

# Raghav Bahl vs Enforcement Directorate Ministry Of ... on 23 January, 2023

**Author: Jasmeet Singh**

**Bench: Jasmeet Singh**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 2392/2021, CRL.M.A. 19314/2021, CRL.M.A. 14701/2022, CRL.M.A. 25294/2022, CRL.M.A. 14700/2022

RAGHAV BAHL

Through:

Mr. Abhimanyu Bhandar  
Kartika Sharma, Ms. V  
Advs.

versus

ENFORCEMENT DIRECTORATE MINISTRY OF FINANCE

Through:

Mr. Zoheb Hossein, Ad  
Vivek Gurnani, Mr. Ra  
Advs.  
Mr. Ajay Digpaul, CGS  
Kamal Digpaul, Ms. Sw  
Advs.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH  
ORDER

% 23.01.2023

1. Exemption allowed, subject to all just exceptions.

2. Application stands disposed of.

W.P.(CRL) 2392/2021

3. This is a petition seeking the following prayers:

"a) Issue an appropriate Writ, Order or Direction calling upon the Respondent to bring on record and after examining the same quash and set aside the ECIR/o6/HIU/2019 initiated by Respondent:

b) Issue an appropriate Writ, Order or Direction quashing and setting aside the notices dated 13.09.2021, 10.11.2021 and 16.11.2021 issued by IO in

ECIR/06/HIU/2019 initiated by Respondent and

c) Stay the investigation in ECIR/06/HIU/2019 during the pendency of the aforesaid Writ Petition."

4. It is stated by Mr. Bhandari, learned counsel for the petitioner that in the present case, the petitioner sent money through bank accounts for purchase of property in London. There is no evasion of tax and hence there are no proceeds of crime.

5. Mr. Bhandari states that at best, the petitioner can be charged with under-reporting of money transferred abroad which does not generate proceeds of crime which is sine qua non for proceedings under the Prevention of Money Laundering Act (PMLA).

6. He also states that there is an LoC issued against the petitioner which needs to be quashed.

7. In support he relies upon a judgment of this Court in „Sathish Babu Sana vs. CBI in W.P.(Crl) 249/2019 and more particularly para 10 which reads as under:

"10. The petitioner thus satisfies the test laid down by this Court in Sumer Singh Salkan (supra) as he has neither deliberately evaded arrest nor failed to appear before the Trial Court despite the non-bailable warrants nor has any coercive action been taken against him and he has travelled abroad number of times with the permission of the Court, which concession he did not misuse and therefore there is no justification in continuing with the LOC opened against the petitioner. Hence the respondent is directed to recall its request for opening the LOC against the petitioner. It is further directed that the petitioner will continue to join the investigation as and when directed by the Investigating Officer and any condition that is imposed by the learned Special Judge in the complaint lodged pursuant to the ECIR, when the petitioner seeks permission to travel abroad will also be applicable in the abovenoted RC No. 224/2017/A-001, till the charge-sheet is filed and thereafter, if the petitioner is charge-sheeted and summoned as an accused."

8. Per contra, Mr. Hossein, learned counsel for the respondent has drawn my attention to the complaint made against the petitioner u/s 51 of the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 and more particularly para 7 and 9 which reads as under:

"07. Sh. Raghav Bahl, has understood his investment in the London Property by E2. 73 lakhs. The value declared by Sh. Raghav Bahl in the FA schedule of his return of Income for A.Y. 2018-19 is only E5.8.4 lakhs. The property has been purchased in the name of Sh. Raghav Bahl. He has claimed that part of the payment towards this property has been made by Ms. Tara Bahl and RBRK investment Ltd. However, Sh. Raghav Bahl has failed to explain the nature of these payments made by Ms. Tara Bahl and RBRK investment Ltd. on his behalf, i.e. whether they are in the nature of loans/gifts, etc. moreover, no corresponding liability has been disclosed in his

balance sheet of the year under consideration. Thus, it is apparent that the investment made in the property, over and above that declared in his return of income, is from his undisclosed income. Thus, the investments made have been recorded in the books of Sh. Raghav Bahl at a much lower value the actual value of the statement. Thus, the under reported investment of E2.73 lakhs is unexplained investment. as per the provisions of section of. 69 of the Income Tax Act, 1961 since Sh. Raghav Bahl has failed to offer any explanation about the source of investment. thus, Sh. Raghav Bahl has willfully attempted to evade Tax as per sub-section 3 of the section 51 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015. Hence, it is apparent that Sh. Raghav Bahl has committed the offences mentioned in the Section 51 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015 for A.Y. 2018-19 and is liable for prosecution under the said section.

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09. In view of above facts and findings, as mentioned above, amply proved that Sh. Raghav Bahl is responsible knowingly for under-reported investment in the London property by E 2.73 lakhs. The value declared by Sh. Raghav Bahl in the FA Schedule of his return of Income for A.Y. 2018-19 is only E 5.84 lakhs. The property has been purchased payment towards this property has been made by Ms. Tara Bahl and RBRK Investment Ltd. however, Sh. Raghav Bahl has failed to explain the nature of these payments made by Ms. Tara Bahl and RBRK investment Ltd. on his behalf, i.e. whether they are in the nature of loans/gifts, etc. moreover, no corresponding liability has been disclosed in his balance sheet of the year under consideration. Thus, it is apparent that the investment made in the property, over and above that declared in his return of income, is from his undisclosed income. Thus, the investments made have been recorded in the books of Sh. Raghav Bahl at a much lower value the actual value of the statement. thus, the under reported investment of E2.73 lakhs is unexplained investment as per the provisions of section of 69 of the Income Tax Act, 1961 since Sh. Raghav Bahl has failed to offer any explanation about the source of investment. thus, Sh. Raghav Bahl has willfully attempted to evade Tax . As per sub-section 3 of the section 51 of the Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax Act, 2015. and declared just E5.84 lakhs (Rs. 5,33,83,416/-) only in FA Schedule of ROI for A.Y. 2018-19 instead of actual investment amounting to E 8.57 lakhs. Thus, it is appear net that Sh. Raghav Bahl has underreported total investment in his foreign assets by E2.73 lakhs. Accordingly, the case of the above stated person is falling into the ambit of provisions of section 50 of Black Money (Undisclosed Foreign Income and Assets) and imposition of Tax Act, 2015."

9. In this view of the matter, he states that there are allegations against the petitioner regarding attempt to evade tax.

10. He further states that the same issues were argued before the Allahabad High Court in CRL.M.C 15822/2019, which writ petition was dismissed and the SLP against the said judgment was also dismissed.

11. In the present case, I am of the view that the petition itself is premature.

12. The petitioner is seeking quashing of ECIR and according to the Supreme Court in „Kirit Shrimankar vs U.O.I in W.P.(Crl) 109/2013 has held that a writ remedy on account of issuance of summons at the stage of investigation/enquiry is highly premature.

13. The relevant paras read as under:

" In the course of hearing of the Writ Petition, we find that the writ petition was premature. The petitioners seek for the prayers as have been couched in the writ petition where the petitioners pray for issuance of mandamus to determine the question of law, as to whether the allegation of commission of offence under Section 135 of the Customs Act, 1962 would construe a bailable offence with further directions to comply with Sections 154, 155 and 157 of the Code of Criminal Procedure to investigate a cognizable/non-cognizable offence, if any, under Section 135 of the Customs Act. In fact, when we perused the averments contained in the Writ Petition the provocation for the petitioner to file this writ petition was the so-called search conducted in the residential premises of the petitioner's ex-wife on 11.06.2013, who was residing at C-103, Gokul Divine, James Wadi, Irla, Ville Parle (West), Mumbai- 400 056 and nothing incriminating was detected in the said search. It was further averred therein that the Officers threatened that the petitioner would be arrested, incarcerated in jail and would face dire consequence if he would not submit to their dictates. On that basis the writ petition came to be filed in this Court under Article 32 of the Constitution of India. We, therefore, expressed that it was highly premature for the petitioner to seek for extraordinary constitutional remedy under Article 32 of the Constitution of India based on such flimsy averments contained in the writ petition, inasmuch as such averments cannot form the basis for a prima facie apprehension of arrest. We, therefore, also expressed that the writ petition does not merit any consideration to be dealt with on the various issues raised, inasmuch as it will be for the petitioner to work out his remedy as and when any appropriate positive action is taken against the petitioner. In the course of hearing, learned Senior Counsel appearing for the petitioner now seeks to withdraw the writ petition reserving petitioner's liberty to work out his remedy in future, if any such situation arises."

14. There is no violation of any fundamental right or even legal right of the petitioner warranting interference of this Hon ble Court at the stage of summons. Reliance is placed on „Virbhadra Singh & Anr. vs. Directorate of Enforcement & Anr. 2017 SCC OnLine Del 8930 where it was held:-

"143... The powers conferred on the Enforcement Officers for the purpose of complete and effective investigation include the power to summon and examine "any person". The law declares that every such person who is summoned is bound to state the truth. At the time of such investigative process, the person summoned is not an accused. Mere recording of ECIR by giving a file number does not make a person an accused.

Therefore, the present Petitions are highly premature and it is well-settled that the Courts do not interdict the powers of investigating agencies conferred upon them by the statutes."

15. In addition, there are allegations in the complaint u/s 51 regarding evasion of tax. The allegations are being investigated. Whether there is generation of proceeds of crime or not is being investigated and for the aforesaid reasons, the petition as of today is premature.

16. Hence, the prayer for quashing of the ECIR, is premature and is hereby rejected.

17. As regards the opening of the LoC against the petitioner is concerned, my attention has been drawn to OM dated 05.12.2017 which reads as under:

"In exceptional cases, LOCs can be issued even in such cases, as would not be covered by the guidelines above, whereby departure of a person from India may be declined at the request of any of the authorities mentioned in clause (b) of the aboveresferred OM, if it appears to such authority based on inputs received that the departure of such person is detrimental to the sovereignty or security or integrity of India or that the same is detrimental to the bilateral relations with any country or to the strategic and/or economic interests of India or if such person is allowed to leave, he may potentially indulge in an act of terrorism or offences against the State and/or that such departure ought not be permitted in larger public interest at any given point of time." Instead of:

"In exceptional cases, LOCs can be issued without complete parameters and/or case details against CI suspects, terrorists, antinational elements, etc. in larger public interest."

18. The validity of this OM was challenged in different High Courts and has been upheld.

19. In the present case, the allegations against the petitioner are with regard to compromising the economic interest of India.

20. The prayer for quashing of LoC at this stage again will be premature and hence is rejected. However, the petitioner has travelled in the past and needs to travel for his work. The liberty of the petitioner to travel abroad for the purpose of business cannot be curtailed.

21. The petitioner is at liberty to file application with supporting documents as and when he has to travel and the same shall be considered in accordance with law.

22. With these directions, the petition is dismissed.

23. At request of Mr. Hossein, this petition shall be tagged along with W.P. (CRL) 1686/2022 for referral purpose only.

24. The compilation of documents and judgments is taken on record.

JASMEET SINGH, J JANUARY 23, 2023/dm [Click here to check corrigendum, if any](#)