IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

Coram

The Hon'ble Mr. Justice P.N.PRAKASH
and
The Hon'ble Mr. Justice V.SIVAGNANAM

Crl O.P.No. 1797 of 2020

D.Bhanumathi ... Petitioner

Vs.

The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
Shastri Bhavan, 3rd Floor, 3rd Block,
No.26, Haddows Road,
Chennai - 600 006. ... Respondent

Prayer : Petition filed under Section 482 Cr.P.C to call for the records in C.C.No.54 of 2018 pending on the file of the Principal Sessions Court, Chennai and to quash the same.

For Petitioner .. Mr.S.Sivakumar

For Respondent .. Mr.Rajnish Pathiyil
Spl. Public Prosecutor
(Enforcement Directorate)

ORDER

(Made by P.N.PRAKASH, J.)

Four FIRs were registered against one R.Devadoss by E-3, Minjur Police Station, Chennai, on four different complaints, filed under Sections 419, 420, 465, 468 and 471 IPC. In all the FIRs, the general allegation against R.Devadoss was that he created bogus land documents in respect of lands belonging to others and in connivance with one A.David Maninesan, sold those properties. Since four FIRs disclosed the commission of schedule offence under the Prevention of Money Laundering Act, 2002, (for short, 'the Act'), the Enforcement Directorate, registered ECIRs and took up the investigation of the case.

2. After completing the investigation, the Enforcement Directorate, filed a complaint in C.C.No.3 of 2014, in the Principal Sessions Court (Special Court for PMLA Cases), Chennai, against R.Devadoss and one M.Saraswathi for the offence under Section 3 read with Section 4 of the Act.

3. Thereafter, it came to the notice of the Enforcement Directorate that four properties that were acquired by R.Devadoss pursuant to the criminal activity engaged by him in the commission of the predicate offence was transferred in the name of his wife Bhanumathi. Therefore, the Enforcement Directorate issued summons to Bhanumathi to appear before them and give her explanation.

4. On receipt of the summons, Bhanumathi did not appear and instead questioned the very validity of the summons. The Enforcement Directorate completed the investigation qua Bhanumathi and has filed a supplementary complaint in C.C.No. 54 of 2018 against Bhanumathi before the same Court for the offence under Sections 3 and 4 of the Act, which is under challenge in this quash petition.

5. Heard, Mr.S.Sivakumar, learned counsel for the petitioner and Mr.Rajnish Pathiyil, learned Special Public Prosecutor for the Department.

6. Learned counsel for the petitioner submitted that out of the four FIRs that were registered by the police, one FIR which was registered on the complaint given by the Indian Oil Corporation, was quashed by this Court and the Special Leave Petition in the Supreme Court is still pending. He further contended that when the Enforcement Directorate had completed the investigation and had filed a complaint in C.C.No.3 of 2014, they are precluded from filing the present supplementary complaint. He also contended that the properties acquired in the name of Bhanumathi have been lawfully acquired by her as she was independently doing Business.

7. Per contra, Mr.Rajnish Pathiyil, learned Special Public Prosecutor for the Department, refuted the aforesaid contentions.

8. This Court gave its anxious considerations to the rival submissions.

9. At the outset, it may be necessary to state here that the registration of an FIR for a schedule offence can trigger an investigation under the Act. However, the investigation under

the Act can proceed independently de hors the investigation/prosecution of the predicate offence. This is limpid from the recent inclusion of explanation (i) to Section 44 of the Act vide Act 23 of 2019.

10. To answer the contention of the learned counsel for the petitioner, it may be apposite to extract the relevant paragraph 2.11 from the impugned supplementary complaint:-

> "2.11 It is submitted that since Smt.D.Bhanumathy did not appear and furnished the documents as directed by the complainant and the source of income for purchase of the properties, the complainant in order to know the financial status of the accused to purchased the properties sent a letter to Principal Commissioner of Income Tax-2, Aayakar Bhavan, 121, Mahatma Gandhi Road, Chennai - 600 034 dated 26.09.2017 asking for the PAN details of Smt.D.Bhanumathy, in reply to which they have sent a letter stating that they have verified with the system and found that as per PAN data, the assesses don't have PAN. It is submitted that this Smt.D.Bhanumathy purchased 4 properties from her husband Shri.R.Devadoss accused No.1 for a sale consideration of Rs.4,85,05,802.40/-. Subsequent to the commission of the scheduled offence by her husband Shri.R.Devadoss. Shri.R.Devadoss in order to project the tainted amount as untainted he has created sale deed in favour of her wife Smt.D.Bhanumathy. Smt.D.Bhanumathy aided/subscribed her name to the sale deed to show that the sale is genuine and in fact the sale deeds are sham sale deeds without any sale consideration. It is submitted that since Smt.D.Bhanumathy did not cooperate with investigating agency by producing the Sale deeds and the source of purchase of the properties which she could but not produced, under Section 114(g) of Indian Evidence Act,1872 that court may presume, if she produced the documents be unfavourable to the person who withholds it and as such it is considered the properties standing to her name are proceeds of crime."

11. A reading of the above shows that Bhanumathi was not an assessee of Income-Tax and that she does not even have a PAN number. However, it is seen that she has purchased four properties from her husband R.Devadoss for valuable consideration. Had R.Devadoss settled the properties in the name of Bhanumathi out of love and affection, things would have been different. However, he has sold the properties. Thus, there are,

prima facie, materials in the supplementary complaint for the prosecution against Bhanumathi to proceed inasmuch as the proceeds of crime that was allegedly acquired by R.Devadoss is said to be projected as untainted one via the four properties that are in the name of Bhanumathi.

12. As against the power of the Department to file supplementary complaint, explanation No.(ii) to Section 44 of the Act, is the complete answer. In such view of the matter, this is not a fit case for quashing the prosecution at the threshold, especially in the light of the presumption under Section 24 of the Act.

13. In the result, this criminal original petition is dismissed with liberty to the petitioner to raise all the points before the trial Court after the charges are framed since there are prima facie materials for framing the charges. Whatever is observed above is limited to this petition and the trial Court shall proceed with the case uninfluenced by what is stated above. Consequently, the connected Crl.M.P. Nos. 1127 and 1128 of 2020 are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssm
To

1.The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
Shastri Bhavan, 3rd Floor, 3rd Block,
No.26, Haddows Road, Chennai - 600 006.

2.The Principal Sessions Court,
Chennai.

3.The Special Public Prosecutor(E.O),
High Court, Madras.

+1cc to Mr.Rajnish Pathiyil, Advocate Sr.5612
+1cc to Mr.S.Sivakumar, Advocate Sr.5402

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srg 26/02/2021