

# Bharat Bhushan And Another vs Union Of India And Others on 5 December, 2024

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Swati Chauhan who lured them to invest huge sum of money in gold while promising 3% return. In lieu of the petitioners' investment, gold jewellery of equivalent value was pledged with them, which ultimately turned out to be made of fake gold. On a complaint, FIR No. 279, dated 23.11.2019, under Sections 420, 406, 120-B IPC was registered at Police Station Sector 14, Panchkula, Haryana, which is now pending for trial in the Court of Judicial Magistrate, Panchkula. The petitioners alleged that Hemant Chauhan has transferred huge sum of money in the account of Swati Thapa @ Swati Chauhan, who in turn has purchased a flat in Panchkula. During the course of enquiry conducted by the Assistant Commissioner of Police, Zone-II Panchkula, it was found that Swati Thapa @ Swati Chauhan had acquired the property from the proceeds of crime, the report of the enquiry was forwarded to the ED by the Deputy Commissioner of Police, Panchkula, however, no action has been taken by the ED.

2. Submissions made by the learned counsel representing the rival parties:-

2.1 Learned counsel representing the petitioners while referring to

copy of the final report submitted under Section 173 Cr.P.C. and communication sent by the Deputy Commissioner of Police, Panchkula submits that ED has failed to take over the investigation and register the ECIR for the offence of money laundering, particularly, when the accused are found to be involved in scheduled offences. He further submits that the accused have not only committed the predicate offence under Section 420 IPC but have also

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indulged themselves in the offence of money laundering as the proceeds of crime have been invested in a flat at Panchkula.

2.2 In response, the ED has filed reply asserting that though, Sections 420 and 120-B of IPC are scheduled offences, however, the dispute between two individuals with respect to cheating has resulted into the registration of FIR. The aforesaid case has not affected the public at large and also does not have larger ramification. As per provisions of the PMLA and its Rules and Regulations, investigation of offence under PMLA is its exclusive privilege and prerogative and if at a later stage of the case, appropriate action under PMLA is warranted then the ED will take the appropriate and desired action.

3. Issue for Adjudication:-

3.1 "Whether first informant/complainant of scheduled offence, which is pending investigation or trial is entitled to seek, as a matter of right, direction to Enforcement Directorate to register Enforcement Case Information Report (ECIR) under the PMLA?"

4. Discussion & Analysis:-

4.1 On study of the provisions of the PMLA, it becomes evident that an individual including the first informant or a complainant of the scheduled offence is not authorized to file a complaint before the Special Court notified for trial of offence punishable under Section 4 of PMLA. Chapter II of PMLA starts with Section 3, which elaborately defines the offence of money laundering, whereas, Section 4 of PMLA lays down the punishment for the offence of money laundering.

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4.2 In Chapter VII, there is provision for constituting the Special Courts, wherein, Section 43 enables the Central Government to designate one or more Court of Sessions as Special Court or Courts for such areas or for such case or class or group of cases. Furthermore, Section 44 is the most important, which provides for offence triable by the Special Courts, it starts with a non obstante clause. Section 44(1)(a) provides that any offence punishable under Section 4 and any scheduled offence connected to the offence under that Section shall only be triable by the Special Court. Clause (b) further provides that the Special Court may take cognizance of an offence under Section 3, only upon a complaint made by an authority authorized in this behalf under this Act. Similarly, Clause (c) also provides that in case, a Court other than the Special Court has taken cognizance as the scheduled offence, then it can commit the case to the Special Court only on an application by the authority authorized to

file a complaint under this act. Here also the first informant of FIR/complaint of a criminal complaint, or a private individual or any other officer/official of the various investigating agencies have not been authorized to knock the doors of Special Court to try offences under PMLA. Thus, it is evident that the Scheme of the PMLA does not envisage filing of complaint by the informant or a private person, in the Special Court alleging the offence of money laundering. The offences of money laundering have not been equated with offences which are crimes as per the other penal provisions. The PMLA is a special enactment brought in to prevent and punish the offence involving money laundering. Section 3 of PMLA has defined the offence of money laundering in an

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elaborate and exhaustive manner so as to prosecute the accused, who is in anyway connected with the proceeds of crime. Thus, it is only the Special Court which is entitled to take cognizance of the scheduled offence as per the provisions of PMLA.

4.3 This matter can be examined from yet another perspective. As per Section 173 of Bharatiya Nagarik Suraksha Sanhita, 2023, (hereinafter referred to as 'BNSS, 2023') information in cognizable offence can be filed to an Officer In-charge of the Police Station by anyone. Section 173 of BNSS, 2023 is a replacement of Section 154 Cr.P.C. There is no such parallel provision in the PMLA. Similarly, Section 175 of BNSS, 2023 enables Police Officer to investigate the case involving cognizable offence, which is equivalent to

Section 156 of Cr.P.C. However, Section 44 of the PMLA empowers only an authorized officer to file a complaint in a Special Court.

4.4 Similarly, Section 223 of BNSS enables filing of complaint by the complainant to initiate criminal prosecution (equivalent to Section 200 Cr.P.C.). However, attention of the Court has not been drawn to any parallel provision in PMLA. A Five Judge Bench of the Supreme Court in 'Lalita Kumari Vs. Govt. of U.P. and others', 2014 (2) SCC 1 has interpreted Sections 154, 155, 156 and 157 Cr.P.C in a manner mandating the police to register the case, if any information is received by or conveyed to an officer discloses commission of any cognizable offence, however, the attention of the Court has not been drawn to any parallel provision under PMLA.

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4.5 With respect to investigation of offence of money laundering, ED is a premier agency, which specially has been nominated to investigate the offences involving money laundering. This agency can not be equated with other prosecuting agencies to try offence under the various other penal provisions. As per the provisions of the PMLA, as mentioned in Chapter VII of PMLA, the "Authority" mentioned in these provisions has been described under Section 48, which includes only the officers or the ED and other class of officers as may be appointed for the purposes of the Act. Thus, no where the complainant/informant or any private person has been authorized or

empowered. Under Section 45(1A) of the PMLA, unless specifically authorized by the Central Government, no Police Officer is authorized to investigate an offence. Under Section 5 (1)(ab) the attachment of property involved in money laundering is permissible only if the twin conditions, namely, any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with in any manner, which may result in frustrating any proceeding relating to confiscation of such proceeds of crime is apprehended.

4.6 In these circumstances, it is reasonable to conclude that ED has discretion to investigate or refuse to investigate. The Constitutional Court is not expected to interfere in that discretion unless any serious offence impacting the life of public at large or in the public interest is involved and the Court concludes that discretion has not been appropriately exercised. The ED cannot be equated with other investigating agency and the Court is not expected to

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direct ED to take up each and every case where offence of money laundering is suspected. The Constitutional Court is not expected to issue writs without analyzing its impact.

5. Decision:-

5.1 Keeping in view the aforesaid facts, this Court does not find it appropriate to issue directions as prayed for by the petitioners.

5.2 Accordingly, the writ petition is disposed of.

(ANIL KSHETARPAL)  
JUDGE

(SHEEL NAGU)  
CHIEF JUSTICE

05.12.2024

neeraj Whether speaking/reasoned : Yes No Whether Reportable : Yes No 7 of 7