

IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr.M.P. No.286 of 2024

1. Kapil Raj		
2. Deovrat Jha		
3. Anupam Kumar		
4. Aman Patel	...	Petitioners
	Versus	
1. The State of Jharkhand		
2. Hemant Soren	...	Opposite Parties

CORAM: HON'BLE MR. JUSTICE ANIL KUMAR CHOUDHARY

For the Petitioners	: Mr. Amit Kr. Das, Advocate Mr. Saurav Kumar, Advocate Mr. Shivam U. Sahay, Advocate Mr. Sahay Gaurav Piyush, Advocate Mr. Sidharth Jain, Advocate
For the State	: Mr. Gopal Sankarnarayanan, Sr. Advocate Mr. Vineet Kr. Vashistha, Spl.P.P. Mr. Manoj Kumar, GA III Mr. S. Bhardwaj, Advocate Ms. Pallavi Langar, Advocate Mr. Achyut Keshav, Advocate

Order No:-04 Dated:-04-03-2024

Heard the parties.

2. Issue notice to the opposite party No.2.
3. Mr. Amit Kumar Das- learned counsel for the petitioners submits that the notice be issued to the opposite party No.2 in his present address as probably the opposite party No.2 is not staying in the same address as mentioned in the cause-title of this Cr.M.P. and he is in judicial custody and in support of his contention, learned counsel for the petitioners places on record the copy of the order-sheet dated 02.02.2024 passed in ECIR Case No.06 of 2023 passed by A.J.C.-1st-cum-Special Judge, Under PMLA, Ranchi.
4. The petitioners are directed to file requisites for service of notice upon the opposite party No.2 by registered post with A/D as well as under process of the court within two days failing which; this Cr.M.P. shall stand dismissed without further reference to the Bench.
5. Rule is made returnable within two weeks.

6. Learned counsel for the petitioners next submits that the petitioners are the officers of Directorate of Enforcement of the Government of India and during the investigation of ECIR No.RNZO/18/2022 in the matter of fraudulent acquisition of land which was in possession of Ministry of Defence, Government of India, having area of 4.55 acres at Morabadi, Ranchi, it emerged that Bhanu Pratap Prasad was actively involved in hatching conspiracies with other persons to acquire and dispose properties in illegal manner and was an accomplice of several private persons including the opposite party No.2 whose details of the properties, which are illegally acquired and possessed, have also been seized from his mobile phone. From the possession of other members of this syndicate, several property documents were seized, out of which 36 documents have been identified as forged. Eight summons have been issued to the opposite party No.2 for his explanation in the above matter but he did not appear and on final opportunity he asked , the petitioners to visit his residential office for statement. On 20.01.2024, the statement of opposite party No.2 was recorded by the petitioners under Section 50 of the PMLA, 2002. On 29.01.2024 the searches under Section 17 of the PMLA, 2002 was conducted at the premises of opposite party No.2 located at New Delhi wherein cash to the tune of Rs.36,00,000/- and a BMW Car were seized. On 31.01.2024, the statement of the opposite party No.2 was being recorded at his residence, however, instead of cooperating with the investigation, the opposite party No.2 got lodged the present F.I.R. on the strength of the written report dated 31.01.2024 kept at Annexure-2 of this Cr.M.P.

7. It is next submitted that the F.I.R. do not disclose any offence far less the offences under Sections 3 (1) (p) (r) (s) (u) of the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. It is next submitted that for constituting the offence punishable under Sections 3 (1) (p) of the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, there has to be materials to show that false, malicious or vexatious suit or criminal or other legal proceedings has been instituted against a member of Schedule Caste and the Scheduled Tribe.

8. Learned counsel for the petitioners relies upon the judgment of Hon'ble High Court of Gujarat in the case of **A. K. Chaudhary vs. State of Gujarat** reported in **2005 0 Supreme (Guj) 599**, the judgment of the Hon'ble Rajasthan High Court in the case of **Naveen Shanker Johari vs. State of Raj.** reported in **2012 3 CriLR 1657** and the judgment of Hon'ble Bombay High Court in the case of **Sapana Korde Nee Ketaki A. Ghodinde vs. The State of Maharashtra & Another** reported in **2019 1 AIR (Bom) (Cri) 550** and submits that unless a finding is given by any authority that the cases instituted against the victim- who lodges the information or at whose behest the First Information Report is lodged, is a false, malicious or vexatious one; the offence punishable under 3 (1) (p) of the Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 will not be made out.

9. It is next submitted that the petitioner No.1 in capacity of the Additional Director of Central Government Investigating Agency is authorized to investigate cases under the Prevention of Money Laundering Act, 2002 and the petitioner No.1 on receiving a confidential information and materials and on being satisfied, had instituted an investigation of large-scale money laundering in course of investigation. It is also submitted that there is absolutely no allegation of any insult or intimidation with an intent to humiliate to a member of a Scheduled Caste or Scheduled Tribe far less in the public view and in absence thereof, no offence punishable under Section 3 (1) (r) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 is made out and in the absence of the allegation to that extent, the offence punishable under Section 3 (1) (s) of the said Act, cannot be made out. It is then submitted that as there is no allegation of any words written or spoken or any sign or visible representation or otherwise given by any of the accused persons which can be said to otherwise promote or attempt to promote any of enmity, hatred or ill-will against any member of Schedule Caste or Scheduled Tribe and in absence thereof, under no stretch of imagination, an offence punishable under Section 3 (1) (u) of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 can be said to be made out. Hence, it is submitted that till the next date

of listing of this case, an order of no coercive steps be passed against the opposite party No.1.

10. Mr. Das next draws the attention of this Court towards Section 17 of the PMLA, 2002 and submits that such a seizure was conducted at the residence of the opposite party No.2 at New Delhi in his residence in his absence in accordance with law. Mr. Das next draws the attention of this Court towards Section 67 of the PMLA, 2002 and submits that the same bars any prosecution or other proceedings against *inter alia* any officer of the Government for anything done or intended to be done in good faith under the provisions of the Prevention of Money Laundering Act, 2002 and drawing attention of this Court towards Section 71 of the PMLA, 2002, Mr. Das submits that Section 67 shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, including all the provisions of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989; as all the provisions of the scheduled castes & Tribes (Prevention of Atrocities) Act, 1989 were in force by the time the PMLA, 2002 was enacted. It is lastly submitted, that unless an order restraining the opposite party No.1 to take any coercive steps is passed, the petitioners will be highly prejudiced.

11. Mr. Gopal Sankarnarayanan- learned senior counsel appearing for the opposite party No.1- State opposes the prayer for passing any order of no coercive steps to be taken by the opposite party No.1 during the investigation of the case concerned against the four petitioners. Mr. Sankarnarayanan draws the attention of this Court towards the judgment of the Hon'ble Supreme Court of India in the case of **Directorate of Enforcement vs. Niraj Tyagi & Others** reported in **2024 SCC OnLine SC 134 (Criminal Appeal No.843 of 2024)** dated 13.02.2024 and submits that the Hon'ble Supreme Court of India in the said case has reiterated the settled principle of law, in no uncertain terms, that statutory power under Section 482 of Cr.P.C. has to be exercised sparingly with circumspection and in the rarest of rare cases. Mr. Sankarnarayanan next draws the attention of this Court towards the judgment of the Hon'ble Supreme Court of India in the case of **Hariram Bhambhi vs. Satyanarayan & Another** reported in **2021**

SCC OnLine SC 1010 and submits that under Section 15.A of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989, a victim or his dependent shall have the right to reasonable, accurate and timely notice of any court proceeding including any bail proceeding and the Special Public Prosecutor or the State Government shall inform the victim about the proceedings under this Act.

12. On being asked by this court as to whether the Special Public Prosecutor or the State government has informed the victim about the proceedings of this criminal miscellaneous petition though indisputably the copy of this criminal miscellaneous petition was received by the State Government more than a month ago; the learned senior counsel appearing for the opposite party No.1- State fairly submits that, certainly duty is cast upon both the Special Public Prosecutor as well as the State Government to inform the victim about the proceedings under the act but with the understanding that the case may be dismissed on the day one itself, therefore the State Government or the Special Public Prosecutor; have not intimated the opposite party No.2 or his dependents about the proceedings of this criminal miscellaneous petition.

It is next submitted by the learned senior counsel for the opposite party No.1 that the Hon'ble Supreme Court of India in the case of **Union of India vs. State of Maharashtra & Others** reported in (2020) 4 SCC 761, has done away with the earlier direction given in the case of **Dr. Subhash Kashinath Mahajan vs. State of Maharashtra & Another** reported in (2018) 6 SC 454 and has laid down the law that if a first information report makes out a cognizable offence, even if they are the offences punishable under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, then F.I.R. has to be registered and there is no illegality in registration of the F.I.R. Hence, it is submitted that there being no illegality in registration of the F.I.R.; no interim protection should be given to the petitioners at this stage.

13. Having heard the rival submissions made at the Bar and after going through the materials available in the record, this Court is of the considered view that Section 71 of the PMLA, 2002 makes it abundantly clear that the

provisions of the PMLA, 2002 overrides the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 as by the time of enactment of PMLA, 2002, including the non-obstante provision in section 71 of PMLA, 2002, the provisions of Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 were already in force. It is the case of the petitioners that all the allegations made against them are relating to the acts committed by them in the course of discharge of their official duty and section 67 of PMLA, 2002, bars any prosecution or other proceedings against *inter alia* any officer of the Government for anything done or intended to be done in good faith under the provisions of the Prevention of Money Laundering Act, 2002.

14. Perusal of the record reveals that the allegations against the petitioners is that the petitioners have carried out a purported search at the premises of the opposite party No.2 at New Delhi. Though nowhere it has been mentioned in the written report as to what was the designation of the informant-opposite party No.2, except that he is the Member of Legislative Assembly representing Sahebganj Constituency but Mr. Gopal Sankarnarayanan- the learned senior counsel appearing for the opposite party No.1- State, submits that till late night of 31.01.2024, the opposite party No.2 was the Chief Minister of State of Jharkhand and in that capacity he was occupying the rented premises of opposite party No.1-State, at New Delhi in which search and seizure was conducted from 7:10 hours to 21:25 hours on 29.01.2024.

The grievance of the informant appears to be that there were extensive coverage by national and Jharkhand based print and electronic media and a presumption is drawn that it is the petitioners who have informed the media of the search so as to create a media spectacle and cause disrepute to the informant in the eyes of general public by leaking selected information that a Blue BMW Car seized from the said premises belongs to the informant and huge sums of illicit cash belonging to the informant, was found in the premises. It is asserted by the informant in the written-report itself that he is not the owner of the car of BMW make claimed to have been seized by the petitioners and he does not owe the illicit cash seized by the petitioners.

15. Keeping in view the aforesaid facts and circumstances of the case, as this is a nascent stage and notice has already been ordered to be issued to the opposite party No.2, this Court do not delving into the merits of the case in the absence of the opposite party No.2 at the stage but keeping in view the fact that the allegation against the petitioners relates to the discharge of the duties of the petitioners under the provisions of the PMLA, 2002 as also the bar for prosecution as contained in Section 67 of the PMLA, 2002; this Court is of the considered opinion that this is a fit case where the opposite party No.1 be directed not to take any coercive steps against the four petitioners of this case till the next date of listing of this case in connection with ST/SC P.S. Case No.06 of 2024 which is pending in the court of learned Special Judge, ST/SC Act, Ranchi.

16. Accordingly, the opposite party No.1 is directed to not take any coercive steps against the four petitioners of this case till the next date of listing of this case in connection with ST/SC P.S. Case No.06 of 2024 which is pending in the court of learned Special Judge, ST/SC Act, Ranchi.

17. List this case after receipt of the service report of the notice issued to the opposite party No.2 or the appearance of the opposite party No. 2, whichever is earlier.

(Anil Kumar Choudhary, J.)