

**AKJ:**  
30.08.2019

W.P.No.5299/2019  
c/w W.P.Nos.5408/2019,  
5420-5423/2019,  
5824/2019, 6210/2019

**ORDERS ON MEMO DATED 30.08.2019/  
APPLICATION FOR STAY OF OPERATION OF  
JUDGMENT DATED 29.08.2019/FOR DEFERMENT OF  
OPERATION OF JUDGMENT AND EXTENSION OF  
INTERIM ORDER/INTERLOCUTORY APPLICATION FOR  
PROTECTING THE INTEREST OF PETITIONERS  
AGAINST SUMMONS ISSUED BY ENFORCEMENT  
DEPARTMENT AUTHORITIES FOR A PERIOD OF FOUR  
(4) WEEKS TO ENABLE THE PETITIONER TO  
APPROACH HIGHER FORUM**

I have heard the arguments of Sri.B.V.Acharya, Sri.Nanjunda Reddy, Sri. Shashikiran Shetty, Sri.A.Shankar, learned Senior Counsel appearing on behalf of respective petitioners and Sri. M.B.Nargund, learned Senior Counsel appearing on behalf of Sri.Unni Krishnan and Sri. Jeevan Neeralagi for respondents.

2. It is the contention of Sri. B.V.Acharya, learned Senior Counsel who has lead the arguments on behalf of petitioners that during the pendency of present proceedings petitioners were granted interim protection from appearing before the Enforcement Department (ED) and as such they have prayed for same being continued for

a limited period to enable the petitioners to file appeal challenging the order passed by this Court on 29.08.2019. It is also contended that by such arrangement, no prejudice would be caused to respondents and by way of alternate submissions it is contended that in the event of assurance given by ED Authorities to the petitioners that they would not be apprehended/arrested, petitioners are ready and willing to appear before the ED authorities as and when called upon for such investigation and it would be without prejudice to their right in the appeal, which they propose to file.

3. Per contra, Sri.M.B.Nargund, learned Senior Counsel appearing for respondents would submit that writ petitions, which have been filed, are not only under Article 226 and 227 of Constitution of India but also under Section 482 Cr.P.C. and as such he contended this Court becomes *functus officio* moment judgment is passed and thereby Section 362 Cr.P.C. is attracted and it enables this Court to correct only clerical or arithmetical errors and as such he submits that applications/memos in question be

rejected. He would also submit that respondents-Authorities are not ready and willing to give any such assurance to the petitioners and investigation would be proceeded in accordance with law. He would also submit that even otherwise, interim protection, if any, which had been granted to petitioners at the initial stage would not confer any right to them to seek for continuation of it even after final orders are passed. Hence, he prays for dismissal of the applications.

4. Having heard the learned Advocates appearing for parties and on perusal of the records, it requires to be noticed at the outset that this Court by order dated 07.02.2019 had made the following observation:

“In the meanwhile, petitioner would be at liberty to file an appropriate application before respondent No.3 for extension of time for appearance. If such application is filed, respondent No.3 shall consider the same. List this matter on 14.02.2019 for consideration of interim prayer. Statement of objections by way of counter or reply and rejoinder, if any, shall be filed by respective learned Advocates before next date of hearing, so that pleadings would be complete. Re-list on 14.02.2019.”

5. Thereafter, on 07.03.2019 Sri. Kapil Sibal, learned Senior Counsel appearing on behalf of petitioners had made a submission that petitioners are likely to be summoned by the ED and as such there is apprehension in that regard. At that stage, the then Additional Solicitor General of India (Karnataka) had made a submission that they have not issued any notice calling upon respective petitioners to appear before the ED subsequent to previous date of hearing. In the light of submissions so made, this Court had made following observation:

“In the light of above submissions made and taking into consideration the observations made by this court on previous occasions i.e. on 07.02.2019 and 22.02.2019 that petitioner/s would be at liberty to file appropriate application/representation before the Enforcement Authority for extension of time for their appearance if need be, it is made clear that in the event of any notice or summons being issued by Enforcement Directorate to petitioners before next date of hearing, respective petitioners would be at liberty to seek for extension of time for their appearance and in the event of such application/s, representation/s is/are filed the Enforcement Directorate shall consider the same.”

In W.P.No.5420-23/2019 this Court by order dated 24.07.2019 had passed the following order:

“In the light of matter being seized by this Court, question of first petitioner appearing before third respondent for the present would not arise.

This order was made applicable to all other pending matters also.

6. Having regard to the above said interim arrangement/orders made and the fact that present petitions have been filed under Article 226 and 227 of Constitution of India r/w Section 482 Cr.P.C. as seen from the cause title of the writ petitions, the argument of the petitioners that writ petitions in question should not be construed as petitions filed under Section 482 Cr.P.C. cannot be accepted. The very fact that issue relating to predicate offence referable to Part-A Paragraph-1 of the Schedule to Prevention of Money-Laundering Act, 2002, which is referable to provisions of IPC had been pressed into service, which has been considered, examined, adjudicated and answered by this Court while disposing of

the writ petitions on 29.08.2019, necessarily these writ petitions have to be construed as having been filed both under Articles 226 and 227 of the Constitution of India and Section 482 of Cr.P.C. Hence, order which has been passed by this Court on 29.08.2019 is also an order passed under Section 482 Cr.P.C. Said order would not be amenable to either review or correction in the light of bar contained under Section 362 Cr.P.C., inasmuch as, this Court becomes *functus officio* the moment order is passed disposing of the case and same is signed. Such an order cannot be altered, except to the extent of correcting clerical/arithmetical error. There is no power available for modification of such judgment or question of exercising the power to the stay or to defer the order would not arise. This view is also supported by the judgment of Hon'ble Apex Court in the cases of **HARI SINGH MANN vs. HARBHAJAN SINGH BAJWA** reported in **(2001) 1 SCC 169** and **CHHANNI vs. STATE OF UTTAR PRADESH** reported in **(2006) 5 SCC 396**.

8. That apart, this Court while passing orders on interim arrangement as could be seen from the orders extracted hereinabove was based on the submission made by the then Additional Solicitor General of India (Karnataka) on instructions from the officials. Hence, question of either staying the judgment/order dated 29.08.2019 or deferring the same would not arise. Resultantly all memos and interlocutory applications stands rejected.

**Sd\-**  
**(ARAVIND KUMAR)**  
**JUDGE**

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