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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(CRL) 1463/2021 & CRL.M.A. 12270/2021**

ADVANTAGE INDIA

..... Petitioner

Through: Mr. Shashwat Sarin, Adv.

versus

DIRECTORATE OF ENFORCEMENT & ANR. Respondents

Through: Mr. Joheb Hossain, Special Counsel
for ED, Mr. Vivek Gurnani & Mr.
Baibhav, Advocates for R-1.
Ms. Anubha Bhardwaj, SPP, CBI &
Mr. Sachin Singh, Advocate for CBI

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

22.08.2023

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1. *Vide* the present petition; the petitioner is seeking following reliefs:

“(i) Issue an appropriate writ or direction thereby declaring Section 44(1)(c) of the Prevention of Money Laundering Act, 2002 as ultra-vires and unconstitutional and strike it down consequently;

(ii) Call for the record of the case bearing No. CBI 14/2020 titled - "CBI vs Deepak Talwar & Ors.", now pending before the court of Ms. Anuradha Shukla Bharadwaj, Ld. ASJ, Rouse Avenue Courts as C. C. 17/2021;

(iii) Quash and set aside the impugned order dated 18.02.2021 passed by the court of Ms. Ambika Singh, Ld. CMM, Rouse Avenue Courts, Delhi, in case bearing No. C.B.I. 14/2020 titled – “CBI vs Deepak Talwar & Ors.”

(iv) Direct the court of Ms. Anuradha Shukla Bharadwaj.



Ld. ASJ, Rouse Avenue Courts, Delhi to transfer/commit the matter bearing CC No. 17/2021 arising out of RC-36- DAI-2017, back to the court of Ms. Ambika Singh, Ld. CMM, Rouse Avenue Courts, Delhi for trial.”

2. Learned counsel appearing on behalf of the respondents has produced two judgments of the Supreme Court, whereby the prayers of the present petition have been answered.

3. In case of Rana Ayyub vs. Directorate of Enforcement through its Assistant Director in Writ Petition (CRL.) No. 12/2023 observed and held that :-

“35. The only contingency that could not have been provided in the above provisions of the Cr.P.C, is perhaps where the offence of money-laundering is committed. This is why Section 44(1) begins with a non-obstante clause. The whole picture is thus complete with a combination reading of Section 44 of the PMLA and provisions of Section 177 to 184 of the Cr.P.C.”

“36. Once this combined scheme is understood, it will be clear that in view of the specific mandate of clauses (a) and (c) of sub-section (1) of Section 44, it is the Special Court constituted under the PMLA that would have jurisdiction to try even the scheduled offence. Even if the scheduled offence is taken cognizance of by any other Court, that Court shall commit the same, on an application by the concerned authority, to the Special Court which has taken cognizance of the offence of money-laundering. This answers the first question posed before us.”

4. Regarding the prayer (ii) the learned counsel has produced a judgement titled as Vijay Madanlal Choudhary and Others vs. Union of India and Others. 2022 SCC OnLine SC 929, the Supreme Court has observed and held as under :-

“ 366. In the context of this provision, it was



emphatically argued before us by the petitioners that it would take away one right of appeal, otherwise available under the 1973 Code. Resultantly Section 44(1) (c) of the 2002 Act in particular, is unconstitutional. To buttress this submission, reliance has been placed on the dictum in A.R. Antulay⁵⁷⁰. However, this ground need not detain us in view of the just stand taken by the learned Additional Solicitor General appearing for Union of India relying on the decision of this Court in State (Through Central Bureau of Investigation) vs. Kalyan Singh (Former Chief Minister of Uttar Pradesh) & Ors.⁵⁷¹, which ⁵⁷⁰Supra at Footnote No.134 ⁵⁷¹ (2017) 7 SCC 444 has considered similar challenge. The latter decision has distinguished the exposition in A.R. Antulay ⁵⁷². In that, the core issue considered in A.R. Antulay⁵⁷³ was whether the High Court was competent to transfer the criminal trial pending before the Special Court dealing with the offence of PC Act, to itself by invoking powers under Section 407 of the 1973 Code. The Court answered the same in the negative and held that such power does not exist in the High Court and it would inevitably violate Article 21 of the Constitution. However, we are dealing with the dispensation provided by the law made by the Parliament in the form of 2002 Act. This being a special legislation and keeping in view the purport of Sections 65 and 71 of the 2002 Act, it is not possible to countenance the ground of challenge under consideration. We may usefully refer to paragraph 28 of Kalyan Singh ⁵⁷⁴, which reads thus:

“28. In the present case, the power of transfer is being exercised to transfer a case from one Special Judge to another Special Judge, and not to the High Court. The fact that one Special Judge happens to be a Magistrate, whereas the other Special Judge has committed the case to a Court of Session would not make any difference as, as has been stated hereinabove, even a right of appeal from a Magistrate ⁵⁷²Supra at Footnote No.134 ⁵⁷³Supra at Footnote No.134 ⁵⁷⁴Supra at Footnote No.571 to the Sessions Court, and from the Sessions Court to the High



Court could be taken away under the procedure established by law i.e. by virtue of Sections 407(1) and (8) if the case is required to be transferred from the Magistrate at Rae Bareilly to the High Court itself. Hence, under Section 407, even if 2 tiers of appeal are done away with, there is no infraction of Article 21 as such taking away of the right of appeal is expressly contemplated by Section 407(1)(iv) read with Section 407(8). In the circumstances, Antulay575 judgment which dealt with the right of a substantive appeal from a Special Judge to the High Court being taken away by an order of transfer contrary to the non obstante clause in Section 7(1) of the Criminal Law Amendment Act, 1952 would not apply in the facts and circumstances before us.”

367. Applying the principle underlying this decision, we have no hesitation in rejecting the challenge to Section 44 as unconstitutional being violative of Articles 14, 20(3) and 21 of the Constitution.”

5. In addition to above, the learned Ld. CMM, Rouse Avenue Courts, Delhi vide its order dated 18.02.2021 passed order as under :-

“As per section 44 (3c) Prevention of Money-Laundering Act. 2002:- "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 authorized 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". ”

In view of the aforesaid Section i.e. Section 44 (3) (c), I deem it appropriate to commit the case to Ld. Sessions Court. As far as the contention of Ld. Defence counsel that there is an ambiguity in the PMLA Law and making as reference to Hon'ble High Court of Delhi, I would like to say that the present court has no jurisdiction to deal with



the cases under PMLA and therefore, I am of the opinion that this request is not maintainable in this case.

Ld. Counsel for the accused has relied upon the judgments in The Directorate of Enforcement Vs. Karti P Chidambaram passed by Hon'ble Supreme Court of India Dairy No. 9360/2018, 9365/2018 dated 09.03.2018.

The Directorate of Enforcement has also relied upon the judgments in Directorate of Enforcement Vs. Surajpal & Ors, dated 10.08.2018, Crl. M.A. No. 1025/2017 and Directorate of Enforcement Vs. CBI and Anr. Crl. Rev. P. No. 131/2016 dated 08.02.2017. I have gone through the same. The present court has highest regard for the authorities as placed on record on behalf of the accused but they do not apply to facts and circumstances of the case.

“Therefore, in these circumstances, the matter stands committed to the court of Ld. Sessions Courts and let it be listed before Principal District & Sessions Judge, RADC for 02.03.2021 at 02.00 PM for appropriate orders.”

6. In view of the above, nothing survives in the present petition and is hereby dismissed.

SURESH KUMAR KAIT, J

NEENA BANSAL KRISHNA, J

AUGUST 22, 2023/AT