



**IN THE COURT OF
HON'BLE PRINCIPAL DISTRICT & SESSIONS JUDGE,
& SPL. DESIGNATED JUDGE (PMLA),
AHMEDBAD [RURAL]
AT NAVRANGPURA, AHMEDABAD.**

ORDER BELOW EXH. 35

**In
PMLA Case No.2 of 2023**

1. The applicant-accused has filed this application under the Provisions of Sec. 227 of the Code of Criminal Procedure, 1973 to discharge him from the PMLA Case No. 2 of 2023 arising out of ECIR No. ECIR/AMZO/01/2023 dated 5/1/2023 registered by Directorate of Enforcement, Ahmedabad Zonal Office, Ahmedabad.
2. The applicant-accused stated at length facts of the registration of the predicate offence, investigation in the said offence, arrest of the applicant and registration of ECIR. It is further stated that predicate offence has been culminated into Sessions Case No.126/2023. The applicant has further stated at length facts of rejection of discharge

application in the predicate offence i.e. order passed below Exh.17 in Sessions Case No. 126/2023.

3. It is further stated that present application has been preferred on the basis of the investigation papers filed along with the main charge sheet and subsequent final report. It is stated that there are no grounds to even presume about existence of any sufficient grounds as contemplated to proceed against the applicant. It is stated that this Hon'ble Court on 6/2/2024, this Hon'ble Court has accepted deletion report dated 19/12/2023 whereby Sec. 120B of the IPC has been deleted from the predicate offence and now applicant is the sole accused in the predicate offence punishable U/ss. 406, 420, 465, 467, 468 and 471 of the IPC r/w. Sec. 66 [c] and 66 [d] of the I.T. Act. It is stated that even during the investigation and accompanying investigation papers in the predicate offence, not a single document has been found to be forged document or false document, much less there being any allegation of the applicant being the author or creator of forged document or false document.

4. It is further stated that it is the law of the land that the 'proceeds of crime' can only relate or be relatable to the predicate offence.

5. It is stated that there is specific case of the complainant in para 7(c) of the complaint that total of Rs.73.11 lakhs was received through crowd funding in the FY 2019-2020 and 2020-2021. It is stated that none of the donors who have made donations during FY 2019-2020 and 2020-2021 have made any complaint or joined in the investigations of the predicate offence and therefore these amounts can never be considered as proceeds of crime as there is no claim of anyone having been cheated or the same having been obtained upon commission of any scheduled offence. It is stated that assuming but not conceding, alleged discrepancy in the ITRs of the applicant does not constitute any offence under the PMLA as the offence under the Income Tax have been declared as Scheduled offence. It is further stated that non explanation or otherwise in relation to monies received in cash to the tune of Rs.23.54 lakhs can never be considered as proceeds of crime as there is no claim of anyone having

been cheated or the same having been obtained upon commission of any scheduled offence.

6. It is stated that all the aforesaid persons making a grievance against the applicant were and still are entitled to seek a refund in terms of Clause 9 of the 'Terms and Conditions' document of Our Democracy web portal or approach the management of OurDemocracy platform in respect of the alleged grievances. It is stated that none of the donors, claiming to have been cheated, have never approached the applicant.
7. It is further stated that ingredients of the offence defined u/s 420 of IPC is not made out, the foundational genesis of the predicate offence is taken away and hence the same cannot be a basis for sustaining a prosecution for an offence punishable u/s 3 of PMLA. It is further submitted that crowd funding is very much legal and the case of the prosecution at best in the predicate offence is arising out of allegations relatable to the proceeds of crime is the offence of cheating as alleged by a total of 5 persons (out of total donors

numbering about 1800) punishable under either Sec. 417 or Sec. 420 of IPC.

8. It is stated that it is the specific case of the complainant in para 7 [C] of the complaint that total Rs.73.11 lakhs was received through crowd funding in FY 2019-2020 and 2020-2021. It is stated that non of donors who made donation in FY 2019-2020 and 2020-2021 have made any complaint or joined in the investigation of the predicate offence inspite of the fact that before December 2020 there were allegations in social media platform about the alleged misuse of the donations at the instance of the applicant. The applicant has further stated at length facts of statement of Anand Nagindas Bihola u/s 50 of PMLA, clarification about the manner of utilization of donations received via crowd funding, the Terms and Conditions put out on the Our Democracy Web Portal and reply dated 8/1/2023 of Mr. Bilal Zaidi. It is further stated that neither Mr. Bihola nor his wife (the actual donor) have claimed that any attempt was made to directly reach out to the applicant any time prior to the lodging of the FIR giving rise to the predicate-offence case. It is stated that no ingredients of the offence defined u/s 415 of IPC is

made out and the same is a *sine qua non* of the offence u/s 420 of IPC. The applicant has further stated in detail about discontinuation of OurDemocracy platform and statement of Suhas Gokhale recorded on 16/1/2023 about lending of money by applicant's sister to him.

9. It is further stated that OurDemocracy platform has not initiated any proceedings for the alleged grievances that they might have had at the relevant period of time against the applicant in accordance of the Dispute Resolution clause. It is stated that post-facto oral version cannot be offered in respect of past-events.
10. The applicant further stated in details about the RTI applications filed by him since 2017 and use of funds collected for different campaigns like SaketversusModi, JusticeforSuhas and SupportSaketinhisTransperancyBattle and prayed to discharge the applicant/accused from PMLA Case No.2/2023 by allowing the present application.
11. The Opponent ED has filed reply vide Exh.37 and has denied the allegations, averments and contentions made in the application. The opponent ED has stated that the genesis of

the recording of the PMLA case by the complainant ED is an FIR bearing No. 11191067220154 dt. 28/12/2022 registered by Cyber Crime Police Station, Ahmedabad City against the accused herein for commission of offence punishable U/ss. 406, 420, 465, 467, 468 and 471 of the IPC r/w. Sec. 66 [c] and 66 [d] of the I.T. Act, which are the scheduled offences defined in Sec. 2(1)(y) of PMLA 2002. The opponent ED has stated in details about the FIR and further stated in detail about the findings of investigation under the PMLA.

12. It is further stated that instant PMLA case was recorded against the accused herein based on the above said FIR registered by the police which revealed the commission of Scheduled offences under PMLA by the accused herein. It is further stated that all the proceedings under the PMLA in the instant case were based on the provisions of PMLA.
13. It is further stated that above said FIR registered by the Predicate agency, itself had revealed the commission of offence u/s 420, 467, 468, 471 of IPC, which are scheduled offences under PMLA in terms of Sec.2(1)(x) and 2(1)(y) of PMLA. It is further stated that in the said FIR, its itself

revealed that the accused herein by committing the said scheduled offence had acquired proceeds of crime, as defined u/s 2(1)(u) of the PMLA and further possessed and used the said proceeds of crime.

14. It is further stated that accused herein during the period of FY 2019-2023 had generated the proceeds of crime to the tune of Rs.1,06,73,749/- and used the said proceeds of crime projecting the same as his untainted money. The opponent has further stated in details facts of the crowd-funding and misusing the same for unintended purposes.
15. It is further stated that complainant in the complaint dated 24/3/2023 in para 7 had clearly mentioned that the accused by claiming himself as an RTI activist and Social Worker, raised money from public through online platform of Ourdemocracy.in, Razorpay.com as well as in cash. Hence, the contention of the accused that he had not been alleged to have raised funding in cash and the amount to the tune of INR 23.54 lakhs ought to be excluded from the consideration, is misconceived, false, misleading and liable to be dismissed in toto.

16. The opponent has stated at length facts of statement of Bilal Zaidi dated 8/1/2023. It is stated that the objective of Ourdemocracy platform was to raise crowd funding for political funding and funding for other social welfare issues. It is also stated that it was never an objective of Ourdemocracy Platform to raise funds for sustenance of any individual.
17. The opponent has also stated in detail facts of various campaigns launched by the accused. The opponent has further stated in detail that after getting suspended the campaign of crowd funding at the said Ourdemocracy platform, the accused herein started to raise crowd funding through some other platform such as social media and Razorpay payment gateway.
18. The opponent has stated in detail terms and conditions of Ourdemocracy platform and further stated that as per the conditions *"The Campaigner must use the funds collected through the Company solely for the project described in their crowd funding campaign. Campaigners shall be liable to legal prosecution by the Funders and/or the Company*

(jointly and severally) if they are found to be using funds for any purpose other than that specified at the time of raising the funds". It is stated that reference of Clause-9 of the Terms and Conditions by the accused are irrelevant and an attempt to beat around the bush.

19. The opponent further stated that accused herein committed the offence u/s 420 of IPC by cheating and dishonestly inducing the public (donors) and also generated acquired and utilized proceeds of crime as stated in the prosecution complaint dated 24/3/2023. Further stated that accused also committed offence u/s 467, 468, 471 of IPC which are basis for initiation of process of investigation and prosecution under PMLA as per the Schedule appended to the 2002 Act.
20. The opponent further stated in detail fact of receiving of Cash of Rs.23.54 lakhs by the accused. It is further stated that crowd funding was misappropriated by the accused for his personal expenses. It is further stated that there is enough evidence which prove that the accused herein cheated the public and generated, acquired and utilized the

proceeds of crime. The opponent has further stated in detail about statement of the accused u/s 50 of PMLA.

21. The opponent has stated in detail about Clause 9 of the Terms and Conditions and further stated that accused herein by selectively quoting a para of the said Terms and Conditions is trying to mislead this Court. It is further stated that reason behind shutting down of Ourdemocracy platform is not as relevant to the subject matter as are the role of the accused in the offence of money laundering. It is further stated that dealings between Ourdemocracy platform and the accused in accordance with the Dispute Resolution have no bearing on the proceedings initiated in the instant PMLA case.
22. The opponent has further stated in detail about the prosecution complaint dated 24/3/2023 and involvement of the accused in process of acquisition, possession and use of proceeds of crime and projecting the said proceeds of crime as untainted property and prayed to dismiss the application.
23. Heard the Ld. Advocate for the applicant-accused and Ld. Spl. Public Prosecutor Mr. S. K. Gupta with Legal

Consultant Ms. Nionika Sachdeva and Mr. Aniruddh Kamboj for the ED at length on the facts and provisions of law.

24. The Ld. Advocate for the applicant-accused has submitted according to the contentions taken in the application and further submitted at length facts of the alleged offence and complaint. Further, submitted that in the complaint/Charge Sheet Papers and documentary evidences produced by the prosecution side has failed to prove prima-facie case against the present applicant-accused.
25. The Ld. Advocate of the applicant-accused further submitted at length facts of intention/purpose of crowd-funding activities of the applicant/accused and vehemently argued that no prima-facie case is made out against the applicant/accused of the alleged offences.
26. The Ld. Advocate of the applicant/accused further submitted that there are no grounds to even presume about existence of any sufficient grounds as contemplated to proceed against the applicant. It is submitted that even during the investigation and accompanying investigation papers in the predicate offence, not a single document has been found to

be forged document or false document, much less there being any allegation of the application being the author or creator of forged document or false document. It is further submitted that it is the law of the land that the 'proceeds of crime' can only relate or be relatable to the predicate offence.

27. The Ld. Advocate of the applicant/accused further submitted that non-explanation or otherwise in relation to monies received in cash to the tune of Rs.23.54 lakhs can never be considered as proceeds of crime as there is no claim of anyone having been cheated or the same having been obtained upon commission of any scheduled offence.
28. The Ld. Advocate of the applicant/accused during the course of argument has referred the statements of the witnesses and further submitted at length facts of statement of Anand Nagindas Bihola u/s 50 of PMLA, clarification about the manner of utilization of donations received via crowd funding, the Terms and Conditions put out on the Our Democracy Web Portal and reply dated 8/1/2023 of Mr. Bilal Zaidi. It is submitted that no ingredients of the offence

defined u/s 415 of IPC is made out and the same is a *sine qua non* of the offence u/s 420 of IPC. The Ld. Advocate further submitted at length facts of different campaigns, discontinuance of OurDemocracy platform and statement of Suhas Gokhale recorded on 16/1/2023 about lending of money by applicant's sister to him and lastly prayed to discharge the applicant/accused from PMLA Case No.2/2023 by allowing the present application.

The applicant-accused has placed his reliance on the following judgments.

1. Judgment of Hon'ble Supreme Court reported in 2022 SCC Online Sc 929 in the case of Vijay Madanlal Chaudhary and Ors vs Union of India.
29. *Per-contra*, the Ld. Spl. Public Prosecutor submitted at length facts of the application, complaint / Charge Sheet Papers and submitted at length facts of the serious economic offence to the tune of more than Rs. 1 Crores and also submitted at length facts of the role played by the present applicant-accused in the alleged offence.
30. The Ld. Spl. Public Prosecutor further submitted according to the contentions taken in the reply by the opponent. It is

submitted that FIR registered by the Predicate agency, itself had revealed the commission of offence u/s 420, 467, 468, 471 of IPC, which are scheduled offences under PMLA in terms of Sec.2(1)(x) and 2(1)(y) of PMLA. Further submitted that in the said FIR, itself revealed that the accused herein by committing the said scheduled offence had acquired proceeds of crime, as defined u/s 2(1)(u) of the PMLA and further possessed and used the said proceeds of crime.

31. The Ld. Spl. Public Prosecutor further submitted at length facts of crowd funding, purpose and utilization of the same. Further submitted that accused herein committed the offence u/s 420 of IPC by cheating and dishonestly inducing the public (donors) and also generated acquired and utilized proceeds of crime as stated in the prosecution complaint dated 24/3/2023. Further stated that accused also committed offence u/s 467, 468, 471 of IPC which are basis for initiation of process of investigation and prosecution under PMLA as per the Schedule appended to the 2002 Act.

32. The Ld. Spl. Public Prosecutor further submitted at length facts of statements recorded u/s 50 of PMLA and evidence collected. Further submitted in detail about the prosecution complaint dated 24/3/2023 and involvement of the accused in process of acquisition, possession and use of proceeds of crime and projecting the said proceeds of crime as untainted property and prayed to dismiss the application.
33. I have gone through the application, Complaint/Charge Sheet Papers, Reply of the Opponent, judgments relied by both the sides and also considered the arguments advanced by the Ld. Advocate of both the sides on the facts and provisions of law.
34. The Present applicant accused has filed this application under the Provisions of Sec. 227 of the Code of Criminal Procedure, 1973 and hence, it is required to be reproduced as under;

"Sec. 227 - Discharge -If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing."

35. Considering the facts and circumstances of the subject matter, it is required to be reproduced Sec. 2 [1] [u] of the PMLA Act as under;

Sec.2 [1] [u]- "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a Scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];"

36. Considering the facts and circumstances of the subject matter and on perusal of the Complaint /Charge Sheet papers, R&P, the prosecution side submitted the list of documentary evidence vide Exh.14 and produced total 42 documents on record. In other words the prosecution side has opened the prosecution case under the provision of Sec. 226 of Cr.P.C. 1973. Thereafter the present applicant/accused filed this application under the provision of Sec. 227 to discharge him from the alleged offence.
37. Considering the facts and circumstances of the subject matter, prima-facie it appears that the present applicant obtained more than Rs.1 crore including around Rs.76 lakhs with the help of online platforms, as crowd funding and Cash of Rs.23.54 lakhs.

38. Considering the facts and circumstances of the subject matter, there is prima facie involvement of the accused in process of acquisition, possession and use of proceeds of crime and projecting the said proceeds of crime as untainted property and this fact is also required to be considered.
39. Considering the facts and circumstances of the subject matter, during the investigation, the Investigating Agency has recorded the statement of the present applicant-accused and others under the provisions of PMLA Act and prima-facie case is made out against the present applicant-accused.
40. Further, I have gone through the Judgments of the Hon'ble Apex Court submitted by the Ld. Advocate for the applicant-accused and considering the facts and circumstances of the case on hand, at the time of deciding the discharge application under the provisions of Sec. 227 of the Criminal Procedure Code, 1973, the detailed inquiry is not required as only to appreciate that whether the prima-facie case is made out or not? Under these circumstances, considering the facts and circumstances of the subject matter, it appears that prima-facie materials of the alleged offences are available

against the present applicant-accused which are sufficient to frame the charge.

41. Further, it is required to be referred the judgment of Hon'ble Apex Court in the case of State of Rajasthan Vs Ashok Kumar Kashyap reported in 2021 SCC Online SC 314 wherein it is held that :

As rightly observed and held by the learned Special Judge at the stage of framing of the charge, it has to be seen whether or not a prima facie case is made out and the defence of the accused is not to be considered. As observed hereinabove, the High Court was required to consider whether a prima facie case has been made out or not and whether the accused is required to be further tried or not. At the stage of framing of the charge and/or considering the discharge application, the mini trial is not permissible.

42. Considering the facts and circumstances of the subject matter and considering seriousness of the economic offence, role attributed to the present applicant-accused in the alleged offences and prima facie incriminating material available against the present applicant-accused, following final order is passed in the interest of justice.

ORDER

*. The present application Exh. 35 preferred by the applicant - accused under the provisions of Sec. 227 of the Cri. Procedure Code to discharge him from the proceedings of PMLA Case No. 2 of 2023 is hereby rejected.

Pronounced in the open Court today on this 07th day of June 2024, Ahmedabad [Rural] at Navrangpura.

(D.M. Vyas)
Principal District & Sessions Judge
and Spl. Designated Judge PMLA
Ahmedabad (Rural) at Navrangpura.
(Code : GJ00326)

vsb