Anoop Bartaria vs Dy. Director Enforcement Directorate on 21 April, 2023

Author: Bela M. Trivedi

Bench: Bela M. Trivedi, Ajay Rastogi

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (Crl.) No. 2397-2398 OF 2019

ANOOP BARTARIA & ETC. .....PETITIONER(

VERSUS

DY. DIRECTOR ENFORCEMENT
DIRECTORATE & ANR. .....RESPONDENT(S)

JUDGMENT

BELA M. TRIVEDI, J.

1. The petitioners by way of these petitions have challenged the common judgment and order dated 21.02.2019 passed by the High Court of Judicature for Rajasthan, Bench at Jaipur, in S.B. Criminal Writ Petition No. 704 of 2018 and S.B. Criminal Writ Petition No. 757 of 2018, whereby the High Court has dismissed both the petitions imposing cost of Rs. 50,000/-.

2. The S.B. Criminal Writ Petition No. 704 of 2018 was filed by the petitioner – Anoop Bartaria, Director of World Trade Park Ltd. seeking a prayer to quash ECIR No.JPZO/01/2016 registered by the Jaipur Zonal Office of Enforcement Directorate, with further prayer against the respondents not to file any criminal complaint against the petitioner and not to take any coercive steps against the petitioner in respect of the said ECIR. The S.B. Criminal Writ Petition No. 757 of 2018 was filed by the petitioner – Anoop Bartaria, the Director, World Trade Park Ltd., and by M/s World Trade Park Ltd, a company registered under the Companies Act, 1956, seeking a prayer to quash and set aside the prosecution complaint in ECIR No.JPZO/01/2016.

3. As per the case of the petitioners, the petitioner- Anoop Bartaria is a leading and an awarded engineer/architect having an expertise in providing structural, architectural and design consultancy services and is also the Chairman and Managing Director of the World Trade Park Ltd., (Erstwhile

M/s R.F. Properties & Trading Ltd.) a company registered under the Companies Act, 1956. The World Trade Park is one of the most sought-after real estate commercial properties situated at JLN Marg, Jaipur. The World Trade Park Company is engaged in the business of selling and leasing commercial spaces to various interested buyers/purchasers.

4. One Mr. Bharat Bomb and his associates approached the petitioners for the purchase of commercial units in the said World Trade Park and booked certain units. Initially the commercial units were booked in the name of Raj Darbar Material Trading Pvt. Ltd. by the said Bharat Bomb, and the amounts thereof in aggregate Rs.

74.02 crores were paid to the petitioners through demand draft and/or RTGS. Further certain amounts totaling Rs. 1.4 crores were received by the petitioner- Anoop Bartaria from Bharat Bomb towards architectural designing and consultancy services towards a real estate project being brought about by Mr. Bomb in Udaipur. However, subsequently Mr. Bomb and his associates, asked the petitioners to register the units in the name of new entities, and therefore the petitioners returned the amount back deposited by M/s. Raj Darbar Material Trading Pvt. Ltd. Thereafter in the year 2015, 34 commercial spaces were sold by the petitioners in favour of Mr. Bharat and his associates by executing 34 registered sale deeds. According to the petitioners, the amounts were received through demand drafts and/or RTGS, and all legal formalities required for registration were also followed in due course. The possession of the said units was also handed over to the respective entities/persons as instructed by Mr. Bomb.

5. The petitioners had taken loan/financial assistance from IDBI Bank and DHFL, as also from UCO Bank, mortgaging the units/spaces of World Trade Park with the said banks. On 04.10.2014, the petitioners had obtained NOC from UCO Bank for the release of a particular immovable property admeasuring 23837 sq.ft. and on 23.12.2014 had obtained NOC from IDBI Bank, Jaipur for transfer of a particular units subject to the compliance of the conditions mentioned therein. Similar, NOC for the sale of area was also issued by DHFL, Mumbai on 24.03.2015 for transfer of units admeasuring 11538 sq.ft.

6. As per the further case of the petitioners, the petitioner- Anoop Bartaria had purchased three offices namely office nos. 407, 408 and 409 in the World Trade Park in his personal capacity and had paid the amount through his current account which had no connection with Mr. Bharat Bomb or his associates.

7. An FIR being No. RCBD1/2016/E/0002 came to be registered by CBI, BS&FC, New Delhi, on 07.03.2016 against the said Bharat Bomb, his associates and the officials of three branches of the Syndicate Bank namely:- (1) Bapu Bazar, Udaipur (2) Malviya Nagar, Jaipur and (3) MI Road, Jaipur and certain other persons for the offences under the 120B, 420, 467, 468, 471, 472 and 474 of IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. It was alleged inter alia in the said FIR that during 2011-2015, to defraud the bank, the accused Bharat Bomb and his associates, in collusion with the officials of Syndicate Bank had misused the KYC documents of his clients/employees/family members as well as the existing customers of the Syndicate Bank to launder the money to the tune of about more than 18,000 crores which resulted in siphoning off Rs.

1055.79 crores. On 14.06.2016, the CBI, BS&FC filed charge-sheet before the Designated CBI Court, Jaipur against Mr. Bharat Bomb and some of the officers of the Syndicate Bank for the said offences.

8. Since some of the offences registered by the CBI in the said FIR were scheduled offences under the Prevention of Money Laundering Act, 2002 (PMLA), the Directorate of Enforcement (ED) Jaipur, initiated investigation for the offence of money laundering by registering an Enforcement Case Information Report (ECIR) on 11.07.2016.

9. During the course of investigation, it was revealed that the petitioner Anoop Bartaria, his companies M/s World Trade Park Ltd. and M/s Sincere Infrastructure Private Ltd. had received more than Rs. 160 crores defrauded funds from the accounts of fictitious firms/ companies created and operated by Bharat Bomb namely M/s B.K. Builders, M/s Raj Darbar Material Trading Pvt. Ltd., M/s Raj Darbar Material Trading LLP, Jai Hanuman Construction & M/s Omnia Entertainment and Hospitality etc.

10. The petitioner- Anoop Bartaria therefore filed the writ petition being S.B. Criminal Writ Petition No. 704 of 2018 before the High Court, seeking prayer to quash the said ECIR dated 11.07.2016. However, pending the said petition, the Prosecution complaint based on the said ECIR came to be filed against several persons including the present petitioners on 17.07.2018. The petitioners therefore filed S.B. Criminal Writ Petition No. 757 of 2018 seeking prayer to quash the said Prosecution complaint. Both the writ petitions came to be dismissed with cost of Rs. 50,000/- by the High Court vide the impugned order.

11. The bone of contention raised by the learned counsel Mr. Swadeep Hora for the petitioners is that the petitioners were neither named in the FIR registered by the CBI against the officers of the Syndicate Bank and Mr. Bharat Bomb nor they were named in the subsequent ECIR registered by the ED, however, the ED after the investigation of the said ECIR has filed the Prosecution complaint falsely involving the petitioners in the same. According to him, the sine qua non and the essential ingredient for the offence of money laundering as defined in Section 3 read with Section 4 of the PMLA is that the person must be knowingly or actually involved in any process or activity connected with the proceeds of crime as defined under Section 2(1)(u) of the said Act and, therefore, unless the said essential ingredient of knowledge is met out, no complaint or proceedings under the said Act could be initiated. In the instant case, the said pre-requisite for filing the complaint against the petitioners being missing, the complaint was not tenable in the eye of law, and that the continuation of any proceedings against the petitioners under the PMLA would be an abuse of process of law.

12. Elaborating his submissions on the allegations made against the petitioners, Mr. Hora submitted that the petitioners had only “buyer- seller” relationship with Mr. Bharat Bomb and his associates, and that the petitioners had no knowledge that the money received by them was the proceeds of crime. In this regard Mr. Hora has placed reliance on Nikesh Tarachand Shah Vs. Union of India and Another1. He further submitted that though initially Mr. Bharat Bomb had requested the petitioners to book certain units in the name of M/s Raj Darbar Material Trading Pvt. Ltd., subsequently he had requested to execute sale deeds in the name of various associated entities, and therefore 34 separate registered sale deeds were executed by the petitioners, and respective amounts

were received separately from each of the entity through demand drafts or RTGS, after refunding the amount received from M/s. Raj Darbar Material Trading Pvt. Ltd. In the said transactions, the petitioners had received the sale consideration of INR 76.72 crores and not INR 150 crores as alleged.

(2018) 11 SCC 1

13. Mr. Hora further submitted that the petitioners had sold the units after obtaining valid NOCs from UCO Bank, IDBI AND DHFL and none of the banks has raised any grievance against the petitioners, as all the dues were cleared in respect of the units mentioned therein by the petitioners before obtaining NOCs from the said banks. He further submitted that the petitioner- Anoop Bartaria being a renowned architect had provided architectural services to Mr. Bharat Bomb for his Royal Raj Villas project at Udaipur and the amount of fees received from Mr. Bomb was also reflected in the income tax and service tax returns of the petitioners.

14. According to Mr. Hora, the alleged offences under the PMLA are not cognizable offences and the entire investigation carried out by the ED was without any authority of law. Lastly, he submitted that the petitioners who are absolutely unconnected to Mr. Bharat Bomb are suffering the business loss and the credibility and therefore the complaint deserves to be quashed in view of the judgment of this Court in case of Pepsi Foods Ltd. and Another vs Special Judicial Magistrate and Others2.

15. Per contra, the learned Additional Solicitor General appearing for the respondents vehemently submitted that the petitioners having (1998) 5 SCC 749 filed frivolous petitions before the High Court, the same were dismissed by the High Court with cost, which order being just and proper should not be interfered with by this Court. Relying upon the State of Haryana and Others. vs. Bhajan Lal and Others3 he submitted that the power of quashing a complaint can only be exercised in rarest of rare case where allegations taken on face value do not prima facie constitute any offence. In the instant case, there are specific allegations of money laundering against the petitioners which had surfaced during the course of investigation carried out by the authorized officer under the PMLA, which prima facie constitute offence against the petitioners under the said Act.

16. Placing reliance on the Prosecution complaint filed by the Directorate of Enforcement, the learned ASG pointed out that the petitioner- Anoop Bartaria had availed fraudulent loan of Rs. 4.80 crores from the Syndicate Bank under the guise of purchasing three offices in his name in the World Trade Park, for which the Syndicate Bank had lodged FIR with CBI on 23.03.2017. It was also revealed that the instalment of the said term loan to the extent of 1.50 crores were being paid by getting money from the fictitious firms controlled by Mr. Bharat Bomb and his associates. He also pointed out that 1992 Suppl. (1) SCC 335 the said current bank account opened by the petitioner-Anoop Bartaria with Syndicate bank on 30.09.2014 was exclusively operated for receiving tainted money from Mr. Bharat Bomb and no other transactions had taken place in the said account. The said account was also not declared in ITR of Anoop Bartaria filed for the assessment year 2015-16.

17. He submitted that the petitioner- Anoop Bartaria and his company had availed the loans for the project of World Trade Park from IDBI Bank/DHFL and UCO Bank, by mortgaging the units of the

said project to the said banks. In line with terms of sanction, the World Trade Park Ltd. had opened an escrow account with IDBI Bank, in which all sale proceeds were to be deposited in that account only. However, Mr. Bartaria did not deposit any amount in the said escrow account and facilitated Mr. Bharat Bomb and his associates in parking the tainted money by opening the account in the Syndicate bank. In the request letters to IDBI for issuing NOC in respect of office nos. 407, 408 and 409, the name of the customer shown was M/s Raj Darbar Material Ltd. showing the status of the properties as unsold.

18. Learned ASG has also placed reliance on the counter affidavit to buttress his submissions that the petitioner- Anoop Bartaria, this company M/s. World Trade Park Ltd., earlier named as M/s. R.F Trading and Properties, and M/s. Sincere Infrastructure Pvt. Ltd.

had received more than 160 crores of defrauded fund since October 2013 till unearthing of the fraud, from the accounts of fictitious firms/companies created and operated by Bharat Bomb and his associates.

19. The learned ASG has placed heavy reliance on the prosecution complaint filed by the ED, more particularly on para nos. 10.5 and 10.8 to show as to how the petitioner-Anoop Bartaria was complicit in the crime and sharing the fruit of the crime with Bharat Bomb; and as to how he was directly involved in the activity connected with proceeds of crime including generation, acquisition and use of proceeds of crime by commission of scheduled offence.

20. Pressing into service the provisions contained in Section 45 read with the explanation to the said provision inserted by the Finance (No.2) Act, 2019, he submitted that the offences under the PMLA are “cognizable and non-bailable”. Learned ASG lastly submitted that because of the order passed by this Court on 25.03.2019 directing the respondents not to take coercive action against the petitioners, the proceedings before the competent Court are stayed and the investigations have also come to stand still, which has caused great prejudice to the case filed by the ED under the PMLA.

21. Now, adverting to the first and foremost contention raised as to whether the offences of money laundering under PMLA are cognizable or not, it may be noted that sub-section (1) of Section 45 pertaining to the offences was amended by Act 20 of 2005. Sub- section 1 of Section 45 prior to amendment read as under:

> “Section 45- Offences to be cognizable and non- bailable-
>
> ```
> (1)    Notwithstanding anything contained in
> the Code of Criminal Procedure, 1973 (2 of
> 1974),
> (a)     Every offence punishable under this Act
> shall be cognizable;
> (b)     No person accused of an offence
> ```
>
> punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless.”

22. Subsequently, sub-section (1) was substituted by the Act 20 of 2005 w.e.f. 1.7.2005.

"(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence [under this Act] shall be released on bail or on his own bond unless..."

23. It may be noted that for removal of doubts, the Explanation to Section 45 was inserted by the Finance (No.2) Act, 2019 w.e.f. 1.8.2019 which reads as under:

> "Explanation- For the removal of doubts, it is clarified that the expression "Offences to be cognizable and non-bailable" shall mean and shall be deemed to have always meant that all the offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly the officers authorized under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under Section 19 and subject to the conditions enshrined under this Section".
>
> 24. From the afore-stated substitution of sub-section (1) and insertion of the Explanation to Section 45, and non-amendment in the short title of Section 45 – "offences to be cognizable and non-bailable", there remains no shadow of doubt that all the offences under the PMLA were, are and shall be "cognizable and non-bailable offences" notwithstanding anything to the contrary contained in the Code of Criminal Procedure Code, 1973. Accordingly, the officers authorized under the PMLA Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under Section 19 which deals with power to arrest and subject to the conditions enshrined under Section 45. The Prosecution complaint no.12/2018 in ECIR No.JPZO/01/2016 having been lodged by the authorized officer competent to file the complaint under Section 45 of the Act read with order dated 11.11.2014 issued by the Government of India, Ministry of Finance, Department of Revenue, New Delhi, as stated in the complaint itself, the Court does not find any substance in the submissions made by Mr. Hora that the Prosecution complaint was not lodged by the authorized officer.
>
> 25. The submissions by Mr. Hora, learned counsel for the petitioners that the knowledge of the petitioners that they were dealing with the proceeds of crime was sine qua non and essential ingredient for the offence of money laundering as defined under Section 3 of the PMLA, and that in the instant case, in absence of any material to show that the petitioners had the knowledge that they were dealing with the proceeds of crime committed by Bharat Bomb and his associates, continuation of the proceedings under the PMLA against the petitioners would be an abuse of process of law, have also no legs to stand. It may be noted that offence of money laundering has been defined in Section 3 of the PMLA, which reads as under:

> "3. Offence of money-laundering. — Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money- laundering.
>
> [Explanation. — For the removal of doubts, it is hereby clarified that, —
>
> (i) a person shall be guilty of offence of money-

laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely: —

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]"

26. Section 2(u) defines what is "proceeds of crime" and Section 2(y) defines what is "Scheduled offence". As discernable from the record, the Prosecution complaint in ECIR was lodged against the petitioners and others under the PMLA by the ED, pursuant to the investigation carried out by the CBI in the FIR No. RCBD1/2016/E/0002 dated 07.03.2016 and the charge-sheet dated 14.06.2016 filed by the CBI against Bharat Bomb and others for the offences under Sections 120B, 420, 467, 468, 471, 472 and 474 of IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 at the Designated CBI Court at Jaipur. All the said offences are scheduled offences within the meaning of Section 2(y) of the said Act. The allegations against the petitioner no.1-Anoop Bartaria (Accused No.5) as the Chairman and Managing Director of M/s. World Trade Park Ltd. and the petitioner no.2- World Trade Park Ltd. (accused No.8) are stated in detail in para 10.5 and 10.8 respectively in the Prosecution complaint. The Court at this juncture is not required to go into the merits of the said allegations. Suffice it to say that serious allegations of money laundering are alleged against both the petitioners in the Prosecution complaint and sufficient

material particulars have been narrated in the said complaint to substantiate the said allegations, which prima facie show the direct involvement of the petitioners in the alleged offences of money laundering as defined in Section 3 of the said PMLA.

27. Having regard to the definition contained in Section 3, it would be a folly to hold that the knowledge of the accused that he was dealing with the proceeds of crime, would be a condition precedent or sine qua non required to be shown by the prosecution for lodging the complaint under the said Act. As the definition itself suggests whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money- laundering. Hence, apart from having knowledge, if a person who directly or indirectly attempts to indulge or is actually involved in the process or activity connected with the proceeds of crime, is also guilty of the offence of money laundering. In the instant case, the direct involvement of the petitioners in the activities connected with the proceeds of crime has been alleged, along with the material narrated in the complaint which would require a trial to be conducted by the competent court.

28. It is axiomatic that the power to quash complaint under Section 482 of Cr.P.C. should be exercised very sparingly and with circumspection, and that too in the rarest of rare cases. In State of Haryana and Others vs. Bhajan Lal and Others (supra), this Court has laid down certain guidelines as to when the powers under Section 482 could be exercised either to prevent abuse the process of any court or otherwise to secure ends of justice.

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused. (2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

29. The case of the petitioners does not fall under any of the above categories. The petitioners have also failed to make out any case of abuse of process of the court at the instance of the respondent authorities. There being enough material to show prima facie involvement of the petitioners in the alleged offence of money laundering, as contemplated under the PMLA the High Court had rightly dismissed the petitions filed by the petitioners. As stated in the statement of objects and reasons of the Act, money laundering poses a serious threat not only to the financial systems of the countries but also to their integrity and sovereignty. Hence any lenient view in dealing with such offences would be a travesty of justice.

30. Before parting, it may be noted that the petitioners in the SLPs while praying for the main relief of quashing the impugned judgment and order dated 21.02.2019 passed by the High Court, had sought interim relief seeking stay of the entire proceedings and the prosecution complaint no. 12/2018 in ECIR No.JPZO/01/2016 pending before the Special Judge (PMLA cases) Jaipur, without producing the said complaint along with the SLP paper books. The SLPs appear to have been filed on 8th March, 2019 declaring that all the defects have been cured, and thereafter on 25.03.2019, by way of an application seeking permission to file additional documents, the petitioners had produced the said Prosecution complaint no.12/2018 on record. Apart from the fact that after filing of the SLPs, no documents could have been filed without the permission of the Court, which in the instant case does not appear to have been sought for by the petitioners nor granted by the Court, the very practice of not filing the essential and relevant documents, more particularly, the documents in respect of which a relief is sought in the SLPs, is strongly deprecated. It may be noted that non-production of the relevant documents especially the documents in respect of which the relief is sought, along with the SLPs could be the sole ground for rejection of the SLPs at the outset.

31. The Registry is also directed to verify at the time of registration of SLPs as to whether all the relevant documents, more particularly, the documents in respect of which the relief is sought, have been produced at the first instance by the petitioners along with the SLPs or not.

32. In that view of the matter, the petitions are dismissed. The interim relief granted earlier stands vacated forthwith. It is needless to say that the observations made against the petitioners in this order are only prima facie and the trial court shall decide the case on merits without being influenced by the said observations.

33. Learned counsel for the respondents, on instructions, informs this Court that since the investigation is over and charge-sheet has been filed, no custodial interrogation of the petitioner is required.

34. The E.D shall be at liberty to proceed further with the Prosecution complaint in accordance with law.

35. Copy of this judgment be sent to the Secretary General and the Registrar (J-I) for doing the needful.

..... J.

[AJAY RASTOGI] .....J. [BELA M. TRIVEDI] NEW DELHI;

21.04.2023