

# Mahender Kumar Khandelwal vs Union Of India & Ors on 28 August, 2020

**Author: Yogesh Khanna**

**Bench: Yogesh Khanna**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(CRL) 1342/2020

MAHENDER KUMAR KHANDELWAL

Through : Mr.Sandeep Sethi, Sr.  
Ms.Ranjana Roy Gawai  
Sen, Mr.Ujjwal Jain,  
Golecha, Mr.Chai  
Mr.Avinash Bhati, an  
Bhati, Advocates.

versus

UNION OF INDIA & ORS.

Through : Ms.Sunieta Ojha, CGSC  
Mr.Amit Mahajan, CGS  
respondents No.2 & 3

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA  
ORDER

% 28.08.2020

1. The hearing has been conducted through Video Conferencing.
2. Exemption allowed, subject to all just exceptions.
3. The application stands disposed of.

W.P.(CRL) 1342/2020 & Crl.M.A.No.11823/2020

4. This writ petition has been filed by the petitioner with following prayers:-

"A. Issue a Writ of Certiorari or any other appropriate writ, order or direction quashing the Summons dated 19.08.2020 and 22.08.2020 issued by the Respondent No. 2/3 to the Petitioner herein in relation to ECIR/DLZO/I/o2/2019 dated 25.04.2019 and all consequential proceedings emanating therefrom qua the Petitioner herein; and B. Issue a Writ of Certiorari or any other appropriate writ, order or direction directing the entire search and seizure proceedings conducted by the Respondent ED on 19.08.2020/ 20.08.2020 at the Gurgaon as well as Dwarka residence of the Petitioner herein to be illegal and quashing all consequential

proceedings emanating therefrom qua the Petitioner as being violative of Articles 14 and 21 of the Constitution; and C. Issue a Writ of Mandamus or any other appropriate Writ, Order or Direction directing the Respondent No. 2/ 3 to not take any coercive action against the Petitioner herein in ECIR/DLZO/I/02/2019 dated 25.04.2019; and D. Pass such other or further order(s) or directions (s)"

5. The learned senior counsel for petitioner submitted the petitioner herein was appointed as an Interim Resolution Professional on 26.07.2017 and thereafter was appointed as Resolution Professional on 01.09.2017. This appointment was in respect of a company namely M/s.Bhushan Power and Steel having its offices at various places including Sambhalpur, Orissa.

6. It is also submitted as Resolution Professional, the petitioner devised various plan(s) for revival of the company and/or realisation of assets and one of such plans was approved by the Committee of Creditors on 16.10.2018 and also by the NCLT on 05.09.2019. However, in the meanwhile, CBI registered a case against erstwhile promoters of the above company for the offences committed by them between the years 2007-2014. It is pertinent to mention various loans were advanced to the above company which were siphoned off to other companies of the accused.

7. It is submitted the respondents filed a complaint under the PMLA on the basis of the statements and documents supplied by the petitioner himself to the respondents and he was made a witness in such complaint. The allegations were the promoters had diverted the stocks of this company to various third parties and the value of such stock being more than Rs.700 crores.

8. The learned senior counsel for petitioner submitted the petitioner on 07.02.2020 had lodged a report qua diversion of the stocks with the Committee of Creditors and even moved an application under Section 66 of the Insolvency Bankruptcy Code for taking action against the erstwhile promoters. It is also submitted whilst all this was happening, the summons were sent to him under Section 50 of the Prevention of Money Laundering Act (PMLA) on 19.08.2020 asking him to appear before the respondents on the said date itself. Since the petitioner could not appear before the respondent No.2, hence once again summons were issued on 22.08.2020 asking the petitioner to appear before the concerned authority on 24.08.2020 at 10.30AM.

9. It is submitted presently the petitioner is hospitalised as is found Covid positive. The reference is also made to two panchnama proceedings both dated 19.08.2020 conducted simultaneously at DLF, Gurugram, Haryana and another at Dwarka premises. In both the Panchnama proceedings, one witness namely Simarpreet Singh from Village Chokhandi, Tilak Nagar, Delhi is shown to be present at both the places at the same time. Further, the learned senior counsel for petitioner argued qua some discrepancies with regard to authorisation and signatures of care taker on authorisation etc.

10. Issue notice. Learned CGSCs appearing above, accepts notice on behalf of the respondents. Learned counsel for UOI submits that she is not inclined to file any reply at this stage, however, she secures her right to file reply at an appropriate stage. The learned counsel appearing on behalf of the Department seeks time to file reply to all allegations raised by the petitioner.

11. The learned senior counsel for petitioner has also referred to various provisions of the IBC viz. Sec.217 to 220 and also 233 to bring home his point that if any act is done by the Resolution Professional, in good faith, the entire procedure is provided under the Code to take action against such Resolution Professional be followed. He also referred to Section 236 of the Code to say nothing contained in any other law for the time being in force, no Court shall take cognizance of any offence under the Code. Hence, it is submitted that the petitioner ought not to have been impleaded as an accused, as he has done all acts in good faith and further he being cited as a witness earlier. Reference is also made to various orders passed by the Co- ordinate Bench of this Court; on 24.02.2020 and 03.03.2020 in W.P.(Crl) No.544/2020; order dated 23.08.2019 passed by the Division Bench in W.P.(Crl) No.2353/2019. The relevant portion of order dated 23.08.2019 notes as under:-

"Looking into the fact that in the year 2017 the statement of the petitioner was recorded under Section 50 (2) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as „the Act ), the petitioner was cited as witness No.26 (Page 191 of the memo of this petition) in ECIR No. ECIR/02/DZ/2017/AD(JS) wherein there are five accused and several witnesses of the petitioner is cited as witness No.26 and also looking to the fact that in this case, post filing complaint, investigation and cognizance was taken by the competent trial court. Summons were issued on 19.08.2019 upon this petitioner under Section 50 (2) of the Act, 2002 which is annexed as Annexure P- 1 to tender further statement. Looking to these aspects of the matter, we hereby grant ad interim relief to the effect that summons dated 19.08.2019 (Annexure P-1), issued to the petitioner, is hereby stayed till the next date of hearing."

12. The learned counsel for Department urges Section 236 of the Code would not be applicable in the present case since the petitioner in collusion with the erstwhile promoters had allowed them to remove various consignment worth several hundred crores so as to given them undue benefits and that such act of the petitioner would clearly make out offences under the IPC as also PMLA as he was not doing his duty diligently and all the incidents and acts of the petitioner herein would certainly fall within the ambit of PMLA.

13. As sought, let the respondents no.2 and 3 file replies within two weeks from today with an advance copy thereof to the learned counsel for petitioner through email. Rejoinder thereto, if any, be also filed within two weeks thereafter.

14. List on 12.10.2020 and in the meanwhile, the petitioner is directed to join the investigation as and when directed to do so, however there shall be no coercive action against him by the Department till the next date of hearing.

YOGESH KHANNA, J.

AUGUST 28, 2020 AT