BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)Nos.21808 and 21809 of 2016

The Deputy Director,
Directorate of Enforcement,
Represented by N.Ananthie, aged about 50 years,
Government of India,
Minsitry of Finance,
Department of Revenue,
Shastri Bhavan, 3rd Floor, 3rd Block,
No.26, Haddows Road,
Chennai-600 006. ... Petitioner in both Crl.O.Ps.

Vs.

1.State,
Represented by the Deputy Superintendent of Police,
Economic Offences Wing-II,
Madurai.

2.Green Life Finance Company,
Formerly at Plot No.4,
Royal Street, Raja Muthiah Nagar @ Ellis Nagar,
Madurai.

3.Amjat Khan Ghori, ... R1 to R3 in both Crl.O.Ps.
4.Asamathkhan Ghori ... 4th Respondent in crl op(md) 21808/2016
4.Hepsiba Merlin Sofi ... 4th Respondent in crl op(md) 21809/2016
5.Syed Mohammed Rafiq ...5th Respondent in both Crl.O.Ps.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C. praying to direct the Special Court under TNPID Act, 1977 to commit the pending scheduled offence case in C.C.No.9 of 2013 and C.C.No.20 of 2013 respectively to the Special Court (Prevention of Money Laundering Act), cum Principle District Judge, Madurai, for trying both scheduled offences and money laundering offences in terms of Section 44(1)(c) and 43(2) of Prevention of Money Laundering Act, 2002.

For Petitioner : Mr.K.K.Senthilvalan
For R1 (in both Crl.O.Ps.) : Mr.K.Suyambulinga Bharathi, Government Advocate (Crl.Side).

COMMON ORDER

These Criminal Original Petitions have been filed by the Directorate of Enforcement, seeking for a direction to the Special Court under the TNPID Act, 1977, to commit the pending scheduled cases in C.C.Nos.9 and 20 of 2013 to the Special Court dealing with the offence of money laundering under the Prevention of Money Laundering Act, 2002 (hereinafter referred as the Act, 2002) in order to deal with those cases along with the pending case in C.C.No.7 of 2017 filed under the Act, 2002.

2.It is the case of the petitioner that the Directorate of Enforcement filed a complaint before the Special Court against the accused persons under Section 43(1) of the Act, 2002 and the same was taken on file and the Special Court has taken cognizance of the offence under Section 3 of the Act, 2002, which is punishable under Section 4 of the Act, 2002. The said case is pending on the file of the Special Court.

3.Insofar as the scheduled offences are concerned, as against the very same accused persons, two cases are pending before the TNPID Court in C.C.Nos.9 and 20 of 2013. Therefore, in accordance with the provision of Section 44(1)(c) of the Act, 2002, the authorized officer filed an application before the TNPID Court to commit the case pending before the Court to the Special Court dealing with the offence under the Act, 2002. This application was filed in the year 2015 and the same was returned by the TNPID Court.

4.Aggrieved by the same, the present criminal original petitions have been filed before this Court by the Directorate of Enforcement.

5.It will be useful to extract the provision of 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 offence 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 cognizance of offence under Section 3, without the accused being committed to it for trial;
>
> (c)If the court, which has taken cognizance 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 or the offence 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."

6.The above provision makes it clear that wherever the Court, which takes cognizance of the scheduled offence, is other than the Special Court, which has taken cognizance of the complaint for the offence of money laundering, the authorized officer is entitled to file an application before the Court, which is dealing with the scheduled offence, seeking to commit the case pending before it to the file of the Special court under the Act, 2002, in order to enable the Special Court, to deal with the case from the stage at which it is committed. The provision also gives directions as to the manner in which, the Special Court will have to hold the trial for both the scheduled offences and also the offences of money laundering.

7.The TNPID Court ought to have entertained the application filed by the Directorate of Enforcement and should have followed the provision of Section 44 of the Act, 2002, and committed the pending cases to the Special Court. However, this was not done in this case.

8.These Criminal Original Petitions are disposed of with a direction to the petitioner to file a fresh application before the Special Court under TNPID Act, 1977, Madurai in C.C.Nos.9 and 20 of 2013 and make a request to the concerned Court to commit both cases to the Second Additional District and Sessions Court for CBI cases and ED cases, Madurai. This exercise shall be completed within a period of two months from the date of receipt of a copy of this order.

9.The Second Additional District and Sessions Court for CBI Cases and ED Cases, Madurai, immediately on receipt of the case file in C.C.Nos.9 and 20 of 2013 shall re-number the same and deal with it in accordance with the provisions of Sections 44(1)(c) and 44(1)(d) of the Act, 2002.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar(CS-II)

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To
1.The Deputy Director,
Directorate of Enforcement,
Government of India,
Minsitry of Finance,
Department of Revenue,
Shastri Bhavan, 3rd Floor, 3rd Block,
No.26, Haddows Road,
Chennai-600 006.

2.The Second Additional District and
Sessions Court for CBI Cases and ED Cases,
Madurai.

3.The Special Court (Prevention of Money Laundering Act),
cum Principle District Judge, Madurai.

4.The Deputy Superintendent of Police,
Economic Offences Wing-II,
Madurai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2cc to Mr.K.K.Sentil Velan, Advocate in SR No.85697 & 85698

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NM/RSK/SAR II/03.10.18/4P/8C.