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REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. 2142-2143 OF 2013

STANDARD CHARTERED BANK ...APPELLANT

VERSUS

ENFORCEMENT OFFICER MINISTRY OF HOME AFFAIRS & ANR. ...RESPONDENTS

Certified to be true copy
Assistant Registrar (Judl.)
.....2026
Supreme Court of India

JUDGMENT

J.B. PARDIWALA, J.:

For the convenience of exposition, this judgment is divided into the following parts:-

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1. These criminal appeals arise from the judgment and order passed by the High Court of Judicature at Bombay dated 22.03.2012, in Criminal Application Nos. 182-183 of 2012, respectively, by which the High Court declined to quash the complaint and the order issuing summons to the appellant herein. The appellant had prayed before the High Court to quash two complaints bearing Criminal Case Nos. 1503-1504 of 2002 for the offence punishable under Sections 56(1) and 73(3) of the Foreign Exchange Regulation Act, 1973 ("**FERA**"), respectively, on various grounds, including that of non-compliance with the mandatory opportunity notice as required under Section 61(2) proviso of FERA and violation of the right of speedy trial. However, the High Court rejected the two petitions *inter alia,* holding that a quashing petition under Section 482 of the Code of Criminal Procedure, 1973 ("**CrPC**") is not maintainable if an alternate remedy of Revision is available under Section 397 of the CrPC.

A. FACTUAL MATRIX

2. The facts of the present case are that the appellant herein, Standard Chartered Bank, is a banking company and an authorised dealer in foreign exchange. The accused no. 2, Ms. B. Mchugh, serving with the Bills Department, Manchester, was the officer in charge of and responsible for the conduct of the bank's business. The complaints proceed against these appellant on the allegation that they contravened the provisions of FERA in the handling of remittances routed through the Vostro Account of Standard Chartered Bank, London, maintained with the Mumbai branch. The prosecution's case is that a chain of banker's cheques and drafts, procured in India through proxy purchasers acting at

the instance of persons who were in fact fronting for a UK-based beneficiary, were forwarded by the appellant's Manchester and New Delhi offices for collection and were credited by the appellant's Mumbai office for the onward benefit of Indo International Corporation Ltd., a person resident outside India. It is the complainant's case that the appellant bank subsequently realised that the remittances were not in conformity with the Exchange Control Regulations, reversed the credit entries, and blocked the entire amount of Rs. 30,00,000/- in its own books, which was thereafter surrendered to the respondent authorities *vide* Pay Order No. 279893 dated 06.01.1993 pursuant to a directive under Section 33(2) of FERA. In such circumstances, the appellant was alleged to have committed an offence of unauthorised credit of an amount of any person resident outside India, punishable under Section 56(1) of the FERA.

3. In such circumstances referred to above, the appellant is here before us with the present appeal.

B. SUBMISSIONS OF THE APPELLANT

4. Mr. Shyam Divan, the senior counsel appearing for the appellant, submitted that the complaint was instituted on 30.05.2002 for a transaction which happened in the year 1992, so as to overcome the sunset period provided under FEMA, which would have come to an end on 01.06.2002. He further submitted that the High Court erred in holding that the quashing petitions under Section 482 of the CrPC were not maintainable, as an alternate remedy of revision under Section 397 was available in the present case. In support of his submission, reliance was placed on the decision of ***Dhariwal***

Tobacco Products Ltd. v. The State of Maharashtra, reported in **(2009) 2 SCC 370**, wherein this Court held that the availability of an alternate remedy of revision under Section 397 of the CrPC cannot be a ground to reject a petition under Section 482 of the CrPC.

5. Mr. Divan further submitted that, as per Section 61(2) of the FERA, no complaint with respect to an offence under Section 56 can be lodged unless an opportunity notice is given to the proposed accused. Referring to the facts, he submitted that in the complaint, the complainant allegedly refers to an opportunity notice, however, neither such opportunity notice was placed on record, nor was any such opportunity notice ever received by the appellant. Since the respondents have failed to comply with the mandatory requirement of section 61(2) of FERA, the Magistrate could not have taken cognizance on the complaint.

6. Mr. Divan further argued that the High Court failed to appreciate that there had been a delay of 10 years in the investigation of a criminal matter, and a further delay of 10 years in the commencement of the trial after a complaint was filed, which manifestly is a violation of the fundamental right to speedy trial under Article 21 of the Constitution of India. He submitted that the appellant is being prosecuted by the respondents in respect of a complaint filed in 2002 for the alleged transaction, which took place in 1991. The said complaint, which was instituted in 2002, even to date is at the same stage as it was earlier. The allegations levelled in the complaint are not supported by any documentary evidence. The respondent - complainant has been unable to produce a single document worth the name in support of the allegations levelled in the complaint, including the said Section 61 opportunity notice.

C. SUBMISSIONS OF THE RESPONDENTS

7. Ms. Ruchi Kohli, the senior counsel appearing for the respondents, submitted that the observations of the High Court with regard to Section 482 of CrPC are not directly relevant since the relevant paragraph no. 98 of the impugned order clearly indicates that the High Court in fact considered the quashing petition of the appellant herein under Section 482 CrPC, despite its observations on the invoking of Section 482 of CrPC, *vis-à-vis*, remedy of preferring a revision application under Section 397 of CrPC, and rejected the said quashing petition on the ground that the criminal complaint need not be quashed only on the ground of delay.

8. With respect to delay, it was also submitted that it is a matter of record that at the first instance of service of summons, the appellant failed to appear before the Trial Court despite the service of summons. She further submitted that the Trial Court had, for the second time, directed the respondents to serve the appellant. Therefore, the delay is on the part of the appellant, and not on the part of the respondent, which also goes to show that the appellant do not want to face the trial and are adopting various tactics to avoid the trial. It was further submitted that violation of the right to speedy trial under Article 21 of the Constitution would get attracted only if there is an intentional delay on the part of the prosecution, whereas the records of the present case show that there is no intentional delay on the part of the department and, therefore, Article 21 of the Constitution is not applicable.

D. ISSUES FOR THE DETERMINATION

9. Having heard the learned counsel appearing for the parties and having gone through the materials on record, the following questions fall for our consideration:

(I) Whether the High Court was correct in holding that the availability of an alternative remedy of filing a revision under Section 397 of the CrPC would operate as a bar to the maintainability of a petition under Section 482 of the CrPC?

(II) Whether the non-compliance with the mandatory requirement of an opportunity notice under the proviso to Section 61(2) of FERA warrants quashing of the criminal complaints and the summoning order issued against the appellant?

(III) Whether the appellant's fundamental right to a speedy trial under Article 21 of the Constitution of India could be said to have been violated in the facts and circumstances of the present case?

E. ANALYSIS

(I) Whether the High Court was correct in holding that the availability of an alternative remedy of filing a revision under Section 397 of the CrPC would operate as a bar to the maintainability of a petition under Section 482 of the CrPC?

10. The High Court in its impugned order rejected the quashing petition of the appellant herein filed under Section 482 CrPC merely on the ground that the same was not maintainable as an alternative

remedy of filing a revision application under Section 397 of CrPC was available. This court, in a catena of judgments, has time and again established, reiterated and readdressed the issue pertaining to maintainability of an application under Section 482 of the CrPC *vis-à-vis* invoking of revisional jurisdiction under Section 397 read with Section 401 of the CrPC. The present case is such that the need to explain the issue has once again arisen.

11. In the case of ***Dhariwal Tobacco*** *(supra)*, the appellants therein had approached the Bombay High Court under Section 482 of the CrPC seeking quashing of criminal proceedings instituted against them in the State of Maharashtra concerning samples of their products. The High Court declined to entertain the application, taking the view that the appellants ought to have availed the alternative remedy of preferring a revision application under Section 397 of the CrPC. The question that thus arose for consideration before this Court was whether an application under Section 482 of the CrPC was liable to be dismissed on the sole ground that an alternative remedy of revision under Section 397 of the CrPC was available. Answering this in the negative, this Court held that the mere availability of a revisional remedy under Section 397 of the CrPC does not, by itself, furnish a ground for dismissing an application under Section 482 of the CrPC. This Court further clarified that the issuance of a summons, being an order of a nature that does not attain finality *qua* the rights of the parties, does not fall within the category of an interlocutory order for the purposes of Section 397 of the CrPC, and that a settled line of precedent of this Court furnishes the governing criteria for invoking the inherent jurisdiction under Section 482. This Court also drew a parallel with the position obtaining under the Code of Civil Procedure, 1908

("**CPC**"), observing that even where the revisional remedy under Section 115 CPC is statutorily barred, recourse to the jurisdiction under Articles 226-227 of the Constitution remains available, as has been held by this Court, and that similarly, even where a second revision before the High Court is barred under Section 397(2) of the CrPC following dismissal of the first by the Court of Session, the inherent power of the Court continues to be available. This Court additionally noted that the High Court's power is traceable not merely to Section 482 but also to Section 483 of the CrPC, which casts a duty on the High Court to exercise continuous superintendence over subordinate Courts of Judicial Magistrates so as to ensure the expeditious and proper disposal of cases. Since the inherent power of the High Court is not conferred by statute but is merely preserved thereunder, this Court held that it would be difficult to conceive of that jurisdiction being ousted merely because a revisional remedy was also available. The relevant observations are as under:

> "**6.** *Indisputably issuance of summons is not an interlocutory order within the meaning of Section 397 of the Code. This Court in a large number of decisions beginning from R.P. Kapur v. State of Punjab to Som Mittal v. Govt. of Karnataka' has laid down the criterion for entertaining an application under Section 482. Only because a revision petition is maintainable, the same by itself, in our considered opinion, would not constitute a bar for entertaining an application under Section 482 of the Code. Even where a revision application is barred, as for example the remedy by way of Section 115 of the Code of Civil Procedure, 1908, this Court has held that the remedies under Articles 226/227 of the Constitution of India would be available. (See Surya Dev Rai v. Ram Chander Rai) Even in cases where a second revision before the High Court after dismissal of the first one by the Court of Session is barred under Section 397(2) of the Code, the inherent power of the Court has been held to be available.*

> ***7.*** *The power of the High Court can be exercised not only in terms of Section 482 of the Code but also in terms of Section 483 thereof. The said provision reads thus:*
>
> > *"483. Duty of High Court to exercise continuous superintendence over Courts of Judicial Magistrates.— Every High Court shall so exercise its superintendence over the Courts of Judicial Magistrates subordinate to it as to ensure that there is an expeditious and proper disposal of cases by such Magistrates."*
> >
> > *The inherent power of the High Court is not conferred by statute but has merely been saved thereunder. It is, thus, difficult to conceive that the jurisdiction of the High Court would be held to be barred only because the revisional jurisdiction could also be availed of. (See Krishnan v. Krishnaveni?.)*
>
> (Emphasis Supplied)

12. Similarly, in ***Prabhu Chawla v. State of Rajasthan***, reported in **(2016) 16 SCC 30**, the petitions before the High Court arose under Section 482 of the CrPC following the issuance of a summons by the trial court. The High Court dismissed the quashing petitions as not maintainable, taking the view that the availability of a remedy under Section 397 of the CrPC rendered a petition under Section 482 impermissible. A three-Judge Bench of this Court, relying upon ***Dhariwal Tobacco*** *(supra)*, held that the availability of an alternative remedy of criminal revision cannot furnish a good ground for dismissing an application under Section 482 of the CrPC. This Court reiterated that nothing contained in the CrPC, not even Section 397, can be read as affecting or limiting the inherent power conferred under Section 482, though such power ought not to be exercised so as to invade areas specifically set apart for other powers conferred under the CrPC. There is, however, no absolute bar on the exercise of inherent jurisdiction where an abuse of the process of the court or some other extraordinary situation warrants

its invocation, the only limitation upon such exercise being one of self-restraint only. The relevant observations are as under:

> *"**6.** In our considered view any attempt to explain the law further as regards the issue relating to inherent power of the High Court under Section 482 CrPC is unwarranted. We would simply reiterate that Section 482 begins with a non obstante clause to state:*
>
> > *"482. Saving of inherent powers of High Court.— Nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any court or otherwise to secure the ends of justice."*
>
> *A fortiori, there can be no total ban on the exercise of such wholesome jurisdiction where, in the words of Krishna Iyer, J.*
>
> > *"abuse of the process of the court or other extraordinary situation excites the Court's jurisdiction. The limitation is self-restraint, nothing more". (Raj Kapoor case, SCC p. 48, para 10)"*
>
> *We venture to add a further reason in support. Since Section 397 CrPC is attracted against all orders other than interlocutory, a contrary view would limit the availability of inherent powers under Section 482 CrPC only to petty interlocutory orders! A situation wholly unwarranted and undesirable.*
>
> *xxx xxx xxx*
>
> ***8.** In our considered opinion the learned Single Judge of the High Court should have followed the law laid down by this Court in Dhariwal Tobacco Products Ltd. and other earlier cases which were cited but wrongly ignored them in preference to a judgment of that Court in Sanjay Bhandari passed by another learned Single Judge on 5-2-2009 in SB Criminal Miscellaneous Petition No. 289 of 2006 which is impugned in the connected criminal appeal arising out of Special Leave Petition No. 4744 of 2009. As a result, both the appeals, one preferred by Prabhu Chawla and the other by Jagdish Upasane and others are allowed. The impugned*

common order dated 2-4-2009 passed by the High Court of Rajasthan is set aside and the matters are remitted back to the High Court for fresh hearing of the petitions under Section 482 CrPC in the light of law explained above and for disposal in accordance with law. Since the matters have remained pending for long, the High Court is requested to hear and decide the matters expeditiously, preferably within six months."

(Emphasis Supplied)

13. Further, in the recent case of ***Akanksha Arora v. Tanay Maben***, reported in **2024 SCC OnLine SC 3688**, the appellant-wife, being dissatisfied with the quantum of interim maintenance awarded to her, had filed a petition under Section 482 of the CrPC before the High Court seeking its enhancement. The said petition was ordered to be dismissed on the ground that it was not maintainable, since the appellant-wife had an efficacious remedy of revision available under Section 397 of the CrPC. The Division Bench of this Court, relying heavily on ***Prabhu Chawla*** *(supra)*, held that the High Court ought not to have rejected the petition under Section 482 solely on the ground that an alternative remedy of revision was available. This Court further held that the nomenclature under which a petition is filed is wholly immaterial, and that in order to do substantive justice, the High Court can always treat and convert a petition filed under Section 482 CrPC as one under Section 397 CrPC, and vice versa.. The relevant observations are as under:

*"**7.** This Court has, in a catena of decisions, provided that nomenclature of a petition is immaterial and for doing substantive justice, the High Court can always convert a petition under Section 482 CrPC to a revision under Section 397 CrPC and vice versa. The approach of the High Court in dismissing the petition filed by the appellant under Section 482 CrPC on the hyper technical ground that she had to avail the remedy of revision cannot be appreciated because the same has unnecessarily compelled the appellant to*

approach this Court by way of this appeal filed under Article 136 of the Constitution of India.

8. *In Madhu Limaye v. The State of Maharashtra, this Court held that the label of a petition filed by an aggrieved party is immaterial. The High Court can always examine the controversy in an appropriate case in exercise of its inherent powers.*

9. *In Prabhu Chawla v. State of Rajasthan, this Court examined the relevant scope of Section 482 CrPC and Section 397 CrPC and held that nothing in CrPC, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482 CrPC. The inherent powers should not invade areas set apart for specific powers conferred under CrPC but there is no total ban on the exercise of inherent powers where abuse of process of Court or other extraordinary situation warrants exercise of inherent jurisdiction. The limitation is self-restraint, nothing more. Availability of alternative remedy of criminal revision under Section 397 CrPC, by itself, cannot be a good ground to dismiss an application under Section 482 CrPC.*

10. *Viewed in light of the above precedents, we feel that even if the High Court was of the view that the appellant should have invoked the jurisdiction under Section 397 CrPC for seeking enhancement of interim maintenance, it ought not to have non-suited the appellant only on the ground of alternative remedy. The judicious approach would have been to convert the petition under Section 482 CrPC into a revision under Section 397 CrPC and to have decided the same as per law."*

(Emphasis Supplied)

14. The law on the interplay between Section 397 and Section 482 of the CrPC, respectively, as laid down in the decisions discussed above, is well settled and admits of little ambiguity. The availability of an alternative remedy of revision under Section 397 of the CrPC does not, by itself, operate as a bar to the exercise of the inherent jurisdiction of the High Court under Section 482 of the CrPC. The

two provisions operate in distinct spheres, and the mere existence of a revisional remedy cannot be treated as ousting the jurisdiction preserved under Section 482, which is available wherever there is an abuse of the process of the court or where the ends of justice so require, the only limitation upon its exercise being one of self-restraint. Nor is the nomenclature of a petition determinative, and a High Court, in order to do substantive justice, may treat a petition filed under Section 482 as one under Section 397, and vice versa, rather than non-suiting a party on a hyper-technical ground of maintainability. Thus, the availability of the remedy of revision under Section 397 of the CrPC could not have been made the threshold on which the maintainability of the appellant's applications under Section 482 was to be tested. We are of the opinion that the High Court erred in treating the availability of the remedy of revision under Section 397 of the CrPC as the threshold for examining the maintainability of the appellant's applications under Section 482 of the CrPC.

15. The respondents contended that the High Court dismissed the appellant's applications solely on merits, that is, on the ground of delay, without reference to any threshold objection as to maintainability. We are unable to accept this submission. The impugned order, at its very inception, frames the common thread running through all ten applications disposed of by it, including Criminal Application Nos. 182 and 183 of 2012, respectively, filed by the appellant, as being that each sought to invoke Section 482 of the CrPC *"without first exhausting the remedy of seeking revision before the Court of Sessions"*, and records that the applications were listed together specifically to examine whether such a course was desirable. This threshold view on maintainability thus forms

the organising premise of the impugned order as a whole and applies equally to the appellant's applications. The finding at para 98 of the impugned order, that the 10-year delay, though *"indeed deplorable"*, would not by itself justify quashing of the complaints, was therefore rendered in continuation of, and not in substitution for, this overarching view on maintainability. The dismissal of the appellant's applications cannot accordingly be read as resting on delay alone. So far as the question of delay is concerned, we shall deal with the same, along with the right to speedy trial, in the later part of this judgment.

(II) Whether the non-compliance with the mandatory requirement of an opportunity notice under the proviso to Section 61(2) of FERA warrants quashing of the criminal complaints and the summoning order issued against the appellant?

16. Section 61 of FERA sets out the statutory requirements that must mandatorily be satisfied before a court can take cognizance of the offences under the Act. Under Section 61, cognizance of an offence punishable under Sections 56 and 57 of FERA, respectively, can be taken by a court only upon a written complaint made by the Director of Enforcement, the Central Government, or the RBI, or by a person authorised by any one of them to make such a complaint. Further, under the proviso to Section 61(2), where the alleged contravention consists of doing an act without permission, no complaint can be made unless the person accused of the offence has first been given an opportunity to show that he had such permission. The relevant extract of Section 61 of FERA is as under:

*"**61.** Cognizance of offences —*

(1) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973, it shall be lawful for any metropolitan magistrate and for any magistrate of the first class to pass a sentence of imprisonment for a term exceeding three years or of fine exceeding five thousand rupees on any person convicted of an offence punishable under section 56.

(2) No Court shall take cognizance —
(i) xxx xxx xxx
(ii) of any offence punishable under section 56 or section 57, except upon complaint in writing made by —
(a) the Director of Enforcement; or
(b) any officer authorised in writing in this behalf by the Director of Enforcement or the Central Government; or
(c) any officer of the Reserve Bank authorised by the Reserve Bank by a general or special order:

Provided that where any such offence is the contravention of any of the provisions of this Act or of any rule, direction or order made thereunder which prohibits the doing of an act without permission, no such complaint shall be made unless the person accused of the offence has been given an opportunity of showing that he had such permission."

(Emphasis Supplied)

17. In ***Devashis Bharracharya v. Union of India***, reported in **2009 SCC OnLine Del 1018**, the petitioner therein had assailed a complaint and the consequent summoning order under Section 56 of FERA read with Section 61(2)(ii), respectively, on the ground that the criminal complaint had been instituted even before the expiry of the three-day period granted to him to show cause. The entire challenge of the petitioner rested on the contention that his prosecution under FERA was illegal and without jurisdiction for failure to comply with the proviso to clause (ii) of sub-section 2 of Section 61. The facts were that an opportunity notice dated 17.05.2002 was served upon the petitioner on 25.05.2002, requiring him to state in writing within three days whether he held

the requisite permission of the RBI for the transactions in question, failing which a complaint would be filed. The petitioner submitted a detailed reply on 27.05.2002, however, the complaint itself had already been signed and filed in Court on that very date, without waiting for the reply or for the three-day period to lapse. The High Court of Delhi held that the opportunity contemplated under the proviso to Section 61(2)(ii) of FERA must be a meaningful opportunity and not a mere notional compliance, and that principles of natural justice have to be read into a statute even where they are not explicitly set out, particularly where, as in the case of FERA, the action complained of results in drastic penal consequences including a term of imprisonment. The court held that this opportunity to show-cause is a matter required to be treated with utmost seriousness, and that the requirement of the statute is mandatory so far as giving such opportunity to a person accused of an offence under Section 56 concerned, on the well settled principle that where law mandates something to be done in a particular way, it has to be done in that way or not at all. Applying this principle, the court found that there was, therefore, no compliance with the statutory requirement of Section 61(2)(ii) of FERA. The court accordingly held that the order taking cognizance and issuing summons was without application of mind and quashed the proceedings. The relevant observations are as under:

> *"**14.** The entire challenge by the petitioner rests on the contention that the prosecution of the petitioner under FERA, 1973 is illegal and without jurisdiction for failure to comply with the proviso to clause (ii) of sub-section 2 of Section 61 [...]*
>
> *xxx xxx xxx*
>
> ***18.** It is well settled that where an action under the statute entails civil consequences, then even if an opportunity of being heard may not be explicitly set out in the applicable*

legal provisions, the adherence to the principles of natural justice has to be read into such a statute. For this reason, so far as the provisions of FERA was concerned, the legislature has enacted the proviso to clause (ii) of sub section 2 of Section 61 requiring an opportunity to show that the noticee had the requisite permission.

19. *There can be no dispute that the action permitted under section 61 of the FERA, 1973 certainly results in drastic penal consequences. The statute prescribes that it shall be lawful for any Metropolitan Magistrate and for any Magistrate of the First Class to pass a sentence of imprisonment for a term exceeding three years or of fine exceeding five thousand rupees on any person if found guilty of the offence under clause (ii) of sub-section 2 of Section 61 of the Act. The present case is not a case where the legislation does not prescribe compliance of the principles of natural justice.*

xxx xxx xxx

23. *In this background, the opportunity which the respondents are directed to give under the proviso to clause (ii) of sub-section 2 of Section 61 is a matter which is required to be treated with utmost seriousness with which the respondents do not appear to have treated the same in the instant case.*

24. *There can also be no dispute that the requirement of the statute is mandatory so far as giving the opportunity of the person accused of an offence under section 56 or 57 is concerned.*

25. *The well-settled principle that where law mandates something to be done in a particular way, then it has to be done in that way or not at all is so well settled that it needs no elaboration [...]*

xxx xxx xxx

30. *[...] 'Opportunity' has to be adequate and meaningful opportunity whereby a person against whom the respondent is able to place such material as to support its plea of innocence on the ground that it had complied with statutory formalities or that no such formality applied. It has*

to be held, therefore, that there is no compliance of the statutory requirements in the instant case.

xxx *xxx* *xxx*

47. *In the instant case, it would appear that the statutory requirement of issuance of notice under proviso of sub clause (ii) of sub-section 2 of Section 61, its date and manner in the instant case as well as the failure to consider the petitioner's reply or even place it before the court, has resulted in manifest error in the exercise of jurisdiction by learned trial judge. The order taking cognizance in the instant case and directing issuance of summons, is clearly without application of mind and cannot stand in law. In the light of the well settled principles noticed hereinabove, there is no embargo from quashing the proceedings which are pending before the learned trial court."*

(Emphasis Supplied)

18. Similarly, and of particular significance to the facts of the present case, in ***Sanjay Malviya v. R.K. Rawal, CEO, Enforcement Directorate***, reported in **2015 SCC OnLine Del 7686**, the petitioner sought quashing of a complaint and summoning order under Section 56 of FERA read with Section 61(2)(ii) respectively. It was an admitted position that the opportunity notice had been served upon the petitioner on 23.05.2002, on a Thursday, leaving him with only a single working day, since 25.05.2002 and 26.05.2002 were public holidays, yet the respondent, without disposing of the petitioner's representation and indeed before even receiving his reply, filed the criminal complaint on 27.05.2002. The petitioner further pointed out that the respondent had not followed the procedure and manner of service prescribed under the Rules, and had allegedly affixed the opportunity notice at an address at which the petitioner was not even residing. The factum of service of the notice was also not mentioned in the list of documents filed with the complaint, nor in the respondent's counter affidavit,

rendering the claim of service itself doubtful. Crucially, and squarely applicable to the case at hand, the High Court of Delhi noted that the complaint neither disclosed any date of service of the opportunity notice nor was any proof of service filed by the department in support of the complaint, the respondent having merely stated that an opportunity notice had been served without any accompanying service report. It was further an admitted fact that no proof of service was filed at the time of filing the complaint to establish that an opportunity under Section 61(2) had in fact been given to the petitioner. The Court held that this would amount to non-compliance of the principle of natural justice envisaged under Section 61(2) of FERA, and reiterated, relying upon the ratio in ***Devashis Bhattacharya*** *(supra)*, that before initiation of proceedings under Section 56 of FERA, an opportunity must be granted to the offender, and that the Magistrate is under a statutory duty to satisfy himself, before taking cognizance, that such an opportunity had in fact been given. The Court accordingly held that the summoning of the petitioner was, in a mechanical manner, and accordingly quashed both the complaint and the summoning order. The relevant observations are as under:

> "***13.*** *The respondent stated that opportunity notice is served to petitioner as required in terms of proviso to Section 61 of the FERA however the compliant (sic) does not disclose the date of this notice and there is no mention of the reply submitted by the petitioner. It is apparent therefrom that complaint was drafted before or at the time of preparation of notice dated 17th May, 2002 and the same is filed without considering the objections of petitioner in its reply dated 25th May 2002.*
>
> ***14.*** *It is well settled law that where law mandates something to be done in a particular way, then it has to be done in that way or not at all is so well settled, that it needs no elaboration. The cognizance taken by ACMM is without*

jurisdiction and the process issued was illegal being in violation of proviso to Section 61 of the FERA and without application of judicial mind.

xxx *xxx* *xxx*

17. *Therefore before initiation of proceedings under Section 56 of the FERA, an opportunity must be granted to the offender by the Magistrate before taking the cognizance of the offence and the Magistrate is under statutory duty to satisfy himself that an opportunity has been given to the offender before filing the complaint and if the offender failed to show any permission, complaints to be filed before the concerned magistrate and that magistrate will issue process only on being satisfied that a case has been made out for such issue that he has such permission. In other words, failure on part of the offender to show such permission to the Department is the genesis of the offence, which gives right to the department to initiate criminal prosecution and not the opportunity. Thus, the following are required for initiation of prosecution:—*

a. Grant of opportunity before filing the complaint
b. Disposal of opportunity given to offender regarding having such permission or not from the RBI, if not,
c. Initiation of criminal prosecution and taking of cognizance by the Magistrate in view of the opportunity given to the offender.

18. *In the present case, statutory requirement of issuance of notice under proviso of Section 61(2)(ii) of the FERA, its date and manner as well as the failure to consider the petitioner's reply has resulted in manifest error in the exercise of jurisdiction by ACMM. The order taking cognizance in the instant case and issuance of summons is contrary to law.*

xxx *xxx* *xxx*

27. *In the complaint neither any date of service of opportunity notice is given nor any proof of service to effect is filed by department in support of the complaint did not mention the factum of compliance with Section 61(2) and only gave date of the notice in the complaint. The respondent in para 5 at page 22 of complaint simply stated that one*

opportunity notice and Show Cause Notice dated 4th April, 2002 was served upon the petitioner which means an opportunity under Section 61(2) by affixation but no service report along with the same was filed at the time of initiation of proceedings before the trial court till date. On 17th May, 2002 the respondent served the opportunity notice by way of affixing the same at a address given therein where the petitioner is not even residing despite the fact though the respondent was having the knowledge of present address of the petitioner where he is actually living which is also mentioned in the opportunity notice which reflects no proper care is taken to serve the notice in accordance with prescribed in Rule 3 of the FERA which clearly prescribe the mode and manner of service of notices issued under the FERA and therefore cannot be considered as a proper service of the notice of opportunity.

xxx xxx xxx

29. *It is admitted fact that no proof of service of notice was filed by the respondent at the time of filing the complaint on 27th May, 2002 to establish that an opportunity in terms with Section 61(2) was given to the petitioner and the petitioner failed to respond the same by showing that it has permission from the RBI or not making him liable for prosecution under Section 56 of the FERA.*

30. *In view of the above facts as well as the legal bar imposed in proviso to Section 61 of the FERA, is ought to have satisfied himself at the first instance before issuance of the process about compliance of proviso to Section 61(2) about the factum of opportunity given to the accused and his satisfaction to this effect must be there before taking cognizance against the petitioner in exercise of his legal duty, as there is a statutory bar imposed upon the ACMM from taking cognizance. If the trial court would have exercised his legal duty diligently in terms of Section 61(2) of the FERA the cognizance could not have been taken for want of granting an opportunity to the petitioner, as done by the trial court in a mechanical manner.*

31. *Therefore, it is apparent on the face of record that summoning of the petitioner in a mechanical manner is bad in law and is liable to be set aside. The impugned order*

dated 27th May, 2002 is accordingly quashed by allowing the present petition."

(Emphasis Supplied)

19. In ***United India Airways Ltd. v. Chief Enforcement Officer, Enforcement Directorate***, reported in **2018 SCC OnLine Del 8233**, the petitioners had assailed an order dated 11.07.2017 framing charge against them under Section 9(1)(e) of FERA, on the ground that the mandatory requirement of the proviso to Section 61(2)(ii) of FERA had not been complied with, since no opportunity notice had ever been served upon the petitioners. The High Court held that the requirement under the proviso to Section 61(2)(ii) of giving an opportunity to the accused to show that he had the requisite permission is a mandatory requirement, and that before taking cognizance, the Magistrate is under a statutory duty to satisfy himself that such an opportunity has in fact been granted. Since the opportunity notice had admittedly not been served upon the petitioners, the Court held that the Trial Court had clearly erred in taking cognizance, and accordingly set aside the impugned order on charge. The relevant observations of the Court are extracted below:

*"**7.** The requirement of proviso to Clause (ii) of sub Section (2) of Section 61 is that an opportunity of showing that the accused had the requisite permission, is a mandatory requirement.*

***8.** A Coordinate Bench of this Court in Sanjay Malviya v. R.K. Rawal, CEO Enforcement Directorate : (2015) 149 DRJ 231 has held that there is a statutory bar imposed under Section 61 of FERA on a magistrate on taking cognizance unless it is shown that the opportunity of showing availability of permission has been granted to the accused.*

9. *It is well settled that where law mandates something to be done in a particular way, it has to be done in that way or not at all.*

10. *Before initiation of proceedings under Section 56 of the FERA, an opportunity must be granted to the accused. Before taking the cognizance of the offence Magistrate is under statutory duty to satisfy himself that an opportunity has been given to the accused before filing the complaint. Magistrate will issue process only on being satisfied that a case has been made out for such issue.*

xxx xxx xxx

16. *The subject complaint was filed on 29.05.2002. Since petitioners were never granted an opportunity, as mandated by Section 61(2) of FERA, there is clearly a breach of the mandate of law. Since the requirements of Section 61(2) of FERA have not been complied with, reliance placed by the respondent on the statement recorded at the time when proceedings under Section 40 of FERA were being undertaken and reliance on the same in the impugned order as sufficient compliance of Section 61(2) of FERA, is clearly misplaced.*

17. *Since respondents have failed to comply with the mandatory requirement of Section 61(2) of FERA, the Trial Court clearly erred in taking cognizance.*

18. *In view of the above, the impugned order on charge dated 11.07.2017 cannot be sustained and is liable to be set aside. The impugned order dated 11.07.2017 is, accordingly, quashed."*

(Emphasis Supplied)

20. Most recently, in ***Shilpi Modes v. Directorate of Enforcement***, reported in **2023 SCC OnLine Del 6816**, the petitioner sought quashing of proceedings initiated under Section 56 of FERA on the ground of violation of the principles of natural justice, since the opportunity notice required under Section 61(2) of FERA had never been served upon the petitioner. In fact, it was found that the

petitioner had, well prior to the initiation of proceedings, communicated its changed address to the Central Bank of India, which address the Central Bank of India, despite being aware of it, failed to communicate to the Enforcement Directorate; consequently, the opportunity notice was never served upon the petitioner at its correct address. The High Court held that any order entailing drastic civil consequences, including an order under FERA, cannot be sustained unless an opportunity has first been afforded to the person likely to be affected, and that this constitutes a clear application of the rule of *audi alteram partem*. The Court noted that the plain reading of the proviso to Section 61(2) indicates that no complaint can be filed unless the person accused of the offence has been given an opportunity of showing that he has such requisite permission. The Court accordingly quashed the proceedings, including the complaint filed against the petitioner. The relevant observations of the Court are extracted below:

> *"**22.** It is clear from the aforesaid that the ED did not have the fresh and correct address of the petitioner which was not disclosed by the Central Bank of India despite being fully aware of the same. Having regard to the aforesaid undisputed admission being part of judicial record, propels this Court to conclude that the notice under proviso to Clause (ii) of sub section (2) of Section 61 FERA was never served upon the petitioner.*
>
> *xxx xxx xxx*
>
> ***24.** The plain reading of the proviso would indicate that no complaint can be filed unless the person accused of such offence has been given an opportunity of showing that he has such requisite permission [...]*
>
> *xxx xxx xxx*
>
> ***28.** A similar issue has been subject matter of a case decided by the learned Single Judge of this Court on 05.04.2018 in Crl. Rev. P. 642/2017 titled United India*

Airways Ltd. v. Chief Enforcement Officer, Enforcement Directorate, 2018 SCC OnLine Del 8233.

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31. *This Court respectfully concurs with the observations and the ratio laid down in the case United India Airways Ltd. (Supra).*

xxx xxx xxx

33. *Since the show cause notice or opportunity notice was never served upon the petitioner, the consequent proceedings initiated under Section 56 FERA cannot be continued. It is for violation of Section 18(2) and Section 18(3) of the FERA that would entail action under Section 56 FERA, but the intervening threshold of issuance of show cause notice/opportunity notice and hearing the notice before passing the decision upon such mandatory application of principles of natural justice alone that the action under Section 56 could, at all, have been initiated. As such the submission of Mr. Yogeshwaran on that count are found to be untenable.*

34. *In view of the aforesaid observations, the present writ petition is allowed and as a consequence thereof, a writ of certiorari is issued quashing the exparte proceedings issued by the ED dated 04.04.2022 including the complaint filed against the petitioner and all the consequential proceedings emanating therefrom."*

(Emphasis Supplied)

21. Thus, the conspectus of the above discussion is that the service of an opportunity notice under the proviso to Section 61(2) of FERA is a mandatory requirement, without compliance of which no complaint under Section 56 or 57 of FERA respectively, can validly be instituted, and no Magistrate can validly take cognizance of the offence alleged therein. This opportunity must be meaningful and adequate, and not a mere technical or notional compliance, given the drastic penal consequences that follow from proceedings under FERA. The burden lies upon the prosecution to establish, at the

threshold, that such notice was issued and served in the prescribed manner. The Magistrate shall satisfy himself, before taking cognizance, that such opportunity was in fact given, or otherwise it may render the order taking cognizance unsustainable and liable to be quashed.

22. Now adverting to the facts of the present case, the respondents, in the said complaints, had merely stated that the opportunity notice under Section 61(2) of FERA was served upon the appellant, but had neither stated the date of such notice, nor placed a copy of the said notice on record with the complaint before the Magistrate. Rather, this Court, *vide* its order dated 24.03.2015, had given both parties an opportunity to place on record any additional documents, if any; however, the respondents failed to place on record the copy of the alleged opportunity notice. To this date, the respondents have not even stated the date of such notice, nor have they sought to place the same on record either before the Magistrate, the High Court, or before this Court. Further, the respondents have not substantiated the proper service of the opportunity notice by placing on record any proof of service. In fact, the Magistrate took cognizance on the complaint without recording his satisfaction of compliance with the mandatory requirement under Section 61(2) of FERA, since no such opportunity notice was on record before the Magistrate. The High Court also ignored this issue altogether.

23. Besides, the appellant has, time and again, before the High Court as well as this Court, claimed that the Magistrate could not have taken cognizance on the complaint since no opportunity notice under Section 61(2) was served upon or received by them. The

respondents have not even denied such a claim, either by apprising the High Court or this Court of the date of the alleged opportunity notice, or by refuting it through production of a copy of the said notice or by specifically denying the same in the counter-affidavit before us. In such circumstances, applying the principles laid down in the decisions discussed above, we are of the considered opinion that the mandatory requirement of the proviso to Section 61(2) of FERA has not been complied with in the present case, giving rise to violation of principle of natural justice, and therefore, the order of the Magistrate taking cognizance of the complaints and issuing summons to the appellant, having been passed without satisfaction of this mandatory pre-condition, cannot be sustained in law.

(III) Whether the appellant's fundamental right to a speedy trial under Article 21 of the Constitution of India has been violated in the facts and circumstances of the present case?

24. Although the conclusions we have reached on the foregoing two issues are, in our considered view, sufficient to finally resolve the controversy, yet we deem it appropriate, indeed necessary, with a view to doing complete justice between the parties and for the definitive settlement of all questions arising in the present *lis*, to also examine this issue.

25. The law on the right to a speedy trial under Article 21 of the Constitution was authoritatively laid down by a Constitution Bench of this Court in ***Abdul Rehman Antulay v. R.S. Nayak***, reported in **(1992) 1 SCC 225**. This Court held that although the Constitution does not expressly declare a right to speedy trial, yet

such a right is implicit in the fair, just and reasonable procedure guaranteed under Article 21, and is a right of the accused, notwithstanding that it also serves the public and social interest in a prompt determination of guilt or innocence. This right extends to every stage of a criminal proceeding, namely, investigation, inquiry, trial, appeal, revision, and retrial, and there is no warrant for confining it to the trial stage alone. This Court identified the underlying concerns of this right from the standpoint of the accused as being the need to keep the period of remand and pre-conviction detention as short as possible, to minimise the worry, anxiety, expense, and disturbance occasioned by unduly prolonged proceedings, and to guard against the erosion of the accused's ability to defend himself on account of the death, disappearance, or unavailability of witnesses over time.

26. At the same time, this Court was equally emphatic that delay is often a deliberate defence tactic, and since the burden of proving guilt lies upon the prosecution, delay ordinarily works to the prejudice of the prosecution rather than the accused. This Court accordingly held that in every case where infringement of the right is alleged, the first question to be put and answered is: *who is responsible for the delay?* Proceedings taken in good faith by either party to vindicate their rights cannot be treated as a delaying tactic, nor can the time taken in pursuing such proceedings be counted towards delay. This Court further held that undue delay must be assessed having regard to all the attendant circumstances, including the nature of the offence, the number of accused and witnesses, the workload of the court concerned, and prevailing local conditions, namely, what are described as systemic delays, and that a realistic and practical approach, rather than a pedantic one,

must inform this exercise. Importantly, this Court held that mere length of delay does not by itself establish a violation of the right, rather, an inordinately long delay may be taken as presumptive proof of prejudice, triggering an examination of the attendant circumstances, and that the "demand" rule, requiring an accused to have asked for a speedy trial as a precondition to complaining of its denial, does not apply in India.

27. Ultimately, the Court held that it is for the court to balance and weigh the several relevant factors, described as a "balancing test", and to determine in each case whether the right to speedy trial has in fact been denied and even where such denial is found, quashing of the charges or conviction is not the sole or inevitable consequence, since the court retains the discretion to pass such other appropriate order, including a direction to conclude the trial within a fixed time, or a reduction of sentence, as may be just and equitable in the circumstances of the case. This Court declined to prescribe any fixed outer time-limit for the trial of offences, holding such a course to be neither advisable nor practicable, and clarified that in every complaint of denial of the right, it is primarily for the prosecution to justify and explain the delay, while the court weighs all the circumstances of the case before pronouncing upon the complaint.

28. The above propositions laid down in ***A.R. Antulay*** *(supra)* were thereafter tested before a seven-Judge Bench of this Court in ***P. Ramachandra Rao v. State of Karnataka***, reported in **(2002) 4 SCC 578**, which, after an exhaustive review of the authorities, reaffirmed the guidelines as laid down in ***A.R. Antulay*** *(supra)* as correctly stating the law.

29. The law on the right to a speedy trial came to be further considered and applied by this Court in ***Kailash Chandra Kapri v. State of Uttar Pradesh***, reported in **2026 SCC OnLine SC 858**, wherein one of us, J.B. Pardiwala, J., speaking for the Bench, dealt with a criminal prosecution that had remained pending for over 35 years. This Court reiterated that the right to a speedy trial is one of the requirements of Article 21 of the Constitution irrespective of whether the accused is in custody or on bail, and irrespective of the nature or gravity of the offence, and held that where a High Court, on an examination of the facts and circumstances of a given case, finds that the continuation of a proceeding would amount to a violation of Article 21, it ought not to hesitate in exercising its inherent power or writ jurisdiction to bring such proceedings to an end. This Court further noted that the appellant before it had remained un-summoned for a period of nearly 35 years for no fault of his own, the sole explanation offered by the State being that he had shifted out of the jurisdiction upon the bifurcation of the State and could not thereafter be traced. The Court further observed that keeping a person in what it described as a state of *"suspended animation"* for 35 years was wholly incompatible with the fair, just and reasonable procedure that Article 21 contemplates, and that quick and timely justice is the very *sine qua non* of that constitutional guarantee. Holding that it would be unjust and inequitable, in the circumstances, to permit the prosecution to proceed any further, this Court quashed the proceedings against the appellant.

30. Now adverting to the facts of the present case, we find that this is not a case where the delay can be laid at the doorstep of the appellant, nor is it a case of mere passive lapse of time, rather, the

record discloses a chronicle of persistent and unexplained inaction on the part of the respondent - complainant itself, spanning virtually the entire life of these proceedings. The complaint came to be instituted on 30.05.2002 for a transaction said to have taken place as far back as in 1991-1992, unaccompanied by a single supporting document, and cognizance was taken and summons issued on that very date. Yet, remarkably, the summons so issued were not even collected by the respondent - complainant for service for almost 2 years thereafter, and it was only sometime in 2004 that the respondent - complainant first came forward to collect the summons.

31. Thereafter, for a further period of 8 years, that is, from 2004 to 2012, the summons, although issued from time to time, yet could not be got served upon the accused by the respondent - complainant, save in the case of the appellant no. 1, Standard Chartered Bank, whose counsel had entered an appearance on 16.08.2005. Through this entire decade, the proceedings remained frozen at the stage of issue of process, with the respondent - complainant itself remaining absent on numerous occasions. Notably, the court record entry dated 12.08.2005 records that even when the summons returned unserved, the respondent - complainant took no further steps whatsoever, such as moving an application for issuance of a non-bailable warrant, a course it eventually chose to adopt only on 28.05.2012, i.e., almost 7-8 years after the summons had first come back unserved. It was in this backdrop that the High Court, in the impugned order dated 22.03.2012, was constrained to describe the delay as *"highly deplorable"* and directed the trial court to conclude the entire trial within one-month. Still, even this direction met the same fate. The

court record entry dated 30.05.2012 records that when fresh notices were issued by the Magistrate's court, the respondent - complainant declined to collect the same for service upon the accused, notwithstanding that it was already in possession of the accused's updated addresses from the record of the High Court itself. It was only on 28.05.2012 that the notices were handed over to the respondent - complainant, and service was thereafter effected on 05.06.2012.

32. Even thereafter, neither the respondent - complainant nor the accused appeared before the Magistrate's court, with the result that the one-month period fixed by the High Court lapsed without the trial having even commenced in earnest, compelling the Magistrate to write to the High Court on 08.06.2012 seeking an extension, which was duly granted on 29.06.2012, extending the outer limit to 6-months. Despite this further indulgence, the respondent - complainant continued to remain absent right up to the filing of the present appeals. On this chronology, therefore, the question that the decisions discussed above require us to ask, namely, who is responsible for the delay, admits of only one answer - at every stage at which the proceedings could have been carried further, it was virtually the prosecution that failed to act with even ordinary diligence and failed to take further steps wherever needed. The respondent - complainant could have filed the application for issuance of a non-bailable warrant long back, well before 2012, since the summons had returned unserved on multiple occasions over the years, but chose not to do so, and for what special reasons, nobody knows.

33. Equally telling is the conduct of the respondent - complainant in the period following the High Court's time-bound directions. Given a clear window of one-month to conclude the trial, the respondent – complainant's response was to refuse to even collect the notices meant for service upon the accused. This compelled the trial court to seek an extension, which the High Court granted, allowing a further 6-months. Yet the record shows that the respondent - complainant continued to remain absent right through this extended period, and indeed, right up to the filing of the present appeals before us. Such conduct, persisting even after two express directions of the High Court fixing outer time-limits for completion of the trial, cannot be explained away as systemic delay or administrative constraint. In our opinion, it reflects a want of diligence and unwillingness to prosecute the appellant further.

F. CONCLUSION

34. In view of all that is stated above, we are of the considered view that this is a fit case warranting the exercise of the inherent powers of this Court to bring these proceedings to an end. The complaint itself, as stated earlier, is not supported by any documentary evidence and rests upon an alleged opportunity notice under Section 61(2) of FERA. The respondent – complainant have, till date, not been able to produce the same or even date it with any precision. It is pertinent to mention that 23-years have now elapsed since the institution of the complaint, and over three decades since the transaction it concerns, without the trial having progressed beyond the stage of service of summons. To permit the respondent - complainant to continue in such circumstances would be to allow the appellant to remain, in the words of this Court in ***Kailash***

Chandra Kapri *(supra)*, in a state of suspended animation indefinitely.

35. We accordingly hold that the co mplaint bearing Criminal Case Nos. 1503-1504 of 2002, and the summoning order dated 30.05.2002 issued therein, are liable to be quashed as against the appellants herein only. We accordingly pass such order.

36. In view of the above, the appeals succeed and are hereby allowed. Accordingly, the impugned judgment and order of the High Court is hereby set aside.

37. Pending applications, if any, shall stand disposed of.

38. The Registry is hereby directed to circulate one copy each of this judgment to all the High Courts.

-Sd-

.....J.

(J.B. Pardiwala)

-Sd-

(Manoj Misra)

New Delhi;
21st July, 2026.

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IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

SPECAIL LEAVE TO APPEAL (Crl) No._____of 2012
(Under Article 136 of the Constitution of India)

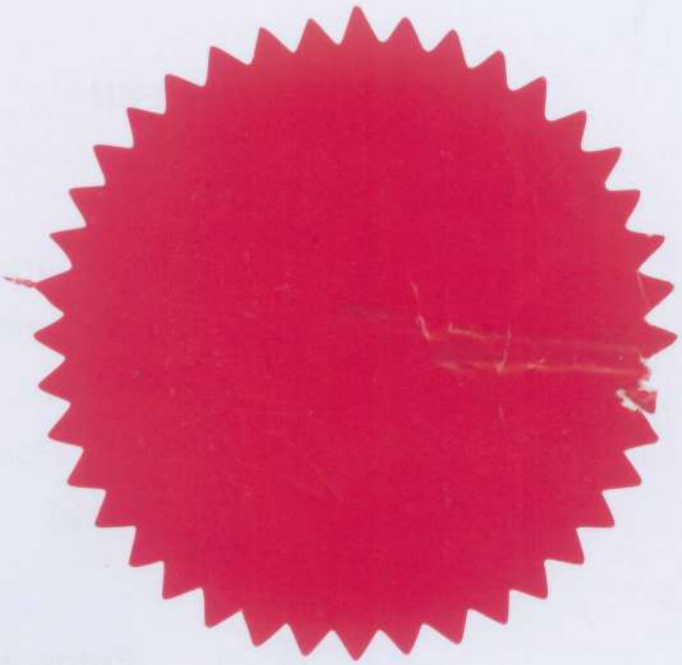
(Against common final judgment & order dated 22nd March, 2012 passed by the Hon'ble High Court of Bombay in Criminal Application No.182/2012 & No.183/2012)

BETWEEN POSITION OF PARTIES

	Trial Court	High Court	This Court
Standard Chartered Bank Through its Constituted Attorney Rashna Mistry 23-25, M. G. Road, Fort, Mumbai [Maharashtra]	Accused	Petitioner	Petitioner
Vs			
1. **Enforcement Officer,** Enforcement Directorate, Janmabhoomi Chamber, 1st Floor, W.H. Marg, Mumbai -400001. [Maharashtra]	Complainant No.1	Resp.No.2	Resp.No.1
2. **State of Maharashtra** Through Home Secretary Home Department Mantralaya, [Mumbai] 400032 [Maharashtra]	Not party	Resp.No.2	Resp.No.2

FILED ON
11 OCT 2012

per 11/10/2012



SEALED IN MY PRESENCE.