

THE HIGH COURT OF SIKKIM : GANGTOK

(Criminal Writ Jurisdiction)

DATED : 17th SEPTEMBER, 2015

S.B. : HON'BLE MR. JUSTICE S. P. WANGDI, JUDGE

WP(Crl.) No.01 of 2015

Petitioner : Eastern Institute for Integrated
Learning in Management University
through its Acting Vice Chancellor,
Shri R. P. Sharma,
8th Mile, Budang,
Malabassey,
West Sikkim.

versus

Respondents : 1. The Joint Director,
Directorate of Enforcement,
Government of India,
CGO Complex,
3rd MSO Building, 6th Floor,
DF Block, Salt Lake,
Kolkata.

2. The Enforcement Officer,
Directorate of Enforcement,
Government of India,
CGO Complex,
3rd MSO Building, 6th Floor,
DF Block, Salt Lake,
Kolkata.

3. The Registrar/Administrative Officer,
Adjudicating Authority,
Jeevan Deep Building,
Room No.26, 4th Floor,
Parliament Street,
New Delhi.

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**Petition under Articles 226/227
of the Constitution of India read with
Section 482 of the Code of Criminal Procedure**

Appearance

Mr. Shakeel Ahmed, Advocate with Ms. Chitra Sharma, Mr. Yogesh Kumar Sharma and Mr. S. P. Bhutia, Advocates for the Petitioner-University.

Mr. Karma Thinlay Namgyal, Central Government Advocate with Mrs. Pollin Rai, Advocate for the Respondents No.1 to 3.

Mr. Banibrata Dutta, Assistant Director with Mr. A. K. Panda, Assistant Legal Advisor, for Respondents No.1 and 2.

J U D G M E N T

Wangdi, J.

1. The Petitioner is a State Private University created under the Eastern Institute for Integrated Learning in Management University Act, 2006 (Act No.4 of 2006) (hereinafter referred to as “EIILMU Act”). In this Writ Petition, the Petitioner-University seeks to quash Enforcement Case Information Report (ECIR) No. KLZO/01/2014/825-827 dated 19-02-2014, Annexure P/2, registered against the persons connected with the Petitioner-University in various capacities for offences

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under the Prevention of Money-Laundering Act, 2002 (for short "PMLA") corresponding to Sections 420/467/120B of the Indian Penal Code (for short "IPC").

2. The ground raised in the Writ Petition invoking the powers of this Court under Section 482 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") are primarily the following:-

- (a) No cognizable case is at all made out firstly, for the reason that the case under PMLA was registered by the Respondents merely on the information of the Sikkim Police and not by application of their own mind and, secondly, on the bare perusal of the ECIR no offence is made out either under Part A or Part B of "scheduled offence" as defined under Clause (y) of Sub-Section (1) of Section 2 of the PMLA.
- (b) That the contents of the ECIR would reveal that the allegations are only in respect of violation of provisions of University Grants Commission Act, the EIILMU Act and the Distance Education Council Regulations which would not attract criminality.
- (c) No offence under the PMLA has been made out as no tainted money arising out of the proceeds of crime and its laundering or layering into the mainstream have been made out.

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- (d) The Petitioner-University has not earned any proceed of crime as its only source of income is the fees collected from the students with which the Petitioner-University had also purchased land against legitimate documents of ownership for setting up its campuses.
- (e) Section 3 of the PMLA is dependent upon the offences under the Indian Penal Code which first requires establishment of the commission of the 'scheduled offences' against the Petitioner in order for its income to fall within the meaning of proceeds of crime.
- (f) The action against the Petitioner-University under the PMLA is premature *inasmuch* as unless there is conviction in the criminal case under Sections 420/467/471/201/120B IPC filed against them in pursuance of the charge-sheet, Annexure P/12, it cannot be said that offences under the PMLA have been made out against them.
- (g) For the reasons aforesaid, the order of provisional attachment dated 28-10-2014, Annexure P/18, under Sub-Section (1) of Section 5 of the PMLA and, the subsequent order of its confirmation dated 03-03-2015, Annexure R/1, of the Adjudicating Authority in respect of 9 (nine) different bank accounts, were illegal.

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3. In their joint counter-affidavit the Respondents No.1 to 3, denying and disputing all material facts have asserted that the action of the Respondents is being carried out in accordance with law. It is stated that the offences punishable under Sections 420/467/471/120B IPC are scheduled offences under the PMLA making the Petitioner-University liable for the actions under challenge.

4. We need not go much into the other facts to ascertain as to whether this is a fit case where this Court should exercise its powers under Section 482 Cr.P.C. and quash the ECIR, except to observe what shall follow hereafter.

5. It is an admitted fact that a case has been registered in the Court of the Chief Judicial Magistrate, South and West at Namchi, against 11 (eleven) persons connected with the Petitioner-University in various capacities based on a charge-sheet submitted by the Sikkim Police for offences under Sections 420/467/471/201/120B IPC. The substance of the offence in the charge-sheet, Annexure P/12, is reproduced below:-

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Vinay Rai along with co-conspirators, Mrs Usha Agarwal, Mr O.B Vijayan, Mrs Mini Juneja, Col Alok Bhandari, Mr Vinod Dahiya, Mr A.L Agarwal, Dr. R. P. Banerjee, Prof. S. Neelamegham, Dr.Rupa Raje Gupta, Dr Savita Sengar, established EIILM University with the sole motive to plot to cheat lakhs of students all over the nation. They induced innocent vulnerable victims projecting wrong information to cheat. Having a number of their Universities quashed in Raipur, namely Rai University, NIILM, IILM, they then tried Rajasthan but did not meet with any success till they succeeded in the State of Sikkim which they further used to their advantage to set up more Universities in different parts of the country. As their past history reveal forgery and cheating and use of their influence members of esteemed boards to further their cause. In EIILM University too the same has been done. In addition it has come to light that eminent scholars who are retired or due retirement have been targeted who are easily susceptible to the salary and especially the positions offered, Professor Jahar Saha, Prof Neelamegham etc. This tactic taken to improve the face value of the University, to create a façade of authenticity to delude the public and distract them from noticing that the University in actuality does not have any recognition from national accreditation bodies for running the programs being offered. All party to this delusion and cheating of the society. The intention from the beginning towards cheating and forgery and the conspiracy to further this intention has been seen in all the preparedness of the accused', from the establishment of a number of trusts to the acceptance of only cheques and drafts as a mode of payment so tracking this trail would pose difficult, to establishment of campuses immediately after a year of recognition, to establishing a huge network of centres etc Also investigation reveals that money that was earned through the fees was benefitted by Rai Foundation either as a direct transaction or money transferred by EIILMU to one of its other trusts e.g. Rai Business School, Rai Technical School, and at the end indirectly benefitting Vinay Rai. Money earned that should have gone for the development of the University went to Rai Foundation instead and to its subsidiaries and the main university lacking in infrastructure.

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6. Based upon the information derived from the charge-sheet, the Respondents No.1 and 2 registered ECIR No.KLZO/01/2014/825-827 dated 19-02-2014 under the PMLA against the aforesaid persons as the offences under Sections 420/467/471/120B IPC are scheduled offences as mentioned in Clause (y) of Sub-Section (1) of Section 2 of the PMLA. The Respondent No.1 while passing the order of provisional attachment dated 28-10-2014, Annexure P/18, under Sub-Section (1) of Section 5 of the PMLA, *inter alia*, is found to have recorded the following:-

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3. (a) Perusal of letter dated 12.02.2014, received from Dy. SP.Gegee Norbu S., SPS), Sub Divisional Police Officer, Namchi Sub-Division, South Sikkim, reveals that Sikkim Police has filed a charge sheet dated 06.05.2013 in the court of Ld. Chief Judicial Magistrate (S & W) for commission of offence punishable under section 420/467/471/201/120B of Indian Penal Code, against the following persons:-

- (i) Shri Vinay Rai, S/o. Late Kulwant Rai, S/o. (sic) Aurangzeb Road, Lane - 12, New Delhi
- (ii) Smt. Usha Agarwal. w/o. Ashok Kumar Agarwal. R/o. 1A, Cornfield Road, Kolkata – 700 019
- (iii) Shri Ollikara Bhaskaran Vijayan, S/o. Late O. N. Bhaskaran, R/o. Ollikara Illom. P.O. Thuravoor, Shertally, Aallippy, Dist. Kerala.
- (iv) Ms. Mini Juneja, w/o. Sunil Juneja, R/o. 616, Sector-37, Faridabad – 121 003

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- (v) Shri Alok Kumar Bhandari, S/o Sagarmal Ratanlal Bhandari, R/o. I-302, Sector-II, Sun city, Bhopal, Ahmedabad.
- (vi) Shri Vinod Kumar Bahiya, S/o. Narain Singh, R/o. H. No. 9, 2nd Floor, Ashoka Park Etn. Punjabi Bagh, East, New Delhi.
- (vii) Shri Aswani Lochan Agarwal, S/o Kamal Lochan Agarwal, 24, Sector 3^a, Rachana Vaishali, Ghaziabad.
- (viii) Ram Prosad Banerjee, DL-11/5, Salt Lake, Kolkata-700091.
- (ix) Shri Sundarajan Neelamegham, K-38, Green Park Main, New Delh-110016.
- (x) Dr. Rupa Raje, H-33/30, DLF City, Gurgaon-122002.
- (xi) Savita Sengar, 701, NT3, Eldeco Utopia, Sector-93A, Noida

It may be mentioned that offences under section 420/467/471/120B of Indian Penal Code are Scheduled Offences, as mentioned in section 2(1)(y) of the Prevention of Money Laundering Act, 2002 (as amended).

(b) It further reveals that all the above mentioned accused persons are associated with Eastern Institute for Integrated Learning in Management University, Sikkim, a private university which was established by Act No. 4, 2006 enacted by Govt. of Sikkim on 24.03.2006 and published by Govt. of Sikkim vide Gazette Notification No. 28/LD/2006 dated 03.04.2006. The University was granted permission by University Grant Commission vide No.49-19/2007 (CPP-i) dated 22.7.2008 to conduct programmes as per State Act. EIILM, Kolkata, West Bengal, a unit of Malvika Foundation is the "Sponsor" of this University.

(c) The University subsequently established global and a national nexus of educational institutions and started selling Degrees, Diplomas and certificate of various courses through its established network for which it has not been granted permission by any competent authority. The University has several National Co-ordinations functioning all across the country for conducting distance education courses. These Coordinators made payments to the university authorities on per student basis, after

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keeping their commission. An off-shore campus of the University was functioning in Mauritius since 2007. Funds collected from students of EIILM University have been transferred to account of Malavika Trust and Rai Foundation. Further huge sums of money were removed from the account of EIILM University into the accounts of Integrated Institute of Excellence Society, Rai Technical School and Rai Business School. Vinay Rai has established a umbrella of trusts for the purpose sponsoring number of Universities all over India. EIILM University is a part of this umbrella which is established under Malvika Foundation through its subsidiary EIILM, Kolkata.

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7. He also took note of the fact that at least 11 (eleven) Foundations/Trusts, were used by the accused persons to launder money earned from their criminal activities. The investigation under PMLA revealed, *inter alia*, that although the Petitioner-University was situated in Sikkim, all its activities regarding Distance Education Courses were actually conducted from its Delhi office. It was thus found that the Petitioner-University and other associated accused persons by allegedly committing offences under Sections 420/467/471/120B IPC during the period from 2008 to 2013 had acquired proceeds of crime.

8. On a careful examination of the charge-sheet filed by the Sikkim Police in the Court of the Chief

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Judicial Magistrate, South & West Sikkim at Namchi and the ECIR which is being sought to be quashed, I have no hesitation to hold that this is not a case where, on a bare perusal of the ECIR, no offence has been made out. To the contrary, from what have been alluded to earlier, *prima facie* there are sufficient materials to constitute offences under the PMLA.

9. The submission of Mr. Shakeel Ahmed, Learned Counsel for the Petitioner-University, that if offences under the Indian Penal Code which have been declared as 'scheduled offences' under the PMLA, are not established, proceeds of crime cannot be determined is, in my view, unacceptable. There is no impediment under the law for the Respondents to proceed against the Petitioner-University and others under the PMLA, if offences under the said Act is also made out.

10. Undeniably the persons named above were associated with the Petitioner-University in various capacities and concededly the charges against them in the criminal trial fall within the 'scheduled offences'

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under the PMLA. Thus, reference to the case of ***State of Haryana and Others VS. Ch. Bhajan Lal and Others : AIR 1992 SC 604***, exhorting this Court to exercise its powers under Section 482 Cr.P.C. to quash the ECIR and the cognate action of attachment under Sub-Section (1) of Section 5 of the PMLA, in my considered opinion, is mis-directed and unsustainable.

11. The other aspect of the matter is that there is also an effective alternative remedy provided under Section 8 of the PMLA followed by the provision of appeal under Section 26 thereof.

12. For the aforesaid reasons, I do not find any reason to interfere with the proceedings instituted by the Respondents at this stage.

13. In the result, the Writ Petition is dismissed.

14. No order as to costs.

Sd/-
(S. P. Wangdi)
Judge
17-09-2015

Approved for reporting : **Yes**

ds/to

Internet : **Yes**