

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.03.2017

PRONOUNCED ON: 14.03.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.387 of 2017

1. Ashok Munilal Jain

2. Mahaveer Kumar

.... Petitioners/Accused 1 & 2

vs.

Assistant Director,
Directorate of Enforcement,
2nd/3rd floor, Murugesu Naicker Complex,
No.84, Greaves Road,
Thousand Lights,
Chennai - 600 006

.... Respondent /Complainant

Criminal Revision preferred under Section 397 r/w. 401
Cr.P.C., against the order passed by the Principal Sessions
Judge, Chennai in Crl.M.P.No.3825 of 2017, dated 28.02.2017.

For Petitioner : Mr.Vikram Chowdary, Senior Counsel
for Mr.Sathish Sundar

For Respondent : Mr.N.Ramesh,
Spl. Public Prosecutor
(For Enforcement)

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ORDER

This revision has been filed against the order passed
by the Principal Sessions Court , Chennai (designated court
for the Prevention of Money Laundering Act) in Crl.M.P.No.3825
of 2017 dated 28.02.2017.

2. The brief facts leading to file this revision is as follows:

The petitioners were arrested on 28.12.2016 in connection with an Enforcement Case Information Report (ECIR) No.19/2016 and they are confined in judicial custody. The above ECIR case has been registered by the Directorate of Enforcement, Chennai Zonal Office, based on a criminal case registered by the C.B.I., Chennai in Cr.No.RC.MA1 2016 A 0040 dated 19.12.2016, against one Sekar Reddy and 5 others, apart from some unknown bank officials and public servants for the alleged offences under Sections 120-B r/w.409 and 420 IPC, and Section 13(2) r/w. 13(1)(c) & (d) of Prevention of Corruption Act 1988. Since the above offences are scheduled offence as per Section 2(1)(y) of Prevention of Money Laundering Act 2002, (herein after called "PML Act".), the above ECIR case was registered by the Directorate of Enforcement Chennai Zonal Office.

3. Earlier the Directorate of Enforcement, New Delhi Zonal Office registered a case in ECIR/14-DZ-II/2016, dated 16.12.2016, based on a crime registered by the Crime Branch Police, New Delhi, for the offences under Sections 420, 409, 188 and 120-B IPC. In the above case, the Directorate of Enforcement, Delhi Zonal Office, arrested one Parasmal Lodha, and during enquiry, the said Parasmal Lodha, has given a statement that he and Sekar Reddy, the accused in Crime No.RC MA-1/2016A, registered by the C.B.I., Chennai, are friends and Parasmal Lodha assisted the said Sekar Reddy, for exchanging nearly Rs. 7 crores of currency notes through one Raman @ Kishan Hirani, a money exchanger, based in Hongkong and his associates, Shivshankar in Delhi and Amarpal Mahaveer Hirani At Chennai. Based on the statement of Parasmal Lodha, the residential premises of the petitioners herein were identified and the respondent Directorate Enforcement, Chennai, and conducted search in their premises on 26.12.2016. Prior to that, on 19.12.2016, Income Tax Department also conducted search in the petitioners' premises and recovered nearly Rs.7 crores of unaccounted cash and 6500 gms of gold bullion and another Rs.3 crores of cash has been recovered from their business premises. During the enquiry, the first petitioner has also admitted that he has been in contact with the said Parasmal Lodha and he had assisted the said Hirani in exchange of currency on his compulsion. In the above circumstances, both the petitioners were arrested under Section 19(1) of PML Act and they were remanded to judicial custody.

4. Earlier the petitioners had filed a petition under Section 439 of Cr.P.C seeking to enlarge them on bail before the Special Court , (Principal Sessions Court, Chennai) and the

Special Court, by an order dated 10.02.2017, dismissed the bail application. Then, the petitioners filed a bail petition before this Court in CrI.O.No.3347 of 2017. When the said bail petition was pending before this Court, on 26.02.2017, the petitioners have completed 60 days of judicial custody, but the respondent did not file any complaint before the expiry of 60 days of their judicial custody. In the above circumstances, once again, the petitioners have approached the Special Court, by filing a petition under Section 167(2) Cr.P.C., seeking a statutory default bail in CrI.M.P.No.3825 of 2017. But the Special Court, by an order dated 28.02.2017, dismissed the above application filed by the petitioners holding that the provision of Section 167(2) Cr.P.C is not applicable to the cases arising under the PML Act.

5. In the meantime, the bail application filed by the petitioners, came up for hearing before this Court, wherein, the petitioners has contended that the maximum permissible period of remand of 60 days has already been expired and so far, the respondent did not file any complaint in terms of Section 45 of PML Act and sought for bail invoking the default clause under Section 167(2) Cr.P.C. This Court, by an order dated 06.03.2017, dismissed the above application holding that since the above contention has been considered by the Special Court, and rejected their contention holding that the provisions of Section 167(2) Cr.P.C is not applicable to the cases arises under the PML Act, without challenging the above order, in the manner known to law, the petitioners cannot raise the above plea in the regular bail application filed by them under Section 439 Cr.P.C. In the above circumstances, now challenging the order passed by the Special Court, rejecting the petitioners' application filed under Section 167(2) Cr.P.C., the present revision has been filed.

6. The learned Senior Counsel appearing for the petitioners would contend that the provisions of Section 167(2) Cr.P.C very much applicable to the cases arises under the PML Act also, as the respondent did not file the complaint within the statutory period of remand of 60 days, as per Section 65 of PML Act , the provisions of Criminal Procedure Code is very well apply to the proceedings under PML Act, so far they are not in consistent with the provisions of the PML Act, and in view of the default committed by the respondent, a indefeasible right has been occurred to the petitioners and the trial court dismissed the application erroneously relying upon the judgment of the Hon'ble Supreme Court reported in 2009(7) Supreme Court Cases 526 (Jeewan Kumar Raut vs. Central Bureau of Investigation), which is not applicable to the facts of this case.

7. The learned Senior Counsel in support of his contention relied upon a Division Bench Judgments of Punjab and Haryana High Court in CRWP No.971 of 2016 (Arun Sharma Vs. Union of India and others), dated 22.07.2016, and also the Hon'ble Supreme Court judgment reported in 2014(9) SCC 457 (Union of India vs. Nirala Yadav).

8. The learned Senior Counsel further relied upon the judgment of the Hon'ble Supreme Court reported in 1995 (4) Supreme Court Cases 1990 (Union of India vs. Tamisharasi and another), which arises under the NDPS Act, wherein the Hon'ble Supreme Court has held that the provisions of Section 167(2) Cr.P.C is applicable to the proceedings under the NDPS Act, and contended that the provisions under PML Act is also similar to that of NDPS Act, and the provisions of Section 167(2) Cr.P.C is very much applicable to the proceedings under the PML Act.

9. Per contra, learned counsel appearing for the respondent would contend that the present revision petition, filed under Section 397 r/w. Section 401 Cr.P.C., against the order passed by the special court, is not at all maintainable in view of the bar under Section 397(2) Cr.P.C. as the order passed by the Special Court is only an interlocutory order and the petitioner cannot maintain this revision petition before this Court.

10. The learned counsel appearing for the respondent would further contended that in view of the judgment of the Hon'ble Supreme Court reported in 2009(7) Supreme Court Cases 526 (Jeewan Kumar Raut and another /vs/ Central Bureau of Inviestigation), the provisions of Section 167(2) Cr.P.C is not applicable to the proceedings under the PML Act and the petitioners cannot claim any right under Section 167(2) Cr.P.C. The provisions contained in the NDPS Act is totally different from the PML Act, and there is a specific period was fixed in the NDPS Act for filing complaint or final report, but there is no such time limit is fixed in the PML Act, and sought to distinguish the judgment of the Hon'ble Supreme Court of India in Tamisharai's case.

11. I have considered the rival submissions and perused the materials available on record carefully.

12. Before considering the case on merits, in view of the objections raised by the respondent regarding the maintainability of the revision, this court has to decide whether the present revision filed under Section 397 r/w.401 Cr.P.C is maintainable against the order passed by the Special Court, and whether the order passed by the court below is an interlocutory order or it is in the nature of a final order. Before considering those issues, I would like to refer the

provisions of Section 397 of the Code of Criminal Procedure. Which reads as follows:-

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

Explanation.—All Magistrates, whether Executive or Judicial, and whether exercising original or appellate jurisdiction, shall be deemed to be inferior to the Sessions Judge for the purposes of this sub-section and of section 398.

(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding.

(3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, no further application by the same person shall be entertained by the other of them."

13. Section 397(1) Cr.P.C empowers High Court and Sessions court to call for and examine the records of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court. But Section 397 (2) imposed a bar for exercising the revisional jurisdiction in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceedings.

14. Now, the question is whether the order passed by the court below dismissing the petition filed under Section 167 (2) Cr.P.C seeking default bail is an interlocutory order or final order.

15. The Hon'ble Supreme Court in number of cases had considered and defined what is an interlocutory order. The Hon'ble Supreme Court, in Amar Nath and others vs. State of Haryana and another, reported in 1977 (4) Supreme Court Cases 137, had held as follows:

" The main question which falls for determination in this appeal is as to what is the connotation of the term "interlocutory order" as appearing in sub-section (2) of Section 397 which bars any revision of such an order by the High court. The term "interlocutory order" is a term of well-known legal significance and does not present any serious difficulty. It has been used in various statutes including the Code of Civil Procedure, Letters Patent of the High courts and other like statutes. In Webster's New World Dictionary "interlocutory" has been defined as an order other than final decision. Decided cases have laid down that interlocutory orders to be appealable must be those which decide the rights and liabilities of the parties concerning a particular aspect. It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the right of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code. Thus, for instance, orders summoning witnesses, adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the revisional jurisdiction of the High Court"

16. Subsequently, a three Judges Bench of the Hon'ble Supreme court of India, in Madhu Limaye vs. The State of Maharashtra reported in 1977 (4) Supreme Court Cases 551 has elaborately considered the Amarnath case(supra) and other

judgments, on this point, has held as follows: -

" Yet, for the reasons already alluded to, we feel no difficulty in coming to the conclusion, after due consideration, that an order rejecting the plea of the accused on a point which, when accepted, will conclude the particular proceeding, will surely be not an interlocutory order within the meaning of Section 397(2)."

Applying the above test, this Court has to decide whether the order passed by the Special Court is an interlocutory order or a final order.

17. The order of rejecting the plea of the accused seeking bail under Section 167(2) Cr.P.C will not conclude the above proceedings, as the right of the petitioners to come out on bail was not finally determined by the Special Court. In Amar Nath's case(supra), the Hon'ble Supreme court has specifically held that passing any orders in a bail petition is only an interlocutory, against which, no revision would lie under Section 397(2) Cr.P.C.

18. In the above circumstances, I have no hesitation to hold that the order passed by the Special Court rejecting the petitioners' application is only an interlocutory order, and in view of the bar under Section 397(2) Cr.P.C, petitioners cannot maintain a revision petition, before this Court.

19. The learned Senior Counsel relied upon the judgment of this Court in CrI.R.C.(MD) No.370 of 2014 (Thangaraj @ Thamilarasan and others vs. The Deputy Superintendent of Police, Q Branch CID, Ramanathapuram) and another judgment of this court in reported in 2003(1) CTC 29 (Palanisamy @ Palani and 5 others /vs/ The Inspector of Police, Thalvi Police, Dharmapuri District). Wherein, this court entertained a revision petition against the order passed in an application filed under Section 167(2) Cr.P.C. In the above cases, the issue regarding maintainability of revision neither raised nor decided, hence, no reliance can be made on the above said judgments. Since I have only considered the maintainability of the revision petition under Section 397 Cr.P.C, I do not want to go into the merits of the case. In the above circumstances, this revision petition is liable to be dismissed on the ground of maintainability alone.

20. In the result, the Criminal Revision Petition is dismissed as not maintainable.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Principal Sessions Judge,
Chennai

2.The Assistant Director,
Directorate of Enforcement,
2nd/3rd floor, Murugesu Naicker Complex,
No.84, Greaves Road,
Thousand Lights,
Chennai - 600 006

+2 ccs to Mr.B.Sathish Sundar Advocate sr 15799
+1 cc to Special Public Prosecutor for Enforcement
Director Govt of India sr 15785
+3 ccs to Mr.B.Sathish Sundar sr 15699

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