

Malvinder Mohan Singh vs Enforcement Directorate & Anr on 6 May, 2022

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.M.C. 1751/2022

MALVINDER MOHAN SINGH

...
Through: Mr. Manu Sharma,
Ridhima Mandhar, Mr. Kart
Mr. Abhyuday Sharma, Advo

versus

ENFORCEMENT DIRECTORATE & ANR

...
Through: Mr. Amit Mahaj

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

% 06.05.2022

1. The instant petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 seeking setting aside of order dated 7th December 2021 passed by Ld. ASJ, Southeast District, Saket Courts, New Delhi in case bearing no. ECIR/05/DLZO-II/2019 titled "ED v. Malvinder Mohan Singh & Ors" alongwith directions to the Jail Superintendent, Tihar Jail No. 8 to facilitate physical meetings with the Advocate/Pairokar, while in custody at the Delhi High Court Mediation Centre.

2. Vide the impugned order dated 07.12.2021, the Ld. Special Judge had dismissed the Petitioner's request to consult physically with his lawyers outside jail premises, while in custody, in order to prepare for proceedings before the Hon'ble Supreme Court of India, Hon'ble High Court of Delhi/Chandigarh, Various District Courts and forums. Further, the Petitioner by way of instant petition is challenging the Impugned Order and any proceedings emanating therefrom, for failing to secure the Petitioner's right to an adequate representation, under Article 21 of the Indian Constitution, read with Delhi Prison Rules, 2018.

3. Learned Counsel for the petitioner submitted that the gist of the matter, as mentioned in the petition, is that on 27th March 2019 a case was registered by the EOW under Sections 420/409/120B of Indian Penal Code on the complaint of Religare Finvest Limited and the instant ECIR bearing no. ECIR/05/DLZO-II/2019 was registered on 24th September 2019 by the Directorate of Enforcement qua the Petitioner for offences punishable under Section 3 & 4 Prevention of Money Laundering Act, in connection with the scheduled offences under Sections 420

& 120B of IPC.

4. Per Contra, Mr. Amit Mahajan, learned CGSC submitted that the instant petition is devoid of merits and is nothing but an abuse of process, and should accordingly be dismissed. It is however submitted on instructions that the Jail authority may arrange/facilitate physical meetings of the petitioner while in custody with his lawyer at Delhi High Court Mediation and Conciliation Centre through Delhi Armed Police, 3rd BN if instructed by this Hon'ble Court.

5. Heard learned counsels for the parties and perused the record.

6. The petitioner has inter alia invoked the power of the Court under Section 482 of the Cr.P.C., therefore, it is appropriate to refer to the said provision and the extent of powers that are exercisable under the same vis-à-vis quashing. The provision reads as under:

"482. Saving of inherent powers of High Court. - Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice."

7. It is well established principle of law that the High Court has inherent power to act ex debito justitiae - to do real and substantial justice for the administration of which alone it exists or to prevent the abuse of process of the Court.

8. The bare language of the provision unambiguously states that the inherent powers of the High Court are meant to be exercised:

- (i) to give effect to any order under the Code; or
- (ii) to prevent abuse of the process of any Court; or
- (iii) to secure the ends of justice.

9. The principle embodied in this Section is based upon the maxim:

Quando lex aliquid alicui concedit, concedere videtur id quo res ipsa esse non potest i.e. when the law gives anything to anyone, it gives also all those things without which the thing itself would be unavoidable. The Section does not confer any new power, rather it only declares that the High Court possesses inherent powers for the purposes specified in the Section. The use of extraordinary power is however required to be reserved only for extraordinary cases, where the judicial discretion and indulgence is warranted as per the facts of the case.

10. The aforementioned provision has been referred to, analysed and interpreted in a catena of judgments of the Hon'ble Supreme Court, few of which are referred to in the following paragraphs.

11. A seven-Judge Bench in the case of P. Ramachandra Rao v. State of Karnataka, (2002) 4 SCC 578 laid down the principles for exercise of the power under Section 482 Cr.P.C. in a case where the Court was convinced that such exercise was necessary in order to prevent abuse of the process of any Court or to secure the ends of justice. The Hon'ble Supreme Court observed:

"21. ... In appropriate cases, inherent power of the High Court, under Section 482 can be invoked to make such orders, as may be necessary, to give effect to any order under the Code of Criminal Procedure or to prevent abuse of the process of any court, or otherwise, to secure the ends of justice. The power is wide and, if judiciously and consciously exercised, can take care of almost all the situations where interference by the High Court becomes necessary on account of delay in proceedings or for any other reason amounting to oppression or harassment in any trial, inquiry or proceedings."

12. In the case of Kaptan Singh v. State of U.P., (2021) 9 SCC 35, the Hon'ble Supreme Court has held that:

"9.2 In the case of Dhruvaram Murlidhar Sonar (Supra) after considering the decisions of this Court in Bhajan Lal (Supra), it is held by this Court that exercise of powers under Section 482 Cr.P.C. to quash the proceedings is an exception and not a rule. It is further observed that inherent jurisdiction under Section 482 Cr.P.C. though wide is to be exercised sparingly, carefully and with caution, only when such exercise is justified by tests specifically laid down in section itself."

13. In Jitul Jentilal Kotecha v. State of Gujarat and Others, 2021 SCC OnLine SC 1045, the Hon'ble Supreme Court has recently held that:

"27. It is trite law that the High Court must exercise its inherent powers under Section 482 sparingly and with circumspection. In the decision in Jugesh Sehgal v. Shamsheer Singh Gogi, this Court has held that, "[t]he inherent powers do not confer an arbitrary jurisdiction on the High Court to act according to whim or caprice." In Simrikhia v. Dolley Mukherjee, this Court in another context, while holding that the High Court cannot exercise its inherent powers to review its earlier decision in view of Section 362 of the CrPC, observed that the inherent powers of the High Court cannot be invoked to sidestep statutory provisions. This Court held:

"5. ... Section 482 enables the High Court to make such order as may be necessary to give effect to any order under the Code or to prevent abuse of the process of any court or otherwise to secure the ends of justice. The inherent powers, however, as much are controlled by principle and precedent as are its express powers by statute. If a matter is covered by an express letter of law, the court cannot give a go-by to the statutory provisions and instead evolve a new provision in the garb of inherent jurisdiction."

14. The Hon'ble Supreme Court while deciding the case of State of Orissa v. Pratima Mohanty, 2021 SCC OnLine SC 1222 on 11th December 2021, has comprehensively dealt with the powers exercisable and extent of the jurisdiction of the High Court while deciding a petition under Section 482 of the Cr.P.C. The Hon'ble Supreme Court has held as under:

"6. As held by this Court in the case of State of Haryana and Ors. vs Ch. Bhajan Lal and Ors. AIR 1992 SC 604, the powers under Section 482 Cr.P.C. could be exercised either to prevent an abuse of process of any court and/or otherwise to secure the ends of justice."

15. In Jaswant Singh v. State of Punjab and Another, 2021 SCC OnLine SC 1007, the Hon'ble Supreme Court has held as under:

"15. The power under Section 482 Cr.P.C. is to be exercised to prevent the abuse of process of any Court and also to secure the ends of justice. This Court, time and again, has laid emphasis that inherent powers should be exercised in a given and deserving case where the Court is satisfied that exercise of such power would either prevent abuse of such power or such exercise would result in securing the ends of justice..."

16. The position of law that is crystallised, in light of the aforementioned judgments, is that jurisdiction under Section 482 should be exercised sparingly, with circumspection and in rarest of the rare cases. Hence, what is only required to be seen is whether there has been an abuse of process or that the interest of justice requires the exercise of the jurisdiction.

17. In the instant case, the Learned ASJ in the impugned order qua the issue in question has held as under:

"Accused Malvinder Mohadn Singh, has filed an application, for seeking leave to meet his lawyers/counsel/parokar at Mediation Center, Saket Courts, New Delhi between 2.00 PM to 5.00 PM. The said application, stands dismissed for the reason that there is no provision in CrPC or any other law, which permits this court to allow such application. Even otherwise accused Malvinder Mohan Singh, who has filed this application, has not referred to any provision of law, in support of the same. Application accordingly stands decided."

18. Having delineated the scope of the powers of the Court in exercise of its jurisdiction under Section 482, and applying the same to the case at hand, it is evident that there is no such relief that can be granted as is being prayed for. There is no reason to interfere with the impugned order passed by the Learned ASJ.

19. The accused along with others is alleged to have been swindled the proceeds of crime by the ED to the tune of 2397 Crores. Economic offences are detrimental not only to the economy of the nation but also the society at large. The underprivileged and downtrodden are often at the receiving end of

the after-effects of such offences. Extraordinary powers of this Court are not meant to be exercised at the disposal of the affluent accused who do not leave any stone unturned to arm-twist the law of the land and administrative machinery to achieve their scrupulous ends.

20. Thus, extraordinary writ jurisdiction cannot be exercised to give special treatment to the petitioner by facilitating physical meetings for him with his counsel. Inherent powers of the Court are meant to be exercised to prevent the abuse of the process of any Court, however the petitioner under the garb of the liberty to approach the Court under the said provision is attempting to commit gross misuse of process.

21. The provision of the Code that is meant to secure the ends of justice cannot be otherwise subverted to circumvent the scheme of the Code. In light of the aforesaid, this Court does not find any cogent reason or any substantial ground to invoke its extraordinary jurisdiction to grant the relief that is being sought by the petitioner.

22. Accordingly, the instant petition stands dismissed as being bereft of merit.

CHANDRA DHARI SINGH, J MAY 6, 2022 gs/@dityak.