

Assistant Director, Directorate Of ... vs M/S Dynamic Shells Pvt. Ltd on 21 March, 2024

Author: Amit Sharma

Bench: Amit Sharma

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IN THE HIGH COURT OF DELHI AT NEW DELHI
CRL.REV.P. 13/2020, CRL.M.A. 364/2020
ASSISTANT DIRECTOR, DIRECTORATE OF
ENFORCEMENT

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M/S DYNAMIC SHELLS PVT. LTD.

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CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

OR

% 21.03.2024

1. The present petition under Section 397/401 read with Section 482 of the Cr.P.C. seeks the following prayers:

"a) pass an order quashing the Order Dated 12.09.2019 passed by Special Judge, Rouse Avenue Courts in CC No. 59/2019 Entitled As "CBI Versus M/s. Dynamic Shells (India) Pvt. Ltd."

b) pass an order to transfer/commit the case bearing CC No. 59/2019 entitled as "CBI Versus M/S. Dynamic Shells (India) Pvt. Ltd." for offence under This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 23/03/2024 at 06:56:25 Section 120B read with Section 420, 468 & 471 of the IPC and Section 13(2) read with Section

13(l)(d) of the PC Act, pending before the court of Ms. Ilia Rawat Ld. Special CBI Judge, Rouse Avenue Courts, Delhi to the court of Sh. Sandeep Yadav Ld. Special Judge, PMLA, Saket Court, New Delhi where case bearing CC No. 06/2018 entitled "ED Versus Shambhti Prasad Singh" for offence under Section 3 punishable under Section 4 of the PMLA which is pending;

c) Pass such other and further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case.."

2. Learned Special Counsel for the petitioner/ED submits that vide the impugned order dated 12.09.2019, the learned Special Judge (PC Act) (CBI-

20), Rouse Avenue Courts, New Delhi, dismissed an application moved on behalf of the ED seeking committal of CC No. 59/2019 (1/16), arising out of Case No. BDI/03(E)/2014/BS&FC/CBI/ND, to the Court of the learned ASJ/Special Judge, PMLA, Saket Courts, New Delhi.

3. It is submitted that Section 44 (1)(c) of Prevention of Money Laundering Act is strictly applicable to this case. Learned Special Counsel for the ED places reliance on the following judgments:

i. Vijay Madanlal Choudhary & Ors. v. Union of India & Ors., (2022) SCC OnLine SC 929.

ii. Upendra Rai v. CBI, Judgment dated 13.05.2021 passed by a Coordinate Bench in W.P. CRL. 1392/2020.

iii. Rana Ayyub v. Directorate of Enforcement, 2023 SCC OnLine SC iv. Advantage India v. Directorate of Enforcement, 2023:DHC:6098-DB.

4. The Hon'ble Supreme Court in Rana Ayyub v. Directorate of Enforcement, (2023) 4 SCC 357 has held as under:

"23. Section 43 reads as follows:

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Explanation.--In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial."

24. Section 44 deals with the question of territorial jurisdiction of the Special Court, constituted under Section 43(1). At the outset, Section 44(1) takes note of two different contingencies, namely : (i) cases where the scheduled offence as well as the offence of money- laundering are committed within the territorial jurisdiction of the same Special Court constituted under Section 43(1); and (ii) cases where 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.

25. Section 44(1) reads as follows:

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

(a) an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or;

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under Section 3, without the accused being committed to it for trial:

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or This is a digitally signed order.

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(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.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.

Explanation.--For the removal of doubts, it is clarified that--

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not."

26. What is dealt with by Section 44(1)(a) is a situation where there is no complication. Section 44(1)(a) lays down the most fundamental rule relating to territorial jurisdiction, by providing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence has been committed. It is relevant to note that Section 44(1)(a) uses the expression "offence" in three places in contradistinction to the expression "scheduled offence" used only once. This usage is not without significance. In all three places where the word "offence" alone is used, it connotes the offence of money-laundering. The place where the expression "scheduled offence" is used, it connotes the predicate offence. By prescribing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which "the offence" has been committed, Section 44(1)(a) makes it crystal clear that it is the Special Court constituted under Section 43(1), which will be empowered to try even the scheduled offence This is a digitally signed order.

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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 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 This is a digitally signed order.

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(emphasis supplied)

5. Attention of this Court is further drawn to a judgment rendered by a coordinate bench of this Court in Upendra Rai v. Central Bureau of Investigation, 2021 SCC OnLine Del 2494, wherein in the background of similar facts and circumstances as in the present case, it has been held as under:

"52. The PC Act - as is expressly indicated by Section 28 of the PC Act - is enacted in addition to and not in derogation of any other law. The object of enacting the said law is to consolidate and amend the law relating to prevention of corruption and for matters connected therewith. The Parliament in its wisdom had considered it appropriate that cases under the said Act be tried by Special Judges, who are or have been a Sessions Judges or Additional Sessions Judges or Assistant Sessions Judges under the Cr.P.C. Concededly, the Special Judges designated under the PMLA would also necessarily have to meet the said qualification. Thus, the Special Judges designated in terms of the PMLA are not, per se, ineligible or unqualified for being

appointed as a Special Judge under the PC Act. The other provisions of the PC Act, which relate to investigation and the procedure for trying an offence under the PC Act, would have to be followed.

53. There is, thus, no reason whatsoever to believe that the legislative object of enacting the PC Act as a special act would not be served if the trial is conducted by a Special Judge appointed under the PMLA. Considering the objective, the language of the two statutes and the fact that the PMLA is a later statute; the provisions of Section 44(1) of the PMLA must be accepted as an exception to the provisions of Section 4(1) of the PC Act.

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61. In view of the above, the contention that cases relating to scheduled offences punishable under the PC Act (as specified in Paragraph 8 of Part A of the Schedule to the PMLA) cannot be tried by the Special Courts designated under the PMLA, which are trying the interlinked offence punishable under Section 4 of the PMLA, for want of jurisdiction to do so, cannot be accepted.

62. There is no ambiguity in the language of Section 44(1)(c) of the PMLA. The concerned court, which is trying the scheduled This is a digitally signed order.

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6. In view of the judicial pronouncements quoted hereinabove and in view of the facts and circumstances of the case, the impugned order dated 12.09.2019, the learned Special Judge (PC Act) (CBI-20), Rouse Avenue Courts, New Delhi is set aside. The proceedings in CC No. 59/2019 (1/16), arising out of Case No. BDI/03(E)/2014/BS&FC/CBI/ND are directed to be committed to the Court of the learned ASJ/Special Judge, PMLA, Saket Courts, New Delhi.

7. The petition is allowed and disposed of accordingly.

8. Pending application(s), if any, also stand disposed of.

AMIT SHARMA, J MARCH 21, 2024/bsr This is a digitally signed order.

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