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IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

2024:PHHC:049512
CRM-M No.6378 of 2023
Reserved on: April 1st, 2024
Pronounced on: April 10th, 2024

Pawan Insaa

.....Petitioner

Versus

Directorate of Enforcement, Government of India,
Chandigarh Zonal Office, Chandigarh

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Argued by: Mr. Bipan Ghai, Senior Advocate
with Mr. Nikhil Ghai, Advocate
for the petitioner.

Mr. Arvind Moudgil, Senior Counsel, Government of India
with Mr. Sahil Rangra and Mr. Naveen Kumar, Advocates
for the respondent.

MANJARI NEHRU KAUL, J.

Petitioner is seeking the quashing of Enforcement Case Information Report i.e. ECIR/01/CDZO/2018 dated 05.02.2018 being illegal and abuse of process of law in view of the judgment passed by Hon'ble the Supreme Court in Vijay Madanlal Choudhary and others Versus Union of India and others, 2021 SCC OnLine SC 1048, and Parvathi Kollur and another Versus State by Directorate of Enforcement, 2022 LiveLaw (SC) 688, since the petitioner has already been discharged of the predicate offences.

2. **Submissions made by learned senior counsel for the petitioner:**

2A. **Scheduled offences as the basis of ECIR:-**

(i) That the impugned ECIR (Annexure P-2) lists the scheduled offences as Section 121-A and Section 120-B IPC, stemming from FIR No.345 dated 27.08.2017 (Annexure P-3) under Sections

120-B, 121-A, 145, 150, 151, 152, 153, 146, 121, 216 of the IPC registered at Police Station Sector 5, Panchkula, where the petitioner had also been implicated.

2B. **Discharge in scheduled offences by trial Court:-**

(i) That notably, the learned trial Court, Panchkula, vide its order dated 02.11.2019 (Annexure P-4), discharged the petitioner of the offences under Sections 121 and 121-A IPC. Therefore, given the discharge of the petitioner of the predicate offence, the continuance of proceedings under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA'), which were initiated on the strength of the predicate offence, would be against the settled law and an abuse of the legal process. In support learned senior counsel has placed reliance upon the judgments passed in *Vijay Madanlal Choudhary and others Versus Union of India and others, 2021 SCC OnLine SC 1048,* and *Parvathi Kollur and another Versus State by Directorate of Enforcement, 2022 LiveLaw (SC) 688,* wherein Hon'ble the Supreme Court held that if the accused is finally discharged or acquitted of the scheduled offence, or if the criminal case against the accused is quashed by a competent Court, the offences of PMLA would not subsist.

2C. **The offence under Section 120-B of the IPC is not a standalone offence:-**

(i) That it has been settled by Hon'ble the Supreme Court in *Criminal Appeal No.2779 of 2023* titled as *Pavana Dibbur Versus The Directorate of Enforcement* that an offence under Section 120-B of the IPC becomes a scheduled offence only if the alleged conspiracy is in relation to committing an offence included in the schedule. However, in

the instant case, as already highlighted earlier, the petitioner has already been discharged of the scheduled offence. Consequently, the proceedings under PMLA cannot persist solely on the basis of an offence under Section 120-B IPC.

3. **Submissions made by learned counsel for respondent-Directorate of Enforcement (for short 'ED'):**

3A. **Preliminary objections on maintainability of the petition:**

(i). That the instant petition under Section 482 of the Cr.P.C. seeking the quashing of ECIR is not tenable, as it is an internal administrative document of the ED. It cannot be kept at par with an FIR, much less equated with it. Consequently, the provisions of the Code of Criminal Procedure (hereinafter referred to as Cr.P.C.) are not applicable to the ECIR. In such circumstances, this Court cannot exercise its inherent jurisdiction under Section 482 of the Cr.P.C. to quash the ECIR. The appropriate remedy available to the petitioner would be to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. In support, learned counsel has placed reliance upon *Vijay Madanlal Choudhary's case (supra)*, *N. Dhanraj Kochar and others Versus Enforcement Directorate 2022 SCC OnLine Mad 8794* and *Jitender Nath Patnaik Versus ED, CRLMC No.2891 of 2023, decided on 02.09.2023.*

3B. **Survival of scheduled offence under Section 120-B IPC:**

(i) That the petitioner has not yet been discharged under Section 120-B IPC. Since one of the alleged scheduled offences still subsists, there is no impediment in proceeding against the petitioner.

4. **Rebuttal by learned senior counsel for the petitioner:**

(i) Learned senior counsel for the petitioner has contended that

ECIR is registered by the ED, which is an investigating agency specializing in investigating the criminal offences under the PMLA. Consequently, since there are allegations of commission of criminal offences under the PMLA, and the fact that the registration of an ECIR results in penal consequences, the present petition would indeed be maintainable under Section 482 of the Cr.P.C. Moreover, it has been emphasized that the broad scope and spirit of Section 482 of the Cr.P.C., which aims to prevent abuse of process of the Court, should not be constrained by overly technical interpretations.

5. I have heard learned counsel for the parties and perused the relevant material on record.

6. Without delving into the merits of the case, this Court at the outset would have to first address the preliminary objections raised by learned counsel for ED, wherein challenge has been laid to the maintainability of the instant petition. The primary question which has arisen for the consideration is whether the ECIR can be quashed in the exercise of its inherent jurisdiction under Section 482 Cr.P.C. by this Court. This necessitates an inquiry into the nature, scope and import of an ECIR. In this regard, it would be most relevant to reproduce the following observations made by Hon'ble the Supreme Court in *Vijay Madanlal Choudhary's case (supra).*

> *"457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the*

> *same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.*
>
> *459. …..Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right…..”*

On a minute perusal of the above reproduced observations of Hon’ble the Supreme Court, it can be safely culled that an ECIR cannot be kept at the same pedestal as an FIR. It is crucial to note that an ECIR is not registered under the Cr.P.C., unlike a First Information Report (FIR), which is mandatorily registered under Section 154 of the Cr.P.C., and subsequently forwarded to the Illaqa Magistrate as per the

provisions of Section 157 of the Cr.P.C.. Additionally, there exists no legal obligation to provide a copy of the ECIR to an accused, and the absence of such provision does not in any manner impinge upon any constitutional or statutory rights of a person. Thus, an ECIR is an administrative document prepared by the officers of the ED. It precedes the commencement of the prosecution against individuals involved in the offence of money laundering, which in turn is governed by special statute i.e. PMLA.

7. This Court unhesitatingly concurs with the contentions made by the learned counsel for the respondent-ED that the ECIR is an internal administrative document of the ED. Consequently, in the considered opinion of this Court, since the ECIR precedes the stage of criminal prosecution and proceedings, it thus falls outside the purview of the inherent jurisdiction conferred upon this Court by Section 482 of the Cr.P.C. Therefore, the prayer of the petitioner for quashing of the ECIR under Section 482 of the Cr.P.C. cannot be entertained.

8. Though the learned senior counsel for the petitioner has emphatically argued that mere technicalities should not come in the way of entertaining the instant petition under Section 482 Cr.P.C. keeping in view the amplitude of the powers conferred upon this Court, however, it cannot be over-emphasized that the powers of this Court are not unbridled and can be exercised under Section 482 Cr.P.C. only to give effect to any order under the Cr.P.C.; or to prevent abuse of the process of any Court; or to secure the ends of justice in relation to a criminal proceeding. Since the ECIR is not a statutory document under the Cr.P.C. and thus, cannot be equated to initiation of any criminal proceeding, aforementioned argument advanced by the learned senior

counsel cannot be accepted as it would result in this Court exceeding its jurisdiction under Section 482 Cr.P.C.

9. As a sequel to the above discussion, without delving into the merits of the case, the present petition fails on grounds of maintainability itself, and is dismissed as such.

10. However, it is made clear that anything observed hereinabove shall not be construed to be an expression of opinion on the merits of the case.

April 10th, 2024 (**MANJARI NEHRU KAUL**)
Puneet **JUDGE**

Whether speaking/reasoned : Yes

Whether reportable : Yes