IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2021

PRONOUNCED ON : 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.O.P.No.26586 of 2016 & CRL.M.P.No.13326 of 2016

and

CRL.O.P.No.23917 of 2018 & CRL.M.P.Nos.13534 & 13535 of 2018

Farouk Irani Petitioner in Crl.O.P.26586/16

Sherna F Irani Petitioner in Crl.O.P.23917/18

vs.

The Deputy Director
The Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
2nd & 3rd Floor
Murugesa Naicker Complex
No.84, Greams Road
Thousand Lights
Chennai 600 006 Respondent in Crl.O.P.26586/16

The Deputy Director
Ms.Ananthie
The Directorate of Enforcement
(The Prevention of Money Laundering Act, 2002)
Government of India
Ministry of Finance, Department of Revenue
2nd & 3rd Floor, Murugesa Naicker Complex
No.84, Greams Road, Thousand Lights
Chennai 600 006 Respondent in Crl.O.P.23917/18

Criminal Original Petitions filed under Section 482 Cr.P.C., to call for the records and quash the proceedings in C.C.No.63 of 2016 on the file of the Hon'ble Principal Sessions Judge at Chennai (Special Court constituted under

Section 43(1) of the Prevention of Money Laundering Act, 2002, for offences under Sections 45(1) read with Sections 3 & 4 of the Prevention of Money Laundering Act, 2002.

For petitioner in both Crl.O.s.	:	Mr.A.Ramesh Sr. Counsel for Mr.C.Arun Kumar
For respondent in both Crl.O.Ps.	:	Mr.R.Sankaranarayanan Additional Solicitor General assisted by Ms.G.Hema Special Public Prosecutor for E.D.

C O M M O N   O R D E R

These Criminal Original Petitions have been filed to quash the proceedings in C.C.No.63 of 2016 on the file of the Principal Sessions Court, Chennai.

2 Since these criminal original petitions challenge one and the same proceedings, they are considered and decided by this common order.

3 Undisputed facts:

3.1 First Leasing Company of India Limited (in short "FLCI") was a company incorporated under the Companies Act, 1956 and was into the business of giving industrial finance. Of course, it is under liquidation now.

3.2 The Chairman of FLCI was one A.C.Muthiah, a leading industrialist, who has major stakes in SPIC and other established industrial houses. One Farouk Irani is said to have joined FLCI in 1973 and became its Managing Director in 1982. One Dilliraj was the Vice President of FLCI during 2006 - 2007. One Sivaramakrishnan was the Chief Financial Officer of FLCI from 2008 to 2014.

3.3 Things were going fine for FLCI until the State Bank of India (SBI) sanctioned a working capital credit limit of Rs.20 crores on 08.02.2005, followed by the IDBI Bank, which also gave a working capital facility for Rs.18 crores by a sanction letter dated 17.08.2005. These banks extended further financial assistance to FLCI from time to time even after 2005.

3.4 While so, the SBI formed a consortium of banks that had lent monies to FLCI. Sometime in the year 2007, the Reserve Bank of India (RBI) conducted inspection of FLCI and observed serious irregularities and diversion of funds to 15 satellite companies. When this news became public, things started hotting up for FLCI and they were not able to repay their lenders, resulting in their account becoming 'Non Performing Asset' (NPA) in the year 2013.

3.5 Farouk Irani is said to have resigned from the post of Managing Director on 23.10.2013 and A.C.Muthiah is said to have resigned from the post of Chairman on 01.11.2013.

3.6 As the investigation into the financial health of

FLCI was being probed by the Chartered Accountants of the consortium banks, lot of skeletons started coming from and out of the cupboard, which resulted in the Deputy General Manager, IDBI Bank, preferring a complaint to the CBI, pursuant to which, the CBI registered an FIR in Crime No.6 of 2015 on 21.09.2015 for the offences under Sections 120-B read with 420, 467, 468, 471 and 477-A IPC against A.C.Muthiah (A1), Farouk Irani (A2), Dilli Raj (A3), Sivaramakrishnan (A4), FLCI (A5), Sarathy & Balu, Chartered Accountants (A6) and M.K.Dandekar & Co., Chartered Accountants (A7) and investigation was taken up by the Bank Security and Fraud Cell of the CBI.

3.7 The complaint of the IDBI Bank showed that they had lent Rs.300 crores to FLCI, by way of working capital limit and the outstanding to them with interest as on 02.09.2014 was Rs.273,99,90,071/-.

3.8 Since the FIR disclosed the commission of a schedule offence under the Prevention of Money Laundering Act, 2002 (in short "the PML Act") viz., Section 420 IPC, the Enforcement Directorate registered a case in ECIR No.10 of 2015 on 20.11.2015 against the aforesaid persons.

3.9 Likewise, on a complaint lodged by the SBI, the CBI registered a fresh FIR in Crime No.RC-02(E) of 2016 on 08.01.2016 for the offences under Sections 120-B read with 409, 420, 467, 468, 471 and 477-A IPC against the aforesaid persons in respect of fraud that was allegedly committed by them qua SBI.

3.10 During the course of the investigation in ECIR No.10 of 2015 registered pursuant to the complaint given by IDBI Bank, the Enforcement Directorate arrested some of the accused, but, consciously did not go anywhere near A.C.Muthiah for the reasons best known to them.

3.11 After completing the investigation, the Enforcement Directorate filed three separate complaints in the Special Court for PMLA Cases, Chennai, which are as under:

i. C.C.No.63 of 2016 in ECIR.No.10 of 2015 against Farouk Irani (A1) and his wife Sherna F Irani (A2), for quashing which, they have filed Crl.O.P.No.26586 of 2016 and Crl.O.P.No.23917 of 2018, respectively;

ii. C.C.No.71 of 2016 in ECIR.No.10 of 2015 against Sivaramakrishnan (A1) and his wife Ratha (A2), for quashing which, they have filed Crl.O.P.No.24856 of 2016 and

iii. C.C.No.70 of 2016 in ECIR.No.10 of 2015 against Dilliraj (A1) and his wife Kotieswari (A2), for quashing which, they have filed Crl.O.P.No.24888 of 2016.

3.12 Though the aforesaid facts are common to all the cases, in this order, this Court is confining itself to Crl.O.P.Nos.26586 of 2016 and 23917 of 2018 that have been filed by Farouk Irani (A1) and his wife Sherna F Irani (A2) invoking Section 482 Cr.P.C. for quashing the prosecution in C.C.No.63 of 2016.

4 Heard Mr.A.Ramesh, learned Senior Counsel representing Mr.C.Arun Kumar, learned counsel on record for Farouk Irani and Sherna F Irani and Mr.R.Sankaranarayanan, learned Additional Solicitor General assisted by Ms.G.Hema, learned Special Public Prosecutor appearing for the Enforcement Directorate.

5 Now, let us examine the allegations against Farouk Irani (A1) and his wife Sherna F Irani (A2) in C.C.No.63 of 2016.

6 As stated above, since the FIR registered by the CBI disclosed the commission of a schedule offence under the PML Act, viz. Section 420 IPC, the Enforcement Directorate commenced the investigation and has filed the present impugned complaint in C.C.No.63 of 2016 before the Special Court for PMLA Cases,Chennai.

7 The gravamen of the allegations in the predicate offence against FLCI and the aforesaid accused is that, they fabricated their books of accounts and painted a rosy picture to the lenders and obtained huge financial assistance, which were parked by them in 15 shell companies that were floated by them for this purpose. It may be pertinent to extract the following paragraphs from the impugned complaint in C.C.No.63 of 2016 :

> “6.5. The Managing Director of FLCI, Shri Farouk Irani, informed the Consortium of Banks during the meeting held on 19.09.2013, while making a revelation about the manner in which affairs of the company were mismanaged and the accounts of the company were prepared and submitted to various bodies including RBI and SBI consortium including the Bank with inflated/falsified entries on profits, cash flow, income and its state of affairs so far, since two decades, had inter alia stated that asset creation was not in line with the liabilities taken by the company FLCI; that there was not enough income generation to meet the repayment of dues; that the gap was met by further borrowings from Banks; that the public deposits and debentures were gradually repaid by increasing the bank borrowings; that further Bank borrowings were used to repay interest on bank loans, income tax, sales tax, staff expenses, etc. Therefore, it is evident that the salaries, dividends, commission on profit, travel expenses, rental income, deposits made into Factors account of FLCI in his name and in the name of others and the interest earned from Factors account of FLCI, etc., by Shri Farouk Irani for the past minimum 20 years were out of bank borrowings only.

6.6. During the course of the investigation under PMLA, 2002, it was found that Fixed Deposits to the tune of Rs.51.27 Crores were held in Lakshmi Vilas Bank and Karur Vysya Bank in the names of Shri Farouk Irani, Smt.Sherna Irani, Mrs.Farah Bakshay, Mrs.Lia Gagrat and M/s.Irani Family Maintenance Trusts.

6.7. While trailing back the Fixed Deposits found as above, it was observed that Shri Farouk Irani has made the above mentioned Fixed Deposits in Lakshmi Vilas Bank and Karur Vysya Bank in the names of himself, his family members and his family Trust through a series of transactions through various public sector and private sector banks by debiting/transferring money from the bank account held in the name of M/s.FLCI having A/c.No.603851004377 in ICICI bank, Mount Road branch, Chennai to the tune of Rs.12,23,99,687/- into Lakshmi Vilas Bank A/c. of Shri Farouk Irani and to the tune of Rs.11,85,89,932/- into Karur Vysya Bank A/c. of Shri Farouk Irani through RTGS and cheque payments during the period 2010-2011."

8 In paragraph 6.8 (wrongly typed as 6.6 at page No.42) of the impugned complaint, the Enforcement Directorate has catalogued 132 items of liquid assets totally valued at Rs.51,27,37,846/- that have been parked in the bank accounts of Farouk Irani, his wife Sherna F Irani and Irani family maintenance Trust. This sum, according to the Enforcement Directorate, represents the proceeds of crime that have been generated by the accused by indulging in a criminal activity relating to a schedule offence viz. Section 420 IPC, in that, the accused had cheated the consortium of banks by submitting false accounts and had diverted the loan amounts into their personal corpus.

9 Mr.A.Ramesh, learned Senior Counsel attacked the order of cognizance passed by the trial Court, while taking on file the complaint in C.C.No.63 of 2016 on 11.08.2016 and submitted that there is absolutely no application of mind and therefore, the entire cognizance order should be set aside. To buttress his contention, he placed strong reliance on the judgment of the Supreme Court in Sunil Bharti Mittal Vs. CBI.[1]

10 In our opinion, though an order of taking cognizance should reflect application of mind by the Court, it is not a matter of thumb rule that in every case where the order of cognizance is cryptic, the same should have to be quashed. The requirement of passing an explicit order, while taking

1 (2015) 4 SCC 609

cognizance of an offence and issuing process is to ensure that frivolous complaints are not taken on file and ordinary citizens are not harassed. This principle cannot be used as a sword by an accused to kill a prosecution, which cannot be said to be a frivolous one as in the present case. In State of Gujarat Vs. Afroz Mohammed Hasanfatta[2], 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.

11 In a simple private complaint case, the Magistrate may not have any materials dehors the sworn statement of the complainant to take cognizance of the offences alleged in the complaint. In such cases, it will be desirable, if the Magistrate passes an order giving reasons for taking cognizance of the offence and issuing process. In this case, along with the complaint, the Enforcement Directorate has filed 41 documents, including the statements of Farouk Irani recorded under the PML Act in support of the allegations in the complaint.

12 Superadded, we cannot lose sight of the following judgments of the Supreme Court, wherein, it has been held in no uncertain terms that failure of the Magistrate to pass a

2 (2019) 20 SCC 539

detailed cognizance order, will not vitiate the act of taking cognizance:

- U.P. Pollution Control Board Vs.Mohan Meakins Ltd. and others[3]
- Kanti Bhadra Shah and another Vs.State of West Bengal[4]
- Dy. Chief Controller of Imports & Exports Vs. Roshanlal Agarwal and others[5]
- Jagdish Ram Vs. State of Rajasthan and another[6]
- Bhushan Kumar and another Vs.State (NCT of Delhi) and another[7]

In Bhushan Kumar (supra), the Supreme Court has held in unequivocal terms that the summoning order under Section 204 Cr.P.C. requires no explicit reasons to be stated because, it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the police report and the materials filed therewith. Illustration (e) to Section 114 of the Evidence Act says, "The Court may presume that judicial and official acts have been regularly performed". In view of the above discussions, the cognizance order in this case does not deserve to be quashed.

13 Mr.A.Ramesh contended that in the complaint, only one witness has been cited viz. Ananthie and therefore, the complaint is irregular. This argument does not cut ice with this Court. It is always open to the trial Court to exercise powers under Section 311 Cr.P.C. and examine witnesses in the interests of justice. This cannot be a parameter for quashing the prosecution at the threshold.

14 Mr.A.Ramesh took this Court through paragraph 9 of the complaint and submitted that the Enforcement Directorate has filed the complaint, even without completing the investigation and therefore, the complaint deserves to be quashed.

15 It may be relevant to extract the impugned averment in paragraph 9 of the complaint :

> "......It is further humbly submitted that as and when further materials become available regarding the involvement of the above accused persons, the complainant may be permitted to file additional complaints, as the investigation under PMLA, 2002 is still going on."

The above averment does not lead this Court to come to an inference that the present complaint is not complete in itself and that, it requires further materials to stand up.

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3 (2000) 3 SCC 745
4 (2000) 1 SCC 722
5 (2003) 4 SCC 139
6 (2004) 4 SCC 432
7 (2012) 5 SCC 424

16 It is common knowledge that no investigation can be said to have attained finality and that, the investigating agency will not be estopped from producing materials before the Court, even after a final report/complaint has been filed. The complainant has only, as a matter of abundant caution, sought liberty to adduce additional materials, as and when they surface.

17 On a complete reading of the complaint and the accompanying documents, we are of the opinion that it is complete in itself for the prosecution to proceed against the petitioners and whatever materials that may later be stumbled upon by the investigating agency can get added as props, unless such materials tend to completely exonerate the accused lock, stock and barrel.

18 Mr.A.Ramesh placed strong reliance on Section 70 of the PML Act and contended that in the absence of arraying FLCI and Irani family Trust as accused, the prosecution stands vitiated. In support of this contention, he placed strong reliance on the judgment of the Supreme Court in Sharad Kumar Sanghi Vs. Sangita Rane[8], wherein, at paragraph 11, it is held as follows :

> "11. In the case at hand as the complainant's initial statement would reflect, the allegations are against the Company, the Company has not been made a party and, therefore, the allegations are restricted to the Managing Director. As we have noted earlier, allegations are vague and in fact, principally the allegations are against the Company. There is no specific allegation against the Managing Director...."

In the opinion of this Court, the aforesaid argument misses the woods for the trees.

19 What is the allegation against Farouk Irani and his wife Sherna F Irani ?

20 Farouk Irani, as Managing Director of FLCI, had submitted false records to the lender banks, obtained huge loans from the banks, diverted those funds to his personal kitty and to the kitty of his family members and Trust. In other words, he has used the cover of FLCI to commit a criminal activity relating to a schedule offence, obtained proceeds of crime and parked the proceeds of crime into the account of his family members and into the account of his family Trust. In this scheme of things, we do not know as to how the FLCI and the family Trust of Farouk Irani can be made as accused in this case. It is not the case of the Enforcement Directorate that FLCI and the family Trust of Farouk Irani had engaged in a criminal activity, obtained

8 (2015) 12 SCC 781

proceeds of crime and projected the proceeds of crime as untainted monies. It is said that Farouk Irani (A.1) and his wife Sherna Irani (A.2) are the Trustees in their family Trust. Therefore, non-inclusion of FLCI and the family Trust as accused cannot be a ground to quash the prosecution for money laundering against Farouk Irani (A.1) and his wife Sherna Irani (A.2).

21 Lastly, Mr.A.Ramesh contended that Sherna F Irani was only a house wife and she had no knowledge that the amounts standing in her name were generated by her husband via criminal activity relating to a schedule offence. Section 3 of the PML Act begins with the expression, 'whosoever' which means that any person, not necessarily the person who had generated the proceeds of crime via a criminal activity, will be liable under Section 4 if he, directly or indirectly, had projected the proceeds of a crime as untainted property. In the teeth of the reverse burden under Section 24 of the PML Act, it is too premature to hold that there are no prima facie materials against her.

In the result, these criminal original petitions are dismissed as being devoid of merits, as there are prima facie materials for framing charges against the petitioners. It is made clear that whatever mentioned above is only for the limited purpose of deciding these quash petitions and the trial Court shall proceed with the trial, without in any manner, being influenced by what is stated above. Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gya/cad

To

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

2. The Principal Sessions Judge
(Special Judge for PMLA Cases)
Chennai

3. The Public Prosecutor
High Court, Madras

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