

(2019) 10 DEL CK 0420

In the Delhi High Court

Case No : Criminal Revision Petition No. 1033 Of 2019

Raman Sharma & Anr

APPELLANT

Vs

Director, Directorate Of Enforcement & Anr

RESPONDENT

Date of Decision : 30-10-2019

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 36, 156(3)
Prevention of Money-Laundering Act, 2002 — Section 3, 4, 44(b), 45

Citation : (2019) 178 DRJ 68

Hon'ble Judges : Suresh Kumar Kait, J

Bench : Single Bench

Advocate : R. Tyagi, Zoheb Hossain, Vivek Gurnani

Final Decision : Dismissed

Judgement

Suresh Kumar Kait, J

CRL.M.A. 37123/2019 (Exemption)

1. Allowed, subject to all just exceptions.
2. This application is, accordingly, disposed of.

CRL.REV.P. 1033/2019

3. Vide the present petition, the petitioner seeks direction thereby to set aside the order dated 31.08.2019 passed by learned Special Judge (P.C.Act) CBI-10, Rouse Avenue Courts, New Delhi in case CC 72/2019 tiled as "Raman Sharma and Anr. vs. Director, Directorate of Enforcement and Anr."

4. The petitioner herein filed the criminal complaint for the continuing organised offences codified inter-alia under the Indian Penal Code 1860, the Prevention of Corruption Act, 1988 and the Prevention of Money Laundering Act, 2002 against the allottee of 43 Acres of Institutional land in Sector 38 Gurugram, subscribers (of shares, bonds, security/collateral, pledge, rights issues) of Global Health Pvt.

Ltd (herein called GHP, the reporting entity with privity of contract with Haryana Urban Development Authority/ HUDA), ultimate beneficiaries of Dr. Naresh Trehan and Associates Health Services Private Limited (herein called NTP), Global Infracon Private Limited (herein called GIP), SAS Infotech Private Limited (herein called SAS), GL Asia Mauritius II Limited (herein called GLA), Punj Lloyd Ltd. (herein called PLL) (all reporting entities having no privity of contract with HUDA) as principle beneficiaries/ beneficial owners earning profits illegally and be able to launder the proceeds of crime in conspiracy with each other, with a guilty mind and in conspiracy with unknown Officers of HUDA, now known as Haryana Shehari Vikas Pradhikaran (HSVP).

5. Learned counsel appearing on behalf of the petitioner submits that the premeditated white collar crime is so complex that it requires investigation to arrive at the truth and the true extent of breach of law by individuals known and unknown be discovered as a majority of case property is not in public domain. That identity of persons and their specific roles in the crime cannot be ascertained without an investigation as per law.

6. Learned counsel for petitioner further submits that the learned Trial Court while passing the impugned order dated 31.08.2019, ignored the aforesaid facts and dismissed the complaint being not maintainable.

7. I note, after hearing the petitioner at length, the learned trial Court observed that as per the complaints, the accused nos.1, 2, 3, & 4 in connivance with accused no.5 has violated/nullified number of conditions/terms mentioned in the advertisement regarding Medicity Project, causing pecuniary advantage to accused nos. 1, 2, 3 and 4. The accused no. 5 abused his position by criminal misconduct and influence and allotted the entire site of Medi City to accused no.1 without any consideration of financial capability of accused no.1, without re-advertisement and calling for new applications regarding changed terms and offers as made available to accused no. 1, without sanction of the High Court for such a revised scheme, without auctioning the land put to pure commercial use by accused nos. 1, 2, 3 and 4 causing the contract between the accused no. 1 and HUDA to be void in law and thus committed offences under Indian Penal Code, Prevention of Corruption Act and Prevention of Money Laundering Act.

8. In view of above, relevant sections of the Prevention of Money Laundering Act are to be discussed which are reproduced as under:

"2. Definitions-

(p) "money-laundering" has the meaning assigned to it in section 3;

(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];

(x) "Schedule" means the Schedule to this Act;

(y) "scheduled offence" means-

(i) the offences specified under Part A of the Schedule: or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or]

(iii) the offences specified under Part C of the Schedule;]

3. Offence of money-laundering-

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

4. Punishment for money-laundering.-

Whoever commits the offence of money laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years shall also be liable to fine [***]

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words " which may extend to ten years" had been substituted.

44. Offences triable by Special Courts.-

(I) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of 1974)-

[(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]

(b) a Special Court may [***] upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial].

[(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall,

on receipt of such case proceed to deal with it from the stage at which it is committed.]

[(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.]

45. Offences to be cognizable and non bailable -

(l) [Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 to 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless -]

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reckon grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person who is under the age of sixteen years or is a woman or is sick or infirm [or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees], may be released on bail, if the special court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Government by a general or a special order made in this behalf by that Government.

(lA) Notwithstanding anything contained in the Code of Criminal Procedure, 1973(2 of1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as maybe prescribed.]

65. Code of Criminal Procedure, 1973 to apply.-

The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceeding under this Act."

9. It is not in dispute that the Prevention of Money Laundering Act is a complete code in itself dealing with the offence of money-laundering. It provides complete mechanism for investigation by an independent agency other than the police, in

respect of offences under Prevention of Money Laundering Act.

10. It is clear that unless and until there is a case registered under a scheduled offence, Enforcement Directorate shall not have cause of action to institute proceedings under Prevention of Money Laundering Act which means that registration of ECIR by Enforcement Directorate can be only after registration of case for a scheduled offence. ECIR is the information recorded by the Enforcement Directorate regarding the registration of predicate offences and is basis for initiating their investigation.

11. It is also not in dispute that no FIR has been registered regarding schedule offence till date. Therefore, it is clear that Enforcement Directorate cannot conduct investigation in the present case in the absence of registration of FIR regarding schedule offences.

12. The Prevention of Money Laundering Act has no provision akin to Section 156 (3) Cr. PC for issuing direction to ED to register ECIR or FIR. So far as applicability of Section 156 (3) Cr. PC is concerned, it is relevant to reproduce the observation of Hon'ble Supreme Court of India in the judgment "CBI Vs State of Rajasthan and Another, Appeal (Crl.) 1163-66 of 1998, Appeal (Crl.) 1162 of 1998, Appeal (Crl.) 42 of 2001. as under:-

"But when a magistrate orders investigation under Section 156(3). he can only direct an officer in charge of a police station to conduct such investigation and not a superior police officer, though such officer can exercise such powers by virtue of Section 36 of the Code. Nonetheless when such an order is passed, any police officer, superior in rank of such officer, can as well exercise the power to conduct investigation, and all such investigations would then be deemed to be the investigation conducted by the officer in charge of a police station. Section 36 of the Code is not meant to substitute the magisterial power envisaged in Section 156(3) of the Code, though it could supplement the powers of an officer in charge of a police station. It is permissible for any superior officer of police to take over the investigation from such officer in charge of the police station either suo motu or on the direction of the superior officer or even that of the government."

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"As the present discussion is restricted to the question whether a magistrate can direct the CBI to conduct investigation in exercise of his powers under Section 156(3) of the Code it is unnecessary for us to travel beyond the scope of that issue. We, therefore, reiterate that the magisterial power cannot be stretched under the said sub-section beyond directing the officer in charge of a police station to conduct the investigation."

13. Accordingly, in the aforesaid judgment of the Hon'ble Supreme Court, it was observed that under Section 156 (3) Cr.P.C., Magistrate can direct the Officer

Incharge of the Police Station to register FIR, however, the scope of Section 156(3) Cr.P.C. cannot be stretched further to direct any other agency or to the officials higher than Officer Incharge of Police Station, to lodge FIR. The Hon'ble Supreme Court has further made it clear that Special Court cannot direct CBI to register FIR.

14. Accordingly, learned Trial Court opined on the same analogy that the Special Court cannot pass direction under Section 156 (3) Cr.P.C. to Enforcement Directorate to register FIR.

15. The second question before the learned Trial Court was that whether the Trial Court can entertain complaint filed by private party for the offence committed under Prevention of Money Laundering Act. On this issue, Section 44 (b) of Prevention of Money Laundering Act clearly stipulate that Special Court may upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3. Further, second proviso to Section 45, Prevention of Money Laundering Act makes it clear that the Special Court shall not take cognizance of offence under section 4 except upon a complaint in writing made by the Director; or any officer of Central Government or State Government authorised in writing in this behalf by Central Government.

16. Accordingly, the learned Trial Court opined that the aforesaid two provisions make it clear that the Court cannot entertain the complaint filed by private complainant for the offence committed under Prevention of Money Laundering Act.

17. In addition to above, admittedly, the land in question is in Gurugram (Haryana). The alleged offence is stated to have been committed in Gurugram, Haryana. Accordingly, the learned Trial Court opined that the subject matter is also beyond the jurisdiction of the Court in Delhi. Accordingly, no direction can be passed even to the police as the entire subject matter or the offence alleged to have been committed is in Gurugram, Haryana.

18. Even otherwise the allegations made by complainant are vague and unspecific. Not even a single incident with sufficient detail has been mentioned in the entire complaint. The allegations lack material particulars and are general in nature.

19. In view of the above facts and settled legal position, I am of the opinion that there is no illegality or perversity in the impugned order.

20. Finding no merit in the present petition, the same is dismissed accordingly.