

Search And Seizure Does Not Give Jurisdiction To Court To Order Return Of Articles When Investigation Is Held In A Different Place: Madras High Court

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

P.N. PRAKASH; J., RMT. TEEKAA RAMAN; J.

W.P.No.28848 of 2022 AND C.M.P.No.28142 of 2022; 03.11.2022

Ramesh Dugar versus Deputy Director; Enforcement Directorate

For Petitioner: Mr.G.Vijay Anand

For Respondents: Mr.N.Ramesh, Special Public Prosecutor (Enforcement Directorate)

ORDER

P.N. PRAKASH, J.

The facts that gave rise to the issuance of the impugned proceedings has been set out in the proceedings dated 14.09.2022 of the Adjudicating Authority under Section 8(1) of the Prevention of Money-Laundering Act, 2002 (in short “the PML Act”):

“1. The Deputy Director, Delhi has filed an Application, received by this Authority on 01.09.2022 under Section 17(4) of PMLA in the matter of Mr.Ramesh Dugar for retention of digital devices, documents/records seized during searches conducted on 05.08.2022.

2. Central Bureau of Investigation (AC-II), New Delhi registered an FIR No.RC2202022E006 dated 14.05.2022 under Section 120(B) of IPC and Section 8 & 9 of PC Act, 1988 against the following accused persons for Criminal Conspiracy, Cheating, Criminal Misconduct by public servant & abuse of official position by public servant:

- (a) Sh.S.Bhaskararaman
- (b) Sh.Karti P.Chidambaram
- (c) Sh.Vikas Makharia
- (d) M/s Talwandi Sabo Power Limited
- (e) M/s Bell Tools Limited
- (f) Unknown public servant(s) & private person(s)

3. It has been placed on record that M/s Talwandi Sabo Power Limited was in the process of establishing a 1980 MW thermal power plant at Mansa District of Punjab and the plant was being installed by Chinese Company, namely M/s Shangdong Electric Power Construction Corp (SEPCO) as an EPC contractor. During 2011, M/s TSPL was in need of more Project VISAs over and above the maximum permissible number of project VISAs for Chinese experts from SEPCO as the company was running behind its schedule in the installation of Power Plant translating into huge financial repercussions in term of penalty, interest on bank loans etc.

4. It has been further brought on record that Sh.Vikas Makharia, Associate Vice President of M/s Talwandi Sabo Power Limited (TSPL), approached Sh.Karti P. Chidambaram (son of P.Chidambaram, the then Home Minister, Govt. of India) through his associate Sh.S.Bhaskararaman in the year 2011 for getting approval on request letter dated 30.07.2011 submitted by TSPL in the Ministry of Home Affairs, Govt. of India (MHA) seeking permission to reuse VISAs issued for their Project at Mansa, Punjab. During the discussions, an illegal gratification of Rs.50 lakhs was demanded. Thereafter Sh.Vikas Makharia submitted the above said request letter dated 30.07.2011 to MHA (Foreigners Division) seeking permission to re-use the Project VISAs already issued to Company.

5. Further, Sh.Vikas Makharia assured Sh.Bhaskararaman that M/s TSPL was ready to pay the said illegal gratification demanded by him after discussion with concerned officials of the company. On 17.08.2011, Sh.Vikas Makharia on being directed by Sh.S.Bhaskararaman, sent a copy of the above said letter dated 30.07.2011 to him through email which was forwarded to Sh.Karti P. Chidambaram. Thereafter, TSPL was granted permission *vide* letter dated 30.08.2011 issued by MHA.

6. Further, it has been placed on record that that illegal gratification of Rs.50 Lakhs was paid by M/s TSPL through M/s Bell Tools Limited, Mumbai. M/s Bell Tools Limited, in connivance with the above said Sh.Vikas Makharia and Sh.S.Bhaskararaman, raised two false invoices of M/s.TSPL for Consultancy Services and for out-of-pocket expenses incurred for re-use of Project VISAs. M/s Bell Tools Limited had never been in such business/services. Payment against the said invoices was made by M/s TSPL to M/s Bell Tools Limited through cheque and then the said amount was paid in cash to Sh.S.Bhaskararaman.

7. Further, there has been constant e-mail communication between Sh.Vikas Makharia, Sh.S.Bhaskararaman and Sh.Karti P. Chidambaram *vide* email dated 02.09.2011. Sh.Vikas Makharia conveyed his thanks and attached permission letter dated 30.08.2011 issued by MHA (Foreigners Division) to Sh.S.Bhaskararaman which was duly forwarded to Sh.Karti P. Chidambaram. Accordingly, a criminal case was registered by the Directorate of Enforcement, Headquarters Office, New Delhi *vide* ECIR No.ECIR/HIU-I/09/2022 dated 25.05.2022.

8. It has been further brought on record that Mr.Ramesh Dugar was one of the directors of Dugar Housing Limited and of other companies of Dugar Group during the year 2011-12 along with Mr.Padam Dugar and was involved in day-to-day functioning/decisions of the group. Advantage Strategic Consulting Private Limited, a company controlled by Karti P.Chidambaram, had entered into partnership deed with M/s Dugar Properties Private Limited and formed a partnership firm namely M/s Dugar MME Properties along with other partners. ASCPL had further entered into Memorandum of Understanding with Dugar Housing Limited for development of a real estate project during February, 2011. The documents recovered from seized digital records during the Aircel Maxis FEMA search contain details of cash transactions between ASCPL and Dugar Group during the close proximity of above said approval and receipt of illegal gratification by Shri S.Bhaskararaman.

9. It has been revealed that M/s ASCPL had entered into cash transactions with Dugar Group Companies during the close proximity of exchange of illegal gratification of Rs.50 lakhs between TSPL and Bhaskararaman.”

2. From a reading of the above, it is seen that the CBI, New Delhi had registered an FIR on 14.05.2022 for the offences under Section 120-B IPC and Sections 8 and 9 of the Prevention of Corruption Act, 1988, against some individuals and companies, for certain acts of omissions and commissions by them.

3. The sum and substance of the allegation is that an amount of Rs.50,00,000/- appears to have been given as bribe by M/s.Talwandi Sabo Power Limited (M/s.TSPL) to a public servant by name S.Bhaskararaman. Since the CBI's FIR disclosed the commission of a scheduled offence under the PML Act, the Enforcement Directorate, New Delhi, registered a case in ECIR No.ECIR/HIU-I/09/2022 on 25.05.2022 and has taken up investigation under the PML Act.

4. Pursuant to the above, the Enforcement Directorate conducted search of the premises of Ramesh Dugar (petitioner) on 05.08.2022 and has seized certain materials, including records and digital devices. Under Section 17(4) of the PML Act, the officers of the Enforcement Directorate cannot retain the seized materials beyond a period of 30 days and therefore, they are required to file an application to the Adjudicating Authority, requesting him to permit them to retain the seized materials for the purpose of investigation. Accordingly, the Enforcement Directorate filed an application. On receipt of such an application, the Adjudicating Authority is required to act under Section 8(2) and 8(3) of the PML Act, in that, he is required to issue summons to the person from whom the materials were seized, call for his reply and thereafter, pass an order in terms of Section 8(3), either handing over those properties back to the person or permitting the officers of the Enforcement Directorate to retain the seized materials.

5. If a person is aggrieved by the order of the Adjudicating Authority under Section 8(3), he could approach the Appellate Tribunal under Section 26 of the PML Act. Even thereafter, an appeal remedy is provided to the High Court under Section 42 of the PML Act. In this case, admittedly, the petitioner has also given a reply statement to the show cause notice to the Adjudicating Authority and the same is under consideration.

6. That apart, we find that the predicate offence has been registered by the CBI, New Delhi, pursuant to which, the Enforcement Directorate, New Delhi has registered the present case. In this writ petition, it is urged by the petitioner that the impugned proceedings suffer from lack of jurisdiction inasmuch as, under Section 17(1), the Deputy Director can conduct search and seizure only on the authorization of the Director and not on his own accord. In support of this contention, the learned counsel placed strong reliance on paragraph 312 of the judgment of the Supreme Court in [Vijay Madanlal Choudhary and others vs. Union of India and others](#) [2022 SCC OnLine SC 929].

7. When we raised the question of the very maintainability of this writ petition before the Madras High Court in view of the fact that the impugned proceedings are pending on the file of the Enforcement Directorate, New Delhi, Mr. Vijay Anand, learned counsel placed strong reliance on the following two judgments :

- i. Nawal Kishore Sharma Vs. Union of India and Others (2014)9 SCC 329; and
- ii. Rajendran Chingaravelu Vs. R.K.Mishra, Addl. Commissioner of Income Tax and Others (2010)1 SCC 457.

8. Mr. Vijay Anand contended that the seizure of the items were done by the Enforcement Directorate from the premises of the petitioner in Chennai and therefore, the Madras High Court would have the territorial jurisdiction to entertain this writ petition. Further, the learned counsel took us through Article 226(2) of the Constitution of India and submitted that where a part of the cause of action arises, the High Court within whose jurisdiction the said part had arisen, would have the territorial jurisdiction.

9. We are afraid that in the facts and circumstances of this case, seizure and recovery of the articles from the premises of the petitioner in Chennai, cannot confer jurisdiction on this Court because, the investigation by the CBI as well by the Enforcement Directorate is being held at New Delhi and the search and seizure is the effect of the investigation and not the cause of the investigation.

10. At the risk of repetition, Rs.50,00,000/- appears to have been the bribe amount, which is said to have been generated from the criminal activity, for which the CBI, New Delhi has registered the FIR as stated above. Now, the Enforcement Directorate, New Delhi is on the trail of the sum of Rs.50,00,000/- and preliminary enquiries revealed that when the said sum of Rs.50,00,000/- was transacted between M/s.TSPL and Bhaskararaman. certain financial dealings appear to have happened between ASCPL and Dugar group of companies.

In such view of the matter, we are afraid that this Court does not have the territorial jurisdiction to entertain this writ petition and therefore, without going into the merits of the case, this writ petition stands dismissed with liberty to the petitioner to work out his remedies in the manner known to law before the appropriate forum. No costs. Connected Miscellaneous Petition stands closed.