

**IN THE COURT OF SPECIAL JUDGE:
PC ACT (CBI) - 04, ROUSE AVENUE DISTRICT COURTS,
NEW DELHI.**

CNR No. DLCT11-11000050-2023

CT No. 01/2023

E.D V. M/s SSK Trading Pvt. Ltd & Ors.

ECIR/DLZO-1/06/2018

U/s 4 r/w Section 3 of PMLA 2002

ORDER

1. This order shall dispose of an application preferred by applicant/A-2 Surender Kumar Bansal seeking direction to E.D to supply list of unrelied documents including copies of summons issued to individuals as well as statements recorded under Section 50 of PMLA 2002 by the Investigating Agency.

2. It is, inter alia pleaded in the application moved by A-2 that applicant has moved the present application seeking supply of list of all the unrelied documents including including copies of summons issued to individuals as well as statements recorded under Section 50 of PMLA 2002 by the Investigating Agency. The said documents are crucial for applicant to build his defence at the stage of arguments on charge.

2.1 It is further pleaded that apart from documents as provided in D-71 of the Relied Upon documents (RUD) filed by the E.D, none of document contains copies of summons issued to other witnesses or individuals during the investigation. Details of the statements recorded by the E.D under Section 50 of PMLA is also not provided in RUDs are detailed in Para-4 (i) to (iv) to whom summons were issued.

2.2 Further, it is pleaded that even the list of Non-Relied Documents (URD) provided on 19.09.2024 does not contain or describe various summons issued to individuals or witnesses in the present ECIR. The list also does not mention statements recorded by ED under Section 50 of PMLA during course of investigation, though not being relied upon by them for purpose of trial.

3. Ld. Counsel for the accused further argued that without supply of summons issued to the accused persons as well as witnesses under Section 50 of PMLA Act, how the court as well as defence will be able to come to know as to which documents were sought from which of the witness.

3.1 It is further argued that as far as the issue of supply of list of unrelieved upon documents as well as inspection thereof is concerned, the issue is not res integra in view of the Hon'ble Supreme Court in **Suo Moto Writ (Crl) No. (S) 1/2017 in "RE: To Issue certain Guidelines regarding inadequacies & deficiencies in criminal trial V. State of Andhra Pradesh & Ors** as well as of Hon'ble High Court in case titled **Arvind Kejriwal & Anr. V. State of NCT of Delhi, Crl. MC 1867/2020 dated 21.10.2020.**

4. In the reply filed by the E.D, it is pleaded that the question of list of unrelieved upon documents in cases under the PMLA Act is concerned, the same is pending before the Hon'ble High Court of Delhi in case titled **E.D V. Kanwar Deep Singh, Crl.MC No.**

2483/2022, Gagan Dhawan V. E.D, Crl. MC 1478/2022 and ED V. Raj Singh Gahlot etc 7029/2022.

4.1 It is further pleaded that in recent judgment by the **Hon'ble Supreme Court in P.Ponnasamy V. State of Tamil Nadu 2022 SCC OnLine 1543**, it has been specifically observed that the question of supply of Unrelied Upon Documents (URD) is to be seen only after the trial has initiated which is not the case herein. It is further pleaded that as far as the inspection or demand of copy of unexhibited documents, the Hon'ble Supreme Court in **V.K. Sasikala V. State (2012) 9 SCC 771** has held that the access to the said unexhibited and non-relied upon documents to the accused is only to be given when he has to explain the incriminating circumstances during the examination under Section 313 Cr.P.C. The said stage has yet not arrived in the present case, however, the inspection and allowing of copies of the said unrelied upon documents cannot be provided to the applicant.

4.2 Lastly, it is pleaded in para-9,10 and 11 that the present case is at the stage of charge and a mini trial cannot be initiated by seeking the unrelied upon documents which could be relevant to the accused only when the proceedings under Section 313 Cr.P.C come in the picture.

4.3 As far as the list of unrelied upon documents is concerned, the complainant has already supplied to all the accused persons on 19.09.2024. However, the investigation is on-going and few documents /statements are required for further investigation and

sharing of list of such documents will hamper the further investigation.

4.4 As far as supply of copies of summons to the accused during the investigation is concerned, the same has no relevance at this stage.

5. Ld. Counsel for E.D further argued that as far as the supply of summons under Section 50 of PMLA Act is concerned, the same are not covered by the judgment of Hon'ble Supreme Court in **Suo Moto Writ (Crl) No. (S) 1/2017 (supra) case** as only the statements and documents or articles seized are to be mentioned in the list of unrelayed Documents to be supplied to the accused at the stage of proceedings under Section 207 Cr.P.C

5.1 As far as certain statements and documents being not mentioned in the list of URD already filed on record, it is argued that they have already pleaded in their complaint that further investigation in respect to the tracing of proceeds of crime as well as other offenders is still going on. Therefore, in order to safeguard their further investigation, they have not disclosed the statements and certain documents in the list of URD, though they are ready to disclose all such documents and statement to the Court if so required.

6. Heard and considered.

7. The applicant herein is primarily seeking direction to the E.D for supplying complete list of URD including list of

summons under Section 50 of PMLA Act issued to accused, individuals and witnesses during investigation. Apart from that the second prayer is for providing list of all such statements recorded in the present case during investigation under Section 50 PMLA Act.

8. The basis of the present application is the directions of the Hon'ble Supreme Court in **Suo Moto Writ (Crl) No. (S) 1/2017 (supra) case** wherein the directions were issued for framing of Draft Rules of Criminal Practice to the various High Courts and State Governments. The Draft Rule framed by the Amicus Curiae was ordered to be treated as part and parcel of the judgment passed on 20.04.2021. The Rule -4 of Draft Rules of Criminal Practice 2021 which is part and parcel of the said judgment is reproduced hereunder for sake of convenience which addresses the issue in hand :

“4. Supply of documents under [Sections 173, 207 and 208 CrPC](#).—(i) Every accused shall be supplied with statements of witness recorded under [Sections 161 and 164 CrPC](#) and a list of documents, material objects and exhibits seized during investigation and relied upon by the investigating officer (IO) in accordance with [Sections 207 and 208 CrPC](#).

Explanation : The list of statements, documents, material objects and exhibits shall specify statements, documents, material objects and exhibits that are not relied upon by the investigating officer.”

9. Thus, it is apparent that the said mandatory condition has to be complied with by the prosecution agency during the scrutiny of documents stage under Section 207 Cr.P.C by

supplying the list having all the documents seized but not relied upon against the accused forward for prosecution.

11. In the present case in hand, in compliance of the said directions, the E.D has already filed the list of unrelieved upon documents on 19.09.2024 and said list has 22 number of documents mentioned herein. The perusal of the said list reflects that no such liberty was sought regarding certain documents or statements which are unrelieved upon being not mentioned in their list despite their bounding duty to do so in terms of clear mandate of the Hon'ble Supreme Court as discussed above.

12. Now, the prosecution agency only after filing of the present application by A-2 has come up with the said plea that certain documents and statements are not mentioned in the said list and the reasons for the same are that it might hamper their further investigation. The relevant Para-11 of the reply is reproduced hereunder for the sake of convenience:

“11.Further, it is submitted that the investigation in the instant case is ongoing and there are few documents/statements which are required for further investigation conducted by the Complainant herein and sharing of list of these documents/statements will hamper the investigation.”

12.1 The reason for not disclosing initially in their original list all the statements and documents which are unrelieved upon documents is simply claimed to be on account pending further investigation. The order of Hon'ble Supreme Court referred-above does not provide the said window to the prosecution by

allowing exclusion of certain documents while furnishing the list of unrelieved documents.

12.2 Even otherwise, the Enforcement Directorate should have specifically pleaded as to the scope of further investigation and under what circumstances, the said disclosure is going to hamper the further investigation being carried out. The said objection now taken also appears to be a lame excuse when seen in light of pending complaint filed under Section 44 of PMLA Act. It was filed way back in Jan.2023. The entire complaint which runs into more than 100 pages is silent with respect to said aspect of further investigation. The prayer in the said complaint only seeks permission to file additional evidence through supplementary prosecution complaint, if required. At Page 12, it has been specifically pointed out that the fake debtors shown by accused company M/s SSK Trading could not be traced out despite efforts during investigation. It is not pleaded that still they are making any effort or conducting any further investigation in this regard. Accordingly, the objection now taken by E.D in not disclosing the complete list of statements/documents which are unrelieved is a plea neither supported by the legal proposition of law as enunciated by the Hon'ble Supreme Court nor by the contents of complaint.

13. The second prayer is with respect to disclosure in the said list regarding all summons issued under the PMLA Act to all individuals, accused and witnesses during course of investigation.

13.1 Ld. Counsel for the applicant argued that the disclosure of said summons is going to guide them with respect to their defence. It will guide them as on what track, the investigation was conducted.

13.2 Per contra, Ld. Sr.PP for CBI vehemently opposed the said application stating that the prayer is beyond the scope of law as laid down by the Hon'ble Supreme Court as referred above.

14. The basis of the said prayer seeking disclosure of list of summons issued under Section 50 of PMLA Act during investigation, at this stage, by moving the application under Section 207 Cr.P.C is the directions of the Hon'ble Supreme Court in *Suo Moto* (supra) case. The relevant extract of the said judgment wherein the scope of the direction is reproduced herein under:

"11. The amici pointed out that at the commencement of trial, accused are only furnished with list of documents and statements which the prosecution relies on and are kept in the dark about other material, which the police or the prosecution may have in their possession, which may be exculpatory in nature, or absolve or help the accused. This court is of the opinion that while furnishing the list of statements, documents and material objects under [Sections 207/208](#), Cr. PC, the magistrate should also ensure that a list of other materials, (such as statements, or objects/documents seized, but not relied on) should be furnished to the accused. This is to ensure that in case the accused is of the view that such materials are necessary to be produced for a proper and just trial, she or he may seek appropriate orders, under the Cr. PC. for their production during the trial, in the interests of justice. It is directed accordingly; the draft rules have been accordingly modified. [Rule 4(i)]"

15. It is quite apparent from the said direction that the obligation upon the prosecution is to supply statements, object/documents seized but not relied upon. The plea of the applicant that the summons too form part of said word 'document' appears to be misinterpretation of the directions. The summons are nothing but tools used by the Investigating Authority, which are used during the course of investigation in summoning various individuals who have some relevance qua the disclosed offences.

16. In these circumstances, the prayer made for disclosure list of all the summons issued under Section 50 PMLA Act during investigation is declined at this stage being beyond the scope of judgment of Hon'ble Supreme Court in Suo Motto (supra) case. The other judgments relied upon are non-applicable qua the issue of list of summons

17. In the light of the above-said reasons, the application in hand preferred by A-2 is partly allowed by directing the E.D to supply complete list of unrelayed upon documents including the list of all the statements recorded during investigation. The application is accordingly disposed off . The direction be complied by the E.D within 10 days from today.

Announced in the open Court
on 13.12.2024

(GAGANDEEP SINGH)
Special Judge, PC Act, CBI-04
RADC, New Delhi