A.F.R.
Neutral Citation No. - 2024:AHC:163184-DB

Court No.45

Case :- CRIMINAL MISC. WRIT PETITION No. - 6236 of 2024

Petitioner :- Anil Tuteja
Respondent :- Station House Officer And 2 Others
Counsel for Petitioner :- Saksham Srivastava,Vinayak Mithal
Counsel for Respondent :- G.A.,Jitendra Prasad Mishra,Pawan Kumar Srivastava

WITH

Case :- CRIMINAL MISC. WRIT PETITION No. - 6194 of 2024

Petitioner :- Anwar Dhebar
Respondent :- State Of Up And 2 Others
Counsel for Petitioner :- Vinayak Mithal
Counsel for Respondent :- G.A.,Jitendra Prasad Mishra,Pawan Kumar Srivastava

WITH

Case :- CRIMINAL MISC. WRIT PETITION No. - 6195 of 2024

Petitioner :- Arun Pati Tripathi
Respondent :- State Of Up And 2 Others
Counsel for Petitioner :- Anurag Kumar Ojha,Ishan Deo Giri,Vinayak Mithal
Counsel for Respondent :- G.A.,Jitendra Prasad Mishra,Pawan Kumar Srivastava

WITH

Case :- CRIMINAL MISC. WRIT PETITION No. - 7389 of 2024

Petitioner :- Niranjan Das
Respondent :- State Of Up And 3 Others
Counsel for Petitioner :- Imran Ullah,Mohammad Khalid
Counsel for Respondent :- G.A.,Jitendra Prasad Mishra,Pawan Kumar Srivastava

Hon'ble Siddhartha Varma, J.
Hon'ble Ram Manohar Narayan Mishra, J.

(Per : Siddhartha Varma,J.)

1. Criminal Misc. Writ Petition No.6236 of 2024 (Anil Tuteja vs. Station House Officer & Ors.) has been filed with the following prayers :

> "A. Issue appropriate writ, order or direction to quash the FIR dated 30.7.2023 bearing FIR No.196/2023 dated 30.7.2023 u/s 420, 468, 471, 473, 484, 120-B IPC PS Kasna, District Greater Noida, Uttar Pradesh ("Impugned FIR") registered by the Respondent No.1 and all consequential proceedings emanating therefrom;
> B. Issue appropriate writ, order or direction to stay the operation and effect of the FIR dated 30.7.2023 bearing FIR No.196/2023 dated 30.7.2023 u/s 420, 468, 471, 473, 484, 120-B IPC PS Kasna, District Greater Noida, Uttar Pradesh ("Impugned FIR") registered by the Respondent No.1 and all investigations and proceedings emanating therefrom;
> C. Issue appropriate writ, order or direction to quash the Impugned Letter dated 28.07.2023 along with all consequential actions and proceedings emanating therefrom as being illegal and in contempt of the Orders of the Hon'ble Supreme Court."

2. Criminal Misc. Writ Petition No.6194 of 2024 (Anwar Dhebar vs. State of U.P. & Ors.) has been filed with the following prayers :-

> "I. Issue appropriate writ, order or direction to quash the FIR dated 30.7.2023 bearing FIR No.196/2023 dated 30.7.2023 u/s 420, 468, 471, 473, 484, 120-B IPC PS Kasna, District Greater Noida, Uttar Pradesh ("Impugned FIR") registered by the Respondent No.3 and all consequential actions/proceedings/ investigations emanating therefrom;
> II. Issue appropriate writ, order or direction to stay the operation and effect of the FIR dated 30.7.2023 bearing FIR No.196/2023 dated 30.7.2023

u/s 420, 468, 471, 473, 484, 120-B IPC PS Kasna, District Greater Noida, Uttar Pradesh ("Impugned FIR") registered by the Respondent No.3 and all actions/ investigations and proceedings emanating therefrom;

III. Issue appropriate writ, order or direction to quash the Impugned Letter dated 28.07.2023 along with all consequential actions/proceedings/investigations emanating therefrom as being illegal and in violation of the Orders of the Hon'ble Supreme Court."

3. Similarly, Criminal Misc. Writ Petition No.6195 of 2024 (Arun Pati Tripathi vs. State of U.P. & Ors.) has been filed with the following prayers :

"I. Issue appropriate writ, order or direction to quash the FIR dated 30.7.2023 bearing FIR No.196/2023 dated 30.7.2023 u/s 420, 468, 471, 473, 484, 120-B IPC PS Kasna, District Greater Noida, Uttar Pradesh ("Impugned FIR") registered by the Respondent No.3 and all consequential actions/proceedings/ investigations emanating therefrom;

II. Issue appropriate writ, order or direction to stay the operation and effect of the FIR dated 30.7.2023 bearing FIR No.196/2023 dated 30.7.2023 u/s 420, 468, 471, 473, 484, 120-B IPC PS Kasna, District Greater Noida, Uttar Pradesh ("Impugned FIR") registered by the Respondent No.3 and all actions/ investigations and proceedings emanating therefrom;

III. Issue appropriate writ, order or direction to quash the Impugned Letter dated 28.07.2023 along with all consequential actions/proceedings/investigations emanating therefrom as being illegal and in violation of the Orders of the Hon'ble Supreme Court."

4. Niranjan Das, another accused in the First Information Report which has been impugned in the above writ petitions, has filed Criminal Misc. Writ Petition No.7389 of 2024 and the prayers made in the writ petition are as follows :-

> "A. Issue appropriate writ, order or direction to quash the FIR bearing Case Crime No.196/2023 dated 30.7.2023 u/s 420, 468, 471, 473, 484, 120-B IPC registered by PS Kasna, Greater Noida, Gautam Budh Nagar, Uttar Pradesh with Sec. 467 IPC and Sec. 7 of the Prevention of Corruption Act having been added subsequently ("Impugned FIR") and all the consequential proceedings emanating there from;
> B. Issue appropriate writ, order or direction to stay the operation and effect of the FIR bearing FIR No.196/2023 dated 30.7.2023 u/s 420, 468, 471, 473, 484, 120-B IPC registered by PS Kasna, Greater Noida, Gautam Budh Nagar, Uttar Pradesh with Sec. 467 IPC and Sec. 7 of the Prevention of Corruption Act having been added subsequently ("Impugned FIR") registered by the Respondent No.1 and all investigations and proceedings emanating there from;
> C. Issue appropriate writ, order or direction to quash the Impugned Letter dated 28.07.2023 along with all consequential actions and proceedings emanating therefrom as being illegal and in contempt of the Orders of the Hon'ble Supreme Court."

5. The question which requires to be answered in the above writ petitions would be – Whether when the prosecution complaint filed by the Enforcement Directorate had been quashed by the Supreme Court, would the statements made under Section 50 of the PML Act, 2002 of various witnesses continue to form the basis of F.I.R. which was to be lodged on the basis of the communication passed on to the State under Section 66(2) of the PML Act.

6. On 26.2.2020, the Income Tax Department carried out certain search and seizure operation on the premises owned by the petitioner Anil Tuteja. On 1.3.2020 statements were recorded by the Income Tax Department of various individuals. Thereafter

on 11.5.2020, Case No.1183 of 2022 was filed by the Department before the Court of Additional Chief Metropolitan Magistrate, Tees Hajari, New Delhi under sections 276(C), 277, 278, 278E of the Income Tax Act read with sections 120-B, 191, 199, 200 and 204 of Indian Penal Code for the Assessment Year 2020-21. Based on this Income Tax Complaint, the Enforcement Directorate (henceforth called the "ED") which finds its existence because of a notification issued under section 49(3) of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "PML Act, 2002") registered an Enforcement Case Information Report (henceforth called the "ECIR") on 18.11.2022 alleging that a liquor scam in the State of Chhatisgarh had come to light. This was numbered as ECIR/RPZO/11/2022 (hereinafter referred to as "ECIR-11"). In the meantime, on 6.4.2023, the Additional Chief Metropolitan Magistrate returned the income tax complaint for the lack of territorial jurisdiction. This was done by the order dated 6.4.2023 and this was also appealed against by the Income Tax Department. There was since now an ECIR-11 registered against Anil Tuteja, Yash Tuteja, Smt. Saumya Chaurasia, Anwar Dhebar, Nitesh Purohit, Vikas Aggarwal alias Sabu, Vikas Aggarwal, CA, Mandeep Chawla, Siddharth Singhania and M/s. Lingraj Suppliers Pvt. Ltd., certain accused persons filed various writ petitions before the Supreme Court. Yash Tuteja and Anil Tuteja filed a writ petition under Article 32 of the Constitution of India being Writ Petition No.153 of 2023.

Siddharth Singhania filed Writ Petition No.217 of 2023; Anwar Dhebar filed Writ Petition No.208 of 2023 and similarly Arun Pati Tripathi filed Writ Petition No.216 of 2023. When these writ petitions were filed they were connected to each other. When Yash Tuteja and Anil Tuteja had filed their writ petition being Writ Petition No.153 of 2023, the Supreme Court on 28.4.2023 protected them from any coercive action being taken by the ED. This writ petition was directed to be listed on 18.7.2023. The order dated 28.4.2023 passed by the Supreme Court is reproduced here as under :-

> "Issue notice.
>
> Learned ASG appearing for the respondent accept notice.
>
> Counter affidavit be filed within four weeks.
>
> Rejoinder be filed within two weeks, thereafter.
>
> Learned senior counsel for the petitioner(s) submits that the allegation is about offences under the Income Tax Act so far as the predicated offence is concerned and the cognizance has not been taken by the competent Court. At this stage, he only seeks protection so far as any coercive step is concerned and submits that he has already joined the investigation.
>
> No coercive steps be taken against the petitioner(s) till the next date.
>
> List on 18th July, 2023."

7. Thereafter on 18.7.2023, when the writ petition of Yash Tuteja was taken up, by that time all the other writ petitions were connected to the writ petition of Yash Tuteja and on that date the Supreme Court further extended the interim order and had also directed that the respondent-Authorities were to stay their hands

off in all manner. The order dated 18.7.2023 is being reproduced here as under :

> "On hearing learned counsel for the parties it transpires that the complaints having been returned, the income tax authorities having taken that to a further Court in appeal and there being any absence of stay, apart from the order already passed of no coercive action, the concerned respondent authorities must stay their hands in all manner. Ordered accordingly.
>
> On our query of learned ASG, we clarify that if the stay is obtained qua that order, it is open to the respondents to move this Court for obtaining appropriate order."

8. Thereafter while the interim orders were pending, on 28.7.2023 the ED purportedly under section 66(2) of the PML Act, 2002 wrote to the Additional Director General of Police, Special Task Force, UP Police, Lucknow, Uttar Pradesh and shared certain information in respect of a company called M/s. Prizm Holography & Security Films Pvt. Ltd., Noida. This communication purportedly sent under section 66(2) of the PML Act, 2002 was taken cognizance of by the Police and an FIR was lodged by the U.P. Police on 30.7.2023 which gave rise to Case Crime No.196/2023. The FIR was specifically lodged against Arunpati Tripathi, ITS, Special Secretary, Excise; Niranjan Das, IAS, Excise Commissioner; Anil Tuteja, IAS, Vidhu Gupta and Anwar Dhebar. While the FIR was pending on 7.8.2023 the Supreme Court, upon being informed that with regard to the issuing of duplicate holograms an FIR had been lodged which had given rise to Case Crime No.196/2023, had directed the U.P.

Police not to take any coercive steps till the next date of listing of the writ petitions. The Supreme Court had, however, not interfered with the investigation. The order dated 7.8.2023 passed by the Supreme Court is being reproduced here as under :-

> "Learned senior counsel for the petitioner contends that the liquor scam is being investigated in file No.ECIR/RPZO/11/2022. He submits that the issue of duplicate holograms which is sought to be raised in the FIR No.0196 dated 30.7.2023 is something which came to the notice of the ED much earlier and it forms a part of the counter affidavit.
>
> It is further submitted that the endeavour is to circumvent the order of this Court dated 18.7.2023.
>
> Learned ASG submits that this is a different offence not connected with the issue of income tax and thus under Section 66(2) PMLA, 2002, the ED was duty bound to bring to the notice of the concerned agency, which is what was done.
>
> On our query as to when these aspects came to the notice of the ED, learned ASG seeks a short accommodation to obtain instructions.
>
> List on 21.8.2023.
>
> The Uttar Pradesh Police may not take any coercive steps till the next date though we are not impeding the investigation."

9. Thereafter on 21.8.2023 when the case was taken up before the Supreme Court then it had only continued the order dated 7.8.2023 till the next date of listing.

10. In the meantime, the ED on 4.7.2023 had already filed its prosecution complaint against 7 persons namely Anwar Dhebar, Arun Pati Tripathi, Trilok Singh Dhillol, Nitesh Purohit, Arvind Singh and M/s. Petrosun Bio Refinery Pvt. Ltd. One more legal entity was roped in and it was known by the name of M/s. Dhillon City Mall Pvt. Ltd. When thereafter the writ petitions of Yash Tuteja, Siddharth Singhania, Anwar Dhebar and Arun Pati

Tripathi were finally heard by the Supreme Court, the latter by its judgment and order dated 8.4.2024 disposed of Writ Petition No.153 of 2023 and Writ Petition No.217 of 2023 with no specific order or direction as in both the writ petitions no prosecution complaint had been filed by the ED. So far as the ECIR-11 was concerned viz.-a-viz. Anwar Dhebar and Arun Pati Tripathi, the prosecution complaint pursuant to the ECIR-11 stood quashed. The ground taken by the Supreme Court was that since there was no scheduled offence on the basis of which the ECIR-11 had been filed, the same had to be quashed. For ready reference, paragraph nos.9 and 10 of the judgment and order of the Supreme Court dated 8.4.2024 are being reproduced here as under :-

> "9. Hence, we passed the following order :
> (i) Writ Petition (Crl.) Nos.153/2023 and 217/2023 are disposed of;
>
> (ii) The complaint based on ECIR/RPZO/11/2022, as far as the second petitioner (Anwar Dhebar) in Writ Petition (Crl.) No.208/2023 is concerned, is hereby quashed. The writ petition is, accordingly, partly allowed;
>
> (iii) The complaint based on ECIR/RPZO/11/2022, as far as the petitioner (Arun Pati Tripathi) in Writ Petition (Crl.) No.216/2023 is concerned, is hereby quashed. The writ petition is, accordingly, allowed.
>
> (iv) There will be no order as to costs; and
>
> (v) Pending applications, including those seeking impleadment, are disposed of accordingly.
>
> 10. We may note that the petitioners in Writ Petition (Crl.) No.153/2023 and the petitioner in Writ Petition (Crl.) No.217/2023 have not been

> shown as accused in the complaint. Only the second petition in Writ Petition (Crl.) No.208/2023 and the petitioner in Writ Petition No.216/2023 have been shown as accused in the complaint. In the case of those petitioners who are not shown as accused in the complaint, it is unnecessary to entertain the Writ Petitions since the complaint itself is being quashed."

11. The paragraph 12 of the aforesaid judgment dated 8.4.2024 had, however, left it open to the petitioners therein to challenge the FIR dated 30.7.2023 lodged by the State of Uttar Pradesh on the basis of the communication of the ED dated 28.7.2023 and for the petitioners in the writ petitions the benefit of the interim order which was granted to them on 7.8.2023 was continued for a period of three weeks. Resultantly, the Criminal Misc. Writ Petition No.6236 of 2024 (Anil Tuteja vs. Station House Officer & Ors.); Criminal Misc. Writ Petition No.6194 of 2024 (Anwar Dhebar vs. State of U.P. & Ors.); Criminal Misc. Writ Petition No.6195 of 2024 (Arun Pati Tripathi vs. State of U.P. & Ors.) and Criminal Misc. Writ Petition No.7389 of 2024 (Niranjan Das vs. State of U.P. & Ors.) were filed.

12. To make the record straight, we may mention that while the ECIR-11 was pending, an FIR was also lodged in the State of Chhattisgarh on 17.1.2024 and that had given rise to Case Crime No.04/2024 at Chhatisgarh. This FIR was also lodged on the basis of an information of the ED sent on 11.7.2023. A writ petition had been filed, it has been informed by means of the Supplementary Affidavit, which was dismissed on 20.8.2024 by

the Chhatisgarh High Court. It has also been informed that against the order dated 20.8.2024 passed by the Chhattisgarh High Court, a Special Leave Petition being SLP No.11790 of 2024 has been filed before the Supreme Court. This SLP is still pending.

13. Sri Siddharth Dave, learned Senior Counsel assisted by Sri Saksham Srivastava and Sri Vinayak Mithal, learned counsel appearing for the petitioners has made the following submissions while challenging the FIR dated 30.7.2023 and the communication of the ED dated 28.7.2023 :-

(i) The ECIR-11 when was initiated, certain statements were recorded under Section 50 of the PML Act, 2002. When the communication dated 28.07.2023 was sent by the ED for State of Uttar Pradesh on the basis of which the FIR No. 196 of 2023 on 30.07.2023 was lodged, the statements were in existence but thereafter when the prosecution complaint dated 04.07.2023 as was filed by the ED was quashed by the Supreme Court on 08.04.2024 then all the statements made under Section 50 of the PML Act, 2002 got washed away and no reliance thereafter could be placed on those statements and, therefore, the FIR was without any basis.

(ii) Learned counsel for the petitioner thereafter submitted that the statements recorded under Section 50 of the PML Act, 2002 could be used only for the purposes of the

proceedings under the PML Act, 2002 itself and that they could not have been used for the purposes of initiating criminal proceedings afresh by the State of Uttar Pradesh. Relying upon a judgment of the Supreme Court in **Prem Prakash vs. Union of India through the Directorate of Enforcement** reported in **2024 SCC OnLine 2270,** learned counsel has submitted that not only the statements recorded under Section 50 of the PML Act, 2002 could not be used for the purposes of the lodging of a separate FIR under the IPC it also could not be used for the purposes of initiating a subsequent ECIR by the ED itself. In this regard, learned counsel for the petitioner relied upon paragraphs 24, 25, 26 and 32 of that judgement. The paragraphs mentioned above are being reproduced here as under :-

> "24. Vijay Madanlal Choudhary (supra) though held that the authorities under the PMLA are not police officers, did anticipate a scenario where in a given case, the protection of Section 25 of the Evidence Act may have to be made available to the accused. The Court observed that such situations will have to be examined on a case-to-case basis. We deem it appropriate to extract Para 172 of Vijay Madanlal Choudhary (supra).
>
> "172. In other words, there is stark distinction between the scheme of the NDPS Act dealt with by this court in Tofan Singh (supra) and that in the provisions of the 2002 Act under consideration. **Thus, it must follow that the authorities under the 2002 Act are not police officers.** Ex-consequenti, the statements recorded by the authorities under the 2002 Act, of persons involved in the commission of the offence of money-laundering or the witnesses for

the purposes of inquiry/investigation, cannot be hit by the vice of article 20(3) of the Constitution or for that matter, article 21 being procedure established by law. **In a given case, whether the protection given to the accused who is being prosecuted for the offence of money-laundering, of section 25 of the Evidence Act is available or not, may have to be considered on case-to-case basis being rule of evidence.**" (Emphasis supplied)

25. This Court in Vijay Madanlal Choudhary (supra) anticipated the myriad situations that may arise in the recording of the Section 50 statement and discussed the parameters for dealing with them. In Rajaram Jaiswal vs. State of Bihar, AIR 1964 SC 828, a judgment quoted in extenso in Vijay Madanlal Choudhary (supra), this Court observed that the expression "police officer" in Section 25 of the Evidence Act is not confined to persons who are members of the regularly constituted police force. Further, setting out the test for determining whether an officer is a "police officer" for the purpose of Section 25 of the Evidence Act, this Court in Rajaram Jaiswal (supra) held (quoted from para 165 of Vijay Madanlal Choudhary (supra)

"165(ii) It may well be that a statute confers powers and imposes duties on a public servant, some of which are analogous to those of a police officer. But by the reason of the nature of other duties which he is required to perform he may be exercising various other powers also. It is argued on behalf of the State that where such is the case the mere conferral of some only of the powers of a police officer on such a person would not make him a police officer and, therefore, what must be borne in mind is the sum total of the powers which he enjoys by virtue of his office as also the dominant purpose for which he is appointed. The contention thus is that when an officer has to perform a wide range of duties and exercise correspondingly a wide range of powers, the mere fact that some of the powers which the statute confers upon him are analogous to or even identical with those of a police officer would not make him a police officer and, therefore, if such an officer records a confession it would not be hit by S. 25 of the Evidence Act. **In our judgment what is pertinent to bear in mind for the purpose of determining as to who can be regarded a 'police officer' for the purpose of this provision is not the**

totality of the powers which an officer enjoys but the kind of powers which the law enables him to exercise. The test for determining whether such a person is a "police officer" for the purpose of S. 25 of the Evidence Act would, in our judgment, be whether the powers of a police officer which are conferred on him or which are exercisable by him because he is deemed to be an officer in charge of police station establish a direct or substantial relationship with the prohibition enacted by S. 25, that is, the recording of a confession. **In other words, the test would be whether the powers are such as would tend to facilitate the obtaining by him of a confession from a suspect or delinquent. If they do, then it is unnecessary to consider the dominant purpose for which he is appointed or the question as to what other powers he enjoys. These questions may perhaps be relevant for consideration where the powers of the police officer conferred upon him are of a very limited character and are not by themselves sufficient to facilitate the obtaining by him of a confession."** (Emphasis supplied)

26. Four decades ago, V.R. Krishna Iyer, J. in his inimitable style, speaking for this Court in Nandini Satpathy Vs P.L. Dani and Another, (1978) 2 SCC 424 observed as under:-

"50. We, however, underscore the importance of the specific setting of a given case for judging the tendency towards guilt. **Equally emphatically, we stress the need for regard to the impact of the plurality of other investigations in the offing or prosecutions pending on the amplitude of the immunity. "To be witness against oneself" is not confined to particular offence regarding which the questioning is made but extends to other offences about which the accused has reasonable apprehension of implication from his answer. This conclusion also flows from "tendency to be exposed to a criminal charge". "A criminal charge" covers any criminal charge then under investigation or trial or which imminently threatens the accused."** (Emphasis supplied)

"57. We hold that Section 161 enables the police to examine the accused during investigation. The prohibitive sweep of Article 20(3) goes back to the

stage of police interrogation- not, as contended, commencing in court only. In our judgment, the provisions of Article 20(3) and Section 161(1) substantially cover the same area, so far as police investigations are concerned. **The ban on self-accusation and the right to silence, while one investigation or trial is under way, goes beyond that case and protects the accused in regard to other offences pending or imminent, which may deter him from voluntary disclosure of criminatory matter. We are disposed to read 'compelled testimony' as evidence procured not merely by physical threats or violence but by psychic torture, atmospheric pressure, environmental coercion tiring interrogative prolixity, overbearing and intimidatory methods and the like** – not legal penalty for violation. So, the legal perils following upon refusal to answer, or answer truthfully, cannot be regarded as compulsion within the meaning of Article 20(3). The prospect of prosecution may lead to legal tension in the exercise of a constitutional right, but then, a stance of silence is running a calculated risk. **On the other hand, if there is any mode of pressure, subtle or crude, mental or physical, direct or indirect, but sufficiently substantial, applied by the policeman for obtaining information from an accused strongly suggestive of guilt, it becomes 'compelled testimony', violative of Article 20(3)."** (Emphasis supplied)

32. We have no hesitation in holding that when an accused is in custody under PMLA irrespective of the case for which he is under custody, any statement under Section 50 PMLA to the same Investigating Agency **is inadmissible against the maker**. The reason being that the person in custody pursuant to the proceeding investigated by the same Investigating Agency is not a person who can be considered as one operating with a free mind. **It will be extremely unsafe to render such statements admissible against the maker**, as such a course of action would be contrary to all canons of fair play and justice."

(iii) Learned counsel for the petitioner stated that the statements recorded under Section 50 of the PML Act, 2002 were akin

to the admissions made before the Police and, therefore, as per Section 25 of the Evidence Act they could not be used against the petitioners i.e. the persons who had made those statements.

(iv) Learned counsel for the petitioner has submitted that if the FIR is perused, it becomes evident that it was a verbatim reproduction of the communication dated 28.07.2023 and, therefore, it could conveniently be said that it was so registered without any application of mind.

(v) Still further learned counsel for the petitioner submitted that every offence which finds mention in the FIR which was lodged on 30.07.2023 was originating in the State of Chhattisgarh and, therefore, there was no occasion for the State of Uttar Pradesh to have lodged the FIR.

(vi) Learned counsel for the petitioner further stated that during the pendency of the ECIR-11, ED had written to the State of Chhattisgarh on 11.07.2023 for the lodging of the FIR and thereafter information was also sent to the State of Uttar Pradesh on 28.7.2023. As per the learned counsel for the petitioners in all probability when under Section 66(2) of the PML Act, 2002, the State of Chhattisgarh had sat over the information sent by the ED then on 28.07.2023 another information was mala fidely sent with regard to the very same facts to State of Uttar Pradesh on 28.7.2023 and that gave rise to the Case Crime No. 196 of 2023 and this

FIR was lodged malafidely on 30.07.2023. Learned counsel for the petitioner, therefore, states that the lodging of the FIR was an absolute result of a malicious act of the ED and also of the State of Uttar Pradesh.

(vii) Learned Senior Counsel Sri Siddharth Dave further submitted that when the entire ECIR and the subsequent prosecution complaint of the ED were set aside, it did not stand to reason that the statements which were taken of the various witnesses under section 50 of the PML Act, 2002 could be used for the lodging of the F.I.R. No. 169/2023. When the foundation itself had been removed, the whole edifice of the building would fall. He, therefore, submitted that such material which was in the possession of the Director of ED was actually of no consequence as the Supreme Court on 8.4.2024 had set aside the prosecution complaint itself. He submitted that when disclosure of information which was now no information at all because of the order of the Supreme Court dated 08.04.2024 then the lodging of the F.I.R. on that information was an exercise in futility performed by the State of U.P. In this regard, learned Senior Counsel relied upon paragraph nos.107, 111 and 116 of the jugment of the Supreme Court in **State of Punjab vs. Davinder Pal Singh Bhullar** reported in **(2011) 14 SCC 770** which are being reproduced here as under :-

> "107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim *sublato fundamento cadit opusmeaning* thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.
>
> .....
>
> 111. Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/orders/FIR/investigation stand automatically vitiated and are liable to be declared non est.
>
> .....
>
> 116. In view of the above, the appeals succeed and are accordingly allowed. The impugned orders challenged herein are declared to be a nullity and as a consequence, the FIR registered by CBI is also quashed."

(viii) Learned counsel Sri Imran Ullah appearing for the petitioner Niranjan Das in Criminal Misc. Writ Petition No. 7389 of 2024 has adopted the arguments made by the learned counsel for the petitioner in Criminal Misc. Writ Petition No. 6236 of 2024.

(ix) Sri Rajiv Lochan Shukla, learned counsel for the petitioner in Criminal Misc. Writ Petition No.6194 of 2024 (Anwar Debhar vs State of U.P. & Ors.) however, while adopting the arguments of Sri Siddharth Dave, learned Senior Counsel has submitted that a perusal of the FIR would go to show that there was not an iota of allegation against the accused, Anwar Debhar in the entire FIR. Learned counsel for the petitioner further relying upon the judgments of the

Supreme Court in **State of Haryana & Ors. vs. Bhajan Lal & Ors.** reported in **AIR 1992 SC 604** submitted that if the FIR did not disclose any cause of action against any particular accused then the FIR could be quashed. He also relied upon the judgment of the Supreme Court in **Lovely Salhotra and Anr. vs. State (NCT) of Delhi & Anr.** reported in **(2018) 12 SCC 391** and submitted that if there were more than one accused persons in a particular FIR and if against any one particular accused, no definite allegation was there from the reading of the FIR then the FIR could be quashed against that particular person.

(x) Sri Shishir Prakash, learned counsel appearing for the petitioner in Criminal Misc. Writ Petition No.6195 of 2024 has submitted that it was wrong on the part of the Police to have said that work was given to the M/s. Prizm Holography and Security Private Limited illegally as the tender which was allotted to the Prizm Holography was challenged before the Chhattisgarh High Court by another firm M/s UFLEX Ltd. but that writ petition came to be dismissed on 12.9.2019 by the High Court of Chhattisgarh. He also relied upon the judgment of the Supreme Court in **State of Punjab vs. Davinder Pal Singh Bhullar** reported in **(2011) 14 SCC 770** and has also specifically relied upon paragraphs 107, 111 and 116 of that judgment which have already been quoted above.

14. Sri P.K. Giri, learned Additional Advocate General assisted by Sri Pankaj Kumar, learned AGA has, however, submitted that a bare perusal of the FIR dated 30.07.2023 discloses a cognizable offence. Relying upon the judgments of the Supreme Court in **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others, AIR 2021 SC 1918; State of Telangana Vs. Habib Abdullah Jellani, (2017) 2 SCC 779 and Lalita Kumar vs. State of U.P., (2014) 2 SCC 1,** he has submitted that this Court may not interfere with the FIR as definitely a perusal of the FIR showed that a cognizable offence was made out and it was a subject of investigation as to whether the accused persons were to be charge-sheeted or whether no criminal proceedings were to be undergone against them. He submits that the investigation was going on and everything would be subject to it. Learned Additional Advocate General has further relied upon the judgment of Supreme Court in **Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors. reported in 2022 SCC OnLine 929 [AIR 2022 SL (Supp) 1283]** and has submitted that definitely under Section 66(2) of the PML Act, 2002 as and when a cognizable offence was noticed by the ED, it could have always referred the matter to the State of Uttar Pradesh for taking cognizance of it and for the lodging of the FIR under Section 154 of Cr.P.C. Learned Additional Advocate General in fact states that if the State of Uttar Pradesh did not lodge the FIR then it would be failing in its duty as a State. Learned Additional

Advocate General further submits that the entire statement which was there on record of the ECIR-11 was definitely on the record of the case and it could always be referred to. He submits that the prosecution complaint which arose out of ECIR-11 was in fact quashed by the Supreme Court on account of the fact that no predicate offence was disclosed and, therefore, he submits that the offences which were to be taken cognizance of by the State and which were definitely found on the record of the case in the form of statements of so many other witnesses then those statements could always be utilized for the purposes of lodging of the FIR. Learned Additional Advocate General further relying upon the case in **Vijay Madanlal Choudhary (Supra)** submitted that the officials under Section 50 of the PML Act, 2002 were not police officers and, therefore, any statement made on oath in their presence were not such admissions which could not be relied upon during trial as per Section 25 of the Evidence Act. Learned Additional Advocate General still further submits that as per Section 66(2) of PML Act, 2002 if the officials of the ED were of the opinion that on the basis of **"any"** information or on the basis of material in their possession, if the Director or any other official of ED came to know that any law for the time being in force was being contravened then it was the duty of the Director of ED to share that information with the concerned agency for necessary action. Relying upon paragraph 290 of the judgment of Vijay Madanlal Choudhary (Supra), learned Additional Advocate

General states that if any incriminating information is there in the possession of the Director of ED then that information should compulsorily be shared with the appropriate authority under Section 66(2) of the PML Act, 2002. The relevant portion of paragraph 290 is being reproduced here as under :

> "290. As a matter of fact, prior to amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 of the Act registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including prevent and regulate the commission of offence of money-laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. **In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond appropriately to such information, the authorised officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act.**

> Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act."
>
> (Emphasis supplied)

15. Learned Additional Advocate General further submitted that under section 66(2) of the PML Act, even if the main ECIR and the prosecution complaint were not in existence, the material which was in possession of the Director and the other officials of the ED and which did not form a scheduled offence, then even that material could have been transmitted to such authority which could take action in pursuance of the material which would be provided by the officials of the ED to such authority. Learned Additional Advocate General submitted that criminal law can be put into motion by just any person and in this regard he refers specifically to paragraph no.6 of the judgment of the Supreme Court in **A.R. Antulay vs. R.S. Nayak** reported in **(1988) 2 SCC 602**. Still further, learned Additional Advocate General submitted that even if any evidence is obtained improperly, it would not affect its admissibility if it is otherwise relevant. In this regard, he relied upon the judgments of the Supreme Court in **R.M. Malkani vs. State of Maharashtra** reported in **(1973) 1 SCC 471** and in **Magraj Patodia vs. R.K. Birla & Ors.** reported in **AIR 1971 SC 1295.** He further submitted that identical issues were involved in the controversy before the Chhattisgarh High Court wherein the Chhattisgarh High Court dismissed the writ petitions filed for the quashing of the FIR on 20.8.2024 in the

case of Anil Tuteja & Ors. vs. Union of India & Ors. in CRMP No.721 of 2024 (2024-CGHS-31310-DB).

16. Sri Zoheb Hossain, learned counsel assisted by Sri Sikandar Bharat Kochar who appeared for the ED while making his submissions states that it was in the fitness of things that the ED had under section 66(2) of the PML Act, 2002 shared with the State of Uttar Pradesh information which it had on 28.7.2023 for the lodging of the FIR. Learned counsel for the ED has stated that the disclosure of information which was made under section 66(2) was made much before the prosecution complaint by the ED was set aside on 8.4.2024 by the Supreme Court. He further submits that even otherwise if there was an information and the ED felt that it was to be shared with the concerned agency for necessary action then it was essential that the information ought to be shared and that the concerned agency had to take action. Learned counsel for the ED relied upon paragraph nos.282 and 290 of the judgment of the Supreme Court in Vijay Madanlal Choudhary (supra) which are being reproduced here as under :-

> "282. Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money- laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed

property, **the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be.** If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

290. As a matter of fact, prior to amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 of the Act registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including prevent and regulate the commission of offence of money-laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. **In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police**

> **fails to respond appropriately to such information, the authorised officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act**. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act."

17. Learned counsel for the ED, therefore, states that for the ED to disclose the information which it had in its possession was the proper thing to do. To share the information was not just a power that the ED possessed but it was also its duty to do so.

18. Sri Zoheb Hossain, learned counsel for the ED further submitted that the ECIR-11 was never quashed. The Supreme Court by its order dated 8.4.2024 had only quashed the prosecution complaint which was filed by the ED pursuant to the ECIR-11. Learned counsel for the ED relying upon the judgment dated 20.8.2024 passed by the Chhattisgarh High Court submitted that even the counsel for the petitioners at Chhattisgarh had conceded to this fact that the Supreme Court had only quashed the prosecution complaint. Learned counsel for the ED further submitted that the statements recorded under section 50 of the PML Act, 2002 would always continue to remain alive since the ECIR-11 was never quashed. Learned counsel for the ED also adopted the argument of the learned Additional Advocate General that any information anywhere whether it is legally admissible or not under law, could be utilized by the State for the purposes of

lodging of the FIR and that was in fact the duty of the State to do so.

19. Sri Zoheb Hossain, learned counsel appearing for the E.D. further submitted that an ECIR is merely an internal document which cannot be quashed and in this regard, he relied upon three judgments of three High Courts namely **Jitendra Nath Patnaik vs. Enforcement Directorate, Bhubaneswar** reported in **CRLMC No. 2891 of 2023 passed by the Orissa High Court at Cuttack dated 02.09.2023, N. Dhanraj Kochar and Ors. vs. Director Directorate of Enforcement and Ors.** Reported in **2022 SCC Online Mad 8794 : (2022) 1 LW (Cri) 251 passed by the Madras High Court** and **Pawan Insaa vs. Directorate of Enforcement, Government of India, Chandigarh Zonal Office, Chandigarh** reported in **CRM-M No. 6378 of 2023** passed by the High Court of Punjab & Haryana at Chandigarh vide order dated 10.04.2024.

20. Learned counsel for the E.D. further relied upon a judgment dated 04.09.2024 passed by the High Court of Punjab and Hariyana at Chadigarh in **M/s IREO Private Limited vs. Union of India and Anr.** which had held in paragraph 3.28 that though the ECIR is not an F.I.R., however, the E.D. which is an Investigating Agency constituted to investigate the offences of money laundering, can always continue to investigate and in the process as and when it got information and material can inform the jurisdictional Police which, can, in its turn lodge the F.I.R.

The Paragraph 3.28 of that judgment is being reproduced here as under :-

> "3.28 Though, the ECIR is not an FIR, however, the ED is an Investigating Agency that has been constituted to investigate the various offences including the offence of money laundering. In these circumstances, after the filing of ECIR in the year 2022, the ED continued to investigate. In that process, it collected information and material by various methods including written communication (Annexure P16). After the collection of the information, the jurisdictional police was informed resulting in the registration of FIR No. 14 dated 12.03.2024. Hence, there is no occasion to either quash or declare that the communication (Annexure P16) is beyond the ED's jurisdiction, as it is not violative of law and the Investigating Agency has acted within the precincts of law, ensuring that all procedures and actions taken during the course of investigation adhered to law."

21. Learned counsel for the E.D. for the similar proposition of law has also relied upon a judgment dated 01.02.2024 passed by the High Court of Punjab and Haryana at Chandigarh in **Angad Singh Makkar vs. Union of India and Ors.** reported in **CRM-M-5228-2024.** The High Court had observed that the E.D. was free to communicate to the Police any information which it had in it's possession. The paragraph 23 of that judgment is being reproduced hereas under :-

> "23. Based on the crimes mentioned in para No. 3 (supra), the Enforcement Directorate was also prosecuting him for proceeds of crime. During such enquiry, the Joint Director

> of Enforcement Directorate, got to know about commission of other offences and thus he rightly exercised his statutory obligations in accordance with Section 66(2) of PMLA and informed the concerned Superintendent of Police, Gobindpur, Yamuna Nagar at Jagadhri. Neither, such communication sent by the Joint Director of Enforcement Directorate to Superintendent of Police, Yamuna Nagar is a direction nor the said Joint Director had any authority to direct for registration of FIR. Thus, the petitioner's contention that the said communication amounts to direction is misreading of the said communication, which has been reproduced in para 16. The communication is only information and it is the power of concerned investigator/SHO to register FIR if they are satisfied and found offence cognizable, as such, the present petition deserves dismissal even on this prayer and related prayers."

22. Similarly, the learned counsel for the ED has relied upon a judgment dated 28.08.2024 passed by the High Court of Punjab and Haryana at Chandigarh in **Pritpal Singh vs. State of Punjab** reported in **CRM-M-32979-2024**. He also relied upon a judgment dated 24.11.2023 passed by the High Court of Delhi at New Delhi in **Rajinder Singh Chadha vs. Union of India Ministry of Home Affairs through its Chief Secretary & Anr.** For a similar proposition he has again relied upon a judgment dated 26.02.2024 passed by the High Court of Punjab and Haryana at Chandigarh in **Sikandar Singh vs. Directorate of Enforcement and Anr.** reported in **CRM-M-51250-2023**

(O&M). Learned counsel for the ED has also submitted that such admissions which do not amount to confession, can always be used as evidence. He has relied upon a judgment of Supreme Court in **Central Bureau of Investigation vs. V.C. Shukla and Anr.** reported in **(1998) 3 SCC 410.** Since the learned counsel for the ED specifically relied upon paragraph 45 of that judgment, the same is being reproduced hereas under :-

> "45. It is thus seen that only voluntary and direct acknowledgement of guilt is a confession but when a confession falls short of actual admission of guilt it may nevertheless be used as evidence against the person who made it or his authorised agent as an "admission" under Section 21. The law in this regard has been clearly and in our considered view correctly explained in Monir's Law of Evidence (New Edn. at pp. 205 and 206), on which Mr Jethmalani relied to bring home his contention that even if the entries are treated as "admission" of the Jains still they cannot be used against Shri Advani. The relevant passage reads as under:
>
> > "The distinction between admissions and confessions is of considerable importance for two reasons. Firstly, a statement made by an accused person, if it is an admission, is admissible in evidence under Section 21 of the Evidence Act, unless the statement amounts to a confession and was made to a person in authority in consequence of some improper inducement, threat or promise, or was made to a Police Officer, or was made at a time when the accused was in custody of a Police Officer. If a statement was made by the accused in the circumstances just mentioned its admissibility will

depend upon the determination of the question whether it does not amount to a a confession. If it amounts to a confession, it will be inadmissible, but if it does not amount to a confession, it will be admissible under Section 21 of the Act as an admission, provided that it suggests an inference as to a fact which is in issue in, or relevant to, the case and was not made to a Police Officer in the course of an investigation under Chapter XIV of the Code of Criminal Procedure. Secondly, a statement made by an accused b person is admissible against others who are being jointly tried with him only if the statement amounts to a confession. Where the statement falls short of a confession, it is admissible only against its maker as an admission and not against those who are being jointly tried with him. Therefore, from the point of view of Section 30 of the Evidence Act also the distinction between an admission and a confession is of fundamental importance."”

(Emphasis supplied)

23. Learned counsel for the ED has also relied upon two further judgments of the Supreme Court dated 24.01.1964 in **Faddi vs. State of M.P.** reported in **AIR 1964 SC 1850** and a judgment dated 27.08.1971 in **Kanda Padayachi alias Kandaswamy vs. State of Tamil Nadu** reported in **1971 (2) SCC 641.** To bolster his arguments, he relied upon paragraphs 11 and 13 of that judgment and the same are being reproduced hereas under :-

“11. As held by the Privy Council, a confession has to be a direct acknowledgment of the guilt of the offence in question and such as would be sufficient by itself for conviction. If it falls short of such a plenary acknowledgment of guilt it would not be a confession even though the statement is of some incriminating fact which taken along with other evidence tends to prove his guilt. Such a statement is admission but not confession. Such a definition was brought out by Chandawarkar, J., in R v. Santya Bandhu (supra) by distinguishing a statement giving rise to an inference of guilt and a statement directly admitting the crime in question.

13. It is true that in Queen-Empress v. Nana, the Bombay High Court, following Stephen's definition of confession, held that a statement suggesting the inference that the prisoner had committed the crime would amount to confession. Such a definition would no longer be accepted in the light of Pakala Narayana Swami's case (supra) and the approval of that decision by this Court in Palvinder Kaur's case (supra). In U. P. v. Deoman Upadhyaya, Shah, J., (as he then was) referred to a confession as a statement made by a person "stating or suggesting the inference that he had committed a crime". From that isolated observation, it is difficult to say whether he widened the definition than the one given by the Privy Council. But he did not include in the expression 'confession' an admission of a fact, however incriminating, which by itself would not be enough to prove the guilt of the crime in question, although it might, together with the other evidence on record, lead to the conclusion of the guilt of the accused person. In a later case of A. Nagesia v. Bihar, Bachawat, J., after referring to Lord Atkin's observations in Pakala Narayana Swami's

> case (supra) and their approval in Palvinder Kaur's case (supra) defined a confession as "an admission of the offence by a person charged with the offence". It is thus clear that an admission of a fact, however incriminating, but not by itself establishing the guilt of the maker of such admission, would not amount to confession within the meaning of Sections 24 to 26 of the Evidence Act."

24. Having heard Sri Siddharth Dave, learned Senior Advocate assisted by Sri Saksham Srivastava and Vinayak Mithal, learned counsel appearing in Criminal Misc. Writ Petition No.6236 of 2024; Sri Rajiv Lochan Shukla learned counsel for the petitioner appearing in Criminal Misc. Writ Petition No.6194 of 2024; Sri Imran Ullah, learned counsel appearing for the petitioner in Criminal Misc. Writ Petition No.7389 of 2024 and Sri Shishir Prakash, learned counsel appearing in Criminal Misc. Writ Petition No.6195 of 2024, the Court finds that the question which is required to be answered in the instant case is as to whether when a prosecution complaint filed by the ED, which was already quashed, and was no longer in existence, would the information disclosed by the officials of the ED to the authority concerned for taking necessary action continue to form basis of an F.I.R. We are of the view that when on the date when the ED had communicated to the State of Uttar Pradesh on 28.7.2023 (purportedly under section 66(2) of the PML Act, 2002) then on that date the prosecution complaint was very much surviving and, therefore, there was nothing wrong in the communication being

sent on 28.7.2023 and in the lodging of the FIR on 30.7.2023. Also if the prosecution complaint had been set aside, there was information available with the ED which had compulsorily to be disclosed to the relevant authority for taking necessary action. In the instant case, if the FIR is perused, then it becomes clear that the Directorate of Enforcement while investigating in a money laundering case under the provisions of PML Act, 2002 had discovered that a company known by the name of M/s. Prizm Holography and Security Films Pvt. Ltd. which was based in Noida was illegally granted a tender to supply holograms to the Excise Department of Chhattisgarh. FIR therefore was registered under sections 420, 468, 471 473, 484 and 120-B IPC. The FIR was lodged by the ED and it had definite information from the statements made by various witnesses under section 50 of the PML Act, 2002 that there was connivance between the company known by the name of M/s. Prizm Holography and Security Films Pvt. Ltd. and senior officials of the State of Chhattisgarh namely Arunpati Tripathi, ITS, Special Secretary, Excise; Niranjan Das, IAS, Excise Commissioner; Anil Tuteja, IAS and a few other individuals and they had modified the tender conditions in such a manner that they were allotted to M/s. Prizm Holography and Security Films Pvt. Ltd., Noida and for doing so they had charged a commission of eight paise per hologram. They had also, as per the FIR, taken a commitment to supply unaccounted duplicate holograms for the sale of illegal country liquor bottles from State

run shops in Chhattisgarh and the manufacturing of duplicate holograms at Noida had allowed the sale of spurious liquor in the State. As per the FIR, the sale of unaccounted liquor due to supply of duplicate holograms had resulted in a massive loss of Rs.1200 crores to the State exchequer. On record were also statements of one Sri Deepak Duary which had corroborated the case of the prosecution. The complaints against illegal allotment of hologram tender to M/s. Prizm Holography and Security Films Pvt. Ltd. had all fallen on deaf ears of the accused persons. We are thus of the view that, therefore, the accused government officials and the owner of the firm M/s. Prizm Holography and Security Films Pvt. Ltd. along with Anwar Dhebar were prima facie involved in the case in question. A bare perusal of the FIR does not evidently disclose the complicity in the case of Anwar Dhebar with the crime in question but the counter affidavits of the State definitely reveal such incriminating evidence which confirms the involvement of Anwar Dhebar. The whatsapp chat between Anwar Dhebar and company officials of the firm definitely go to indicate that there were dubious activities going on in between the accused persons.

25. It is a clear law as has been held by the Supreme Court in **Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra and Others, AIR 2021 SC 1918; State of Telangana Vs. Habib Abdullah Jellani, (2017) 2 SCC 779 and Lalita Kumar vs. State of U.P., (2014) 2 SCC 1** that if there is a cognizable

offence disclosed in the FIR, then no interference is to be made by the Court. In the instant case, so far as the petitioners Anil Tuteja, Arun Pati Tripathi and Niranjan Das are concerned we do find that against them a definite allegation is there in the FIR and they disclose cognizable offences under sections 420, 468, 471 473, 484 and 120-B IPC.

26. The arguments of Sri Rajiv Lochan Shukla were required to be referred to wherein he had stated that no definite role had been assigned to Anwar Dhebar, the petitioner in Criminal Misc. Writ Petition No.6194 of 2024. The argument to begin with impressed us but when we looked into the various investigations which had been undergone after the FIR was lodged on 30.7.2023 and which formed a part of the counter affidavit of the State of Uttar Pradesh, we found that there was a definite complicity of the accused Anwar Dhebar in the crime in question and we cannot shut our eyes to the investigations which had been undergone. As per the judgment of the Supreme Court in **State of Haryana & Ors. vs. Bhajan Lal & Ors. (AIR 1992 SC 604),** an FIR could be quashed if there was nothing established from the reading of the FIR and from the evidence collected thereafter. In the instant case the evidence gathered after the lodging of the FIR definitely showed complicity of the petitioner Anwar Dhebar with the crime in question. The law with regard to criminal cases stands on a different footing from the law with regard to service law etc. wherein an order cannot be substituted with reasons etc.

in the form of subsequent affidavits. In the case at hand, we find that Anwar Dhebar was named in the FIR and during the investigation his complicity in the crime which was a cognizable one cannot be prima facie ruled out, the evidence in regard to which was clearly to be found in the counter affidavit of the State and of the E.D.

27. The answer to the question that whether when the prosecution complaint itself had been done away with, could the FIR stand on the basis of the statements etc. which were recorded under section 50 of the PML Act, 2002, would be that definitely the information which was gathered under section 50 of the PML Act, 2002 was a material in the possession of the Director of ED which had to be transmitted to the concerned agency for necessary action. In the instant case, the State of Uttar Pradesh was the concerned agency which had to look into the fact as to whether the work of manufacturing holograms was given to M/s. Prizm Holography and Security Films Pvt. Ltd. illegally by the accused persons and whether the accused persons for their illegal acts had charged commission. Also, the State of Uttar Pradesh had to see that when duplicate holograms, in connivance of the accused persons were being made and for this purpose the ED had passed on information in its possession to it then it had to further investigate and bring the guilty to book.

28. While holding that the F.I.R. cannot be interfered with in the above mentioned writ petitions, we would also like to meet

the arguments made by the learned counsel for the petitioners when he stated that the statements made under Section 50 of the PML Act, 2002 would not enure to the benefits of the prosecution after the prosecution complaint of the ED was set aside by the Supreme Court by its order dated 08.04.2024. Learned counsel for the petitioners had relied upon the judgment of **Prem Prakash (Supra)** and had submitted that the Supreme Court had held that even though the authorities were not Police under the PML Act, 2002 before whom the witnesses had made their statements, the protection under Section 25 of the Evidence Act were to be given to those witnesses.

29. Having perused the judgment of **Prem Prakash (Supra)** and the judgment of **Vijay Madanlal Choudhary (Supra)**, we are definitely of the view that whether the protection which is to be extended to the accused who is being prosecuted for the offence of money laundering would have a protection of Section 25 of the Evidence Act, depends on a case to case basis. Even if the judgment of the Supreme Court in **Nandani Satpathy vs. P.L. Dani & Anr. (1978) 2 Supreme Court Cases** is seen, we are of the view that the protection under Section 25 of the Evidence Act to an accused is given at the stage when the cases are being tried after they are put to trial. We are of the considered view that when the trial takes place then of course the statements recorded at the time of investigation would not be admissible. When ever the investigating agency has a doubt as to whether the

makers of the statement were bringing to light any crime then that information could always be used for initiating an investigation or for the purposes of further forwarding a particular investigation which was already engaging the attention of a particular investigating agency. Thus, it will be very unsafe to accept the arguments of the learned counsel for the petitioners that for all initiation of criminal cases, statements made before the authorities under Section 50 of the PML Act, 2002 could never be used. Such statements which are in the knowledge of an investigating agency can always be used for initiating or for furthering of any pending investigation. It of course need not be used for the purposes of a trial and definitely they could not be categorized as confessions or admissions. Also we are of the view that when the ED had by its communication dated 28.07.2023 informed the State of Uttar Pradesh and which information had resulted in the F.I.R. dated 30.07.2023 then that information was an information under Section 66(2) of the PML Act, 2002 and that information could be always used by the State of Uttar Pradesh. Still further we are of the view that even if the crimes had allegedly been discovered in the State of Chhatisgarh, when it was discovered by ED that duplicate holograms were being made in NOIDA a district of the State of Uttar Pradesh then it was in the fitness of things that the State of Uttar Pradesh was informed about the wrongs which were being done on its territory. Also we are of the view that there was nothing malicious in the fact that

when the State of Chhatisgarh did not react to the communication dated 11.07.2023, then the ED had written to the State of Uttar Pradesh on 28.07.2023 about the activities which were being done in the State of Uttar Pradesh. The two communications dated 11.07.2023 and 28.07.2023 were sent in quick succession and, therefore, no mala fide could be attached to this act of the ED. If the State of Chhatisgarh did not react to the communication dated 11.07.2023 and the State of Uttar Pradesh reacted to the communication dated 11.07.2023 then it could not be said that, because the State of Chhatisgarh did not react to the communication dated 11.07.2023, the communication dated 28.07.2023 was sent to the State of Uttar Pradesh. Also we refer to the argument of Sri Shishir Prakash who had stated that the allotment of tender to M/s. Prizm Holography and Security Private Limited was challenged before the Chhatisgarh High Court and the Chhatisgarh High Court had found that there was nothing illegal in the grant of tender to the M/s. Prizm Holography and Security Private Limited and, therefore, to say that M/s. Prizm Holography and Security Private Limited was wrongly granted the tender, was wrong on the part of the ED. Here, we may state, it was just possible that the High Court had looked into the technicalities of the grant of the tender and thereafter it had held that there was nothing wrong in the grant of the tender. Definitely the High Court of Chhatisgarh had not while looking into the grant of tender looked into the aspect of

the fact as to whether bribe had been paid to the accused persons and that whether M/s. Prizm Holography and Security Private Limited was actually manufacturing duplicate holograms which was bringing loss to the exchequer of the State to the tune of Rs. 1,200 crores.

30. Since, we have found that the FIR challenged in Criminal Misc. Writ Petition No.6236 of 2024, Criminal Misc. Writ Petition No.6195 of 2024; Criminal Misc. Writ Petition No.6194 of 2024 and Criminal Misc. Writ Petition No.7389 of 2024 disclose the commission of cognizable offences, we consider it appropriate not to interfere in the writ petitions. However, the petitioners can always avail the remedy before the competent court of law for bail/anticipatory bail as is permissible under law.

31. For the reasons stated above, all the writ petitions accordingly stand dismissed.

Order Date :- 04.10.2024
GS/M.S.Ansari

(Siddhartha Varma, J.)

(R.M.N. Mishra, J.)