



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 22nd September, 2025

Pronounced on: 1st December, 2025

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W.P.(CRL) 3894/2018, CRL.M.A. 50234/2018

SMT. POONAM GAHLLOT

Wife of Sh. Harish Ghallo,

B-1/1001, Vasant Kunj, New Delhi

.....Petitioner

Through: Mr. Malak Bhatt, Ms. Neeha Nagpal,
Ms. Samridhi, Advocates.

versus

DIRECTORATE OF ENFORCEMENT

Through Mr. Rahul Verma, Assistant Director

MTNL Building, 1st & 2nd Floor,

Jawahar Lal Nehru Marg, New Delhi-110002

.....Respondent

Through: Mr. Arun Bhardwaj, Sr. Advocate and
Mr. Anupam S. Sharma, Special
Counsel with Ms. Harpreet Kalsi,
Mr. Vashisht Rao & Mr. Ripudaman
Sharma, Advocates.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Writ Petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as 'Cr.P.C.'*) has been filed on behalf of the Petitioner/Poonam Gahllo for directing the Respondent Directorate of Enforcement ('ED') to not insist on personal appearance of the Petitioner in the Office of Enforcement Directorate at New Delhi, in compliance of the Summons under S. 37 of The Foreign Exchange Management Act, 1999 (*hereinafter "FEMA"*) read with



131 Income Tax Act, 1961 (hereinafter 'ITA'); and to permit the Petitioner to be represented through Counsel in response to Summons.

2. **Brief facts** of the case are that Petitioner, who is a Canadian Citizen, aged 53 years, is a house-wife and resides with her husband Shri Harish Gahlot at D-1/1001, Vasant Kunj, New Delhi. On 10.10.2018 at 12:09 PM, various persons claiming to be from the Income Tax Department, visited her property bearing H. No.F-8/15, 3rd Floor, Vasant Vihar, New Delhi, where Petitioner's son resides along with his wife in a rented accommodation. At that time, Petitioner's younger son, aged 22 years and studying in Dubai, was visiting the family and staying with his brother.

3. The officials virtually ransacked the premises and started giving grave threats to overawe and browbeat the Petitioner's elder son, his wife and Petitioner's younger son. Petitioner's daughter-in-law, who was at home, was also not allowed to leave the premises. Pertinently, no lady official was accompanying the said Income Tax Officials on that day. Petitioner's son and others were virtually under a house arrest as none of them were allowed to move out. The said officials left the premises in the wee hours on 13.10.2018.

4. The Respondent issued Summons bearing No.329 dated 27.11.2018 directing Petitioner's personal presence in the Office of the Respondent on 30.11.2018 and submit the documents listed in the 'Annexure A' attached to the said Summons, which was in connection with proceedings under FEMA. It is asserted that no particulars/details of the case, were mentioned.

5. In response to the **First Summons**, the Petitioner sent a Reply dated 30.11.2018 to the Respondent informing that she was facing a medical condition in her family and that her husband and elder son have been



suffering from severe viral fever for the last 3-4 days and undergoing medical treatment, because of which, she was unable to collate the documents and sought further time for the same. The Petitioner requested to defer her presence/attendance for at least two weeks.

6. Respondent issued **second Summons** bearing No.339 dated 30.11.2018 to the Petitioner and again directed her to appear personally at the Office of the Respondent, for recording her statement in connection with the case under FEMA. It is asserted that despite being aware of the medical situation faced by the Petitioner and her family members, second summons were issued on the same day, which clearly reflects that the Resopndent did not consider the Petitioner's request.

7. However, in response to the Second Summons, the Petitioner on the date of appearance i.e. 04.12.2018 submitted a Reply/Letter on the same day informing that she herself is suffering from viral fever. However, notwithstanding her health, she submitted all the documents that were sought by the Respondent *vide* the said Letter.

8. Thereafter, Petitioner addressed a Letter dated 06.12.2018 to the Respondent with the request that she being a woman, cannot be asked to appear in the Office of Respondent and that the Summons seeking her personal appearance in their office is not sustainable, as has been held by the Division Bench of this Court in the case of Asmita Agrawal vs. The Enforcement Directorate, reported as (2002) 61 DRJ 339 (DB). However, she was open to objective investigations and was willing to render all due assistance and cooperation.

9. Despite aforesaid request of the Petitioner and despite her furnishing all the required documents, **third Summons dated 12.12.2018** with the



endorsement “*final opportunity to tender statement under Section 37 of FEMA, 1999-reg*” was issued, again compelling the Petitioner to attend to the Office personally for recording of her statement.

10. The Respondent had rejected the Petitioner’s request to record her statement at her residence on a misconceived basis, by placing reliance on Judgment dated 24.04.2018 passed by Hon’ble Madras High Court in the case of Nalini Chidambaram vs. Directorate of Enforcement & Ors., 2018 (2) MLJ (Crl) 430. Further request of the Petitioner to furnish documents made in the letter dated 06.12.2018, was not even referred to in the said Letter/Communication dated 12.12.2018.

11. In response to the *third Summons*, Petitioner again wrote a Letter dated 13.12.2018 to the Respondent reiterating correct proposition of law. However, no response has been received by her.

12. The summons issued by the Respondent, have been ***challenged on the ground*** that no personal appearance of the Petitioner, who is a woman, can be insisted in the Office of the Respondent. Section 160(1) Cr.P.C. clearly states that no woman, whose presence is required as a witness, shall be required to attend any place for such purpose other than the place in which such woman resides.

13. Section 4 Cr.P.C. deals with the trial of the offence under the IPC and other laws. Perusal of Sub-Section 2 of Section 4 show that all offences shall be investigated, inquired into, tried, and otherwise dealt with under the same provision and the Code, subject to the condition that if there is any enactment or a special Code regulating the manner or place of investigating, inquiring into, trying or otherwise, then the Code would not apply.



14. It is asserted that FERA even though a special Code or enactment, nowhere provides as to where should the investigation of woman be done. Therefore, in the absence of any such provision available in the special enactment, Cr.P.C. would be applicable as per Section 4(2) of Cr.P.C.

15. It is further contended that Summons have been issued under Section 37 of the FEMA with the heading of '*Power of search, seizure, etc.*' Sub-Section 3 to Section 37 states that powers which are conferred on Income-Tax Authorities under the Income-Tax Act, 1961 (43 of 1961) shall be exercised subject to such limitations laid down under that Act.

16. By virtue of Section 37(3) FEMA, provisions of Section 132 IT Act would also apply to FEMA. Therefore, Section 132 of Income Tax Act, 1995, which also provides for '*search and seizure*' makes the provisions of the Cr.P.C. applicable.

17. In the case of Nandini Satpathy vs. P. L. Dani, (1978) 2 SCC 424, while considering Section 160(1) Cr.P.C., the Hon'ble Apex Court held that insisting on a woman to appear in the Police Station, is flagrant contravention of the proviso to Section 160(1) Cr.P.C. and such deviance must be visited with prompt punishment, since Police may not be a law unto themselves, expecting others to obey the law.

18. Vide Communication/Letter dated 12.12.2018, Respondent has rejected to consider the Provisions of Section 160(1) Cr.P.C. and to record her statement at her place of residence, by placing reliance on the judgment passed in Nalini Chidambaram (*supra*), which is completely incorrect. This judgment was challenged before the Division Bench of Hon'ble Madras High Court vide WA No.1168-69/2018 on 10.07.2018 and the Appeals were dismissed. However, the said judgement of the Division Bench is under



challenge before the Hon'ble Supreme Court in SLP(C) No. 19275-19276/2018, wherein, vide Order dated 03.08.2018 Notice has been issued and interim protection has been granted, which had been further extended. Furthermore, the said judgment is distinguishable insomuch as it is in the context of Prevention of Money Laundering Act (hereinafter 'PMLA'), which is completely different from the FEMA. Therefore, no reference can be made to the said judgment.

19. Petitioner has shown full cooperation and has already submitted the documents sought for by the Respondent. Moreover, her request to supply her with the entire material/documents, which has led the Respondent to issue summons in question, has not been dealt with by the Respondent at all. No fair opportunity has been given to her in regard to recording of her statement effectively, but she is being compelled to give her personal appearance at the Office of Respondent.

20. All the documents relied upon by the Respondent must be provided to the Petitioner in consonance with the procedure established by law and as contemplated under Article 21 of the Constitution of India, so as to enable her to make her statement effectively. This is to enable a person to exercise his right to remain silent under Article 20 of the Constitution of India. Denial of such request would thus, constitute violation of the Fundamental Rights under Articles 14, 20 and 21 of the Constitution of India.

21. Reliance is placed on Youth Bar Association of India vs. Union of India, (2016) 9 SCC 473; Court on its Own Motion vs. State, (2010) 175 DLT 110 (DB); In re: Madhu Limaye & Ors, (1969) 1 SCC 292; and Babubhai and v. State of Gujarat and Ors., (2010) 12 SCC 254, wherein the



fair investigation has been held to be part of the Constitutional Right enshrined under Articles 20 and 21 of the Constitution of India.

22. Prayer is therefore, made that the summons issued by the Respondent be quashed and the Respondent be directed to comply with the mandate of Section 160 Cr.P.C. and record her statement at her residence and also to supply her the entire material/documents, which are in the possession of the Respondent.

23. *Learned counsel for the Respondent* has vehemently contended that Section 160 Cr.P.C. is a general provision applicable essentially to the offences under Cr.P.C. As per Section 4(2) Cr.P.C. it is only when there is no procedure defined under the Special Act, Section 160 Cr.P.C. can be invoked. It is submitted that for this reason, the summons issued under Section 50 of PMLA were held to be distinct from Section 160 Cr.P.C. in the case of Abhishek Banerjee & Anr. vs. Directorate of Enforcement, .

24. FEMA is also an Act similar to PMLA and therefore, the provisions of Section 160 Cr.P.C. cannot be read into the procedure for investigations under FEMA.

25. Reliance is placed on judgment dated 17.05.2022 in the case of Abhishek Banerjee, Special Leave to Appeal (Crl.) Nos. 2806-2807/2022 (supra) wherein summons issued under Section 50 of PMLA, directing the Petitioner to appear in the Office for recording of statement, were held to be distinct from the procedure provided under Section 160 Cr.P.C. and the challenge to the summons issued under Section 50 of PMLA, was rejected.

Submission heard and record perused.



26. The Petitioner has been issued summons under Section 37 FEMA and has been asked to appear before at the ED Office along with certain documents.

27. The Petitioner has challenged the Summons issued under S.37 FEM, **on the ground** that the summons are in contravention of the procedural safeguards enshrined under the Cr.P.C. The main contention is that the procedure under Section 37 FEMA is akin to that provided under Section 132 of ITA and therefore, Section 160 Cr.P.C. becomes applicable whereby a woman is exempted from appearing in a Police Station for recording the evidence.

28. **This raises the question of the applicability of Cr.P.C., to the summons issued under 37 FEMA.**

29. S. 37 FEMA is found in Chapter VI titled “*Directorate of Enforcement*”, which confers investigative powers upon designated Enforcement Officials and relevant part of Section 37 FEMA reads as under:

“37. Power of search, seizure, etc.

(1)...

(2)....

(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.”

30. From a bare perusal of this Section, it is evident that for investigation of contraventions related to foreign exchange under Section 37 FEMA, Officers being Director or Assistant Director of ED has been conferred with the power to issue summons under Section 37 FEMA for the purpose of *inquiry/investigation, which is the same as under the Income tax Act.*



31. To understand the contention raised by the Petitioner, it would be appropriate to understand the nature of proceedings under FEMA. In this regard, reference be made to the case of K.A. Mansoor vs. The Assistant Director, Directorate of Enforcement, Chennai FPA-FE-92/CHN/2017, wherein challenge was made to the Summons issued under Section 37 FEMA read with Section 131 Income-Tax Act. It was held that the issuance of summons, in no way affect the right of a person as it is only a *preliminary investigation* and for production of documents before the Authority, for further investigations. It was further observed that FERA, 1973 was replaced by FEMA by virtue of Section 49 of FEMA, *dispensing with the concept of offence under FEMA*. The present procedure under FEMA is of *imposition of a penalty, for contravention of the provisions of the Act*. Any contravention of FEMA, is to be determined *by an Adjudicating Authority*. Further Appeal lies to Special Director and thereafter, to Appellate Tribunal for foreign exchange. Section 15 of FEMA further provides for compounding of the contraventions. The entire face of the Act has been completely overhauled and the *concept of offence has been removed* and replaced only by penalty with a two tier Appellate Tribunal. *It is, therefore, unthinkable to question the summons issued by the ED under Section 37 of FEMA*.

32. In this background, it would be pertinent to refer to *Chapter XIII of IT Act which deals with the Income-Tax Authorities*. Part-C contains Section 131 and 132 of ITA, and the distinction between Section 131 and 132 of ITA is, therefore, essential to be understood.



33. S.131 IT Act defines the powers of the Income-Tax Authorities regarding *discovery, production of evidence, etc.* under the Act, which is reproduced as under:

“131. Power regarding discovery, production of evidence, etc.

(1) The [Assessing Officer], [Deputy Commissioner (Appeals)], [,Commissioner (Appeals)], [Principal Chief Commissioner or Chief Commissioner or [Principal Commissioner or Commissioner] and Dispute Resolution Panel referred to in clause (a) of sub-section (15) of section 144C]] shall, for the purposes of this Act, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when 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 and examining him on oath;*
 - (c) compelling the production of books of account and other documents; and*
 - (d) issuing commissions.*
- ...”***

34. It thus, provides that for the purpose of this Section, the Income-Tax Officers as specified therein, would have the same powers as are vested in the Court under Code of Civil Procedure, 1908 (*hereinafter referred to as ‘CPC’*), in regard to:

- (i)** *discovery and inspection;*
- (ii)** ***enforcing the attendance of any person***, including any officer of a banking company and examining him on oath;
- (iii)** *compelling the production of books of accounts and other documents; and*



(iv) issuing commissions.

35. The power to seek discovery, ensuring the attendance of the person for examining him on oath and for compelling production of documents, is distinct from the powers of *search and seizure* given in Section 132 ITA, which states that where a person summoned to produce the books, documents or for the purpose as detailed in Section 131 of ITA, ***fails to do so***, then the provisions of Cr.P.C relating to ***search and seizure***, shall apply in this regard. Relevant part of S. 132 IT Act, reads as under:

“132. Search and seizure -

(1) Where the [[Principal Director General or Director General] or [Principal Director or Director]] or the [[Principal Chief Commissioner or Chief Commissioner] or [Principal Commissioner or Commissioner]] [or Additional Director or Additional Commissioner] [or Joint Director or Joint Commissioner] in consequence of information in his possession, has reason to believe that—

...

...

(13) The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to searches and seizure shall apply, so far as may be, to searches and seizure under sub-section (1) or sub-section (1A).”

36. From the comprehensive reading of these two Sections, it emerges that the powers ***regarding discovery, production of evidence, etc.*** under Section 131 is governed by the Code of Civil Procedure, which is distinct from the power of ***search and seizures*** which is governed by the Criminal Procedure Code, in terms of S.132 IA Act.

37. Pertinently, S. 37 FEMA provides for “***Power of search, seizure, etc.***” and does not separate the powers to seek production of documents, and appearance of parties, into separate Sections unlike S.131 & S.132 IT Act.



The use of an extra '*etc.*' in S. 37 FEMA becomes significant; it indicates that it is not just limited to "*search and seizure*", but also includes the power to seek attendance. Therefore, it follows that *while seeking attendance and production of Documents under FEMA*, Code of Civil Procedure would apply, while for the *search and seizure*, Criminal Code would be applicable.

38. This aspect was considered by Bombay High Court in the case of Avinash Bhosale vs. Union of India & Ors., in Crl. W.P. No. 2432 of 2007 decided on 08.10.2008, wherein the issue was whether the ED could impound a Passport under S. 37 of FEMA. A reference was made to the **Oxford Dictionary of Law** (2003) which defines **Summons** as *a Court Order to an individual to appear in Court, at a specific place and time*, and it was held that under Section 131 ITA, the Officers mentioned therein, have *no larger power than the Civil Court* to direct production, discovery and inspection of documents, which is controlled by Section 30 CPC and Order 11 of the Civil Code.

39. Likewise, in the case of P. Giribabu vs. The Deputy Director of Enforcement, Writ Petition No. 23110 & 23558 of 2009, decided on 26.03.2010, it was considered whether at the *stage of preliminary investigations*, can the Petitioner seek assistance of a lawyer. It was observed that *when the material is being collected for taking further action, the Officers of FEMA, do not act as a Court. Whether the Petitioner will be treated as an Accused on contravention of the provisions of FEMA or whether they would be treated as a witness, would be decided only after preliminary enquiry or investigation by the Authorities concerned.* Even at the initial stage itself, before the Adjudicating Authority comes to the



conclusion to proceed further or not, there can be no need for the Petitioners to be assisted by an Advocate or a Chartered Accountant.

40. Similarly, in the case of V. Datchinamurthy vs. Assistant Director of Inspection, (1984) 149 ITR 341 Madras High Court noted that the functions and the powers of the ITO appointed under the ITA, are well-defined by the statute. His principal job is *to make an assessment of the income and levy Income-Tax on the basis of his determination*. For the purpose of discharging his functions, he is invested with the powers to *gather information, material evidence and the like*. A specific power is conferred on him to summon witnesses, enforce their attendance, issue commissions and the like. *In this respect, his powers are co-equivalent with those of Court of law under Code of Civil Procedure.*

41. The Respondent/ED has sought to draw a parallel in S. 50 PMLA and S. 37 FEMA and has placed reliance on the recent judgment of the Apex Court in Abhishek Banerjee (supra) wherein the Apex Court has held the Summons under S.50 PMLA are distinct from those under the Code and thus, the compliance is mandatory. However, this reliance is misplaced for two reasons. *Firstly*, the PMLA and FEMA have distinct statutory frameworks and nature of proceedings. **S. 50 PMLA confers criminal investigative powers on the ED involving summons for inquiries related to money laundering, which is a scheduled offence under PMLA and involves criminal prosecution.** In contrast, S. 37 FEMA is primarily concerned with civil-administrative investigations of foreign exchange contraventions governed by a regulatory framework distinct from Criminal Law. *Secondly*, there is a difference in the scope of summons and procedural



safeguards. The Apex Court in Abhishek Banerjee (supra) thu, held that Section 50 PMLA overrides certain Cr.P.C. safeguards such as territorial and gender safeguards under Ss. 160-161 Cr.P.C. On the other hand, S. 37 FEMA remains within the civil inquiry domain.

42. Therefore, it is concluded that “powers regarding discovery and production of evidence” under Section 37 FEMA are analogous to those under Section 131 ITA, which is governed by Civil Code and therefore, S.160 Cr.P.C. would not be applicable, as argued by the Petitioner.

43. In the present case, the Summons have issued for the production of evidence and recording of a statement to trace the source of funds utilized for acquiring foreign assets, under S.37 FEMA read with S.131 IT Act, **which itself is explanatory that Civil Code is applicable.** Civil Code contains no provision like S.160 Cr.P.C mandating the recording of the statement of a woman at her residence. The insistence of the Petitioner for not appearance before the Authority is therefore, without any basis.

Conclusion:

44. In light of the law discussed above, this Court finds no merit in the Writ Petition.

45. The Writ Petition is **dismissed** in the aforesaid terms.

46. Pending Applications, if any, also stand disposed of.

**(NEENA BANSAL KRISHNA)
JUDGE**

DECEMBER 01, 2025/R