

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO.3746 OF 2022

Apurva Bhupendra Shah Petitioner.

Vs.

The Union of India & Ors. Respondents.

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WITH

WRIT PETITION NO.3747 OF 2022

Rashmikanth Dipchand Gardi Petitioner.

Vs..

Union of India & Ors. Respondents.

WITH

WRIT PETITION NO.4268 OF 2022

Hasmukh Dipchand Gardi ... Petitioner.

Vs.

Union of India & Ors. ... Respondents.

WITH

WRIT PETITION NO.4269 OF 2022

Binoy Hasamukh Gardi ... Petitioner.

Vs.

Union of India & Ors. Respondents.

WITH
WRIT PETITION NO.4506 OF 2022

Hiten Rashmikan Gardi Petitioner.

Vs.

Union of India & Ors. Respondents.

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Mr.Niteen Pradhan, Senior Advocate, a/w Mr Dhruv Balan, Mr Ayaz Bilawala & Mr Yogesh Gaikwad i/b M/s Bilawala & Co. for petitioner in WP No.3746 of 2022.

Mr.Dhruv Balan a/w Mr.Ayaz Bilawala & Mr Yogesh Gaikwad i/b M/s Bilawala & Co. for the petitioners in WP No.3747/2022; WP No.4506/22; WP No.4269/22 and WP No.4268/22.

Smt A.S. Pai, GP @ Mr. JP Yagnik, APP for State.

Mr Shreeram Shirsat @ Anna Oommen for Respondents No.1 to 3- E.D.

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**CORAM : Nitin W. Sambre &
R.N.Laddha, JJ.**

DATE : 22 June, 2023.

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Judgment (Per Nitin W. Sambre, J.) :

The respective Counsel are in agreement that the issue raised in all these petitions is same. Even, ECIR registered

against all the petitioners is same. As such, by this common judgment, the petitions are disposed of by consent.

2. The prayer is for issuance of Writ of Mandamus for quashing of entire proceedings in ECIR/MBZO-II/15/2019 registered by Respondent No.3-Enforcement Directorate, Mumbai, Zone-II.

3. The prayer is supported by learned Senior Advocate Mr.Niteen Pradhan based on two incidents;

a) quashing of predicate offence by consent vide order of this Court [**Coram: S.C. Dharmadhikari & G.S.Patel, JJ.**] dated 19th October, 2013 delivered in Writ Petition No.1955 of 2013 and Writ Petition No.2332 of 2013.

b) If the aforesaid predicate offence is already quashed in view of the law laid down by the Division Bench of this Court [**Coram: Revati Mohite Dere & Prithviraj K. Chavan,JJ.**] in Writ Petition No.4037 of

2022 with Writ Petition No.4038 of 2022 decided on 23rd February 2023, the ECIR registered against all petitioners, is liable to be quashed and set aside.

4. Aforesaid contentions are resisted by Mr.Shreeram Shirsat, learned Counsel appearing for Respondents-Enforcement of Directorate. According to him, steps have been taken, as directed in the matter of **Naresh Goyal Vs. The Directorate of Enforcement in Writ Petition No.4037 of 2022 with Writ Petition No.4038 of 2022 dated 23rd February, 2023**. In addition, his contentions are that an independent complaint dated 28.10.2020 addressed to the Economic Offence Wing, against petitioner is pending consideration. According to him, the Court should defer the hearing of present petition for a certain period as the Enforcement Directorate intend to take chance before Apex Court. The fact about quashment of FIR is not in dispute nor there is any challenge to the judgment delivered by this Court quashing

predicate offence by consent.

5. The fact remains that ECIR registered against the petitioners are based on the contents in FIR in the offence.

6. In this background, once predicate offence is quashed, very prosecution against the petitioner under Prevention of Money Laundering Act, 2002, in aforesaid ECIR cannot be said to be justified. Support is drawn support from the judgment of this Court in the matter of **Naresh Goyal** (supra).

7. As far as contention that independent complaint dated 28.10.2020 preferred by Dhanpatraj Bhansali against the petitioners is pending before the Economic Offence Wing, the said complaint will take its own time and cannot be said to be detriment or an impediment, as the complainant in the said complaint dated 28.10.2020 is at liberty to take such steps as are permissible in law.

8. In the aforesaid background, we deem it fit to allow the present petitions in terms of prayer clause (a).

9. Claim put forth by Mr.Shirsat that hearing of the matters needs to be deferred is also liable to be rejected with regard to the judgment in the matter of **Naresh Goyal** (supra).

[R.N.Laddha, J.]

[Nitin W. Sambre, J.]