

CRM-M-37200-2021 with two connected matters

-1-

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Pronounced on: 03.09.2025

CRM-M-37200-2021

Amarinder Singh ...Petitioner(s)

Versus

Income Tax Department and another ...Respondent(s)

With

CRM-M-37204-2021

Raninder Singh ...Petitioner(s)

Versus

Income Tax Department and another ...Respondent(s)

And

CRM-M-37207-2021

Raninder Singh ...Petitioner(s)

Versus

Income Tax Department and another ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE TRIBHUVAN DAHIYA

Present:- Mr. Gurmohan Singh Bedi, Advocate,
Mr. Amandeep S. Talwar, Advocate,
Mr. Pawandeep Singh, Advocate,
Mr. Anand V. Khanna, Advocate, and
Ms. Ambika Bedi, Advocate for the petitioner(s) in all cases

Mr. Zoheb Hossain, Special Counsel
(through video conferencing) assisted by
Mr. Lokesh Narang, Senior Panel Counsel and
Mr. Vipul Joshi, Advocate for the respondents

TRIBHUVAN DAHIYA, J.

These three petitions are interconnected, and raise common questions of law, therefore, the same are being decided together.

**CRM-M-37200-2021 with two connected matters****-2-**

2. The first petition, CRM-M-37200-2021, has been filed under Section 482 Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.') for setting aside the order dated 02.09.2021, Annexure P-8, passed by Additional Sessions Judge, Ludhiana, in CRR No.12 of 01.10.2020 dismissing the revision petition filed by the petitioner against the order passed by Judicial Magistrate Ist Class, Ludhiana, dated 18.09.2020, in COMA 7115/2020 dated 14.08.2020. Further, prayer has been made to set aside the Magistrate's order dated 18.09.2020 as well, whereby the application filed by the second respondent/Directorate of Enforcement (for short, 'E.D.') to inspect the documents attached with the complaint filed by the first respondent/Income Tax Department (for short, 'I.T. Department') has been allowed.

2.1. The other two petitions, CRM-M-37204-2021 and CRM-M-37207-2021, have been filed under Section 482 Cr.P.C. by son of the petitioner in the first petition with identical prayers to quash the orders dated 02.09.2021 passed by Additional Sessions Judge, Ludhiana, in CRR No.11 dated 01.10.2020 and CRR No.10 dated 25.09.2020, dismissing the revision petitions filed by the petitioners, as also the orders dated 18.09.2020, whereby applications filed by the E.D. to inspect documents attached with the complaint filed by the I.T. Department have been allowed.

3. To notice the facts in brief from the first petition, CRM-M-37200-2021, the I.T. Department filed a complaint dated 30.11.2016, before Chief Judicial Magistrate, Ludhiana, against the petitioner under Section 277 of the Income Tax Act, 1961, read with Sections 176, 177, 181, 186, 187, 193 and 199 of the Indian Penal Code (for short, 'IPC'), *inter alia*, alleging as under:



2. That the Income Tax Department, received credible information from the Foreign Authorities through official channels, that the accused is the beneficiary of foreign assets maintained and controlled through foreign business entities. The accused is also the beneficiary of foreign bank accounts maintained with HSBC Private Bank (SUISSE) S.A Geneva, Switzerland. Based upon these documents Summon u/s 131(1A) of the Act was issued to Sh. Amarinder Singh 30.03.2016 to know about his association/relation with the Jacaranda Trust and/or its related entities and also about the property P29, Marina Mansions in Dubai which was acquired through one of the beneficially owned/associated companies of the Jacaranda Trust. As per information available on record, original request to transfer the property P29, Marina Mansions in Dubai was received from Mr. Amarinder Singh i.e. father of Mr. Raninder Singh. Sh. Amarinder Singh was asked to appear in person or furnish the required information as per Annexure-A to Summons dated 30.03.2016 through AR in the form of a sworn affidavit duly notarized.

3. That on 22.07.2011 information in the form of master-sheets was received by the Director General of Income Tax (Inv.), Chandigarh, thereby indicating association/connection of the family members of the accused with certain foreign entities. The information in the form of master-sheets was originally received in Paris (France) (on 28.06.2011 by the Competent Authority of India i.e. Foreign Tax and Tax Research (FT&TR) Division of Central Board of Direct Taxes (CBDT), officially from the Competent French Authority as per the provisions of Article 28 of Double Taxation Avoidance Convention (DTAC) between India and France. This information was received in soft copy in the form of USB Pen Drive along-with a letter dated 28.06.2011 of the Competent Authority of France. Subsequently, this information was forwarded to the Commissioner of Income Tax (Inv.), CBDT, New Delhi on 14.07.2011 by the FT&TR Division of CBDT. Then on 22.07.2011, the CIT(Inv.), CBDT, New Delhi handed over this



information to the DGIT(Inv.), Chandigarh. A certificate u/s 65B of the Indian Evidence Act, 1872 with regard to the print out of the above mentioned master sheets has been received from the Competent Indian Authority i.e. FT&TR Division of CBDT. Copies of letter dated 28.06.2011 of the Competent French Authority is annexed as Annexure-C-2, letter dated 14.07.2011 of FT&TR Division is appended as Annexure-C-3 copy of certificate dated 22.07.2011 regarding receipt of information by the DGIT(Inv.), Chandigarh is annexed as Annexure-C-4. The copy of master sheets received from competent Indian Authority i.e. FT&TR division of CBDT is appended as Annexure-C-5 and certificate dated 15.02.2016 u/s 65B of FT&TR Division of CBDT are hereto appended as Annexure-C-6.

3.1. On the basis of allegations aforementioned and the documents appended, the Magistrate found sufficient grounds for taking cognizance of the alleged offences against the petitioner punishable under Section 277 of the Income Tax Act and Sections 176, 177, 181, 186, 187, 193 and 199 IPC, and summoned him vide order dated 24.04.2017. The petitioner challenged the summoning order by filing a petition, CRR No.37 of 21.08.2017, which was allowed by Additional Sessions Judge, Ludhiana; the Magistrate's order was set aside and the matter was remanded to pass a fresh order on the complaint, vide order dated 27.11.2018, Annexure P-3. The said order was challenged by the complainant/IT Department before this Court by filing a petition, CRM-M-15062-2019, which is pending adjudication.

3.2. During pendency of the complaint, the E.D. moved an application before the Magistrate for inspection of documents filed by the complainant/I.T. Department, or, in the alternative, seeking directions to the complainant to provide a copy of those documents. It was for the reasons, as mentioned in the petition, that '*directorates of enforcement was also seized of the matter with*



regard to the subject matter of the said complaint pending before the court and that the subject matter came within the ambit of FEMA, 1999 and the applicant Respondent No. 2 was the sole authority to administer the said law and for the purpose of conducting investigation under the provisions of the said act the documents attached with the complaint are required to be examined which are on the judicial file of the Court. The application was allowed by the Magistrate vide impugned order dated 18.09.2020, permitting inspection of the judicial file by the E.D. The order was challenged by the petitioner by filing a revision petition, CRR No.12 of 01.10.2020, before Additional District Judge, Ludhiana, which was dismissed vide impugned order dated 02.09.2021, and the Magistrate's order was upheld.

4. In this factual background, learned counsel for the petitioners, Mr. Gurmohan Singh Bedi, has contended that grave prejudice has been caused to the petitioners by the impugned orders whereby the E.D., which is stranger to the complaints, has been permitted to inspect the records/Court file and use the same for investigation against them. It is further contended that the records contain secret information given by the French Republic to the Government of India and there is a specific bar on providing any such information to a stranger under the "*Agreement for Avoidance of Double Taxation with France*". It has been entered into between the Government of India and the Government of French Republic for avoidance of double taxation and prevention of fiscal evasion with respect to taxes on income and capital, and has come in force on 01.08.1994. He has specifically relied upon Article 28 of Convention to the Agreement notified on 07.09.1994 and amended on 12.08.2009, which reads as under:



28. (1) The competent authorities of the Contracting States shall exchange such information (including documents) as is necessary for carrying out the provisions of the Convention or of the domestic laws of the Contracting States concerning taxes covered by the Convention, insofar as the taxation thereunder is not contrary to the Convention, in particular, for the prevention of fraud or evasion of such taxes. Any information received by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that Contracting State. However, if the information is originally regarded as secret in the transmitting State, it shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes which are the subject of the Convention. Such persons or authorities shall use the information only for such purposes but may disclose the information in public court proceedings or in judicial decisions.

(2) In no case shall the provisions of paragraph 1 be construed so as to impose on a Contracting State the obligation :

(a) to carry out administrative measures at variance with the laws or administrative practice of that or of the other Contracting State ;

(b) to supply information or documents which are not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State ;

(c) to supply information or documents which would disclose any trade, business, industrial, commercial or professional secret or trade process or information the disclosure of which would be contrary to public policy.

The argument is that the information is protected under Article 28 and cannot be disclosed to any third person or authority. Accordingly, the complainant/I.T. Department being bound under the Convention cannot disclose this information



to the E.D.; consequently, the latter cannot be allowed to obtain the same in circuitous manner by inspecting the Court records as it is legally impermissible. In support of the contentions, he has relied upon a judgment rendered by the Supreme Court in *State of Tamil Nadu and Others v. K. Shyam Sunder and others*, (2011) 8 SCC 737.

5. *Per contra*, Mr. Zoheb Hossain, learned Special Counsel for the respondents, contend that the order is well-reasoned and cannot cause any prejudice to the petitioner, as the E.D. has only been allowed to access judicial documents. Besides, Rule 2 of Part-C, Chapter 16, of the Punjab and Haryana High Court Rules and Orders, Volume 4, specifically allows even a stranger to inspect the Court record for sufficient reasons. The revisional Court has taken that into consideration, and finding sufficient reasons in the E.D.'s application for inspection of records, allowed the same which is in accordance with law. He further contended that in *Ram Jethmalani and others v. Union of India and others*, (2011) 8 SCC 1, an article similar to Article 28 has been examined and interpreted by the Supreme Court holding that it is not a restraint on disclosing the information.

6. Arguments advanced by learned counsel for the parties have been considered.

7. As apparent on record, complaints have been filed by the I.T. Department against the petitioners under Section 277 of the Income Tax Act, 1961, read with Section 176, 177, 181, 186, 187, 193 and 199 of the IPC, wherein information in the form of master sheets originally received in Paris, France, by the competent authority of India/Foreign Tax and Tax Research Division of Central Board of Direct Taxes from the competent French authority, has been placed on record. It is to the effect that the petitioners are 'beneficiaries



of foreign assets maintained and controlled through foreign business entities'. During pendency of proceedings before the Magistrate, the E.D. moved an application for inspection of the aforesaid information/documents on the ground that it was also seized of the subject matter of the complaint, and for the purpose of conducting investigation the documents were required to be examined. The application was allowed vide impugned order dated 18.09.2020, and revision petition against the same was dismissed vide impugned order dated 02.09.2021. While dismissing the revision petition, learned Additional Sessions Judge referred to Rule 2 of Part-C, Chapter 16 of the Punjab and Haryana High Court Rules and Orders, Volume 4, which allowed even a stranger to a civil or a criminal case to inspect record of pending case(s) for sufficient reasons. The reasons for inspection of record put forth by the E.D. were found sufficient, and the E.D. was allowed to inspect the file, by recording as under:

14. Point No.2: ...Before dealing with the matter the provisions of Punjab and Haryana High Court relevant to the issue are reproduced Volume 4 Chapter 16

Part C

Inspection of Judicial Records

Rule 2. Inspection of Pending cases:- Records of pending cases shall be open to the inspection of the parties or their pleaders or agents alone, subject to the general control of the Judge of the Court in which the case is pending. Inspection by the petition-writers is absolutely forbidden; and Legal Practitioners' Clerks may only inspect records when the Legal Practitioner concerned is present.

[Provided that a stranger to a civil or criminal case may, for sufficient reasons shown to the satisfaction of the Court inspect record of such pending case(s) before the final order is passed.]1



Note: (1 Added by correction slip No.139 Rules/II.D.4, dated 13th August 2007.)

Inspection shall not be allowed on the day fixed for the hearing of the case without the special permission of the presiding Judge, and then only if the urgent fee is paid (vide Rule 5 below), except in challan cases which may be inspected at ordinary fees even on the date of hearing.

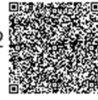
The perusal of proviso to rule 2 reveals that a stranger to a civil or criminal case may for sufficient reason shown to the satisfaction of court inspect the record of such pending cases. Thus, the matter regarding inspection was between the Enforcement Directorate and the court. So, it was for the court seized with the matter to record its satisfaction and allow the inspection of the record to the stranger.

15. xxx xxx

16. ... As discussed above, in view of inspection rules in Volume 4 Chapter 16 Part C stranger to case can inspect civil as well as criminal pending file for sufficient reasons and the enforcement directorate is an independent investigation agency under the FEMA. So the department has locus standi to inspect the file and in case the inspection to the ED is not allowed which is competent authority under the law to conduct the investigation, it would create hurdle in the investigation.

This Court finds that the order is well-reasoned, and does not suffer from any infirmity or error of law.

8. Further, learned counsel for the petitioners has assailed the impugned orders permitting inspection of the records on the ground that in Article 28 of the Convention under the “*Agreement for Avoidance of Double Taxation with France*” entered into between the Government of India and the French Republic, there is a bar on disclosing any information received by the contracting State and it is to be treated as secret under the domestic law. And as provided therein, it can only be disclosed to the persons or authorities



involved in the assessment or collection of taxes or enforcement or prosecution thereof, etc. However, it remains undisputed that the information or documents placed on record before the Magistrate by the I.T. Department have been received by it in the French Republic at Paris, and its use as well as dissemination is regulated under the Agreement for Avoidance of Double Taxation, referred to above. The Supreme Court in *Ram Jethmalani* case (*supra*) had the occasion to examine one such Avoidance of Double Taxation Agreement entered into between the Government of India and Germany; Article 26 of the said agreement was *pari materia* to Article 28 of the Agreement in question. The Court examined the issue, whether the article proscribed disclosing of information received by the Government of India under the Agreement, and also whether in the context of proceedings under Article 32 of the Constitution the Union of India could claim exemption from providing such information to the petitioners. The Court held as under:

67. Relevant portions of Article 26 of the double taxation agreement with Germany, a copy of which was submitted by the Union of India, reads as follows:

“26. Exchange of information.—(1) The competent authorities of the contracting States shall exchange such information as is necessary for carrying out the purposes of this agreement. Any information received by a contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) involved in the assessment or collection of, the enforcement or prosecution in respect of, or the determination of appeals in relation to, the taxes covered by this agreement. They may disclose the information in public court proceedings or in judicial proceedings.



(2) In no case shall the provisions of Para 1 be construed so as to impose on a contracting State the obligation:

(a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other contracting State;

(b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other contracting State;

(c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (order public).”

The above clause in the relevant agreement with Germany would indicate that, contrary to the assertions of the Union of India, there is no absolute bar of secrecy. Instead, the agreement specifically provides that the information may be disclosed in public court proceedings, which the instant proceedings are. The proceedings in this matter before this Court, relate both to the issue of tax collection with respect to unaccounted for monies deposited into foreign bank accounts, as well as with issues relating to the manner in which such monies were generated, which may include activities that are criminal in nature also. Comity of nations cannot be predicated upon clauses of secrecy that could hinder constitutional proceedings such as these, or criminal proceedings.

68. The claim of the Union of India is that the phrase “public court proceedings”, in the last sentence in Article 26(1) of the double taxation agreement only relates to proceedings relating to tax matters. The Union of India claims that such an understanding comports with how it is understood internationally. In this regard the Union of India cites a few treatises. However, the Union of India did not provide any evidence that Germany specifically requested it to



not reveal the details with respect to accounts in Liechtenstein even in the context of proceedings before this Court.

69. and 70. xxx xxx xxx

71. The last sentence of Article 26(1) of the Double Taxation Avoidance Agreement with Germany, “[T]hey may disclose this information in public court proceedings or in judicial decisions”, is revelatory in this regard. It stands out as an additional aspect or provision, and an exception, to the preceding portion of the said article. It is located after the specification that information shared between contracting parties may be revealed only to “persons or authorities (including courts and administrative bodies) involved in the assessment or collection of the enforcement or prosecution in respect of, or the determination of appeals in relation to taxes covered by this agreement”. *Consequently, it has to be understood that the phrase “public court proceedings” specified in the last sentence in Article 26(1) of the double taxation agreement with Germany refers to court proceedings other than those in connection with tax assessment, enforcement, prosecution, etc., with respect to tax matters.* If it were otherwise, as argued by the Union of India, then there would have been no need to have that last sentence in Article 26(1) of the double taxation agreement at all. The last sentence would become redundant if the interpretation pressed by the Union of India is accepted. Thus, notwithstanding the alleged convention of interpreting the last sentence only as referring to proceedings in tax matters, the rubric of common law jurisprudence, and fealty to its principles, leads us inexorably to the conclusion that the language in this specific treaty, and under these circumstances cannot be interpreted in the manner sought by the Union of India. (Italics by this Court)

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73. The redundancy that would have to be ascribed to the said last sentence of Article 26(1) of the double taxation agreement with Germany, if the position of the Union of India were to be accepted, also leads to a manifest absurdity, in the context of the Indian

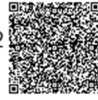


Constitution. Such a redundancy would mean that constitutional imperatives themselves are to be set aside. Modern constitutionalism, to which Germany is a major contributor too, especially in terms of the basic structure doctrine, specifies that powers vested in any organ of the State have to be exercised within the four corners of the Constitution, and further that organs created by a Constitution cannot change the identity of the Constitution itself.

74. to 80. xxx xxx xxx

81. It is now a well-recognised proposition that we are increasingly being entwined in a global network of events and social action. Considerable care has to be exercised in this process, particularly where Governments which come into being on account of a constitutive document, enter into treaties. The actions of Governments can only be lawful when exercised within the four corners of constitutional permissibility. No treaty can be entered into, or interpreted, such that constitutional fealty is derogated from. The redundancy, that the Union of India presses, with respect to the last sentence of Article 26(1) of the double taxation agreement with Germany, necessarily transgresses upon the boundaries erected by our Constitution. It cannot be permitted.

8.1. Apparently, the Court concluded that Article 26 of the Agreement, which is *pari materia* to Article 28 of the Agreement in the instant case, is no obstacle to disclosure of information. However, on account of the fact that investigation in those cases had not been concluded and right to privacy of an individual was integral part of the right to life, it was held that '*it would be inappropriate for this Court to order the disclosure of such names, even in the context of proceedings under clause (1) of Article 32*', to the petitioners therein. At the same time, it has also been held, if after proper investigation the State is able to establish *prima facie* grounds to accuse the individuals of wrongdoing based on material evidence, citizens of the country will have the right to be



informed about the details of foreign accounts. The Court also held that in case any citizen or entity has information of any wrongdoing associated with the Bank account of an individual, it is their moral duty to inform the State about it which would have the obligation to investigate the same. The observations of the Court in this regard are as under:

88. The revelation of details of bank accounts of individuals, without establishment of prima facie grounds to accuse them of wrongdoing, would be a violation of their rights to privacy. Details of bank accounts can be used by those who want to harass, or otherwise cause damage, to individuals. We cannot remain blind to such possibilities, and indeed experience reveals that public dissemination of banking details, or availability to unauthorised persons, has led to abuse. The mere fact that a citizen has a bank account in a bank located in a particular jurisdiction cannot be a ground for revelation of details of his or her account that the State has acquired. Innocent citizens, including those actively working towards the betterment of the society and the nation, could fall prey to the machinations of those who might wish to damage the prospects of smooth functioning of society. Whether the State itself can access details of citizens' bank accounts is a separate matter. However, the State cannot compel citizens to reveal, or itself reveal details of their bank accounts to the public at large, either to receive benefits from the State or to facilitate investigations, and prosecutions of such individuals, unless the State itself has, through properly conducted investigations, within the four corners of constitutional permissibility, been able to establish prima facie grounds to accuse the individuals of wrongdoing. It is only after the State has been able to arrive at a prima facie conclusion of wrongdoing, based on material evidence, would the rights of others in the nation to be informed, enter the picture. *In the event citizens, other persons and entities have credible information that a wrongdoing could be associated with a bank account, it is needless to state that they have the right,*



and in fact the moral duty, to inform the State, and consequently the State would have the obligation to investigate the same within the boundaries of constitutional permissibility. If the State fails to do so, the appropriate courts can always intervene. (Italics by this Court)

8.2. Finally, the Court issued a direction to the Union of India to disclose the names of individuals with respect to whose Bank accounts investigations have been concluded, either partially or wholly, and show cause notices issued and proceedings initiated. The Union of India was exempted from revealing the names of those individuals with respect of whom investigations/enquiries were in progress and no information or evidence or wrongdoing was available.

8.3. In the facts of the case at hand, information regarding the foreign assets concerning the petitioners has been placed on record in the form of documents before the Magistrate by the I.T. Department which has been sought by another government Department/E.D. for the purpose of investigation. It is not a case that the information has been demanded for public dissemination; rather, it is only for carrying out investigation against the petitioners. They have no right to object to it by alluding to the Avoidance of Double Taxation Agreement. It is the Government of India which has entered into this Agreement with the French Republic, whereunder the information has been handed over to the I.T. Department. In case disclosure of information causes any violation of terms of the Agreement, including that of Article 28, it is for the Department to oppose it on that ground and not for the petitioners. And the former has no objection to sharing the information for investigation, nor can such an objection be raised on its behalf in the light of law laid down in *Ram Jethmalani* case *ibid.* holding, if a citizen or entity has any information of



wrongdoing with respect to a Bank account, it must be shared with the State which is under obligation to investigate the same. Here, the information is being sought by an organ of the State/the E.D. itself for the purpose of investigation which cannot be taken exception to in view of the settled law.

8.4. The judgment in *K. Shyam Sunder* case (*supra*) relied upon by the petitioner lays down what cannot be done directly, can also not be done indirectly as that would be an evasion of law. In the instant case, as discussed hereinbefore, there is no restriction on the E.D. to access the information/documents placed on record before the Magistrate by the I.T. Department for the purpose of investigation. Therefore, it cannot be said that the E.D. is trying to procure the documents by circumventing the Agreement in question.

9. In the light of foregoing discussion, the petitions stand dismissed. The E.D. is permitted to inspect the record of the complaints before the Magistrate and access the information/documents; however, the same shall not be disseminated publicly unless permitted in accordance with law.

10. A photocopy of this order be placed on connected files.

(TRIBHUVAN DAHIYA)
JUDGE

03.09.2025

Payal

Whether speaking/reasoned Yes/No

Whether reportable Yes/No