

CRM-M-24276-2022

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CRM-M-24276-2022  
Reserved on: 03.05.2024  
Pronounced on: 30.05.2024

Pirtpal Singh ...Petitioner

Versus

Directorate of Enforcement and others ...Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. D.S. Sobti, Advocate  
for the petitioner.

Mr. Shobit Phutela, Sr. Panel Counsel  
for respondents No.1 and 3.

Mr. Sunish Bindlish, Advocate with  
Ms. Sidhi Bansal, Advocate  
for respondent No.2.

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ANOOP CHITKARA, J.

|                            |             |
|----------------------------|-------------|
| ECIR No.                   | Dated       |
| 05/CDZO/2017/4868 to 4871  | 30 Nov 2017 |
| Complaint No. COMA/01/2020 | 12 Jun 2020 |

PREDICATE OFFENCE

| FIR  | Dated      | Police Station              | Sections                      |
|------|------------|-----------------------------|-------------------------------|
| 0118 | 11.10.2017 | Phase 11, SAS Nagar, Punjab | 472, 473, 384, 420, 120-B IPC |
| 0158 | 11.10.2017 | SAS Nagar, Punjab           | 30 of Arms Act                |

1. Seeking quashing of above captioned ECIR, complaint and all consequent proceedings, the petitioner has come up before this Court under Section 482 CrPC.
2. I have heard counsel for the parties and have gone through the record.
3. The arguments addressed by the parties and records referred to are being addressed and the relevant portions in the following discussions.
4. On 10.10.2017, the Enforcement Directorate officials, including one Assistant Director, searched the business and residential premises of the petitioner and petitioner’s company, namely M/s Seabird International Pvt. Ltd. under Section 37 of the Foreign exchange Management Act. It would be appropriate to refer to provisions of

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Sections 36 and 37 of Foreign Exchange Management Act, 1999, [FEMA], which read as follows: -

S. 36. [FEMA] Directorate of Enforcement.—

(1) The Central Government shall establish a Directorate of Enforcement with a Director and such other officers or class of officers as it thinks fit, who shall be called officers of Enforcement, for the purposes of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may authorise the Director of Enforcement or an Additional Director of Enforcement or a Special Director of Enforcement or a Deputy Director of Enforcement to appoint officers of Enforcement below the rank of an Assistant Director of Enforcement.

(3) Subject to such conditions and limitations as the Central Government may impose, an officer of Enforcement may exercise the powers and discharge the duties conferred or imposed on him under this Act. etc.—

S. 37. [FEMA] Power of search, seizure,

(1) The Director of Enforcement and other officers of Enforcement, not below the rank of an Assistant Director, shall take up for investigation the contravention referred to in section 13.

(2) Without prejudice to the provisions of sub-section (1), the Central Government may also, by notification, authorise any officer or class of officers in the Central Government, State Government or the Reserve Bank, not below the rank of an Under Secretary to the Government of India to investigate any contravention referred to in section 13.

(3) The officers referred to in sub-section (1) shall exercise the like powers which are conferred on income-tax authorities under the Income-tax Act, 1961 (43 of 1961) and shall exercise such powers, subject to such limitations laid down under that Act.

5. The searches were conducted based on reliable secret information received for a grave violation of the provisions of FEMA. As mentioned in para 3.2 of the above-captioned complaint, the Enforcement Directorate had received information that the petitioner and one Manoj Kumar were obtaining education visas for students, falsely claiming they had two colleges in Australia, namely Australian Adelaide International College and Durban International College. The petitioner and associates incorporated the company M/s Seabird International Pvt. Ltd. on 01.05.2015, and the other Directors were Gurinder Singh and Jagmohan Singh. The information revealed a serious violation of forex through RTGS payments. Acting swiftly, the officials, including respondent No.2, who was Assistant Director, searched the premises of the petitioner's company and

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recovered the documents, as mentioned in para no.3.2 of the complaint, which read as follows: -

- “i. 27 counterfeit Government Authorities seals, (Executive Magistrate of different Districts of Punjab, Tehsildars/Naib-Tehsildars of different Distt. Of Punjab, Ashoka Emblem seal, Registrar of Hindu Marriages)*
- ii. A seal of a doctor, Hospital, viz. Dr. Paramjeet Singh Kler, Kler Hospital*
- iii. Seals of Music Companies viz. Swag Music Pvt. Ltd.*
- iv. Seals of tour operators, viz. Taj Travels*
- v. Seals of different Banks viz. Punjab National bank, Oriental Bank of Commerce*
- vi. 595 number of blank FDR's (Fixed Deposit Receipts)*
- vii. 687 number of blank bank's letter head of Punjab National Bank*
- viii. Replica of handgun AG 9mm 0720994 of make Rohm Germany was also found from the residential premises of Shri Pritpal Singh*
- ix. Laptops, Hard disks, handwritten diaries mentioning the accounts of the firms, property related documents etc.”*

6. After that, the Enforcement Directorate officials recorded statement of petitioner under Section 37 of FEMA and the same has been referred in para no.3.3 of the complaint which reads as follows: -

*“3.3. That statement of Shri Pritpal Singh was recorded during the search proceedings under the section 37 of FEMA, 1999, wherein he has, inter-alia, stated that he started M/s Seabird Education, situated at sector-70, Mohali, in partnership with Shri Manoj Kumar in the year 2007 which was dealing with immigration related services in respect of students like education visa, etc.; that he established M/s Seabird International Pvt. Ltd. in partnership with Shri Gurinder Singh in the year 2013 & the business activity of the firm included education visa for students, etc.; that they could make out the possibility of a candidate getting the visa and if required makeup for the deficiency in the documents, in other words, in order to enhance the profile of the students applying for visas he admitted that he used to include some documentations which may not be true and present the same to the visa/admission granting authorities; that the commission being charged by M/s Seabird is about 20-25% of the total amount collected from them for the purpose of services provided; that*

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*after deducting their commission, they used to transfer money in the accounts of various forex companies, viz., M/s Paul Merchants, M/s Weizmann Forex, etc., which in turn used to remit these amounts to the colleges/universities abroad as fee for the students applying for the visa; that he did not have any other source of income besides the business of M/s Seabird International Pvt. Ltd; that the search was conducted in his and witnesses presence and some documents, laptops, cash etc were recovered during search from the premises as detailed in Panchnama dated 10.10.2017.”*

7. The Joint Director of Enforcement Directorate vide letter dated 10.10.2017 sent a written communication to the Senior Superintendent of Police, SAS Nagar Punjab, stating that there is a violation of the IPC and Arms Act. Subsequently, their counterparts of Punjab Police about such violations, based on such information, Punjab Police registered following two FIRs: -

| FIR  | Dated      | Police Station              | Sections                      |
|------|------------|-----------------------------|-------------------------------|
| 0118 | 11.10.2017 | Phase 11, SAS Nagar, Punjab | 472, 473, 384, 420, 120-B IPC |
| 0158 | 11.10.2017 | SAS Nagar, Punjab           | 30 of Arms Act                |

8. After the registration of the above captioned FIR, the Enforcement Directorate registered the above captioned ECIR on 30.11.2017 (Annexure P-11). A reference to ECIR mentions that it is based on two FIRs, i.e., FIR No.118 and 158. The petitioner has been mentioned as suspect No. 1. Subsequently, the Enforcement Directorate filed a complaint before the Special Judge, Mohali, under Sections 44 and 45 of the PMLA Act for the commission of offense punishable under section 3 read with Ss. 70 and 4 of the PMLA Act.

9. During the investigation, ED found proceeds of crime which are given in para no.3.5 of complaint which is reproduced below:-

*“3.5. During the investigation under PMLA, 2002, it was revealed various documents were fabricated by the directors of M/s Seabird International Pvt. Ltd. by the use of fake stamps of govt. authorities such as executive magistrate, tehsildars, banks and fake letter heads of Punjab National Bank which were then used for procurement of visas of the applicants/students who were not otherwise eligible for grant of such visas. The fabricated documents were forged in a way so as to make the ineligible applicants eligible for such grant of visa. By using this modus operandi, proceeds of crime of Rs.7,56,40,000/- was generated.*

4. Details of proceeds of crime attached/seized/frozen:

| S.No. | Description | Name of Owner | Linkage with the tainted money (in few words) |
|-------|-------------|---------------|-----------------------------------------------|
|-------|-------------|---------------|-----------------------------------------------|

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|    |                                                                                                                                                                                                                                             |                |                                                                                                                                                                                                                                                                                                |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1. | SCF 75, Phase X, Mohali (Valued Rs.2,10,00,000/-)                                                                                                                                                                                           | Pirtpal Singh  | As the property derived directly/indirectly out of POC are not available to extent of total POC for attachment. Hence, the provision with reference to “value thereof” as defined under section 2 (1) (u) r/w section 2 (1) (v) of the PMLA, 2002, was invoked and this property was attached. |
| 2. | SCO-1C, 2, 3 in sector 53, Mohali (50% share of Pirtpal Singh) (Valued Rs.8,44,00,000/-, however, 50% share of Pirtpal Singh = Rs.4,22,00,000/-)                                                                                            | Pirtpal Singh  | That this property has been acquired from the amount taken as fee from the various students sent abroad on the basis of fake documents submitted before the visa/admission granting authorities.                                                                                               |
| 3. | Land measuring 73K-11M of Village Chaurpur registered in the name of Gurinder Singh, Resham Singh & Jaswinder Singh to the extent of share of Gurinder Singh (13.58 K) as per mutation rapt no.380 dated 07.08.2014 (Valued Rs.12,64,800/-) | Gurinder Singh | As the property derived directly/indirectly out of POC are not available to extent of total POC for attachment. Hence, the provision with reference to “value thereof” as defined under section 2 (1) (u) r/w section 2 (1) (v) of the PMLA, 2002, was invoked and this property was attached. |
| 4. | Land Rover-Discovery having registration number PB65AA0025 registered in name of Gurinder Singh (Valued Rs.48,00,000/-)                                                                                                                     | Gurinder Singh | That this property has been acquired from the amount taken as fee from the various students sent abroad on the basis of fake documents submitted before the visa/admission granting authorities.                                                                                               |

10. Apprehending arrest, the petitioner filed anticipatory bail before the Special Judge, and vide order dated 04.09.2020, the same was dismissed. However, the

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petitioner came up before this Court under Section 438 CrPC and vide order dated 22.09.2020 passed in CRM-M No.27822 of 2020, a co-ordinate Bench of this Court had granted anticipatory bail to the petitioner subject to compliance of conditions.

11. Subsequently, seeking quashing of ECIR, complaint, and all subsequent proceedings, the petitioner came up before this Court by filing the present petition. Vide order dated 30.05.2022, a Co-ordinate Bench had issued notice and clarified that further proceedings would be subject to the outcome of the decision of the present petition.

12. An analysis of the above sequence of events makes it crystal clear that the officials of the Enforcement Directorate initially raided the premises of the petitioner and his company under Section 37 of the FEMA, 1999. The Enforcement Directorate is created under Section 36 of the FEMA, 1999, and they have powers to conduct searches under Section 37 of FEMA. However, the officers, while conducting searches under Section 37 of FEMA, can exercise the powers like those conferred on Income tax authorities under Income Tax Act, 1961, and Section 37(3) FEMA makes it mandatory that the officer shall exercise such powers subject to such limitations laid down under Income Tax Act, 1961.

13. The moot question that could have arisen was that based on which statutory obligations the Joint Director had sent the information of the recovery of a toy gun and counterfeit stamp of government authorities, a bank, and a doctor to the concerned Senior Superintendent of Police. A perusal of the report filed under Section 173 of Code of Criminal Procedure, 1973 [CrPC] in FIR No.118, the Investigator found a violation of Section 472 and 473 Indian Penal Code, 1860. Section 39 of the CrPC mandates the public to give information about the commission of any offense, but a perusal of the list of offenses mentioned in Section 39 CrPC does not contain Sections 472 and 473 IPC or that of the Arms Act. Thus, it is clear that the Joint Director did not act under Section 39 CrPC.

14. Section 66 of PMLA authorizes the officials mentioned therein to disclose the information. However, the initial search conducted on 10.10.2017 was not conducted under the provisions of PMLA as such information could not have been supplied under Section 66 of PMLA. Be that as it may, neither perusal of the petition refers to the closure of ECIR nor complaint by claiming the search to be the initial information to be without authority of law nor counsel for the petitioner addressed any such arguments in the Court. Without such pleadings and arguments, even Counsel for the Enforcement Directorate could not have replied. Once the petitioner has not taken up these points, this Court does not deem it appropriate to adjudicate about irregularity or illegality

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about an aspect of such information and leave it open to be taken up either at the time of framing of charges or at the time of trial, if petitioner so desires.

15. The petitioner's primary grounds for quashing ECIR and the complaint are that all this was done under the provisions of PMLA without any predicate offense. On the face of it, this argument is factually incorrect. Reference to the above chronological events clearly points out that the Enforcement Directorate, which is the creation of Section 36 of FEMA, had acted under the provisions of Section 37 of FEMA and not Sections 17, 18, and 50 of PMLA. ECIR was recorded after registration of FIR by Punjab Police.

16. The petitioner's next stand is that since the FIRs were registered after the conduct of the search under PMLA, those FIRs cannot be taken as a predicate offense, and in the absence of predicate offense, there cannot be any violation of scheduled offense under PMLA. This argument is also contrary to the factual scenario. As mentioned above, the Enforcement Directorate conducted the searches under Section 37 of FEMA and not under Sections 17 and 18 of PMLA. After that, they sent a communication to the concerned Senior Superintendent of Police who had registered the two FIRs, i.e., FIR No.118 and 158. Neither the petition nor the counsel for the petitioner claims that FIR No.118 has been closed or the accused were discharged or resulted in acquittal, as such predicate offense is still subsisting and this Court cannot quash ECIR and consequent complaint once the predicate offense, i.e., FIR No.118 is still subsisting.

17. Regarding FIR No.158 registered under Section 30 of the Arms Act, 1959, a perusal of the petition reveals that on 09.01.2019 vide Annexure P-8, the police had filed a cancellation report. Subsequently, the matter was posted before JMJC on 30.11.2019, who had directed further investigation vide Annexure P-9. Later on, as reflected in an order dated 27.04.2022, the State filed a cancellation report again. However, ACJM issued a returnable notice to the respondent on 14.05.2022. The reply filed by the Enforcement Directorate is silent about what happened to FIR No.158 under Section 30 of the Arms Act, 1959. However, a perusal of Section 30 of Arms Act, 1959, reveals that the maximum sentence that can be imposed is 06 months. Since this FIR was registered on 11.10.2017, no Court could have taken cognizance of this FIR after 10.10.2018 because of the express bar of Section 468 CrPC. The provisions of Section 468 skipped the mind of CJM as he ordered further investigation. Thus, it can be said that a cancellation report filed by the police under Section 30 of the Arms Act has to be accepted. Even this Court presumes that if FIR No.158 is closed, it would not help the petitioner because FIR No.118 is still subsisting.

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18. Petitioner has annexed the copy of the police report filed under Section 173 CrPC as Annexure P-7. Reference to the said report points out that in the said FIR, challan has been filed under Section 472 and 473 of IPC, 1860. Part A, paragraph 1 of the Schedule annexed to PMLA under Section 2(y) of PMLA mentions 472 and 473 of IPC as scheduled offences.
19. Given the above, it is clear that Section 472 and 473 of Indian Penal Code, 1860, [IPC] are scheduled offenses and can be prosecuted; as such, the Enforcement Directorate was well within the scope of PMLA, 2002 to launch prosecution by filing a complaint for violation of Sections 3 and 4 of PMLA based on the predicate offense under Section 472 and 473 IPC.
20. There is no merit in the petition and the same is dismissed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)  
JUDGE

30.05.2024  
Jyoti Sharma/Jyoti-II

|                           |            |
|---------------------------|------------|
| Whether speaking/reasoned | YES        |
| Whether reportable        | <b>YES</b> |