

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.552 of 2018
and Crl.MP.6539 of 2018

R.Subramanian

.. petitioner

Vs.

The Assistant Director
Directorate of Enforcement
Chennai Zonal Office,
3rd Floor, C Block,
Murugesu Naicker Complex,
No.84, Greaves Road,
Chennai - 600 006.

... Respondent

Prayer: This Criminal revision is filed under Section 397 r/w.401 of Criminal Procedure Code to set aside the order dated 28.02.2018 passed in un-numbered Crl.MP..... in ECIR/CEZO/08/2014 passed by the XIV Metropolitan Magistrate, Egmore, Chennai and now on the file of the Principal Sessions Judge, Chennai (Special Court for enforcement Directorate Cases) and allow the said petition.

For petitioner : Mr.R.Subramanian,
Party-in-person.

For Respondent : M/s.G.R.Rajagopalan, ASG,
assisted by M/s.G.Hema, Spl.P.P.

O R D E R

This Criminal revision is filed to set aside the order dated 28.02.2018 passed in un-numbered Crl.MP..... in ECIR/CEZO/08/2014 passed by the XIV Metropolitan Magistrate, Egmore, Chennai and now on the file of the Principal Sessions Judge, Chennai (Special Court for enforcement Directorate Cases).

2. The respondent arrested the petitioner on 27.02.2018 in ECIR/CEO/80/2014(ECIR) and produced the petitioner before the learned XIV Metropolitan Magistrate, Chennai for remand. The petitioner was produced before the learned XIV Metropolitan

Magistrate on 27.02.2018 at 21.50hrs at the residence of the learned Magistrate, the Magistrate directed to produce the petitioner on 28.02.2018 and the respondent produced the revision petitioner before the Magistrate on 28.02.2018. The revision petitioner made the objections before the Magistrate that the offence under Section 3 and 4 of the Prevention of Money Laundering Act, 2002 (herein after referred to as "PML Act") are non-cognizable offence and Cl.(1-a) introduced by the amendment that "no police officer shall investigate into an offence under the Act unless specifically authorized by Central Government by General or Special Order". Therefore, the respondent has not been authorised to do the same, the arrest made by the respondent is without any law and the same is illegal. Further the offence under Section 420 IPC is not the schedule offence under PML Act on the date of arrest and therefore the arrest is illegal as per the law laid down by the Hon'ble Supreme Court. Wherever, the statutory authority such as respondent is permitted under law only to act on the basis of reason to believe with the bonafide existence of such reason to believe is a question of very jurisdiction and is subject to judicial scrutiny. The authority has not shown any materials to arrive at conclusion that it had a reason to believe for arresting the revision petitioner and produce before the Magistrate for remand.

3. The learned Magistrate also without any jurisdiction remanded the revision petitioner and without considering the objections raised by the revision petitioner. Therefore, it is liable to be set aside the order passed by the Magistrate on 28.02.2019.

4. The revision petitioner objected the arrest and remand before the Magistrate on the following grounds :-

1. ECIR/CEZO/8/2014 could not at all have been registered as it disclosed no offence under PMLA and on such ECIR disclosing no offence no arrest could have been made.
2. Since PMLA offences are non cognizable no ECIR could have been registered without compliance of procedure under Section 155 Cr.PC.
3. Jurisdiction to arrest did not vest on respondent as no bonafide reason to believe based on credible material.
4. Mandatory provisions of Section 41(1)(b) Cr.PC and 41A(3) Cr.PC not complied with.
5. No reason can exist to arrest 3½ years after registration of ECIR.
6. Material relied for reason to believe upon not produced at stage of arrest.
7. Case diary and material for remand including

statements recorded and CBI charge sheet not produced.

8. Material relied upon for jurisdiction to arrest never produced and not sought to be seen and claim of existence of material false ex facie.
9. Lack of reason to arrest and remand never considered including failure of Section 41A(3) Cr.PC and 41(1)b Cr.PC.
10. Challenge to summons in 2015 by writ appeal cannot be basis to hold non cooperation with enquiry.
11. Special Provision of arrest under PMLA not noted and wrongly held as though arrest was required for investigation.
12. When Magistrate itself holds sufficient ground for remand not there remand petition ought to have gone to Special Court being Court having jurisdiction to try offences.

5. The revision petitioner appeared in person and would submit that on the date of arrest the respondent has no jurisdiction to arrest the petitioner, since on the date of remand the offence alleged against the revision petitioner is non cognizable offence and therefore without getting any directions from the Court, the arrest of the petitioner was unwarranted. The offence under Section 420 IPC is not scheduled offence on the date of arrest and remand, therefore, the subsequent amendment cannot give retrospective effect and the objections raised by the revision petitioner at the time of remanding the revision petitioner has not been considered with the reason stated for rejection of his objections is not in accordance with law. The respondent has not produced any materials to show that it had a sufficient reason to believe for such an arrest. The authorised person must have some material in his possession and further the authorised person should have reason to believe which should be recorded in writing. The learned Metropolitan Magistrate without applying his mind mechanically remanded the revision petitioner. Therefore, the order passed by the Magistrate is liable to be set aside.

6. The learned Additional Solicitor General appearing for the respondent would submit that the respondent has been authorised to investigate the matter and they have reasonable belief that the petitioner has committed the offence, therefore, the respondent arrested the petitioner on 27.02.2018 and produced before the Metropolitan Magistrate on 27.02.2018 at 21.50hrs. Since, the petitioner made an objection, the Magistrate directed to produce him on 28.02.2018. The objections raised by the revision petitioner was well considered by the Magistrate and rejected his contention and remanded him.

7. Subsequently, the Special Court also extended the remand of the revision petitioner, till date he is in judicial custody and several bail petitions filed before this Court were dismissed. Earlier, the revision petitioner has also filed CrI.RC.No.630 of 2018 before this Court challenging the order of the Special Court dated 20.04.2018 taking cognizance of the offence by ordering that the complaint be taken on file as CC.No.4 of 2018. The same was dismissed by this Court by an order dated 10.10.2018. Therefore, this Court also recognise the arrest made by the respondent and remand made by the Magistrate as legal, the petitioner has also not challenged the said remand made by the Metropolitan Magistrate in earlier occasion. Therefore, at this stage, challenging the order of remand made by the Magistrate by way of this revision is not maintainable.

8. Heard the rival submissions made on both sides and perused the materials available on record.

9. It is seen from records, that the revision petitioner was arrested on 27.02.2018 and produced before the XIV Metropolitan Magistrate, Egmore, Chennai with a petition for remand on the same day at 21.50hrs, the endorsement made by the Magistrate shows that the accused objected for the remand itself, contending that the offence is not cognizable offence and there is no established precedent on that aspect. The Magistrate remanded the revision petitioner to judicial custody till 28.02.2018. On 28.02.2018, once again the petitioner was produced before the Magistrate at 13.20hrs, the petitioner raised the above objections and the Magistrate rejected the contention of the revision petitioner and remanded to judicial custody. Challenging the said order, the revision petitioner is before this Court. On reading of the entire records and provisions of law, the Special Court has been established under the PML Act, though he was arrested by the respondent and produced before the Magistrate on 27.02.2018, the Magistrate remanded the petitioner till 28.02.2018. Once again, on 28.02.2018 the petitioner was produced before the Magistrate, the Magistrate ought to have directed the respondent to produce the revision petitioner before the Special Court instead of remanding him.

10. The learned Additional Solicitor General appearing for the respondent would submit that the Magistrate is the competent authority to remand the accused, the contention raised by the learned Additional Solicitor General is not acceptable for any reason, the arrest was made under Section 19(1) of PML Act. It is pertinent to refer Section 19 of PML Act :-

"19. Power to arrest.-- (1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

(2) The Director, Deputy Director, Assistant Director or any other officer shall immediately after arrest of such person under sub-section(1), forward a copy of the order along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such adjudicating authority shall keep such order and material for such period, as may be prescribed.

(3) Every person arrested under sub-section(1) shall, within twenty four hours, be taken to a [Special Court or] Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction.

PROVIDED that the period of twenty four hours shall exclude the time necessary for the journey from the place of arrest to the [Special Court or] Magistrate's Court."

11. In this regard, the petitioner/party-in-person placed reliance on the judgment of the Hon'ble Supreme Court in the case of State of Tamil Nadu v. V.Krishnaswami Naidu and another reported in (1979) 4 SCC 5 wherein it is held as follows :-

"Besides, Section 3 of the Code suggests that if the context otherwise requires, the word 'Magistrate' may include Magistrates who are not specified in the Section. Read along with the definition of 'Magistrate' in Section 32 of the General Clauses Act, the Special Judge can be held to be a Magistrate for the purposes of Section 167. Thus although the words "Special Judge" are not mentioned in Section 167, that would not exclude the special judge from being a Magistrate having jurisdiction to try cases under Section 167."

The arrest and remand were taken place in Chennai. Already in Chennai, the Special Court has been established and therefore the Special Court alone has got jurisdiction and not the

Metropolitan Magistrate.

12. The learned Additional Solicitor General would submit that as per the amendment the word Special Judge only incorporated later date after the remand i.e., with effect from 19.04.2018. Therefore, on the date of arrest and remand the word special judge has not been found in Section 19(3) of PML Act, this contention is not acceptable, because though the word Special Judge was incorporated subsequent to the date of arrest as per the amended Act, but on the date of remand, already the Special Court is in existence. Even prior to date of 19.04.2018 the sub clause (3) of Section 19 of PML Act reads as follows :-

"19(3) Every person arrested under Sub Section (1) shall, within twenty four hours, be taken to a Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction."

It shows after the arrest under PML Act, the respondent has to produce the accused before the Magistrate having jurisdiction. As per the law laid down by the Hon'ble Apex Court, the Magistrate having jurisdiction is only Special Judge not the other Magistrate. Thus, the contention raised by the learned Additional Solicitor General is not acceptable that at the relevant point of time the word Special Judge is not found in Section 19(3) of PML Act. The Magistrate has no jurisdiction on the date of arrest and remand, the Special Court was already established and tried the cases filed under this Act, in this case also the further extension of warrant was done only by Special Judge. Therefore, the Special Judge is the jurisdictional Magistrate. Insofar as Chennai is concerned, the Special Court has been already established where the present petitioner was arrested within the limit of Chennai. If the petitioner is arrested out of Chennai he can be produced before the nearest Magistrate and the Magistrate can remand only for the travelling purpose and for producing the accused before the Special Court. Whereas in this case, the arrest was made within the limit of Chennai, even assuming that the Magistrate was wrongly remanded on 27.02.2018, the Magistrate on 28.02.2018 ought to have directed to produce him before the Special Court. Hence, the remand made by the Magistrate on 28.02.2018 is without jurisdiction and non application of mind and the remand is illegal. Therefore, the order passed by the learned XIV Metropolitan Magistrate, Chennai dated 28.02.2018 is liable to be set aside. However, this Court has not given any answer to other points raised by the revision petitioner, since, the matter is pending before the Competent Special Court. The petitioner has not challenged the subsequent remand made by the Special Court dated 07.03.2018 and thereafter, the petitioner filed bail applications and other petitions which were rejected by this Court. Since, the petitioner has not challenged the

subsequent remand made by the Special Court. Now, the case was taken on file in CC.No.4 of 2018 and the same is pending for trial before the Competent Court. The revision petitioner challenged the same before this Court in Crl.RC.No.630 of 2018, which was dismissed by this Court by an order dated 10.10.2018. Hence, this Court is not inclined to answer the other objections raised by the revision petitioner. Since, this Court found that the Metropolitan Magistrate is not jurisdictional Magistrate. The Magistrate without considering the objection raised by the petitioner during the remand and without applying its mind remanded the petitioner for 15days without any jurisdiction. Therefore, the remand order passed by the Magistrate on 28.02.2018 is liable to be set aside.

13. As stated earlier, this Court is not inclined to give answer for other points since the Special Court has already taken the case on file in CC.No.4 of 2018 and same is pending for trial. The petitioner is at liberty to take all his defence before the Special Court in appropriate proceedings. Under these circumstances, the order passed by the learned XIV Metropolitan Magistrate, Egmore, Chennai in Crl.MP..... in ECIR/CEZO/08/2014 dated 28.02.2018 is hereby set aside.

14. In the result, the revision petition is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(C.O)

//True Copy//

Sub Assistant Registrar

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To

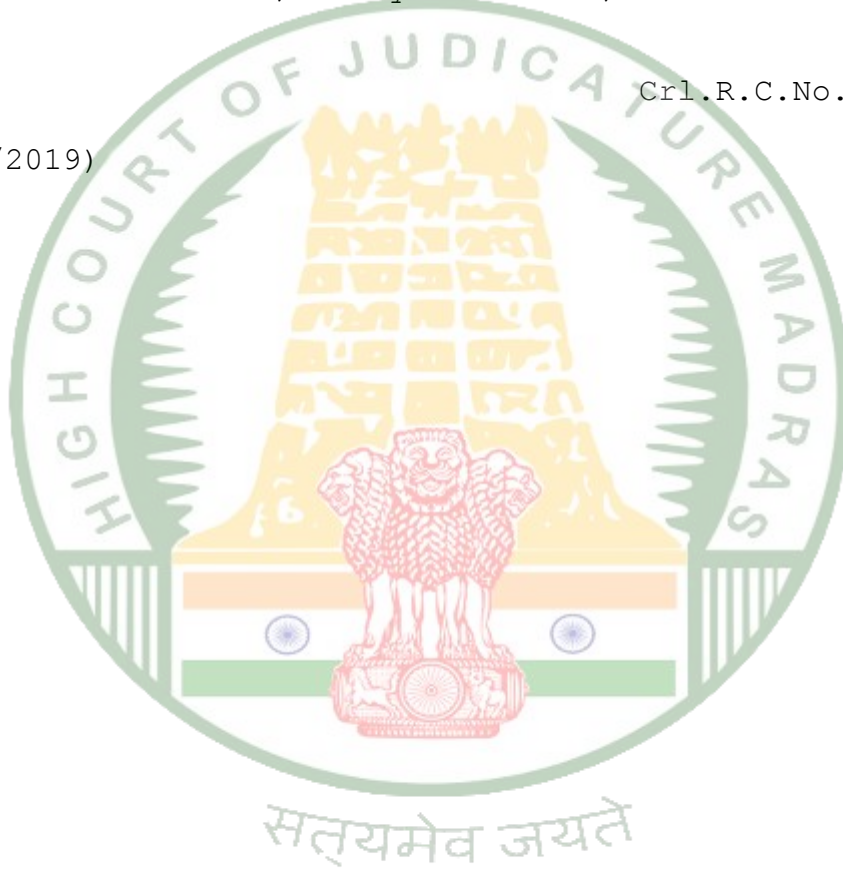
- 1.The XIV Metropolitan Magistrate,
Chennai.
- 2.The Principal Sessions Judge/Special Court,
Chennai.
- 3.The Additional Solicitor General,
High Court, Madras.
- 4.The Public Prosecutor,
High Court, Madras.

5.The Assistant Director,
Directorate of Enforcement,
Chennai Zonal Office,
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+2cc to Mr.R.Subramanian, Party-in-Person, SR.No.37942

Cr1.R.C.No.552 of 2018

Kak(25/04/2019)



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