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POWER OF PMLA COURTS TO DECIDE TERRITORIAL JURISDICTION

AUTHORED BY - TANISHEE RANJAN

FACTS

During the pandemic, the Petitioner, Rana Ayyub had initiated crowdfunding campaign through an online crowdfunding platform named “Ketto” and ran three campaigns from April 2020 to September 2021. In connection with the same, the Mumbai Zonal Office of the Enforcement Directorate initiated an enquiry against her under the Foreign Exchange Management Act, 1999 through an Office Order dated 3.8.2021. An FIR was lodged against her under Sections 403, 406, 418 and 420 IPC read with Section 66-D of the Information Technology (Amendment) Act, 2008 and Section 4 of the Black Money Act. After she submitted a detailed response as ordered by the Mumbai Zonal Office of the Enforcement Directorate, the Delhi Zone-II Office of the Directorate of Enforcement registered a complaint in the Court of the Special Judge at Ghaziabad on the ground that the FIR registered on 7.9.2021 on the file of the Indirapuram Police Station, Ghaziabad formed the basis for the complaint of the Enforcement Directorate. She was not only summoned to the Delhi Zone-II Office but a provisional order of attachment of her bank account in a Navi Mumbai HDFC Bank Branch was also. A Look out Circular was issued against the petitioner, but the same was set aside by the High Court of Delhi in a writ petition filed by the petitioner. In a second writ petition filed by the petitioner, the High Court of Delhi restrained the Directorate of Enforcement from taking further steps under Section 8 of the PMLA on the short ground that the validity period of 180 days, of the order of provisional attachment, came to an end statutorily on 4.8.2022. Thereafter, the Court of the Special Judge, Anti-Corruption, CBI Court, Ghaziabad, passed also summoned Ayyub. This led to the writ petition before the Supreme Court questioning the territorial jurisdiction of the Ghaziabad Court.

Ratio Decidendi

Issue of territorial jurisdiction cannot be decided in a writ petition, especially when there is a serious factual dispute about the place/places of commission of the offence.

ARGUMENTS ADVANCED

o *Contentions of PETITIONER:*

Ms. Vrinda Grover, learned Counsel for the Petitioner, made it clear that the challenge to the impugned Summoning Order is limited to the question of territorial jurisdiction alone and that the impugned Summoning Order is not being challenged on any ground other than the lack of territorial jurisdiction.

It was contended that an offence punishable under the Act, shall be triable only by the Special Court constituted for the area in which the offence has been committed¹ and hence, the Special Court in Maharashtra alone could have taken cognizance of the complaint. She argued that no part of the alleged offence of money-laundering was committed within the jurisdiction of the Special Court, Ghaziabad and that her bank account where the alleged proceeds of crime were deposited, is located in Navi Mumbai, Maharashtra. Therefore, the lodging of the complaint at Ghaziabad was an abuse of the process of the court and was done at the instance of the founder of the Hindu IT Cell.

Heavy reliance is placed by the learned Counsel for the Petitioner on the opinion of this Court in paragraphs 353 to 358 of the decision in *Vijay Madanlal Choudhary and Ors. v. Union of India*.²

On facts, it is the contention of the learned Counsel for the Petitioner that no part of the alleged offence of money-laundering was committed within the jurisdiction of the Special Court, Ghaziabad and that the Petitioner's bank account where the alleged proceeds of crime were deposited, is located in Navi Mumbai, Maharashtra. Even the proceedings for the provisional attachment of the bank account were initiated in New Delhi. Therefore, it is contended that the lodging of the complaint at Ghaziabad was an abuse of the process of the court and that the same having been done at the instance of the founder of the Hindu IT Cell, is completely vitiated. It is also contended that the Court of the Special Judge, ought to have returned the complaint to the Respondent, in terms that the Order taking cognizance is vitiated also by non-application of mind.³

¹ Prevention of Money Laundering Act, No Act No.15 of 2003, 17 January 2003 (India)

² *Vijay Madanlal Choudhary vs Union Of India*, Supreme Court of India, 27 July 2022, SPECIAL LEAVE PETITION (CRIMINAL) NO. 4634 OF 2014, SCC (India)

³ THE CODE OF CRIMINAL PROCEDURE, No ACT NO. 2 OF 1974, 25 January 1974 (India)

o ***Contentions of Respondent:***

It was contended by Mr. Tushar Mehta, learned Solicitor General representing the Directorate of Enforcement that under the scheme of the Act, the complaint of money-laundering should follow the complaint in respect of the scheduled offence. Since the complaint in respect of the scheduled offence was registered on 7.9.2021 in Indirapuram Police Station, Ghaziabad, the Respondent necessarily had to lodge the Enforcement Case Information Report (ECIR) on 11.11.2021, on the file of the same court, within whose jurisdiction the scheduled offence became triable. In addition, it is contended by the learned Solicitor General that the Petitioner was alleged to have received money through an online crowdfunding platform and that there were several victims within the territorial jurisdiction of the Court of the Special Judge who had contributed money. Therefore, it is the contention of the learned Solicitor General that a part of the cause of action had actually arisen within the jurisdiction of the Court of the Special Judge, Ghaziabad.

LAWS APPLICABLE;

o ***STATUTES APPLIED:***

- Prevention of money laundering act, 2002⁴
- The Code of Criminal Procedure, 1973⁵
- The Indian Penal Code, 1860⁶
- The Information Technology Act, 2000⁷
- The Black Money (Undisclosed Foreign Income and Assets) Act, 2015⁸
- The Foreign Exchange Management Act, 1999⁹

o ***CASE LAW***

- Vijay Madanlal Choudhary v. Union of India

o ***PRINCIPLE***

- Generalia specialibus non derogant

⁴ Prevention of Money Laundering Act, No Act No.15 of 2003, 17 January 2003 (India)

⁵ THE CODE OF CRIMINAL PROCEDURE, No ACT NO. 2 OF 1974, 25 January 1974 (India)

⁶ The Indian Penal Code, No ACT NO. 45 OF 1860 (India)

⁷ The Information Technology Act, No ACT NO. 21 OF 2000, 9 June 2000 (India)

⁸ The Black Money (Undisclosed Foreign Income And Assets) And Imposition Of Tax Act, No ACT NO. 22 OF 2015, 26 May 2015 (India)

⁹ The Foreign Exchange Management Act, No ACT NO. 42 OF 1999, 29 December 1999 (India)

This principle means that for the purposes of interpretation of two statutes in apparent conflict, the provisions of a general statute must yield to those of a special one.

ANALYSIS

o Trial of the offence of money-laundering should follow the trial of the scheduled/predicate offence or vice versa

The Court extensively examined the relevant provisions of the Prevention of Money Laundering Act and highlighted the two-fold approach it adopts: one for addressing the proceeds of crime and the other for prosecuting individuals involved in money laundering. Chapter III and Chapter VI of the PMLA outline the process for dealing with proceeds of crime, including attachment, adjudication, and an appellate remedy through the Special Tribunal. In contrast, Chapter VII is concerned with prosecuting money launderers via Special Courts.¹⁰

A Special Court, constituted under Section 43(1) of the PMLA, primarily tries offences punishable under Section 4. However, Section 43(2) extends its jurisdiction to also try any other offence with which the accused is charged in the same trial. Further, Section 44(1)(a) establishes the territorial jurisdiction rule, stating that both offences under Section 4 of the PMLA and any related scheduled offence will be tried by the Special Court in the area where the offence was committed. This provision makes it clear that the Special Court under Section 43(1) is empowered to try both the money laundering offence and the connected scheduled offence.

Moreover, under Section 44(1)(c), if different courts have taken cognizance of the scheduled offence and the money laundering offence, the authority filing the PMLA complaint must apply to the court handling the scheduled offence. This court is then required to transfer the case to the Special Court handling the money laundering charge. The Court concluded that the trial for the scheduled offence should follow the trial for the money laundering offence, rather than the other way around.

¹⁰ Bhardwaj P, 'Here's Why Sc Rana Aayub's Challenge To Ghaziabad's Special Court Territorial Jurisdiction In Money Laundering Case '(*SCC.OnLine*, 8 February 2023) <www.sconline.com/blog/post/2023/02/08/rana-ayyub-journalist-money-laundering-ghaziabad-special-court-territorial-jurisdiction-pmla-scope-supreme-court-legal-updates-research-knowledge-news/> accessed 18 September 2024

o *Territorial Jurisdiction of Special Court*

A person's involvement in any of several activities connected to the proceeds of crime constitutes the offence of money laundering. These activities can include (i) acquiring the proceeds of crime in one location, (ii) possessing them in another, (iii) concealing them in a third place, and (iv) using them in a fourth location. Each of these areas would be considered the place where the money laundering offence has occurred. In other words, the offence can be deemed to have been committed in the area where the proceeds of crime are acquired, possessed, concealed, or used. Additionally, the term "proceeds of crime" refers to property obtained as a result of criminal activity related to a scheduled offence. Thus, the area where the property is derived, obtained, held, or concealed would also be the location of the money laundering offence.

o *Special Court of Ghaziabad's territorial jurisdiction*

Ayyub argued that her bank account is located in Navi Mumbai, Maharashtra, and therefore, the offence of money laundering should be considered to have occurred in Maharashtra. However, this argument overlooks the six types of processes or activities related to the proceeds of crime, as outlined in Explanation (i) under Section 3 of the PMLA, including concealment, possession, acquisition, and use. Since the three fundraising campaigns were conducted through the online crowdfunding platform "Ketto," the identities of the donors and their locations were unclear. While Navi Mumbai is where one of the six activities listed under Section 3 took place, determining territorial jurisdiction requires further inquiry into where the alleged proceeds of crime were concealed, possessed, acquired, or used. This is a factual question that will need to be resolved based on evidence presented before the Trial Court. The Court, therefore, dismissed the petition, granting Rana Ayyub the option to raise the issue of territorial jurisdiction during the trial.

CONCLUSION

The case involving Rana Ayyub centers on allegations of financial misconduct related to her crowdfunding campaigns during the pandemic. The Enforcement Directorate (ED) initiated an inquiry under the Foreign Exchange Management Act, claiming that Ayyub misappropriated funds intended for COVID relief. Ayyub contested the jurisdiction of the Ghaziabad Special Court, asserting that the alleged offenses occurred in Maharashtra, where her bank account is located. The Supreme Court ruled that territorial jurisdiction issues cannot be resolved in a writ petition due to factual disputes regarding where the alleged crimes took place. The court

emphasized that the trial for money laundering should consider various locations tied to the proceeds of crime, allowing Ayyub to address jurisdiction during her trial. Thus, while Ayyub's arguments highlight potential jurisdictional flaws, the court's decision underscores the complexity of establishing where money laundering offenses occur based on multiple factors.

