IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.01.2021

Coram

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

Criminal Original Petition No. 21346 of 2016

Kumar Ganesaperumal .. Petitioner/A2

Vs.

The Assistant Director,
Directorate of Enforcement,
Shastri Bhavan,
Chennai - 600 006. .. Respondent

Prayer: Petition under Section 482 of Cr.P.C to call for the records in C.C.No.13 of 2015 on the file of Principal Sessions Judge, Chennai (Special Court Formed under Section 43(1) of the Prevention of Money Laundering Act, 2002) and quash the same.

For Petitioner .. Mr.M.Rajan

For Respondent .. Ms.G.Hema
CGSC

ORDER
[Order of the Court was made by P.N.PRAKASH, J.]

Seeking to quash the proceedings in C.C.No.13 of 2015 on the file of Principal Sessions Judge, Chennai (Special Court Formed under Section 43(1) of the Prevention of Money Laundering Act, 2002), the present Criminal Original Petition has been filed.

2. One Raja, along with his father Manoharan and others, floated a Financial Establishment in the name and style of Maze Group of Technology in February, 2008, and collected deposits from public on the promise that the deposits would be returned with interest.

3. While the business was progressing well, Manoharan entered into a sale agreement with one Kumar Ganesa Perumal on 05.10.2009 for purchasing 2.99 acres of land in Naakondapalli Village, Hosur at the rate of Rs.42 lakhs per acre totalling Rs.1.25 crores and gave a sum of Rs.15 lakhs as advance to the said Kumar Ganesa Perumal. Some time in the end of January, 2010, the finance business of Maze Group of Technology ran into rough weather and they were not able to return the deposit amounts to the depositors. Hence, on a complaint lodged by one A.K.Chinnasamy, the District Crime Branch, Krishnagiri, registered a case in Crime No. 06 of 2010 on 06.02.2010 for the offence under Section 420 IPC read with Section 65 of the Information Technology Act against Raja, S/o.Manoharan(A1), Manoharan (A2), Hemalatha (A3), Aadhi @ Suresh Babu (A4) and Pugalenthi(A5). Since the allegations disclosed the commission of an offence under the TNPID Act, the investigation of the case in Crime No. 06 of 2010 was transferred from the file of the District Crime Branch, Krishnagiri to the Economic Offences Wing, Coimbatore and the case was re-numbered as Crime No.02 of 2010.

4. While so, the Enforcement Directorate, registered a case in ECIR No. 49 of 2010 on 25.05.2010 on the premise that the accused involved in Crime No.02 of 2010 had indulged in money laundering. Statement of Kumar Ganesa Perumal was recorded on 03.11.2010 and the statement of Manoharan was recorded on 14.02.2011 by the Enforcement Directorate. However, Manoharan died on 11.12.2011.

5. The Economic Offences Wing, Coimbatore completed the investigation in Crime No. 02 of 2010 and filed a charge sheet in C.C. No. 13 of 2015 in the Special Court for TNPID Act Cases, Coimbatore against Maze Group of Technology (A1), Raja (A2), Aadhi @ Sureshbabu (A3), D.Sugadevan (A4), M.Pugalenthi (A5), Hemalatha (A6), Praveentaj (A7) and Venkatamma (A8) for the offence under Sections 420, 465 and 468 IPC read with Section 5 of the TNPID Act.

6. The Enforcement Directorate proceeded with the investigation in ECIR No. 49 of 2010 and after completing the same, filed a complaint in C.C.No.13 of 2015 in the Court of the Principal Sessions Judge, Chennai (Special Court Formed under Section 43(1) of the Prevention of Money Laundering Act, 2002) against Raja (A1) and Kumar Ganesa Perumal (A2), for quashing which, Kumar Ganesa Perumal is now before this Court.

7. Heard Mr.M.Rajan, learned counsel for the petitioner and Ms.Hema, learned Central Government Standing Counsel for the respondent.

8. A complete reading of the complaint does not disclose what is the involvement of Kumar Ganesa Perumal(A2) in the offence. It is true that Raja(A1) is an accused in the predicate offence. However, in Para 4.7 of the complaint, it is stated as follows:

> "4.7 Shri O.Manohara, father of the said Shri Raja and son of late Shri Occhadevar, residing at New Building, Cooperative Nagar, Chinnalapatti, Dindigul District in his statement dated 14.02.2011 given under Section 50(2) and 50(3) of PMLA inter-alia, stated that with the money received from the investors, who had deposited in M/s Maze Group of Technology, he purchased 1350 sqr feet land situated at No.35, Railway Station Road, Krishnappa Colony, Hosur in his name at the cost of Rs.15 lakhs on 02.09.2009 and spent Rs.40 lakhs to construct a house; that on 5.10.2009 he paid an advance amount of Rs.15 lakhs with regard to purchase of land measuring about 3 acres for a total sale consideration of Rs.1.25 Crores to Shri R.Kumar Ganesh Perumal of Hosur and that the amount was given to him by his son Raja out of the money deposited by the investors; that on 07.10.2009 he purchased 9.5 cents land situated at Kumaran Nagar, 1st Cross Street, Hosur in his name for Rs.47 lakhs from the amount given to him by his son Raja out of the money deposited by the investors; that both the properties were sold to Shri Ikram Ahmed Against receipt of Rs.23 Lakhs."

9. It may be pertinent to state that Manoharan had died on 11.12.2011 and therefore, his statement cannot be treated as a substantive piece of evidence.

10. However, a reading of Para 4.7 shows that, Manoharan had given the advance of Rs.15 lakhs to Kumar Ganesa Perumal for purchasing the latter's property for a sale consideration of Rs.1.25 crores. It is the allegation of the Enforcement Directorate that this amounted to an offence under Section 3 of the Prevention of Money Laundering Act, 2002.

11. Ms.Hema, learned Central Government Standing Counsel read through the provisions of Section 3 of the PML Act and contended that the provision is wide enough to bring into it, any person, who, in any manner, involves himself either as an abettor or otherwise in the commission of money laundering. She drew the attention of the Court to Para 5 of the complaint, which reads as follows:

> "5. It is humbly submitted that whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering in terms of Section 2(1)(p) r/w Section 3 of the PMLA."

12. As stated above, Kumar Ganesa Perumal is not an accused in the predicate offence. Of course, it is not necessary that in every case under the PML Act, the accused named in the PMLA complaint is required to be an accused in the predicate offence. However, on facts, this Court finds that Raja's father - Manoharan had entered into an agreement to purchase the property of Kumar Ganesa Perumal at Rs.1.25 crores and paid an advance of Rs.15 lakhs and thereafter, the police registered a case against Maze Group of Technology on account of which the deal did not go through. On these facts, this Court is not able to infer that Kumar Ganesa Perumal, by agreeing to sell his property to Manoharan, had assisted or abetted, in any manner, the offence prescribed under the PML Act.

13. During investigation, the Enforcement Directorate has collected a sum of Rs.10,10,729/- out of Rs.15 lakhs lying in the bank account of Kumar Ganesa Perumal in the form of a Demand Draft No. 017360 dated 13/12/2013 drawn in favour of the Joint Director, Directorate of Enforcement, Chennai. Thus, Kumar Ganesa Perumal has been left with Rs.4,89,271/- which he is ready to give to the Enforcement Directorate any time.

14. We are aware that under Section 24 of the PML Act, the burden is on the accused to prove that the proceeds of crime was not involved in money laundering. In this case, M/s. Maze Group of Technology was into finance business which cannot be said to be per se a criminal activity. Even assuming for a moment that they were into a criminal activity and the sum of Rs.15 lakhs that was given as advance by Manoharan to Kumar Ganesa Perumal was proceeds of crime, the mere fact that Kumar Ganesa Perumal agreed to sell his property to Manoharan, cannot, by itself, bring him into the net of Section 3 of the PML Act without anything more.

15. Let us take a hypothetical case: 'X' is the owner of a Mercedes Benz and wants to sell it. Some prospective buyers approach him and one 'Y' pays Rs.30 lakhs and buys the car. If, at a later point of time, it is found that 'Y' had earned money through criminal activities, can 'X' be prosecuted under Section 3 of the PML Act for selling his car? If a draconian legislation

like PML Act is stretched to such extremes, half of our country's population would become deemed criminals. We cannot afford to criminalize our citizens who are otherwise simple folks.

16. In the result, this petition is allowed and the proceedings in C.C.No.13 of 2015 on the file of the Principal Sessions Judge, Chennai (Special Court Formed under Section 43 (1) of the Prevention of Money Laundering Act, 2002) is hereby quashed insofar as this petitioner is concerned. Consequently, connected Crl.MP.Nos.14059 & 9892 of 2016 are closed. Kumar Ganesa Perumal shall deposit the balance amount of Rs.4,89,271/- in the Principal Sessions Court, Chennai (Special Court Formed under Section 43(1) of the Prevention of Money Laundering Act, 2002) within three months from the date of receipt of a copy of this order and on such deposit, any encumbrance of his property on account of the prosecution shall stand removed.

-s/d-
Assistant Registrar

True Copy
Sub-Assistant Registrar

ssm

To

1.The Assistant Director,
Directorate of Enforcement,
Shastri Bhavan,
Chennai - 600 006.

2.The Principal Sessions Judge,
(Special Court Formed under Section 43(1)
of the Prevention of Money Laundering Act, 2002)
Chennai.

+1 cc to Mr.P.G.Santhosh Kumar Advocate sr2399
+1 cc to M/s.G.Hema special public proseuctor sr2335

Crl.O.P.No. 21346 of 2016

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