Court No. - 15

Case :- APPLICATION U/S 482 No. - 2318 of 2024

Applicant :- Saurabh Mukund
Opposite Party :- Directorate Of Enforcement Thru. Its Joint Director Lko.
Counsel for Applicant :- Ram Prakash Pandey
Counsel for Opposite Party :- Rohit Tripathi

Hon'ble Mohd. Faiz Alam Khan,J.

1. Heard Shri Neeraj Jain assisted by Shri Ram Prakash Pandey, learned counsel for the applicant, Shri Rohit Tripathi, learned counsel for Enforcement Directorate and perused the record.

2. This application under section 482 Cr.P.C. has been moved by the applicant with the following prayer:-

"*a. issue a wit of declaration or a writ in the nature of declaration or any other appropriate writ, order or direction holding and declaring that second ECIR/13/LKZO/2019 registered at zonal office Lucknow pursuant whereto summon bearing reference no. PMLA/ SUMMON/LKZO/2024/1379 and third ECIR/25/LKZO/2023 pursuant whereto summon bearing reference no. PMLA/SUMMON/LKZO/2024/1332 have been issued are deliberate abuse of authority and manifest violation of law in the manner in which respondent is conducting investigation raising serious apprehension both about the veracity and purpose of the investigation which investigation appears to be a tool for propaganda than any serious or sincere endeavour to inquire facts and affix responsibility therefore,*

b. issue a writ, order or direction in the nature of certiorari quashing the second ECIR/13/LKZO/2019 registered at zonal office Lucknow and all subsequent communications/ proceedings emanating therefrom,

c. issue a writ, order or direction in the nature of certiorari quashing the third ECIR/25/LKZO/2023 registered at zonal office Lucknow and all subsequent communications/ proceedings emanating therefrom,

d. issue a writ, order or direction in the nature of mandamus directing the respondent and its officers to show scrupulous regard for their statutory responsibilities to avoid misconduct in discharge thereof and not to use their investigation to

violate the fundamental rights of citizens and the successive ECIR not only being impermissible in law but infringing both the reputation and fair treatment of the persons against whom such investigation is directed,

e. issue a writ, order or direction in the nature of mandamus or any other writ, order or direction to the respondents to forthwith desist from contravening their legal / constitutional duties i.e. their illegal acts of infringing constitutional right of petition to enjoy his liberty except in accordance with due process of law and cease to obstruct him from perusing his vocation in life so as to render meaningful existence/ enjoyment of his right to life and liberty as guaranteed by the Constitution of India;

f. issue a writ, order or direction in the nature of mandamus or any other writ, order or direction to the respondents commanding them not to initiate any proceeding or take any action against the petitioner without permission of this Hon'ble Court;

g. issue any other suitable writ, order or direction which this Hon'ble Court may deem fit and proper on the basis of fact and circumstances of the case and in the interest of justice."

3. Shri Neeraj Jain, learned counsel for the petitioner/ applicant submits that on 6.2.2024 the petitioner has received summons related to *ECIR/25/LKZO/2023* requiring him to appear and furnish details about 111 Companies in respect of which not only a complaint has already been filed by serious fraud investigation office herein after referred to as 'SFIO' on 18.9.2017 being Criminal Case No. 720/2017 before the Special Judge Companies Act Dwarika, Delhi and with regard to it a Criminal Case No. 196/2022 filed by the Enforcement Directorate is also pending. In pursuance of an ECIR bearing No. ECIR/LKZO/ 02/2019.

4. It is further submitted that on 17.2.2024 another summon pertaining to ECIR/13/LKZO/2019 was received by the petitioner and the said summons is arising out of the same recommendation of SFIO concerning 111 Companies, in respect of which complaint has already been filed by SFIO on 18.9.2017 being CC NO. 1720/2017 before learned Special Judge Companies Act Dwarika, Delhi.

5. It is further submitted that issuance of summons in the aforesaid 2 ECIRs are nothing but an attempt to harass the applicant who is already facing prosecution by Enforcement Directorate in an identical matter.

6. It is vehemently submitted that when an ECIR has already been registered by Enforcement Directorate in the same offence another 2 ECIRs could not be registered. The reliance has been placed on the law laid down by the Hon'ble Supreme Court in ***T.T. Antony Vs. State of Kerala*** (2001)6 SCC 181.

7. It is vehemently submitted that the petitioner in order to know the facts on the basis of subsequent ECIR has been lodged while replying to the said summons sought copy of the ECIR's and also posted a copy thereof through speed post but no copy of ECIRs have been provided and in all probability the summons which have been sent pertaining to the above mentioned two subsequent ECIRs are with regard to the same companies which have already been investigated by the Directorate of Enforcement and pertaining to which a fulfledged complaint has already been filed before the Special Court Companies Act, Dwarika, Delhi and it is not revealed as to whether any further investigation or inquiry is being done by the Enforcement Directorate, in the same matter.

8. It is vehemently submitted that the instant case is an example wherein the authority vested in State has been abused and exploited by the State Authorities. The two ECIRs lodged subsequently cannot be contemplated to be having new cause of action as copy of the same has never been provided to the petitioner and once in the identical matter the allegations have been investigated and complaint has been filed the department is not having any power to open a denovo investigation on the same set of allegations/ facts and thus lodging of the successful ECIRs are sheer abuse of power conferred upon Public Authority by the statute.

9. It is further submitted that lodging of 2 ECIRs subsequently on the same set of circumstances pertaining to which earlier ECIR has been registered and complaint has been filed is amounting to never ending process of investigation and further investigation, which has instilled a fear in the mind of the petitioner who despite having fully cooperated in the earlier inquiry pertaining to Navarta Marketing Private Ltd. along with 83 other entities is consistently being summoned to the office of Enforcement Directorate by way of issuing summons bearing different numbers of ECIRs and the same information is being sought again and again and thus 2and & 3rd ECIRs lodged subsequently pertaining to which impugned summons have been issued be declared deliberate abuse of authority and the subsequent ECIR's registered at Zonal Office of the Enforcement Directorate, Lucknow with all its subsequent proceedings be quashed and the Directorate Enforcement be directed not to investigate the same and direction or order in

the nature of mandamus be also issued commanding the Enforcement Directorate not to initiate any proceeding or take any action in the matter without permission of this Court.

10. Learned counsel for the applicant has placed reliance on the following case laws:-

(i) ***T.T. Antony Vs. State of Kerala and others*** reported in (2001)6 SCC 181.

(ii) ***Anju Chaudhary Vs. State of Uttar Pradesh*** reported in 2013 (6) SCC 384.

(iii) ***Vinay Tyagi Vs. Irshad Ali @ Deepak and others*** reported in 2013 (5) SCC 762.

(iv) ***Atir Vs. State (N.C.T. of Delhi)*** passed in Crl. M.C. No. 1197 of 2021

(v) ***Ashish Bhalla Vs. State and another*** passed in Crl. M.C. No. 298 of 2023.

(vi) ***Youth Bar Association of India Vs. Union of India and others*** reported in 2016 (9) SC 473.

(vii) ***Dilbag Singh Vs. Union of India and others*** passed in C.R.M.-M-2191-2024 (O & M) Decided on 9.2.2024.

(viii) ***West Bengal Vs. Committee for Protection of Democratic Rights*** reported in (2010)3 SCC 571.

10. Shri Rohit Tripathi, learned counsel appearing for Enforcement Directorate while relying on the short counter affidavit filed by the Directorate of Enforcement submits that by means of the instant application the petitioner has clubbed two separate cases and separate cause of actions pertaining to 2 separate cases of PMLA and the same is not maintainable.

11. It is vehemently submitted that the summons which have been issued to the petitioner have been issued by the Enforcement Directorate in exercise of power contained under Section 50 of P.M.L.A. and the same has been issued in furtherance of 2 ECIRs thus the present application under Section 482 Cr.P.C. is not maintainable in view of the law laid down by the Full Bench in ***Ram Lal Yadav and others Vs. State of U.P. and others*** reported in MANU/U.P./0576/1989.

12. It is further submitted that at this point of time it is neither clear nor decided whether the applicant has been summoned as an accused or simply as a witness in the cases which are under

investigation and the same depends upon the outcome of the investigation /interrogation of the petitioner and any judicial intervention at this stage is likely to create a hurdle in smooth and fair investigation.

13. It is further submitted that ECIR-02-LKZO- 2019 was registered with reference to offences under the Companies Act read with relevant provisions of the IPC and the matter was investigated by the SFIO and a complaint was filed before the concerned Court and the Enforcement Directorate has also filed its complaint before the same Court in the matter while ECIR No. 13/2019 on the other hand was registered by the Enforcement Directorate with reference to RC No.06 (A)/2019SC-III/ND registered by CBI New Delhi pertaining to the offences 120B & 420 of IPC and 13(2) r/w 13(1) (d) of PC Act,1988 and ECIR No. 25 of 2023 has been registered by the Enforcement Directorate with reference to FIR 0006 dated 01.06.2022 registered by UP Vigilance Department, Meerut against Md. Iqbal involving offences under Sections 13(2) read with 13(1) (b) of PC Act.

14. It is vehemently submitted that these 3 ECIRs have been registered with regard to different and distinct matters and so far as the filing of the copy of the 2 ECIRs pertaining to which statement was made earlier, as per the rules of registry a copy of such pleadings has to be served on the petitioner which may adversely effect the case of prosecution and investigation. It is submitted that in ***Vijay Madan Lal Chaudhary & others Vs. Union of India***, in SLP (Cr) No. 4634 of 2014 the Supreme Court has held that ECIR is an internal document of Enforcement Directorate, however, these 2 relevant ECIRs. can be submitted to the Court in a sealed envelope, if it is deemed fit, for perusal.

15. It is further submitted that the instant writ petition/ application is premature and has been filed only on the issuance of summons issued under Section 50 of the P.M.L.A. and the same does not give rise to any cause of action and is an abuse of legal process. Unless and until the adjudicatory process starts on the filing of complaint there can be no interference with the statutory responsibilities vested under the P.M.L.A. for investigation.

16. It is further submitted that the petitioner is not cooperating with the investigation and is not appearing before Summoning/ Investigating Authority. While drawing the attention of this Court towards the law laid down by the Hon'ble Madras High Court in ***Mrs. Nalini Chidambaram Vs. The Directorate of Enforcement,*** W.P. 32848 of 2016 and of Delhi High Court in

Virbhadra Singh Vs. Enforcement Directorate (MANU/DE/1813/2015), it is observed that writ petition cannot be entertained at the stage of summons. While relying on the law laid down by the ***Privy Council in Emperor v. Khwaja Nazir Ahmed*** (1945) 47 BOMLR 245, it is submitted that the department is having a statutory right to investigate the ECIR (FIR).

17. Learned counsel for the Enforcement Directorate has placed reliance on the following case laws:-

(i) ***Ram Lal Yadav and others Vs. State of U.P. and others*** reported in MANU/U.P./0576/1989.

(ii) ***Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) Vs. Arun Kumar Bajoria*** reported in (1998)1 SCC 52.

(iii) ***Mr. Talib Hasan Darvesh Vs. The Directorate of Enforcement*** passed in W.P. (Crl.) 780/2024, CRL. M.A.7287/ 2024, Decided on 13.3.2024.

(iv) ***Kirit Shrimankar Vs. Union of India*** reported in (2018) 12 SCC 651.

(v) ***C.M. Raveendran Vs. Union of India and Assistant Director Enforcement Directorate*** passed on W.P. (C) No. 28049 of 2020 (E), Decided on 17.12.2020.

18. Having heard learned counsel for the parties and having perused the record, it is reflected that against the petitioner one FIR and one ECIR has been registered by the Investigating Agency as well as by the Enforcement Directorate and after completing of the investigation a complaint with regard to the same has also been filed before the competent court at Dwarika, New Delhi.. The applicant appears to be aggrieved by the issuance of summons to him in ECIR/25/LKZO/2023 and ECIR LKZO/13/2019. The copies of summons which have been placed at page no. 58 and 65 of the paper book would reveal that with both the summonses a list of 119 entities have been given pertaining to which the details have been required by the E.D. The submission of learned counsel for the applicant is that it is with regard to the same cause of action the new ECIRs have been lodged/ registered pertaining to which a complaint has already been filed by the E.D. The defence of Enforcement Directorate appears to be with these 2 ECIRs are not connected with the subject matter of earlier ECIR, pertaining to which a complaint has already been filed. It is also the case of Enforcement Directorate that they may

provide the ECIRs in a sealed envelope to this Court but if the same would be brought on record by way of an affidavit, a copy of the same shall be provided to the applicant which may effect the investigation of the case and having regard to the law laid down by the Hon'ble Supreme Court in **Vijay Madan Lal Chaudhary (supra)** the ECIR is an internal document of the E.D.

19. So far as the submissions of Ld. counsel for the petitioner pertaining to lodging of second FIR is concerned, at first it is to be recalled that an ECIR is not an FIR as held by the Apex Court in **Vijay Madanlal Choudhary and Ors. vs. Union of India (UOI) and Ors. (27.07.2022 - SC) : MANU/SC/0924/2022.** Secondly the contents of the two ECIR'S has still not been revealed by the ED and in absence of relevant material no opinion may be expressed with regard to these ECIR's.

20. Hon'ble Supreme Court in **Nirmal Singh Kahlon vs. State of Punjab and Ors. (22.10.2008 - SC) : MANU/SC/8189/2008** while considering the scope of second FIR opined as under :-

"45. In the aforementioned circumstances, the decision of this Court in Ram Lal Narang v. State (Delhi Administration) MANU/SC/0216/1979 : 1979CriLJ1346 assumes significance. This Court therein was concerned with two FIRs; both lodged by the Central Bureau of Investigation. The first one contained allegations against two persons, viz., Malik and Mehra under Section 120B of the Indian Penal Code read with Sections 406 and 420 thereof wherein the CBI filed a chargesheet. Later on, however, some subsequent events emerged resulting in lodging the FIR not only against Malik and Mehra but also against Narang and his two brothers. This Court opined:

The offences alleged in the first case were Section 120B read with Section 420 and Section 406 IPC, while the offences alleged in the second case were Section 120B read with Section 411 IPC and Section 25 of the Antiquities and Art Treasures Act, 1972. It is true that the Antiquities and Art Treasures Act had not yet come into force on the date when the FIR was registered. It is also true that Omi Narang and Manu Narang were not extradited for the offence under the Antiquities and Art Treasures Act, and, therefore, they could not be tried for that offence in India. But the question whether any of the accused may be tried for a contravention of the Antiquities and Art Treasures Act or under the corresponding provision of the earlier Act is really irrelevant in deciding whether the two conspiracies are one and the same. The trite argument that a Court takes cognizance of offences and not offenders was also advanced. This argument is again of no relevance in

determining the question whether the two conspiracies which were taken cognizance of by the Ambala and the Delhi Courts were the same in substance. The question is not whether the nature and character of the conspiracy has changed by the mere inclusion of a few more conspirators as accused or by the addition of one more among the objects of the conspiracy. The question is whether the two conspiracies are in substance and truth the same. Where the conspiracy discovered later is found to cover a much larger canvas with broader ramifications, it cannot be equated with the earlier conspiracy which covered a smaller field of narrower dimensions. We are clear, in the present case, that the conspiracies which are the subject-matter of the two cases cannot be said to be identical though the conspiracy which is the subject-matter of the first case may, perhaps, be said to have turned out to be part of the conspiracy which is the subject-matter of the second case. As we mentioned earlier, when investigation commenced in FIR R.C. 4 of 1976, apart from the circumstance that the property involved was the same, the link between the conspiracy to cheat and to misappropriate and the conspiracy to dispose of the stolen property was not known. 12. The further connected questions arising for consideration are, what was the duty of the police on discovering that the conspiracy, which was the subject-matter of the earlier case, was part of a larger conspiracy, whether the police acted without jurisdiction in investigating or in continuing to investigate into the case and whether the Delhi Court acted illegally in taking cognizance of the case?"

20. This Court do not want to deliberate this issue in depth as it is still not known as to on what basis or accusation and against whom the two ECIR'S have been lodged by the Enforcement Directorate and any hypothetical discussion on this issue will not fetch any fruitful conclusion , for want of necessary material or information.

21. In Vijay Madanlal Choudhary and Ors. vs. Union of India (UOI) and Ors. (27.07.2022 - SC) : MANU/SC/0924/2022 Hon'ble Supreme Court while considering the issue of summons by the Enforcement Directorate in the background of Articles 20(3) and 21 of the Constitution opined as under :-

"SECTION 50 OF THE 2002 ACT

150. The validity of this provision has been challenged on the ground of being violative of Articles 20(3) and 21 of the Constitution. For, it allows the authorised officer under the 2002 Act to summon any person and record his statement during the course of investigation. Further, the provision mandates that the person should disclose true and correct facts known to his personal knowledge in connection with the subject matter of investigation. The person is also obliged to sign the statement so given with the threat of being punished for the

falsity or incorrectness thereof in terms of Section 63 of the 2002 Act. Before we proceed to analyse the matter further, it is apposite to reproduce Section 50 of the 2002 Act, as amended. The same reads thus:

50. Powers of authorities regarding summons, production of documents and to give evidence, etc.--

(1) The Director shall, for the purposes of Section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a 264[reporting entity], and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.

(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding Under Sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any Rules made in this behalf by the Central Government, any officer referred to in Sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not--

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the 265[Joint Director].

151. Section 50 forms part of Chapter VIII of the 2002 Act which deals with matters connected with authorities referred to in Section 48 in the same Chapter. Section 50 has been amended vide Act 2 of 2013 and again, by Act 13 of 2018.

Nothing much would turn on these amendments.

152. By this provision, the Director has been empowered to exercise the same powers as are vested in a civil Court under the 1908 Code while trying a suit in respect of matters specified in Sub-section (1). This is in reference to Section 13 of the 2002 Act dealing with powers of Director to impose fine in respect of acts of commission and omission by the banking companies, financial institutions and intermediaries. From the setting in which Section 50 has been placed and the expanse of empowering the Director with same powers as are vested in a civil Court for the purposes of imposing fine Under Section 13, is obviously very specific and not otherwise.

153. Indeed, Sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression "proceeding" in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority or the Special Court, as the case may be. Nevertheless, Sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of Sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of Sub-section (4) which provides that every proceeding Under Sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an Accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well-established. The Constitution Bench of this Court in M.P. Sharma17 had dealt with a similar challenge wherein warrants to obtain documents required for investigation were issued by the Magistrate being violative of Article 20(3) of the Constitution. This Court opined that the guarantee in Article 20(3) is against "testimonial compulsion" and is not limited to oral evidence. Not only that, it gets triggered if the person is compelled to be a witness against himself, which may not

happen merely because of issuance of summons for giving oral evidence or producing documents. Further, to be a witness is nothing more than to furnish evidence and such evidence can be furnished by different modes. The Court went on to observe as follows:

Broadly stated the guarantee in Article 20(3) is against "testimonial compulsion". It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is "to be a witness". A person can "be a witness" not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (See Section 119 of the Evidence Act) or the like. "To be a witness" is nothing more than "to furnish evidence", and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. So far as production of documents is concerned, no doubt Section 139 of the Evidence Act says that a person producing a document on summons is not a witness. But that Section is meant to regulate the right of cross-examination. It is not a guide to the connotation of the word "witness", which must be understood in its natural sense, i.e., as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in Article 20(3) is "to be a witness" and not to "appear as a witness". It follows that the protection afforded to an Accused in so far as it is related to the phrase "to be a witness" is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case.

(emphasis supplied)

159. In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority Under Section 50 in connection with the inquiry regarding proceeds of crime which

may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an Accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection Under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences Under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of Rule of evidence.

162. It is, thus, clear that the power invested in the officials is one for conducting inquiry into the matters relevant for ascertaining existence of proceeds of crime and the involvement of persons in the process or activity connected therewith so as to initiate appropriate action against such person including of seizure, attachment and confiscation of the property eventually

vesting in the Central Government.

163. We are conscious of the fact that the expression used in Section 2(1)(na) of the 2002 Act is "investigation", but there is obvious distinction in the expression "investigation" occurring in the 1973 Code. Under Section 2(h) of the 1973 Code, the investigation is done by a "police officer" or by any person (other than a Magistrate) who is authorised by a Magistrate thereby to collect the evidence regarding the crime in question. Whereas, the investigation Under Section 2(1)(na) of the 2002 Act is conducted by the Director or by an authority authorised by the Central Government under the 2002 Act for the collection of evidence for the purpose of proceeding under this Act. Obviously, this investigation is in the nature of inquiry to initiate action against the proceeds of crime and prevent activity of money-laundering. In the process of such investigation, the Director or the authority authorised by the Central Government referred to in Section 48 of the 2002 Act is empowered to resort to attachment of the proceeds of crime and for that purpose, also to do search and seizure and to arrest the person involved in the offence of money-laundering. While doing so, the prescribed authority (Director, Additional Director, Joint Director, Deputy Director or Assistant Director) alone has been empowered to summon any person for recording his statement and production of documents as may be necessary by virtue of Section 50 of the 2002 Act. Sensu stricto, at this stage (of issuing summon), it is not an investigation for initiating prosecution in respect of crime of money-laundering as such. That is only an incidental matter and may be the consequence of existence of proceeds of crime and identification of persons involved in money-laundering thereof."

21. It is apparent from the reading of Section 50 of PMLA as well as decision in **Vijay Madanlal Choudhary (supra)** that the power conferred upon the authorities by virtue of Section 50 of PMLA empower them to summon 'any person' whose attendance may be crucial either to give some evidence or to produce any records during the course of investigation or proceedings under PMLA. The persons so summoned are also bound to attend in person or through authorised agent and are required to state truth upon any subject concerning which such person is being examined or is expected to make statement and produce documents as may be required in a case.

22. In the case of **Commissioner of Customs, Calcutta v. M.M. Exports (2010) 15 SCC 647**, the Hon'ble Apex Court, while dealing with a case of issuance of summons under Section 108 of Customs Act, had expressed that except in exceptional cases, High Courts should not interfere at the stage of issuance of summons.

23. In **Poolpandi and Ors. vs. Superintendent, Central Excise and Ors. (14.05.1992 - SC) : MANU/SC/0339/1992,** while discussing the question as to whether the petitioners, who are required to be questioned during the investigation under the provisions of the Customs Act, 1962 and the Foreign Exchange Regulation Act, 1973 are entitled to the presence of their lawyers during such questioning, Apex Court opined as under:-

"11. We do not find any force in the arguments of Mr. Salve and Mr. Lalit that if a person is called away from his own house and questioned in the atmosphere of the customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus: if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering questions it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. Mr. Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the just, fair and reasonable test' we held that there is no merit in the stand of appellant before us."

24. While discussing the requirement of supply of copy of ECIR to the person who has been apprehending arrest Apex Court in **Vijay Madanlal Choudhary(Supra)** observed as under:-

"178. The next issue is: whether it is necessary to furnish copy of ECIR to the person concerned apprehending arrest or at least after his arrest? Section 19(1) of the 2002 Act postulates

that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22(1) of the Constitution. Being a special legislation and considering the complexity of the inquiry/investigation both for the purposes of initiating civil action as well as prosecution, non-supply of ECIR in a given case cannot be faulted. The ECIR may contain details of the material in possession of the Authority and recording satisfaction of reason to believe that the person is guilty of money-laundering offence, if revealed before the inquiry/investigation required to proceed against the property being proceeds of crime including to the person involved in the process or activity connected therewith, may have deleterious impact on the final outcome of the inquiry/investigation. So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the Court is free to look into the relevant records made available by the Authority about the involvement of the arrested person in the offence of money-laundering. In any case, upon filing of the complaint before the statutory period provided in 1973 Code, after arrest, the person would get all relevant materials forming part of the complaint filed by the Authority Under Section 44(1)(b) of the 2002 Act before the Special Court.

179. Viewed thus, supply of ECIR in every case to person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such arrest to such person. Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the Accused as per the provisions of 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right. Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution. It is not unknown that at times FIR does not reveal all aspects of the offence in question. In several cases, even the names of persons actually involved in the commission of offence are not mentioned in the FIR and described as

unknown Accused. Even, the particulars as unfolded are not fully recorded in the FIR. Despite that, the Accused named in any ordinary offence is able to apply for anticipatory bail or regular bail, in which proceeding, the police papers are normally perused by the concerned Court. On the same analogy, the argument of prejudice pressed into service by the Petitioners for non-supply of ECIR deserves to be answered against the Petitioners. For, the arrested person for offence of money-laundering is contemporaneously informed about the grounds of his arrest; and when produced before the Special Court, it is open to the Special Court to call upon the representative of ED to produce relevant record concerning the case of the Accused before him and look into the same for answering the need for his continued detention. Taking any view of the matter, therefore, the argument under consideration does not take the matter any further."

25. In respect of the provisions of "PMLA", Section 50(2) of the Act unambiguously enumerates that the Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act. Sub-clause (3) stipulates that all the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required. Section 50(1)(b) of the Act stipulates that enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath.The very object of the provision is unambiguously enumerated in Section 50 of the "PMLA" states that the Director for the purpose of Section 12 shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908, while trying a suit in respect of the matters stipulated. Therefore, enforcing the attendance of any person is certainly permissible for the purpose of proceeding with the investigation. Sub-clause (3) to Section 50 states that the persons who received such summons from the competent authorities under the "PMLA" is bound to attend in person. However, the authorised agents are also permitted to attend the investigation on behalf of the person against whom such summon is issued. However, if the competent authorities under the "PMLA" is of an opinion that personal appearance is required for the purpose of seeking certain specific clarifications, then the scope of the Act is wide and the authorities competent are empowered enough to issue summons for the personal appearance of that person to participate in the investigation process.

26. The "PMLA", being a Special Act, has provided certain

mandatory provisions in order to ensure the effective investigation of the offence of money laundering. The officers empowered under PMLA are required to make investigation into the offences under the said law and having regard to the observations made by the Apex Court in **Vijay Madanlal Choudhary(Supra)** they could not be equated with police officers. The law confers upon them requisite powers to carry out investigation and collect evidence. The said power includes the power to issue summons to "any person" whose attendance is considered "necessary" and compelling his attendance, whether to "give evidence" or to "produce any records" and to examine him "on oath", in terms of Section 50(2) and (3) of the Act , or to put any person under arrest (without warrant) upon satisfaction as to his complicity. Therefore, during the course of investigation, if the authorities are of an opinion that certain personal clarifications are required by person against whom summons are issued, then they are empowered to secure such personal appearance of such persons.These powers which appears to be necessary for investigation do not render the authorities under PMLA as police. In extraordinary cases, where the authorities are of an opinion that such personal appearance is not strictly required, then they are at liberty to waive the personal appearance of such person.The Prevention of Money-Laundering Act, 2002 is a complete Code which overrides the general provisons of criminal law to the extent of inconsistency. This law establishes its own enforcement machinery and other authorities with adjudicatory powers and jurisdiction. The enforcement machinery is conferred with the power and jurisdiction for investigation, such powers being quite exhaustive to assure effective investigation and with built-in safeguards to ensure fairness, transparency and accountability at all stages. The powers conferred on the enforcement officers for purposes of complete and effective investigation include the power to summon and examine "any person".

27. The law declares that every such person who is summoned is bound to state the truth. At the time of such investigative process, the person summoned is not an accused. Mere registration of ECIR does not make a person an accused. He may eventually turn out to be an accused upon being arrested or upon being prosecuted. No person is entitled in law to evade the summons issued under Section 50 PMLA on the ground that there is a possibility that he may be arrested in the future. The investigation in the present ECIR,S are still continuing and the petitioner has only been summoned to appear and submit certain documents which may be in his possession as he had been an employee of the Companies under scanner, thus the petitioner's prayer for quashing of ECIR'S itself is premature as

at this stage even the status of the applicant before the ED is not known and the same is in the realm of future.

28. The copy of ECIR'S in question, which are sought to be quashed, has not been placed on record by the ED despite promise in this regard was extended by Ld Counsel representing Enforcement Directorate, thus this Court is not in a position to examine the contents of the same. It is stated that the copies of the ECIR'S may be placed before this Court in sealed cover for perusal. This Court is not inclined to promote the culture of sealed covers in judicial proceedings and this aspect of the matter, as to whether the ED in each and every case may refuse to provide the copy of ECIR to an accused person or even to a witness, may be deliberated in depth by this Court in an appropriate case, but suffice is to say that if there is nothing extra ordinary or special , in normal course, a person summoned by the ED in whatever capacity is required to get, at least the substance of accusation if not the copy of ECIR, so he can prepare himself accordingly or may also collect relevant documents to answer the questions which may be put by the ED when interrogating the person summoned. The inquiry or investigation, as the case may be, is required to be fair to all stake holders, moreso towards a person whose status before the ED is not known yet. But as of now It appears not mandatory for the Directorate of Enforcement to furnish a copy of ECIR'S to the person , as held by Hon'ble Apex Court in **Vijay Madanlal Choudhary (supra)**, as the petitioner herein has only been summoned under Section 50 of PMLA.

29. This Court is of the considered opinion that this petition has been filed by petitioner on mere apprehension. If the Investigating Authorities are having enough materials to proceed against a person in a manner known to law and by adhering strictly to the provisions of law, then they are duty bound to do so as the law so warrants and permits them to adopt such course of action. These are all the decisions to be taken only after completing an effective investigation or atleast preliminary investigation. The investigation process should not be hampered at this initial stage. The decisions in this regard are to be taken only after the completion of the investigation by the competent authorities by strictly following the provisions of law. The Courts cannot presume that what possible actions could be taken by the competent authorities at this or that stage, even before the completion of the investigation. Thus, this Court is of a strong opinion that interference at this stage in respect of the facts and the circumstances of the present case on hand, is certainly unwarranted. At the cost of repetition it is reiterated that the petitioner himself is not aware as to whether he is being summoned under Section 50 of PMLA as an accused or as a witness, as already an ECIR was registered

against him. The Directorate of Enforcement has not filed any complaint against the petitioner and he is yet not an accused in the present ECIR,S and it cannot be said at this uncertain stage that Directorate of Enforcement is identifying the petitioner as an accused, in absence of any formal accusation to this effect.

30. Thus, having gone through the facts and circumstances of present case and for the reasons given herein before and also in view of the judicial precedents discussed above, this Court finds no good ground to quash the summons issued under Section 50 of PMLA to the petitioner or the impugned ECIR's.

29. Resultantly the instant petition preferred by the petitioner is **dismissed**.

Order Date :- 29.3.2024

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