IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 27.03.2019

PRONOUNCED ON: 09.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.OP.No.6703 of 2019
Crl.MP.No.3709 of 2019

R.Subramanian ... Petitioner/1st Accused

Vs

1.CBI by Inspector of Police, Banking Securities and Frauds Cell, Bangalore ..Respondent/Complainant

2.The Assistant Director, Directorate of Enforcement Chennai Zonal Office, Chennai-6
Respondents

(2nd Respondent is impleaded as per the order of this Court dated 20.03.2019 made in Crl.MP.No.4132/2019 in Crl.OP.No.6703 of 2019)

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.PC to call for the records, in CC.No.9635 of 2014, on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai based therein to direct the proceedings therein and adjourn since till transfer of the same to the Principal Sessions Court, for being tried along with CC.No.4 of 2018 on its file.

For Petitioner : Mr.Prakash Goklaney

For Respondent : Mr.K.Srinivasan-SPP(CBI)-R1
Ms.G.Hema-SPP(ED)-R2

ORDER

1. This Criminal Original Petition is filed under Section 482 of Cr.PC to call for the records in CC.No.9635 of 2014, on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai and to adjourn sine die the impugned proceedings till transfer of the same to the Special Court, constituted for the Prevention of Money Laundering Act (PMLA), namely, the Principal Sessions Court, for being tried along with CC.No.4 of 2018 on its file.

2. The facts of the case are that based on the complaint received from one V.Sreedharan, General Manager and Zonal Head, Bank of Baroda, Zonal Office, Chennai, the Respondent had registered a case in No.RC4(E)/2013/ CBI/BS&FC/BLR, on 26.07.2013, against the Petitioner/A1, Managing Director, M/s.Subhiksha Trading Services Limited, K.P.Vairavan/A2, the then AGM and Branch Head, Bank of Baroda, Corporate Financial Services Branch, Chennai, M/s.Subhiksha Trading Services Limited/A3, Registered Office at No.146, 2nd Floor, R.K.Mutt Road, Mandaveli, Chennai-28 and other unknown others, for the offences under Sections 120B read with 420 of IPC and Sections 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988.

3. Thereafter, based on the above said First Information Report, dated 26.07.2013, the charge sheet in CC.No.9635 of 2014 against the Petitioner/A1 and M/s.Subhiksha Trading Services Limited/A2, represented by A1, for the offence under Section 420 of IPC was filed before the Additional Chief Metropolitan Magistrate, Egmore, Chennai. The allegations against the Petitioner/A1 are that during 2007-2008, the Petitioner/A1 in collusion with one K.P.Vairavan, the then Assistant General Manager, Bank of baroda, Corporate Financial Services Branch, Chennai and others got sanctioned a term loan of Rs.50 crores from the Bank of Baroda, Corporate Financial Services Branch, Chennai, for the purpose of implementation of the expansion programme of the Company and a CC Limit of Rs.25 crores towards take over of its existing CC Limit with the Axis Bank Limited, Chennai and did not utilize the funds for the purpose for which it was sanctioned and disbursed and diverted the funds for personal benefits and through accounts of several benami Companies floated by him, resulting in a wrongful loss of Rs.77.39 crores to the Bank of Baroda, as on 31.03.2009. By the aforesaid acts, the Petitioner/A1 and A2 Company, represented by A1 had committed the offence under Section 420 of IPC, to take cognizance of the offence and try the accused, in accordance with law. It is under these circumstances that this Criminal Original Petition has been filed, seeking the relief as stated above.

4. This court heard the learned counsel on either side.

5. The learned counsel for the Petitioner would contend that the impugned proceedings in CC.No.9635 of 2014 is in respect of the schedule offence and is pending on the file of the Additional Chief Metropolitan Magistrate, Chennai. He would further submit that in respect of the schedule offence, proceedings have been initiated by the Enforcement Directorate in ECIR/CEZO/8/2014 and that the proceedings has culminated into a

complaint in CC.No.4 of 2018, pending on the file of the Principal Sessions Court, being the Special Court under Section 43(1) of the Prevention of Money Laundering Act. He would submit that the provisions of Section 44(1)(a) of the PMLA provide that any of offence under Section 4 of PMLA and any schedule offence connected to the said offence shall be triable by the Special Court, having jurisdiction over the area where the PMLA offence is committed and that Section 71 of PMLA also provides that the said Act will have overriding effect and as such, the jurisdiction of Additional Chief Metropolitan Magistrate stands ousted in respect of the connected schedule offence, to which the impugned proceedings related.

6. The learned counsel for the Petitioner would further submit that on and from 20.04.2018, when the Special Court being the Principal Sessions Court, Chennai took cognizance of CC.No.4 of 2017, only that Court can try the connected Schedule offence being the offence covered in the impugned charge sheet. He would submit that the Additional Chief Metropolitan Magistrate, on coming to know of taking cognizance of CC.No.4 of 2018 by the Special Court, is bound to adjourn sine die the proceedings to await receipt of application from the 2nd Respondent/ED for transfer of proceedings under Section 44(i)(c) of PMLA and that in such circumstances, the discharge petition filed by the Petitioner should be heard by the Court of competent jurisdiction, which is only the Special Court, where CC.No.4 of 2018 for the offence under Section 4 of PMLA is pending. He would further submit that after the judgement of the Honourable Supreme Court reported in 2018 11 SCC 1 (Nikesh Tarachand Shah Vs. Union of India), the Bombay High Court, in Bail Application No.248 of 2018, dated 04.05.2018, has held that the trial of the scheduled offence and the trial of the complaint under the PMLA should be tried together. He would further submit that the Trial Court has posted the discharge petition for orders, without hearing the Petitioner and would seek an opportunity to put forth his submissions.

7. Per contra, the learned Special Public Prosecutor for CBI, while denying the averments made in the affidavit filed in support of this Criminal Original Petition, would contend that the case for the predicate offence is a case based on the final report filed by the Police and that the case of the 2nd Respondent is to be tried as a private complaint procedure and that though as per Section 44(1)(c) of PMLA, the Court, which has taken cognizance of the scheduled offence, is different from that of the Special Court, trying the offence under the PMLA, the Court, trying the case, shall commit the case to the Special Court on application from the Authorised Authority. However, there is no bar to continue with the trial and the Act is clear that the Special Court can proceed to deal with the

case from the stage at which it is committed. He would further submit that mere filing of the complaint by the Authorised Authority before the Special Court will not preclude the Court, trying the case for the offence under schedule offence to proceed with the trial. He would further submit that cases with similar prayer was earlier considered by this Court, in a batch of Criminal Original Petitions in Crl.OP.Nos.25157 to 25168 of 2016 and this Court, by order dated, 14.06.2017, had rejected the prayer, seeking joint trial and that the impugned proceedings initiated by CBI is pending since 2014, whereas the proceedings of ED under the PMLA has been initiated much later and thereby, the prayer cannot be sustained till an application under Section 44(1)(c) of the Act is filed by the Enforcement Directorate and this Criminal Original Petition is liable to be dismissed, as not maintainable.

8. The learned counsel for the 2nd Respondent would submit that the Enforcement Directorate is taking steps for filing necessary application before the learned Additional Chief Metropolitan Magistrate, Egmore and that the Act is clear that it is only the Authority who can file the application and such an option is not provided to the accused, who is facing trial. Further, the Act does not bar the Court, trying the predicate/ scheduled offences to stall further proceedings, whereas it gives power to the Special Court to deal it with from the stage at which it is committed and when such being so, the Petitioner cannot claim it as a matter of right. She would once again reiterate that steps are being taken by the 2nd Respondent to file an application under Section 44(1)(c) of the Act, before the concerned Court.

9. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scanned through the entire materials.

10. At the outset, the decisions relied on by the learned counsel for the Petitioner are in respect of striking down Section 45 (1) of the PMLA, as constitutional, in so far as it imposes two further conditions for releasing on bail and relating to consideration of bail applications without application of twin conditions contained in Section 45 of the Act. In the said decisions, no finding has been rendered in respect of trying of cases for offences under the predicate/ scheduled offences and the complaint under the PMLA together. Hence, the said decisions cannot be made applicable for deciding the case on hand.

11. Further, on a scrutiny of the materials, it is seen that the Petitioner was charged for the offence under Section 420 of IPC, for having committed serious bank frauds and thereby,

causing a wrongful loss to the Bank of Baroda to the tune of several crores. The 1st Respondent/CBI has investigated the matter and finally laid a charge sheet as against the Petitioner/A1 and A2 Company represented by A1 for the offences under Section 420 of IPC. The Petitioner/A1 has also filed a discharge petition in Crl.MP.No.752 of 2016, before the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

12. The Petitioner has sought to adjourn sine dine till the transfer of the impugned proceedings in CC.No.9635 of 2014 on the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, to the Special Court, mainly on the ground that the 2nd Respondent, namely, the Directorate of Enforcement, has also filed a private complaint before the Special Court for Prevention of Money Laundering Act, 2002, namely, Principal Sessions Judge at Chennai, which is constituted for trying the cases contemplated under the PMLA and the same has also been taken cognizance by the Special Court for the aforesaid offences in CC.No.4 of 2018 under the PMLA and thereby, the Special Court constituted for the said Act, the Principal Sessions Judge, Chennai, which is the Special Court, alone is competent to try the impugned proceedings in CC.No.9635 of 2014 and he would seek for transfer of the impugned proceedings to the said Special Court to be tried along with CC.No.4 of 2018.

13. Chapter VII of the PMLA deals with the designation of Special Courts, offences triable by the Special Court and the manner in which trials are to be conducted by the Special Court. Section 44 deals with the offences triable by Special Courts.

14. At this juncture, before adverting to the discussion further, it is relevant and necessary to refer to Section 44 of the Prevention of Money Laundering Act, 2002, as under:-

> Section 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 office 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 of the office 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.

(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."

15. A reading of the Section 44 of the PMLA, makes it clear that only the offences punishable under the said Act and connected schedule offences alone are to be tried by the Special Court constituted for the said Act. The impugned proceedings, which are sought to be transferred from the CBI Court by the Petitioner/A1, are not under the PMLA, but under the provisions of IPC and the Prevention of Corruption Act, 1988, which are pending before the Additional Chief Metropolitan Magistrate, Egmore, Chennai.

16. Admittedly, the Petitioner was prosecuted by the 1st Respondent/CBI for having committed serious bank frauds to the tune of Rs.77.39 crores and accordingly, the charge sheet was filed under the provisions of IPC, namely, Section 420 of IPC. Mere filing of the private complaint to proceed against the Petitioner for the same serious bank frauds, on the basis of the materials collected by the 1st Respondent/CBI will not entitle the Petitioner to seek transfer the impugned proceedings initiated by the 1st Respondent/CBI to the Special Court constituted for the said Act to be tried jointly.

17. Factually, the impugned proceedings is of the year 2014 and the proceedings before the Special Court is of the year 2018. In respect of the impugned proceedings, the investigation has already been completed by the CBI even in the year 2014 itself and taken up in CC.No.9635 of 2014. The Petitioner has been questioned and it is at the stage of framing charges and the discharge petition filed by the Petitioner is pending from the year 2016.

18. Section 44(1)(c) of the PMLA, gives the option only to the Authority Authorised, to file the complaint under the Act and to file an application, seeking to commit the case, relating to the schedule offence to the Principal Court and the Special Court shall, in receipt of such case, proceed to deal with it from the stage at which it is committed. Proceedings for the offence under the Indian Penal Code (IPC), for the predicate offences and proceedings under the PMLA are independent. There is no bar for proceeding with trial of the penal offences and further on any application being filed, the Special Court has got power to deal with it from the stage at which it is committed.

19. As analysed above, merely because the private complaint was filed by the 2nd respondent before the Special Court with regard to money laundering, it cannot be stated that the case investigated by the 1st Respondent/CBI with regard to the aforesaid crime also has to be tried by the Special Court constituted under the Act, 2002. If a view to try both the proceedings initiated by the 1st Respondent/CBI and 2nd Respondent/Enforcement Directorate is taken by this Court, there will be unnecessary protraction of the proceedings and unwarranted delay in the entire criminal prosecution

launched by the CBI before the concerned Court.

20. The main object of constituting a Special Court is only for speedy trial of the cases for the offences of money laundering. Hence, inasmuch as such an offence of money laundering was not charged by the 1st Respondent/CBI, the investigation done by the 1st Respondent/CBI and the charge sheet laid by them before the Special Court for CBI cannot be transferred on the mere fact that the aforesaid offence was the basis of the money laundering. If such a view is adopted, all the cases pertaining to predicate offences/ fraud of the bank money will be stayed once the complaint under the PMLA is filed in the Special Court.

21. As stated above, in a batch of Criminal Original Petitions in

Crl.OP.Nos.25157 to 25168 of 2016, this Court, by order dated, 14.06.2017, in similar circumstances, had negatived a similar prayer, seeking joint trial. This Court also is of the firm opinion that the cases, arising out of money laundering, pending before the other Courts other than the Special Court cannot be transferred and such a Court can only commit the cases to the Special Court on filling necessary application by the authority concerned, seeking permission to file the complaint under the Prevention of Money Laundering Act. Therefore, the question of transferring the impugned proceedings to the Special Court for Prevention of Money Laundering Act does not arise at all. Therefore, the relief sought for by the petitioners cannot be sustained, at this stage.

22. As stated above, admittedly, in respect of the impugned proceedings, the 1st Respondent/CBI has not charge sheeted the Petitioner for the offence with respect to money laundering, as contemplated under the Act, 2002. That being so, the prayer of Petitioner/A1, seeking transfer of the afore said cases from the file of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, to the file of the Principal Sessions Court, Chennai constituted for the Prevention of Money Laundering Act, cannot be allowed, at this stage, merely because such case also involves serious bank frauds.

23. No doubt, the offence of money laundering is inextricably linked with the scheduled offence and thereby, it would be the ultimate interest of the Prosecution to see that charges for the predicate offence/scheduled offence are proved so as to bring the amounts involved in the cases for the predicate offence, within the ambit of the definition of 'proceeds crime". That is the reason the wisdom of the legislature have given the option to the Department to seek for a joint trial rather than to give the option to the accused, so that the delay may not be caused in the trial of the offence for the predicate offence.

24. Further, this Court is also of the view that allowing the trial to be continued in the CBI Court will not cause any prejudice to the Petitioner/A1. In fact, if the relief as sought for by the Petitioner/A1 is granted, serious prejudice would not only cause to the Prosecution, but also to the Petitioner/A1. That apart, even in the case of CBI and the complaint filed by the Enforcement Directorate, there cannot be any common evidence and the evidence of each case, has to be assessed independently for deciding the same. Therefore, the contention of the learned counsel for the Petitioner/A1 that the evidence would be common in the CBI charge sheeted case as well as the case pending on the file of the Special Court for

Prevention of Money Laundering is not sustainable in law. Hence, this Court is of the view that the cases, which are pending on the file of the CBI Court in connection with various offences, which were investigated in the year 2013, cannot be transferred to the Special Court for Prevention of Money Laundering as sought for by the Petitioner/A1. Consequently, this Court is not inclined to entertain the present Criminal Original Petition. However, this Court took note of the submissions made by the learned counsel for the 2nd Respondent that steps are being taken to file necessary application as per Section 44(1)(c) of the PMLA, seeking to transfer the case.

25. In the result, this Criminal Original Petition is dismissed, as devoid of merits. Consequently, the connected MP is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

Srcm
To:

1.The Public Prosecutor, High Court, Madras
2.The Inspector of Police, CBIBanking Securities, and Frauds Cell, Bangalore
3.The Assistant Director, Directorate of Enforcement, Chennai Zonal Office, Chennai-6
4.The Additional Chief Metropolitan Magistrate, Egmore, Chennai
5.The Principal Sessions Court, Chennai
+2 CCS to Mr.Prakash Goklaney, Advocate sr 34571.

Crl.OP.No.6703 of 2019

RSV(CO)
SP(12/06/2019)