



Suchitra

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL REVISION APPLICATION NO.22/2024****SHRI. DIGAMBAR VASANT KAMAT**

s/o. Shri. Vasant Kamat, aged 70.
House No. 401/1, Sanrit
Apartments, Near Masjid, Malbhat,
Margao Goa-403601

... APPLICANT

Versus

1. DIRECTORATE OF
ENFORCEMENT,
Government of India,
Through, Rajesh Nair,
Assistant Director,
Panaji Zonal Officer, 1st Floor,
Jeevan Vishwah, LIC Building,
EDC Complex, Patto Plaza,
Panaji-Goa-403001

2. **SHRI. CHRUCHILL ALEMAO**

s/o. Late Antonio Agustis
Braz Alemao, House No. 150,
Novangully, Varca, Salcete, Goa- 403721.

... RESPONDENTS

WITH**CRIMINAL REVISION APPLICATION NO.625/2021 (F)****MR. CHURCHIL ALEMAO,**

73 years of age, Indian National,
Businessman by profession, R/o.
H. No. 150, Varca, Salcete, Goa.

... APPLICANT

Versus

1. DIRECTORATE OF ENFORCEMENT,
Government of India,
Through, Rajesh Nair,
Assistant Director, Jeevan Vishwah,
LIC Building, Panaji Zonal Officer,
1st Floor, EDC Complex, Patto Plaza,
Panaji-Goa-403001.

2. DIGAMBAR VASANT KAMAT

s/o. Shri. Vasant Kamat
House NO. 401/1,
Sanrit Apartments,
Near Masjid, Malbhat,
Margao Goa-4036013.

... RESPONDENTS

Mr Parag Rao, Advocate for the Applicant in CRIR No.22/2024 and for Respondent No.2 in CRIR No.625/2021 (F).

Mr Mark Valadares and Mr Sahil Sardessai, Advocates for the Applicant in CRIR No.625/2021 (F) and for Respondent No.2 in CRIR No.22/2024.

Mr S. Samant, Retainer Counsel with Adv Mr Anshul Kumar Sarathe for Respondent No.1 - ED.

CORAM: **ASHISH S. CHAVAN, J.**

Reserved on: **27th APRIL 2026**

Pronounced on: **4th MAY 2026**

ORDER:

1. The Applicants in both aforesaid Revision Applications are arraigned as co-accused in a complaint filed by the Respondent – Enforcement Directorate (ED), under Section 44(1)(b) of the Prevention of Money Laundering Act, 2000 (PMLA) pending before the Special Court at Mapusa Goa (PMLA Court). Since both the Applicants have assailed the common order of taking cognizance and issuing process, raising *pari materia* identical grounds, both Revision Applications can be disposed of by way of a common order.

2. The facts germane to deciding the issue arising out of the present Revision Applications can be summarized as under:-

(i) On 21.07.2015, an FIR was registered which forms the foundational predicate offence.

(ii) On 07.08.2015, on the basis of the aforesaid predicate offence, ECIR was registered by the Respondent ED marking the commencement of proceedings under PMLA.

(iii) On 12.07.2018, a complaint under Section 44(1)(b) of PMLA was instituted before the Special Court at Mapusa.

(iv) The learned Special Court vide order dated 21.07.2018 took cognizance of the offence under the PMLA and issued summons to the accused persons.

(v) On 22.07.2021, the Special Court framed charges under Section 3 of the PMLA against the aforesaid Applicants.

3. Although, the Revision Applications pray for setting aside the cognizance order and the order issuing process on several grounds, the aforesaid Applicants have limited their challenge to the cognizance order on the basis of not obtaining prior sanction under Section 197 of the Criminal Procedure Code (Cr.P.C.).

4. Heard Mr Parag Rao for the Applicant in Criminal Revision Application No.22/2024 and Mr Sahil Sardesai for the Applicant in Criminal Revision Application No.625/2021 (F). Mr S. Samant, Retainer Counsel for the Respondent ED. Perused the record.

5. The Respondent ED has filed replies in both the aforesaid Applications.

6. On behalf of the Applicants a common argument was raised that the learned Special Court ought not to have taken cognizance of the offence under the PMLA in view of the fact that on the date that the cognizance was taken, no prior sanction was obtained by the Respondent ED as stipulated by law under Section 197 of Cr.P.C.

7. Inviting the attention of this Court to the order taking cognizance dated 21.07.2018, it was submitted on behalf of the Applicants that as on the date of taking cognizance, no sanction as provided for under Section 197 of Cr.P.C. was obtained by the Respondent ED. Relying on the pronouncement of the Hon'ble Supreme Court in the matter of *Directorate of Enforcement v/s. Bibhu Prasad Acharya – (2025) 1 SCC 404*, it was argued that in the said judgment, it was categorically held that Section 197(1) of the Cr.P.C. will apply to the provisions of PMLA. Relying further on the replies filed by the Respondent ED, it was argued on behalf of the Applicant that it is undisputed that as on the date of taking cognizance by the Special Court, the Respondent ED had

not obtained any sanction as provided for under Section 197 of Cr.P.C.

8. On behalf of the Respondent ED, learned Advocate Mr Samant conceded the position that as on the date of the order taking cognizance, the Enforcement Directorate had not obtained sanction as provided for under Section 197 of Cr.P.C.

9. Appreciating the rival contentions, the question that arises for the consideration of this Court is whether the order taking cognizance is tenable in law in the absence of sanction as provided for under Section 197 of Cr.P.C. At this juncture, it would not be out of place to reproduce Section 197 of Cr.P.C.:

“197. Prosecution of Judges and public servants.—

(1) When any person who is or was a Judge or Magistrate or a public servant not removable from his office save by or with the sanction of the Government is accused of any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty, no Court shall take cognizance of such offence except with the previous sanction 6[save as otherwise provided in the Lokpal and Lokayuktas Act, 2013 (1 of 2014)]—

(a) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of the Union, of the Central Government;

(b) in the case of a person who is employed or, as the case may be, was at the time of commission of the alleged offence employed, in connection with the affairs of a State, of the State Government:

1[Provided that where the alleged offence was committed by a person referred to in clause (b) during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in a State, clause (b) will apply as if for the expression “State Government” occurring therein, the expression “Central Government” were substituted.]

2[Explanation.—For the removal of doubts it is hereby declared that no sanction shall be required in case of a public servant accused of any offence alleged to have been committed under section 166A, section 166B, section 354, section 354A, section 354B, section 354C, section 354D, section 370, section 375, 3[section 376A, section 376AB, section 376C, section 376D, section 376DA, section 376DB] or section 509 of the Indian Penal Code (45 of 1860).]

(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein, wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression “Central Government” occurring therein, the expression “State Government” were substituted.

4[(3A) Notwithstanding anything contained in sub-section (3), no court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991 (43 of 1991), receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause

(1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the court to take cognizance thereon.]

(4) The Central Government or the State Government, as the case may be, may determine the person by whom, the manner in which, and the offence or offences for which, the prosecution of such Judge, Magistrate or public servant is to be conducted, and may specify the Court before which the trial is to be held.”

As can be seen from the definition itself, the previous sanction as envisaged in Section 197(1) of Cr.P.C. is a condition precedent to the Court taking cognizance of an offence when the accused is a public servant and the offence alleged to have committed by him has been committed while acting or purporting to act in the discharge of his official duty.

10. From the arguments of the learned Retainer Counsel and the replies filed by the Respondent ED, it is evident that the Applicants before this Court were public servants at the time when the cognizance was taken by the learned Special Court i.e. order dated 21.07.2018. Thus, the provisions of Section 197(1) of Cr.P.C. are squarely attracted to the Applicants. Insofar as the question as to whether Section 197 of Cr.P.C. applies to offences under PMLA, the same is no longer *res integra* in view of the authoritative pronouncement of the Hon'ble Supreme Court in

the matter of *Bibhu Prasad Acharya (supra)*. Examining this issue, the Hon'ble Supreme Court has observed thus:-

“24. Section 71 gives an overriding effect to the provisions of PMLA notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Section 65 is a prior section which specifically makes the provisions of CrPC applicable to PMLA, subject to the condition that only those provisions of CrPC will apply which are not inconsistent with the provisions of PMLA. Therefore, when a particular provision of CrPC applies to proceedings under PMLA by virtue of Section 65 PMLA, Section 71(1) cannot override the provision of CrPC which applies to PMLA.

25. Once we hold that in view of Section 65 PMLA, Section 197(1) will apply to the provisions of PMLA, Section 71 cannot be invoked to say that the provision of Section 197(1) CrPC will not apply to PMLA. A provision of CrPC, made applicable to PMLA by Section 65, will not be overridden by Section 71. Those provisions of CrPC which apply to PMLA by virtue of Section 65 will continue to apply to PMLA, notwithstanding Section 71. If Section 71 is held applicable to such provisions of CrPC, which apply to PMLA by virtue of Section 65, such interpretation will render Section 65 otiose. No law can be interpreted in a manner which will render any of its provisions redundant.

26. In this case, the cognizance of the offence under Section 3, punishable under Section 4 PMLA, has been taken against the respondent-accused without obtaining previous sanction under Section 197(1) CrPC. Therefore, the view taken by the High Court is correct. We must clarify that the effect of the impugned judgment¹ is that the orders of the Special Court taking cognizance only as against the accused B.P. Acharya and Adityanath Das stand set aside. The order of cognizance against the other accused will remain unaffected.

27. However, it will be open for the appellant to move the Special Court to take cognizance of the offence against the two respondents if a sanction under Section 197(1) CrPC is granted in future. This liberty will be subject to legal and factual objections available to the respondents. Hence, the appeals must fail and are dismissed subject to what is observed above.”

11. In view of the aforesaid facts and in the light of the guiding principle of the Hon'ble Supreme Court in *Bibhu Prasad Acharya (supra)*, this Court finds merit in the submission of the Applicants that the cognizance order cannot be sustained in the light of the fact that no previous sanction was obtained on the date on which the order taking cognizance was passed.

12. In view thereof, the order taking cognizance and the order issuing process dated 21.07.2018 is set aside.

13. However, it will be open for the Respondent ED to move the Special Court, Mapusa to take cognizance of the offence against the Applicants if a sanction under Section 197(1) of Cr. P.C. is granted in future. This liberty will be subject to such legal and factual objections if any, available to the Applicants.

14. With these observations, Criminal Revision Application No.22/2024 and Criminal Revision Application No.625/2021 (F) stand disposed of. Misc. Applications if any, also stand disposed of. Registry to waive office objections and register Criminal Revision Application No.625/2021 (F).

ASHISH S. CHAVAN, J.