

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

1. CRWP 951 of 2016
Date of decision : March 27, 2018

White Water Foods (P) Limited & ors. Petitioners

Versus

Directorate of Enforcement, Mumbai Respondent

2. CRWP 984 of 2016

P.D. Agro Processors (P) Limited & ors. Petitioners

Versus

Directorate of Enforcement, Mumbai Respondent

CORAM : HON'BLE MR. JUSTICE A.B. CHAUDHARI
HON'BLE MR. JUSTICE INDERJIT SINGH

PRESENT: Mr. Vikram Chaudhari, Sr. Advocate, with
Mr. Hemant Shah, Advocate, for the petitioners in CRWP-951-
2016.

Ms. Madhu Daya, Advocate, for the petitioner in CRWP-984-
2016.

Mr. Satya Pal Jain, Additional Solicitor General of India, with
Mr. Alok Kumar Jain, Advocate, for the respondent.

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1. Whether Reporters of local newspapers may be allowed to
see the judgment? YES

2. To be referred to the Reporter or not? YES

3. Whether the judgment should be reported in the digest? YES

Per A.B. Chaudhari, J.

Both these petitions i.e. CRWP-951-2016 and CRWP-984-

2016, arise out of the complaint (Annexure P-2) i.e. PMLA Case No.4 of 2015 titled 'Directorate of Enforcement vs. M/s National Spot Exchange Limited and others', which arose out of FIR No.216 of 2013 dated 30.09.2013, and process issued thereon vide summons dated 13.01.2016 (Annexure P-3, collectively), pending in the Designated Court-Prevention of Money-Laundering Act, 2002. There is also a challenge to the vires of the provisions of Sections 3, 4 and 45 of the Prevention of Money-Laundering Act, 2002 (for short 'the Act').

It appears that in CRWP-951-2016, the Registry of this Court had raised objection No.4 on 16.07.2016 as to how the petition was maintainable in Punjab and Haryana High Court when the case is pending with the Designated Court for the Prevention of Money-Laundering Act at Mumbai. It appears that objection No.4 was answered by saying that the summons and complaint have been served at Panchkula/ Chandigarh and the entire transactions as per the complaint took place within the territory of State of Punjab. The petitions were, thus, placed before this Court for admission hearing and on 18.07.2016, in CRWP-951-2016, this Court made an order and recorded the submission of learned counsel for the petitioners in para-2 thereof that the petitioner's company is located only within the jurisdiction of Punjab and Haryana High Court. The business is being transacted and the factory premises and the warehouses are located within the jurisdiction of this Court. The summons were also received by the petitioners from the Economic Offences Wing at the addresses within the jurisdiction of this Court. This Court referred to the decision of the Apex Court in Navin Chandra N. Majithia vs. State of

Maharashtra, 2000(3) Crimes 222, as regards the issue of jurisdiction and issued notice of motion and also made an interim order exempting the personal appearance of petitioner No.4-Kamal Kant Dewan and petitioner No.5-Amit Dewan. Thereafter, by another order dated 04.08.2016, this Court enjoined the respondent-Enforcement Directorate from arresting petitioner-Kamal Kant Dewan.

In CRWP-984-2016, this Court had by an interim order dated 25.07.2016, granted bail to the petitioners in the said petition. Learned counsel for the petitioners submitted that accordingly bail has been granted by the trial Court and the charge-sheet has also been filed. Learned counsel for the petitioners contended that, therefore, the petitioners are entitled to continuation of bail, pursuant to the interim orders made by this Court.

Facts :

The facts giving rise to these petitions are as under:-

According to the respondent-Directorate of Enforcement, Mumbai, a scam took place in Mumbai in respect of National Spot Exchange Limited, which is a platform for trading into various commodities under various segments. The principle accused, according to the respondent-Enforcement Directorate, is Jignesh Shah and the scam is stated to be involving an amount of Rs.5600 crores. One Pankaj Saraf had lodged a complaint with the Police Station MRA Marg, Mumbai on 30.09.2013 in respect of forgery/fraud giving rise to the said scam in the National Spot Exchange Limited, Mumbai. Accordingly, the investigation was undertaken by registration of the FIR and the police submitted an

investigation report. A reference was made to the Enforcement Directorate since it was found that there was huge amount of money laundering, and offences cognizable under the Prevention of Money-Laundering Act, 2002. Therefore, the investigation was undertaken by the Enforcement Directorate, Mumbai. The Enforcement Directorate, Mumbai issued summons for investigation to the petitioners and others and started its investigation. After making the investigation, the Enforcement Directorate filed a complaint contemplated by the Act in the Court of City Civil Court and Additional Sessions Judge, Greater Bombay, designated as Prevention of Money-Laundering Special Court, in which there are 68 accused persons. Admittedly, the petitioners in both these petitions are the accused persons in that complaint which was registered as PMLA case No.4 of 2015. It appears that the designated court took cognizance of the complaint and issued process on 13.01.2016. Pursuant to the said order dated 13.01.2016, accused summons dated 13.01.2016 (Annexure P-3) were issued to the accused persons, including the petitioners to appear on 22.01.2016/extended dated 16.05.2016. The petitioners having received the said summons, which is in a printed format, without filing the copy of order dated 13.01.2016, have obtained interim orders for exemption from personal appearance, bail and so on and so forth from this Court.

On 15.03.2018, when these petitions were listed before this Court, Mr. Satya Pal Jain, Additional Solicitor General of India, raised a preliminary objection as to the territorial jurisdiction of this Court to entertain these petitions and submitted that the jurisdiction to entertain

any such petition lies only with the Bombay High Court. Since the interim order were operating, this Court granted time to the counsel for both the parties and fixed 27.03.2018 for hearing arguments on the issue of territorial jurisdiction.

Arguments :

In support of these petitions, the learned counsel for the petitioners vehemently argued that the complainant-Pankaj Saraf was also a member of the Exchange, who lodged the complaint with the MRA Marg police. He submitted that the Government of India had also issued a Notification dated 12.07.2013 restraining the National Spot Exchange Limited from trading. The counsel submitted that this Court has territorial jurisdiction and in support thereof he cited the following reasons :-

- i) The place of residence of the petitioners is Chandigarh/ Panchkula/ Ludhiana;
- ii) The properties which were attached and factory, etc., are located at Ludhiana, within the jurisdiction of this Court;
- iii) The Electronic Exchange is also at Ludhiana where some transactions had taken place, which is also clear from the flow of funds chart enclosed by the respondent-complainant. The transactions in Ludhiana industry/factory itself clearly show that no offence was committed at Mumbai and the offence, if any, for the sake of arguments, was committed at Ludhiana. Therefore, the cause of action is very much within the territorial jurisdiction of this Court;
- iv) The provisions of Section 42 of the Act regarding appeal, also

show the intention of the Legislature, therefore, this Court has territorial jurisdiction;

v) The provisions of Section 43 of the Act would not apply in the present case;

vi) The petitioners are challenging the vires of the provisions of the Act and, therefore, any High Court in India, including this Court, would have jurisdiction to examine the validity of the provisions and, therefore, this Court has jurisdiction in the matter;

vii) The Directors/partners of the companies/petitioners received summons at the places of their residence; namely, Chandigarh/ Panchkula/ Ludhiana and, therefore, this Court has territorial jurisdiction. He relied on the decision in the case of Navin Chandra N. Majithia (supra) and also relied on several other decisions, compilation of which has been taken on record.

Per contra, learned counsel for the respondent vehemently opposed the petitions and submitted that filing of the present petitions in the Punjab and Haryana High Court in respect of a criminal complaint case pending in the designated court at Mumbai is a sheer abuse of process of law and it appears that the petitions were filed in this Court with a deliberate object and for avoiding the Special Court at Mumbai, including the Bombay High Court. The counsel for the respondent expressed surprise and stated he cannot imagine any reason for approaching this Court on said flimsy grounds regarding cause of action when, admittedly, the criminal complaint has been filed in the Court of City Civil Court and Additional Sessions Judge, Greater Bombay at

Mumbai, and order issuing process and accused summons have been made at Mumbai. Counsel for the respondent submitted that the judgment regarding jurisdiction in the case of Navin Chandra N. Majithia (supra) is under Section 138 of the Negotiable Instruments Act. At any rate, the same has been explained by the Supreme Court in a subsequent judgment, which has been referred to in the written statement filed by the respondent. He submitted that all interim orders were obtained fraudulently.

Finally, counsel for the respondent prayed for dismissal of these petitions with exemplary costs as there is a sheer abuse of process of law.

Consideration :

At the outset, this Court is taken aback at the manner in which these petitions were filed in this Court and from the conduct of the petitioners it clearly appears that the petitioners never wanted to approach the Designated Special Court itself at Mumbai; namely, City Civil Court (Designated Court for the Prevention of Money-Laundering Act) at Mumbai or the Bombay High Court, for the reasons best known to the petitioners. For us, the reasons are unfathomable. That apart, the petitioners did not file order dated 13.01.2016 by which process was issued, passed in PMLA Complaint No.4 of 2015. That is the basic order giving rise to cause of action. Counsel for the petitioners was specifically asked as to what were the reasons for not filing the order issuing process which must be a reasoned order to which the petitioners' counsel did not have any answer. Counsel for the petitioners was also asked as to why the

petitioners or their counsel did not appear before the designated court at Mumbai and challenge his jurisdiction, demerits of the complaint and so on and so forth, before the same court. Counsel for the petitioners was also asked as to why the petitioners did not approach the Bombay High Court under the same jurisdiction; namely, Section 482, Code of Criminal Procedure or Articles 226 and 227 of the Constitution of India, for the grievance made in the present petitions. Counsel for the petitioners did not have any explanation except for saying that the question of liberty of the petitioners arose and, therefore, the petitioners made the propitious choice of approaching this Court and obtaining interim orders. To our mind, it clearly appears that the petitioners have employed a ploy to stop their interrogation and arrest for the last two years in the alleged huge scam involving an amount of Rs.5600 crores. The petitioners have clearly played subterfuge by filing these petitions in a weird manner in Punjab and Haryana High Court, which are clearly not maintainable, for which we record the reasons, hereinafter.

The National Spot Exchange Limited is admittedly located at Mumbai since its formation. The FIR lodged with MRA Marg Police Station was investigated by the police within the jurisdiction of Police Station MRA Marg, Mumbai. The Enforcement Directorate took over the investigation having been satisfied about the huge money laundering and, thereafter, filed the said complaint which was taken cognizance of with 68 named accused. In the said complaint, the following prayers have been made, which we quote hereunder:-

“13. Prayer :

13.1 It is most respectfully prayed that this Hon'ble Court be pleased to take cognizance of offence of Money Laundering defined under Section 3 and punishable under Section 4 of the Prevention of Money Laundering Act, 2002, against the accused persons/ entities as detailed below and process may be issued against accused in accordance with Law:

(i) Shri Anjani Sinha, (ii) Shri Amit Mukherjee, (iii) Shri Jai Bahukhandi, (iv) Smt. Bonhi Mukherjee, (v) M/s P.D. Agroprocessors Pvt. Ltd, (vi) M/s Dunar Foods Ltd, (vii) M/s Prime Zone Developers Pvt. Ltd, (viii) Shri Surender Gupta, (ix) Shri Ranjeev Aggarwal (x) Shri Ashwin Sindhvani, (xi) Shri Vijay Kumar Sharma, (xii) Shri Anil Kumar, (xiii) M/s Aastha Minmet India Ltd, (xiv) M/s Juggernaut Projects Ltd, (xv) M/s Aastha Alloycorp Pvt Ltd, (xvi) M/s Aastha Allow Steel Pvt Ltd, (xvii) Shri Mohit Aggarwal, (xviii) Smt. Shyama Kejriwal, (xix) M/s Mohan India Pvt Ltd, (xx) M/s Tavishi Enterprises Pvt Ltd, (xxi) M/s Brinda Commodity Pvt Ltd, (xxii) M/s Whizkid Promoters Pvt Ltd, (xxiii) Shri Jagmohan Garg, (xxiv) Shri Jai Shankar Srivastava, (xxv) Shri Ram Awadh Sharma, (xxvi) Shri Mukul Gupta, (xxvii), M/s Spincot Textiles Pvt Ltd, (xxviii) Shri Ghanta Kameswara Rao, (xxix) M/s White Water Foods Pvt Ltd, (xxx) M/s Bharat Food & Agro Products, (xxxi) M/s VIR Foods Ltd, (xxxii) Shri Kamal Kant Dewan, (xxxiii) Shri Amit Dewan, (xxxiv) M/s N.K. Proteins Ltd, (xxxv) M/s N.K. Industries Ltd, (xxxvi) M/s N.K. Corporation, (xxxvii) Shri Nilesh Patel, (xxxviii) Shri Nimish Patel, (xxxix) Shri Darshan Patel, (xl) M/s Yathuri Associates, (xli) M/s Naraingarh Sugar Mills Ltd, (xlii) M/s Rahul Sales Ltd, (xliii) Shri Gagan Suri, (xliv) Shri Rahul Anand, (xlv) Shri Sanjeev Bhasin, (xlvi) M/s Namdhari Food International

Pvt Ltd, (xlvii) Shri Iqbal Singh Bal, (xlviii) Shri Inder Singh Bal, (ii) Shri Surjit Singh Bal, (I) M/s Lotus Refineries Pvt Ltd, (Ii) M/s Lotus Allied Mediamatics Pvt Ltd, (lii) M/s Lotus Builders, (liii) Shri Arun Sharma, (liv) M/s Namdhari Rice & General Mills, (lv) Shri Daljit Singh Bal, (lvi) Shri Jaspal Singh Bal, (lvii) Shri Jai Singh Bal, (lviii) M/s Swastik Overseas Corporation, (lix) M/s Manan Ago Pvt Ltd, (lx) M/s Issan Overseas Ltd, (lxi) Shri Rajesh Mehta, (lxii) Shri Rajiv Todi, (lxiii) Shri Jignesh Shah, (lxiv) Shri Shrikant Javalkar, (lxv) Shri Shankarlal Guru, (lxvi) Shri Bhagwat Pawar, (lxvii) Shri Joseph Massey, (lxviii) M/s National Spot Exchange Ltd (NSEL).

13.2 The complainant craves to add that investigations against other persons/entities namely, NSEL officials, IBMA, other defaulting members & others are in progress. The proceeds of crime either collected as finance charges, transaction charges, warehousing / delivery charges, interest, VAT, other charges, etc by NSEL or outstanding on the defaulting members of approx. Rs. 1400 Crores is also under investigation. The Complainant hereby humbly submits that the investigation in this case is ongoing to come to terms with the wider ramifications & to trace out the entire proceeds of crime siphoned off in the matter. The Complainant craves leave of this Special Court to file supplementary complaints under Section 45 of the PMLA, 2002 upon completion of investigation.

13.3 The Hon'ble Court may also order under subsection 5 of Section 8 of the Prevention of Money Laundering Act, 2002, confiscation of the properties involved in the money laundering or which has been used for commission of offence of money laundering to the

Central Government.

14. The Flow of Funds Charts are annexed at Annexure-A. The list of witnesses to be examined at the time of trial is annexed as Annexure-B. The list of documents relied upon in the complaint is also enclosed as Calendar of evidences and annexed as Annexure-C.”

As stated earlier, the designated Court at Mumbai took cognizance of the complaint and it must have passed a detailed order issuing process on 13.01.2016 but the petitioners have deliberately not filed the said order and have only filed the accused summons that they had received. The petitioners have, thus, clearly indulged in suppressio veri suggestio falsi and have, thus, played fraud on this Court. They have abused the process of this Court and have also fraudulently obtained interim orders from this Court. It is well known that the provisions of Section 45 of the Act prohibited grant of bail to the accused persons though a few months back, the Apex Court has not approved of it. The fact, however, remains that the offences have been treated as very serious offences as the same adversely affect the economy of the nation and also the common citizens and gullible investors. It is undisputed that the complaint itself was filed at Mumbai in the designated court at Mumbai, the order issuing process was passed by the court at Mumbai, the summons were issued from Mumbai to appear before the Mumbai Court. The offences, from the reading of the complaint, took place at the National Spot Exchange Limited, Mumbai. The cause of action, thus, clearly arose within the territorial jurisdiction of Mumbai courts. Thus, the place of jurisdiction of the said complaint and the cause of action

mentioned therein is clearly at Mumbai and no part of cause of action has arisen within the territorial jurisdiction of Punjab and Haryana High Court.

The submission made by the counsel for the petitioners that the petitioners reside at Chandigarh/ Panchkula/ Ludhiana or that the attachment of properties at Ludhiana was made and that the petitioners received summons at Chandigarh/ Panchkula/ Ludhiana, is wholly misconceived and misplaced and must be rejected outright. The residence of the accused persons cannot give cause of action. The attachment of factory/warehouses, etc. located at Ludhiana does not give any cause of action. Section 42 of the Act relates to appeal against the order of Appellate Tribunal and the provision has no relevance. The submission that there is an electronic exchange also at Ludhiana of National Spot Exchange Limited and, therefore, this Court has jurisdiction is again misplaced. We have, therefore, come to the conclusion that no part of cause of action at all arose within the territorial jurisdiction of Punjab and Haryana High Court and there was no question of filing any petition in respect of PMLA Case No.4 of 2015, pending in the court of designated City Civil Court and Additional Sessions Judge, Greater Bombay, or to challenge the summons issued by the said court to the petitioners. We, therefore, categorically and clearly hold that Punjab and Haryana High Court does not have any territorial jurisdiction over these matters, and the territorial jurisdiction is that of Bombay High Court. We, therefore, answer the question by holding accordingly. The following concluding para from the decision of the Apex Court in the case of Rajasthan High

Court Advocates' Association vs. Union of India and others, (2001) 2

Supreme Court Cases 294, would be apt:-

“18. In case of a dispute arising whether an individual case or cases should be filed and heard at Jodhpur or Jaipur, the same has to be found out by applying the test – from which district the case arises, that is, in which district the cause of action can be said to have arisen and then exercising the jurisdiction under Article 226 of the Constitution.”

It is clear from the above discussion and the facts as narrated above, that the petitioners have deliberately with a mala fide intention lodged the petitions here that has resulted in sheer abuse of process of law. The petitioners have obtained interim orders which are continuing for the last two years. Due to interim orders obtained from this Court, the custodial interrogation of the petitioners also could not be made. The submission that now charge-sheet has been filed is no answer as the Enforcement Directorate has always an authority to make further investigation. The custodial interrogation in the alleged huge scam like the present one could be most essential. However, in order to abuse the entire process of interrogation and investigation, these petitions were lodged in this Court and interim orders were obtained. In our opinion, therefore, the petitioners are fully guilty of misusing the process of law and interfering in the administration of justice. The petitioners are, therefore, liable to pay exemplary costs to the Union of India through the Enforcement Directorate. We have given conscious thought to the entire matter and we find, looking to the huge scam and the successful attempt

made by the petitioners to bypass the investigation, exemplary costs in the sum of Rs.50 lacs per petitioner would subserve the ends of justice.

Since we have already found that the petitioners have successfully obtained interim orders from this Court i.e. exemption from personal appearance and bail, it is necessary to set the things right keeping in mind the principle 'actus curiae neminem gravabit'. We also hold that the grant/furnishing of bail pursuant to the interim order made by this Court, becomes inconsequential. Hence, it will be necessary for us to grant liberty to the designated court at Mumbai to hear both the parties in PMLA Case No.4 of 2015 to decide the question of custody of the petitioners for custodial interrogation by the Enforcement Directorate.

The decisions cited by the learned counsel for the petitioners, in the facts of the present case, do not have any application.

In the result, we make the following order :-

ORDER :

1. CRWP-951-2016 and CRWP-984-2016 are dismissed for want of territorial jurisdiction of this Court and all interim orders dated 18.07.2016 and 04.08.2016, made in CRWP-951-2016, and order dated 25.07.2016, made in CRWP-984-2016, regarding exemption from personal appearance, as well as grant of bail to the petitioners are vacated;
2. Each petitioner in both the petitions shall pay exemplary costs in the sum of Rs.50 lacs; to the Union of India through the respondent, within a period of four weeks from today failing which the same shall be recovered as arrears of land revenue;

3. The petitioners are directed to surrender before the Special Court at Mumbai in PMLA Case No.4 of 2015, within a period of four weeks from today;
4. The Special Designated Court at Mumbai, after hearing both the parties in PMLA Case No.4 of 2015, is at liberty to decide the question of custody of the petitioners for custodial interrogation by the enforcement agency, within a period of four weeks from the date of surrender and make necessary orders; and
5. Respondent is directed to produce the present order before the Special Court (PMLA), Mumbai in PMLA case No.4 of 2015.

(A.B. Chaudhari)
Judge

March 27, 2018
Kang

(Inderjit Singh)
Judge

सत्यमेव जयते