HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1770 OF 2015

ORDER:

1. This revision is filed by the petitioners-accused Nos.1 to 3 challenging the order dated 1.7.2015 passed in Crl.M.P.No.418 of 2014 in C.C.No.3 of 2014 by the Metropolitan Sessions Judge, Cyberabad.

2. Brief facts of the case are as follows:

(i) The CBI has initiated Criminal proceedings against the 1st petitioner/A1 on the file of the I Additional Special Judge for CBI Cases, Hyderabad for the offence punishable under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 in C.C.No.16 of 2010 alleging that the 1st petitioner/A1 has acquired assets worth of Rs.45,94,764.83 ps., disproportionate to his source of income, during the "check period" of his service in ECIL as a Public Servant, and obtained pecuniary advantage for himself and for his family members. The FDRs worth Rs.20 lakhs were taken in the names of 49 unknown individuals and the 1st petitioner/A1 was shown as nominee in all such F.D.Rs. The complainant recorded the statements of the Branch Managers of Lakshmi Vilas Bank Limited, Shivpuri, Malkajgiri, Hyderabad, viz.,J. Janaki Raman, G.S. Radhakrishna and Y. Venkat Rao respectively, who have stated that 49 Dhanchakra deposits were made in the name of 49 fictitious persons for total sum of Rs.20 lakhs. In the year 2007-08 during the tenure of J. Janaki Ram, the said FDRs were encashed by the 2nd petitioner, who is the brother-in-law of A1. Since the deposits were less than Rs.50,000/- each, PAN details of deposit holders were not insisted. The matured amounts were credited into the Joint Account of K. Jaiveer Naidu & K. Padmaja Naidu instead of issuing pay orders directly in the name of depositors. K. Jaiveer Naidu is the builder from whom the 2nd petitioner has purchased Flat No.101, Jai Residency, Manikonda Jagir (V), Rajendranagar Mandal. The 2nd petitioner/A2 stated in his statement dated 9.7.2012 that after retiring from APSRTC in the year, 2011, he joined in M/s. Lakshmi Woven Sacks, Jeedimetla and he was having a savings account with SBI, M.G. Road, Secunderabad. He stated that he purchased Flat No.109 in his name at Jai Residency at Manikonda from K. Jaiveer Naidu for valid consideration of Rs.26.50 lakhs and paid Rs.22.50 lakhs through account transfer on 27.8.2008 and 28.8.2008 in Lakshmi Vilas Bank Limited, Malkajgiri. A2 stated that an amount of Rs.15 lakhs was given by his father by selling residential property and his mother-in-law gave Rs.4 lakhs cash to him and the other amounts were given to him in order to buy a flat. He raised further amount of Rs.1 lakh from the savings of his wife and the said amount of Rs.20 lakhs was given to A1, who in turn deposited the same in Lakshmi Vilas Bank Limited, Malkajgiri. He further stated that there is no relation between Rs.20 lakhs given to A1 and 49 Dhanchakra deposits with Lakshmi Vilas Bank.

(ii) The complainant examined the 3rd petitioner-A3, who is the son of A1, on 10.7.2012, who stated that he has three accounts with HDFC Bank Pvt., Ltd., one account with SBI and PPF account with SBI, and two other accounts with Lakshmi Vilas Bank Limited. He purchased Flat No.303 at M/s. Aditya Constructions Company Limited Serilingampally for consideration of Rs.33 lakhs. A3 further stated that he invested an amount of Rs.11.47 lakhs for registration. The said amount was paid to the builder. He sold the same to Anil Samayam for consideration for Rs.62 lakhs. He further stated that he has cleared the loans and whatever the amount left was invested as FDR in HDFC, Kapra and he paid an amount of Rs.9 lakhs to HDFC and also cleared the loan taken from one Vijaya to a tune of Rs.14 lakhs through an instrument No.986550, dated 7.6.2012 from HDFC Bank and invested rest of the amount of Rs.39 lakhs in the form of FDRs at HDFC. A3 also stated that he is not aware of any Dhanchakra Deposits made with Lakshmi Vilas Limited, Malkajgiri and while he was at USA, he was told by his father that an account has been opened in his name in Lakshmi Vilas Bank Limited, and a temporary loan was taken from Lakshmi Vilas Bank Limited, Malkajgiri, in his name in order to buy a Flat at Aditya Odyssey in Kondapur village, Sherilingampally, R.R. District. A3 further stated that he was told by his father that pay orders from Lakshmi Vilas Bank Limited for an amount of Rs.17.50 lakhs was paid to M/s. Aditya Construction Company Private Limited, in his name but he is not aware of any collateral security with Lakshmi Vilas Bank Limited for sanctioning the said loan.

(iii) Basing on the material collected, CBI filed charge sheet against A1 to A3 for the offence under Sections 13(2) r/w 13(1)(e) of the P.C. Act in C.C.No.16 of 2010 on the file of the I Additional Special Judge for CBI Cases, Hyderabad. Consequently, the Directorate of Enforcement has filed C.C.No.3/2014 on the file of the Court of the Metropolitan Sessions Judge alleging that the 1st petitioner acquired disproportionate assets. The learned Metropolitan Sessions Judge took cognizance of the case against the petitioners/A1 to A3 for the offence under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002. The petitioners filed Crl.M.P.No.418 of 2014 in C.C.No.3 of 2014 seeking to discharge them for the offence under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002. The learned Metropolitan Sessions Judge dismissed the above

Crl.M.P. Aggrieved by the same, the petitioners-A1 to A3 filed this revision.

3. Learned Counsel for the petitioners submitted that the offence punishable under the Prevention of Corruption Act, 1988 was incorporated in the Prevention of Money Laundering Act, 2002 by an amendment made with effect from 1.6.2009 and that the amended Act is prospective in nature. He further submitted that in the absence of the scheduled offence, the provisions of the Money Laundering Act cannot be invoked independently. He further submitted that as per the complaint, the offences are alleged to have been committed by the petitioners prior to 2009. Therefore, the amended Money Laundering Act cannot be made applicable to the present case. It is also submitted that the allegation of money laundering is only with respect to a scheduled offence as seen from Section 3 read with Section 2(1)(u) and Section 2(1)(y) of the amended Act and that in the present case, the 1st petitioner was already charged under the P.C. Act in another crime and that CBI charge sheeted only the 1st petitioner and not the other petitioners. Therefore, the petitioners can be discharged for the offences under the Money Laundering Act.

4. The learned Standing Counsel appearing for the respondent submitted that the trial Court has rightly dismissed the petition filed by the petitioners and that the order of the trial Court does not suffer from any irregularity warranting interference of this Court.

5. It is pertinent to note that the CBI has initiated Criminal proceedings against the 1st petitioner/A1 on the file of the I Additional Special Judge for CBI Cases, Hyderabad for the offence punishable under Sections 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 in C.C.No.16 of 2010

alleging that he has acquired assets worth Rs.45,94,764.83 ps., disproportionate to his source of income, during the "check period" of his service in ECIL as a Public Servant. The material gathered from the above pleadings, discloses that the alleged bank transactions took place in the year 2008 i.e., prior to 2009. Section 3 of the Prevention of Money Laundering Act mandates that the act of money laundering should be intentional and it has to be traced to the point of time when the actual transaction took place. The allegations that have been made by the C.B.I in the chargesheet in C.C.No:16/2010 on the file of the 1st Additional Special Judge for C.B.I Cases, Hyderabad and in the Money laundering case initiated by the Directorate of Enforcement in C.C.No:3/2014 on the file of the Metropolitan Sessions Judge for the offences under sections 3 and 4 of the Act are one and the same.

6. Be that as it may. Now coming to the facts of the case on hand, the offence was alleged to have been committed during the check period of service of the 1st petitioner and the C.B.I. filed the charge sheet in C.C.No:16/2010 for the offence punishable under Sections 13 (2) read with Section 13 (1) (e) of the Prevention of Corruption Act, 1988 against the 1st petitioner. Subsequently, the Directorate of Enforcement filed the charge sheet in C.C.No.3 of 2014 for the offence under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 against Petitioners-1 to 3. There is no explanation for the delay of 3 to 4 years in invoking the provisions of sections 3 and 4 of the Prevention of Money Laundering Act, 2002 against petitioners Nos.1 to 3.

7. In support of his contention that the offence in question is alleged to have been committed in the year 2008 whereas the amendment Act came into force from 1.6.2009, in which Section 7 to 13 of the P.C. Act were

inserted in the Schedule, and the application of the said Act cannot be retrospective, but it is prospective in nature and that prior to amendment Act, 2009, none of the provisions which are now invoked by the Enforcement Directorate were on the statue book except Section 467 IPC, and as such, the charge sheet in C.C.No:3/2014 is liable to be quashed, the learned Counsel for the petitioners relied upon an unreported judgment of this Court in W.P.No:17525/2014 wherein this Court held that the alleged incidents occurred prior to June, 2009, and prior to 2009, the relevant provisions of Indian Penal Code were not included in the schedule appended to the Act 2002 and the filing of the complaint and taking cognizance thereof is unsustainable. He further relied upon the judgment of Delhi High Court in Crl.M.C.No:5581/2014 and also on Tech Mahindra's case, wherein it was observed as under:

> "It is settled principle of law that no person can be prosecuted on the allegation which occurred earlier by applying the provision of law which has come into force after the alleged incident. In other words, there can be no retrospective application of criminal liability for the incident occurred prior to introduction of such liability in the Statute Book.
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> Admittedly, prior to Amendment Act 2009, none of the provisions which are now invoked by the Enforcement Directorate were on the statute book except Section 467 I.P.C. Thus, the petitioner cannot be prosecuted by invoking those provisions."

In the above judgment of Delhi High Court also, the C.B.I filed the charge sheet for the offences under sections 13 (2) read with 13 (1) (d) of the P.C. Act and sections 120B, 420, 471 read with 468, 409 and 477A I.P.C. alleged to have been committed during 2005-2006. It was held by the Delhi High Court that admittedly, prior to amendment Act 2009 none of the provisions which are now invoked by the Enforcement Directorate were on the statute book except Section 467 I.P.C and thus, the petitioner cannot be prosecuted by invoking those provisions.

8. It is also pertinent to note that Article 20 (1) of the Constitution postulates that a person cannot be prosecuted for the offence alleged to have been committed prior to the introduction of the Act and it cannot have the retrospective effect.

9. It is also pertinent to note that the C.B.I already filed the charge sheet against the 1st petitioner, who was the public servant, under the provisions of Section 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988. The provisions under Sections 7, 8, 9, 10 and 13 of the Prevention of Corruption Act, 1988 were inserted in paragraph 8 of Schedule A, under the amendment Act of Money Laundering 2009 with effect from 1.6.2009 whereas the Directorate of Enforcement has laid the chargesheet in C.C.No:3/2014 against the petitioners-1 to 3 for the offences alleged to have been committed prior to 2009. This charge sheet has been filed only after the introduction of the amendment Act 2009, which came into effect from 1.6.2009. Prior to Amendment Act, 2009, none of the provisions which are now invoked by the Enforcement Directorate were on the statue book except Section 467 IPC. Therefore, the petitioners cannot be prosecuted by invoking the provisions of Sections 3 and 4 of the Money Laundering Act.

10. In support of his contention, the learned Counsel for the petitioners relied upon an unreported judgment of this Court in W.P.No:17525/2014, dated 22.12.2014 wherein it was held thus:

> "In the instant case, the alleged incidents occurred prior to June, 2009. Prior to June, 2009, the relevant provisions of Indian Penal Code were not included in schedule appended to the Act

2002. These provisions were not listed as offences under the Act admittedly when the alleged incidents have taken place. The only provision that is invoked which was in the schedule to the Act is section 467. The illegal activities committed by the persons in the helm of affairs cannot be attributed to the petitioner company, more particularly the allegation of forgery as all those illegalities were committed by them behind the back and without the involvement of the petitioner company. Thus, if the allegations made are taken at their face value and accepted in their entirety, they do not prima facie constitute any offence or make out a case against the petitioner company. In accordance with the principles laid down by the Supreme Court in **Bajan Lal** case, the petitioner company cannot be proceeded against under section 3 of Act 2002. Thus, filing of complaint and taking cognizance thereof is unsustainable"

11. In the light of the observations made by this Court in the above judgment coupled with the judgment of the Delhi High Court, this Court is of the view that the petitioners cannot be proceeded against under sections 3 and 4 of the Act 2002. The trial Court has failed to consider all these legal aspects and therefore, the order impugned is liable to be set aside.

12. In the result, this Criminal Revision Case is allowed setting aside the order of the Metropolitan Sessions Judge, Cyberabad in Crl.M.P.No:418/2014 in C.C.No:3/2014, dated 1.7.2015. Consequently, Crl.M.P.No:418/2014 in C.C.No:3/2014, is allowed discharging the petitioners-1 to 3 in C.C.No:3/2014 for the offence under sections 3 and 4 of the Prevention of Money Laundering Act, 2002.

Justice Raja Elango

Dated:14.9.2017

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HON'BLE SRI JUSTICE RAJA ELANGO

CRIMINAL REVISION CASE No.1770 OF 2015

14.09.2017

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