IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.04.2015

Delivered on: 27.04.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.10633 of 2015
and M.P.No.1 of 2015

R.Subramanian .. Petitioner

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 Petition 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 25.3.2015 issued by the respondent herein and quash the same.

For Petitioner : Mr.Prakash Goklaney

For Respondent : Mr.M.Dhandapani,
Standing Counsel
for Enforcement Directorate

O R D E R

The petitioner is arrayed as first accused in C.C.No.9635 of 2014 on the file of the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai. The Central Bureau of Investigation, BS & FS, Bangalore has registered an F.I.R in RC4 (E)/2013 on 26.07.2013 for the alleged commission of offences under Sections 120B r/w. 420 IPC and Sections 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988 and after investigation has filed charge sheet which has been taken on file in the above said calendar case.

2. The allegations are that M/s.Subhiksha Trading Services Ltd., (M/s.STSL) a public limited company was engaged in organizing retailing by establishing chain shores and selling products in FMCG, Pharma, Groceries, Fruits, Vegetables etc and the petitioner herein was the Managing Director and Tmt.R.Mangalam was the Director. According to the prosecution, the petitioner was the only active Director who was handling the day-to-day affairs of the company such as availing loan from various banks and was making decisions with respect to expansion and also responsible for financial implications. The above said company, represented by the petitioner herein, submitted an application on 22.5.2007 to the Bank of Baroda, CFS Branch, Chennai requesting for cash credit limit of Rs.25 crores and term loan of Rs.50 crores and Rs.25 crores towards working capital to take over the existing loan from AXIS Bank Limited. The said loan was sanctioned subject to condition that guarantee of M/s.Vishwapriya Financial Services and Securities Ltd., have to be provided, but intentionally failed to provide the same and thereby deviated from the terms of the loan. It is further alleged that the said company also availed another term loan of Rs.75 crores from ICICI Bank for expansion programme of 3rd and 4th phase and it was sanctioned against security of second charge of all immovable fixed assets of the borrower across the country. The petitioner subsequently made a request to the Bank of Baroda for modification of the sanction.

3. In sum and substance, the case of the prosecution is that the petitioner, as Managing Director of the above said company, with dishonest intention to cheat the bank, did not comply with the terms and conditions of the sanction and intentionally kept the bank in dark about the utilization of funds and utilized the loan funds for payments other than for which it was sanctioned and thereby caused wrongful loss to the bank and he also did not route the sale proceeds through the current account of the company maintained with Bank of Baroda and with dishonest and deceitful means, diverted the funds and failed to repay the loan amount which resulted in the account becoming Non Performing Asset (NPA) and thereby, caused wrongful loss to the bank to an extent of Rs.77.39 crores as on 31.03.2009 and also availed huge credit facilities from various other banks to the extent of Rs.700 crores. The above said company also maintained different set of books of accounts and fraudulently obtained certificates from Chartered Accountants for the purpose of utilizing it to obtain loan from various banks including Bank of Baroda and thereby the petitioner, being the first accused and the company, being the second accused, had committed the offence punishable under Section 420 IPC.

4. The respondent has issued the impugned summons dated 25.03.2015 calling upon the petitioner to appear in connection with the investigation under the provisions of the Prevention of Money Laundering Act, 2002 [Central Act 15 of 2003], (in short "Money Laundering Act"), at his office on 09.04.2015 at 10.30 a.m. along with the documents as per the annexure. Challenging the legality of the said summon, the petitioner has filed this writ petition.

5. Mr.Prakash Goklaney, learned counsel appearing for the petitioner would submit that by way of amendment in the year 2009, Section 420 IPC was made as a scheduled offence under the Money Laundering Act and it came into force only on 01.06.2009 and in the case on hand, the assets of the company were declared as Non-Performing Assets on 31.03.2009, three months prior to the said amendment and at that time, Section 420 IPC was not a scheduled offence under the Act and consequently, the respondent has no jurisdiction to issue summons calling upon the petitioner to appear before him in connection with the investigation being conducted under the provisions of Money Laundering Act, 2002 and prays for quashment of the same.

6. Per contra, Mr.M.Dhandapani, learned counsel appearing for the respondent would submit that only summons were issued calling upon the petitioner to appear in person along with the documents and he shall appear before the respondent and produce all the documents and it is also open to him to put forth his defence and would further contend that the writ petition is premature and is liable to be dismissed.

7. This Court has carefully considered the rival submissions and also perused the materials available on record.

8. The respondent, in exercise of powers under Section 50 (2) and (3) of the Money Laundering Act, has issued summons dated 25.03.2015, calling upon the petitioner to appear along with documents as per the annexure. It is relevant to extract Section 68 of the Money Laundering Act, which reads as under:

> "68. Notice, etc., not to be invalid on certain grounds.- No notice, summons, order, document or other proceeding, furnished or made or issued or taken or purported to have been furnished or made or issued or taken in pursuance of any of the provisions of shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons, order, document or other

proceeding is in substance and effect in conformity with or according to the intent and purpose of the Act."

9. As per the said provision, no notice, summons, order, document or other proceeding..... issued or taken in pursuance of any of the provisions of shall be invalid, or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such notice, summons, order, document or other proceeding if such notice, summons.......is in substance and effect in conformity with or according to the intent and purpose of the Act. The reasons for introducing Money Laundering Act is that the money laundering causes serious threat not only to the financial systems of the country, but also their integrity and sovereignty and the object of the Act is to prevent money laundering and provide for confiscation of property, derived from income involved in money laundering or materials connected or incidental thereto. Therefore, the points urged by the petitioner are unsustainable. Even in the impugned summons, it has been indicated that every proceeding under Section 50(2) and (3) of the Money Laundering Act shall be deemed to be judicial proceeding within the meaning of Sections 193 and 228 of the Indian Penal Code and if a person fail to give evidence as mentioned in the schedule, he shall be liable to penal proceedings under the Act.

10. Any statement obtained from the petitioner does not infringe the constitutional guarantee of protection against self-incrimination under Article 20(3) of the Constitution of India, as held so by the Hon'ble Supreme Court of India in C.Sampath Kumar v. Enforcement Officer [(1997) 8 SCC 358]. It cannot be said that the respondent lacks jurisdiction to issue summons or has no authority of law to issue summons for the purpose of aiding investigation under the provisions of Money Laundering Act. This Court, on a careful consideration of the materials, is of the view that the writ petition lacks merit.

11. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar (CO)

/true copy/

Sub Asst. Registrar

jvm

To

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.

1 cc to M/s. M. Dhandapani, Advocate, Sr. 22820
2 ccs to M/s. Prakash Goklaney, Advocate, Sr. 23374

W.P.No.10633 of 2015

MP (CO)
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