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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 5277/2022

SUROJIT SAMANTA ..... Petitioner

Through: Mr. Vikas Pahwa, Sr.Advocate with Mr. Shannwga, Ms. Raavi Sharma, Mr. Ayush Jindal and Mr. Sunojit Samanta, Advocates

versus

ENFORCEMENT DIRECTORATE ..... Respondent

Through: Mr. Arun Bhardwaj, Sr. Advocate with Mr. Abhishek Sharma and Mr. Anupam Sharma, Advocates

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

O R D E R

% 14.10.2022

CRL.M.A. 21011/2022

Exemption allowed, subject to all just exceptions.

The application stands disposed of.

CRL.M.C. 5277/2022

1. This is a petition seeking quashing and setting aside of the impugned order dated 20.08.2022 passed by the Ld. Special Judge (PC Act), CBI-12, RADC, New Delhi, in the prosecution complaint title *"Enforcement Directorate vs. Mukti Pada Dikshit & Ors."* in ECIR No. 60/DLZ-I/2010 and consequential proceedings arising there from. It is also prayed for quashing and setting aside the prosecution complaint titled *"Enforcement*

Directorate vs. Mukti Pada Dikshit @ M.P. Dixit & Ors." in ECIR No. 60/DLZO-I/2010.

2. It is stated by Mr Pahwa, learned senior counsel for the petitioner that the allegation in the present case is that the petitioner was the person who assisted Mr. M.P. Dixit in procuring the bribe money of Rs. 80 lakhs. The petitioner employed one V.N. Singh whose services were utilised by M.P. Dixit through the Petitioner i.e. Surojit Samanta who was very much aware that the amount involved as an illegal gratification. On the basis of the said transactions, an FIR bearing RC No. AC-2-2010 A0002 CBI ACU – II, dated 25.05.2010 under Section 120-B IPC and Section 7 & 12 of the PC Act, 1988 was registered by the CBI against various accused persons. Pursuant to the FIR, ECIR/60/DZ/2010/AD(SC) was recorded by the Directorate of Enforcement (hereinafter referred to as "ED") on 05.07.2010 wherein it was noted that investigation needs to be conducted under the provisions of Prevention of Money Laundering Act, 2002 (PMLA).

3. On 30.12.2011, CBI filed charge-sheet before the Ld. Special Judge, CBI. Since there was no sanction of prosecution of public servant, Shri M.P. Dixit, the cognizance was not taken by the Ld. Special Judge and the file was consigned to record room, vide order dated 22.01.2016 passed by Ld. Special Judge, (PC Act), CBI-02. Vide proceedings dated 14.03.2016 Ld. CBI Court discharged bail bond so also surety for the petitioner. Mr. Bhardwaj, learned senior counsel for the respondent states that the learned additional Sessions Judge, Special Judge (PC Act) did not close the case but the same was wrongly mentioned in the letter dated 24.06.2016 issued by Superintendent of Police, CBI to Joint Director of ED. In that letter, the CBI forwarded to the ED a copy of the order of Competent Court regarding

closure of the case.

4. In 2021, ED issued Provisional Attachment Order (PAO) No. 1/21 dated 21.01.2021 for attachment of Rs. 80 lakhs stated to have been recovered and seized by the CBI on 26.05.2010. The order of provisional attachment has been, thereafter, confirmed vide order dated 06.08.2021.

5. On 27.05.2022, ED filed Prosecution Complaint titled "*Enforcement Directorate Vs. Mukti Pada Dikshit @ M.P. Dixit & Ors.'* in *ECIR No. 60/DLZO-I/2010* before the ld. Special Judge (PC Act), CBI-12, RADC, New Delhi.

6. On 20.08.2022, the learned Special Judge was pleased to take cognizance for offence under Section 3 of PMLA, punishable under Section 4 of PMLA and summoned the accused including the petitioner in Prosecution Complaint titled '*Enforcement Directorate v. Mukti Pada Dikshit & Ors.*' in ECIR No. 60/DLZ-I/2010. The operative portion of the order reads as under:-

> *"In the understanding of the Court, only because trial of the alleged offence could not be initiated after filing of the charge-filed for the reason that sanction for prosecution was refused, the same would not mean that no scheduled offence has been committed or that there was no laundering of the proceeds of crime, as defined in Section 3 of PMLA, 2002.* ***As per the complaint, there is sufficient evidence on record to prove not only the commission of the scheduled offence but also of the offence, alleged to have been committed under Section 3 of the PMLA, 2002****."*

7. It is argued by Mr. Pahwa that in the present case, once, there was no sanction of prosecution against Shri M.P. Dikshit and the Ld. Special Court declined the prayer for taking cognizance, there was no predicate offence

which is a *sine qua non* for initiating proceedings under the PMLA. He states that there is no scheduled offence which exists against the petitioner.

8. On 22.01.2016, the Ld. Additional Sessions Judge (PC Act), CBI-02 had not only declined taking cognizance on account for want of sanction but also consigned the file to record room. Vide proceedings dated 14.03.2016, Ld. CBI Court discharged bail bond and surety for the petitioner. The Superintendent of Police, CBI duly informed the same to the Joint Director ED stating "*in view of the denial of sanction for prosecution of the public servant, the Competent Court has closed the case*".

9. From January 2016 till date, the respondents have not taken any action against the said order and have considered the case as closed. Petitioner further states that proceedings/order dated 14.03.2016 also attained finality in the mean time.

10. Mr. Bhardwaj, learned senior counsel appearing for the respondent, has relied on the judgment of '*CBI v. B.A. Srinivasan'* (2020) 2 SCC 153 and more particularly para 13 which reads as under:-

> *"13) Consequently, there was no occasion or reason to entertain any application seeking discharge in respect of offences punishable under the Act, on the ground of absence of any sanction under Section 19 of the Act. The High Court was also not justified in observing "that the protection available to a public servant while in service, should also be available after his retirement. That statement is completely inconsistent with the law laid down by this Court in connection with requirement of sanction under Section 19 of the Act."*

11. He states that the protection which was available to Shri M.P. Dixit while in service no longer exists after his retirement and the protection due for want of sanction while M.P. Dixit was in service also no longer exists

and hence, the charge-sheet, consequently, revives.

12. He has further drawn my attention to another judgment of '*Nanjappa v. State of Karnataka'* (2015) 14 SCC 186 and more particularly, the portion which reads as under:-

> "8. ..... *A fortiori it would also follow that the ultimate order made by it by whatever name it is characterised cannot in law operate as an acquittal. In the Privy Council case it was interpreted by Sir John Beaumont who delivered the opinion of the Board to be an order of discharge. It is unnecessary for us to say whether such an order amounts to an order of discharge in the absence of any express provision governing the matter in the Code or it does not amount to an order of discharge. It is sufficient to say that it does not amount to an order of acquittal as contemplated by Section 403(1) and since the proceedings before the Special Judge ended with that order it would be enough to look upon it merely as an order putting a stop to the proceedings. For these reasons we hold that the trial and eventual conviction of the appellant by Mr. Bhattacharjee were valid in law and dismiss the appeal."*

13. He states that it is only an order of acquittal or discharge which absolves the person of a scheduled offence and merely want of sanction for prosecution cannot be within the definition of acquittal or discharge. He states that the charge-sheet still exists in law.

14. I have heard learned counsel for the parties. The order of 22.01.2016 passed by Additional Sessions Judge records as follows:-

> *"After giving my considered thoughts to the contention raised on behalf of CBI, I find that this application is completely devoid of merit as once the sanction U/s 19 of PC Act for the prosecution of public servant had been declined, the public servant cannot be made vulnerable to the prosecution just because he was retired. In a case directly on the same fact titled as 'Chitranjan Dass V/s State of Orissa (2011) 7, Supreme Court Cases 167', Hon'ble Supreme Court had held as under:-*

> *13. Here in the present case while the appellant was in service sanction sought for his prosecution was declined by the State Government. The Vigilance Department did not challenge the same and allowed the appellant to retire from service. After the retirement, the Vigilance Department requested the State Government to reconsider its decision, which was not only refused but the State Government while doing so clearly observed that no prima facie case of disproportionate assets against the appellant is made out. Notwithstanding that the Vigilance Department chose to file a chargesheet after the retirement of the appellant and on that the Special Judge had taken cognizance and issued process.*
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> *14. We are of the opinion that in a case in which sanction sought for is refused by the competent authority, while the public servant is in service, he cannot be prosecuted later after retirement, notwithstanding the fact that no sanction for prosecution under the Prevention of Corruption Act is necessary after the retirement of the public servant. Any other view will render the protection illusory. Situation may be different when sanction is refused by the competent authority after the retirement of the public servant as in that case sanction is not at all necessary and any exercise in this regard would be action in futility.*

In the light of above legal position same merely because the public servant has retired, cognizance against him cannot be taken in absence of sanction U/s 19 of PC Act especially, when sanction had been refused while the public servant was in office. Therefore, the prayer for taking cognizance is declined. As regard the other accused, the allegations are relating to Section 120B IPC Section 7 read with Section 13(1)(d) & section 13(2) of the PC Act. As the cognizance against the public servant cannot be taken, no case against other accused will be made out. Therefore, the congnizance qua other accused can also not be taken and the same is declined.

Also has been filed a report on behalf of the CBI intimating result of further investigation.

It is submitted in the report that during the investigation, it transpired from the intercepted conversation (Call Nos.1, 2, 3,4 and 5 dated 05.06.2010) that accused M.P. Dixit may have also obtained an illegal amount of Rs. 50 lakhs just before the alleged illegal transaction of Rs. 80 lakhs. However, at the time, it was not clear whether such transaction was a part of the same transaction or it was a separate instance as such no separate FIR was registered. During the investigation, no supplementing or additional evidence could be gathered to prove or verify whether any such suspicious illegal transaction of Rs. 50 lakhs took place.

Considering the submissions made in the report, the same is accepted. File be consigned to record room."

15. The said finding has not been challenged by the respondent and hence attained finality. The Sessions Judge has relied on the judgment of Hon'ble Supreme Court in *"Chittaranjan Dass v. State of Orissa"* (2011) 7 SCC 167 and has come to a finding that merely because a public servant has retired, cognizance against him cannot be taken in the absence of sanction under Section 19 P.C. Act when sanction was refused while the public servant was in office. Once the said finding exists, the reliance of Mr. Bhardwaj on *Srinivasan (Supra)* may not be well found. The CBI has not challenged the said finding.

16. In '*Vijay Madanlal Choudhary & Ors. v. UOI & Anr.*'2022 SCC Online SC 929, the Hon'ble Supreme Court in paragraphs 253 and 467 has stated as under:-

"253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been

committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now.

....

467. In the light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:-

....

(v)(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

17. I am of the view that once sanction for prosecution has been declined and the file of the case under PC Act has been consigned to record room, there is no offence registered or pending enquiry or trial before competent forum. Thus, it means that there is no predicate offence to continue proceedings for under PMLA. Once the complaint under PC Act itself is over, the proceedings under PMLA cannot proceed.

18. For the aforesaid reasons, issue notice to respondents.

19. Mr. Abhishek Sharma, learned counsel accepts notice, seeks and is granted four weeks time to file a response/status report.

20. Let the rejoinder be filed within four weeks thereafter.

21. List on 08.02.2023.

CRL.M.A. 21010/2022-STAY

22. This is an application seeking grant of ad interim stay before the Trial Court. For the reasons stated above, issue notice.

23. Mr. Sharma, learned counsel accepts notice, seeks and is granted four weeks time to file a reply.

24. For the reasons above, the proceedings before the Trial Court in *"Enforcement Directorate Vs. Mukti Pada Dikshit & Ors."* shall remain stayed against the petitioner, till the next date of hearing.

25. The observations are only prima-facie for the purpose of deciding the issue of ad-interim order today.

26. List on 08.02.2023.

JASMEET SINGH, J

OCTOBER 14, 2022/*rhc* *Click here to check corrigendum, if any*