

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE JUSTICE TIRTHANKAR GHOSH

CRR 1620 of 2021

Ranjit Singh Kothari & Anr.

-vs.-

The State of West Bengal & Anr.

Mr. Ayan Bhattacharjee,
Mr. Indrajit Adhikari,
Mr. Amitabrata Hait,
Mr. Suman Majumder.

...For the Petitioners

Mr. Vipul Kundalia,
Mr. Anurag Roy,
Ms. Uneaza Ali.

...For the E.D./Opposite Party No.2

Reserved on : 12.09.2023.

Judgment on : 22.11.2023

Tirthankar Ghosh, J:-

The present revisional application has been preferred by the petitioners challenging the order dated March 24, 2021 passed by the Learned Metropolitan Magistrate, 4th Court, Calcutta in connection with G.R. Case No. 175 of 2012 (arising out of Shakespeare Sarani P.S. Case no. 12 of 2012) under Sections 420/467/468/471 of Indian Penal Code wherein the learned Magistrate was pleased to allow the application dated 12.12.2018 filed by the

Complainant/Enforcement Directorate and directed for appearance of all the accused persons for committing the case to the Special Designated Court as per provisions of Section 44(1)(c) of PMLA, 2002.

The relevant part of the application under Section 44 (1)(c) of PMLA, 2002 filed by the Complainant/ED is as follows:

“5. That the applicant submits that CBI, BS&FC, Kolkata initially registered 5 FIRs (viz RCBSK 2011E003 dated 31.05.2011, RCBSK 2011E0004 dated 31.05.2011, RCBSK2010 E0005 dated 30.09.2011, RCBSK2010E006 dated 30.09.2011 and RC06/E/2011 dated 30.11.2011) and subsequently filed 5 charge sheets and one supplementary charge sheet viz Charge Sheet No. 8/2012 dated 28.06.2012 and Supplementary Charge Sheet dated 05.02.2013, Charge sheet No. 07/12 dated 20.06.2012, Charge sheet No. 09/12 dated 27.07.2012, Charge Sheet No. 10/12 dated 27.07.2012 and Charge sheet No. 11/12 dated 24.09.2012 on the basis of complaint made by Shri Milap Kapoor, the then General Manager, Indian Overseas Bank, Regional Office, 119, Park Street, Kolkata, Shri Durga Prasad Gupta, the then Dy. General Manager & Regional Head, Oriental Bank of Commerce (OBC), Salt Lake, Sector-I, and Smt. Jayati Chakraborty, Dy. General Manager & Branch Head, Mid Corporate Group, IDBI Bank Ltd., Shakespeare Sarani Branch, Kolkata against the M/s Prime Pulses Ltd. M/s Prime Impex Ltd and others u/s 120B, r/w 420,467,468,471 of IPC. The matter of all the above discussed five charge sheets are pending before the Ld. 21 Metropolitan Magistrate, Kolkata. Further Central Bureau of Investigation, Economic Offence Wing, Kolkata, CBI, EOW, Kolkata registered three FIRs viz RC 06/E/ 2011-Kol. Dated 30.11.2011, RC 05/E/2011-Kol dated 14.09.2011 and RC4/E/2012 dated

24.02.2012 and subsequently filed 3 charge sheets viz charge sheet No. 08/12 dated 12.10.2012, Charge sheet no. 09/12 dated 30.11.2012 and charge Sheet No. 11/12 dated 31.12.2012 on the basis of complaint made by Shri Durga Prasad Gupta, the then Dy. General Manager & Regional Head, Oriental Bank of Commerce, Salt Lake, Sector-I, Kolkata, Shri K. B. Nageswar Rao Asst. General Manager, Bank of India, Kolkata Large Corporate Branch (BOI, KICB), 5 BTM Sarani, Kolkata-700001. and Shri Jayant Kumar Sanyal, the then Executive Director, M/s PEC Ltd. at Kolkata (A Govt. of India Enterprise, under Ministry of Commerce and Industry) against M/s Prime Impex Ltd., M/s Mehul Overseas Pvt. Ltd. and others u/s 120B, r/w 420,468,471 of IPC. The matter of charge sheet No. 08/12 dated 12.10.2012 & Charge sheet no. 09/12 dated 30.11.2012 are pending at before the Ld. 21st Metropolitan Magistrate, Kolkata. The matter of charge Sheet No. 11/12 dated 31.12.2012 is pending at 22nd Metropolitan Magistrate, Kolkata. Two separate FIRs viz. FIR No. 138 dated 18.05.2011 & FIR No. 12 dated 11.01.2012 were also registered by the Kolkata Police on the basis of complaint filed by Lalit Kumar Singhal Vice President, Yes Bank Ltd. 19, Camac Street, Kolkata-17. and J. K Ramakrishna Rao, Regional Collection Manager- East, DCB Bank Ltd. Gariahat Road Kolkata respectively against the Directors of M/s Prime Pulses Ltd., Ms Prime Impex Ltd. Subsequently cases were transferred to Kolkata Police Banking Fraud Section (BFS) and two separate charge sheets bearing no. 122/2016 dated 24.08.2016 before Ld. Chief metropolitan Magistrate, Calcutta and charge sheet bearing no. 27/17 dated 21.03.2017 before Ld. Chief Metropolitan Magistrate, Calcutta were filed by the Kolkata Police (BFS). Thus there were 10 separate charge sheets have been filed in this case for causing total principal loss of Rs.447,44,08,331/- plus overdue interest (Total

Principal Loss till date after taking recovery measures by the Banks/ Financial Institution) to various banks/ Financial institution.

6. *That after completion of investigation for entering into a deep rooted criminal conspiracy, cheating and forgery, the said Shakespeare Sarani Police Station, Kolkata, submitted Charge Sheet vide No. 27/17 for the offences 120B read with 420, 468 and 471 of the Indian Penal Code, 1860 and substantive offences thereof against the accused persons above named before the Ld. C.M.M, Calcutta where cognizance was taken and the said case was re-numbered as GR/175/12 and transferred to your honours court **Ld. 4th Metropolitan Magistrate, at** Calcutta for trial and disposal and is pending before your honours court for trial and disposal.*

7. *That the applicant submits that the offences under Section 120-B read with Section 420, 467, 468 & 471 of IPC, 1860 are schedule offences under Prevention of Money Laundering Act, 2002(PMLA,2002). Enforcement Directorate, Kolkata Zonal Office, Kolkata on the basis of above said FIRs and charge sheets, Enforcement Directorate, Kolkata Zonal Office recorded an Enforcement Case Information Report vide ECIR No. KLZO/08/2016 dated 19.08.2016 for the purpose of investigation under the provisions of Prevention of Money Laundering Act, 2002(PMLA, 2002) and commenced investigation.*

8. *That after completion of investigation in the case bearing No. ECIR No. KLZO/08/2016 dated 19.08.2016, this Directorate filed a complaint U/s. 45 of Prevention of Money laundering Act, 2002 for offences Under Section 3 and punishable Under Section 4 of the PMLA Act, against the accused persons above named before the Ld. Chief Judge, City Sessions Court, at Bichar Bhavan, Kolkata (Special Designated Court Under The Prevention of Money Laundering Act,*

2002), which is numbered as M. L. Case No. 05 of 2018 where the Ld. Court being satisfied took cognizance and subsequently the accused persons appeared and granted bail and also taken appropriate steps in accordance with law and after that the said case has been transferred by the Ld. Chief Judge to the court of Ld. Special CBI Judge, 1st Court at Bichar Bhavan, Calcutta (Special Designated Court Under The Prevention Of Money Laundering Act, 2002), where the case is pending for trial.”

The complainant therefore prayed “...to commit the above case to the Special Court under the prevention of Money Laundering Act, 2002, i.e. Ld. Special CBI Judge, 1st Court at Bichar Bhavan, Calcutta (Special Designated Court under the Prevention of Money Laundering Act, 2002), in terms of Section 44 (1) (c) of Prevention of Money Laundering Act, 2002, for the conduct of trial of both the scheduled offences as well as offences under Prevention of Money Laundering Act, 2002 in terms of Section 43(2) of the Prevention of Money Laundering Act, 2002.....”

Mr. Bhattacharya, learned Advocate appearing for the petitioners challenged the order dated 24th March, 2021 thereby committing the case relating to the schedule offence to the Special Court designated under PMLA, 2002 by stressing on the issue that the language of the statute do not mandatorily direct that the transfer of the case under the schedule offence to the Special Court is automatic. In order to elaborate his argument learned Advocate assigned the following reasons:

- (i) As per the un-amended provisions, the Scheduled offence and the offence under the provisions of PMLA, 2002 could only be tried by the Special Court constituted under PMLA (vide Section 44(1)(a) of the Act). The amended provisions came into force on February, 15 2013 and the word 'only' appearing in Section 44(1)(a) was deleted, while in Section 44(1)(c) it has been incorporated that in case the Court which has taken cognizance of the Scheduled offence is not the Special court under PMLA, such Court, on an application by the prosecution is empowered to commit the case of Scheduled offence to the Special Court.
- (ii) As the legislature has consciously omitted the word 'only', discretion has been vested in the regular Court trying Scheduled offence and there is no compulsion in the amended provisions for trying the scheduled offence and the offence under PMLA by one and the same Special Court. According to the petitioner the word 'shall' used in Section 44(1)(c) in situational interest has to be read as 'may'. By relying upon Quebec Railway, Light, Heat and Power Company Limited -Vs. - Vandry & Ors. reported in AIR 1920 PC 181 it was emphasized that the settled principle of law is that the legislature do not waste its word.
- (iii) By relying upon the judgment of the Hon'ble Supreme Court in Vijay Madanlal Choudhary & Ors. -Vs. - Union of India & Ors., reported in 2022 SCC OnLine SC 929 that the provisions under

Section 44 of PMLA are enabling and discretionary, thus while considering an application it must be kept in mind that the same do not become oppressive particularly with regard to persons who may not be charged for the offence of money laundering but may be charged for the scheduled offence.

(iv) It has been contended that the PMLA lays down substantially different rules for trial [vide Section 44(1)(d)], so according to the petitioner it has been submitted that all litigants who are similarly situated should be provided with same/similar procedural safeguards and without any discrimination. Right of an accused in the scheduled offence who is not implicated for the offence under PMLA should not be taken away. Reliance was placed to that effect on State of West Bengal –Vs. – Anwar Ali Sarkar & Anr. reported in AIR 1952 SC 75.

(v) By relying upon number of authorities learned Advocate contended that the legislature cannot indirectly control the action of the judiciary and if any other interpretation is given the same would result in withdrawing the element of discretion vested with the judiciary.

Learned Advocate for the petitioner summarised his arguments in the following terms:

“(a) Section 44(1)(c) is an enabling provision;

- (b) The term 'shall' as occurring in Section 44(1)(c) has to be read as 'may';*
- (c) Section 44(1)(a) has to be read in conjunction with Section 44(1)(c);*
- (d) Transfer of a case by the regular court to the special court is optional and the said issue has to be considered regard being had to various factors viz., the nature of the regular case, number of common accused, distance between the regular court and the special court etc.*
- (e) Since this provision is an enabling one, an order passed under Section 44(1)(c) has to satisfy the test of application of mind;*
- (f) No obligation can be foisted upon the regular court to transfer a case on the request of ED under Section 44(1)(a)."*

Mr. Kundalia, learned Advocate appearing for the Enforcement Directorate relied upon the provisions of Section 44 of PMLA, 2002 and submitted that it is a settled position of law that the scheduled offence case is to be committed to the special Court which has taken cognizance of the complaint of the offence of money laundering. Referring to the relevant provisions of Section 44 of PMLA it was submitted that the object of including clauses (a) and (c) of Section 44(1) of PMLA, along with the explanation as introduced by the Finance (No.2) Act, 2019 was to enable the same Court to try both the offences of money laundering as well as the predicate Scheduled offence.

Attention of the Court was drawn to paragraph 269 of Vijay Madanlal Choudhary (supra), wherein the Hon'ble Apex Court held as follows:

“269. *From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.”*

It was insisted by the ED that it has been absolutely made clear that there is no question of joint trial of scheduled offence and the offence of money laundering under PMLA.

Reliance was placed upon the observations in Mahesh Agarwalla –Vs. – CBI, reported in 2017 SCC OnLine Cal 11069, wherein the powers under Section 44(1)(c) of PMLA has been approved. Relevant observations of the judgment is set out as follows:

“17. *..... as the prosecutions involve similar questions of fact and law and in the light of section 44 of the Prevention of Money Laundering Act, I am of the opinion that the prosecution in respect of the scheduled offences as well as the offences under the Prevention of Money Laundering Act ought to be tried by the same court.*

18. Accordingly, I transfer the proceeding in special case no. 39/2011 from the file of learned Judge, CBI Special Court, Asansole, Bardhaman, to the file of learned Judge, Special (CBI) court no. 1, Bichar Bhawan, Calcutta who shall proceed with the trial of both the cases in accordance with law particularly the provisions of section 43/44 of the Prevention of Money Laundering Act.””

Learned Advocate for ED relied upon Rana Ayyub –Vs. – Directorate of Enforcement, reported in (2023) 4 SCC 357, attention was drawn to the following paragraphs:

“26. What is dealt with by Section 44(1)(a) is a situation where there is no complication. Section 44(1)(a) lays down the most fundamental rule relating to territorial jurisdiction, by providing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence has been committed. It is relevant to note that Section 44(1)(a) uses the expression “offence” in three places in contradistinction to the expression “scheduled offence” used only once. This usage is not without significance. In all three places where the word “offence” alone is used, it connotes the offence of money-laundering. The place where the expression “scheduled offence” is used, it connotes the predicate offence. By prescribing that an offence punishable under Section 4 of the PMLA and any scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which “the offence” has been committed, Section 44(1)(a) makes it crystal clear that it is the Special Court constituted under Section 43(1), which will be empowered to try even the scheduled offence connected to the same.

27. *After mapping out/laying down such a general but fundamental rule, the Act then proceeds to deal with a more complicated situation in Section 44(1)(c). The question as to what happens if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the offence of money-laundering, is what is sought to be answered by clause (c) of sub-section (1) of Section 44. If the court which has taken cognizance of the scheduled offence is different from the Special Court which has taken cognizance of the offence of money-laundering, then the authority authorised to file a complaint under PMLA should make an application to the court which has taken cognizance of the scheduled offence. On the application so filed, the court which has taken cognizance of the scheduled offence, should commit the case relating to the scheduled offence to the Special Court which has taken cognizance of the complaint of money-laundering.*

28. *Therefore, it is clear that the trial of the scheduled offence should take place in the Special Court which has taken cognizance of the offence of money-laundering. In other words, the trial of the scheduled offence, insofar as the question of territorial jurisdiction is concerned, should follow the trial of the offence of money-laundering and not vice versa.*

29. *Since the Act contemplates the trial of the scheduled offence and the trial of the offence of money-laundering to take place only before the Special Court constituted under Section 43(1), a doubt is prone to arise as to whether all the offences are to be tried together. This doubt is sought to be removed by Explanation (i) to Section 44(1). Explanation (i) clarifies that the trial of both sets of offences by the same court shall not be construed as joint trial.*

30. *A careful dissection of clauses (a) and (c) of sub-section (1) of Section 44 shows that they confer primacy upon the Special Court constituted under Section 43(1) of the PMLA. These two clauses contain two rules, namely : (i) that the offence punishable under PMLA as well as a scheduled offence connected to the same shall be triable by the Special Court constituted for the area in which the offence of money-laundering has been committed; and (ii) that if cognizance has been taken by one Court, in respect of the scheduled offence and cognizance has been taken in respect of the offence of money-laundering by the Special Court, the Court trying the scheduled offence shall commit it to the Special Court trying the offence of money-laundering.*

.....

39. *Once this combined scheme is understood, it will be clear that in view of the specific mandate of clauses (a) and (c) of sub-section (1) of Section 44, it is the Special Court constituted under PMLA that would have jurisdiction to try even the scheduled offence. Even if the scheduled offence is taken cognizance of by any other court, that court shall commit the same, on an application by the authority concerned, to the Special Court which has taken cognizance of the offence of money-laundering. This answers the first question posed before us.”*

Learned Advocate for the ED also relied upon KA Rauf Sherif –Vs. – Directorate of Enforcement & Ors. Reported in 2023 SCC OnLine SC 375 and submitted that the law on the subject was reiterated by the Hon’ble Apex Court.

Emphasis was laid on Section 71 of the PMLA by the learned Advocate appearing for the ED for rebutting the contentions advanced by the petitioner, particularly with regard to the overriding effect and the examples relied upon by the petitioner relating to Section 209 and Section 259 of Cr.P.C.

By referring to the different paragraphs of Vijay Madanlal Choudhury (supra), the Enforcement Directorate contended that the paragraphs relied upon were interpreted in a different context and has no manner of application with reference to the present case where the legislature has in clear and distinct language empowered the prosecuting authorities to prefer such an application and by using the word 'shall' has left no room for alternate interpretations.

The issue which have been canvassed by the learned Advocate for either parties revolves around Section 44 (1)(c) and the certainty of the Special Designated Court to try the scheduled offence. One of the foundation of the argument advanced by the learned Advocate appearing for the petitioner is that the word 'only' which was earlier in the statute and has been deleted subsequently by the legislature do not impose a compulsion or mandate that both the cases should be tried by one and the same Court. It was further contended by the petitioner that if an alternate interpretation is made the same would be oppressive, particularly with regard to persons who are not charged for money laundering and have been charged for scheduled offence only. Such arguments of the petitioners are very general in nature and it is not the case of

petitioners that they have been arraigned only in the scheduled offence and not for money laundering.

Secondly if the other argument of the petitioners are accepted that is legislature do not waste its words the word 'shall' used in Section 44(1)(c) assumes importance and as such leaves no room for any other interpretation.

The relevant provisions under the PMLA, 2002 are set out as follows:

“44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

[(a) an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]

(b) a Special Court may, [* *] upon a complaint made by an authority authorised in this behalf under this Act take 3[cognizance of offence under Section 3, without the accused being committed to it for trial].*

[Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or]

[(c) if the court which has taken cognizance of the scheduled offence 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 authorised 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 at which it is committed.

.....

[Explanation.—For the removal of doubts, it is clarified that,—

- (i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;*
- (ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.]”*

Thus a conjoint reading of Section 44(1)(a), Section 44(1)(c) along with Explanations (i) to the Section 44(1) makes it abundantly clear that the legislative intention was that one and same Court would try both the offences and the Special Designated Court being vested with the Sessions power for dealing with offences under PMLA would try such offence. Further the subject matter of transactions being same along with the factual foundation and the outcome in trial of the Scheduled offence having an impact in respect of the offences relating to money laundering, a harmonious construction of the

provisions would lead to one and only conclusion that the Special Designated Court for trying offences under PMLA would be the Court which would try the Scheduled offences in the factual circumstances of the present case.

As such the order dated March 24, 2021 passed by the learned Metropolitan Magistrate, 4th Court, Calcutta, do not call for any interference and the said order is hereby affirmed.

Accordingly CRR 1620 of 2021 is dismissed.

Pending applications, if any, are consequently disposed of.

Interim order, if any, is hereby vacated.

All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.

Urgent Xerox certified photocopy of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Tirthankar Ghosh, J.)