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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated	:	07.11.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD).No.19086 of 2024
and
Crl.M.P.(MD).Nos.11790 & 11791 of 2024

V.P.Nandhakumar ... Petitioner

Vs.

The Inspector of Police,
Central Bureau of Investigation,
Anti-Corruption Branch,
Madurai ... Respondents

PRAYER : Criminal Original Petition has been filed under Section 528 of BNSS, to call for the records pertaining to the impugned notice under Section 41(A) of Cr.P.C., issued by the respondent to the petitioner directing him to appear before the respondent's office on 08.11.2024, on the file of the respondent and quash the same as illegal.

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For Petitioner : Thiru. V.Chitambaresh,
Senior counsel appearing on behalf of
Thiru. G.Karuppasamypandiyan,

For Respondent : Thiru. C.Muthusaravanan
Special Public Prosecutor

ORDER

Criminal Original Petition has been filed to quash the impugned notice under Section 41(A) of Cr.P.C., issued by the respondent to the petitioner directing him to appear before the respondent's office on 08.11.2024, relating to a case in Crime No.RC2292024A0003 of 2024 on the file of the respondent.

2. The petitioner is the Managing Director and CEO, of Manapuram Finance Limited and the same is non-banking financial company (NBFC) registered as per Chapter (IIIB) of the Reserve Bank of India Act 1943 having its registered office at Manapuram House, Valappad (PO), Thirusur, State of Kerala. The said finance company has around 3500 branches all over India. One of the Branches is situated at Pudukkottai. One Mr.Marimuthu, Office Assistant of the

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Punjab National Bank, Pudukkottai Branch, had stolen 14,743.50 grams of Gold Jewels from the bank which were pledged by the customers of the Punjab National Bank and pledged the same in the petitioner's Pudukkottai Branch in his name and others name and received the amount in the year 2018-2019. Thereafter, the said jewels neither redeemed nor claimed by the said persons. That being the situation, the Punjab National Bank authorities have found that the said Marimuthu committed theft of the huge quantity of jewels and pledged the same in the said petitioner's finance company situated at Pudukkottai. Hence, the punjab national Bank authority preferred a complaint to the Pudukkottai local jurisdictional police and the local police station officials registered the case in the year 2019. Thereafter, they sent a communication to the petitioner's branch and informed about the registration of the criminal case. But, the petitioner's Non-Banking Financial Institution had auctioned the said stolen jewels pledged by the said Marimuthu.

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3. Punjab National Bank filed a writ petition in W.P.(MD).No. 19154 of 2022 before this Court to transfer the investigation from the local police station to CBI. This Court allowed the said writ petition on 19.01.2024 and directed the CBI to conduct the investigation. Thereafter, the CBI Officers registered a case in Crime No.RC2292024A0003 of 2024. After registration of a case, issued notice under Section 41(A) of Cr.P.C., to the petitioner herein directing him to appear before the respondent police situated at Madurai. Challenging the same, the petitioner has filed this Criminal Original Petition under Section 528 of The Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS), to quash said notice issued under Section 41(A) of the Cr.P.C.

4. Mr.V.Chitambaresh, the learned Senior Counsel appearing for the petitioner made the following submissions:

4.1.The summons issued under Section 41(A) of Cr.P.C., is not accordance with law and the same lacks the essential requirements as

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stipulated under Section 41(A) of Cr.P.C., and hence, he seeks to quash the same. Further the continuation of the proceedings under Cr.P.C., is illegal after the introduction of BNSS and consequently the summons issued under Section 41(A) of the Cr.P.C., is not legally maintainable. The petitioner is the Managing Director/CEO of the said Manapuram Finance Limited. The said Manapuram Finance Limited is Non-Banking Financial Company having 3500 Branches across India and he has no enduring memory about the individual transaction of the jewels pledged by the said Marimuthu. Managers of the said Branch and officers of the said Branch for the relevant period were already summoned by CBI and there was no necessity to summon the petitioner. More particularly, entire case rests on the documents which are already available with the CBI.

4.2.He placed strong reliance on the judgment of the Karnataka High Court in W.P.No.11028 of 2021 in the case of ***"Manish Maheswari Vs. State of Utra Pradesh"***, where the learned Judge of the Karnataka High Court, Bangalore quashed the notice issued

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under Section 41(A) of the Cr.P.C., to Managing Director of the "*Twitter*" on the ground that there were no enough contents or the sufficient materials in the notice under Section 41(A) of the Cr.P.C., and no material was referred to show that the said Managing Director of Twitter had knowledge about the fake news spread throughout India and similar circumstances are available in this case also. In the notice, there is no specific mentioning that the petitioner had knowledge about pledging of the stolen jewels by Marimuthu and hence, he seeks to quash the proceedings. He also finally submitted that the petitioner is aged about 70 years and he has residence at Tirussur District Kerala and it is not fair on the part of the CBI to call him to appear before the office situated at Madurai without any sufficient materials to implicate him in the above crime and also he is suffering from the injuries because of "*Rib Fracture*" and doctor has advised him to take rest and to take rest and to avoid travel till the review on 04.11.2024. Therefore, he seeks indulgence of this Court to make his appearance through video conference.

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5.Mr.C.Muthu Saravanan, learned Special Public Prosecutor for CBI Cases, made the following submissions:

5.1.In view of Section 531(2)(a) of BNSS, the submission of the learned Senior Counsel that the entire proceedings commencing from registration of FIR and the issuance of summons under Section 41(A) of Cr.P.C., is illegal is liable to be rejected. Section 531(2)(a) clearly states that the procedure stated in the Cr.P.C., alone is applicable to the case registered prior to the commencement of the BNSS 2023. The impugned notice issued under Section 41(A) of Cr.P.C., contains the satisfaction of the investigation officer to issue summons to call the petitioner to appear before the Investigating Officer to ascertain the facts and circumstances based on the allegations made in the FIR and other materials collected by the investigating agency. It is not necessary to disclose the material available against the petitioner at this stage in the notice under Section 41(A) of the Cr.P.C. Section 41(A) of Cr.P.C., clearly states that "*a reasonable complaint has been made*" or "*credible information has been received*" or "*a reasonable*

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suspicion exists that he has committed a cognizable offence". The investigating agency has a right to issue notice under Section 41(A) of Cr.P.C The learned Special Public Prosecutor circulated two incriminating materials that are available against the petitioner to show that the petitioner had knowledge about the above pendency of the criminal case originally registered by the local jurisdictional police and consequential notice issued by the local police station to the petitioner's branch relating to the theft of the said jewels and in spite of that knowledge they have conducted the auction over the crime articles. Hence, he is bound to appear before the investigating agency and co-operate with the investigation. The Code itself did not provide different procedure for the "*haves and have nots*". Hence, he seeks to dismiss the said petition.

5.2.The learned Special Public Prosecutor also submitted that even they sent a communication to the CBI seeking adjournment on the ground of health issues and even as per the document produced before this Court, the doctor advised him not to travel only upto

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04.11.2024. Hence, he should appear before the Investigating Agency to cooperate with the investigation. The interrogation ought to be conducted in person and not through Video conference. Hence, the prayer for the appearance through video conference is not legally permissible procedure. In all circumstances, this quash petition is misconceived one and hence, he seeks to dismiss the same.

6.This Court considered the rival submissions made by the learned Senior counsel appearing for the petitioner and the learned Special Public Prosecutor appearing for the respondent and also the precedents relied upon by the learned Senior counsel appearing for the petitioner.

7.Discussion on the Applicability of BNSS:

The learned Senior counsel placed reliance on the judgment of the Karnataka High Court Criminal Petition No.200913 of 2024 "*Arunkumar Case*" and argued that the registration of the FIR under

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Cr.P.C., and issuance of summons under Section 41(A) of the Cr.P.C., is illegal and liable to be quashed. This Court perused the judgment of the Karnataka High Court. In the said case, FIR was registered on the basis of the complaint preferred after the commencement of BNSS 2023. Therefore, the learned Judge of the Karnataka High Court has held that the investigating agency, Law enforcing authorities have no jurisdiction to register the case under Cr.P.C., after the commencement of the BNSS and hence, the learned Judge quashed the same and remitted it back to the investigating agency to register the case under BNSS and continue the investigation. In this case, as rightly argued by the learned Special Public Prosecutor, CBI, the case was registered in the year 2019 by the local police station and they continued the investigation and there was no progress and therefore, Punjab National Bank have filed the writ petition before this Court to transfer the insvestigation to CBI and the same was allowed by this Court by order dated19.01.2024 and on the basis of the direction of this Court, FIR was registered on 13.03.2024 and the investigation is

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in preliminary stage and the summons issued under Section 41(A) of the Cr.P.C., is in accordance with law prevailed on the date of the registration of the case namely, Cr.P.C. The said submission f the learned Special Public Prosecutor deserves to be accepted. To strengthen the said argument, the learned Public Prosecutor also referred section 531 (2) (a) of the BNSS which reads as follows:

> ***531.Repeal and savings****-(1)the code of criminal procedure, 1973(2 of 1974) is hereby repealed.*
>
> *(2)notwithstanding such repeal.*
>
> *(a)If, immediately before the date on which this sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending then, such appeal, application, trial, inquiry or investigation shall be disposed of, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as in force immediately before such commencement (hereinafter referred to as the said code), as if this Sanhita had not come into force.*

From the reading of section 531(2)(a), it is clear that the investigation was already commenced as per Cr.P.C., and the procedure stated in the said Cr.P.C., alone is applicable and hence, the contention of the

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learned Senior counsel that the registration of the case and issuance of summons under Cr.P.C., is not valid on the ground that the same was initiated under Cr.P.C., instead of BNSS is misconceived one and hence, this Court is not inclined to accept the same. Therefore, the CBI correctly registered the case under Cr.P.C., and continued the proceedings as per Cr.P.C., and issued summons under Section 41(A) of the Cr.P.C., for appearance of the petitioner and the same is in accordance with law. Therefore, there is no need to quash the same by exercising power under Section 528 of BNSS.

8. **Discussion on the Non-compliance of the requirements of Section 41(A) of Cr.P.C**:

The learned Senior Counsel placed reliance on the judgment of the Karnataka High Court in W.P.No.11028 of 2021 and argued in the case of Manish Maheswari Vs U.P. (hereinafter called Tiwtter cases) that the petitioner is being summoned not in his individual capacity as a representative of the company, namely, Non-Banking Financial

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Institution and no materials were mentioned in the notice under Section 41(A) of Cr.P.C, to satisfy that any offence is made out against the petitioner. In the said case also the Director was not accused and no material was adduced before the Court to demonstrate that the CBI entertained the reasonable suspicion.

8.1.The learned Senior counsel relied paragraph Nos.43 and 44 of the said judgment. On the basis of the said paragraph, the learned senior counsel argued that similar facts are available in this case also. The petitioner is the managing director of the Manapuram Finance Institution and has no knowledge about the pledged jewels in one of the branches of Manapuram Finance Company and hence, he seeks to quash the notice under Section 41(A) of Cr.P.C.

8.2.The learned Special Public Prosecutor submitted that FIR registered by local police in the year 2019 and collected records and based on the records they have issued the notice to the branch and in spite of the knowledge they conducted the auction on 25.03.2023 and before the auction, the petitioner gave the approval on 07.03.2023.

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Therefore, the contention of the learned Senior counsel that he has no knowledge about the same deserves to be rejected similarly. Further, whether they have knowledge or not is to be investigated by the investigating agency. The CBI issued only summons under Section 41(A) of Cr.P.C., to collect material from him. Therefore, the petitioner is duty bound to appear and to co-operate with the investigation. The said submission of the learned Special Public Prosecutor sounds reasonable.

8.3.The learned Special Public Prosecutor has made out a case for issuing summons under section 41 (A) Cr.P.C. There is no requirement of law to disclose the materials available against the petitioner in the notice issued under Section 41(A) of Cr.P.C. In the relied judgment of the Karnataka High Court, the specific observation of the Karnataka High Court in paragraph No.43 is that the said director's name was not found in the FIR and also no material were placed before the Court to demonstrate that the respondent entertained a reasonable suspicion or that they had some

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credible information. The said finding is on facts of that particular case. Here the learned Special Public Prosecutor, produced two material documents before this Court in sealed cover. The FIR and the other materials clearly disclosed the reasonable suspicion to invoke the provision of under Section 41(A) of Cr.P.C. Section 41 (A) of the Cr.P.C., which is as follows:

> ***41.A.Notice of appearance before police officer-*** *the police officer shall in all cases where the arrest of a person is not required under the provisions of sub Section 1 of Section 41, issue a notice directing the person against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence, to appear before him or at such other place as may be specified in the notice.*

8.4. A complaint has already been made against the company. The learned Special Public Prosecutor also submitted that before registering the case by CBI on the order of this Court, local police conducted investigation and sent communication to petitioner's branch in the year 2019 ie., on 15.05.2019, 03.06.2019 and 31.10.2020.

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As per the terms of the loan, the loan became NPA automatically on the 9th day. They did not take any auction up to 07.03.2023. On 07.03.2023, the petitioner gave approval to conduct auction and seal material document produced before this Court . Therefore, the case of the learned Senior counsel that there was no credible information or reasonable complaint or reasonable suspicion deserves to be rejected. Hence, the argument of the learned Senior counsel to quash the impugned notice under Section 41(A) of the Cr.P.C., on the ground of lack of requirements of Section 41(A) of Cr.P.C., is without substance and liable to be rejected.

9.**Discussion on the appearance through video conference:**

"To appear before him" in the section 41 (A) of Cr.P.C. demands personal appearance before the investigating officer. Till the filing of the final report, the investigating agency is duty bound to collect the materials in secrecy. As discussed in the earlier paragaraph of this order, the investigating agency issued the notice under section 41 (A)

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of Cr.P.C against the petitioner since sufficient available materials against him. Therefore he was called to submit himself for gathering or collecting materials from him to enable the investigation officer to proceed in the right direction. It is settled principle that the accused has no right to seek the particular manner and mode of the investigation and he has no right to seek the investigation through the video conference and hence as rightly pointed out by the learned Special Public Prosecutor in order to maintain the secrecy of the investigation he has to appear before the investigating officer at Madurai. Hence, his request to appear through video conference also is liable to be rejected.

10.**Discussion on the health issues:**

The documents submitted by the learned Senior counsel itself shows that the petitioner was advised to avoid travel for next one month till the review on 04.11.2024 and that date already expired. The learned Special Public Prosecutor, in this regard also submitted

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that his request to adjourn the appearance date on the ground of health issues was already accepted. But without making appearance, he filed the petition before this Court and evaded for appearance under Section 41(A) of Cr.P.C. In pursuance of notice under Section 41(A) of Cr.P.C., notice. This Court is not inclined to accept the case of the petitioner that he cannot to travel to Madurai from Tirussur. More facilities are available for easy travel. The office of the CBI is situated at Madurai and Madurai has airport facilities and in the said circumstances, there is no impediment to appear in the office of CBI.

11.The procedure stated in Cr.P.C., is applicable to all persons. Once, the notice is issued under Section 41(A) of Cr.P.C., whatever his position he has to appear before the investigating officer. The investigating officer only issued the notice under Section 41(A) to co-operate with the investigation, on the material collected and also the materials which were already collected by the local investigating agency and the investigating officer has satisfied the grounds as

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stated in section 41 (A) of Cr.P.C. In the said circumstances, this quash petition is liable to be dismissed.

12. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Inspector of Police,
   Central Bureau of Investigation,
   Anti-Corruption Branch,
   Madurai

2.The Special Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

3. The Section Officer,
   VR Section(Records)
   Madurai Bench of Madras High Court, Madurai.

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K.K.RAMAKRISHNAN, J.

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