IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.O.P.No.28857 of 2024
and
Crl.MP.No.16130 of 2024

Equitas Small Finance Bank Limited,
Represented by
Mr.K.Ramanathan, Senior Vice President (Legal) ... Petitioner

Vs.

1. The Secretary,
   Ministry of Finance,
   Government of India,
   North Block,
   New Delhi - 110 001.

2. The Deputy Director,
   Directorate of Enforcement,
   5th Floor, Mainaak Tower, G.S.Road,
   Christian Basti Guwahati - 781 005.

3. The Assistant Director,
   Directorate of Enforcement,
   5th Floor, Mainaak Tower, G.S.Road,
   Christian Basti Guwahati - 781 005.

4. The Senior Inspector of Police,
Economic Offences Wing,
General Cheating, Unit - IV,
Police Commissioner's Office,
New Building, 3rd floor, L.T.Marg,
Crawford Market, Mumbai - 400 001. ... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records and quash the summon dated 14.11.2024 *vide* No.PMLA/SUMMON/DMSZO/ 2024/350/696 issued by the third respondent.

For Petitioner	:	Mr.R.Shunmuga Sundaram Senior Counsel for Ms. Shakeenaa A.G.
For Respondents	:	Mr.N.Ramesh Special Public Prosecutor for ED [For R1 to R3]

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The Criminal Original Petition has been instituted challenging the summon issued by Assistant Director, Enforcement Directorate, Dimapur Sub-Zonal Office, Guwahati under Section 50 (2) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA').

2. Mr.R.Shunmugasundaram, the learned Senior Counsel appearing on behalf of the petitioner would contend that the petitioner/Bank responded to the summon earlier issued on 13.09.2024 and the Bank representatives appeared before the competent Authority of Enforcement Directorate and placed the details with reference to the deposit made by the accused person in the money laundering case.

3. The Bank representatives appeared on 22.10.2024 and they are ready and willing to cooperate for the investigation of the money laundering offense, if any. Meanwhile, certain Court orders in civil litigations are also produced and that prompted the Bank to file the present petition, since the Managing Director and Chief Executive Officer of the petitioner/Bank is now directed to appear before the Enforcement Directorate through the impugned summons.

4. Mr.N.Ramesh, the learned Special Public Prosecutor appearing on behalf of the respondents 1 to 3 would oppose by stating that the investigation into the offences of money laundering is in progress. A

provisional attachment order in the present case was issued by the competent Authority in proceeding dated 09.02.2023. The adjudicating Authority confirmed the provisional attachment in proceeding dated 02.08.2023 under Section 8 of PMLA. However, the petitioner/Bank has wrongfully released the amount to the tune of Rs.10,92,52,102/-, despite the fact that the Enforcement Directorate provisionally attached the said amount.

5. In this context, the learned Senior Counsel for the petitioner would submit that the money was released pursuant to the directions issued the Bombay Court and the said money is deposited in a dedicated account and not been released in favour of any person. Therefore, it is for the investigating Officer of the Enforcement Directorate to verify and initiate appropriate action. It is contended that the petitioner will appear meanwhile and place all the records.

6. The learned Special Public Prosecutor would further contend that the impugned summon has been issued by the Assistant Director of Enforcement Directorate, Guwahati Zone. Therefore, the present petition

filed before the Madras High Court is without jurisdiction. In this regard, the learned Special Government Pleader relied on the order of the Hon'ble Division Bench of this Court dated 03.11.2022 in W.P.No.28848 of 2022 wherein, the Court made the following observations:

> *"9. We are afraid that in the facts and circumstances of this case, seizure and recovery of the articles from the premises of the petitioner in Chennai, cannot confer jurisdiction on this Court because, the investigation by the CBI as well by the Enforcement Directorate is being held at New Delhi and the search and seizure is the effect of the investigation and not the cause of the investigation."*

7. The learned Senior Counsel for the petitioner would submit that the case relied on by the Special Public Prosecutor is distinguishable.

8. However, beyond the said ground raised, we are of the considered opinion that no petition to quash the summon is entertainable, unless the said summon has been issued by an incompetent Authority having no jurisdiction or allegation of malafides are raised against the Authority,

who issued the summon. Even in such circumstances, the Authority against whom the allegations of malafides are raised must be impleaded as party respondent in his personal capacity. In all other circumstances, the person, who received the summon is expected to appear before the competent Authority and place the records or defend his case, as the case may be.

9. Section 50 (2) and (3) of PMLA reads as under:

> "(2) *The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceedings under this Act.*
>
> *(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required."*

10. The above provision is unambiguous that all the persons so summoned shall be bound to attend in person or through their authorized agents, as such Officer may direct and shall be bound to state the truth upon any subject respecting which they are examined or make statements and produce such documents as may be required.

11. Sub-Section (3) to Section 50 in unequivocal terms reiterates that the person so summoned shall be bound to attend in person. If the Enforcement Directorate summon a particular Officer with designation, then such Officer shall alone should appear before the Enforcement Directorate.

12. Courts at no circumstances shall dilute the rigor of investigation of money laundering cases instituted under the provisions of PMLA. The practice of interference by the Courts at the issuance of summon stage would in our opinion may cause prejudice to the investigation itself. Therefore, the Courts must allow the investigating Agency to act in a fair and free manner to cull out the truth by collecting all necessary evidences by obtaining statements from the persons concerned and initiate all appropriate actions by

following the due procedures as contemplated under the provisions of PMLA.

13. Therefore, granting any leniency either for appearance or otherwise by the Courts based on misplaced sympathy or taking a lenient view would undoubtedly hamper the investigation process and the same would result in allowing such persons to escape from the clutches of PMLA proceedings, which is not desirable.

14. This exactly is the reason why the Constitutional Courts across the Country time and again reiterated that no petition against notice, summons are entertainable, unless it is issued by an Authority having no jurisdiction. Courts are not expected to adjudicate disputed facts in a petition filed challenging the summons or notices. All such factual aspects disputed are to be adjudicated by the competent Authority for taking final decisions by following due process as contemplated under PMLA.

15. At this juncture, the learned Senior Counsel for the petitioner would submit that the petitioner will co-operate and appear before the Authority issued the impugned summons.

16. In view of the fact that the impugned summon has been issued by Enforcement Directorate, Guwahati Zone and further the petitioner could not able to establish any acceptable ground for entertaining the present petition, we are inclined to reject the petition. Accordingly, the Criminal Original Petition stands **dismissed**. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] **[M.J.R., J.]**
18.11.2024

Index	:	Yes/No
Speaking Order	:	Yes/No
Neutral Citation	:	Yes/No

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