(2019) 07 DEL CK 0208

In the Delhi High Court

Case No : Criminal Writ Petition No. 1319, 1164 Of 2019, Criminal Miscellaneous Application No.8513, 8514, 9696, 9697, 10070 Of 2019

Sarla Gupta & Anr APPELLANT

Vs

Directorate Of Enforcement RESPONDENT

Date of Decision : 22-07-2019

Acts Referred:

Constitution Of India, 1950 — Article 21
Indian Penal Code, 1860 — Section 120B, 420
Prevention Of Corruption Act, 1988 — Section 13(i)(d)
Prevention of Money-Laundering Act, 2002 — Section 3, 4, 5, 44(1)(d)
Code Of Criminal Procedure, 1973 — Section 173(5)(a), 207, 207(v), 208

Citation : (2019) 262 DLT 661

Hon'ble Judges : A.K. Chawla, J

Bench : Single Bench

Advocate : R.K. Handoo, Aditya Chaudhary, Amit Mahajan, Randeep Sachdeva, Kunal Dutt, Pavan Narang, Siddharth Handa, Himanshu Sethi, Ketan Goel

Final Decision : Dismissed

Judgement

A.K. Chawla, J

CRL.M.A. 9697/2019 in W.P.(CRL.) 1319/2019

CRL.M.A. 8514/2019 in W.P.(CRL.) 1164/2019

Exemptions allowed, subject to just exceptions.

CRL.M.A. 10070/2019 in W.P.(CRL) 1164/2019

By this application, amended Memo of Parties is sought to be placed on record.

Allowed. Amended Memo of Parties is taken on record. Application stands disposed off.

W.P.(CRL.) 1319/2019 and CRL.M.A. 9696/2019 (for stay)

W.P.(CRL.) 1164/2019 and CRL.M.A. 8513/2019 (for stay)

1. By the instant writ petitions, the petitioners seek setting aside of the common order dated 30.03.2019 passed by the ld. Special Judge (PC Act),

CBI-05, PHC, whereby, the respective applications filed by the petitioners seeking supply of deficient/illegible documents detailed there-under, came

to be dismissed.

2. Concisely, the facts relevant to the subject matter are that on the registration of an FIR dated 05.07.2017 for the alleged contravention of Section

120-B r/w Section 420 IPC and Section 13(i)(d) of the Prevention of Corruption Act in short 'the PC Act' â?" charge-sheets in respect whereof have

been filed â?" the respondent Directorate of Enforcement recorded an Enforcement Case Information Report i.e. ECIR on 26.07.2017, and, thereby,

initiated investigations under Section 5 of the Prevention of Money Laundering Act, 2002 in short 'PMLA' against Lara Projects LLP (erstwhile

Delight Marketing Company Pvt. Ltd./DMCPL) and its Director(s)/ Shareholders; attachment proceedings under Section 5 of PMLA; and; also, filed

a criminal complaint under Section 3 r/w Section 4 of PMLA inter alia against the petitioners. In the proceedings so initiated, the petitioners filed the

subject applications, which came to be dismissed vide the impugned order. Aggrieved thereof, the petitioners have preferred the instant writ petitions.

3. In W.P.(Crl.) 1319/2019 the impugned order is assailed on the plea that the proceedings before the ld. Special Judge in PMLA are governed by the

provisions of Cr.P.C. and require strict compliance of Section 208 Cr.P.C. According to the said petitioners, the documents supplied by the respondent

run into eight volumes with 3535 pages and on a preliminary scrutiny, it was revealed that there were deficiencies and certain documents had not

come to be supplied. In continuation thereof, it is also urged that any further investigation and filing of supplementary complaint is not permissible in

law. In W.P.(Crl.) 1164/2019, the petitioners plead that on the preliminary scrutiny of the documents relied upon and supplied by the respondent, the

documents detailed in the application were found deficient besides few documents being not legible and therefore, the application made under Section

207 Cr.P.C. was required to be granted.

4. In the submissions of the ld. counsel for the petitioners, the deficient documents sought were the documents, which find mention in the documents

furnished and thus, form integral part of the relied upon documents and in the absence thereof, the consideration on charge would be infracted and

may not be fair. It is also the submission of the ld. counsel for the petitioners in W.P.(Crl.) 1319/2019 that the ld. Special Judge erred in drawing parity

in Sections 207 and 208 Cr.P.C. In support of such submissions reliance is placed upon Manu Sharma vs. State (2010) 6 SCC 1 and V.K. Sasikala vs.

State 2012 (9) SCC 771.

5. In the submissions on behalf of the respondent-Directorate of Enforcement, the ld. Special Judge has primarily rejected the prayer made on the

ground that at the stage of framing of charges, while considering application under Section 207 Cr.P.C. only the documents relied upon by the

prosecution and filed along with the complaint were to be supplied. In addition, according to the respondent, the right of the respondent to file

supplementary complaint was well recognized in Yogesh Mittal vs. ED 2018 SCC OnLine Del 6565. In the submissions of the ld. counsel for the

respondent, the scope and ambit of application under Section 207 Cr.P.C. was very limited, and, in the present case, when the charges were yet to be

framed, the petitioners were entitled to only the documents which form part of the charge-sheet/complaint and relied upon by the prosecution. It is

thus contended that the documents asked for being not part of the relied upon documents, the petitioners were not entitled to such documents under

Section 207 Cr.P.C. In support of such submissions, the reliance is placed upon Dharambir vs. CBI ILR (2008) II Delhi 842 and Dinesh Puri vs. State

(Govt. of Delhi) 2016 SCC OnLine Delhi 5551.

6. The impugned order has come to be passed by the ld. Special Judge (PC Act) in the proceedings initiated under a special Act i.e. PMLA. The

complaint made by the Directorate of Enforcement under Section 3/4 of the PMLA Act is the foundation thereof. On the complaint so made, the

offence(s) are to be tried by the Special Court as provided for under sub-clause (d) of sub-Section (1) of Section 44 PMLA. Provision so made under

the PMLA-a special enactment, is an exception created to the procedure to be followed for trial of the offences as provided for under the Code of

Criminal Procedure. In that view of the matter neither Section 207 nor Section 208 Cr.P.C. can be applied mutatis mutandis to the proceedings

Â under PMLA. Then, the matter is at the stage of pre-charge consideration and this stage, cannot be construed to be a stage of trial. Trial begins

with the framing of charge. In the given factual conspectus, the observations and the conclusions drawn by the Co-ordinate Bench of this Court in

Dharambir's case (supra) and relied upon by the Trial Court have a direct bearing. Relevant to the subject, the ld. Special Judge has aptly culled out

the observations and the conclusions drawn in Dharambir's case (supra), as under:

(v) In terms of Sections 207(v) read with Section 173(5)(a) CrPC, the prosecution is obliged to furnish to the accused copies of only such documents

that it proposes to rely upon as indicated in the charge sheet or of those already sent to the court during investigation.

(vi) The trial court or this Court cannot, at the pre-charge stage, direct the prosecution to furnish copies of documents other than that which it

proposes to rely upon or which have already been sent to the court during investigation.

(vii) At the pre-charge stage the trial court cannot direct that a copy of each and every document gathered by the prosecution must be furnished to the

accused irrespective of what the prosecution proposes to rely upon.

(viii) The prosecution is bound to indicate in the charge sheet submitted to the Court the documents it is proposing to rely upon for persuading the court

to frame a charge against the accused. If it fails to do so, the court will proceed on the basis that whatever document is forwarded with the charge

sheet is in fact proposed to be relied upon by the prosecution.

(ix) Where the accused insists that some other document apart from what is stated in the list of documents attached to a charge sheet should be taken

as being proposed to be relied upon by the prosecution, and submits that this is evident from a reading of the charge sheet, the trial court will examine

such submission and if it is satisfied that the charge sheet does in fact indicate that some other document is also proposed to be relied upon by the

prosecution, then it can require the prosecution to furnish the accused a copy of such document as well.

(x) ...

(xi) ...

(xii) ...

(xiii) ...

(xiv) ...

(xv) As long as the statutory requirements of Sections 207(v) read with 173(5)(a) CrPC are strictly complied with, and in the absence of any

challenge to their constitutional validity, the failure to furnish to the accused by the prosecution at the pre-charge stage all documents gathered during

investigation will not be a violation of the right to a fair trial under Article 21 of the Constitution.

7. In Sasikala's case (supra) relied upon by the ld. counsel for the petitioners in W.P.(Crl) 1164/2019, which took note of the ratio of the judgment in

Manu Sharma's case (supra), the Supreme Court had taken note of the perceived difficulties in answering or explaining some part of evidence brought

by the prosecution on the basis of specific documents and it was sought to be ascertained if the alleged incriminating documents could be better

explained by reference to some other documents which were in the court's custody and therefore, an opportunity must be given to the accused to

satisfy itself in that regard. There cannot be any dispute with regard to the ratio of the judgment in Sasikala's case (supra). The fact however remains

that the principles enunciated in Sasikala's case (supra) would be attracted only during the course of trial, which is not the case in hand.

8. For the foregoing reasons, the writ petitions are unmerited and are dismissed along with pending applications.