BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Seventeenth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL OP(MD) No.5615 of 2018
AND
CRL A(MD)NO.SR5872 OF 2018

THE ASSISTANT DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
GOVERNMENT OF INDIA,
MINISTRY OF FINANCE, DEPARTMENT OF REVENUE,
NO.6,(O.NO.42),BESANT
ROAD, CHOKKIKULAM,MADURAI-002.
(F.NO.ECIR/MDSZO/04/2014(PV) ... PETITIONER / APPELLANT
COMPLAINANT

Vs

1 SHRI A.SEENI @ SEENIVASAN,
2 S.VASUKI,
3 S.SUGUMARI, ... RESPONDENTS/RESPONDENTS/
ACCUSED

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant Special Leave to appeal against the order in C.C.No.05/2016 dated 20.12.2017 of the Honourable Court of the II Addl District Court for CBI Cases, Madurai and the Designated Special Court for PMLA, (hereinafter referred to as Special Court) and thus render justice.

Crl A(MD)No.SR 5872 of 2018:
To take this criminal appeal on file, call for entire records relating to the judgment made in C.C.No.05/2016 dated 20.12.2017 on the file of the Hon'ble II Additional District Court for CBI cases, Madurai hear the counsel for the Appellant / Complainant and to set aside the same and convict and sentence the Respondents / Accused to the maximum as authorised by law and allow the appeal.

ORDER : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of MR.K.K.SENTHIL VELAN, Special Public Prosecutor for the Petitioner and of MR.R.GANDHI, Advocate for the respondent the court made the following order:-

This petition is filed to grant special leave to appeal against the order in C.C.No.5 of 2016 dated 20.12.2017 of the II Additional District Court for CBI cases, Madurai and the Designated Special Court for PMLA (Herein after referred to as Special Court).

2.On the side of the petitioner, it is stated that on 18.06.2013, a case in Crime No.140 of 2013 under Section 8(c) r/w. 20(6)(ii)(c) r/w. 25 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 was registered by the Natham Police Station, Natham, Dindigul District against Mr.A.Seenivason, Mrs.S.Sugumari, Mrs.S.Vasuki and others. The offences under Sections 20 and 29 of Narcotic Drugs and Psychotropic Substances Act, 1985 are scheduled offences under the Prevention of Money Laundering Act, 2005 and prima facie case under the PMLA is made out and Enforcement Case Information Report(EC(R) No.MDSZO/04/2014 dated 23.07.2014 was registered against them by the petitioner Department and investigation was initiated.

3.It is stated that Mr.A.Seenivasan and his wives namely, Mrs.S.Sugumari and Mrs.S.Vasuki were enquired and their statements were recorded before the concerned authority. In the statement of Mr.Seenivasan dated 22.08.2014, he has admitted that his passport expired on 28.11.2013 and he has not renewed the same. In that statement, he has stated that case in Crime No.725 of 2010 was registered against him by Natham Police Station under Narcotic Drugs and Psychotropic Substances Act in the year 2010. In that case, 25 kgs of Kanja was seized from the resident of his brother-in-law and he furnished the details of the immovable properties in his name and in the name of his family members. He has stated that properties including 12 houses and a land measuring about 2 ½ acres of coconut trees were purchased from kanja business. Out of the rent and income, 1 acre 25 ½ cent in Survey No.297/B2, 297/1B1 and 1 acre 8 ½ cents in Survey No.297/1B2, 297/1A2 were purchased in the name of his first wife Mrs.S.Sukumari and a Tavera Car having Registration No.TN-7-AB-2423 and a plot measuring 1,470 sq. ft was purchased in the name of his second wife Mrs.S.Vasuki and he has furnished details of various assets. The first respondent has given a statement before the authorities wherein he has stated that some of the properties are purchased in the name of himself and in the name of his relatives and the amount for consideration is derived from Kanja business.

4.On the side of the petitioner, it is stated that under Section 50 of the Money Laundering Act, the statement recorded by the authorities are admissable in evidence. In Ex.P9, the respondent has stated his father-in-law and mother-in-law were doing kanja business and the properties were purchased from out of the same business and only after recording the statements of the person, the respondent can be named as an accused. The statement recorded by the authorities are similar to that of the statement recorded in the Judicial proceedings. Under Section 24 of the Money Laundering Act, the burden of proof is upon the accused. The Narcotic Drugs and Psychotropic Substances Act is one of the scheduled offence but the trial Court failed to consider all these aspects and acquitted the accused.

5.It is further stated that appeal is pending and C.M.A. Is pending and without considering the scope of the Act, the trial Court has ordered for the release of the properties. The trial Court has come to a wrong conclusion that the confession of the accused is inadmissible whereas the statements of the respondents are admissible in evidence. The statement was recorded by the concerned authorities under Section 51 of the Act. It is admissable in evidence, Only after recording the statement, the case was registered and then only the respondents will be named as an accused. In support, the judgments published in the case of ***Rajesh Manekehand Kothari v. Union of India*** in ***Special Criminal Application (Direction) No.4496 of 2014***, in the case of ***Ram Singh v. Central Bureau of Narcotics*** reported in ***(2011) 11 Supreme Court Cases 347,*** in the case of ***Rohit Tandon v. Enforcement Directorate*** reported in ***2018 CRL. L. J. 416*** and in the case of ***K.I.Pavunny v. Assistant Collector(HQ)*** reported in ***(1997) 3 Supreme Court Cases 721*** are cited.

6.On the side of the respondent, it is stated that a case in C.C.No.52 of 2016 was filed under the Narcotic Drugs and Psychotropic Substances Act ended in acquittal and the foundation of the case itself has gone. The Narcotic Drugs and Psychotropic Substances Court acquitted the respondents. The Judgments cited are not applicable to the facts of the case. The order passed by the lower Court is correct and there is no need for the petitioner to file an appeal.

7.Records perused. A perusal of the records reveals that there are arguable points for the appeal. Whether Sections 50 and 24 of the Money Laundering Act are applicable to the case can be decided only after hearing the arguments in the appeal and an opportunity for the petitioner to put forth his case has to given in the interest of justice. Hence, this petition is allowed and the special leave is granted. The Registry is directed to number the appeal, if in order.

sd/-
17/07/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE II ADDITIONAL DISTRICT JUDGE FOR CBI CASES,
MADURAI.

COPY TO : THE SECTION OFFICER, CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. CC to M/S.K.K.SENTHILVELAN Special Government Pleader
SR.No.13372

GJM/CSL/ASVM/20.7.18-4P-4C

ORDER
IN
CRL OP(MD) No.5615 of 2018
AND CRL A(MD)NO.SR5872/2018
Date :17/07/2018