

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

W.P.Nos.34172 to 34175 of 2017
and
W.M.P.Nos.37961 to 37964 of 2017

W.P.No.34172 of 2017

R.Kasaniya Begum
W/o.Shri C.Rabeek Raja
No.893, S.M.Nagar
Meluir, Mudurai - 625 106.

..Petitioner in
W.P.No.34172 of 2017

Vs

1. The Deputy Director
Directorate of Enforcement
Chennai Zonal Office
3rd Floor, "C" Block
Murugesu Naicker Complex
84, Greaves Road
Chennai - 600 006.

2. The Chair Person
Adjudicating Authority
Room No.25, 4th Floor
Jeevan Deep Building
Parliament Street
New Delhi 110 001.

...Respondents in W.P.No.34172 of 2017

Prayer :

Petition filed under Article 226 of the Constitution of India, issue a Writ of Certiorari, calling for the records of the case relating to the impugned order No.21/2017, Dated 30.10.2017 in ECIR/CEZO/03/2014 dated 30.10.2017 passed by the 1st respondent and to quash the same, so far as it relates to the Provisional attachment under Section 5 of Prevention of Money Laundering Act, 2002, of the properties of the petitioner's herein.

W.P.No.34173 of 2017

R.Rahuman

..Petitioner in W.P.No.34173 of 2017

Vs

1. The Deputy Director
Directorate of Enforcement
Chennai Zonal Office
3rd Floor, "C" Block
Murugesu Naicker Complex
84, Greaves Road
Chennai - 600 006.

2. The Chair Person
Adjudicating Authority
Room No.25, 4th Floor
Jeevan Deep Building
Parliament Street
New Delhi 110 001.

...Respondents in W.P.No.34173 of 2017

Prayer :

Petition filed under Article 226 of the Constitution of India, issue a Writ of Certiorari, calling for the records of the case relating to the impugned complaint filed on 14.11.2017 under Section 5(5) of the PMLA No.21/2017, dated 30.10.2017 in File No.ECIR/CEZO/03/2014 filed by the first respondent before 2nd respondent and to quash the same.

W.P.No.34174 of 2017

R.Kasaniya Begum

..Petitioner in W.P.No.34174 of 2017

Vs

1. The Deputy Director
Directorate of Enforcement
Chennai Zonal Office
3rd Floor, "C" Block
Murugesu Naicker Complex
84, Greaves Road
Chennai - 600 006.

2. The Chair Person
Adjudicating Authority
Room No.25, 4th Floor
Jeevan Deep Building
Parliament Street
New Delhi 110 001.

...Respondents in W.P.No.34174 of 2017

Prayer :

Petition filed under Article 226 of the Constitution of India, issue a Writ of Certiorari, calling for the records of the case relating to the impugned complaint filed on 14.11.2017 under Section 5(5) of the PMLA No.21/2017, dated 30.10.2017 in File No.ECIR/CEZO/03/2014 filed by the first respondent and to quash the same.

W.P.No.34175 of 2017

R.Yasar Arabath

..Petitioner in W.P.No.34175 of 2017

Vs

1. The Deputy Director
Directorate of Enforcement
Chennai Zonal Office
3rd Floor, "C" Block
Murugesu Naicker Complex
84, Greaves Road
Chennai - 600 006.

2. The Chair Person
Adjudicating Authority
Room No.25, 4th Floor
Jeevan Deep Building
Parliament Street
New Delhi 110 001.

...Respondents in W.P.No.34175 of 2017

Prayer : Petition filed under Article 226 of the Constitution of India, issue a Writ of Certiorari, calling for the records of the case relating to the impugned complaint filed on 14.11.2017 under Section 5(5) of the PMLA No.21/2017, dated 30.10.2017 in File No.ECIR/CEZO/03/2014 filed by the first respondent before 2nd respondent and to quash the same.

For Petitioners : Ms.K.Ezhil Arasi (in all WPs)

For Respondents : Ms.G.Hema (in all WPs)
(in all Wps) Special Public Prosecutor

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COMMON ORDER

[Order of the Court was made by Dr. G.JAYACHANDRAN]

This writ petition is directed against the registering of complaint under Section 5(5) of Prevention of Money Laundering Act, 2002 (hereinafter referred as PMLA Act. The petitioners herein are one of the partners of M/s.R.R.Minerals at Aruppukottai, wherein, the respondents have found that there is

prima facie case of money laundering in the affairs of the said partnership firm and therefore, summon was served to the petitioners under Section 50(2) and 50(3) of PML Act, calling upon them to answer the queries and pursuant to the said process, since a prima facie case of money laundering has been made out to the tune of Rs.5 Crores, a complaint has been registered and it is under investigation. By way of a writ petition, the said process is sought to be quashed and the reasons stated in the writ petition for seeking quashment of the complaint is that the respondent has no authority under PML Act to register a complaint and Section 3 of PML Act is not at all applicable to the petitioners. Since there is no material to show that the properties in their possession are proceeds of crime, when the petitioners have not been involved in any crime, the assets possessed by them cannot be termed as proceeds of crime or the petitioners are involved in money laundering. Therefore, the impugned order, in so far it relates to the petitioners, under Section 5(5) of PLM Act is not sustainable and liable to be quashed.

2. Heard the learned counsel for the petitioners. For convenience, provisions relevant to decide the petition is extracted below:-

Section 2(u) :- "'Proceeds of crime'" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property''

Section 3 :- "Offences of Money-laundering"

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money-laundering

Section 5 (5) :-

"5. The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

(i) Paragraph 1 of Part A and Part B of the Schedule, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974); or

(ii) Paragraph 2 of Part A of the Schedule, a police report or a complaint has been filed for taking cognizance of an offence by the Special Court constituted under sub-section (1) of section 36 of the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985)."

3. Insofar as this case is concerned, after affording an opportunity to the petitioners under Section 50 and being satisfied that prima facie material against them and reason to believe that the petitioners are in possession of proceeds of crime, the complaint has been registered and it is under investigation besides adjudication for attachment.

4. Under these circumstances, it cannot be construed that the Authorities have no power under Section 3 or 5 to proceed against the petitioners or the complaint itself is bereft of material and liable to be quashed. It is for the petitioners to participate in the enquiry/investigation. On completion of investigation, it is always open to the petitioner to approach the appropriate Court under the appropriate provision of law, for redressal of his grievance, if any. Therefore, both on merits as well as on the facts of the case, these petitions are not maintainable and liable to be dismissed. Accordingly dismissed. No costs. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

sk/maya
To

1. The Deputy Director
Directorate of Enforcement
Chennai Zonal Office
3rd Floor, "C" Block,
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84, Greaves Road, Chennai - 600 006.

2. The Chair Person
Adjudicating Authority
Room No.25, 4th Floor
Jeevan Deep Building
Parliament Street, New Delhi 110 001.

+1cc to Mr.T.Ramesh, Advocate, S.R.No.9078
+1cc to Ms.G.Hema, Advocate, S.R.No.9102

W.P.Nos.34172 to 34175 of 2017

NRK (CO)
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