

2022 LiveLaw (SC) 867

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ANIRUDDHA BOSE; J., VIKRAM NATH; J.**

20th October 2022

DR. MANIK BHATTACHARYA *versus* RAMESH MALIK AND OTHERS

Summary: - Protective order passed against one investigating agency cannot operate against another investigating agency even if there are factual similarities in allegations- Interim protection granted against coercive action by the CBI cannot operate against ED.

Prevention of Money Laundering Act 2002 - While testing the legality of an arrest made by an agency otherwise empowered to take into custody a person against whom such agency considers subsistence of prima facie evidence of money laundering, we do not think a general protective order directed at another investigating agency could have insulated the petitioner from any coercive action in another proceeding stated by a different agency, even if there are factual similarities vis-à-vis the allegations.

(Para 7)

Prevention of Money Laundering Act 2002 - Money laundering is an independent offence. *(Para 7)*

INTERLOCUTORY APPLICATION NO.154274 OF 2022 AND INTERLOCUTORY APPLICATION NO.154275 OF 2022 IN SLP (CIVIL) NO(S). 16325-16326 OF 2022

(Arising out of impugned final judgment and order dated 02-09-2022 in MAT No. 957/2022 02-09-2022 in MAT No. 993/2022 passed by the High Court At Calcutta)

For Petitioner(s) Mr. Mukul Rohatgi, Sr. Adv. Mr. Parthiv K. Goswami, Sr. Adv. Ms. Diksha Rai, AOR Mr. Kumarpal Chopra, Adv. Mr. Gowtham Kumar, Adv. Ms. Jaikirti S. Jadeja, Adv.

For Respondent(s) Mr. Rauf Rahim, AOR Mr. Mahesh Jethmalani, Sr. Adv. Ms. Sonia Mathur, Sr. Adv. Mr. Kabir Shankar Bose, Adv. Mr. Amit Kumar Mishra, Adv. Mr. Surjendu Sankar Das, AOR Mr. Ravi Sharma, Adv. Ms. Annie Mittal, Adv. Mr. Ajay Awasthi, Adv. Ms. Mugdha Pande, Adv. Mr. Wedo Khalo, Adv. Ms. Anjani Kumar Rai, Adv. Mr. Abhijeet, Adv. Mr. Simarjeet Singh Sluja, Adv. Ms. Pratiksha Mishra, Adv. Mr. Nikhi Chandra Jaiswal, Adv. 2 Mr. Divik Mathur, Adv. Mr. Surjendur Sankar Das, Adv. Ms. Astha Sharma, AOR Mr. Ravinder Singh, Adv. Ms. Raveesha Gupta, Adv. Mr. Shreyas Awasthi, Adv. Ms. Deeksha Agrawal, Adv. Mr. Kunal Chatterji, AOR Ms. Maitrayee Banerjee, Adv. Mr. Rohit Bansal, Adv. Mr. Joydeep Mazumdar, Adv. Mr. Vikas Kumar, Adv. Ms. Shalini Kaul, AOR

ORDER

1. These two applications have been taken out by the petitioner in connection with Special Leave Petition (Civil) Nos. 16325-16326 of 2022. In these Special Leave Petitions, the petitioner has questioned legality of an order of a Division Bench of the High Court at Calcutta sustaining a series of orders passed by a Single Judge on 13th, 15th, 17th, 20th and 21st June 2022 in two Writ petitions, registered as 9979 of 2022 and 7097 of 2019. The controversy relates to allegations of illegalities in recruitment of primary school teachers through the Teachers Eligibility Test, 2014. In these orders several directions were given against the petitioner herein, including directing the Central Bureau of Investigation (CBI) to start interrogation of the petitioner and in the event the petitioner (and certain other persons) did not cooperate with the CBI was given the liberty to interrogate them after taking them into custody. This set of orders passed between 13th June 2022 and 21st June 2022 were carried in appeal by the petitioner as well as other authorities before a Division Bench of the High Court. The Division Bench, in substance, sustained these orders.

2. When the Petitions for Special Leave to Appeal was heard by this Court on 27th September 2022, notice was issued and in the SLPs in connection with which these IAs have been taken out, it was directed that no coercive steps shall be taken against the petitioner till 28th September 2022. This protection has subsequently been continued.

3. Learned Counsel for the petitioner had mentioned before us on 12th October 2022 that the petitioner was arrested on 10th October 2022 by the Enforcement Directorate. These two IAs were filed on 12th October 2022 itself, being I.A. No.154274 of 2022 for impleading the Directorate of Enforcement as a party respondent to the present Special Leave Petitions and I.A. No.154275 of 2022 for declaring the arrest of the petitioner as illegal. Such arrest was made by the Enforcement Directorate on the basis of Enforcement Case Information Report under No. KLZ0-II/19/2022 (ECIR).

4. We heard the above two applications on 18th October 2022. Mr. Mukul Rohtagi, learned Senior Counsel for the petitioner argued that when the latter was under the protective cover of the order passed by this Court, his arrest by the Enforcement Directorate was illegal, being in violation of that Order of this Court. His submission has been that the protection granted by this Court was in relation to a particular offence and the Enforcement Directorate had arrested him in relation to the same offence, which was unwarranted.

5. Mr. Tushar Mehta, learned Solicitor General appeared in these matters on behalf of the Enforcement Directorate and his submission is that in the Writ Petitions, out of which the present proceedings arise, Enforcement Directorate was not a party. The Order of this Court, giving interim protection to the petitioner from coercive steps, was based in the backdrop of the direction of the Single Judge issued on CBI to investigate into the allegations of irregularities pertaining to the recruitment of primary teachers and observations of the Single Judge that CBI could interrogate the petitioner and also arrest him in case of his non-cooperation. His case is that the Enforcement Directorate had initiated an independent investigation into money-laundering allegations based on the aforesaid ECIR against one Chandan Mondal @ Ranjan and unknown office bearers of the West Bengal Board of Primary Education and others.

6. In an affidavit filed on behalf of the Enforcement Directorate affirmed by one Devranjan Mishra on 17th October 2022, a copy of the remand application of the Enforcement Directorate has been annexed. We find in this application, there is broad reference to the allegations which are being investigated by the CBI. Enforcement Directorate's case, however, is that various incriminating documents were seized during the course of the search conducted at the premises of the petitioner and evidence has surfaced as regards the role of the petitioner in money-laundering activities and proceeds of crime.

7. We cannot hold the arrest of the petitioner by the Enforcement Directorate illegal as the issue of money-laundering or there being proceeds of crime had not surfaced before the Single Judge or the Division Bench of the High Court. Before us, however, it had been brought to our notice by Mr. Rohatgi in course of hearing on the question of interim order passed in the instant special leave petitions, that the petitioner had been cooperating with investigation by the Enforcement Directorate and the CBI. While testing the legality of an arrest made by an agency otherwise empowered to take into custody a person against whom such agency considers subsistence of prima facie evidence of money-laundering, we do not think a general protective order directed at another investigating agency could have insulated the petitioner from any coercive action in another proceeding started by a different agency, even if there are factual similarities vis-a-vis the allegations. Under The Prevention of Money-Laundering Act, 2002 ("2002 Act"), money- laundering is an independent offence

and in the event there is any allegation of the Enforcement Directorate having acted beyond jurisdiction or their act of arrest is not authorized by law, the petitioner would be entitled to apply before the appropriate Court of law independently. But that question could not be examined in a Special Leave Petition arising from the proceedings in which the question of Money Laundering were not involved.

8. In the present Special Leave Petitions, having regard of this scope and nature of the proceedings, we are not inclined to go into the legality of the question of invoking the provisions of the 2002 Act in arresting the petitioner. We are also satisfied that the order restraining coercive action being taken against the petitioner passed by us on 27th September 2022, which we have still directed to continue, did not operate to prevent the Enforcement Directorate from carrying on with their investigation into the allegations under the 2002 Act.

9. For the reasons that we have stated above, we are not inclined to add the Enforcement Directorate as a party in the present petitions. The grievance of the petitioner against the Enforcement Directorate would have to be ventilated independently before the appropriate forum. We do not accept the argument of the petitioner that his arrest was illegal because of the interim order passed by us. We make it clear that we have not delved into the question of legality of the petitioner's arrest or initiation of proceeding against him under the 2002 Act.

10. Both the applications shall accordingly stand dismissed, without any order as to costs.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)