BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.09.2018

CORAM:
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
Crl.O.P.[MD].No.16988 of 2018
and
Crl.M.P.[MD].No.7508 of 2018

1.S.P.Rajendran
2.R.Bhooma : Petitioners/Accused 1 and 2

Vs.

The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
No.6 (Olde No.42), Besant Road,
Chokkikulam,
Madurai- 625 002. : Respondent/Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to the impugned complaint in C.C.No.4 of 2018 on the file of the Hon'ble II-Additional District Court for CBI cases, Madurai and quash the same in respect of the petitioners alone.

For Petitioners : Mr.B.Saravanan
For Respondent : Mr.S.Ragaventhre
Central Government Standing Counsel

ORDER

It is seen from the records that the schedule offence was investigated by the District Crime Branch, Karur in Crime No.6 of 2013 and a final report has been filed before the learned Judicial Magistrate No.II, Kulithalai and the same has been taken on file in C.C.No.3 of 2016 for the offences under Sections 120(B), 468, 471, 409, 420, 416, 201 and 109 I.P.C. In this case, admittedly the trial is yet to commence.

2.Parallely, the respondent has proceeded to register ECIR in the year 2015 and subsequently a complaint has been filed before the Special Court for an alleged offence under Section 3 of Prevention of Money Laundering Act punishable under Section 4 of the Act. (herein after referred to as PMLA Act).

3.The learned counsel for the petitioners would submit that the Court below ought not to have taken cognizance of the complaint, since an offence under Section 3 of the PMLA Act will come into play, only after the trial and disposal of the case which is pending in C.C.No.3 of 2016. The learned counsel for the petitioner further submitted that if in case the Special Court proceeds further to decide the case and convicts the petitioners and at a later point of time, the court which is dealing with the schedule offence, acquits the petitioners, the petitioners will be put to untold hardship.

4.The learned counsel for the petitioners would further submit that the very offence of money laundering that has been alleged by the respondent is defendent upon the commission of the schedule offence. Therefore, the result in the case that is pending in C.C.No.3 of 2016, will have a bearing on the complaint that has been filed before the Special Court. Therefore, the learned counsel for the petitioner would submit that the court below ought not to have taken cognizance of the complaint filed by the respondent.

5.This Court has carefully considered the submissions made on the side of the petitioner. It will be relevant to extract the provisions of Section 3 of the PMLA Act.

> "3. Offence 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 including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering."

6.It is clear from the above provision that the offence of Money laundering is directly connected with the proceeds of the crime. Therefore, it is important to understand the meaning of proceeds of crime. This is defined under Section 2(u) of the Act as follows.

> (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;

7.In order to attract the said provision, the proceeds of the crime must relate to any property which has been derived or obtained directly or indirectly by a person as a result of a criminal activity relating to a schedule offence. Schedule offence has been defined under the Act under Section 2(y) of the Act, which is as follows.

(y) "Schedule offence" means-

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more;

or

(iii) the offences specified under Part C of the Schedule;]

8. In this case, admittedly the offence for which an F.I.R was registered against the petitioners and the final report that was filed, subsequent to the investigation, is a schedule offence under the PMLA Act. Therefore, it has to be seen as to whether the respondent can proceed further by filling a complaint, even before the case which is pending before the regular court in C.C.No.3 of 2016 is disposed of by the concerned Court.

9.It will be useful to extract the following provision under Section 44 of the PMLA Act, which is 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 trail in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trail before a Court of Session.]

(2)Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under Section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to “Magistrate” in that Section includes also a reference to a “Special Court” designated under section 43.

10.A reading of the Section 44(C) of the Act makes it clear that the Special Court has been given the jurisdiction and power to conduct the case both for the schedule offence as well as for the offence under the PMLA Act. In the present case, admittedly the schedule offence is now pending before the learned Judicial Magistrate No.II, Kulithalai in C.C.No.3 of 2016.

11.In view of the complaint filed by the respondent which has been taken cognizance by the Special Court, Section 44(c) of the Act will immediately come into play. The reason being that since the offence of money laundering is directly related to the schedule offence, the legislature thought it fit that the same court has to conduct the proceedings both for the schedule offence as well as the offence of money laundering.

12.Keeping this in mind, Section 44(c) provides that the authority who is authorised under the Act should make an application before the court in which the schedule offence is pending seeking to commit that case to the Special Court in which the offence of money laundering is pending. The provision also makes it clear that the Special Court, after the case is committed to it , shall deal with the schedule offence from the stage at which it is committed. Section 44(d) also provides for the manner in which the trial has to be conducted by the Special Court in this regard. Therefore, the objections raised by the petitioners that the Special Court cannot proceed to deal with the complaint till the disposal of the case pending for the schedule offence, is not sustainable. The provision itself enables both the proceedings to be tried by the same court namely the Special Court.

13.The learned counsel for the petitioner would further submit that the notification that has been issued by the Central Government on 01.06.2006, specifically empowers only a Principal District Judge of the respective District to be notified as a Special Court under the provision of Money Laundering Act 2002. Section 43(1) of the Act provides that the Central Government in consultation with the Chief Justice of High Court, shall have trial of the offence punishable under Section 4 can designate one or more Courts of Session as a Special Court for such area or for such case or class or group of cases as may be specified in the notification.

14.The learned Central Government Standing Counsel has produced the relevant notification before this Court wherein the II-Additional District Court for CBI Cases, Madurai has been designated to be a Special Court under Section 43(1) of the Act. Therefore, the ground raised by the learned counsel for the petitioner in this regard is also not sustainable.

15.This Court does not find any reason to interfere with the complaint filed by the respondent against the petitioners. However, there shall be a direction to the respondent to file an appropriate application under Section 44(c) of the PMLA Act before the learned Judicial Magistrate No.II, Kulithalai to commit the case which is pending in C.C.No.3 of 2016, to be transferred to the Special Court which is trying the offence of money laundering, which is pending in C.C.No.4 of 2018. On such committal, the Special court shall proceed with the case in the manner provided under Section 44(c) and (d) of the PMLA Act.

16.This Criminal Original Petition is disposed of with the above direction. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Writs)

/True copy/

Sub Assistant Registrar(CS-I)

To

1. The II-Additional District Court for CBI cases,
Madurai.

2.The Judicial Magistrate No.II,
Kulithalai.

3.The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
No.6 (Old No.42), Besant Road,
Chokkikulam,
Madurai- 625 002.

4.The Principal District Judge, Madurai.

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das
KK/RSK/SAR-1/25.10.2018/5P-5C