IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 11.08.2015

DELIVERED ON : 18.08.2015

CORAM:

THE HONOURABLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN

W.A.No.764 of 2015
&
M.P.No.1 of 2015

R. Subramanian ...Appellant

vs.

The Assistant Director
Directorate of Enforcement
Government of India
II and III Floor, "C" Block
Murugesa Naicker Office Complex
No.84, Greams Road
Thousand Lights
Chennai-600 006. ...Respondent

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 27.04.2015 in W.P.No.10633 of 2015 on the file of this Court.

W.P. No. 10633 of 2015 filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records relating to the summons under File No.ECIR/08/CEZO/2014 Sr.No.272 of 2013 dated 25/03/2015 issued by the Respondent herein and quash the same.

For Appellants : Mr.Prakash Goklaney

For Respondent : Mr. M. Dhandapani

JUDGMENT

K.K.SASIDHARAN, J

This writ appeal is directed against the order dated 27 April 2015 in W.P.No.10633 of 2015 dismissing the writ petition filed by the appellant challenging the summons issued by the Directorate of Enforcement, Chennai.

Summary of facts:

2. The appellant availed financial assistance from Bank of Baroda in 2007-2008. Since the appellant failed to pay the loan amount, proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as "SARFAESI" Act) was taken by the Bank. The Central Bureau of Investigation initiated criminal proceedings against the appellant for cheating by registering First Information Report.

3. While so, the respondent issued summons to the appellant calling upon him to appear at 10.30 a,m. on 9 April 2015 in connection with the investigation initiated against him under the provisions of Prevention of Money-Laundering Act, 2002. The appellant challenged the summons dated 25 March 2015 before the Writ Court primarily on the ground that the matter relates to the year 2007-2008 and as such, proceedings under the Money-Laundering Act is not maintainable inasmuch as Section 420 of Indian Penal Code (hereinafter referred to as "IPC") was not a Scheduled Offence under the Prevention of Money-Laundering Act in 2007-2008.

4. The learned Single Judge dismissed the writ petition by holding that the respondent is having jurisdiction to issue summons. Feeling aggrieved by the order passed by the Writ Court, the unsuccessful writ petitioner is before this Court.

Rival Submissions:

5. The learned counsel for the appellant contended that Section 420 of IPC was included as a Scheduled Offence only in 2009. The allegation against the appellant relates to the year 2007-2008. According to the learned counsel, there is no question of giving retrospective effect to a penal provision and as such, the respondent has no jurisdiction to initiate proceedings under the Money-Laundering Act.

6. The learned counsel for the respondent justified the impugned summons and the related order passed by the Writ Court. According to the learned counsel, summons was issued by a competent authority under the provisions of Prevention of Money-Laundering Act. The appellant is bound to produce documents pursuant to the summons. The learned counsel submitted that the writ petition was rightly dismissed by the learned Single Judge.

Analysis:

7. The Central Bureau of Investigation registered a First Information Report against the appellant on 26 July 2013 on allegation that he cheated Bank of Baroda. The crime was registered pursuant to the complaint preferred by Bank of Baroda alleging that the appellant manipulated records and defrauded the Bank. The Central Bureau of Investigation after holding investigation filed a charge sheet against the appellant before the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

8. The respondent taking into account the First Information Report lodged by the Central Bureau of Investigation against the appellant and the related final report, initiated proceedings by invoking the provisions of Prevention of Money- Laundering Act.

9. The summons issued to the appellant is challenged primarily on the ground that Section 420 of IPC was not a Scheduled offence in 2007-2008 and as such, no action could be taken at present by invoking the provisions of Prevention of Money-Laundering Act.

10. The Prevention of Money-Laundering Act, 2002 was enacted to prevent money-laundering and to provide for confiscation of property derived from, or involved in, money-laundering. Section 2(p) indicates that "money-laundering" has the meaning assigned to it in Section 3 of the said Act. Section 3 provides that whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property, shall be guilty of the offence of money-laundering.

11. Chapter VIII of the Prevention of Money-Laundering Act, 2002 provides for Constitution of Authorities and their powers. Section 49 of Chapter VIII provides for appointment and powers of authorities and other officers. Section 50 gives power of a Civil Court to the authorities appointed under Section 49 of the Act, while performing functions under the Act.

12. There is no dispute that Section 420 of IPC was included as a Scheduled Offence only in 2009. The appellant is yet to produce documents summoned by the respondent. The respondent should be given opportunity to peruse the documents, to arrive at a finding as to whether the petitioner was involved in money-laundering as provided under Section 3 of the Act. The respondent would also be deciding the question whether the date of "laundering" is relevant or whether the term "laundering" would include any process or activity by which illicit money is being projected as "untainted".

13. The appellant has no case that the respondent is not a statutory authority conferred with the power of investigation under the provisions of Prevention of Money-Laundering Act, 2002. His only objection is that the facts of the case would not attract the provisions of Prevention of Money-Laundering Act as it stood originally.

14. The learned counsel for the appellant placed heavy reliance on the decision of Supreme Court in Ritesh Agarwal v. SEBI (2008) 8 SCC 205 in support of his contention that a penal statute will not have any retrospective effect or retrospective operation. There is no dispute with the legal position. However, in this case, the respondent is yet to decide the issue as to whether the Act of money-laundering was complete before making Section 420 of IPC as a Scheduled Offence. The matter requires collection of materials and factual analysis.

15. The matter involves a core question as to whether the relevant date is the date of acquisition of illicit money or the date on which such money is being processed for projecting it untainted. The question cannot be decided merely on the basis of the affidavit filed by the appellant. The respondent should be permitted to conduct investigation to arrive at a definite finding. The jurisdiction in a case of this nature is a mixed question of law and fact and the same cannot be decided on the basis of half baked materials produced by the appellant. We are, therefore, of the view that the learned Single Judge was correct in dismissing the writ petition.

16. In the upshot, we dismiss the intra-court appeal. Consequently, the connected MP is closed. No costs.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

Tr/

To

The Assistant Director
Directorate of Enforcement
Government of India
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Murugesa Naicker Office Complex
No.84, Greams Road
Thousand Lights
Chennai-600 006.

1 CC to Mr.Prakash Goklaney, Advocate SR.No. 43657

1 CC to Mr. M. Dhandapani, Advocate SR.No. 43909

W.A.No.764 of 2015

JP (CO)
PSI (31.08.2015)