

CBI Vs. Premier Vinyl & Ors.
CC No.277/2019

Matter has been taken up through VC hosted by Ms.Kamal Bhatia, Reader of the court through Cisco Webex App.

05.10.2020

Present: Sh.Lalit Mohan, Id. PP for CBI.
Sh.P.S. Singhal, Id. counsel for A3 and A9.
Sh.Shital Ramteke, Id. counsel for A5 with A5.
Sh.Ashwini Dubey, Id. counsel for A6.
Sh.Abhay Pandey, Id. counsel for A7.
Sh.Praveen Aggarwal, Id. LAC from DLSA.

As pointed out by the counsels for the parties that proceedings in the present case are still stayed by Hon'ble High Court and it is submitted that next date of hearing before Hon'ble High Court of Delhi is 16.10.2020.

Accordingly, put up this case on 05.11.2020 awaiting for further orders from Hon'ble High Court (date given as per request of Id. counsels for accused persons). In the meantime as per the guidelines of Arrears Committee, since this is a case old more than 10 years (20 years old) and charge in this case has not yet been framed intimation in this regard be sent to office of Id. Registrar General, High Court of Delhi.

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(Shailender Malik)
Special Judge (PC Act), CBI
Rouse Avenue Courts, New Delhi
05.10.2020

IN THE COURT OF SH. SHAILENDNER MALIK, SPECIAL JUDGE (P.C. ACT), CBI, ROOM NO.407, ROUSE AVENUE DISTRICT COURT, NEW DELHI

CC No.42/2029

CBI Vs. Upender Rai & Anr.

RC No.217/2018/A0004

ORDER

1. This is an application moved by Directorate of Enforcement under Section 41(1)(c) of Prevention of Money Laundering Act, 2002 (hereinafter referred as "PML Act"), seeking for committal of the present case to the Court of Special Judge (PML Act) in Patiala House Court, New Delhi.

2. It is stated that CBI had registered two FIRs against non-applicant Upender Rai and Others being RC No.217/2018/A0003 against Upender Rai & Others for offence under Section 420 read with 120B IPC and Section 13(2) read with 134(1)(d) of the Prevention of Corruption Act, 1988 and another FIR dated 05.05.2018 being RC No.217/2018/A0004 under Section 384 read with 120B IPC as well as Section 8 of the P.C. Act (the present case). Since after investigation Directorate of Enforcement has filed complaint for offence under Section 3/4 of PML Act which is pending in the court of designated Special Judge PML Act (Sessions Case No.259/2018), Patiala House Court against Upender Rai & Others. In that case ld. Special Judge has already taken the cognizance vide order dated 08.08.2018. It is stated that in that case a supplementary complaint was also filed before the ld. Special Judge and thereafter summon was issued to the accused persons arrayed in that complaint.

3. It is further mentioned that in RC No.217/2018/A0003 which was pending before ld. CMM for trial involving a scheduled offence, ED had moved an

application under the same provision of Section 44(1)(c) of PML Act and that case was committed to Id. Special Judge, PML Act by Id. CMM vide order dated 16.08.2019. Said order dated 16.08.2019 was challenged by filing a revision petition No.26/2019, which was dismissed by the court of Sh.Harish Kumar, Id. Special Judge (PC Act) vide order dated 01.02.2020.

4. It is stated that in the said revision petition all the objections raised on behalf of non-applicant/accused Upender Rai have been considered and declined by a lengthy order dated 01.02.2020 and it was held that provisions of Section 44(1)(c) of the PML Act are mandatory. It is stated that said order dated 01.02.2020 of Id. ASJ/Special Judge (PC Act) has not been challenged by the accused/non-applicant Upender Rai before any superior court. It is stated that since the present case arising out of RC No.217/2018/A0004 also pertain to proceeds of crime derived under the scheduled offence and defined under the PML Act, therefore it is prayed that present matter may also be committed to Id. Special Judge under PML Act at Patiala House Court for trial along with complaint case under PML Act.

5. After filing the application, notice was issued to the CBI as well as to both the accused persons in this case. CBI has filed the reply taking the objection that present matter may not be committed to Special Judge under PML Act because that court has no jurisdiction to try offences under Prevention of Corruption Act. It is stated that as per the provisions of Section 3 of P.C. Act only a Special Judge designated under the P.C. Act can try offences of P.C. Act. It is stated that earlier case being RC No.217/2018/A0003 was involving offences triable before the Id. MM and was not involving of any offences under the P.C. Act. It is matter of record that said RC though was registered under Section 13(2) of the P.C. Act, however later that offence was not made out and therefore the case was being tried before Id. CMM. CBI as such opposed the application moved on behalf of ED.

6. Accused no.1 Upender Rai has also filed the reply wherein it is stated that committal of the proceedings in first FIR to Special Court (PML Act), Patiala House Court does not in any manner make it obligatory for this court to commit the present case also to that court as the difference between the proceedings of first FIR and present case is that the present case can 'only' be tried before a Special Judge notified under P.C. Act. Whereas the first FIR did not require the matter to be heard by a Special Judge under the P.C. Act. Moreover, the Special Judge designated under PML Act can try offences committed under PML Act. Trial of offences under P.C. Act can only be conducted by a Special Judge designated under Section 3 of the P.C. Act. It is stated that provision of Section 3 of the P.C. Act makes it clear that it is "only" a Special Judge under the said Act can try offences of P.C. Act and none else.

7. It is further stated that Section 44 of the PML Act starts with non-obstinate clause only viz a viz provisions of Cr.P.C. Whereas Section 4 of the P.C. Act start with non-obstinate clause not only limiting the provisions of Cr.P.C. but it also over ride "any other law" for the time being in force. As such it is not mandatory for committal of the proceedings under Section 44(1)(c) of the PML Act if the offence is triable under the P.C. Act.

8. It is stated that word 'shall' as mentioned in Section 44(1)(c) of the PML Act does not mean a mandatory transfer/committal of the matter to Special Court of PML Act. Since moving an application under the said provisions by the competent authority under the PML Act predicates, in itself clarify the intention of the legislature on committal of all the matters of scheduled offences is not mandatory in all circumstances.

9. Sh.Rajeev Awasthi, ld. Senior PP for ED has argued that provision of Section 44(1)(c) of the PML Act makes it mandatory for committal of the matter of

scheduled offences to Special Judge under the PML Act for trial along with trial of offences u/s 3/4 of the said Act. While relying upon on the judgment of Hon'ble High Court of Delhi in **Directorate of Enforcement vs. Suraj Pal and others** (Crl. Rev. P. No.67/2017 decided on 10.08.2018), it is stated that para 13 to 15 of the order of Hon'ble High Court makes it clear that Section 44(1)(c) of the Act is mandatory to be followed so that proceedings pertaining to scheduled offences can also be tried before Special Court notified under the said Act along with trial of the offences under the said Act before that court. He further argued that in the first FIR against the same accused proceedings have already been committed to Special Judge (PML Act) by the trial court of Id. CMM. He submits that order of Id. CMM was challenged by way of revision petition and the revision petition was also dismissed by the court of Id. ASJ/Special Judge (P.C. Act) by order dated 01.02.2020. He submits that said order dated 01.02.2020 covers all the objections raised by accused no.1 herein as he had earlier raised these objections in those proceedings.

10. Ld. PP for CBI submits that his objections for committal of the present matter to Special Judge (PML Act) is only limited to the extent that offences under the P.C. Act is also to be tried by a designated Special Judge under Section 3 of the P.C. Act. Therefore, trial of this matter may not be committed to that court.

11. Sh.Arjun Mukherjee, Id. counsel for accused no.1 submits that Id. Sr. PP for ED has submitted that provision of Section 44(1)(c) of the PML Act are mandatory in nature whereas the expression 'shall' as used in the said provision, does not indicate that intention of the legislature to ouster the jurisdiction of any other court except the special court under the PML Act. The bare provision of Section 44(1)(c) of the Act makes it clear that moving of an application by ED has been pre-requisite for committal of the proceedings which indicates that it is not in each and every situation the trial of scheduled offence has to be transferred before

Special Judge under PML Act. Even otherwise, he submits that trial of this case is also required to be conducted before a Special Judge, P.C. Act and a Special Judge, PML Act would not have the jurisdiction to try offences under the P.C. Act for lack of jurisdiction. He submits that as such in this particular case matter cannot be committed to that court of PML Act. He relied upon the judgment in case of **State of Haryana and others vs. Raghubar Dayal** 1995 (1) SCC 133, to submit that word 'shall' is not mandatory and can also be directory, having regard to the object of the provision. He also relied upon judgment of Apex Court in **P. Nallammal and others vs. State** 1999 6 SCC 559, **Inspector of Police, through CBI vs. Assistant Director and others** (Crl.M.C. No.2178/2019). He also having relied upon the judgment of **Kerala High Court in Inspector of Police, CBI vs. Assistant Director and others** MANU/KE/4832/2019.

12. Having considered the facts and circumstances first of all it needs to be noted that admittedly the matter arising out of RC No.217/2018/A0003 against accused Upender Rai and others, which was pending before Id. CMM, Rouse Avenue District Court has already been committed under Section 44(1)(c) to Special Judge (PML Act). That order of committal of that matter was challenged by way of revision by accused Upender Rai and that revision was dismissed by Id. ASJ/Special Judge (P.C. Act) on 01.02.2020 and said order has attained finality as it was not challenged thereafter.

13. This matter arising out of RC No.217/2018/A0004 is also against accused Upender Rai and Rahul Sharma. In this case precise allegations against accused Upender Rai are that accused Upender Rai, a media person approached one Kapil Wadhawan, Chairman of Dewan Housing Finance Limited (DHFL), portraying himself as power broker of Income Tax Department and other government departments. Accused allegedly claimed to be possessing sensitive

information from the Income Tax Department relating to raids to be conducted on the companies associated with M/s White Lion Real Estate Developers Private Limited. Accused allegedly threatened Kapil Wadhawan that he had potential to tarnish the image of associate companies and their promoters as he has media connections. By putting such threats accused Upender Rai allegedly demanded huge amount of money for settling the issues of Income Tax Department and for adverse media reporting. Succumbed to such pressure a sum of Rs.15,19,50,000/- was allegedly paid to accused no.1 Upender Rai through consultancy agreement by M/s White Lion Real Estate Developers Private Limited whose Director Balwinder Singh Malhotra has filed the complaint against him leading to registration of present FIR.

14. So the facts of the present matter indicate that accused no.1 Upender Rai allegedly earned 'proceeds of crime' by committing offence under Section 384 read with 120B IPC and Section 8 of the P.C. Act which are 'schedule offence' in the complaint against him under Section 3/4 of the PML Act pending before Id. Special Judge (PML Act), Patiala House Court.

15. Now in the light of the submissions at bar, question for consideration is whether the present matter should be committed to Special Judge (PML Act) under Section 44(1)(c) of the PML Act or not. In this regard let us first precisely discuss certain provisions of PML Act to understand the aim and object of the Act.

16. The scheme of the Act shows that the definition of "**Money Laundering**" as provided under section 2(p) of the Act, which is referable to section 3, casts a criminal liability on any person who directly or indirectly attempts to indulge or knowingly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 'proceeds of crime' and projecting it as untainted property and shall be guilty of offence of money laundering. Section 4 provides the punishment for money laundering.

17. As the provision of Section 3 quoted above, uses expression ‘**proceeds of crime**’, same has been defined in Section 2(1)(u) of PMLA to mean any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. Expression ‘**Scheduled offence**’ under section 2(y) means the offences specified under part A, B and C of the schedule subject to prescribed monetary limit in case of Part B.

18. Term ‘money laundering’ becomes a separate offence under Section 3 of this Act, when anyone indulged in process or activity to conceal or convert the proceeds of crime gained from scheduled offences to project it as untainted property. Apparently, object of the Act is to prevent and punish money laundering and also to confiscate the property derived by money laundering and matters connected with it. The scheme of the Act also show that money laundering though is an offence by itself is inseparably connected to schedule offences (predicate offences). Part A, B and C of Schedule annexed with the Act mention different offences under different provisions of statute including the offence under P.C. Act.

19. Let us understand some more provisions of PML Act. Chapter V of PML Act (Section 16 to 24) further lays down about the power of an authority to survey, seizure, search any property, person and to arrest any person, when on the basis of material available with it, it has reason to believe offences under Section 3 of the Act has been committed. So power of investigation has been conferred to the authority appointed under Section 48 and 49 of the Act. Chapter VI then provides for constitution of “appellate tribunal” for the purpose of confiscation of the properties as well as for deciding the objections regarding that. Chapter VII then provides for constitution of special courts for trial of offence punishable under Section 4 of PML Act (Section 43). Thereby Section 44(a) of the Act lays down that notwithstanding anything contained in Cr.P.C. offence under Section 4 of this

Act as well as “**any schedule offence connected to offence under this Act**”, shall be tried by special court under this Act. Section 44(b) mandates that for prosecution of offences under Section 4 of the Act shall be launched by filing a complaint by authority authorized under the Act and thereupon special court would take cognizance of an offence. Then comes Section 44(c), under which the present application has been filed, which lays down as :-

“(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973,

(a) -----

(b) -----

(c) If the court which has taken cognizance of the scheduled offences 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 authorized 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 which it is committed.....”

20. Certain other relevant provisions of PML Act are that Section 45 second proviso reiterate that special court shall not take cognizance of an offence under Section 4 of the Act unless complaint in writing is made by the authority. Section 71 of the Act further provides about overriding effect of this Act on the provisions of Cr.P.C. or any other law which is inconsistent with PML Act.

21. Thus, on meaningful reading of different provisions of PML Act, one can easily conclude that intention of legislature is to provide one common judicial adjudication forum i.e. Special Court for deciding the complaint filed under the said Act as well as also adjudicating by a separate trial of scheduled offences. A complaint to be filed under PML Act would be required to mention about the

criminal activities by which the proceeds of crime earned from scheduled offences was converted to project as untainted property. As such, such facts which are mentioned in scheduled offences are very essential to be proved in the prosecution under PML Act. So, there would be some overlapping facts stated in the prosecution under PML Act as well as for prosecution under scheduled offences. Apparently, for this reason the provision of Section 44(a) of the PML Act mandates that trial of offences under Section 4 of the Act as well as trial of scheduled offences should be before one Special Judge (PML Act) by way of separate trial to avoid contradictory findings by two different forums.

22. To oppose the application it was argued that basic difference in two FIRs registered against Upender Rai is that present matter is for offence u/s 8 of P.C. Act, which can be tried only before Special Judge notified under P.C. Act. In this regard it was further elaborated that Section 4 of P.C. Act start with non-obstinate clause to ouster the application of the provision of Cr.P.C. as well as any other law for time being in force. As such it is not mandatory for committal of this matter to Special Court (PML Act).

23. Trial of present matter for offences *inter alia* under Section 8 of P.C. Act can be before notified Special Judge under P.C. Act but offences of P.C. Act have also been mentioned as scheduled offences under PML Act. Moreover, Section 4 of P.C. Act was enacted in 1988 and PML Act came into force in 2002. In order to make harmony to achieve of object of PML Act as well as to ensure the compliance of Section 4 of P.C. Act, a Special Court (PML Act) can also be conferred power of Special Judge under P.C. Act. Otherwise also, I find that it is only a technical objection which must not come in the way for a larger object of PML Act to try the offence of money laundering as well as predicate offences. Such arrangement to my mind is more practicable and useful instead of having a situation

where two proceedings are being carried out at two different courts. In order to save time in recording of evidence of common witnesses, common documents etc. as well as to avoid hardship to witnesses, litigants, and also to avoid contradictory findings of two courts, all these difficulties can be removed by ensuring the compliance of legislative mandate in the shape of Section 44(a) as discussed above. No doubt certain practical difficulties may also occur for conducting separate trial of offences of PML Act and predicate offences, but one must not overlook the larger objects for which the PML Act was enacted. While due importance is required to be given to criminal activities of fraud, corruption etc. for ensuring their expeditious trial. At the same time, it needs to be emphasized that of late offence of money laundering is also posing serious threats to the financial system of country as well as increasing of multiplicity of criminal activities. Therefore, PML Act was enacted as a comprehensive legislature for not only preventing money laundering and connected activities but also to set up a mechanism for coordinating measures for combating of criminal activities including fraud, corruption, evasion of income tax etc. Therefore, the arguments on behalf of accused no.1 is in fact technical and cannot be sustained against the larger object of PML Act.

24. The arguments that provisions of Section 44(1)(c) is not mandatory, to my mind is also not to be accepted in every possible situation because no doubt under Section 44(1)(c) of PML Act moving of an application by ED has been made pre-requisite for getting the committal of trial of predicate offence to Special Court, PML Act, where trial of offence of money laundering is pending. But to my understanding such provision has been made only to give liberty to authority under PML Act to examine necessity of taking such committal of trial, having regard to the stage of the trial of predicate offence, commonity of evidence etc. In fact to my understanding pre-requisite of moving of an application by authority under PML Act has been to

avoid those practical difficulties where trial of the predicate offence has gone far ahead or has reached to final stages whereas the trial of money laundering is yet to be started. No doubt in that sense provisions of Section 44(1)(c) of PML Act does not lay down complete ouster of jurisdiction of the court where the trial of predicate offence is going on but I find that legislature in its wisdom has consciously made a flexible arrangement only to avoid unnecessary delay, hardship to witnesses in those cases where the stage of the trial of predicate offence is far ahead than the stage of the trial of money laundering offence. Harmonious construction of Section 44(1)(a) and 44(1)(c), to my mind makes it mandatory for committal of trial of predicate offence where the trial of the predicate offence is also at the initial stages so that the evidence of common facts in both the trial can be recorded and assessed by one adjudicatory forum i.e. Special Court under PML Act.


25. Ld. counsel for accused Upender Rai has heavily relied upon the judgment of Kerala High Court in **Inspector of Police, CBI vs. Assistant Director and others** (supra) where Hon'ble High Court of Kerala held that competent authority under PML Act have been given discretion to move an application under Section 44(1)(c) in appropriate cases for committal of trial of predicate offences and in that case court has a duty to apply its mind and to take proper decision. Reading the paras 10 to 22 of that judgment would rather indicate that even Hon'ble Kerala High Court highlighted the intention of the legislature that both predicate offence and offence under Prevention of Money Laundering Act should be tried by the Special Court under PML Act because the offences are inextricably interlinked. As such, I find that judgment of Kerala High Court cannot be of any help for ld. counsel for accused no.1. Rather Hon'ble High Court of Delhi in **Directorate of Enforcement vs. Suraj Pal and others** (supra) held explicitly that provisions of Section 44(1)(c) are mandatory when ED has moved the application for committal.

In the present case I have already noted precise facts indicating that proceeds of crime were allegedly gained by accused Upender Rai and trial of the present case is also at the initial stage, charge is yet to be framed.

26. Thus, for the reasons above I find that the application of the ED is liable to be allowed and accordingly the present matter is ordered to be committed to the Special Court (PML Act) at Patiala House Court for the trial of this case. Ahlmad is directed to send complete file of the present case to the court of Id. Special Judge (PML Act), Patiala House Court. Application stands allowed.

Announced on 05.10.2020

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MALIK



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(Shailender Malik)
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