IN THE DESIGNATED SPECIAL COURT UNDER THE PML ACT TRYING THE CASE RELATING TO THE SCHEDULED OFFENCE CITY SESSIONS COURT, MUMBAI

ORDER BELOW EXH.16
IN
SESSIONS CASE NO.654 OF 2018

Ashok Chugani
R/o : 66 Shankar Nagar,
Nagpur, ... **Applicant (A1)**

Versus

State of Maharashtra
(through D.B. Marg Police Station) ... **Respondent**

<u>Appearance</u>:
Ld. Counsel Mr. R.B. Mokashi @ Ld. Adv. Mr. H. H. Nagi for applicant.
Mrs. Rashmi Tendulkar, Ld. A. P.P.

CORAM : M. G. DESHPANDE,
DESIGNATED SPECIAL COURT
UNDER THE PML ACT, 2002.
(C.R.N.16)
DATE : January 4, 2024.

ORDER

1. It is significant to note that, after rejection of application for discharge preferred by Mukund Athavale (A5) in PMLA Special Case No.01 of 2009, the present accused No.1 Ashok Chugani, who is accused No.1 in PMLA Special Case No.01 of 2009, had withdrawn his discharge application (Exh.165). At that time he (A1) had not filed any discharge application in any of the cases related to the Predicate Offences, but the moment discharge application of accused No.5 in the PMLA case was rejected, he (A1) withdrew his application and then filed this application in the case related to the Predicate Offence. In this way, accused No.1 Ashok Chugani has claimed discharge from this case

and also prayed to stay further proceedings of this case until disposal of this discharge application. Prosecution vide say (Exh.16A) strongly opposed the application pointing out circumstances existing against the accused No.1, his active involvement in commission of crime and contended to reject the application.

2. Heard Ld. Counsel Mr. R.B. Mokashi for the applicant (A1) and Ld. APP Mrs. Rashmi Tendulkar at length. Following points arise for my determination. I am recording following findings thereon for the reasons discussed below :-

	POINTS	FINDINGS
1.	Whether the applicant (A1) is entitled to be discharged as claimed?	No
2.	What Order ?	Application stands rejected.

REASONS

POINT NO.1.

CONTENTION OF THE APPLICANT (A1)

3. Careful reading of the whole application, prima-facie indicates that some of the paragraphs are incomplete and illegible and appear typed half only. Therefore, the Court tried at its level best to find out the meaning thereof and bring it in consonance with the alleged contention of the applicant. Therefore, I am constrained to note as such.

4. Plain reading of the complaint indicates allegations against other accused and not against the present applicant (A1). Chartered Accountant Mr. Surajprakash Maheshwari as Consultant with

M/s. Beauty Gems and Jewelers, Mumbai lodged report with D.B. Marg police station being FIR No.244/2006 dt.20.10.2006 and chargesheets under Ss. 464, 465, 467, 468, 471, 420, 34 IPC was filed on 18th Girgaon Court, Mumbai vide 32/PW/2007 which is now pending before this Court as S.C. No.656/2018. Allegations therein are that the accused No.1 alongwith another person met the informant in his office and struck deal for supply of cut and polished Diamonds. Accordingly, a cheque of Rs.45 Lakh dt.13.04.2006 was issued. The applicant (A1) allegedly got the date in the said cheque changed from **13.04.2006** to **17.04.2006** as the delivery of diamonds was likely to be late. The said cheque of Rs.45 Lakh was encashed by the applicant (A1) alongwith accused No.2 Suman Banerjee by altering the date on the cheque given for purchase of diamonds. Mr. Vijay Lodha had in fact changed the said date in the cheque and put his countersign for the same. In this background the applicant (A1) contends that he had absolutely no role in the dealings of Vijay Lodha and others nor he (A1) has any concern in encashment of the said cheque of Rs.45 Lakh, which was deposited in the account of Bombay Enterprises.

5. It is further contended that, during the investigation nothing was revealed that the date in the cheque has been altered by the present applicant (A1). It was allegedly encashed by accused No.2 Suman Banerjee. The said cheque was deposited in an account with ICICI Bank at Goregaon in the account of Bombay Enterprises. The applicant (A1) does not hold any account by the name of Bombay Enterprises and the said cheque was encashed by accused No.2 as alleged in the Prosecution case. The applicant (A1) was nowhere beneficiary of the alleged transaction and entire transaction of the said cheque was done by accused No.2 Suman Banerjee and also the

applicant (A1) was not aware of the same. There is no iota in the entire complaint/report to suggest or infer that the applicant (A1) alongwith other accused was actively involved and/or knowingly initiated and/or conspired in the commission of the offence as alleged. Hence, question of involving him (A1) under Sec.34 IPC does not arise. The prosecution case is silent on monetary beneficial consideration received by the applicant (A1). Therefore, the charge cannot be framed against the applicant nor any role can be attributed to him (A1) during the case. Even if for a moment this applicant (A1) opts not to cross-examine or rebut the statements or evidence of the informant, even then there is no material on record to warrant his (A1) conviction. With this, the applicant (A1) contended to allow the application.

ARGUMENT OF LD. COUNSEL ADV. MR. R.B. MOKASHI FOR THE APPLICANT (A1).

6. The prosecution case alleged in the chargesheet is nothing but a simple civil transaction of pay and purchase. Issuance of cheque is an admitted fact and allegation against the applicant (A1) is that he altered dates in the cheque. The informant C.A. had nothing to do or show about Beauty Gems and Jewelers, Mumbai. There are two signatures of Vijay Lodha and it is no one's case that this signature of Vijay Lodha is fabricated by the applicant (A1). The Bank accepted the instrument in due course, hence it cannot be said that it was a tainted – forged instrument. There is no evidence to show that Chugani (A1) is the same person named as Albert and no role is attributed to him (Chugani). With this argument Ld. Counsel Mr. Mokashi contended to discharge the applicant (A1). I carefully examined these arguments.

7. It is necessary to consider the record of the case, documents submitted therewith, statements of prosecution witnesses. Case of prosecution indicates that C.R.No.244/2006 under Ss. 464, 467, 471, 420, 34 IPC was registered at D.B. Marg Police Station at the instance of Mr. Surajprakash Pukhraj Maheshwari, who is Advisor of the said Proprietary firm Beauty Gems and Jewelers, J.S.S. Road, Mumbai, which deals with import-export of diamonds. In April, 2006 a person telling his name as Albert contacted the owner of the said firm and the informant, and inquired whether the said firm had diamonds of 250 carats for selling. The discussion took place and the rate for the same was fixed to Rs.20000/per carat. The accused immediately asked for payment being a condition for the said transaction and the informant put forth the condition to deposit the cheque once the diamonds were delivered. Once both of them agreed for the same Mr. Vijay Lodha, the owner of the firm, gave signed cheque of Rs.45 Lakh having date 13.04.2006. As the accused stated that the diamonds would be made available after some delay, hence the said date was written as 17.04.2006. On the basis of the said transaction initially the accused was to handover diamonds of 250 carats to the firm owner and thereafter on 17.04.2006 was to deposit the said cheque.

8. On 15.06.2006 when inquiry was made about the firm’s account with IndusInd Bank, it was revealed that an amount of Rs.45 Lakh from the said IndusInd Bank had been transferred into the account having name “Bombay Enterprises” with ICICI Bank, Goregaon East Branch. The said Bombay Enterprises, where the amount of Rs.45 Lakh had been transferred, is in the name of absconding accused Suman Banerjee. The arrested accused allegedly withdrew the said Rs.45 Lakh by changing the date in the cheque issued by Mr. Vijay

Lodha from 17.04.2006 to 12.04.2006. In this way the person name Albert in league with absconding accused Suman Banerjee committed this offence. Thereafter, the informant and witnesses tried to take trace the accused named Albert, but he could not be found out. On 20.10.2006 when the informant alongwith witnesses were going by their car found the said accused i.e. the applicant (A1), at Nariman Point, hence chased and caught him at Girgaon Chowpaty and further brought him to the police station. These are the basic facts alleged in the prosecution complaint.

9. The material with the chargesheet prima-facie indicates that the applicant (A1) is Dutch citizen and has been residing in India on residential permit. It was also revealed that he and his associates committed many offences in the State of Punjab and Mumbai and he was previously arrested by Punjab Police as well as GB CB CID, Mumbai. The material with chargesheet further indicates that the present applicant (A1) had paid Rs.3 Lakh to absconding accused Suman Banerjee, Rs.12 Lakh to Srinivasan, Rs.15 Lakh to Canadian citizen named Sunny Gill and Rs.1.5 Lakh to Jayshilan. A pendrive was recovered from the applicant (A1) and the contents thereof revealed that the applicant (A1) had created number of documents required for collection of funds from many countries. Three mobile phones and four SIM cards were seized from the car of the applicant (A1) bearing No.MH02-AP-6508. The said car is registered in the name of Sophia Mina Cherry and loan of Rs.6 Lakh from Kotak Mahindra Finance was obtained for the same in the name of her husband. The applicant (A1) had paid Rs.12 Lakh to Srinivasan, a south Indian on 14.04.2006 in front of Mcdonald Restaurant, Navi Mumbai in order to hush up this scam.

10. Unless the trial reaches to the stage of evidence drawing any inference that the applicant (A1) has not changed the date in the cheque in question nor withdrew the amount as alleged, would amount premature conclusion. It cannot be ignored that identity of the accused No.1 is yet to be confirmed as to whether he is Albert or someone else or even Suman Banerjee, who is shown as an absconding accused. In such situation, the circumstances available in the chargesheet, statements of prosecution witnesses and other materials prima-facie indicate involvement of the applicant in a serious offence.

11. It has to be noted that the offences under Ss.467, 471, 420 IPC are the Predicate Offences. This case (Sessions Case No.654/2018) relates to the Predicate offence and cannot be tried in isolation as per the mandate under Sec.44(1)(c) of the PML Act. It is specific contention of the ED that by such criminal activities relating to the Predicate Offences, this applicant (A1) and his associates have generated proceeds of crime as per Sec.2(1)(u) of the PML Act. It is significant to note that the applicant (A1) had already filed discharge application (Exh.165) in PMLA Special Case No.01 of 2009. At that time he had not filed any application for discharge in both cases related to the Predicate Offences. Alongwith the applicant (A1), Mukund Athavale (A5) in PMLA Special Case No.01 of 2009 had also filed discharge application and this Court rejected the same with detailed, reasoned Order dt. 18.10.2023. Thereafter, immediately the present applicant (A1) had withdrawn his similar application (Exh.165 therein) for discharge and subsequently filed discharge application in the cases related to the Predicate Offence. Such withdrawal speaks volumes. Because it is settled legal position that once any accused is discharged or acquitted from the case relating to the Predicate Offence, prosecution

under the PML Act e.g. PMLA Case No.01/2009 cannot continue as held in **Vijay Madanlal Choudhary and others Vs. Union of India and others, [Special Leave Petition (Criminal) No.4634 of 2014, decided on 27.07.2022]**. Therefore, knowing well this settled legal position and as similar discharge application of Mukund Athavale (A5) in PMLA Special Case No.01/2009 was rejected, the applicant (A1) anticipated fate of his discharge application in the PMLA case and strategically withdrawn the same and now pressing this discharge application in Predicate Offence for the reasons best known to him.

12. The only thing from such conduct of the applicant (A1) prima-facie indicates that what he could not get legally (order of discharge in PMLA case) is now being tried to be obtained by such way. If he is discharged in this case certainly the PMLA case against him cannot continue and the effect of dismissal/rejection of his discharge application (in PMLA case No.1/2009) due to its withdrawal would automatically get nullified. This conduct of the accused No.1 does not permit him to claim any discharge. The relief which cannot be obtained directly cannot be obtained indirectly, as done by the applicant (A1) herein. The accused No.1 should not ignore that the Hon'ble Supreme Court has expedited this case and should not cause any delay in framing charges.

13. Careful perusal of paragraphs 4 and 5 of the Discharge Application prima-facie indicates that the offence took place in Mumbai, wherein the applicant (A1) allegedly portrayed himself as "Albert". Whether the applicant (A1) is "Albert" or "Chugani" cannot be resolved unless the prosecution leads evidence. Therefore, granting discharge

would be nothing but drawing premature conclusion of the trial which is not permissible under Sec.227 Cr.P.C.

14. In the result, on consideration of the record of this case and the documents submitted therewith as well as statements of prosecution witnesses and after hearing the submissions of the accused and prosecution, I hold that there are sufficient grounds for proceeding against the accused No.1 by framing charge and directing him to face the trial. Therefore, Point No.1 is answered in the negative and following order is passed :-

ORDER

Discharge Application (Exh.16) stands rejected.

Dt.: 04.01.2024

(M.G. Deshpande)
Designated Special Court,
under the PML Act, trying case of the
Scheduled Offence, Gr. Mumbai

Signed on : 04.01.2024

"CERTIFIED TO BE TRUE AND CORRECT COPY OF THE ORIGINAL SIGNED JUDGMENT/ORDER"	
05.01.2024 at hours UPLOAD DATE AND TIME	(KISHOR PRAKASH SHERWADE) NAME OF STENOGRAPHER

Name of the Judge	HHJ M. G. DESHPANDE (COURT ROOM NO.16)
Date of pronouncement of judgment/order	04.01.2024
Judgment/order signed by P.O. on	04.01.2024
Judgment/order uploaded on	05.01.2024