

AJAY KUMAR KUJAR
Special Judge (PC Act) CBI-09
Court No. 502, Fifth Floor
Rouse Avenue Court Complex
New Delhi

IN THE COURT OF SH. AJAY KUMAR KUJAR, ADDITIONAL
SESSIONS JUDGE / SPECIAL JUDGE (PC ACT), CBI-09,
ROUSE AVENUE COURT COMPLEX, NEW DELHI

ECIR No.7/HIU/2017

ED vs. P. Chidambaram & Anr.

15.10.2019

ORDER

1. By this order, I shall deal with the application of DoE for arrest of the accused Sh. P. Chidambaram in ECIR No.7/HIU/2017 and another application under Section 167 Cr.PC. I shall also deal with the application which has been moved on behalf of accused Sh. P. Chidambaram for cancellation of production warrant.

2. I have heard the learned Solicitor General Sh. Tushar Mehta and Sh. Kapil Sibal, learned Senior Advocate appearing for the accused.

3. The accused was produced on 14.10.2019 on the basis of production warrant issued by this court on the application of DoE under Section 267 Cr.PC r/w Section 65 of PML Act, 2002. It was stated in the said application that the accused Sh. P. Chidambaram is in judicial custody in FIR No.RC2202017 E 0011.

4. After hearing the submissions, this court vide order dated 11.10.2019 had directed to issue production warrant against accused Sh. P Chidambaram for 14.10.2019. The accused Sh. P. Chidambaram



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has moved an application for cancellation of this production warrant. I consider it appropriate to deal first with this application.

5. In this application, it is stated that the production warrant issued on 11.10.2019 for seeking production of the accused for the purposes of his arrest and remand for investigation is illegal and contrary to the law laid down by the Hon'ble Delhi High Court in the case of Harshad S Mehta vs. CBI, ILR 1993 1 Delhi and also contrary to the rules laid down in Chapter-I, Part-C (ii) (1) of Part-E, Volume-III Delhi High Court Rules. It was submitted by the learned counsel that since the production warrant is itself is bad in law any subsequent proceedings thereto would also be bad in law. It was argued that the court cannot seek production of accused under Section 267 Cr.PC in aid of investigation. He referred to the judgment in Harshad S Mehta (supra) case and submitted that court can exercise power under Section 267 Cr.PC only for the purpose of asking the accused an answer to the Charge, in enquiry or trial or "in the proceedings" pending before it or for giving evidence as a witness.

6. On the contrary, the learned Solicitor General has relied upon the judgment in CBI vs Anupam J Kulkarni, 1992 3 SCC 141 and judgment passed in Pradeep Ram vs State of Jarkhand & Anr., Cri. Appeal No.816/817/2019. It was submitted that in the case of Anupam J Kulkarni (supra) the Hon'ble Supreme court has held that even if an accused is in judicial custody in connection with the investigation of



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the earlier case, he can formally be arrested regarding his involvement in different case. He referred to Pradeep Ram (supra) case wherein Section 267 Cr.PC as such was not under consideration but an accused was produced before the court pursuant to the production warrant issued by Special Judge and remanded to custody. The Hon'ble Supreme Court observed as under:-

“Coming back to the present case, the appellant was already into jail custody with regard to another case and the Investigating Agency applied before the Special Judge, NIA Court to grant production warrant to produce the accused before the court. The Special Judge having accepted the prayer for grant of production warrant, the accused was produced before the court on 26.6.2018 and remanded to custody.

.....

We thus do not find any error in the procedure which was adopted by the Special Judge, NIA Court with regard to production of appellant before the court.”

7. In this regard, after having considered the submissions of the learned counsels, I have come across a judgment passed by Full Bench of the Hon'ble Rajasthan High Court titled as State of Rajasthan vs Santosh Yadav, 2005 Criminal Law Journal, 1830 wherein by placing reliance on the judgment in CBI vs Anupam J Kulkarni (supra) and State vs Dawood Ibrahim (2000) 10 SCC 438, the Hon'ble Full Bench distinguished the Single Bench Judgment of Harshad S Mehta (supra) and observed as under:-

“The police can seek permission to remove an accused

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from judicial custody to police custody for completion of investigation in another case and for this purpose production warrant under Section 267 Cr.PC can be issued. The expression 'other proceedings' used in Section 267 (1) Cr.PC and 'for the purpose of any proceedings' occurring in Section 267 (1) (a) Cr.PC would include investigation as defined under Section 2 (h) Cr.PC."

8. In the case of Anupam J Kulkarni (supra), the Hon'ble Supreme Court also held that when a person is in judicial custody in another case, his formal arrest in the second case is permissible. It was also observed that the procedural law is meant to further the ends of the justice and not to frustrate the same.

9. The prayer made in this application by the accused Sh. P. Chidambaram for cancellation or recall of production warrant issued by this court on 11.10.2019 thus cannot be allowed for two reasons; firstly, the production warrant were issued by this court being the jurisdiction court of the case in which he was in custody and secondly, under the Criminal Procedure Code the Courts exercising criminal jurisdiction have no power to recall any order passed by it. Thus, the remedy against the order dated 11.10.2019 available with the accused was to challenge it in superior court.

APPLICATION OF DoE FOR ARREST.

10. It was submitted by the learned counsel for the accused that accused cannot be arrested in DoE case. His argument is that accused has been in police custody in CBI case i.e. RC No.2202017 E 0011

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and has been thoroughly interrogated. The money involved in the said CBI case is the proceeds of crime. In case PML Act, 2002, also the investigating is qua the proceeds of crime and therefore, the transaction in both the cases is same. He referred to the judgment in CBI vs Anupam J Kulkarni (supra) and submitted that remand period cannot be extended with regard to another offence committed by an accused in the same case. The learned SG also relied upon the same judgment and submitted that the investigation in CBI case is different from the investigation in the case under PML Act, 2002.

11. The relevant portion in the judgment of Anupam J Kulkarni case will clarify the situation;

“If during the investigation his complicity in more serious offences during the same occurrence is disclosed that does not authorise the police to ask for police custody for a further period after the expiry of the first fifteen day. If that is permitted then the police can go on adding some offence or the other of a serious nature at various stages and seek further detention in police custody repeatedly, this would defeat the very object underlying Section 167. However, we must clarify that this limitation shall not apply to a different occurrence in which complicity of the arrested accused is disclosed. That would be a different transaction and if an accused is in judicial custody in connection with one case and to enable the police to complete their investigation of the other case they can require his detention in police custody for the purpose of associating him with the investigation of the other case. In such a situation he must be formally arrested in connection with other case



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and then obtain the order of the Magistrate for detention in police custody”.

12. Thus, it is clear that custody of an accused cannot be extended in case of addition of a serious offence which was committed in the same transaction in the same case. However, such bar will not be applicable when the investigation and custody of an accused is required in some other case.

13. Learned counsel for accused submitted that if one go through the FIR of CBI and ECIR registered by the DoE, the contents thereof would be found same. He submitted that it would show that transaction is same and the investigation is also with regard to 'proceeds of crime'. Therefore, further demand for an offence arising out of the same transaction cannot be granted. The learned SG on the other hand submitted that the offence under PML Act is different, distinct and stand alone offence. He refers to the judgment of the Hon'ble Supreme Court in Sh. P. Chindambaram vs Directorate of Enforcement, Criminal Appeal No.7523/2019 and the judgment in the case of Sachin Narayan vs Income Tax Department, Writ Petition No.5299/2019 (Karnataka High Court).

14. Although, proceedings under PML Act, 2002 presuppose the existence of predicate offence i.e. the schedule offence but the field of investigation would vary in both the cases. In the present case, the CBI is investigating the transaction whereby accused allegedly got

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money illegally. The scope of investigation under PML Act would be its laundering by way of its 'placement', 'layering' and 'integration'. So the offence under PML Act and the investigation there under would be distinct and different although to initiate an investigation under PML Act, a predicate offence under some other penal laws would be necessary. The arrest of an accused in a predicate offence and interrogation thereunder would have no effect on the provisions of PML Act qua interrogation and arrest of an accused under Section 19 of PML Act, 2002, provided there are reason to believe on the basis of the material available that any person is guilty of an offence under PML Act.

15. The learned counsel for accused argued that under Section 19 of PML Act no permission is required from the court to arrest so there is no occasion to move any such application before the court. Section 19 of PML Act provides that a person can be arrested if there are reason to believe on the basis of the material available that any person is guilty of an offence under PML Act. No doubt when the investigating agency has sufficient material in his possession qua any person for commission of an offence under PML Act he can be arrested without any interference or assistance from the court. However, when such person is in custody of the court in some other case, then permission would be required to interrogate such person from the said court. Such interrogation with the permission of the court may result in arrest of



the accused in the case if the circumstances so justify.

16. The DoE in this case had moved the application seeking production warrant of the accused as he was in custody in RC No.2202017 E 0011 being investigated by CBI for the predicate offence. The DoE cannot interrogate accused without the permission of the court he being in custody of this court. The application therefore sought for his production in the court for the purpose of arrest and remand.

17. Therefore, in these circumstances, the DoE can seek the permission to interrogate the accused and then if the grounds specified in Section 19 of PML Act are made out, arrest the accused.

18. Accordingly, the application for arrest of accused is being treated as an application for interrogation of accused in ECIR No.7/HIU/2017 and is allowed accordingly.

19. So far as the application under Section 167 Cr.PC is concerned, it would be considered only if the accused is arrested by the DoE under Section 19 of PML Act, 2002. This application is premature at this stage, as such, no order is passed on this application.



**Announced in the open court
on 15.10.2019**

—sd/—
(AJAY KUMAR KUCHAR)
ASJ/Special Judge (PC Act), CBI-09
RACC, New Delhi : 15.10.2019 (SR)
AJAY KUMAR KUCHAR
Special Judge (PC Act) CBI-09)
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Present:

Sh. Tushar Mehta, Learned Solicitor General alongwith
Sh. Amit Mahajan, Learned CGSC, Sh. N. K. Matta, Learned
SPP, Sh. Rajat Nair, Learned Advocate, learned SPP,
Sh. Kanu Aggarwal, learned SPP, Sh. Mahesh Gupta,
DD (ED) and Sh. Sandeep Thapliyal, AD (ED).

Sh. Palaniappan Chidambaram produced in JC on production
warrants with Sh. Kapil Sibal, Learned Senior Advocate,
Sh. Arshdeep Singh, Sh. Kunal Vajani, Sh. Amit Bhandari,
Sh. Hitesh Rai, Sh. Akshat Gupta, Sh. Aman Brar and
Sh. Ayush Agarwal, learned counsels for accused.

Vide separate order, the application seeking recalling of
production warrant on 11.10.2019 moved by accused is dismissed.

Application for arrest of accused moved by DoE is being
treated as an application for interrogation of accused in ECIR
No.7/HIU/2017 and is allowed accordingly.

So far as the application under Section 167 Cr.PC is
concerned, it would be considered only if the accused is arrested by the
DoE under Section 19 of PML Act, 2002. This application is premature at
this stage, as such, no order is passed on this application.

Since the interrogation of the accused in ECIR has been
allowed by this court, the learned SG submitted that some time may be
given for interrogation of the accused by the Investigating Officer. The
court premises was not considered conducive for the interrogation of the
accused Sh. P. Chidambaram, the court therefore, gave an option to the
Investigating Officer to interrogate the accused in prison where he is in JC



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in RC No.2202017 E 0011. The learned SG has agreed so the learned counsel for the accused.

Accordingly, it is directed as under:-

- i) That the accused may be interrogated by the Investigating Officer in Central Jail, Tihar on 16.10.2019 after 08.30 am who is in JC in RC No.2202017 E 0011 in Central Jail No.7.
- ii) DoE Officers namely Sh. Mahesh Gupta, DD (ED), Sh. Sandeep Thapliyal, AD (ED) and Sh. Dainik Jain, AEO shall be permitted by the Supdt. of Jail, Tihar to visit Central Jail to interrogate the accused.
- iii) Supdt. of Jail shall make necessary arrangement and secured place for the interrogation of the accused in the Central Jail.
- iv) Supdt. of Jail shall allow the aforesaid Investigating Officers of DoE to carry with them stationery, pen, papers, books.
- v) Interrogation of the accused in JC shall be as per the rules of Jail Manual.
- vi) Supdt. of Jail shall ensure the compliance of the rules.

With these directions, the applications are disposed off accordingly.

Copy of the order be given dasti to the parties, if so requested.

A copy of the order be sent to the Jail Supdt. for necessary compliance.



— Sd/ —
(AJAY KUMAR KUCHAR)
ASJ/Special Judge (PC Act), CBI-09
RACC, New Delhi : 15.10.2019 (SR)

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