(2023) 08 CAL CK 0093

In the Calcutta High Court

Case No : W.P.A. No. 20158 Of 2023

Sukanta Chakraborty — APPELLANT

Vs

Union Of India & Ors. — RESPONDENT

Date of Decision : 29-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 226
Prevention of Money Laundering Act, 2002 — Section 50, 50(3)

Citation : (2023) 08 CAL CK 0093

Hon'ble Judges : Jay Sengupta, J

Bench : Single Bench

Advocate : Bikash Ranjan Bhattacharyya, Y.J. Dastoor, Mrityunjoy Chatterjee, Subhankar Nag, Jaydeep Biswas, Jasojeet Mukherjee, S.Das, Arijit Chakrabarti, Deepak Sharma, Dhiraj Trivedi, Arunava Ganguly

Final Decision : Dismissed

Judgement

Jay Sengupta, J

This is an application under Article 226 of the Constitution of India praying for quashing of the impugned summons dated 11.08.2023 being no. PMLA/Summon/KLZO/2023/1631 in respect of F. No. ECIR/KLZO/01/2018/1669 and a direction that no coercive measures should be taken against the petitioner in respect of the said summon.

Learned senior counsel representing the petitioner submits as follows. The petitioner is not an accused in this case. Only a summon has been issued to him. At the relevant point, the petitioner was associated with the RP group of Companies. He joined the present company only in 2017 while the subject matter of investigation is prior to 2015. Earlier, he used to work in one ESS DEE Computers. Reliance is placed on the decision in V. Senthil Balaji's Case, 2023 SCC Online SC 934 and it is submitted that the power to arrest in PMLA case is very limited and is to be exercised cautiously and as per law. However, that stage has not come yet. But the petitioner's apprehension and the consequent prayer for ‘no coercive action’ emanates from the fact that two other witnesses called by such summons have been arrested. Section 50 (3) of the PMLA Act provides that a witness can be asked to attend in person or through an authorized agent. In the instant case, there is no reason why the petitioner should be asked to come in person. Here, it does not appear that the summon was sent for any other purpose than for production of documents.

Learned counsel appearing on behalf of the Enforcement Directorate submits as follows. As would be evident from a plain reading of the summons sent, it was clearly indicated that the petitioner should appear in person. It was further categorically mentioned that he was not only to produce documents, but also to tender evidence, which is permissible in law. Earlier there was a summons sent in connection with another case. The petitioner merely replied that the company will send the documents. Therefore, there was an effective non-compliance of the summons. There is an allegation of fraud by the RP group of Companies to the tune of Rs. 700 crores. There is a statement of an accused mentioning that the petitioner had been working in the group from much before. The judgment in V. Senthil Balaji’s case (supra) vindicates the powers of the Enforcement Directorate including the power to arrest. However, that stage has not come yet as the petitioner has not been examined. Reliance is also placed on the decision in the Commissioner of Customs, Calcutta –vs- M. M. Exports reported at 2007 (212) ELT (165) SC and it is submitted that at the stage of issuance of summons Courts should normally not interfere with the proceeding.

In reply, it is submitted on the petitioner that the earlier summons was issued in another case. Moreover, statement of an accused is hardly of any value after submission of charge sheet.

I have heard the submissions of the learned counsels for the parties and have perused the writ petition.

First, the power of the Enforcement Directorate to arrest an accused cannot be called into question in view of the decisions in V. Senthil Balaji’s Case (supra). However, that is not directly an issue here.

It appears that a notice has been given to the petitioner to appear and produce certain documents and tender evidence in terms of Section 50 of the PMLA Act.

If the petitioner is not in a position to produce certain documents because he was not connected to the company at that point, this can fairly be contended before the authorities.

However, there is a clear indication that documents have been sought as regards several other companies. Item 10 indicates that another purpose for such attendance is to tender evidence.

In exercise powers under Section 50 of the PMLA Act, it was specifically directed that the petitioner should attend in person.

It will be too much to ask the authorities to record elaborate reasons at every stage.

Besides, the question of using a statement of a co-accused does not arise as the petitioner has not yet been made an accused, far less on the basis of any such statement.

Therefore, I do not find any reason as to why the petitioner could not co-operate with the proceeding.

The petitioner also could not show any patent illegality in the summoning of the petitioner by the Enforcement Directorate.

No case is made out either to seek the exceptional relief of 'not to take coercive action'. In fact, such relief could be granted only in very exceptional cases. On this, reliance may be placed on Neeharika Infrastructure (P) Ltd., 2021 SCC Online 315.

Therefore, it is necessary that the petitioner co-operates with the Enforcement Directorate and appropriately responds to the summons that was issued or may be issued by the said authorities.

I do not find any merit in this writ petition.

Accordingly, the writ petition is dismissed.

However, there shall be no order as to costs.

Since affidavits were not called for, allegations are deemed not to have been admitted.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.