

IN THE COURT OF XLVI ADDL. CITY CIVIL AND SESSIONS JUDGE
AND SPECIAL JUDGE FOR CBI CASES, BENGALURU (CCH-47)

P.C.R.No.25/2022

Dated this the 02nd day of June 2022

PRESENT : **Sri.Santhosh Gajanan Bhat,B.A.L., LL.B.,**
XLVI Addl. City Civil and Sessions Judge and
Special Judge for CBI Cases, Bengaluru.

Complainant: Directorate of Enforcement,
Represented by -
The Assistant Director,
Government of India,
Ministry of Finance, Dept. of Revenue,
3rd Floor, B Block, BMTC,
Shantinagar, KH Road,
Bengaluru-560 027.

(By Enforcement Directorate)

V/s

Accused No.1: M/s Amnesty International India Pvt. Ltd.,
Rep. By its Director/Executive Director/
Chief Executive Officer - Shri.Aakar Patel (A4)
235, 13th Cross, Indiranagar,
2nd Stage, Bengaluru-560 038.

Accused No.2: M/s Indians for Amnesty International Trust,
Rep. By its Executive Director-
Shri.Avinash Kumar,
#235, 13th Cross, Indiranagar,
2nd Stage, Bengaluru-560 038.

Accused No.3: Sri.G.Ananthapadmanabhan,
S/o Sri.S.Guruswamy,
DOB – 10.08.1966 (aged about 55 years),
Former Chief Executive Officer of M/s Amnesty
International India Pvt. Ltd., (AIPL),

r/o No.302, Santhome Apartments,
1st A Cross, Indiranagar, 1st Stage,
Bengaluru-560 038.

Accused No.4: Shri.Aakar Patel,
S/o Sri.Anil.B.,
DoB – 15.12.1969 (aged about 52 years),
Director of M/s Amnesty International India
Pvt. Ltd., (AIPL) & Ex-Managing Trustee of
M/s Indians for Amnesty International Trust (IAIT),
r/o No.23/5, G-1,
Serenade Benson Cross Road,
Bengaluru-560 045.

ORDER ON TAKING COGNIZANCE

The complaint is presented by the Assistant Director, Directorate of Enforcement against the accused persons alleging that, they have committed the offences punishable under Section 3, 4 of PML Act 2002.

2. The main gist of the case is that, a complaint was received on 12.6.2019 from the Ministry of Home Affairs and on the basis of the same, the CBI Authorities i.e., CBI, EOU-IV, New Delhi had registered the FIR in RC.No:220-2019-E0006 dated 5.11.2019 against M/s Amnesty International India Pvt Ltd., (hereinafter called as 'AIPL'), M/s India Amnesty International Trust (hereinafter referred to as 'IAIT' and M/s Amnesty International India Foundation Trust (hereinafter called as 'AIIFT' and M/s Amnesty International South Asia Foundation (hereinafter called as 'AISAF') under Section 120(B) of IPC r/w Section 11, 35 and 39 of Foreign Contributions Regulatory Act, 2010. Since the offences punishable under Section

120(B) of IPC which is morefully mentioned in the aforesaid FIR amounts to predicate offence, the investigation was taken up by the complainant i.e., Enforcement Directorate with respect to the involvement of criminal activities as defined under Section 2(1)(x) and under Section 2(1)(y) of PLM Act.

3. It is also in detail narrated in the complaint that, M/s Amnesty International India Pvt Ltd., which works through AIFT, AISAF and AIIFT in India had sought for permission under FCRA and as such AIIFT had received permission in 2011-12 to receive foreign contribution from Amnesty International, UK. However, the said permission accorded was canceled on the basis of adverse inputs received from security agencies and there afterwards, since prior permission was not granted, Amnesty India had made several attempts to obtain registration under FCRA and in order to overcome the said aspect, Amnesty India used commercial methods and accordingly, a sum of Rs.10 Crores came to be remitted in the form of Foreign Direct Investment without obtaining necessary permission from the Ministry of Home Affairs and once again, a sum of Rs.26 Crores was remitted to Amnesty India from UK based Entities without approval from the Ministry of Home Affairs. It is also been stated that, the receipts were subsequently incorporated on NGA activities of Amnesty in India which clearly flouted the terms and conditions of FCRA.

4. It is also alleged in the complaint that, AIPL had received funds to an extent of Rs.36 Crores for mainly three purposes i.e.,

service contract, advance income and FDI through automatic route which were mainly used by commercial entities and out of the said foreign funds, Rs.10 Crores were remitted as FDI and remaining sum of Rs.26 Crores were paid for consultancy services and all such attempts were made only to evade FCRA without any approval from Ministry of Home Affairs.

5. It is also alleged that, the FDI received on 24.9.2015 as compulsory convertible debentures were immediately placed as fixed deposits and in the subsequent month, another Indian Entity IAIT availed overdraft facility to an extent of Rs.14.25 Crores by keeping the fixed deposit of Rs.10 Crores as collateral security. Further it is also alleged that, an amount of Rs.51 Crores were received by AIPL towards export of services even though no documentary proof such as invoices or agreements were furnished to the authorized dealer bank by narrating all the said aspects in detail, the complainant Enforcement Directorate Authorities relying upon the bank accounts of the accused persons and also the details of the transactions that had taken place and also on collection of necessary materials had contended that a prima facie case was made up and hence they had filed the complaint against the present accused persons as contemplated under the provisions of law.

6. The complaint also indicates of passing of Provisional Attachment Order as per Section 5(1) of PML Act wherein movable properties of AIPL and IAIT were provisionally attached through

Special Attachment Orders as enumerated in the complaint. The complaint which is filed also indicates of summoning of the persons related to the above complaint and examination of the witnesses as contemplated under Section 50(2) and 50(3) of PML Act and which indicates of affording opportunity to accused and also to co-accused to discharge their burden as per Section 24 of PML Act.

7. On completion of the said investigation, the present detailed complaint along with records have been presented to the Court. Hence, the complainant who was present before the Court has sought for taking necessary cognizance against the aforesaid offences and also to summon the accused persons as contemplated under the law. further it is submitted that since the complaint is filed by the public servant, they have sought for dispensation of recording of sworn statement prior to taking of cognizance.

8. Heard.

9. The following points that would arise for my consideration is:

(1) Whether sufficient grounds has been made out by complainant/Directorate of Enforcement, Bengaluru to attract the provisions of the offences punishable under Section 3, 4 and **8(1)** or **8(5)** of PML Act and also to issue process against the accused persons?

(2) What Order?

10. My findings to the above points are:

Point No.1 : In the Affirmative

Point No.2 : As per final order, for the following:

REASONS

Point No.1:

11. Eschewing unnecessary details the facts which are germane to the above case is that, the complainant Enforcement Directorate Authorities through it's Assistant Director has presented the above complaint before the Court mainly on the ground that, the accused persons by flouting various trusts and agencies had tried to evade the process of law and also the circumvent the provisions of FCRA. it is also narrated by the Complainant that the Accused persons under guise of forming trusts and other entities had made an attempt to violate the provisions of the Act and also specifically the provisions of FCR since the permission was withdrawn due to adverse inputs by the security agencies. The complainant has mainly contended that the act of the Accused persons amounts to receiving of amount which comes within the purview of PML Act which can be termed as proceeds of crime.

12. Before adumbrating the said allegations, the Court is required to carefully appreciate the allegations made in the complaint with the documents and materials collected by the Investigating Agencies during the course of its investigation in order to ascertain whether necessary materials have been made out for the purpose of taking cognizance. further the law with respect to

taking of cognizance by the trial court has been succinctly laid down by the Hon'ble Apex court, wherein the Hon'ble Apex court has held that the court cannot mechanically state that there are materials to proceed against the accused persons in the absence of necessary materials to proceed against them. further it has been held by the Hon'ble Apex court that the trial court has to carryout an exercise to ascertain whether any overt act is attributed against the accused persons. once again the caution has been laid down by the Hon'ble Apex court that the court cannot examine the same in the manner of deciding the case. The said principles has bee laid down by the Hon'ble Apex court in the judgment reported in **(2015) 4 SCC 609** *(Sunil Bharti Mittal v. CBI)* wherien it is held as:

"46. It is stated at the cost of repetition that in the present case, while issuing summons against the appellants, the Special Magistrate has taken shelter under a so-called legal principle, which has turned out to be incorrect in law. He has not recorded his satisfaction by mentioning the role played by the appellants which would bring them within criminal net. In this behalf, it would be apt to note the following observations of this Court in *GHCL Employees Stock Option Trust v. India Infoline Ltd.* [(2013) 4 SCC 505 : (2013) 2 SCC (Cri) 414] : (SCC p. 516, paras 19 & 21)

"19. In the order issuing summons, the learned Magistrate

has not recorded his satisfaction about the prima facie case as against Respondents 2 to 7 and the role played by them in the capacity of Managing Director, Company Secretary or Directors which is sine qua non for initiating criminal action against them. [*Thermax Ltd. v. K.M. Johnny* [(2011) 13 SCC 412 : (2012) 2 SCC (Cri) 650] followed.]

21. In the instant case the High Court has correctly noted that issuance of summons against Respondents 2 to 7 is illegal and amounts to abuse of process of law. The order† [Ed. : The reference is to *Nirmal Bhanwarlal Jain v. GHCL Employees Stock Option Trust*, (2010) 114 DRJ 451] of the High Court, therefore, needs no interference by this Court.”

47. We have already mentioned above that even if CBI did not implicate the appellants, if there was/is sufficient material on record to proceed against these persons as well, the Special Judge is duly empowered to take cognizance against these persons as well. Under Section 190 of the Code, any Magistrate of First Class (and in those cases where Magistrate of the Second Class is specially empowered to do so) may take cognizance of any offence under the following three eventualities:

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts; and

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

This section which is the starting section of Chapter XIV is subject to the provisions of the said Chapter. The expression “taking cognizance” has not been defined in the Code. However, when the Magistrate applies his mind for proceeding under Sections 200-203 of the Code, he is said to have taken cognizance of an offence. This legal position is explained by this Court in *Chief Enforcement Officer v. Videocon International Ltd.* [(2008) 2 SCC 492 : (2008) 1 SCC (Cri) 471] in the following words : (SCC p. 499, para 19)

“19. The expression ‘cognizance’ has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means ‘become aware of’ and when used with reference to a court or a Judge, it connoted ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect

of such offence said to have been committed by someone.

20. 'Taking cognizance' does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence."

48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.

49. Cognizance of an offence and prosecution of an offender are two different things. Section 190 of the Code empowered taking cognizance of an offence and not to deal with offenders.

Therefore, cognizance can be taken even if offender is not known or named when the complaint is filed or FIR registered. Their names may transpire during investigation or afterwards.

54. However, there has to be a proper satisfaction in this behalf which should be duly recorded by the Special Judge on the basis of material on record. No such exercise is done. In this scenario, having regard to the aforesaid aspects coupled with the legal position explained above, it is difficult to sustain the impugned order dated 19-3-2013 in its present form insofar as it relates to implicating the appellants and summoning them as accused persons. The appeals arising out of SLP (CrI.) No. 2961 of 2013 and SLP (CrI.) No. 3161 of 2013 filed by Mr Sunil Bharti Mittal and Ravi Ruia respectively are, accordingly, allowed and order summoning these appellants is set aside. The appeals arising out of SLPs (CrI.) Nos. 3326-27 of 2013 filed by Telecom Watchdog are dismissed."

13. On perusal of the records it is noticed that, M/s Amnesty International functions in India through its four Entities which are registered in Bengaluru and New Delhi as Company/Trusts which are described supra. It is also noticed from the records that, the

trust was registered during the year 2012 and subsequently, AIPL was accorded permission under FCRA during the financial year 2011-12 for receiving foreign contribution from AIPL. However, the same came to be canceled on the basis of adverse input received by security agencies and subsequent to that, AIPL was formed though they had not obtained any permission under FCRA Act. It is noticed that, the foreign contributions to the Indian Entities were routed through FCIT route in order to evade the rigors and expands its NGO activities. Even the records would indicate that as per the statement dated 21.10.2021 of Ananthapadmanabhan Swamy under Section 50(3) of PML Act, a Advisory Board was set up for deliverable in the consultancy service agreements entered into with AIPL. However, he had made a long list of original members which he shared with AIPL and in turn AIPL had shortlisted the names.

14. Further the records indicates that, the remittances had come for export of services and the services were being delivered only in India without there being no actual export activities. The same was supported by the objectives contained in various agreements and the huge amount of money is being remitted for each agreement by AIL. It is also noticed from the records that, the concerned trustees of AIPL who were enquired at the time of statement under Section 50(3) of PML Act to explain how the activities could be considered as commercial activities, for which they had stated as per the agreement of services they were charging for the same and hence, the same were to be construed as commercial activities. The said agreements would clearly indicates

that, the civil society work were being undertaken by profit making company and the funds for the same were coming from Amnesty International Limited under the guise of remittances.

15. The records also clearly indicates the intention was to flout AIPL in order to raise funds from overseas customers and expand its activities in India in an attempt to avoid legal hurdles and also possibly to violate any recourse of law by taking the recourse to export services in the form of reports supposedly to have been submitted to AIPL against the inward remittance received.

16. It is also clear that, the Entities of AI i.e., IAIT and AIPL were formed to expand operations of Amnesty in India without getting it into recourse of FCRA.

17. At this juncture, the Court has to consider the cognizance of Section 120(B) can be pressed into for the purpose of attracting the provisions of PML Act. It is settled law that, Section 120(B) of IPC is a distinct, independent offence which is classified as scheduled offences under PML Act and as such, any property derived or obtained by persons directly or indirectly as a result of criminal activity relating to the offence of conspiracy comes within the purview of Proceeds of Crime which has been narrated under the provisions of PML Act. with respect to the role of the present accused persons, the law is well settled that at the time of taking cognizance the court should be satisfied with respect to the specific role played by the Accused persons. In order to ascertain the same,

the records and the complaint furnished is carefully appreciated to ascertain the materials to take cognizance for the aforesaid offences. The complaint discloses that AIPL was incorporated on 10.06.2013 with the name and style M/S Social Sector Research Consultancy & Support Services(India) Pvt LTd with the object of being a commercial enterprise providing services including research, market survey, support work, campaigning and consultancy and it is stated that subsequently only the name of it was changed as AIPL on 16.06.2015 while all other activities remained the same. further it is stated in the complaint that the AIPL which is a commercial entity had committed criminal activity related to scheduled offence i.e. criminal conspiracy and further under the guise of carrying out of civil activities had carried out its NGO activities in the absence of any documents relating to exports made and layering of remittances received by AIPL and as such, had received proceeds to an extent of Rs.51.72 Crores under the guise of export of services and FDI from AIL. The total proceeds of Rs.19,53, 58,035/- in possession of AIPL and IAIT were attached would indicate the overtact against the accused No.1. Likewise, with respect to the role of accused No.2 it is stated in the complaint that, IAIT was incorporated in the year 2012 and subsequently, the trustees were changes and also the complaint indicates that, both AIPL and IAIT were located in the same premises and were interrelated in their functions. Further, from 15.7.2013 to 12.11.2014 IAIT was having full control in AIPL and subsequently, the funds received by it was utilized by IAIT to establish OD facilities for Rs.14.25 Crores. It is also been stated that, the flow of money from AIPL to IAIT as FDI to an extent of Rs.10

Crore was used to create OD facilities to an extent of Rs.14.25 Crores and as such it has committed criminal activity related to scheduled offence by availing loan facility against FDI received by AIPL as a collateral which involved in layering of remittances received by AIPL. With respect to accused No.3 it is stated that, he was approached by AIL to set up entities of Amnesty in India and accordingly, AIPL and IAIT were set up and he had also set up advisory board for operation of amnesty in India. It is narrated in detail that, he was aware of the remittances received by AIPL from AIL which was a foreign based entities to carry out NGO/social sector activities under the guise of commercial contracts and as such, his acts was detrimental to the national interest and hence, he had committed offenses. With respect to accused No.4, Aakar Patel it is stated that he was Executive Director of AIPL from 2015 to 2019 and he headed the management and finance of the company including the policy making and also taking financial decisions and he used to handle day to day affairs of both AIPL and IAIT. A detailed report is filed with respect to the activities carried out by him and also as he was at the helm of affairs of Amnesty in India with remittances were received from AIL in the bank account of AIPL to carry out NGO's /social sector activities under the guise of commercial contracts it is noticed that, a specific overtact is alleged against him. Hence, it is crystal clear that, the materials on record when carefully appreciated with the documents and also the investigating report furnished by the complainant would attract the provisions of Section 3, 4 and 8(5) of PML Act.

18. At this juncture the law is well settled that, the Court will have to consider whether necessary materials have been placed before the Court for the purpose of taking cognizance. Taking cognizance is a sacrosanct act which requires the application of mind and when the Court has compared the same with the allegations made in the complaint coupled with the statement of witnesses and inquiry report as contemplated under Section 50 of PML Act with the records which are furnished along with the complaint would clearly indicates the commission of offences for the purpose of taking cognizance. Hence, there are sufficient materials to proceed against the accused persons by taking cognizance and also for securing them.

19. Sequestionally, point No.1 is answered in the Affirmative and accordingly I proceed to pass the following:

ORDER

Cognizance is taken for the offences punishable under Section 3, 4 and 8(5) of Prevention of Money Laundering Act, 2002 and as such office is hereby directed to register Special CC in Register No.3 for the aforesaid offences against accused No.1 to 4.

Since the punishment prescribed for violation of Section 3 under PML Act, 2002 is Rigorous Imprisonment for a term which is not less than three years and which may extend to seven years and by

considering the materials placed before the Court, it would be fit and appropriate to issue summons to accused No.1 to 4 for their appearance.

Accordingly, issue SS to accused No.1 to 4.

Returnable by 27.6.2022.

(Dictated to the Judgment Writer, transcription computerized, then corrected and pronounced by me in the Open Court on this the 2nd day of June 2022)

(Santhosh Gajanan Bhat),
XLVI Addl. City Civil and Sessions Judge
& Special Judge for CBI Cases, Bengaluru.

