

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 28TH DAY OF FEBRUARY, 2023

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

WRIT PETITION NO.2576 OF 2023 (GM-RES)

BETWEEN

VIHAAN DIRECT SELLING INDIA PRIVATE LIMITED
A PRIVATE LIMITED COMPANY REGISTERED
UNDER THE COMPANIES ACT 1956
GROUND FLOOR, E1 BLOCK,
MANYATA EMBASSY BUSINESS PARK
BEECH BUILDING,
OUTER RING ROAD
BENGALURU - 560045

REP BY ITS DIRECTOR
SRI DILIPRAJ PUKKELLA
S/O SRI P D T RAO
AGED 48 YEARS

... PETITIONER

(BY SRI KIRAN S. JAVALI, SENIOR ADVOCATE
FOR SRI SHREEHARI, ADVOCATE)

AND

1 . THE ASSISTANT DIRECTOR
DIRECTORATE OF ENFORCEMENT
ENFORCEMENT DIRECTORATE
AN AUTHORITY UNDER SECTION 48 OF THE PREVENTION
OF MONEY LAUNDERING ACT 2002
4TH FLOOR, KISER I HIND BUILDING
OPP GRAND HOTEL
CURRIMBOY ROAD
BALLALRD ESTATE
ZONE - I
MUMBAI - 400 001

2 . THE ADDITIONAL DIRECTOR
DIRECTORATE OF ENFORCEMENT
ENFORCEMENT DIRECTORATE
AN AUTHORITY UNDER SECTION 48 OF THE PREVENTION
OF MONEY LAUNDERING ACT 2002
4TH FLOOR, KAISER- I HIND BUILDING
OPP. GRAND HOTEL CURRIMBHOY ROAD
BALLARD ESTATE
ZONE - I
MUMBAI - 400 001

... RESPONDENTS

(BY SRI MADHUKAR DESHPANDE, SPECIAL COUNSEL FOR R1
AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226
AND 227 OF THE CONSTITUTION OF INDIA READ WITH
SECTION 482 OF THE CODE OF CRIMINAL PROCEDURE,
PRAYING TO CALL FOR ENTIRE RECORDS IN CONNECTION
WITH ECIR NUMBER ECIR/MBZO 1/15/2016 ON THE FILE OF
THE R1 AND QUASH THE SAME AS ULTRA VIRES THE
PREVENTION OF MONEY LAUNDERING ACT AND ILLEGAL AND
NON EST IN THE EYES OF LAW.

THIS WRIT PETITION HAVING BEEN HEARD AND
RESERVED FOR ORDERS ON 21.02.2023 THIS DAY, THE COURT
MADE THE FOLLOWING:

ORDER

This writ petition is filed by the petitioner-company
under Articles 226 and 227 of the Constitution of India
seeking various reliefs of issuing writ of certiorarified
mandamus for quashing the FIR in No.ECIR/MBZO-
1/15/2013 registered by the Directorate of Enforcement
(ED) and also various directions, to quash the search and

seizure of the account and to declare the search conducted under Section 17 of the Prevention of Money Laundering Act as illegal and unconstitutional and other various reliefs.

2. Heard the arguments of learned Senior counsel appearing for the petitioner counsel and learned Special counsel for the respondents-ED.

3. The case of the prosecution is that the respondent-ED registered a FIR in ECIR/MBZO-1/15/2013 based upon the FIR registered by the Oshiwara Police Station, Mumbai in Crime No.316/2013 for various IPC offences and the offence under Sections 120B and 420 of IPC are the schedule offences under the Prevention of Money Laundering Act, 2002 (for short 'PML Act'). Hence, the ED registered a case against the petitioner-company in the above said FIR and during the investigation in the year 2013, the ED said to be conducted the search and froze the bank account of the petitioner and sent the seized amount and other materials to the Adjudicating Authority under Section 17 of the PML Act. Hence, the petitioner is

before this Court by challenging the proceedings on various grounds.

4. Learned Senior counsel for the petitioner has argued mainly on the ground that the predicate offence registered by the Mumbai Police in Crime No.316/2013 has been stayed by the Hon'ble Supreme Court in ***Writ Petition(s) (Criminal) No(s).31/2017 on 27.03.2017.*** When the predicate offence is already stayed by the Hon'ble Supreme Court, the ED has no authority to proceed with its investigation and seize any documents in the PMLA case and contended that it is well settled by the Hon'ble Supreme Court that when the predicate offence is stayed, the proceedings in PML Act should also be stayed until disposal of the case before the Hon'ble Supreme Court and in support of his arguments, he has relied upon the judgment of the Co-ordinate Bench of this Court as well as the judgment of the Madras High Court.

5. The learned Senior counsel further contended that Oshiwara Police, Mumbai registered the FIR in the

year 2013 and ED also registered the FIR in the year 2013, but, from last ten years, they have not taken any action in this matter and after staying the predicate offence by the Hon'ble Supreme Court in the year 2023, the ED raided the company of the petitioner and froze the account due to which, the petitioner is suffering heavy loss and the company required to make salary to the employees, the company has to pay GST, TDS deductions, etc., the company required to pay Rs.12.9 crores per month and various expenditures and because of freezing the account, the company would put into hardship and loss, therefore, prayed for defreezing the account by declaring the search conducted by the ED as illegal. The learned Senior counsel further contended that the very search and seize is illegal in view of the stay granted by the Hon'ble Supreme Court in the predicate offence, therefore, prayed for declaring the search and seize as illegal and to defreeze the account.

6. *Per contra*, the learned Special counsel appearing for the ED objected the petition mainly two

grounds that the petition filed by the petitioner is not maintainable before this Court since the predicate offence in FIR registered at Oshiwara Police Station, Mumbai and the ED also registered FIR at Mumbai. After the search and seize, all the materials were forwarded to the Adjudicating Authority under Section 17A of the PML Act. The Adjudicating Authority is at Delhi. Therefore, it is contended that the petitioner can approach the Bombay High Court for questioning the search and Adjudicating Authority seizure and also can approach the at Delhi, therefore, the petitioner is not entitled for any relief in this case. He further contended that the Adjudicating Authority seized the matter, therefore, the same cannot be questioned here. In support of his arguments, he has relied upon the judgment of the Madras High Court.

7. The learned Senior counsel appearing for the petitioner has vehemently contended that after keeping the matter for ten long years and after staying the matter by the Hon'ble Supreme Court in respect of predicate

offence, the very search and seize in the PML Act is illegal and the petitioner approached this Court under writ jurisdiction where there is violation of the procedures established by the law. The bank accounts which are at Bengaluru and Chennai were freezed. The petitioner required to pay salaries and other maintenance including the taxes, therefore, he has contended that the seized materials cannot be kept in their custody for more than 30 days, therefore, it was forwarded to the Adjudicating Authority. Hence, prayed for allowing the petition.

8. The respondent counsel in reply has contended that when there is an alternative and efficacy remedy available, the petitioner cannot approach this Court. Hence, prayed for dismissing the petition.

9. Having heard the arguments and on perusal of the records, it is an admitted fact that the Oshiwara Police, Mumbai registered a FIR against the petitioner in Crime No.316/2013 for various IPC offences and Section 120B and 420 of IPC cases were schedule offences under the

PML Act. Hence, the ED registered FIR in ECIR/MBZO-1/15/2013 and it is also an admitted fact, the Hon'ble Supreme Court has stayed the predicate offence in **Writ Petition(s) (Criminal) No(s).31/2017 on 27.03.2017**.

The learned Senior counsel for the petitioner has relied upon the judgment of the Co-ordinate Bench of this Court in the case of **Mantri Developers Private Limited and others vs. ED in W.P.No.20713/2022 (GM-RES)** and in the case of **MS.C.Uma Reddy and others vs. ED in W.P.No. 19337/2022 (GM-RES)** dated 14.12.2022, has taken similar view that once the predicate offence is stayed, the proceedings in the Act registered by the ED cannot be proceeded. The Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary and others vs. Union of India and others** reported in **2022 SCC OnLine SC 929** has held that once the predicate offence is ended in discharge or acquittal, the proceedings initiated by the ED cannot be proceeded. Of course, there is no second thought in the decision rendered by the Hon'ble Supreme Court and the Co-ordinate Bench of this Court.

However, in this case the main objection by the learned Special counsel for respondent is that the FIR in predicate offence and FIR in ED case were all registered at Mumbai and the properties seized were all forwarded to the Adjudicating Authority at Delhi and this Court cannot quash or stay the proceedings which has no territorial jurisdiction. In this regard, the learned counsel for the respondent has relied upon the judgment of the Madras High Court in the case of **S. Ilanahai vs. The State of Maharashtra in Criminal.O.P.No.22498/2014 and M.P.No.1/2014** reported in **2015 (1) MWN (Cr.) 618**, held at Paragraph Nos.38, 39 and 40 which are as under:

*"38. From the above judgment of the Larger Bench, now it is crystal clear that what is relevant for the High Court to entertain a Petition under Section 482, is not the cause of action as the term "cause of action" is foreign to Criminal law. In **Navinchandra N. Majithia v. State of Maharashtra**, 2000 (4) CTC 60 (SC), the Hon'ble Supreme Court had not dealt with the question as to whether the power of the High Court under Section 482 of the Code*

could be exercised beyond the territorial limits of the High Court. As I have already pointed out, the Court only held that Writ jurisdiction could be exercised beyond the territorial limits provided either the cause of action in full or in part has occurred outside the jurisdiction of the High Court concerned.

39. *As we have already noticed, before the introduction of Clause (2) of Article 226 of the Constitution of India, as per the Constitution Bench Judgment in **Election Commission, India v. Saka Venkata Subba Rao**, AIR 1953 SC 210, the jurisdiction was based only on the situs of the person or Authority concerned against whom Writ or Order is to be issued. The jurisdiction was extended beyond the territorial limits by the introduction of Clause (2) to Article 226 of the Constitution of India based on the cause of action. So far as the Territorial jurisdiction under Section 482 of the Code of Criminal Procedure is concerned, it is akin to Article 226 of the Constitution of India as it stood prior to the introduction of Clause (2) of Article 226. When Parliament thought it fit, after the above Constitution Bench Judgment, to extend the Writ*

Jurisdiction of the High Court beyond the territorial limits of the said High Court, it did not think it appropriate, similarly to amend Section 482 of the Code of Criminal Procedure so as to add provision like Clause (2) of Article 226 of the Constitution of India extending the inherent power of the High Court under Section 482 of the Code of Criminal Procedure beyond the territorial limits of the said High Court based on the fact that the part of offence is committed outside the territorial limits of the said High Court.

40. Thus, in my considered opinion, so far as the power under Section 482 of the Code of Criminal Procedure for the purpose of quashing the F.I.R. is concerned, the only criteria is the situs of the Authority who has registered the case and not the place of commission of the crime either in full or in part. Similarly, the Writ jurisdiction of the High Court under Article 226 of the Constitution to quash a Criminal case also does not extend beyond the territorial limits of the said High Court if the case is pending on the file of an Authority, who is located outside the territorial limits of the said High Court. This conclusion is inescapable,

*in view of the authoritative pronouncement of the Larger Bench of the Hon'ble Supreme Court in **Dashrath Rupsingh Rathod v. State of Maharashtra, 2014 (2) MWN (Cr.) DCC 145 (SC)**, wherein the Court has held that the concept of "cause of action" which is relevant to Civil Law cannot be imported to Criminal Law".*

10. The Delhi High Court has also taken similar view in the case of **Sayed Mohd. Masood vs. Union of India and Another** reported in **2013 SCC OnLine Del 4510** has held at paragraph No.18 as under:

"18. Mr. V.P. Singh, learned senior counsel for petitioner's submission that since arrest order was issued in Delhi and subsequently, the petitioner was also arrested in Delhi constitutes a cause of action is misplaced. Going by the petitioner's logic, in all criminal cases, where an accused is arrested in a State different from where FIR is lodged, two High Courts would have jurisdictions under Article 226 of the Constitution, namely, one under whose territorial jurisdiction the FIR had been registered and the other where the accused

had been arrested. But in law, two High Courts cannot simultaneously exercise jurisdiction. In our view the mere fact that the summons dated 14th December, 2012 whereby the petitioner was asked to appear in person in the office of Directorate of Enforcement, Delhi Zonal Office and the arrest order was issued from the Delhi Zonal Office are not facts which by themselves would confer territorial jurisdiction on this Court. A perusal of both the summons and the arrest order reveal that they were issued by Mr. D. Shanmugam, Assistant Director, Directorate of Enforcement, Mumbai, Camp at Delhi Zonal Office at 10-A, Jam Nagar House, Akbar Road, New Delhi-110011. This Court is of the opinion that this would imply that Mr. D. Shanmugam, at the relevant time, had only camped at the Delhi Zonal Office for the sake of convenience and it cannot be inferred that the Delhi Zonal Office was directly related to the affairs of the case against the petitioner under PMLA, 2002. Further, the present petitioner was arrested in Delhi because he was available in Delhi. In the present case, the prosecution presented the petitioner before the concerned Duty

Magistrate on the same day, i.e., 14th December, 2012 itself and obtained transit remand. The very next day he was produced before the Mumbai Court. At no point of time, the present petitioner was detained in Delhi, more than what was logistically required. Consequently, this Court is of the opinion that the material and substantial part of cause of action had arisen within the jurisdiction of the Mumbai High Court alone."

11. The judgment of the Madras High Court and the Delhi High Court were categorically held that when the FIR is registered in some other State, merely the petitioner-accused staying in Karnataka State and bank account is operating at Karnataka, this Court cannot take the cognizance and quash or stay the criminal proceedings in favour of the petitioner. I am in respectful agreement with the decision rendered by the Madras High Court as well as the Delhi High Court that this Court has no jurisdiction to entertain the petition and pass any order against the respondent-ED when the case was registered

at Mumbai and properties were seized and forwarded to the Adjudicating Authority at Delhi. Therefore, the only option available to the petitioner is to approach the Mumbai Court having territorial jurisdiction and also an alternative and efficacy remedy available before the Adjudicating Authority at Delhi. Therefore, this Court cannot interfere and pass any order with the action taken by the respondent-ED in the case registered at Mumbai. Hence, the petition is devoid of merits and liable to be dismissed.

12. Accordingly, the writ petition is ***dismissed***.

**Sd/-
JUDGE**

GBB