offence of money laundering.”

14. It also needs to be noted that the Court of Sessions and all the Additional Session Judges, Greater Bombay have been notified to be Designated Courts for trial of the offences under PC Act. The

PMLA Court seized of Special PMLA Case No. 579/2020, is competent to try offence/s under PC Act.

15. It is reiterated that phraseology of Section 44(1)(c) of PMLA admits to interpretations. In view of the said provision being mandatory in nature and so has been held by the Hon'ble Apex Court in the case of **Rana Ayyub vs. Directorate of Enforcement through its Assistant Director** (*supra*), the learned Special Judge (CBI), Greater Bombay ought not to have rejected the application (Exhibit-144). Interference with the impugned order is therefore warranted.

16. In the result, both the applications are allowed setting aside the order impugned therein dated 27/07/2022 passed by learned CBI Special Court on the application (Exhibit-144) in Special Case No. 830/2021.

17. CBI Special Case Nos. 830/2021 & 965/2021 in FIR RC 219-2020-E0004 dated 07/03/2020 filed by respondent no. 2/CBI against the applicant, pending on the file of learned Special Judge (CBI), Greater Bombay stand transferred to PMLA Court seized of the Special PMLA Case Nos. 452/2020 & 579/2020, for trial in accordance with law.

18. Criminal Application Nos. 795/2022 & 911/2022 stand disposed of accordingly.

(R. G. AVACHAT, J.)