HON'BLE SRI JUSTICE R. SUBHASH REDDY

And

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL MISCELLANEOUS APPEAL Nos.882 & 896 of 2013,

210, 267, 268, 269, 270, 271, 272, 273, 274, 298 & 299 of 2015

-

COMMON JUDGMENT : (Per Justice R.Subhash Reddy)

In view of the common questions of law on similar set of facts, all these appeals are heard together and are being disposed of by this common judgment. For the purpose of disposal, we refer to the facts as narrated in C.M.A.No.882 of 2013.

2. This civil miscellaneous appeal is filed under Section 42 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the Money Laundering Act'), by the appellant before the appellate Tribunal, aggrieved by the order, dated 04.09.2013, passed in interlocutory application in MP-PMLA-298/HYD/2013 in FPA-PMLA-42/HYD/2010.

3. The appellant herein is the appellant in the main appeal before the appellate Tribunal constituted under the provisions of the Money Laundering Act. Pending appeal, the appellant herein has filed miscellaneous petition under Section 35 of the said Act, seeking to take on record certain documents filed along with the said petition. The said petition was rejected by the Tribunal. Hence, this appeal.

4. Pursuant to registration of crime by the Central Bureau of Investigation (CBI) in relation to Satyam Computers Services Ltd. (SCSL) and its promoters, the Directorate of Enforcement has passed provisional attachment order in relation to various assets of the

appellant under the provisions of the Money Laundering Act, and thereafter, filed complaint before the adjudicating authority for confirmation of the order. The adjudicating authority under the said Act has passed orders, dated 14.01.2010, in Case No.01/2009 in ECIR No.01/HZO/2009, confirming the provisional attachment order. Aggrieved by the order of confirmation made by the adjudicating authority, the appellant herein has preferred appeal under Section 29 of the Money Laundering Act, before the appellate Tribunal and the same is numbered as FPA-PMLA-42/HYD/2010. When the notice of hearing of appeal, dated 11.01.2013, was issued posting the appeal for hearing on 05.02.2013, the appellant herein has filed interlocutory application under Section 35 of the said Act, to take on record certain documents filed along with the application. Such application is dismissed by the Tribunal by impugned order, dated 04.09.2013.

5. Mainly, the appellate Tribunal has recorded reasons stating that the documents which are sought to be introduced by way of additional evidence are not the documents at all, as they contain written submissions and that the electronically generated documents are not certified to be true copies by competent authority, and further, it is recorded by the Tribunal that no reasons have been assigned for not filing such documents when the matter was pending before the adjudicating authority. Giving reasons for not permitting each and every document sought to be introduced as additional evidence, the Tribunal has rejected the application, by impugned order.

6. In this appeal, it is contended by learned counsel Sri S.Niranjan Reddy and other Advocates on record, appearing for appellants that the appellate authority has rejected the petition without assigning valid reasons. It is contended that all the documents which are filed by way of additional evidence, are the documents, which have a bearing on various issues that arise for consideration in the appeal. It is contended that though after passing of orders by the adjudicating

authority, the appellant has been continuously trying to collect and compile the evidence for discharging his burden under the scheme of the Act, as the record is voluminous and had to be gathered from various sources/locations, despite best efforts and due diligence, the documents could not be filed at earlier stage. It is contended that as held by the Hon'ble Supreme Court in the case of **State of rajasthan v. T.N.Sahani**, the appellate Tribunal ought to have decided the petition filed for additional evidence, along with the appeal. It is contended that all the documents which are sought to be filed, are not computer-generated copies and some documents are issued by the public authorities and as such, there is no reason for not taking such documents on record. It is submitted that under Section 24 of the Money Laundering Act, the burden of proof is on the person who is alleged with the offence, as such, it is very essential to take on record the documents filed by the appellant, for the purpose of proving his case.

7. On the other hand, it is contended by the learned counsel appearing for the Directorate of Enforcement that though proceedings are initiated in the year 2009, at no point of time, the appellant had made any effort to bring on record such documents. It is submitted that the majority of documents which are sought to be introduced by way of additional evidence, are the submissions prepared by the appellant and also certain information prepared in tabular form by the appellant himself, as such, the same cannot be construed as documents. It is further contended that to prove the documentary evidence, source and authenticity are the key factors but the documents now sought to be filed by the appellant, are not certified by competent authority, as such, they were rightly refused by the appellate Tribunal. It is submitted that under Section 35(2) of the Money Laundering Act, the appellate Tribunal, while discharging its functions under the said Act, is empowered to discharge the same powers as are vested in a civil Court under the CPC while trying a suit, in respect of the following matters, namely:-

a. summoning and enforcing the attendance of any person and examining him on oath;

b. requiring the discovery and production of documents;

c. receiving evidence on affidavits;

d. subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;

e. issuing commissions for the examination of witnesses or documents;

f. reviewing its decisions;

g. dismissing a representation for default or deciding it ex parte;

h. setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

i. any other matter, which may be, prescribed by the Central Government."

8. In this case, it is to be seen that in view of the applicability of the provisions under CPC, the present petition for filing additional documents can be considered as introduction of additional evidence as contemplated under Order 41 Rule 27 of CPC. Under Order 41 Rule 27 (aa) of CPC, the party seeking to produce additional evidence, has to establish that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not,

after the exercise of due diligence, be produced by him at the time when the primary authority has passed orders. In view of such provision, it has to be considered whether any reasons within the meaning of said provision were assigned in the petition filed before the appellate Tribunal. A copy of the interlocutory application filed before the appellate Tribunal, is placed on record. The only reason stated in the application filed under Section 35 of the Act is that the appellant has been continuously working to collect and compile the evidence for discharging his burden after the order of confirmation is passed by the adjudicating authority. Except stating that the record is voluminous and had to be gathered from various sources, no other acceptable reason is indicated. In any event, even to consider on merits also, we have carefully perused the order passed by the appellate Tribunal. The appellant has prayed to take on record the documents shown in Annexures 1 to 11, which read as under :

“Annexure-I : Statement of NBFC loans outstanding.

Annexure-II : Statement of repayment of NBFC loans.

Annexure-III : Details of investment by SRSR Holdings.

Annexure-IV : Statement of weighted average price at which SCSL were pledged.

Annexure-V : Statement of weighted average price at which SCSL were held.

Annexure-VI : Statement of value realized by SRSR holdings on sale of SCSL shares.

Annexure-VII : Statement of details of pledged shares have been returned to SRSR.

Annexure-VIII : Statement of showing details of ‘other sources’ and SCSL share.

Annexure IX : Statement showing details of average price at which SCSL shares were traded.

Annexure X : The offer document detailing the price at which Mahindra acquired SCSL shares.

Annexure XI : Statement showing original acquisition of shares by the promoters/their spouses."

From the above, it is clear that the documents sought to be filed as additional evidence, are either the statements prepared by the appellant by obtaining information from the other sources or data put in a tabular form by the appellant, basing on certain electronically generated documents, which are not filed. The annexures contain the transaction statements obtained from National Securities Depository Limited for the period from 14.09.2006 to 01.03.2008 for SRSR Holdings Private Ltd. and also the extracts purported to have taken from the website of the National Stock Exchange of India Ltd., inter alia, showing the average price of share of Satyam Computers Ltd. on 06.01.2009. The aforesaid documents have neither authentication nor certification by any authorized person. Even with regard to statements of Accounts with Axis Bank for the period from 01.07.2005 to 31.03.2009, the same are not certified under the Bankers' Books of Evidence Act, nor they are certified to be true copies of the originals. Among the documents, there is a copy of letter of offer from Tech Mahindra Limited to the shareholders of Satyam Computer Services Ltd., along with Summary Term Sheet and other annexure and the offer was open from 12.06.2009 to 01.07.2009. Though it is pleaded that such document is a public document, there is no explanation at all as to why such document was not filed before the adjudicating authority when the matter was pending from 2009. Admittedly, the appellant has stated in the application that he started working to collect the documents only after passing the final orders of confirmation by the original authority, which itself shows that he was not diligent at all for filing such documentary evidence when the matter was pending before the primary authority.

9. It is true that in **Union of India v. Ibrahim Uddin & another**, the Hon'ble Supreme Court has held that an application filed under Order 41 Rule 27 is to be considered at the time of hearing of the appeal on merits so as to find whether the documents and evidence sought to be adduced have any relevance/bearing on the issues involved, but at the same time, when the documents filed are not in accordance with law, it is always open to the Court to pass an order of rejection without listing the matter to be considered at the time of final hearing. Further, in the case of **Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & others**, relied on by the learned counsel for respondents, the Hon'ble Supreme Court has held that when the electronic evidence is sought to be introduced, source and authenticity are the two key factors which are to be established. Further, in the case of **Anvar P.V. v. P.K.Basheer & others**, the Hon'ble Supreme Court, in the context of admissibility of secondary evidence of electronic record, held that the statement pertaining to electronic record has to be accompanied by a certificate as specified in Section 65-B(4) of the Evidence Act and in the absence of such certificate, secondary evidence of electronic record cannot be admitted in evidence. Paragraphs 15 and 16 of the said judgment read as under :

> "15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:
>
> a. There must be a certificate which identifies the electronic record containing the statement;
>
> b. The certificate must describe the manner in which the electronic record was produced;
>
> c. The certificate must furnish the particulars of the

device involved in the production of that record;

d. The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and

e. The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device."

> 16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice."

Thus, appending a certificate as required by the provisions of Section 65-B(4) of the Evidence Act is a mandatory pre-requirement, which is completely absent in the present case.

10. In the case on hand, as some of the documents sought to be filed as additional evidence cannot be construed at all as documents as much as they are merely statements prepared by the appellant himself and there is no authenticity and certification by the relevant authority as contemplated under Section 65-B of the Indian Evidence Act, such documents are rightly refused to be taken on record at the appellate stage.

11. In view of the aforesaid reasons and for the reasons recorded in

the impugned order, we are of the view that no case is made out for interference with the impugned order passed by the Tribunal.

12. All these civil miscellaneous appeals are accordingly dismissed. No costs.

Pending miscellaneous applications, if any, shall stand closed.

R. SUBHASH REDDY, J

A. **SHANKAR NARAYANA, J**

6th October 2015

ajr