



HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

S.B. Criminal Writ Petition No. 355/2022

Bhanwar Lal Vishnoi S/o Mukna Ram Vishnoi, Aged About 43
Years, R/o B-81 Arvind Nagar Air Force Area Jodhpur

----Petitioner

Versus

1. Enforcement Directorate, Ministry of Finance Department,
of Revenue Government of India through Its Assistant
Director 6th Floor Lok Nayak Bhawan Khan Market New
Delhi-110003

2. Assistant Director, Enforcement Directorate Ministry of
Finance Department of Revenue Government of India 2nd
Floor Jeevan Nidhi II LIC Building Bhawani Singh Road
Jaipur 302005

----Respondents

For Petitioner(s) : Mr. Sachin Saraswat
For Respondent(s) :

JUSTICE DINESH MEHTA
Order

14/10/2022

1. Instant petition preferred under Section 482 of the Code of Criminal Procedure (hereinafter referred to as 'the Code') lays challenge to summons dated 31.08.2022 issued by the Assistant Director, PMLA, Directorate of Enforcement, Ministry of Finance, Government of India, Jaipur under the provisions of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as "the Act of 2002").

2. Mr. Saraswat, learned counsel for the petitioner argued that the impugned summons (Annexure-3) issued by the respondent No.2 is per se illegal and contrary to the provisions of Section 50 of the Act of 2002 and the Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority,



Impounding and Custody of Records and the Period of Retention) Rules, 2005 (hereinafter referred to as 'the Rules of 2005').

3. Learned counsel invited Court's attention towards the provisions contained in Rule 11 of the Rules of 2005 and argued that Rule 11 stipulates that summons must be in the format prescribed in Form V and contain schedule or the reason for which the noticee has been called and the list of documents to be produced, whereas the impugned summons does not conform to the mandatory provisions and hence, liable to be quashed.

4. While arguing that pursuant to first summons issued to the petitioner, his brother has filed a detailed reply along with all the documents, learned counsel argued that issuance of second summons to the petitioner is arbitrary exercise of powers, the same, therefore, deserves to be quashed.

5. Heard.

6. On perusal of the impugned summons dated 31.08.2022, it reveals that the petitioner has been asked to appear before the Investigating Officer on 15.09.2022. At this juncture it will be important to reproduce relevant part of Section 50 the Act of 2002 and Rule 11 of the Rules of 2005:—

"50. Powers of authorities regarding summons, production of documents and to give evidence, etc.

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a banking company or



a financial institution or a company, and examining him on oath;

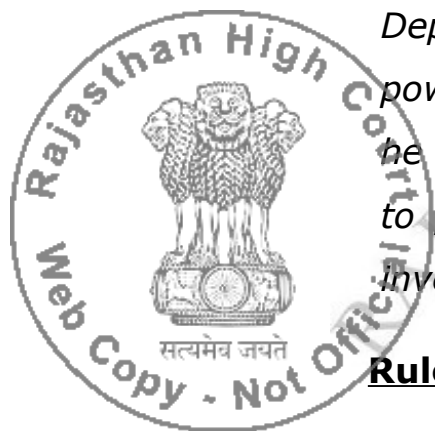
(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act."



Rule 11 of the Rules of 2005:-

11. Forms of records.-The summoning officer shall, while exercising powers under sub-section (2) and (3) of Section 50 of the Act, issue summons in Form V appended to these rules.

7. A conjoint reading of sub Section (1) (b) & (2) of Section 50 of the Act of 2002 makes it abundantly clear that it is wide enough to authorise and empower the Director or the Additional Director (as the case may be) to issue a summons to a person.

8. Mere fact that the reply has been filed and the requisite documents as required in first summons have been furnished, does not absolve the petitioner of his statutory obligation to honour the summons. Nor does it take away right of the authorised officer to call upon the petitioner to appear before him.

9. Petitioner's argument that the summons issued to the petitioner which does not append the schedule and list of documents is illegal, is preposterous. The Rule cannot be read



mechanically, if the respondent No.2 does not require production of any document or he proposes to examine the petitioner on oath, obviously, the schedule or list of documents becomes redundant and thus, in such contingencies, 'schedule part' of the Form V can be omitted.

10. In other words, when the authorised officer needs only petitioner's presence, it is not necessary to append the list of documents and the schedule.

11. Petitioner simply wants to avoid summons by way of taking hyper technical pleas, which too have no substance.

12. In view of the discussion foregoing, this Court does not find any illegality or infirmity in the impugned summons dated 31.08.2022 (Annexure-3). The writ petition, therefore, fails.

13. The stay application also stand disposed of.

(DINESH MEHTA),J

157-Arvind/-

