

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :- Hon'ble Justice Amrita Sinha

WPA 9979 of 2022

With

IA No. CAN 1 of 2023, CAN 2 of 2023, CAN 3 of 2023,
CAN 4 of 2023, CAN 5 of 2023 and CAN 6 of 2023

Soumen Nandy

Vs.

The State of West Bengal & Ors.

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| For the writ petitioner | :- | Mr. Bikash Ranjan Bhattacharyya, Sr. Adv. Mr. Firdous Samim, Adv. Ms. Gopa Biswas, Adv. Ms. Payel Shome, Adv. |
| For the applicant in CAN 5 of 2023 & CAN 6 of 2023 | :- | Mr. Saptansu Basu, Sr. Adv. Mr. Kishore Dutta, Sr. Adv. Mr. Sandipan Ganguly, Sr. Adv. Mr. Jishnu Chawdhury, Adv. Mr. Sabyasachi Banerjee, Adv. Mr. Anit Kumar Nag, Adv. Mr. Agnish Basu, Adv. Mr. Kush Agarwal, Adv. Ms. Riddhi Jain, Adv. Mr. Aakash Mishra, Adv. |
| For the applicant in CAN 3 of 2023 & CAN 4 of 2023 | :- | Mr. Debashis Roy, Adv. Mr. Sk. Selim Rehman, Adv. Mr. Aniruddha Chatterjee, Adv. Mr. Ayan Poddar, Adv. Mr. Soham Dutta, Adv. |
| For the Enforcement Directorate | :- | Mr. Dhiraj Kumar Trivedi, Ld. DSGI. Mr. Samrat Goswami, Adv. |
| For CBI | :- | Mr. Billwadal Bhattacharyya, Ld. DSGI. Mr. Arijit Majumdar, Adv. |
| For the State | :- | Mr. Sirsanya Bandopadhyay, Jr. SC. Mr. Arka Kumar Nag, Adv. |
| For the respondent no. 13 | :- | Mr. Sandip Kumar De, Adv. Mr. Abhijit Sarkar, Adv. |
| For WBBPE | :- | Mr. L. K. Gupta, Sr. Adv. Mr. Saikat Banerjee, Adv. Mr. Ratul Biswas, Adv. Mr. Kaushik Chowdhury, Adv. |
| For DPSC, Nadia | :- | Mr. Arindam Chattopadhyay, Adv. |

Hearing concluded on :- 16.05.2023
Judgment on :- 18.05.2023

Amrita Sinha, J.:-

CAN 3 has been filed by one Kuntal Ghosh ('KG' for short) for being impleaded as party in the pending writ proceeding claiming himself to be associated with student politics during his college days and an erstwhile member of the All India Trinamool Congress and also served as the Youth Wing Leader of the said political party. KG was arrested by ED on 21st January, 2023 in connection with the money laundering case and is still in custody in the Presidency Correctional Home, Alipore.

A further application has been filed by KG being CAN 4 of 2023 praying for recalling a part/portion of the order directing investigation of the complaint of custodial torture lodged by KG. KG alleges that he is aggrieved by the said direction passed by this Court on 13th April, 2023 where the Court directed investigation to be conducted in connection with the complaint of custodial torture lodged by him before the Hastings police station.

An application for intervention in the writ petition being CAN 5 of 2023 has been filed by one Abhishek Banerjee ('AB' for short) who has averred that he is a Member of the Parliament from Diamond Harbour Constituency and is also the General Secretary of All India Trinamool Congress, the ruling political party of the State of West Bengal.

He claims to be aggrieved by certain direction passed by the Hon'ble Court on 13th April, 2023 in the present writ petition. He further alleges that he is a stranger to the writ proceeding where order has been passed against him behind his back, and accordingly, he seeks leave to intervene in the proceeding to put forth his defence.

AB has also filed an application being CAN 6 of 2023 for recalling a portion of the order dated 13th April, 2023, wherein direction has been passed for investigation of his activities.

The said order dated 13th April, 2023 was passed in application being CAN 1 of 2023, WPA No. 9979 of 2022, filed by the Directorate of Enforcement ('ED' for short) seeking appropriate orders.

Being aggrieved, both the applicants challenged the order dated 13th April, 2023 before the Hon'ble Supreme Court by filing Special Leave Petition (Civil) diary no. 15889/2023 and 15883/2023 respectively. The Hon'ble Supreme Court, by order dated 17th April, 2023, was pleased to stay all actions against the applicants in pursuance of the direction contained in the order dated 13th April, 2023. The interim order of stay was, thereafter, extended till the next date of hearing fixed on 28th April, 2023.

The Hon'ble Supreme Court by order dated 28th April, 2023, was pleased to dispose of the Special Leave Petitions by directing the Hon'ble the Acting Chief Justice of this Hon'ble Court to reassign the pending proceedings to some other Judge of the High Court and the Judge to whom the cause papers are reassigned would be at liberty to take up all applications which may be moved in that regard. The Hon'ble Supreme Court was, however, neither pleased to interfere with the order nor pleased to extend the order of stay of the direction passed by this Hon'ble Court on 13th April, 2023.

The applicants allege that in the order dated 13th April, 2023 the Hon'ble Court was pleased to take note of a public meeting held by AB on 29th March, 2023 where he claimed that the police or the interrogating agencies were pressurizing one of the accused who is in custody i.e. KG in connection with the recruitment scam to disclose his name.

The Court observed that KG filed a complaint against the interrogating officers before the CBI Court and before the Hastings police station on 31st March and 1st April 2023 respectively. The Court thought it fit to get the matter enquired as to whether KG took the cue from the public speech made by AB, especially because the complaint was lodged by KG soon after the speech was made by AB.

It has been submitted that, the Court in the impugned order came to a definite conclusion that the investigating officers were terrorized by the complaint which was absolutely unwarranted. The Court directed that the investigating officers should not keep the speech of AB outside the investigation of CBI and, if necessary, ED.

The applicants are aggrieved by the same. It has been argued that the application on which the aforesaid direction was passed to investigate the speech of AB did not contain any material in connection with either of the applicants and, accordingly, such direction ought not to have been passed.

The applicants submit that the aforesaid direction passed by the Court is prejudicial to them and there has been violation of the principle of natural justice. The applicants ought to have been heard prior to passing any order against them that is causing prejudice.

Prayer has been made to permit AB to intervene and KG to be added in the matter and place their case before this Court.

The primary ground for seeking recall of the said order is that the application on which the said order was passed, does not contain any pleading in connection with the public speech made by AB. No case was made out by the ED in the application mentioning that AB was anyway responsible for influencing the process of investigation that is continuing. No prayer has either been made in the application of the ED seeking direction for interrogating AB.

It has been argued that the observation of the Hon'ble Court that there is a tacit understanding between AB and KG in connection with the recruitment scam and that there is a sinister design to terrorize the investigating officers and throttle the investigating process, has the trapping of finality which is absolutely uncalled for.

It has been submitted that the Hon'ble Judge was allotted determination to take up matters relating to education in Primary Schools and the Hon'ble Judge did

not have the determination to take up any matter in connection with causing investigation in a criminal proceeding. Any order passed directing the investigating officer to cause inquiry, not falling within the determination of the Hon'ble Judge, is *coram non judice*, without jurisdiction and liable to be recalled.

In this connection reference has been made to the judgment passed by the Hon'ble Division Bench of this Court in the matter of ***Sohan Lal Baid vs. State of West Bengal & Ors.*** reported in ***AIR 1990 Cal 168*** wherein the Court held that judgment pronounced by a Court without investment of jurisdiction is void. The Court categorically held that any order passed without jurisdiction is void and has no effect in the eye of law.

Reliance has also been placed on the decision delivered by the Hon'ble Supreme Court in the matter of ***State of Rajasthan vs. Prakash Chand & Ors.*** reported in ***(1998) 1 SCC 1*** wherein the Hon'ble Court held that the puisne judges cannot pick and choose any case pending in the High Court and assign the same to himself for disposal without appropriate order of the Chief Justice. The puisne judges can only do that work as is allotted to him by the Chief Justice or under His direction and the Chief Justice alone has the prerogative to constitute Benches of the Court and allocate cases to the Benches so constituted.

The sheet anchor of the application for recalling is the allegation of bias. It has been submitted that the learned Judge was negatively biased against AB. The same is clearly evident from an interview given by the Hon'ble Judge, in a private television channel, where the Hon'ble Judge expressed his intention to take strict action against AB allegedly for passing certain comments in connection with the Calcutta High Court.

A transcript of the interview given by the Hon'ble Judge in vernacular in support of the allegation of bias has been placed before this Bench. It has been submitted that the action of the Hon'ble Judge is not in tune with the Bangalore Principles of Judicial Conduct of 2002 setting standards for ethical conduct of judges.

The observation made in the order dated 13th April, 2023 reeks of mala fide where the Hon'ble Judge transgressed the self imposed restriction while exercising writ jurisdiction. The Hon'ble Judge did not have the power to conduct an inquisitorial trial. Supervision of the process of investigation is permissible, but conducting an inquisitorial trial is not.

It has been argued that, the fact that the Hon'ble Supreme Court directed reassignment of the writ petition before any other Judge of this Court upon going through the English translation of the television interview which went on air proves that the Hon'ble Supreme Court clearly held that bias was evident. The assignment of the matter before this Bench is enough indication of bias.

In this connection reliance has been placed upon the judgment delivered by the Hon'ble Supreme Court in the matter of ***Ranjit Thakur vs. Union of India & Ors.*** reported in ***(1987) 4 SCC 611*** wherein the Court held that, to test the likelihood of bias what is relevant is the reasonableness of the apprehension in that regard in the mind of the party. The proper approach for the Judge is not to look at his own mind and ask himself, however, honestly, "Am I biased?"; but to look at the mind of the party before him. A judgment which is the result of bias or want of impartiality is a nullity and the trial *coram non judice*.

It has been strenuously argued that the observation made by the Hon'ble Judge is enough to prove bias and, as such, the impugned order dated 13th April, 2023 is liable to be recalled.

On the issue of bias reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in ***Kulwinder Kaur @ Kulwinder Gurcharan Singh vs. Kandi Friends Education Trust & Ors.*** reported in ***(2008) 3 SCC 659*** wherein the Court laid down the broad propositions that may constitute a ground for transfer of cases. Reasonable apprehension in the mind of the litigant that he might not get justice in the Court in which the suit is pending, is one of the grounds on which a proceeding may be transferred from one Court to the other.

On the issue that the Court could not have passed the direction in the absence of proper pleading, reliance has been placed on the decision passed by the Hon'ble Supreme Court in ***Arikala Narasa Reddy vs. Venkata Ram Reddy Reddygari & Anr.*** reported in **(2014) 5 SCC 312** wherein the Court held that as a rule, relief not founded on the pleadings should not be granted. In the absence of pleadings, evidence if any, produced by the parties, cannot be considered. No party should be permitted to travel beyond its pleadings.

On the same issue reliance has been further placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Ratanlal @ Babulal Chunilal Samsuka vs. Sundarabai Govardhandas Samsuka (dead) through legal representatives & Ors.*** reported in **(2018) 11 SCC 119** wherein the Court held that any amount of evidence or proof adduced without there being proper pleading is of no consequence and will not come to the rescue of the parties.

On behalf of KG it has been highlighted that the writ court ought not to have gone into forensic investigation/post mortem of the complaint of custodial torture lodged before the police station. It has been argued that once complaint of custodial torture is lodged, the police is duty bound to take steps in response to the same. The observation of the Court that there is a sinister design to make allegations against the investigating officers of different scams to terrorize the officers has practically sealed the fate of KG to avail the benefit of obtaining bail. In view of the aforesaid observation of the Court, KG will not be in a position to seek release on bail.

Learned advocate representing KG relies upon the decision delivered by the Hon'ble Supreme Court in the matter of ***Lalita Kumari vs. Government of Uttar Pradesh & Ors.*** reported in **(2014) 2 SCC 1** wherein the Court held that registration of FIR is mandatory under Section 154 of the Code, if the information discloses commission of a cognizable offence and no preliminary inquiry is permissible in such a situation. If the inquiry discloses the commission of a cognizable offence, the FIR must be registered.

Learned advocates representing the writ petitioners, the ED and the CBI vehemently oppose the submissions and prayers of the applicants. It has been submitted that the applicants, though not parties in the instant proceeding, are directly involved with the recruitment scam. The hands of the investigating agencies ought not to be tied from interrogating any person who is likely to be involved with the scam. Any order passed staying the process of interrogation will directly affect the investigation that is going on and the entire process will be rendered nugatory. The investigating agencies ought to continue with the investigation and as and when the agencies require interrogation of the applicants, they will certainly get an opportunity, as available in law, to defend themselves.

It has been contended that AB is a very influential and powerful person in the political arena and keeping him out of the zone of interrogation in such a huge recruitment scam, will neither be rational nor proper. In fact, several other accused who are in custody for quite some time including KG are relying upon the signal given by AB.

Learned advocates representing the petitioner, ED and CBI vociferously submits that the applications are not maintainable at all. All the issues raised in the present applications were raised by both the applicants before the Hon'ble Supreme Court. The applicants cannot re-agitate the issues all over again before this Court. The Hon'ble Supreme Court after hearing the parties was pleased to pass an interim order of stay of the order complained of, but at the time of disposal of the Special Leave Petitions the Hon'ble Supreme Court did not grant any relief in favour of the applicants. The Hon'ble Supreme Court was only pleased to pass direction upon the Acting Chief Justice for reassigning the pending proceeding before any other Hon'ble Judge of the Court without interfering with the matter at all.

It has been submitted that the Special Leave Petitions were heard for three days at a stretch and after hearing the submissions of all the parties the Hon'ble Supreme Court was pleased not to interfere with the order appealed against.

It has been contended that the liberty which was granted by the Hon'ble Supreme Court to deal with applications, relates to any issue which is prospective in nature and any cause of action which arises subsequent to the order passed by the Hon'ble Supreme Court. The Hon'ble Supreme Court did not grant any liberty to the applicants to reargue the entire matter before the assignee judge.

The questions of law and the grounds of appeal urged in the Special Leave Petitions have been placed before this Bench. The issue of violation of the principles of natural justice, order passed upon personal knowledge of the Hon'ble Judge, order passed in the absence of proper pleadings and all other issues raised in the application for recalling, intervention and addition of party were all available and argued before the Hon'ble Supreme Court.

Had the Hon'ble Supreme Court intended to grant any liberty to the applicants to seek recall of the order complained of, then the same would have been specifically recorded in the order itself. Prayer made before the Court which is not allowed is considered to be refused by the Court and the same cannot be re-agitated again before the assignee judge.

Learned advocate representing ED categorically submits that there is nothing on record or otherwise in support of the contention of bias. It has also been submitted that the order was passed by the Hon'ble Judge relying upon submissions and documents made available before the Court. The order complained of was passed not upon the personal knowledge of the Hon'ble Judge but strictly on the basis of submissions and documents placed before the Court.

The complaint letter of KG making wild allegation against the investigating officers was placed before the Court. The orders of the learned Judge-in-Charge, Special, CBI dated 3rd February, 2023 and 30th March, 2023 were also brought to the knowledge of the Hon'ble Judge.

It has been submitted that the application filed by ED clearly mentioned that politically exposed persons were trying to lodge similar complaints against the

investigating officers of ED through police authorities. As the complaint letter of KG was, till then, not before the investigating officers, accordingly, the names of the politically exposed persons could not be disclosed in the application which was affirmed on 12th April, 2023. At the time of hearing of the application on 13th April, 2023, the officers of ED had knowledge of the contents of the complaint letter and made appropriate submission before the Hon'ble Judge.

The pleadings and the submissions made in Court were duly taken into consideration and order was passed by the Hon'ble Judge on 13th April, 2023.

It has been argued that the investigation procedure is already on and the investigating officers have ample power and jurisdiction to summon any person for collection of evidence to proceed further with the investigation. None can raise any objection if the investigating officer requires the presence of any person in the interest of investigation.

To controvert the allegation of the applicants that the Hon'ble Judge did not have the determination to take up the matter, reliance has been placed on the judgment dated 6th September, 2021 passed by this Court in **WPA 11803 of 2021 (Suvendu Adhikary vs. State of West Bengal & Ors.)** wherein the Court referred to the judgment delivered by the Hon'ble Supreme Court in the matter of **State of Haryana vs. Bhajan Lal** reported in **(1992) Supp (1) SCC 395** wherein the Court held that nomenclature under which petition is filed is not quite relevant and that does not debar the Court from exercising its jurisdiction which otherwise it possesses unless there is special procedure prescribed which is mandatory.

As the main matter was pending consideration before the Hon'ble Judge monitoring the investigation, the department immediately rushed to the said Court for relief so that the investigation could continue unhindered.

Learned advocate representing CBI submits that AB has admitted in the application that he did deliver the speech on 29th March, 2023. It is not the case of AB that the speech in question was not delivered by him. AB is suffering from a

perceived paranoia in facing the investigation. AB being a Member of the Parliament, ought to cooperate with the investigating officer to unravel the persons involved in the scam.

Acting on the direction passed by the Hon'ble Court, notice under Section 160 CrPC was issued to AB on 16th April, 2023 with a direction to appear before the CBI on 18th April, 2023. AB deliberately suppressed the fact of issuance of the said notice and has intentionally tried to mislead the Court. The fact of issuance of the said notice was also not brought to the knowledge of the Hon'ble Supreme Court as there is no reference to the said notice in any of the orders passed by the Hon'ble Supreme Court. It has been stressed that suppression of such vital fact is a conscious effort to delay and forestall the investigation.

It has been submitted that the Hon'ble Judge was overseeing the investigation and, accordingly, it is absolutely proper for the Hon'ble Judge to pass order on appreciation of all facts and documents placed before the Court. The close proximity of timing of the public speech made by AB and the complaint lodged by the accused in custody i.e. KG, is highly suspicious and ought to be investigated.

It has been contended that the applicants are neither proper nor necessary parties for adjudication of the issue in the writ petition and as such the prayer for intervention or addition of party is liable to be dismissed with exemplary cost for wasting the valuable time of the Hon'ble Court.

It has been contended that there is no requirement of service of a prior notice in a proceeding in connection with PMLA, PCA and IPC. In support of the aforesaid submission reliance has been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Dinubhai Boghabhai Solanki -vs- State of Gujarat & Ors.*** reported in ***(2014) 4 SCC 626*** and ***E. Sivakumar -vs- Union of India & Ors.*** reported in ***(2018) 7 SCC 365***.

To controvert the submission of the applicants that proper pleadings and prayer was not made in the application on which the order was passed reliance has

been placed on the judgment delivered by the Hon'ble Supreme Court in the matter of ***Bharat Singh & Ors. -vs- State of Haryana & Ors.*** reported ***in (1988) 4 SCC 534.***

In support of the submission that the investigation was being court monitored and the investigating officers acted in accordance with the direction passed by the Hon'ble Supreme Court, reliance has been placed on the order dated 18th October, 2022 passed by the Hon'ble Supreme Court in Petition for Special Leave to Appeal Nos. ***16325-16326/2022 (Manik Bhattacharya vs. Ramesh Malik & Ors.)*** wherein the Hon'ble Court was pleased to direct the CBI under the SIT to continue with the investigation and file comprehensive report before the Court.

In support of the submission that the applications filed by the applicants are liable to be dismissed with exemplary cost for wasting the valuable time of the Court reliance has been placed on the judgment delivered by this Court in the matter of ***Bharatiya Janata Party & Ors. -vs- The State of West Bengal & Ors.*** reported in ***2016 (1) CLJ (Cal) 556*** : MANU/WB/1365/2015 where the Hon'ble Court was pleased to dismiss the writ petition with costs.

Learned advocates representing the writ petitioners, ED and CBI pray for dismissal of the applications with exemplary costs.

Learned advocate representing the State submits that the Hon'ble Judge ought not to have entertained the prayer of the ED and further not to have restrained the police from lodging any FIR against the ED. It has been submitted that the police is duty bound to act on the complaint of custodial torture lodged by an undertrial.

It has further been argued that ED, not being a party in the writ proceeding, the application of a third party ought not to have been entertained.

I have heard and considered the rival submissions made on behalf of all the parties. This Bench has been apprised of the fact that ED has been impleaded as party respondent in the writ proceeding.

It is seen that the applicants are not parties in the writ proceeding. Both allege that portion of the order dated 13th April, 2023 directing the investigating agencies to conduct investigation is prejudicial to them as the same was passed without granting them an opportunity of hearing. There was no material on record which prompted the Hon'ble Judge to pass such order. Allegation of negative bias of the Hon'ble Judge against one of the applicants (AB), has been stressed upon.

The application on which the impugned order was passed was filed by ED wherein it was mentioned that one of the accused who is presently in custody in the PMLA case i.e. KG lodged a complaint before the police station making false, frivolous and baseless allegations against the officers of ED. Copy of the complaint was neither served upon the ED nor upon the learned Special Court, PMLA. Aspersions have been cast upon the investigation of ED.

Based upon the inputs received from the media and elsewhere, ED came to learn that the said accused i.e. KG lodged a complaint before the CBI Court and before the Hastings police station against the officers of ED through the Superintendent, Presidency Correctional Home. The said accused along with other politically exposed persons were trying to lodge similar complaints against the officers of ED through the police authorities.

ED apprehended that the same was a desperate attempt to thwart the investigation. ED sought for verification of the subject complaint filed by the accused in custody.

Though ED did not make any specific prayer with regard to the relief(s) sought for and made an innocuous prayer for passing appropriate order on the submissions made in the body of the application, but the Court upon hearing submissions made on behalf of all the appearing counsels and upon perusal of documents placed before the Court passed the said impugned order. The Court recorded the date and the events chronologically and thereafter took note of the public meeting held by AB on 29th March, 2023, the press statement made by KG on 30th March, 2023,

complaint lodged by KG before the CBI Court on 31st March, 2023 and the complaint lodged by KG before the Hastings police station on 1st April, 2023.

The dates in the impugned order were recorded as per the submissions made by the representative of ED. The Hon'ble Judge took note of the public meeting held by AB on 29th March, 2023. The excerpt of the speech of AB in the said public meeting was brought to the notice of the Court.

The excerpts of the public speech made by AB on 29th March, 2023, the press statement by KG on 30th March, 2023, complaint made by KG on 31st March, 2023 and 1st April, 2023 have been placed before this Bench, word by word. The name of AB has been repeatedly mentioned therein.

The close proximity of the dates of the above events raised doubt in the mind of the Court with regard to the genuineness of the allegation made by KG in the complaint. The inference drawn by the Hon'ble Judge may or may not have been correct. It is for the investigating agencies to take note of the same and proceed in the matter in accordance with law.

The offence which ED is dealing with is under the Prevention of Money Laundering Act, 2002 and the predicate offence under the Prevention of Corruption Act, 1988 and the Indian Penal Code is being investigated by CBI. It appears from records that the investigation started a couple of months back and the same has proceeded to a fair extent. Several high ranking politicians including Member of Legislative Assembly, Minister-in-Charge of Education, ex President of the West Bengal Board of Primary Education, several persons in the Bengali film industry have been arrested and taken in custody. Astronomical amount of cash, documents, evidences both physical and electronic have been seized from the custody of the accused.

The investigation is in full swing and in the course of the same the officers are regularly collecting information in connection with the crime and taking necessary consequential steps. PMLA does not require grant of a prior opportunity of hearing

to a suspected accused. It is only in the course of investigation that the officers of ED will be able to ascertain as to whether the suspect will be required to be interrogated or not. The investigating officers usually act on the basis of the information that they derive from the accused person(s) or from their own sources and thereafter take a call as to how to proceed with the process of investigation.

There is hardly any scope to afford prior opportunity of hearing in a proceeding under PMLA. If the proposition of the applicants that, prior opportunity of hearing be afforded before starting the investigation is to be accepted by the Court, then the investigating officers will never be able to conclude the investigation in a time bound manner. There may be several persons involved in an offence under the PMLA. It is for the investigating officer to decide as to who should be interrogated and when. It is not for the suspected/proposed accused or the accused to dictate terms upon the investigating officer as to how and in which manner the investigation should proceed.

The Hon'ble Supreme Court in the matter of Dinubhai Boghabhai Solanki (supra) reiterated the principle laid down by the Hon'ble Supreme Court in the matter of ***Union of India vs. W.N. Chadha reported in (1993) Supp (4) SCC 260: (1993) SCC (Cri) 1171*** wherein it was held that it would not be necessary to give an opportunity of hearing to the proposed accused as a matter of course. The Court cautioned that if prior notice and an opportunity of hearing have to be given in every criminal case before taking any action against the accused person, it would frustrate the entire objective of an effective adjudication. The same principle was reiterated by the Court in E. Sivakumar (supra).

The same principle was reiterated by this Court in the judgment dated 28th July, 2022 passed in MAT 922 of 2022 in ***Kushal Agarwal vs Mahindra Kumar Jain & Ors.*** wherein the Court held that the accused have no say as regards the manner and method of investigation and has no participation as a matter of right.

In Bharat Singh (supra) the Court was pleased to point out that there is a distinction between a pleading under the Code of Civil Procedure and a writ petition

or a counter affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in a counter affidavit not only the facts but also the evidence in proof of such fact have to be pleaded and annexed to it.

In the instant case the investigation conducted by the agencies is criminal in nature as held by the Hon'ble Supreme Court in ***Ram Kishan Fauji -vs- State of Haryana & Ors.*** reported in ***(2017) 5 SCC 533***. ED in its application clearly mentioned about the involvement of politically exposed persons who are trying to lodge complaints against the officers of ED in a desperate attempt to thwart the investigation process. The learned counsel representing ED specifically submitted that though the investigating officers were aware that there is involvement of politically exposed persons to stall the investigation process, but as the name(s) of such politically exposed persons were not readily available, accordingly, names of such persons could not be mentioned in the said application.

This Bench is of the view that the materials placed before the Hon'ble Judge taking up the matter were enough to pass the order under reference. The pleading and the information required for passing such direction were duly made available before the Court.

As regards the issue raised with regard to entertaining the application by the Court taking up primary education matters this Bench is of the opinion that the entire investigation is being monitored by the Court. The monitoring has the sanction of the Hon'ble Supreme Court. In the course of such investigation if an issue is raised by the investigating agencies or if the investigating officers are facing any difficulty or harassment in the process of investigation, recourse can certainly be availed of by approaching the Hon'ble Judge monitoring the investigation.

It is absolutely wrong to conceive that the proceeding will be monitored by a particular Hon'ble Judge and the investigating agency will be liable to approach a different Bench to pray for any relief which is in the aid of investigation. ED has submitted that efficacious remedy available before it was to approach the Hon'ble

Judge monitoring the investigation. This Bench is of the view that the Hon'ble Judge rightly took up the matter and passed necessary direction to facilitate the investigation process. Such act cannot be alleged to be taken without jurisdiction.

The ratio laid down in Sohan Lal Baid (supra) and Prakash Chand (supra) is the settled position of law and there can be no quarrel with the same. The relief sought for by ED in the application has a direct nexus with the investigation that the Hon'ble Judge was monitoring and, accordingly, it cannot be heard to contend that the Hon'ble judge did not have determination to hear the issue.

None of the decisions referred to by the applicants lay down the law that opportunity of hearing, prior to the investigation under PMLA, have to be afforded to an accused or a suspected accused.

AB has averred in the application that he is a respected person in the society and a law abiding citizen of India. Being a Member of the Parliament the applicant ought to know that all citizens of the country are required to cooperate with any investigation conducted by the competent officers in accordance with law. It can be that the applicant, holding such high and responsible post, may be in the know of information which may be required and helpful for proceeding further with the scam case that is being investigated by the investigating officers.

The principle of adherence to natural justice thereby meaning that opportunity of hearing is to be given to a person prior to summoning him to give evidence is not the same in all branches of law. The said principle has a different connotation in a proceeding involving civil consequences but has an absolute contrary implication in a criminal proceeding. Application of the principle of natural justice in connection with PMLA and the predicate offences is practically nil.

Summoning a person for interrogation in connection with a public scam of such humungous magnitude does not *ipso facto* imply that coercive step will be taken against him; neither does it suggest that he is an accused or a suspected accused. It is only when there is sufficient evidence of involvement of the said

person in the crime, that steps will be taken in accordance with law. But there is absolutely no requirement to hear a person prior to issuance of notice for appearing and deposing before the investigating officer. There is no application of the principle of natural justice requiring prior opportunity of hearing to be given to a person who may be required for investigating a crime.

There are enough safeguards in the Act itself where steps may be taken against the erring officers for vexatious searches. The offences under the PMLA are cognizable and non-bailable, subject to the conditions laid down. The Act has overriding effects and investigation under the Act is under exclusive jurisdiction and domain of ED. It is for the person who is charged with the offence of money laundering to disprove that he or she is not involved in the offence. Unless contrary is proved, presumption is that the accused is involved in money laundering.

Presumption of innocence is absent under the said Act. Anybody and everybody whose presence may be required by the investigating agencies are legally bound to cooperate with the investigation process. No matter how tall the person is, the law is always higher.

According to the provisions of PMLA, no prosecution, suit or other proceeding lie against the investigating officer for anything done or intended to be done in good faith under the Act. ED was apprehensive that the State police may take steps against the investigating officers in furtherance to the complaint lodged by the accused under custody. The Hon'ble Judge dealing with the matter, with a view to protect the investigating officers from malicious prosecution and harassment, passed necessary direction in the said order.

As allegation of bias of the Hon'ble Judge was made, the Hon'ble Supreme Court was pleased to direct assignment of the matter to a different Judge only to dispel all doubts from the mind of the applicants that the Court was biased at the time of passing the order and also for upholding and maintaining the high dignity and majesty of this Court. From the discussions made herein above it is evidently

clear that there were overwhelming evidences before the Court which prompted the Hon'ble Judge to pass necessary direction in the order complained of.

In the instant case, the application for intervention and recalling has been filed by third parties not connected with the relief sought for in the writ petition. The applicants may be required for investigation purpose, but that does not mean that their presence will be necessary for adjudicating the writ proceeding. Intervention/addition of the applicants will in no way aid in disposal of the writ petition. The applicants can always put forward their defence and avail remedies in law, if at all, they are aggrieved by any act of the investigating agencies.

PMLA is a special Act formulated to prevent money laundering and to provide for confiscation of property derived from, or involved in, money laundering and for matters connected therewith or incidental thereto. Under the Act, investigation includes all the proceedings conducted by the Director or by any authority authorized by the Central Government under the Act for collection of evidence. The adjudicating authorities under the Act consist of persons having experience in the field of law, administration, finance or accountancy.

The members of the adjudicating authority have wide power to implement the provisions of the Act. The authority has the power to enforce attendance of any person, compel production of records, receive evidence of affidavits and every proceeding is to be deemed to be judicial proceeding within the meaning of the Indian Penal Code.

The members of ED are experienced enough to handle threats/harassments similar to the nature of complaint as lodged by KG, the accused in custody. The Court would like to believe that the investigating officers would be able to tackle all or any complaint filed by or on behalf of an accused, co-accused or proposed/suspected accused with the sole intention to dislodge the ongoing investigation process. The Court firmly believes that the investigating officers would neither be browbeaten nor cowed down by the adamant and over-powering attitude of the accused, co-accused, suspected or proposed accused.

The figures of the scam as unearthed till date make it crystal clear that several high level, influential politically exposed persons are involved in the crime. Scam of such enormous scale involving crores and crores of money could not have been possible without the tutelage and blessings of the persons in power. The proceeds of crime have penetrated through several strata and have exchanged numerous hands. In such type of cases it is not unusual that threats and challenges will be there in practically each and every step. It is for the investigating officers to overcome the hurdle and unravel the truth to punish the offenders. The powers of the investigating officers to summon are not restricted to any particular person and the said power to investigate is to be utilized effectively to reach the goal. The investigating officers will be failing in their duties if they recede from the investigation process out of fear or otherwise; which in turn will give an impetus to the persons involved in the crime.

Being aggrieved by the order passed by the Court on 13th April, 2023 the applicants already preferred appeal before the Hon'ble Supreme Court. After hearing all the parties, the Hon'ble Supreme Court was pleased to dispose of the Special Leave Petition without interfering with the order passed by the Hon'ble Court. Had the Hon'ble Supreme Court intended to grant any leave to the applicants to re-agitate the issue before the High Court, the same would have been specifically mentioned in the manner as has been done by the same Bench on the same date in the same matter in Special Leave Petition filed by the State of West Bengal in Petition for Special Leave to Appeal (C) No. 8706/2023.

On a perusal of the order dated 28th April, 2023 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary Nos. 15883/2023 and 15883/2023 it is plainly clear that no leave was granted by the Hon'ble Supreme Court to re-agitate or reopen the issue all over again. The moment the SLP stood disposed without any direction upon the High Court to revisit the issue which was already there before the Hon'ble Supreme Court, the order appealed against stood affirmed and the same becomes a closed chapter. Any issue subsequent to the order passed by the Hon'ble Supreme Court can be brought to the knowledge of the High

Court by filing interlocutory application. Only to dispel the doubt of bias of the Hon'ble Judge, the Hon'ble Supreme Court was pleased to direct reassignment of the matter. This Bench is of the opinion that the applications for recalling will be barred by the principles of constructive *res judicata*.

'All applications' as indicated in the order of the Hon'ble Supreme Court has to be necessarily interpreted as applications on issues not decided by the Court. The same cannot be read as application with issues already adjudicated and decided by the Court. If the former interpretation is to be accepted, then there will be no end to a dispute and there will be a possibility of the losing party approaching the Court to reargue and re-agitate the issue all over again. Finality of an issue can never be reached. The same is contrary to the principle of *res judicata*.

It appears from the prayers made in the applications that recalling has been sought only for the portion of the order where direction has been passed for causing investigation of the involvement of the applicants. The applicants do not appear to be bothered by the investigation *per se*. It is only where direction has been passed to investigate their involvement, that the applicants oppose the same.

The conduct of the applicants in resisting investigation casts a cloud on the bona fide of the applicants in filing the present application. AB being in the top rung of the ruling political party ought not to shy away from the investigation process. On the contrary, the applicants and particularly AB is trying tooth and nail to oppose such investigation. The proper approach would be to put oneself to the test and come out clean instead of avoiding or running away from the entire process. The State machinery, especially the police, also appear to back the accused. The hyper activism of the Superintendent of the Presidency Correctional Home is also worth noticing. The lightning speed in which the Superintendent acted on receipt of the complaint of KG is clear proof of his faithfulness to the State.

KG is already in jail custody and will be dealt with appropriately in accordance with law. At this stage, it does not appear that any of the rights of the

applicants have been infringed in any manner requiring interference by the Court either by the act of the respondents or by the order passed by the Court.

Learned counsel representing ED, while referring to the complaint lodged by KG, has specifically pointed out that the complaint in question is neither in proper form nor in accordance with the provision of the Jail Code. The Superintendent of the Correctional Home was extra vigilant and forwarded the complaint to the Officer-in-Charge, Hastings police station with utmost promptness. At this stage the Court is not expressing any opinion with regard to the legality or correctness of the said complaint. The same will be taken note of at a subsequent stage, if occasion so arises.

The act of the applicants in pressing the instant applications raises doubt in the mind of the Court that the same have been filed with mala fide intention to deter the investigating officers to follow through the process of investigation which has already opened up a box of worms with more to follow suit. The idea is to delay the entire process to the extent possible so that the real culprits can remain shielded. In fact, on account of filing the applications neither the ED nor the CBI appear to have proceeded any further.

The notice under 160 CrPC issued in favour of AB is yet to be acted upon even though there is no order restraining the investigating authority to proceed with the same. The applicants have indeed been successful in interrupting the investigation to a great extent. It is high time that the investigation process be brought back to the right track and proceeded in the right earnest so that the same reaches its logical conclusion at the earliest.

If the trend to delay the main investigation and intimidate the investigating officers is not dealt with appropriately at the very first stage, then the same will develop as a style and very many investigations in future may be held up for the same reasons. Such a move must be stubbed with an iron hand and upon imposition of exemplary costs so that the same has a deterring effect and similar offenders will be compelled to think a multiple time before adopting such a stand.

In view of the discussions made herein above no relief can be granted to the applicants. The applications being CAN 3 of 2023, CAN 4 of 2023, CAN 5 of 2023 and CAN 6 of 2023 fails and are hereby dismissed with costs assessed at rupees fifty lac, out of which twenty five lac will be deposited by KG in favour of the State Legal Services Authority and the balance twenty five lac will be deposited by AB in favour of the High Court Legal Services Authority within 31st July, 2023.

List the matters on 9th June, 2023 under the heading 'to be mentioned' to ascertain compliance of payment of costs.

Urgent certified photocopy of this judgment, if applied for, be supplied to the parties or their advocates on record expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)