

Form No. J(2)

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

W.P.A. 20644of 2023

Pritimoy Chakraborty
Vs.
Union of India & Ors.

For the petitioner

Mr. Bikash Ranjan Bhattacharyya, Sr.Adv
Mr. Subhankar Nag
Ms. Sayanti Sengupta
Mr. Jamiruddin Khan

For the ED

Mr. Arijit Chakrabarti
Mr. Deepak Sharma

For the Union of India

Mr. Billwadal Bhattacharyya, Ld. DSGI
Mr. Tirtha Pati Acharyya

Heard on : 25.08.2023.

Judgment on : 25.08.2023.

Jay Sengupta, J.

This is an application under Article 226 of the Constitution of India praying for quashing of the impugned summons dated 17.08.2023 being no. PMLA/Summon/KLZO/2023/663 in respect of

F. No. ECIR/KLZO/01/2018/1669 and a direction that no coercive measures should be taken against the petitioner in respect of the said summon.

Learned senior counsel representing the petitioner submits as follows. The petitioner is not an accused in this case. Only a summon has been issued to him. The petitioner suffers from diverse ailments. The company in question in which he was a director namely, Zenith Finesse India Private Limited is now sold to another Company as per the IBC. Therefore, the petitioner is now not in a position to produce the documents sought. It is another thing that earlier the petitioner was in a position and did submit a few documents in this regard. Reliance is placed on the decision in V. Senthil Balaji's case, 2023 SCC online SC 934 and it is submitted that the power to arrest in PMLA case is very limited and is to be exercised cautiously and as per law. However, that stage has not come yet. But the petitioner's apprehension and the consequent prayer for 'no coercive action' emanates from the fact that two other witnesses called by such summons have been arrested. Most of the records sought are already with the Enforcement Directorate. Some documents that are not there have been disclosed in the writ petition. Section 50 (3) of the PMLA Act provides that a witness can be asked to attend in person or through an authorized agent. In the instant case, there is no reason why the

petitioner should be asked to come in person. Here, it does not appear that the summon was sent for any other purpose than for production of documents.

Learned counsel appearing on behalf of the Enforcement Directorate submits as follows. As would be evident from a plain reading of the summons sent, it was clearly indicated that the petitioner should appear in person. It was further categorically mentioned that he was not only to produce documents, but also to tender evidence, which is permissible in law. It is true that earlier a summon was issued to Mr. D. P. Jadav., a Director of Zenith Finesse India Private Limited and the petitioner provided some documents on behalf of such person. The present summon is not directed against Zenith Finesse India Private Limited. The judgment in V. Senthil Balaji's case (supra) vindicates the powers of the Enforcement Directorate including the power to arrest. However, that stage has not come yet as the petitioner has not been examined. Reliance is also placed on the decision in the Commissioner of Customs, Calcutta –vs- M. M. Exports reported at 2007 (212) ELT (165) SC and it is submitted that at the stage of issuance of summons Courts should normally not interfere with the proceeding.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition.

First, the power of the Enforcement Directorate to arrest an accused cannot be in question in view of the decisions in V. Senthil Balaji's Case (supra). However, that is not directly an issue here.

It appears that a notice has been given to the petitioner to appear and produce certain documents and tender evidence in terms of Section 50 of the PMLA Act.

If the petitioner is not in a position to produce certain documents because he is not in charge of a company anymore, this can fairly be contended before the authorities. However, there is a clear indication that documents have been sought as regards several other companies. Item 9 indicates that another purpose for such attendance is to tender evidence.

In exercise powers under Section 50 of the PMLA Act, it was specifically directed that the petitioner should attend in person.

It will be too much to ask the authorities to record reasons at every stage even while issuing summons in terms of Section 50 of the PMLA Act.

Therefore, I do not find any reason as to why the petitioner could not co-operate with the proceeding.

The petitioner also could not show any patent illegality in the summoning of the petitioner by the Enforcement Directorate.

No case is made out either to seek the exceptional relief of 'not to take coercive action'. In fact, such relief could be granted only in very exceptional cases. On this, reliance may be placed on Neeharika Infrastructure (P) Ltd., 2021 SCC Online 315.

Therefore, it is necessary that the petitioner co-operates with the Enforcement Directorate and appropriately responds to the summons that was issued by the said authorities.

As it was alleged that noticees are usually made to await for long hours at the office of the Enforcement Directorate, it is clarified that once the petitioner reaches the Enforcement Directorate, the authorities that shall take prompt steps to examine him and/or record any evidence.

Considering the purported health condition of the petitioner, let the interrogation, if any, on a particular day not exceed 4 hours.

Since the decision is being made on the writ petition of the petitioner at about 11:45 AM today and the direction was for the petitioner to attend the office of the Enforcement Directorate at 10:30 AM, let the petitioner attend the office of the Enforcement Directorate for such purpose today at 2 PM.

I do not find any merit in this writ petition.

Accordingly, the writ petition is dismissed.

However, there shall be no order as to costs.

Since affidavits were not called for, allegations are deemed not to have been admitted.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

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(Jay Sengupta, J.)