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

% ***Date of decision: 31st July, 2025***

\+ **<u>CRL.M.C. 2390/2021, CRL.M.A. 15802/2021,</u>**

<u>CRL.M.A. 15803/2021</u>

DIRECTORATE OF ENFORCEMENT

.....Petitioner

Through: Mr. Zoheb Hussain, Spl. Counsel, ED, Mr. Anupam S. Sharrma, Spl. Counsel, ED with Mr. Vivek Gurnani, Panel Counsel, Mr. Kartik Sabharwal, Mr. Pranjal Tripathi and Mr. Kanishk Maurya, Advocates.

versus

SANJEEV KAPOOR

.....Respondent

Through: Mr. Hrishikesh Baruah, Mr. Kumar Kshitij and Mr. Utkarsh Dwivedi, Advocates.

<u>CRL.M.C. 2413/2021, CRL.M.A. 15928/2021,</u>

<u>CRL.M.A. 15929/2021</u>

DIRECTORATE OF ENFORCEMENT

.....Petitioner

Through: Mr. Zoheb Hussain, Spl. Counsel, ED, Mr. Anupam S. Sharrma, Spl. Counsel, ED with Mr. Vivek Gurnani, Panel Counsel, Mr. Kartik Sabharwal, Mr. Pranjal Tripathi and Mr. Kanishk Maurya, Advocates.

versus

ANIRUDH WADHWA

.....Respondent

Through: Mr. Manu Sharma, Sr. Advocate with

Mr. Ayush Shrivastava, Mr. Abhiyuday and Ms. Sneha P. Mandal, Advocates.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T ***(oral)***

1. The aforesaid two Petitions have been filed on behalf of the Petitioner Directorate of Enforcement (ED) under Section 482 Cr.P.C. to challenge the Order dated 10.09.2021 vide which the Application under 207 Cr.P.C filed by the Respondents namely Sanjeev Kapoor and Anirudh Wadhwa, have been allowed and the Petitioner has been directed to supply the documents to the Respondents herein.

2. The ***factual background*** in brief is that a search and seizure was carried out in the premises of Sanjay Bhandari under Section 132 Income Tax Act, from where it got revealed that many undisclosed foreign assets and offshore entities were established/ incorporated by the Accused persons to launder the illegal money. The Assessment proceedings under Black Money (Undisclosed Foreign Income and Assets) and Imposition of tax Act, 2015 got initiated against Mr. **Sanjay Bhandari.** Despite being served with the Notices under the Act, **he** failed to appear.

3. There was an apprehension that **he** may dispose off the properties/assets in India and abroad to defeat the process of law. Income Tax authorities conducted search and seizure at the premises of Accused persons **Sanjay Kapoor and Anirudh Wadhwa.** It was found that they were involved in fabricating and creating back dated documents to enable accused Sanjay Bhandari to launder his foreign assets and illegal money in Order to vitiate proceedings under Income Tax and Black Money Act.

4. After completion of proceedings under the Income Tax Act and Black Money Act, ***Complaint under Section 51 Black Money Act*** was filed before the Court of ACMM, Tis Hazari, Delhi on which cognizance was taken vide Order dated 10.05.2019.

5. It is submitted on behalf of Petitioner/ED that Section 51 Black Money Act is a scheduled offence under PMLA and investigations were initiated under PMLA for the offences of money laundering. After investigations, ***Complaint under Section 44 & 45 PMLA*** was filed by the Petitioner before the Court of competent jurisdiction. The cognizance was taken on the Complaint vide Order dated 15.10.2020. Accused Sanjay Bhandari has been declared a Proclaimed Offender and some of his properties have been attached under Section 83 Cr.P.C. Because he was absconding, entire proceeds of crime could not be traced and investigations are still ongoing. Letter Rogatories have been issued.

6. The Accused Sanjay Bhandari appeared before the Court and was provided with the copy of the Complaint along with the documents. Thereafter, the Respondents moved Applications under Section 207 Cr.P.C dated 01.03.2021 and 12.02.2021 and sought supply of certain documents. These documents were categorized in five categories i.e.

(i) Illegibly/cut documents/darkened portions;

(ii) Missing statement of witnesses and RUD-33;

(iii) Documents mentioned in Search Memos, Seizure Memos and Panchnamas;

(iv) Missing documents; and

(v) Electronic data.

7. It is submitted that all the aforesaid documents have already been

provided to the Respondents except RU-33 which has already been filed in the Court under the sealed cover. The learned ASJ in the impugned Order had directed the Petitioner to supply the List of Documents not relied upon and also permitted inspection of RUD-33 document after moving an Application for inspection before the Court.

8. *The Petitioner is aggrieved by the impugned Order* ***on the grounds that*** it has been overlooked that the Complaint under Section 44/45 Prevention of Money Laundering Act is in the nature of Complaint and thus, governed by Section 208 Cr.P.C instead of Section 207 Cr.P.C. Therefore, the Application under Section 207 Cr.P.C *per se* was not maintainable. Section 208 Cr.P.C contemplates that in a case instituted otherwise than the Police Report, the competent Court issuing process shall have to furnish the Accused, copies of documents i.e. statements, confessions or any other documents before the Magistrate on which the prosecution proposes to rely. Even Section 207 Cr.P.C provides for supply of copies of Police Report to the Accused. The Police Report contemplated in this Section is the Final Report under Section 173 Cr.P.C. Since Section 207 Cr.P.C is not applicable, Section 173 Cr.P.C would also not be applicable to a Complaint filed under PMLA.

9. The Prosecution Complaint under Section 44 PMLA is accompanied by only relied upon documents and the competent Court under Section 208 Cr.P.C has access only to these documents. The basic difference is that in the investigation by Police which is governed by Chapter XII of Cr.P.C, concerned Magistrate has supervisory jurisdiction even at the time of investigation and has access to all the documents i.e. relied/unrelied documents collected during investigations. In a Complaint Case, no such

supervisory jurisdiction is exercised by the Competent Court.

10. The learned Trial Court has wrongly observed that the judgments of the Delhi High Court and the Apex Court have laid down comprehensive legal proposition which would have binding effect. It is submitted that the Trial Court has relied on *Siddharth Vaisht @ Manu Sharma*, *V.K. Shashi Kala vs. State*, *P. Gopal Krishnan @ Dileep*'s case and wrong interpretation of the aforesaid judgments has been taken that the Prosecuting Agency is also bound to give the documents to the Accused which are not relied upon by the Investigating Agency. The Judgments show that the issue whether Prosecuting Agency should supply those documents which have not been relied upon by it, has not been specifically dealt with in those judgments. In *Dinesh Puri vs. State*, *Dharamveer vs. CBI* and *Sarla Gupta'*s case it has been specifically held that the Prosecuting Agency is not bound to supply those documents which have not been relied upon by it.

11. Furthermore, the learned Trial Court has made incorrect observations regarding document RUD-33 that the counsel for the Accused shall have an opportunity to inspect those documents in the presence of Investigating Officer by moving an Application in this regard. It is submitted that those documents do not pertain to Accused No.2 and 3 but are relevant for the ongoing investigations especially against Sanjay Bhandari, who has been declared a PO. Since the documents does not pertain to the Accused No.2 and 3, there is no occasion of giving an opportunity to Accused No.2 and 3 to inspect these documents at this stage i.e. before framing of Charges. By giving the said opportunity, the learned Trial Court has indirectly declined the prayer of the Petitioner that disclosing these documents to the Accused shall prejudice the further investigation. There is a serious apprehension

that if opportunity of inspecting those documents is given to Respondent No.2 and 3, the contents of the documents would be disclosed to the Accused Sanjay Bhandari, against whom the investigation is pending.

12. The learned Special Judge has failed to appreciate that the Supreme Court in the case of *To Issue Certain Guidelines Regarding Inadequacies and Deficiencies in Criminal Trials vs. The State of Andra Pradesh and Ors.* Suo Moto Writ (CrI.) No. 1/2017 vide Order dated 21.04.2021 recognized that the documents which are not relied upon, are not to be provided to the Accused at the stage of either Section 207 or 208 Cr.P.C. and therefore, suggested suitable amendments to be made in Cr.P.C. Till such amendment is made in the Cr.P.C, no document which is not relied upon by the Prosecution, would be required to be provided to the Accused.

13. It is further submitted that the law in this regard would be governed by the earlier judgment of the Apex Court in the case of *V.K. Shashi Kala vs. State* (2012) 9 SCC 771 etc., which clearly states that the Accused would be entitled to ask for the documents to prove his innocence even though the said document is relied upon by the Prosecution at the stage of trial and not at the stage of framing of Charges. An exception has been provided by the Apex Court in the case of *Rukmin Narveka vs. Vijaya Satardekar* (2008) 14 SCC 1, that if the document is of sterling nature and if shown to the Trial Court, it would convincingly demonstrate that the prosecution version was totally absurd, in such circumstances, such additional document may be permitted to be produced even at the stage of framing of Charge.

14. The law is thus, well settled that there cannot be a mini trial at the stage of framing of Charge as observed in *State of Rajasthan vs. Ashok Kumar Kashyap* 2021 SCC OnLine SC 314.

15. It is asserted that learned Trial Court has given completely wrong interpretation of the Order of the Apex Court dated 21.04.2021 wherein it was opined that list of those documents, etc. be provided to the Accused which have not been relied upon by the Investigating Agency. The purpose of this observation was to give an opportunity to the Accused to get production of those documents at the time of trial by moving an appropriate Application under Section 91 Cr.P.C. The Apex Court has not opined that such documents be provided to the Accused before framing of Charge but only the list of documents.

16. These observations are in consonance with the view taken by this Court in *Dinesh Puri vs. State* (Supra) wherein it was observed that for proper administration of justice, the documents which favour the Accused though collected but on the volition of the Investigating Agency not relied upon, are required to be given to the Accused, though not under Section 207 Cr.P.C, but under Section 91, 233 and 243 Cr.P.C.

17. The observations of the learned Special Judge that the documents be provided at this stage when the Charges are yet to be framed, is completely erroneous. The Supreme Court in *Om Prakash Sharma vs. CBI* (2005) 1 SCC 568 has clearly stated that the production of documents can be sought, only if in the opinion of the Court is that they are necessary and desirable and having regard to the stage of the prosecution process.

18. It is further submitted that though the Court while dealing with the Application under Section 91 Cr.P.C at the time of framing of Charge, can summon a document if it is of sterling quality and would change the course of the case. However, neither the Application under consideration was under Section 91 Cr.P.C nor any such document has been indicated by the

Accused/Respondent. Neither the Special Judge nor the Accused invoked Section 91 Cr.P.C, knowing full well that the said provision would not be applicable to procure the documents by the Respondent at the pre-trial stage. It is, therefore, submitted that the impugned Order dated 10.09.2021 of learned Special Judge be set aside.

19. *Learned counsel for Respondent* has appeared on advance Notice. It is submitted that the documents sought at the pre-Charge stage is only the ***list of unrelied documents.*** At no point of time, were the unrelied documents sought by the Respondent.

Submissions heard and Record Perused.

20. Learned counsel for the Petitioner/ED submits that there is no objection to providing the list of unrelied documents which shall be done forthwith.

21. The serious contention is in respect of the document RUD-33, which has been placed on record in a sealed cover. The Respondent has submitted that he be given a copy of the same, since it is a relied document. The Petitioner, however, has objected to the same since it pertains not to the Respondents, but to the Accused against whom against whom the investigations are ongoing. The Petitioner has the apprehension that giving the copy of this document would cause serious prejudice to the ongoing investigations in so much as the contents if known to the Respondent, may get conveyed to the Accused against whom the investigations are ongoing. Therefore, this document which is considered by the Prosecution to be confidential and which may hamper the ongoing investigations, has been put in sealed cover.

22. *First and the foremost* it is claimed that this document does not

pertain to the Respondent. However, in order to not take them by surprise, the learned Special Judge has permitted the Respondent to do an inspection of the document in the Court. The apprehension of the Petitioner has been sufficiently addressed in the impugned Order dated 10.09.2021 wherein the Court has directed "RUD-33" shall not be provided to the Accused persons at this stage and would be kept in sealed cover. To balance the interest of the Petitioner as well as the respondents, it is stated that counsels for Accused/Respondents would be given an opportunity to inspect those documents in Court in the presence of Investigating Officer **by moving an Application** in this regard.

23. It is the learned Special Judge, who is the best person to peruse the contents of the document to determine whether its inspection by the Respondent/by their counsel is pertinent for their defence. Therefore, as has been held, the Application for Inspection would be filed before the learned Trial Judge and whatever reservations the Petitioner has in regard to the inspection of the document, can be agitated before the learned Special Judge who may consider them and dispose of the Application for inspection. No further directions are required.

24. The Petitions are accordingly, disposed of along with the pending Applications.

(NEENA BANSAL KRISHNA)
JUDGE

JULY 31, 2025
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