



2024:DHC:4211



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% *Date of Decision: 23.04.2024*

+ CRL.M.C. 3056/2024 & CRL.M.A. 11787/2024

VIPHIL JAIN & ANR.

..... Petitioner

Through: Mr. Arvind Kumar, Mr.
Subit Kumar Singh, Mr.
Ankit Kumar Vats, Mr.
Nikhil Anand & Mr.
Karan Kumar Paneshar,
Advs.

versus

DIRECTORATE OF ENFORCEMENT
& ANR.

..... Respondents

Through: Mr. Manish Jain, Special
Counsel with Mr. Sougala
Ganguly & Ms. Snehal
Sharda, Advs.

CORAM:**HON'BLE MR. JUSTICE AMIT MAHAJAN****AMIT MAHAJAN, J. (Oral)**

1. The present petition is filed under Article 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC'), seeking setting aside the order of remand dated 09.04.2024, passed by the learned Additional Sessions Judge (ASJ) in ECIR/DLZO-II/03/2024 (hereafter '**the impugned order**').

2. The learned ASJ by the impugned order, remanded the petitioners to the custody of Respondent No.1- Enforcement Directorate (ED) for a period of 14 days.

3. The learned counsel for the petitioners submits that, prior to the petitioners being sent to the custody of the ED, the

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petitioners were already in police custody of the Crime Branch, Delhi in FIR No. 59/2024.

4. He submits that the custody of the petitioners could not have been granted beyond a period of fifteen days. He submits that the petitioners had already spent a period of eleven days in the police custody of the Crime Branch and, hence, could not have been sent to the custody of the ED for another period of fourteen days. He submits that the same would fall foul of Section 167(2) of the CrPC.

5. He relies on the judgment passed by the Hon'ble Apex Court in *V Senthil Balaji v. The State represented by Deputy Director & Ors. : (2024) 3 SCC 51*, to contend that the words “such custody” occurring in Section 167(2) of the CrPC would include not only police custody but also that of other investigating agencies. He submits that the Hon'ble Apex Court had held that the period of custody as provided in Section 167(2) of the CrPC would have to be read collectively between the police and other investigating agencies.

6. On being asked, the learned counsel for the petitioners submits that the impugned order has been challenged only on the aforementioned ground.

7. The learned Special Counsel for the respondents submits that the issue is no longer *res integra*.

8. He relies upon the judgment passed by the Hon'ble Apex Court in *Central Bureau of Investigation v. Anupam J. Kulkarni : (1992) 3 SCC 141*. He submits that Respondent No.1/ED is investigating an independent case under the

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Prevention of Money Laundering Act, 2002 (**'the Act'**) and is entitled to seek custody of the accused in terms of Section 167(2) of the CrPC. He submits that the police were investigating a scheduled offence, whereas ED is investigating the offence of laundering proceeds of crime which are generated from the scheduled offence.

9. I have considered the arguments advanced by the learned counsel for the parties.

10. The issue that has been raised for consideration of this Court is whether the accused persons who have already spent 11 days in police custody under Section 167(2) of the CrPC can thereafter be sent to further custody of the ED for a period which cumulatively is more than 15 days. The argument of the petitioners is based on the contention that both agencies being Delhi Police and the ED are essentially investigating the same offence.

11. The argument in the opinion of this Court is meritless. The offence of money laundering is independent of the offence from which such money which is sought to be laundered is generated. The offence of money laundering is the process or activity which is connected with the proceeds of crime which have been derived or obtained as a result of criminal activity which is the subject matter of investigation by the predicate agency which is the Delhi Police in the present case.

12. The FIR by the State / Delhi Police was registered under Sections 274/275/276/420/468/471/120B/34 of the IPC. The respondent authorities are entitled to investigate the proceeds

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which have been generated from the crime being investigated by the Delhi Police.

13. It is true that in order for the proceeds of crime to exist, the existence of the scheduled / predicate offence is a pre-requisite.

Section 3 of the Act states as under:

“Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted.”

14. Once the proceeds generated from the crime which is being investigated by the predicate agency are dealt with in the manner as defined in Section 3 of the Act, the same becomes an independent offence which is then investigated by the specified



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agency being ED.

15. The Hon'ble Apex Court in ***Vijay Madan Lal Chaudhary & Ors. v. Union of India : 2022 SCC OnLine SC 929*** held as under:

“42. From the bare language of section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form—be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so.

Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence—except the proceeds of crime derived or obtained as a result of that crime.”

16. It is thus clear as held by the Hon'ble Apex Court that the scheduled offence and the offence of money laundering even though may be connected to some extent, are independent of each other. For the offence of money laundering, the generation of proceeds of crime and its dealing in the manner specified in Section 3 of the Act is a pre-condition.

17. It is also well-settled that one set of transactions can give rise to more than one set of offences.

18. The Hon'ble Apex Court in ***Monica Bedi v. State of Andhra Pradesh: (2011) 1 SCC 284*** held as under :

“29. It is thus clear that the same facts may give rise to different prosecutions and punishment and in such an event the protection afforded by Article 20(2) is not available. It is settled law that a person

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can be prosecuted and punished more than once even on substantially same facts provided the ingredients of both the offences are totally different and they did not form the same offence.”

19. The argument that Section 167 of the CrPC bars agencies from taking custody of the accused for more than a cumulative 15 days, is thus incorrect. It is true that if the FIR is registered for multiple offences, the police is not entitled to take custody for more than 15 days claiming separate custody in each of the offences. However, the offence under the Act is not investigated by the police but by a separately assigned agency being ED. The offence by its very nature is a separate independent offence for which the ED is entitled to seek custody which can only be sought under the provisions of Section 167 of the CrPC (Ref: ***Directorate of Enforcement v. Deepak Mahajan : (1994) 3 SCC 440***).

20. Therefore, once from a set of facts, it is noted that the proceeds have been generated which are likely to be laundered or have been laundered, the same amounts to a separate offence being committed which is investigated by the ED. The offence of money laundering thus may originate from the offence that is investigated by the police but is an independent offence and if the accused is in judicial custody in relation to the original offence which is investigated by the police, the agency can very well seek his custody by formally arresting the accused in relation to that case and can also seek his custody under Section 167 of the CrPC.

21. The Apex Court in ***Central Bureau of Investigation v.***



Anupam J. Kulkarni had held that the limitation of police custody for 15 days shall not apply to a distinct offence in which the complicity of the accused is disclosed. Para 11 of the judgment reads as under:

“11. A question may then arise whether a person arrested in respect of an offence alleged to have been committed by him during an occurrence can be detained again in police custody in respect of another offence committed by him in the same case and which fact comes to light after the expiry of the period of first fifteen days of his arrest. The learned Additional Solicitor-General submitted that as a result of the investigation carried on and the evidence collected by the police the arrested accused may be found to be involved in more serious offences than the one for which he was originally arrested and that in such a case there is no reason as to why the accused who is in magisterial custody should not be turned over to police custody at a subsequent stage of investigation when the information discloses his complicity in more serious offences. We are unable to agree. In one occurrence it may so happen that the accused might have committed several offences and the police may arrest him in connection with one or two offences on the basis of the available information and obtain police custody. If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen days. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can



require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case and then obtain the order of the Magistrate for detention in police custody. The learned Additional Solicitor-General however strongly relied on some of the observations made by Hardy, J. in Mehar Chand case [(1969) 5 DLT 179] extracted above in support of his contention namely that an arrested accused who is in judicial custody can be turned over to police custody even after the expiry of first fifteen days at a subsequent stage of the investigation in the same case if the information discloses his complicity in more serious offences. We are unable to agree that the mere fact that some more offences alleged to have been committed by the arrested accused in the same case are discovered in the same case would by itself render it to be a different case. All these offences including the so-called serious offences discovered at a later stage arise out of the same transaction in connection with which the accused was arrested. Therefore there is a marked difference between the two situations. The occurrences constituting two different transactions give rise to two different cases and the exercise of power under Sections 167(1) and (2) should be in consonance with the object underlying the said provision in respect of each of those occurrences which constitute two different cases. Investigation in one specific case cannot be the same as in the other. Arrest and detention in custody in the context of Sections 167(1) and (2) of the Code has to be truly viewed with regard to the investigation of that specific case in which the accused person has been taken into custody. In S. Harsimran Singh v. State of Punjab [1984 Cri LJ 253 : ILR (1984) 2 P&H 139] a Division Bench of the Punjab and Haryana High Court considered the question whether the limit of police custody exceeding fifteen days as prescribed by Section 167(2) is applicable only to a single case or is attracted to a series of different cases requiring investigation against the same accused and held thus: (p. 257, para 10-A)



“We see no inflexible bar against a person in custody with regard to the investigation of a particular offence being either re-arrested for the purpose of the investigation of an altogether different offence. To put it in other words, there is no insurmountable hurdle in the conversion of judicial custody into police custody by an order of the Magistrate under Section 167(2) of the Code for investigating another offence. Therefore, a re-arrest or second arrest in a different case is not necessarily beyond the ken of law.”

This view of the Division Bench of the Punjab and Haryana High Court appears to be practicable and also conforms to Section 167. We may, however, like to make it explicit that such re-arrest or second arrest and seeking police custody after the expiry of the period of first fifteen days should be with regard to the investigation of a different case other than the specific one in respect of which the accused is already in custody. A literal construction of Section 167(2) to the effect that a fresh remand for police custody of a person already in judicial custody during investigation of a specific case cannot under any circumstances be issued, would seriously hamper the very investigation of the other case the importance of which needs no special emphasis. The procedural law is meant to further the ends of justice and not to frustrate the same. It is an accepted rule that an interpretation which furthers the ends of justice should be preferred. It is true that the police custody is not the be-all and end-all of the whole investigation but yet it is one of its primary requisites particularly in the investigation of serious and heinous crimes. The legislature also noticed this and permitted limited police custody. The period of first fifteen days should naturally apply in respect of the investigation of that specific case for which the accused is held in custody. But such custody cannot further held to be a bar for invoking a fresh remand to such custody like police custody in respect of an altogether different case involving the same accused.



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22. Thus, once it is clear that the offence under the Act is a separate and distinct offence, no bar could be read on ED in taking custody.

23. In view of the above, this Court finds no merit in the present petition, and the same is dismissed.

AMIT MAHAJAN, J

APRIL 23, 2024

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