IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2021

PRONOUNCED ON : 26.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

AND

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P. (MD) No.13467 of 2019 & Crl.MP.(MD) No.8242 of 2019

1 P.K. Selvaraj
Proprietor, Sindhu Granites
Managing Partner, Sree Murugan Enterprises and
Sree Laxmi Exports
Plot No.3, First East Street
K.K. Nagar
Madurai 625 020

2 Shanthi Selvaraj
Partner, Sree Murugan Enterprises and Sree Laxmi Exports
Plot No.3, First East Street
K.K. Nagar
Madurai 625 020

3 P.K.S. Suryaprakash
Partner, Sree Murugan Enterprises and Sree Laxmi Exports
Plot No.3, First East Street
K.K. Nagar
Madurai 625 020

4 Sree Murugan Enterprises
(represented by Managing Partner Selvaraj
First Floor, Plot No.3, First East Street
K.K. Nagar, Madurai 625 020

5 Sree Laxmi Exports
(represented by Managing Partner P.K. Selvaraj)
II Floor
Plot No.3, First East Street
K.K. Nagar
Madurai 625 020 Petitioners

vs.

The Directorate of Enforcement
represented by the Assistant Director
Government of India
Ministry of Finance
Department of Revenue

II & III Floors, "C" Block
Murugesa Naicker Office Complex
84 Greams Road
Thousand Lights
Chennai 600 006 Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C. No.13 of 2018 before the Principal District Court at Madurai (Special Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002), now pending on the file of the II Additional District Court for CBI Cases, Madurai.

For petitioners Mr. Richardson Wilson
for M/s. P. Wilson Associates

For respondent Mr. R. Sankaranarayanan
Addl. Solicitor General
assisted by Mr. Su. Srinivasan
Public Prosecutor (Enforcement Directorate)

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ORDER

P.N. PRAKASH, J.

This criminal original petition has been filed seeking to quash the proceedings in C.C. No.13 of 2018 before the Principal District Court, Madurai, which is now pending on the file of the II Additional District Court for CBI Cases, Madurai.

2 Sindhu Granites, Sree Laxmi Granites (A.5) - mentioned as Sri Lakshmi Exports in the cause title of this petition and Sree Murugan Enterprises (A.4) are into the business of granite mining and they are controlled by Selvaraj (A.1), Shanthi Selvaraj (A.2) and Surya Prakash (A.3). They were given licence to mine in specified areas by the State Government. But, it is alleged that they started quarrying illegally in Government lands which were not allotted to them.

3 In this connection, three FIRs, viz., Cr. Nos. 162 of 2012, 396 of 2013 and 417 of 2013, were registered for the offences under Sections 447, 379, 406 and 420 IPC read with Section 3(1) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, Section 6 read with Sections 3 and 4 of the Explosive Substances Act and Section 4 and other provisions of the Mines and Minerals (Development & Regulation) Act, 1957. It is the case of the police that illegal quarrying was carried on by the accused from 2006 onwards.

4 Since the case registered by the police disclosed the commission of a schedule offence under the Prevention of Money Laundering Act, (for short "the PML Act"), the Enforcement Directorate registered a case in ECIR No.14 of

2015 on 31.12.2015 and after completing the investigation, has filed a complaint in C.C. No.13 of 2018 in the Court of the Principal District Judge (Special Court for PML Act Cases), Madurai, for the offences under Section 3 read with Section 4 of the PML Act against Selvaraj (A.1), Shanthi Selvaraj (A.2), Surya Prakash (A.3), Sree Murugan Enterprises (A.4) and Sree Laxmi Granites (A.5), for quashing which, this criminal original petition has been preferred.

5 Mr. Richardson Wilson, learned counsel representing M/s.P.Wilson Associates, learned counsel on record for the petitioners, submitted that the entire police investigation began pursuant to the directions of this Court in a public interest litigation, in which, various orders were passed by this Court, including the one appointing Mr. Sagayam, I.A.S. to conduct an enquiry into the allegations of illegal quarrying around Madurai area. He further submitted that when the report submitted by Mr. Sagayam, I.A.S. itself has not been disclosed or made public and when the said report is also being contested by the licencees, the foundation for the present prosecution under the PML Act is weak. We are unable to subscribe to this submission, because, the FIRs have been registered based on the complaints given by the Revenue officials and not merely based on the report of Mr. Sagayam, I.A.S. Further, the registration of an FIR can trigger an investigation under the PML Act if the FIR discloses the commission of a schedule offence under the said Act. In fact, in this case, final report (charge sheet) has been filed in Cr.No.396 of 2013 and Cr.No.417 of 2013 based on the materials collected by the police. Therefore, the report of Mr. Sagayam, I.A.S. can have no bearing on the present prosecution under the PML Act, especially in the light of explanation (i) to Section 44 of the PML Act.

6 Mr. Richardson Wilson further contended that 45 properties have been mentioned in the complaint and that most of the properties were purchased by the accused even prior to the commission of the predicate offence and therefore, the prosecution under the PML Act cannot have legs to stand. This contention also deserves to be rejected for the simple reason that it is not the purchase of the properties that forms the criterion for a prosecution under the PML Act, but, the projection of the fruits of crime as untainted ones. Whether the properties were purchased with the proceeds of crime or otherwise is a question of fact which cannot be gone into in a petition under Section 482 Cr.P.C. and the same can be looked into only by the trial Court during trial.

7 The learned counsel for the petitioners contended that the order of the trial Court taking cognizance of the offence does not disclose application of mind and hence, the same deserves to be quashed. In support of this contention, he placed strong reliance on the judgment of the Supreme Court in

Sunil Bharti Mittal Vs. C.B.I.[1] This contention, which is being raised at the Bar time and again, has been adequately answered by this Bench very recently in M. Suresh Khatri vs. Directorate of Enforcement, Chennai – 6[2] in the following words:

> "22. In criminal law, the principle of stare decisis cannot be mechanically applied. In Sunil Bharti Mittal (supra), the CBI had filed a charge sheet against Bharti Cellular Ltd. and other telecom companies and one Shyamal Ghosh. While taking cognizance, the Special Judge added Sunil Bharti Mittal, Chairman-cum-Managing Director of Bharti Cellular Ltd. and issued process to him. This was the subject matter of the challenge before the Supreme Court. The Supreme Court went into the charge sheet that was filed by the CBI and found that the CBI themselves had come to the opinion that there was no material to implicate Sunil Bharti Mittal. In fact, in paragraph 32 of the judgment, the Supreme Court held as follows :
>
> > "32. The fulcrum of the issue before us is the validity of that part of the impugned order vide which the two appellants who were not named in the charge-sheet, have been summoned by the Special Judge, for the reasons given therein."
>
> After discussing the facts, the Supreme Court held in paragraph 53 as under:
>
> > "53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."
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> The above passage should be seen from the context it was stated. It was stated in the context in which, Sunil Bharti Mittal was not an accused in the charge sheet and he was included as an accused by the

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Special Judge, while taking cognizance of the offence disclosed in the charge sheet. Similarly, in Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and Others [(2015) 12 SCC 420], the Supreme Court dealt with a private complaint for defamation. It may be pertinent to extract paragraph 21 of the said judgment :

> ”21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that “a complaint of facts which constitute such offence”. Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected.”
> (emphasis supplied)

23 However, very recently in State of Gujarat Vs. Afroz Mohammed Hasanfatta [(2019) 20 SCC 539], the Supreme Court, in paragraph 22, held as follows :

> “22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 CrPC is not the same at the time of framing the charge. For issuance of summons under Section 204 CrPC, the expression used is “there is sufficient ground for proceeding…”; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is “there is ground for presuming that the accused has committed an offence…”. At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 CrPC, detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police has filed charge-sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 CrPC.“

The above statement of law cannot be distinguished by contending that it would apply only for a police report because, all investigations culminate in the investigating agencies filing either a police report or a complaint with the materials collected by them, for the Court to take cognizance thereon.”

In view of the above discussion, this criminal original petition stands dismissed. Connected Crl.M.P. stands closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

cad

To:

1 The the Assistant Director
Directorate of Enforcement
Ministry of Finance
Department of Revenue,Govt of India
II & III Floors, “C” Block
Murugesa Naicker Office Complex
84 Greams Road
Thousand Lights
Chennai 600 006

2 The Principal District Judge
Madurai

3 The II Additional District Judge for CBI Cases
Madurai

4 The Public Prosecutor
High Court of Madras
Chennai 600 104

Crl.O.P. (MD) No.13467 of 2019

A.SK(18.03.2021)