

Arjun

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

WRIT PETITION NO.6332 OF 2024

ARJUN
VITTHAL
KUDHEKAR

Amit Chandole

...Petitioner

Versus

Directorate of Enforcement

...Respondents

Through its Assistant Director, Mumbai & Anr.

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ARJUN VITTHAL
KUDHEKAR
Date: 2025.06.12
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WITH
INTERIM APPLICATION (ST) NO.12908 OF 2023
IN
WRIT PETITION NO.6332 OF 2024

Ramesh Iyer

...Applicant

IN THE MATTER BETWEEN:

Amit Chandole

...Petitioner

Versus

Directorate of Enforcement

...Respondents

Through its Assistant Director, Mumbai & Anr.

WITH
WRIT PETITION NO.4523 OF 2022

Directorate of Enforcement

...Petitioner

Through Assistant Director, Mumbai

Versus

M/s Topsgroup Services And Solutions Ltd. & Ors.

...Respondents

WITH
INTERIM APPLICATION NO.1432 OF 2023
IN
WRIT PETITION NO.4523 OF 2022

Ramesh Ramkrishna Iyer

...Applicant

IN THE MATTER BETWEEN:

Directorate of Enforcement

...Petitioner

Through Assistant Director, Mumbai

Versus

M/s Topsgroup Services And Solutions Ltd. & Ors.

...Respondents

Mr. Aabad Ponda, Senior Advocate a/w Sebin Michael Joseph, Sandra Jaison & Mayank Jain, for the Petitioner in WP/6332/2024 and for Respondent No.8 in WP/4523/2022.

Mr. H. S. Venegavkar, SPP a/w Kamar Ali Shaikh & Leepika Rasiwasia, for Respondent No.1-ED in WP/6332/2024 and for the Petitioner in WP/4523/2022.

Mr. Amit Desai, Senior Advocate a/w Kushal Mor, Gopal Krishna Iyyer, Mamta Harwani & Riddhi Dhamecha i/b Dhiren H. Shah, for Respondent No.7 in WP/4523/2022.

Ms. P. P. Bhosale, APP, for the Respondent-State.

Mr. Dharmesh Joshi a/w Imran Khan, for the Intervenor.

CORAM: MADHAV J. JAMDAR, J.
DATED: 11 JUNE 2025

JUDGMENT:

1. The reliefs sought in Criminal Writ Petition No.4523 of 2022 are as follows :-

- “b. That this Hon’ble Court be pleased to quash and set aside letters dated 7th September, 2022 (Exh. 43), 15th September, 2022 (Exh. 48) in Special Case No. 1124 of 2020, pending on the file of Ld. Special PMLA Judge. Mumbai;*
- c. That this Hon’ble Court be pleased to quash and set aside letter bearing OW No. 17951/2022 dated 4th August, 2022 from the Registrar of Sessions Court, Mumbai, directing the Ld. Additional Chief Metropolitan Magistrates 47th Court at Esplanade, Mumbai, to pass appropriate orders with regards to the ‘C’-Summary Report, and thereafter commit the same to the Ld. Special PMLA Court, Mumbai;*
- d. That this Hon’ble Court be pleased to quash and set aside*

the judgement and order dated 14/09/2022 passed by the Ld. Additional Chief Metropolitan Magistrates 47th Court at Esplanade, Mumbai thereby sending the records of CC No. 2448/MISC/2021 in MECR No. 5/2020 back to the Ld. Special PMLA Court, Mumbai;

- e. That this Hon'ble Court be pleased to quash and set aside the impugned judgement and order dated 14/09/2022, accepting 'C'-Summary Report, passed by the Ld. Additional Chief Metropolitan Magistrates 47th Court at Esplanade, Mumbai in CC No. 2448/MISC/2021 in MECR No. 5/2020;"*

2. The following relief is sought in Writ Petition No.6332 of 2024 :-

"A. Issue a writ of Certiorari or any other writ, order or direction setting aside the impugned Order dated 18/07/2022 passed by the Ld. Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in C.C No. 2448/Misc/2021 and all the proceedings initiated consequent thereof;"

3. The impugned Order dated 18th July 2022 has been passed by the learned Additional Chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai in C.C. No.2448/MISC/2021 below application filed by Prosecution For Directorate Of Enforcement for committal of the said proceedings before the PMLA Special Court at Mumbai. The prayer sought in the said Application reads as under :-

*"a) this Hon'ble Court be pleased to commit the abovesaid case of scheduled offences under IPC at C-Summary **MISC/4702448/2021** filed in FIR No. 05/2020 filed by EOW for a simultaneous trial with PMLA Case No: 1124/2020 to the Designated PMLA Court Mumbai (court no.16) in view of the provisions of Section 43(2) read with Section 44(1)(c) of the PMLA, 2002."*

4. The learned Additional Chief Metropolitan Magistrate by said impugned Order dated 18th July 2022 committed the said case to the PMLA Special Court. The said Order is challenged in Criminal Writ Petition No.6332 of 2024.

5. Before considering the challenge raised in both the Writ Petitions, it is necessary to set out brief facts of the case as set out in Writ Petition No.4523 of 2022 :-

- i. *That the Complainant, Shri Ramesh Iyer, Ex-Vice Chairman of Topsgroup Services Ltd., alleged that he learnt that there are various off the record transactions being carried out from the Company.*
- ii. *That amongst other allegations, it was alleged that in the year 2014, a contract was signed by M/s Topsgroup Services & Solutions Ltd, with Mumbai Metropolitan Regional Development Authority (MMRDA) as per which about 350 to 500 guards were to be deployed at MMRDA sites on a monthly basis. It is submitted that out of the same, only 70% of guards were actually deployed; however, the billing was done for all the guards (100% deployment) as per contract, and the wages-paid details were submitted to MMRDA for 100% of the contract value based on the number of guards to be deployed as per the contract and not on the basis of actual deployment of the guards. It is further submitted that accordingly, compliance documents like PF/ ESIC were submitted for 100% of the contract value and not on the basis of actual deployment of the guards.*
- iii. *That the Complainant during investigation submitted that huge cash amounts were withdrawn from bank accounts of M/s Topsgroup Services & Solutions Ltd. and were given to Mr. Niraj Bijlani, who is Ex-CEO of Topsgroup. That in the year FY 2017-18, an amount of Rs. 92 lakhs approx. was handed over to Mr. Niraj Bijlani and there was an arrangement with a person namely Mr.*

Amit S. Chandole (Respondent No. 8) as per which 50% of the profits (i.e., Revenue billed to MMRDA less wages, PF, ESIC) were being regularly shared on monthly basis, and in addition, a fixed commission of Rs. 50,000/- per month and Rs. 500/- per guard (as per contracted agreement) deployed is being paid to Amit Chandole (Respondent No. 8) and these amounts were paid by Topsgrup to the said accused. As per the details provided by the Complainant, for last 3 years i.e., from May 2017 till June 2020, amount aggregating to Rs. 2.36 crore has been shared as commission. Out of the said amount, Rs. 90 Lakh has been paid through bank transfers to Mr. Amit S. Chandole and Mr. Sanket S. More. As per the Complainant, all these amounts were being paid from Topsgrup bank accounts and approx. commission of Rs. 7 Crore has been paid to Mr. Amit S. Chandole since 2014 i.e., from initiation of contract with MMRDA.

6. As noted herein above various orders/communications have been challenged in Criminal Writ Petition No.4523 of 2022. One of the Order challenged is dated 14th September 2022, by which 'C' Summary Report was accepted by the learned Additional Chief Metropolitan Magistrate. The said Order reads as under :-

"ORDER BELOW 'C' SUMMARY REPORT"

1. *M.E.C.R. No. 05/2020 came to be registered and investigation started. Investigating Officer investigated the entire case. Recorded the evidence of witnesses, collected necessary documents and finally come to the conclusion that no cognizable offence can be attributed. Therefore, the Investigating Officer submitted 'C' Summary Report. Therefore, notice has been issued to the informant to appear to file say on record.*

2. *Accordingly first informant Ramesh Iyer have filed say on record and submits that he has no objection to the report of 'C' Summary. The said report has been lodged due to mis-understanding. Hence, no objection to 'C' Summary*

Report. Therefore, 'C' Summary report is hereby accepted."

A bare perusal of said Order shows that the Additional Chief Metropolitan Magistrate has not applied his mind to the said 'C' Summary Report and only on the ground that the Informant has given no objection, accepted said C-Summary Report.

7. Mr. H. S. Venegavkar, learned SPP relies on the decision of *Bhagwant Singh v. Commr. of Police*¹ and more particularly on Paragraph No.4, which reads as under :-

"4. Now, when the report forwarded by the officer-in-charge of a police station to the Magistrate under sub-section (2)(i) of Section 173 comes up for consideration by the Magistrate, one of two different situations may arise. The report may conclude that an offence appears to have been committed by a particular person or persons and in such a case, the Magistrate may do one of three things: (1) he may accept the report and take cognizance of the offence and issue process or (2) he may disagree with the report and drop the proceeding or (3) he may direct further investigation under sub-section (3) of Section 156 and require the police to make a further report. The report may on the other hand state that, in the opinion of the police, no offence appears to have been committed and where such a report has been made, the Magistrate again has an option to adopt one of three courses: (1) he may accept the report and drop the proceeding or (2) he may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process or (3) he may direct further investigation to be made by the police under sub-section (3) of Section 156. Where, in either of these two situations, the Magistrate decides to take cognizance of the offence and to issue process, the informant is not prejudicially affected nor is the injured or in case of death, any relative of the deceased aggrieved, because cognizance of the offence is

¹ (1985) 2 SCC 537

taken by the Magistrate and it is decided by the Magistrate that the case shall proceed. But if the Magistrate decides that there is no sufficient ground for proceeding further and drops the proceeding or takes the view that though there is sufficient ground for proceeding against some, there is no sufficient ground for proceeding against others mentioned in the first information report, the informant would certainly be prejudiced because the first information report lodged by him would have failed of its purpose, wholly or in part. Moreover, when the interest of the informant in prompt and effective action being taken on the first information report lodged by him is clearly recognised by the provisions contained in sub-section (2) of Section 154, sub-section (2) of Section 157 and sub-section (2)(ii) of Section 173, it must be presumed that the informant would equally be interested in seeing that the Magistrate takes cognizance of the offence and issues process, because that would be culmination of the first information report lodged by him. There can, therefore, be no doubt that when, on a consideration of the report made by the officer-in-charge of a police station under sub-section (2)(i) of Section 173, the Magistrate is not inclined to take cognizance of the offence and issue process, the informant must be given an opportunity of being heard so that he can make his submissions to persuade the Magistrate to take cognizance of the offence and issue process. **We are accordingly of the view that in a case where the Magistrate to whom a report is forwarded under sub-section (2)(i) of Section 173 decides not to take cognizance of the offence and to drop the proceeding or takes the view that there is no sufficient ground for proceeding against some of the persons mentioned in the first information report, the Magistrate must give notice to the informant and provide him an opportunity to be heard at the time of consideration of the report.** It was urged before us on behalf of the respondents that if in such a case notice is required to be given to the informant, it might result in unnecessary delay on account of the difficulty of effecting service of the notice on the informant. But we do not think this can be regarded as a valid objection against the view we are taking, because in any case the action taken by the police on the first information report has to be communicated to the informant and a copy of the report has to be supplied to him under sub-section (2)(i) of Section 173 and if that be so, we do not see any reason why it should be difficult to serve notice of the consideration of the report on the informant.

Moreover, in any event, the difficulty of service of notice on the informant cannot possibly provide any justification for depriving the informant of the opportunity of being heard at the time when the report is considered by the Magistrate.”

(Emphasis added)

8. Thus, it is clear that if ‘C’ Summary Report is filed, then the learned Magistrate has three options, as follows:

- (i) Learned Magistrate may accept the C-Summary report and drop the proceeding.
- (ii) Learned Magistrate may disagree with the report and taking the view that there is sufficient ground for proceeding further, take cognizance of the offence and issue process.
- (iii) Learned Magistrate may direct further investigation to be made by the police under sub-section (3) of Section 156.

9. Thus, the learned Magistrate was duty bound to apply his mind to the facts of the case and to the ‘C’ Summary Report and the material annexed to the same and then pass order either accepting the ‘C’ Summary Report or rejecting the said ‘C’ Summary Report and taking cognizance of the offence and issuing process or the learned Magistrate may direct further investigation under sub-section (3) of Section 156. A bare perusal of said Order dated 14th September 2022 shows that the ‘C’ Summary Report is accepted without application of mind and only on the ground that the First Informant has given no objection.

10. In view of this position on record and in view of the law laid down by the Supreme Court, Mr. Desai, learned Senior Counsel for Respondent No.7 and Mr. Ponda, learned Senior Counsel for Respondent No.8 in Writ Petition No.4523 of 2022, state that no detailed reasons be recorded and the matter be remanded back to the learned Additional Chief Metropolitan Magistrate by setting aside said Order dated 14th September 2022.

11. It is the submission of Mr. Venegavkar, learned SPP that after setting aside said Order dated 14th September 2022 accepting C-Summary, the matter be remanded back to the PMLA, Special Court. He points out Order dated 14th September 2022 passed by the learned Additional Chief Metropolitan Magistrate dated 14th September 2022 by which after accepting the C - Summary Report the learned Magistrate has sent the case to the PMLA, Special Court. The said Order dated 14th September 2022 reads as under :-

“ORDER BELOW EXH.1

On 04/07/2022, the Assistant Director of Directorate of Enforcement have filed application for committal of the said case to the PMLA Special Court at Mumbai. On 18/07/2022, this court has passed an order and committed the case to the PMLA Special Court. Thereafter, again on 04/08/2022 the said case has been sent back to this court by PMLA Special Court for passing the appropriate order on ‘C’ Summary Report and directed to sent it back to the PMLA Special Court. Accordingly, today ‘C’ Summary report has been decided and accepted. Therefore, it is necessary to sent the said case immediately to the PMLA Special Court as per

order dated 18/07/2022.”

12. The above Order dated 14th September 2022 is passed on the basis of Order dated 18th July 2022 passed by the Additional Chief Metropolitan Magistrate, by which it has been directed that the C - Summary Report deserved to be committed to PMLA, Special Court for simultaneous trial as directed by PMLA Special Case. Accordingly, by said Order dated 18th July 2022 the case was directed to be committed to PMLA, Special Court. As noted herein above, learned Additional Chief Metropolitan Magistrate after accepting C-Summary, sent the said case to the PMLA, Special Court.

13. In view of above submission of learned SPP, both Mr. Desai, learned Senior Counsel for Respondent No.7 in Writ Petition No.4523 of 2022 and Mr. Ponda, learned Senior Counsel for Respondent No.8 in Writ Petition No.4523 of 2022 and also for the Petitioner in Writ Petition No.6332 of 2024, point out Section 44(1)(c) of the *Prevention of Money-Laundering Act, 2002* (“PMLA, 2002”), which reads as under :-

“44. Offences triable by Special Courts.— (1)
Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—

...

(c) 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 authorised 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.”

(Emphasis added)

Both the learned Senior Counsel submit that it is very clear that the stage of committal will be only after the jurisdictional Court takes cognizance of the scheduled offence.

14. Mr. Desai, learned Senior Counsel and Mr. Ponda, learned Senior Counsel relied on the decision of the Supreme Court in *Rana Ayyub v. Directorate of Enforcement*² and more particularly on Paragraph Nos.27 to 30 of the same, which read as under :-

“27. After mapping out/laying down such a general but fundamental rule, the Act then proceeds to deal with a more complicated situation in Section 44(1)(c). The question as to what happens if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the offence of money-laundering, is what is sought to be answered by clause (c) of sub-section (1) of Section 44. If the court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money-laundering, then the authority authorised to file a complaint under PMLA should make an application to the court which has taken cognizance of the scheduled offence. On the application so filed, the court which has taken cognizance of the scheduled offence, should commit the case relating to the scheduled offence to the Special Court which has taken cognizance of the complaint of money-laundering.

28. Therefore, it is clear that the trial of the scheduled

² (2023) 4 SCC 357 : 2023 SCC OnLine SC 109

offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa.

*29. Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (i) to Section 44(1). **Explanation (i) clarifies that the trial of both sets of offences by the same court shall not be construed as joint trial.***

30. A careful dissection of clauses (a) and (c) of sub-section (1) of Section 44 shows that they confer primacy upon the Special Court constituted under Section 43(1) of the PMLA. These two clauses contain two rules, namely : (i) that the offence punishable under PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and (ii) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money-laundering by the Special Court, the Court trying the scheduled offence shall commit it to the Special Court trying the offence of money-laundering.”

(Emphasis added)

15. Thus, it is clear that the stage which has been contemplated under Section 44(1)(c) of the PMLA, 2002 will be after the jurisdictional Court has taken cognizance of the scheduled offences. The said stage will come if the learned Additional Chief Metropolitan Magistrate by rejecting the C-Summary Report takes cognizance of the offence and issues process.

16. Accordingly, both the Writ Petitions are disposed of by passing following Order :-

- i. Criminal Writ Petition No.4523 of 2022 is allowed in terms of prayer clauses (b), (c), (d) and (e).
- ii. Criminal Writ Petition No.6332 of 2024 is allowed in terms of prayer clause (a). Resultantly, Order dated 14th September 2022 directing that papers of CC No.2448/MISC/2021 in MECR No.5 of 2020 be sent to PMLA, Special Court is also set aside.
- iii. Accordingly, the case bearing CC No.2448/MISC/2021 in MECR No.5 of 2020 is remanded to the learned Additional chief Metropolitan Magistrate, 47th Court, Esplanade, Mumbai for considering 'C' Summary Report afresh.
- iv. It is clarified that this Court has not considered the merits with respect to the said 'C' Summary Report and all contentions in that behalf of all the parties are expressly kept open.
- v. In the facts and circumstances of this case, the learned Additional Chief Metropolitan Magistrate is requested to consider said 'C' Summary Report expeditiously.

17. As both the Writ Petitions are disposed of, nothing survives in the Interim Applications and the same are also disposed of.

[MADHAV J. JAMDAR, J.]