IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2021

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.22222 of 2016
and
Crl.M.P.Nos.10324, 10325& 14064 of 2016

1.Dr.P.Vijayan

2.V.Anitha .. Petitioners/Accused

Vs.

The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floor, No.84,
Murugesa Naicker Office Complex,
Greams Road, Thousand Lights,
Chennai - 600 006. .. Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.37 of 2015 in E.C.I.R.No.09 of 2014 on the file of the Principal Sessions Court, (Special Court under the Prevention of Money Laundering Act, 2002), Chennai and quash the same.

For Petitioners : Mr.B.Kumar, Senior Counsel
for Mr.M.Rajasekaran

For Respondent : Mr.R.Sankaranarayanan
Additional Solicitor General
Assisted by Ms.G.Hema
Special Public Prosecutor (ED)

ORDER

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

This criminal original petition has been filed seeking to call for the records in C.C.No.37 of 2015 in E.C.I.R.No.09 of 2014 on the file of the Principal Sessions Court, (Special Court under the Prevention of Money Laundering Act, 2002), Chennai and quash the same.

2. The Central Bureau of Investigation (for brevity “the CBI”) registered a case in Crime No.RCMAI1 2011 A 0003 on 12.01.2011 against P.Vijayan and his wife V.Anitha, for the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 (for brevity “the PC Act”). After completing the investigation, the CBI filed a final report in C.C.No.15 of 2014 for the said offence against P.Vijayan and his wife V.Anitha before the Special Court for the CBI Cases, Chennai.

3. It is the case of the CBI that P.Vijayan was the Vice-Chancellor of the Indian Maritime University, Chennai, from 01.03.1995 to 13.01.2011 and he has acquired assets disproportionate to his known sources of income and that his wife has abetted the said offence.

4. On coming to know of the registration of the case under the PC Act, the Enforcement Directorate registered a case in E.C.I.R.No.09 of 2014 on 31.12.2014 under the Prevention of Money Laundering Act, 2002 (for brevity “the PML Act”). After completing the investigation, the Enforcement Directorate filed a complaint in C.C.No.37 of 2015 in the Principal Sessions Court, (Special Court for PML Act Cases), Chennai, against P.Vijayan and V.Anitha, on the ground that they are projecting the proceeds of crime as untainted money, for quashing which, this petition has been filed under Section 482 Cr.P.C.

5. Heard B.Kumar, learned Senior Counsel representing Mr.M.Rajasekaran, learned counsel on record for P.Vijayan and V.Anitha, petitioners/accused herein and Mr.R.Sankaranarayanan, learned Additional Solicitor General assisted by Ms.G.Hema, learned Special Public Prosecutor appearing for the Enforcement Directorate, respondent herein.

6. Mr.B.Kumar, learned Senior Counsel submitted that the assets that were allegedly acquired by P.Vijayan was prior to the inclusion of Section 13 of the PC Act as a predicate offence in the PML Act and therefore, the prosecution of the accused is misconceived, inasmuch as, the PML Act cannot be applied retrospectively as that would violate Article 20 (1) of the

Constitution of India.

7. This issue is no more res integra in view of the amendment that was brought into the PML Act, whereby, an explanation provision has been added, a reading of which, clearly shows that the commission of the predicate offence is not relevant and what is relevant is the projection of the proceeds of crime as untainted. Hence, we are unable to countenance the aforesaid submission made by Mr.B.Kumar.

8. Mr.B.Kumar, learned Senior Counsel further submitted that P.Vijayan was substantially employed in a Society during the relevant check period and therefore, as an employee of a Society, he could not even be prosecuted under the PC Act, as he is not a public servant. He further submitted that on this premise, P.Vijayan filed an application under Section 239 Cr.P.C., for discharge and the same has been dismissed by the Special Court for the CBI Cases, Chennai, aggrieved by which, P.Vijayan has filed a revision petition and the same is pending before this Court. It is his further submission that until the disposal of the said revision petition and determination of the issue by this Court, this prosecution may be kept pending.

9. This Court is unable to subscribe to the above submission also, because, the investigation under the PML Act can proceed independently dehors the investigation/prosecution of the predicate offence. This is limpid from the recent inclusion of explanation (i) to Section 44 of the PML Act vide Act 23 of 2019.

10. As regards V.Anitha, Mr.B.Kumar, submitted that she being a home maker, she cannot be attributed knowledge.

11. In view of the reverse burden under Section 24 of the PML Act, we cannot decide this issue in a quash petition under Section 482 Cr.P.C.

In fine, this criminal original petition is dismissed as being devoid of merits. Liberty is given to the accused to raise all the points before the trial Court after the charges are framed as there are prima facie materials to frame charges. The trial Court shall proceed with the trial uninfluenced by the observations made in this case. Connected Crl.M.Ps. are closed.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

nsd

To

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

2.The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floor, No.84,
Murugesa Naicker Office Complex,
Greams Road, Thousand Lights,
Chennai - 600 006.

3.The Special Public Prosecutor,(ED)
Madras High Court,
Chennai - 600 104.

+1 cc to M/s.G.Hema Advocate sr5633/2021
+1 cc to M/s.M.Rajasekaran Advocate sr5053/2021

Crl.O.P.No.22222 of 2016

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