

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Special Original Jurisdiction)

Friday, the Twenty Fifth day of October Two Thousand Nineteen

PRESENT

THE HON`BLE MR JUSTICE M. SATHYANARAYANAN

and

THE HON`BLE MR JUSTICE N. SESHASAYEE

WMP No.29068 of 2019

IN WP.No.29268 of 2019

K.LIYAKATH ALI [PETITIONER]
S/O.KADAR EBURAMU GANI, NO.1,
ANGAPPAN NAICKEN STREET, CHENNAI - 600 001,
PRESENTLY AT CENTRAL PRISON-II,
PUZAL CHENNAI

Vs

1 UNION OF INDIA [RESPONDENTS]
REP. BY ITS SECRETARY, DEPARTMENT OF REVENUE,
MINISTRY OF FINANCE (REVENUE),
NO.128-A, NORTH BLOCK,
NEW DELHI-110 001

2 THE DEPUTY DIRECTOR
DIRECTORATE OF ENFORCEMENT,
CHENNAI ZONAL OFFICE, 3RD FLOOR,
C-BLOCK, MURUGESA NAICKER COMPLEX,
NO.84, GREAMS ROAD, CHENNAI-600 006

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to stay the operation of Section 2(1) u, Section 3, Section 44 and Section 45 of the Prevention of Money Laundering Act 2002 in so far as they are amended by the Finance Bill 2 of 2019 and so far as petitioner consent (in WMP.No.29068/2019) pending disposal of the above WP.No.29268/2019.

Order : This petition coming on for orders upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of T.SUGIRTHA, Advocate for the petitioner and of

Mr. V. CHANDRASEKARAN, SENIOR PANEL COUNSEL for 1st Respondent and of Mr. N. RAMESH, SPECIAL PUBLIC PROSECUTOR (ENFORCEMENT DIRECTORATE) LEAD BY MR. G. RAJAGOPALAN, ADDITIONAL SOLICITOR GENERAL of 2nd Respondent the court made the following order:-

(Order of the Court was made by M. SATHYANARAYANAN, J.,)

Mr.V. Chandra Sekaran, learned Senior Panel Counsel accepts notice for the first respondent / Union of India and Mr.N. Ramesh, learned Special Public Prosecutor (Enforcement Directorate) accepts notice for the second respondent and they are lead by Mr.G.Rajagopalan, learned Additional Solicitor General.

2. The petitioner is a sole accused in C.C.No.3 of 2017 on the file of XII Additional Sessions Judge and Designated Special Court for Prevention of Money Laundering Act, Cases, Chennai and he is facing prosecution for the commission of offence under Prevention of Money Laundering Act.

3. It is brought to the knowledge of this Court that challenging the proceedings in C.C.No.3 of 2017, the petitioner filed a petition in Crl.O.P.No.23477 of 2018 before this Court and initially, interim order of operation of the trial proceedings of the Special Court was stayed, but subsequently, it was modified that the trial of the case can go on, but final verdict should not be passed.

4. Mr.N. Ramesh, learned Special Public Prosecutor (Enforcement Directorate) submits that the trial is in midway.

5. Mr.G. Rajagopalan, learned Additional Solicitor General would submit that in the light of the ingenuity found in commission of the crime committed by various offenders, the present legislature in its wisdom though it fit to bring forth certain amendments and those amendments are in the form of "Explanation". The learned Additional Solicitor General also drew attention of this Court to paragraph No.53 of the judgment of the Hon'ble Supreme Court of India in the case of **S. Sundaram Pillai andn Others vs V.R Pattabiram and Others** reported in (1985) 1 SCC 591 and would submit that it only reinforces the legislature and in the form of "explanation" it is always open to the legislature to fill up the gaps in the event of fairness in the amended enactment.

6. The learned Additional Solicitor General further submits that M/s VGN Developers P Ltd, Nungambakkam, Chennai has filed a petition in Crl.O.P.No.9796 of 2019 praying for quashment of records in CC No.56 of 2018 pending on the file of Principal Sessions Judge, City Civil Court, Chennai under Section 45(1) of the Prevention of Money-Laundering Act, 2002, wherein, the Deputy Director, Directorate of Enforcement was the respondent/complainant and the said Criminal Original Petition was dismissed by the Division Bench of this Court

by Order dated 04.10.2019. In paragraph No.17 of the Order, the Division bench has stated that *Sub Section 1 of Section 44(1) of the Act has been amended by way of an insertion through The Finance (No.2) Act, 2019 No.23 of 2019 dated 01.08.2019* and observed that though it has come into force subsequently, it is nothing but a clarificatory one and further submits that there is no question of law involved in this Writ Petition.

7. Heard both sides and perused the materials available on record.

8. In the case of **Bhavesh D.Parish vs Union of India** reported in AIR 2000 SC 2047, wherein, it is observed that *"it is now well settled that there is always a presumption in favour of the constitutional validity of any legislation, unless the same is set aside after final hearing and therefore, the tendency to grant stay of legislation relating to economic reform, at the interim stage, cannot be understood."*

9. In the case on hand, the petitioner/party-in-person is alleged to have involved in commission of offence under Prevention of Money-Laundering Act, 2002.

10. This Court is of the considered view since vires of certain provisions of Prevention of Money Laundering Act, 2002 is under challenge, the Official Respondents have to be given an opportunity to file counter affidavit and to meet the arguments factually and legally.

11. This Court is of the considered view that it is not a fit case to grant Interim Stay, as sought for by the petitioner/party-in-person.

12. Therefore, the petition in WMP No.29068 of 2019 is dismissed.

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-sd/-

25/10/2019

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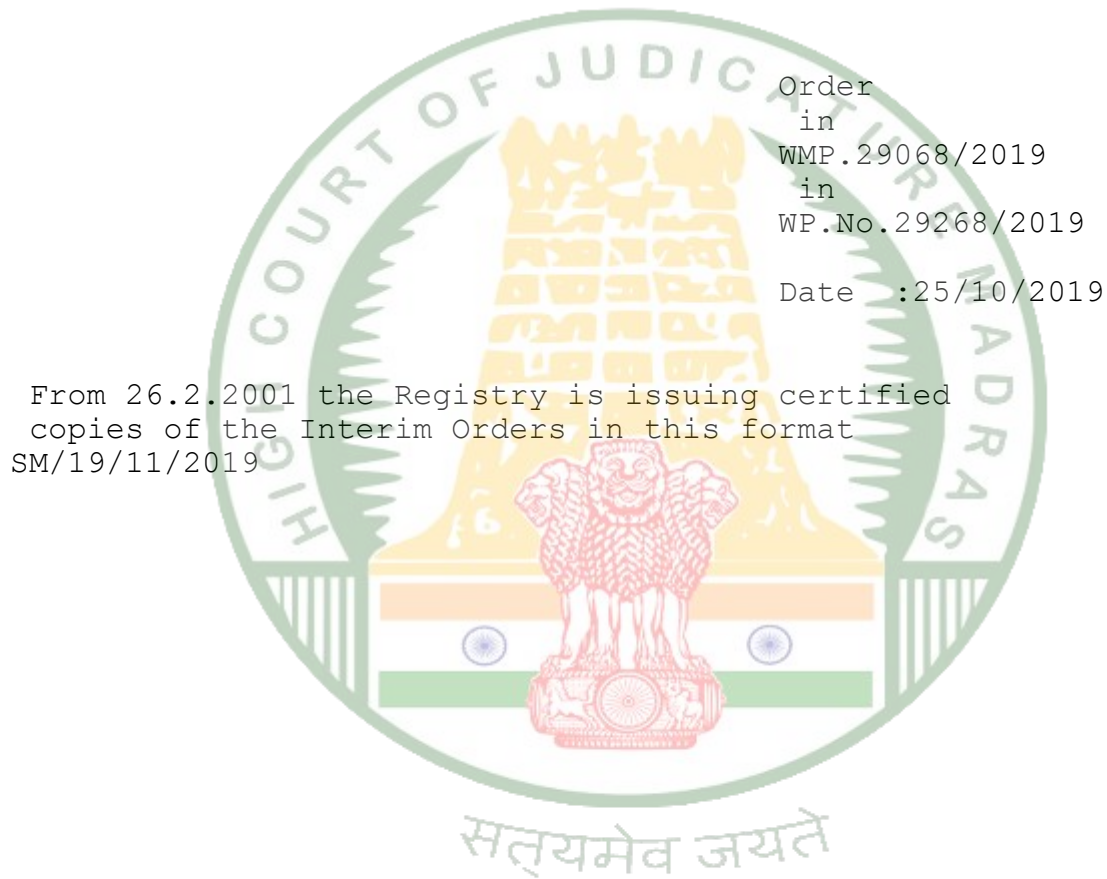
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C.C. to T.SUGIRTHA Advocate on payment of necessary charges

C.C. to N. RAMESH Advocate on payment of necessary charges

The Government Advocate, High Court, Madras - 104.



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