THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

CRIMINAL REVSION CASE No.1153 of 2017

ORDER:

This criminal revision case, under Sections 397 & 401 of the Code of Criminal Procedure, 1973 ('the Code', for short), by the petitioner-A6 is directed against the common orders, dated 26.10.2016, of the learned Metropolitan Sessions Judge, Hyderabad, passed in Crl.MP.No.2227 of 2015 and Crl.MP..No.1836 of 2016 in SC.No.108 of 2015 insofar as it related to dismissal of Crl.MP.No.1836 of 2016 filed by the petitioner-A6.

2. I have heard the submissions of *Sri Chetluru Sreenivas,* learned counsel for the petitioner-A6, and of *Sri N. Harinath,* learned Special Public Prosecutor for the Directorate of Enforcement, representing the respondent. I have perused the material record.

3. At the outset, it is to be noted that the petitioner-A6 and another accused, A2, filed the afore-stated two MPs under Section 227 of the Code requesting the Court of Session to discharge them from the Sessions Case. The respondent-Assistant Director, Directorate of Enforcement, filed a counter and resisted the applications. By a common order, both the applications were dismissed. However, the petitioner-A6 preferred this revision aggrieved of the common orders insofar as it related to the dismissal of his petition.

4. The case of the petitioner-A6 in support of his request for discharge, in brief, is this: - 'The respondent filed a complaint under Section 200 of the Code read with Sections 45, 3,4 and 8(5) of the Prevention of Money Laundering Act, 2002 ['the PML Act', for short], before the Court below alleging that the petitioner-A6 and other accused 1 to 5 and 7 committed offences punishable under Sections 3, 4 & 8(5) of the PML Act. In-fact, the petitioner-A6 is not involved in the alleged crime and has not committed any offences much less

the alleged offences. He never met any of the officials of the then Government regarding the Government's participation in the equity of the Company and his involvement in the alleged transactions constituting the alleged crime is nil. His assigned area of work as a Director of M/s.Vashista Wahan Private Limited (hereinafter 'VWPL') was only technical and advisory in nature. Therefore, he was not involved in any financial transactions. He did not receive a single rupee from the Company. He also did not authorise outflow of a single rupee from the Company account singly or jointly with others. In-fact, he tried his best to stop A1, A2 & A4 from transfering money given by the Government. He, being unhappy with the ways of working of the Company, sent his resignation from the Board to A4, on 14.07.2005. The enquiry on this issue started on 10.08.2005. The resignation was sent to the Registrar of Companies on 05.09.2005. Even the flow chart mentioned in the charge sheet does not disclose that any money was received by the petitioner-A6. The beneficiaries, if any, are the other accused. The role of the petitioner-A6 has not been properly defined to show that the provisions of PML Act are attracted. The allegations in the charge sheet disclose that the petitioner is not present at the meeting said to have been held at Hyderabad, on 07.01.2005, and he is not a privy to any plan. The petitioner-A6 has no role in A4's act of making a fraudulent copy of the Board resolution, on 13.01.2005, at Hyderabad, which was yet to be signed by APIIC, and the acceptance of the said copy without verification and remission of Rs.11,67,40,000/-. In-fact, the petitioner-A6 had written to A4, on 15.03.2005 and 20.03.2005, to return the money to the Government and be on the right side of the law. The charge sheet does not allege anything against the petitioner-A6. It is not alleged that he informed HSBC to confirm to Commerz Bank about the then APIIC equity participation. The petitioner-A6 gave due assistance to the respondent during the course of preliminary enquiry and provided documentary proof of the scam and all the other information required by the respondent. The officials of the then Government including Ministers and other bureaucrats should have been arraigned as accused as they only facilitated siphoning away of money of public exchequer by removing the condition of keeping the amount of money of the Government in ESCROW account against guarantee and had permitted the amount to be deposited in the regular account of VWPL. Normally the institutions like APIIC appoint a Director on Board when it invests in equity and the same will be done to take care of such institution's financial interest. However, for the best reasons known, the APIIC had not bothered to appoint a Director in the present case before investing in equity. The officials of the then Government *prima facie* acted with complicity and the exercise of approval of grant of money and its disbursal was done in utter haste by them and it is evident that it is done under the Government's pressure and that under Government's pressure the said officers were let off by the respondent. It is intriguing to note that the then APIIC and other Government officers had meetings in Hyderabad with A1, A2 & A4 and representatives from Germany during the period between 25.05.2005 and 27.05.2005 and the said officials for the reasons best known to them chose not to check about the money already invested in VWPL as most of the accused are out of their reach and are absconding and as to bring such accused persons of foreign nationality is not an easy task. The respondent arraigned this petitioner as an accused only to give a colour that the investigation has come to a logical conclusion. A draft resolution, terms of which were already agreed to between APIIC and A1, was faxed to APIIC, and a resolution was adopted under Section 289 of the Companies Act, 1956. Signing any time before the next board meeting is permitted and the same cannot be termed as ante dating the resolution. A4 was the Chairman and there was no provision for penalty on the Company for non-compliance of procedure in recording minutes of the meeting. APIIC released the money, on 13.01.2005, on the basis of agreement with A1 and the minutes were signed by the petitioner, only on 13.01.2005, as is evident from the contents of the charge sheet. Therefore, the petitioner signing the minutes has no bearing on remittance by the then APIIC. The mails of the petitioner-A6 to A1 & A4 bear testimony to the fact that the petitioner-A6 made efforts to stop them from doing wrongs. The petitioner-A6 has written to Registrar of Companies and also to HSBC Bank to stop money transfer. However, A4 went to HSBC to drop the name of the petitioner-A6 as authorised signatory in the bank. The respondent had not filed any document to show that the petitioner-A6 has done any acts or omitted to do any acts or that there are any omissions or commissions on his part which influenced or prompted APIIC to remit money on 13.01.2005; and, he has no role in the subsequent transfer of any money from the account of the Company. No document is filed to prove that the petitioner-A6 was a beneficiary in any manner whatsoever. In-fact the petitioner-A6 has blown the whistle; and, on 10.08.2005, the respondent under an acknowledgement has taken the hard disk of the petitoner-A6's personal computer, through which the referred mails were sent. The respondent has not deliberately mentioned the said aspect in the charge sheet and also failed to file the said documents before the Court. The said document, if produced before the Court, would have evidenced the fact that the petitioner-A6 is innocent and has not committed any offence under the provisions of PML Act. The ingredients of the penal provisions under the special Act are not attracted to the alleged case against the petitioner-A6 and he has neither directly nor indirectly attempted to indulge in any acts or omissions and has neither intentionally nor knowingly assisted in any transaction and he is not a party to any transaction with knowledge and he is not actually involved in any process or activity connected with the proceeds of the crime. There are no allegations of concealment, possession, acquisition or use of any proceeds of the crime. The petitioner has not projected or claimed any such amount as untainted property even as per the charge sheet averments. He exercised due diligence to prevent contravention and the contraventions, if any, had taken place without his knowledge. The provisions of the PML Act came into effect with effect from 01.07.2005. Hence, the same cannot be stretched to cover the earlier transactions, that is, transactions prior to the said date. No amount was transferred to this petitioner by APIIC. Hence, the petitioner-A6 is entitled to be discharged.

5. Per contra, the case of the respondent, in brief, is this: 'The material allegations in the petition are false. The petitioner is aware of the fraud committed by Dr Helmuth Schuster and others and has not taken any measures to prevent the same. Being the Director of VWPL during the relevant period, the petitioner is vicariously liable to prevent the fraud committed and has not taken responsibilities to prevent the same and hence he is guilty under the provisions of PML Act. He assisted the other accused persons in siphoning of the proceeds of the crime and he abetted the other accused persons in transferring and concealing the proceeds of the crime. None of the contentions raised by the petitioner are either tenable or true and correct. He was involved in the whole process of discussions with the Government of Andhra Pradesh on behalf of VWPL. The petitioner is now proclaiming that he is a whistle blower. The petitioner has not approached the Government or any law enforcement agency and never informed about the fraud. After the investigation commenced, he claimed that he is a whistle blower. It is an after thought to escape from the penal liability. It is being stated so to gain sympathy from the Court. He is a Director of the Company during the relevant period of time and he is aware of the fraud committed and he in-fact assisted in concealment, transfer and possession of the proceeds of the crime. The petitioner is a Director of the Company. He is responsible for the conduct of the affairs of the Company in a fair and legal manner and he failed to fulfil the said responsibility and is, therefore, guilty of the offences punishable under the provisions of the PML Act. The investigation under PML Act concentrates on the fruits of the fraud committed by the accused persons and its trail. He is aware

of the whole transaction made from the Bank account of the Company and the said fact is clearly evident from the documents submitted by the petitioner himself as well as the documents submitted by the respondent along with the charge sheet. Since the petitioner was expecting a job from Volkswagaon and as Dr Helmuth Schuster did not offer him a post as desired, he started addressing e-mails about his grievances to Volkswagen, but, not to unearth the fraud committed by Dr.Helmuth Schuster and others. The averments in the charge sheet supported by the material collected during the course of investigation and produced before the Court sufficiently establish the complicity of the petitioner-accused. The petitioner-A6 did not furnish any evidence showing the involvement of the senior functionaries of the Government of Andhra Pradesh. The petitioner provided assistance to the respondent at the time of preliminary enquiry to unearth the scam is incorrect. His allegations on that score are frivolous. The petitioner-A6 did not provide any technical expertise or advice to VWPL. For all the grounds mentioned in the charge sheet and in view of the supporting material, there is a *prima facie* case against the petitioner-A6.

6. Learned counsel for the petitioner-A6 while reiterating the case of the petitioner-A6 would contend as follows:

The learned Metropolitan Sessions Judge failed to appreciate the facts correctly and the legal position in proper perspective. The petitioner is one of the Directors of the Company. In the complaint it was falsely alleged as follows: - 'The petitioner continued to be the Director of VWPL till 05.09.2005. During the period of his directorship almost all the proceeds of the crime were delivered out from the account of VWPL. Further, with a deliberate and *mala fide* intention of assisting his colleague directors, Jagadeesh Alaga Raja, Dr.Helmuth Schuster and Ashok Kumar Jain, he shunned his responsibility and allowed the money laundering activity to happen unceasingly. He knowingly assisted in the offence of money laundering. He addressed written request to

HSBC bank for informing about the credit of Rs.11,67,40,000/- into the account of VWPL to Olaf Gothal of Commerz bank, Germany, and not directly to M/s.Volkswagen AG, Germany. This petitioner with dishonest, fraudulent and *mala fide* intention and knowledge involved in all activities connected with the assistance offered to the frontrunners in generation of proceeds of crime, concealment of proceeds of crime, possession, transfer and acquisition of proceeds of crime, projecting or claiming the proceeds of crime as untainted property.' Even going by the above allegations, the ingredients of PML Act are not attracted. The Court below failed to see that no amounts were transferred to the petitioner-A6 and that he has no *mens rea*. The Court below ought to have seen that criminal provisions are prospective in operation. The Court below failed to see that a communication, dated 07.01.2005, was issued by K.V. Rao, the then Principal Secretary (Industries), to M/s.Volkswagon, AG, Germany, intimating that the Government of Andhra Pradesh has decided to participate in the equity through their wholly owned Government undertaking namely APIIC. This would go to show that there was no involvement of the petitioner-A6 in insisting on the Government of Andhra Pradesh to make equity participation with Volkswagon as claimed in the complaint. PML Act came into effect from 01.07.2005. Hence, the same cannot be stretched to cover the earlier transactions falling prior to July, 2005.

7. The learned Standing Counsel supported the orders of the Court below while reiterating the case of the respondent, which is stated in paragraph 5 supra.

8. I have given earnest consideration to the facts and submissions.

9. During the course of hearing, it is brought to the notice of this Court that A2, whose petition was also dismissed by the Court below by the common order impugned in this revision, filed a Criminal Revision Case in Crl.RC.No.3222 of 2016 before this Court assailing the common order insofar as

it related to the dismissal of his petition in Crl.MP.No.2227 of 2015 and that this Court by order, dated 14.03.2017, allowed the said revision case and discharged A2 from the case and that the case of this petitioner-A6 also stands on the same footing and indeed on a better footing than that of A2 and that therefore, the petitioner-A6 is also entitled to the same relief. Be that as it may.

10. Learned Standing Counsel placed reliance on the following two decisions.

i) Hari Narayan Rai v. Union of Inida (UOI), Asst.,Director-II and others[1] in support of the proposition that though the Act has come into force with effect from 01.07.2005, the relevant date is not the date of acquisition of illicit money but the relevant dates are the dates on which such money was processed for projecting it as untainted.

ii) Narendra Mohan Singh and Ankita Singh v. Directorate of Enforcement and another[2] is relied upon in support of the same proposition that the date when one person is found involved in any process or activity connected with the proceeds of crime and projected it as untainted property would be relevant for the purpose of prosecution under Section 3 of the PML Act.

11. In the case on hand, the petitioner-A6 who was one of the Directors of VWPL sent his resignation from the Board on 14.07.2005. His resignation was sent to the Registrar of Companies on 05.09.2005 and it was acknowledged. A plain perusal of the charge sheet would show that the entire transaction took place prior to 01.07.2005, the date from which the PML Act has come into force. The role of the present petitioner-A6 as per the charge sheet averments is this: 'The petitioner-A6 with a fraudulent and dishonest intention put antedated signatures on the Board Resolutions and other Company related

[1] MANU/JH/0726/2010
[2] 20142)AJR 670

documents as if they were signed on 13.01.2005. Further, as one of the directors of M/s.Vashishta Wahan Private Limited, he is liable for the acts on behalf of the Company.' (Reproduced verbatim)

12. Except those averments no specific imputations, much less any act or omission said to have been committed or omitted to have been committed subsequent to the coming into the force of the PML Act were made against the petitioner-A6. So as far as A2 is concerned, the averments in the charge sheet dealing with his role are as follows: - 'A2 with a fraudulent and dishonest intention, negotiated with the officials of the Government of Andhra Pradesh and insisted the Government of AP to invest in a Special Purpose Vehicle to be incorporated by M/s.Volkswagen AG, Germany, as equity participation and to release Euro 2 Million into the account of M/s.Vashishta Wahan Private Limited, the proposed SPV. He was instrumental in the account opening of M/s.Vashishta Wahan Private Limited in HSBC Bank.' There is an allegation of transfer of Rs.3,89,891/- by M/s.Vashishta Wahan Private Limited into the account of A2. Even that transfer is prior to the coming into force of the Act. Even the transfer of Rs.11,67,40,000/- was much before coming into force of the Act. Therefore, no offences *prima facie* attracting the ingredients of the PML Act which came into force from 01.07.2005 were alleged to have been committed after coming into force of the Act. As already noted, A2 was discharged as per orders, dated 14.03.2017, of this Court in Crl.RC.No.3222 of 2016. On a careful examination of the cases of this petitioner-A6 and A2 in juxtaposition, this Court is of the view that the case of the petitioner-A6 certainly stands on a better footing in view of the allegations made against him. It is not disputed before this Court that any penal statute cannot have retrospective effect and such statute is presumed to be prospective in operation unless specifically made retrospective either expressly or by necessary intendment. Further, on a consideration of the broad probabilities of the case, the total effect of evidence including the documents produced

before the Court, it is apparent that no acts or omissions constituting the offences under the PML Act are committed by the petitioner-A6 after the coming into force of the said Act to attract the penal provisions of the said Act. Accordingly, this Court is of the view that a *prima facie* case for the offences under the provisions of PML Act is not made out against the petitioner-A6 for framing a charge under the provisions of the said law.

13. For all the foregoing reasons, this Court is of the considered view that when the allegations in the charge sheet itself disclose that no commissions or omissions were done by the petitioner-A6 attracting the penal provisions of PML Act after coming into force of the said Act, on 01.07.2005, and on the other hand the charge sheet averments only lay bare that all the transactions, acts and commissions were done much prior to the coming into force of the said Act, it follows that on this ground alone the prosecution cannot be maintained against the petitioner-A6 under the PML Act and, therefore, the request of the petitioner-A6 that he is entitled to be discharged merits consideration.

14. On the above analysis, this Court finds that the Court below is not justified in not considering the request of the petitioner-A6 and hence, the order impugned, which is not justified, is liable to be set aside.

15. In the result, the Criminal Revision case is allowed and the common order, dated 26.10.2016, of the learned Metropolitan Sessions Judge, Hyderabad, insofar as it related to the dismissal of Crl.MP.No.1836 of 2016 is concerned, is set aside and the said MP is allowed. Accordingly, the petitioner-A6 is discharged from the case. His bail bonds, if any, shall stand cancelled.

Miscellaneous petitions pending, if any, shall stand closed.

M.SEETHARAMA MURTI, J

01.09.2017
Vjl