Reserved on: 07.06.2017
Delivered on : 14.06.2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.OP.Nos. 25157 to 25168 of 2016

Crl.O.P.No.25157 of 2016

1. S.Kumar @ S.Vijayakumar
Aged about 48 years
S/o. Shri N.Sivagnanam
R/o. No.7/5,
Amsa Garden, 3rd Street
Tiruvottiyur, Chennai - 600 019

2. S.Elumalai
Aged 39 years
S/o. Shri N.Sivagnanam
R/o. No.46, South Mada Street
Tiruvottiyur,
Chennai 600 019 .. Petitioner/Accused No. 3 and 4

Versus

1. The Inspector of Police
SPE - CBI: ACB: CHENNAI

2. The Deputy Director
Directorate of Enforcement
Government of India,
Ministry of Finance
Department of Revenue
2nd and 3rd Floor, Murugesa
Naicker Complex
No.84, Greams Road, Thousand Lights
Chennai -600 006
3. S.Muralidharan
4. R.Chandrasekaran ... Respondents/
Complainants/
Accused 1 and 2

Crl.O.P.No.25158 of 2016:

1.S.KUMAR @ S.VIJAYAKUMAR

2.N.DEVARAJ @ N.DEVARAJAN

3. S.ELUMALAI

4. R.JAYANTHI

5. D.RADHA

6 D.SENTHIL

7 E.BHUVANA

8 K.LAKSHMI

9 M.HARIDOSS

10 R.USHA

11 N.HEMA @ HEMAMALINI

...Petitioners/Accused 3,5,6,8,9,10, 11,12,14,15 & 16

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB:CHENNAI

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA
MINISTRY OF FINANCE DEPARTMENT OF REVENUE.
2nd & 3 rd FLOOR. MURUGESA NAICKER COMPLEX NO.84
GREAMS ROAD, THOUSAND LIGHTS, CHENNAI 600 006.

3 S.MURALIDHARAN

4 R.CHANDRASEKARAN.

5 V.J.VIJAYAKUMAR

6 M.GAJALAKSHMI

7 Mrs.V.J.SASIKALA

..Respondents/Complainants/ Accused 1,2,4,7 & 13.

Crl.O.P.No.25159 of 2016:

1 S.KUMAR @ S.VIJAYAKUMAR

2 N.DEVARAJ @ N.DEVARAJAN ..Petitioners/Accused 2 & 3

Vs

1 THE SUPERINTENDENT OF POLICE
CBI/BS&FC/BANGALORE/RC05(E)/2010 ..Complainant

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNEMENT OF INDIA
MINISTRY OF FINANCE DEPARTMENT OF REVENUE
2nd & 3rd FLOOR. MURUGESA NAICKER COMPLEX NO.84
GREAMS ROAD, THOUSAND LIGHTS, CHENNAI 600 006.

3 R.CHANDRASEKARAN ..Respondents/Complainants/
1st Accused

Crl.O.P.No.25160 of 2016:

1 S.KUMAR @ S.VIJAYAKUMAR

2 M.HARIDOSS ..Petitioners/Accused 2 & 3

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB: CHENNAI. ..Complainant

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA
MINISTRY OF FINANCE DEPARTMENT OF
REVENUE 2ND & 3RD FLOOR
MURUGESA NAICKER COMPLEX NO.84
GREAMS ROAD, THOUSAND LIGHTS, CHENNAI 600 006.

3 R. CHANDRASEKARAN

4 S. RAMAN

5 V.J.VIJAYAKUMAR @SEENU ..Respondents/Complaints/

Accused 1, 4, & 5

Crl.O.P.No.25161 of 2016:

1 S.KUMAR @ S.VIJAYAKUMAR

2 N.DEVARAJ @ N.DEVARAJAN

3 S.ELUMALAI

..Petitioners/Accused 3,5& 6

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB CHENNAI

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA MINISTRY OF FINANCE
DEPARTMENT OF REVENUE 2ND & 3RD FLOOR
MURUGESA NAICKER COMPLEX NO.84 GREAMS ROAD
THOUSAND LIGHTS
CHENNAI 600 006.

3. V.G.SUBRAMANIAN

4. S.RAMAN

5. V.J.VIJAYAKUMAR @ SEENU

..Respondents/Complainants/
Accused 1,2 & 4

Crl.O.P.No.25162 of 2016:

1 S.KUMAR @ S.VIJAYAKUMAR

2 S.RAVI

3 R.PUNITHAVATHI ..Petitioners/Accused 2,4 & 5

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB CHENNAI. ..Complainant

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
2ND & 3RD FLOOR MURUGESA NAICKER COMPLEX, No 84,
GREAMS ROAD, THOUSAND LIGHTS , CHENNAI-600 006.

3 S.MURALIDHARAN

4 V.J.VIJAYAKUMAR @ SEENU
..Respondents/Complainants/
Accused 1 & 3

CRL.O.P.NO.25163 OF 2016:

1 S.KUMAR @ S.VIJAYAKUMAR

2 S.ELUMALAI

3 D.KALAISELVAM ..Petitioners/Accused 3,5& 6

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB CHENNAI ..Complainant

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
2ND & 3RD FLOOR MURUGESA NAICKER COMPLEX, No 84,
GREAMS ROAD, THOUSAND LIGHTS , CHENNAI-600 006.

3 S.MURALIDHARAN

4 R.CHANDRASEKARAN

5 V.J.VIJAYAKUMAR @ SEENU
..Respondents/Complainants/
Accused 1,2 & 4

Crl.O.P.No.25164 of 2016:

1 S.KUMAR @ S.VIJAYAKUMAR

2 SHRI N.DEVARAJ @ N.DEVARAJAN
..Petitioners/Accused 2 & 4

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB CHENNAI ..Complainant

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA MINISTRY OF FINANCE

DEPARTMENT OF REVENUE
2ND & 3RD FLOOR MURUGESA NAICKER COMPLEX, No 84,
GREAMS ROAD, THOUSAND LIGHTS , CHENNAI-600 006.

3 S.MURALIDHARAN

4 V.J.VIJAYAKUMAR @ SEENU

..Respondents/Complainants/
Accused 1 & 3

Crl.O.P.No.25165 of 2016:

1 S.KUMAR @ S.VIJAYAKUMAR

2 S.ELUMALAI

...Petitioners/Accused 2 & 3

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB: CHENNAI. ..Complainant

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
2ND & 3RD FLOOR MURUGESA NAICKER COMPLEX, No 84,
GREAMS ROAD, THOUSAND LIGHTS , CHENNAI-600 006.

3 S.MURALIDHARAN

..Respondents/Complainants/1st Accused

Crl.O.P.No.25166 of 2016:

1 S.KUMAR @ S.VIJAYAKUMAR

2 D.KALAISELVAM

..Petitioners/Accused 3 & 5

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB: CHENNAI.

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
2ND & 3RD FLOOR MURUGESA NAICKER COMPLEX, No 84,
GREAMS ROAD, THOUSAND LIGHTS , CHENNAI-600 006.

3 S.MURALIDHARAN

4 R.CHANDRASEKARAN

5 V.J.VIJAYAKUMAR @ SEENU

...Respondents/Complainants/ Accused 1,2 & 4

Crl.O.P.No.25167 of 2016:

1 S.KUMAR @ S.VIJAYAKUMAR

2 N.DEVARAJ @ N.DEVARAJAN

3 S.ELUMALAI

4 H.VIJAYA BASKAR

5 R.USHA

6 R.JAYANTHI

7 D.SENTHIL

8 M.HARIDOSS

..Petitioners/Accused 2,4,5,6, 7,10,11 & 12.

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB CHENNAI

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
2ND & 3RD FLOOR MURUGESA NAICKER COMPLEX, No 84,
GREAMS ROAD, THOUSAND LIGHTS , CHENNAI-600 006.

3 S.MURALIDHARAN

4 V.J.VIJAYAKUMAR @ SEENU

5 ADAM KHAN

6 M.GAJALAKSHMI ..Respondents/claimants/ Accused 1,3,8 &9

Crl.O.P.No.25168 of 2016:

1 S.KUMAR @ S.VIJAYAKUMAR ..Petitioner/2nd Accused

Vs

1 THE INSPECTOR OF POLICE
SPE:CBI:ACB CHENNAI

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT
GOVERNMENT OF INDIA MINISTRY OF FINANCE
DEPARTMENT OF REVENUE
2ND & 3RD FLOOR MURUGESA NAICKER COMPLEX, No 84,
GREAMS ROAD, THOUSAND LIGHTS , CHENNAI-600 006.

3 R.CHANDRASEKARAN

4 V.J.VIJAYAKUMAR @ SEENU
..Respondents/Complainants/ Accused 1 & 3

Prayer:- The Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to transfer of C.C.No.23 of 2013, C.C.NO.17 of 2013, C.C.NO.44 of 2011, C.C.NO.42 of 2011, C.C.No 39 of 2011, C.C. No 24 of 2013,C.C.NO 21 of 2013, C.C.NO 19 of 2013, C.C.NO 20 of 2013, C.C.NO 22 of 2013, C.C.NO 18 of 2013 and C.C.NO 41 of 2011 respectively on the file of the XI Additional City Civil & Sessions Judge for CBI cases (Banks and Financial Institutions) to the Principal Sessions Judge at Chennai (Special Court for Prevention of Money Laundering Act) where C.C.No.20 of 2015, C.C. No 49 of 2016, C.C.No.39 of 2016 and C.C.No.20 of 2015 respectively filed by the second respondent is pending.

For Petitioner in all Crl.O.Ps : Mr. Prakash Goklaney

For Respondent : Mr. K. Srinivasan
Special Public Prosecutor
for CBI Cases

COMMON ORDER

The petitioners, who are arrayed as Accused in C.C.Nos.23 of 2013; 17 of 2013; 44 of 2011; 42 of 2011; 39 of 2011; 24 of 2013; 21 of 2013; 19 of 2013; 20 of 2013; 22 of 2013; 18 of 2013 and 41 of 2011 respectively, have filed the captioned petitions seeking to transfer the aforesaid cases pending on the file of the Court of XI Additional City Civil and Sessions Judge for CBI Cases, (Banks and Financial Institutions) to the Principal Sessions Judge at Chennai, (Special Court for Prevention of Money Laundering Act), where C.C.No.20 of 2015 filed by the second respondent, namely, Directorate of Enforcement, is pending.

2. The case of the prosecution is that the petitioners/ accused in all these cases have entered into a Criminal Conspiracy with Shri Kumar @ Vijayakumar and others and by abusing their official position sanctioned housing loans/ additional housing loans without adhering to the basic Banking norms of pre-sanction requirements to various persons and thereby caused huge pecuniary loss to the Bank concerned. Therefore, the second respondent, namely, the Directorate of Enforcement, preferred a complaint under Section 45 (1) read with Section 3, 4 and 8 (5) of the Prevention of Money Laundering Act, 2002, (In short "Act 2002") and filed a charge sheet against the petitioners/ accused in C.C.No.20 of 2015 for the offence under Sections 120 (B), read with 420, 468 and 471 of the Indian Penal code, 1860 as well as Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act, 1988.

3. It is in these circumstances, the petitioners herein have filed the instant petitions seeking to transfer the proceedings pending against them on the file of XI Additional Sessions Judge, (Special Court for CBI Cases) to the file of the Principal Judge, City Civil Court, Chennai (Special Court for Prevention of Money Laundering Act).

4. It is the case of the petitioners that the records before the CBI Court would be required for the Special Court and a large part of the evidence would even be common. According to the petitioners, the Act, 2002 contemplates such trial together and also contemplates transfer of such proceedings to the Special Court under Section 44 of the Act, 2002. Therefore, the petitioners have prayed for allowing the captioned petitions.

5. The 1st respondent, namely, the CBI, ACB, Chennai, has filed a separate counter in all these cases opposing the relief sought for by the petitioners/ accused. It is contended that the instant petitions filed by the accused seeking transfer of

the cases pending on the file of the Special Court, CBI to the file of the Special Court for Prevention of Money Laundering Act, are not maintainable and the same have been filed only to protract the cases. According to the 1st respondent, under Section 44 of the Act, 2002 only the scheduled offences can be tried jointly by the Special Court constituted under the said Act and as the charges framed by the CBI Court contains the offences under Sections 468 and 471 of IPC and as the said offences are not scheduled in the Act, 2002 to attract the provisions of Section 44 of the said Act, the Principal Sessions Judge, Chennai, i.e.Special Court for Prevention of Money Laundering Act, has no power to conduct the trial of the aforesaid cases. It is further contended by the 1st respondent that no prejudice would be caused to the accused/ petitioner in conducting trial by the CBI Court. It is also contended that the case pending in Principal Sessions Judge, Chennai, is in the initial stage whereas the cases pending in CBI is in active progress and is likely to be disposed of at the earliest. Therefore the 1st respondent prayed for dismissal of the captioned petitions.

6. Heard the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

7. From the records, it is seen that the petitioners were originally charged for the offence under Section 13 of the Prevention of Corruption Act, 1988 along with Section 420, 468, 471 read with Section 120-B of the IPC, for committing serious bank frauds and thereby causing loss to the bank to the tune of several crores. The CBI has investigated the matter and finally laid a charge sheet as against the petitioners and others for the offences as stated above. This fact has not been disputed by the 1st respondent in the separate counter affidavit filed by them.

8. The main ground on which the instant transfer sought for by the petitioners is that the the second respondent, namely, the Directorate of Enforcement, has also filed a private complaint before the Special Court for Prevention of Money Laundering Act, i.e. Principal Sessions Judge at Chennai, which is constituted for trying the cases contemplated under the Act, 2002 and same has also been taken cognizance by the the Special Court for the aforesaid offences. Therefore, it is the contention of the learned counsel for the petitioners that since the second respondent has initiated proceedings under the provisions of the Act, 2002, Special Court constituted for the said Act, i.e. Principal Sessions Judge, Chennai, alone is competent to try the cases. Hence, the learned counsel for the petitioners prayed for allowing the petitions.

9. No doubt, the Special Court for Prevention of Money Laundering Act, has been constituted for trying the offences contemplated under the said Act, 2002 along with schedule offences connected with that section.

10. Before further discussion, it would be useful to refer Section 44 of the Act, 2002, which reads as follows:

> "44. Offences triable by Special Courts- (1) notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-
>
> (a) an offence punishable under Section 4 and any scheduled offence connected to the office under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:
>
> Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or;
>
> (b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take congnizance of offence under Section 3, without the accused being committed to it for trial;
>
> (c) if the court which has taken congnizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed;
>
> (d) a Special Court while trying the Scheduled offence of the office of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.
>
> (2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under Section 439 of the Code

> of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under Section 43."

11. The above section makes it clear that only the offences punishable under the Act, 2002 and connected schedule offences alone be tried by the Special Court. Admittedly, the charges framed, which are sought to be transferred from the CBI Court by the petitioners herein, contains various offences under I.P.C. and also under P.C.Act.

12. Admittedly, the CBI prosecuted the petitioners for the serious bank fraud committed by them to the tune of several crores and filed the charge sheet for the offence under Section 13 of the Prevention of Corruption Act, along with Section 420, 468 and 471 read with Section 120 B of the IPC, after obtaining necessary sanction from the competent authority. Merely because the second respondent has filed a private complaint to proceed against the petitioners on the basis of the materials collected by the CBI for the serious bank fraud and also for confiscation of the properties, the petitioners cannot now contend that the offences investigated by the CBI with regard to the serious bank fraud committed by them also be tried by the Special Court constituted for trying the offences under the Act, 2002. In fact, the aforesaid private complaint was filed before the Special Court only in the year 2015. Whereas in the instant cases, investigation has been completed by the CBI even in the year 2013 itself. Further, the offences under Section 13 of the Prevention of Corruption Act, along with Section 420, 468, 471 read with Section 120 B of the IPC alone was charge sheeted against the petitioners and these offences are not scheduled in the Act, 2002.

13. Therefore, as discussed above, merely because private complaint was filed by the 2nd respondent before the Special Court with regard to Money laundering, it cannot be stated that the cases investigated by the CBI with regard to the aforesaid crime also have to be tried by the Special Court constituted under the Act, 2002. If such view has been taken by this Court, there will be unwarranted delay in entire criminal prosecution launched by the CBI before the concerned Court. The object of constituting a Special Court is only to speed up the trial with regard to money laundering. Therefore, as long as the money laundering offence has not been charged by the CBI, investigation done by the CBI and the charge sheet laid by them before the Special Court for CBI cannot be transferred merely because the aforesaid Crime were also the result of the money laundering. If such view is adopted, all the cases pertaining to

fraud of the bank money will land up only in the Special Court without any progress.

14. It is further to be noted that the cases, arising out of Money Laundering, pending before the other Court than the Special Court cannot be transferred and such Court can only commit the cases to the Special Court on filling an application by the authority concerned seeking permission to file the complaint under the Money Laundering Act. Therefore, the question of transferring the instant cases to the Special Court for Money Laundering Act does not arise at all. Therefore, the relief sought for by the petitioners cannot be entertained at this stage.

15. Admittedly, in the instant cases, the CBI has not charge sheeted the petitioners for the offence relating to money laundering as contemplated under the Act, 2002. That being the case, the relief sought for by the petitioners seeking to transfer of the aforesaid cases from the file of the XI Additional City Civil and Sessions Judge for CBI cases, cannot be ordered merely because such cases also involve serious bank frauds.

16. Therefore, this Court is of the view that no prejudice would be caused to the accused in allowing the trial to be continued in the CBI Court. That apart, even in a case and counter case arising out of the same transaction, there cannot be any common evidence and the evidence of each case, has to be assessed independently for deciding the same. Therefore, the contention of the learned counsel for the petitioners that the evidence would be common in the CBI charge sheeted case as well as the case pending on the file of the Special Court for Prevention of Money Laundering is not sustainable in law. Hence, this Court is of the view that the cases, which are pending on the file of the CBI Court in connection with various offences, which were investigated in the year 2013, cannot be transferred to the Special Court for Prevention of Money Laundering as sought for by the petitioners.

17. It is curious to note that in the instant cases, charges have already been framed and some of the witnesses were also examined. Since the demur of witnesses noted by the Special Judge also assumes significance, the petitioners cannot seek transfer as a matter of right. In fact, the relief as sought for by the petitioners is granted, serious prejudice would not only caused to the prosecution but also to the accused. Hence, this Court is not inclined to entertain the captioned petitions.

18. Accordingly, the Criminal Original Petitions are dismissed as devoid of merits.

s/d-
Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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To
1. The XI Additional City Civil & Sessions Court for CBI Cases[Bsnk & Financial Institutions] Chennai.

2. The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue
2nd and 3rd Floor, Murugesa
Naicker Complex
No.84, Greams Road, Thousand Lights,
Chennai -600 006.

3. The Inspector of Police
SPE - CBI: ACB: CHENNAI

4. The Special Public Prosecutor for CBI Cases
High Court, Chennai 104.

Crl.OP.Nos.25157 to 25168 of 2016

NMI(CO)
sp(27.06.2017)