IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.12.2021

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Criminal Original Petition No.2835 of 2019
and
Crl.M.P.No.1858 of 2019

Mobeen Unnisa
W/o.Dr.Niranjan .. Petitioner /Accused 9

Vs.

State represented by
The Assistant Director,
Directorate of Enforcement,
2nd & 3rd Floor,
Murugesha Naicker Office Complex,
No.84, Greams Road, Thousand Lights,
Chennai - 600 006. .. Respondent

Criminal Original Petition filed u/s.482 of the Code of Criminal Procedure praying to call for the records and quash the case in C.C.No.13 of 2017 in the Court of Principal Sessions Judge, Chennai (Special Court constituted u/s.43(1) of the Prevention of Money Laundering Act, 2002) in ECIR No.CEZO/03/2015 on the file of the respondent.

For Petitioner : Mr.R.John Sathyan

For Respondents : Mr.Rajnish Pathiyil
Special Public Prosecutor [ED]

O R D E R

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

This petition has been filed seeking quash of the case in C.C.No.13 of 2017 in the Court of Principal Sessions Judge, Chennai (Special Court constituted u/s.43(1) of the Prevention of Money Laundering Act, 2002) in ECIR No.CEZO/03/2015 on the file of the respondent.

2. The minimum facts that are required to decide this

quash petition, are as under:

One Kamalakannan was working as an accountant in Dr.V.Seshaiah Diabetes Care and Research Institute (hereinafter referred to as ''the hospital'') for a pretty long time. On the allegation that the said Kamalakannan misappropriated huge amounts from the hospital, running to several crores, the hospital gave a complaint to the police, based on which, a case in Central Crime Branch Crime No.474 of 2014 was registered on 26.11.2014 for the offences u/s.408, 420, 468 r/w 120-B IPC against the said Kamalakannan and certain unnamed bank officials. Since the offences in the First Information Report were also offences enumerated in Schedule-A of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as "the PMLA"], the Enforcement Directorate registered a case in ECIR No.CEZO/03/2015 under the PMLA and took up investigation of the case. After completing the investigation, the Enforcement Directorate has filed a complaint in C.C.No.13 of 2017 for the offences u/s.3 r/w 4 of the PMLA against 10 persons including Kamalakannan for quashing which, Mobeen Unnisa [A9] has filed the present petition u/s.482 Cr.PC.

3. Heard Mr.R.John Sathyan, the learned counsel appearing for the petitioner and Mr.Rajnish Pathiyil, the learned Special Public Prosecutor [ED] appearing for the Enforcement Directorate.

4. The allegation against Mobeen Unnisa [A9] has been set out in paragraph Nos.7.3 and 10.11 of the impugned complaint, which read as under:

> '7.3. Smt Mobeen Unnisa, W/o Dr Niranjan, in her statement dated 28.05.2015 has, inter alia, stated that she was the proprietor of M/s Sparta Software Solutions started in the year 2012; that Shri Kamalakannan, accountant, approached her for the development of the software for the Hospital; that no payment was received from the Hospital; that Shri Kamalakannan instead of releasing the payment for the supply of software offered her to share his rented office premises located at Mahalingapuram, Kodambakkam; that she took the accommodation of fully furnished office premises at Mahalingapuram Kodambakkam, Chennai-34; that Shri Kamalakannan did not share rent for the office premises and also did not pay for the software; that she shifted the premises to Annanagar western extension after disposing the furniture and fixture set up by Shri Kamalakannan for Rs.2,00,000/; that since the money

involved between her and Shri K.Kamalakannan were proceeds of crime laundered by Shri K.Kamalakannan out of the crime under investigation by the CCB, Police under FIR No.474/2014 and by the Enforcement Directorate under ECIR No. 03/2015, she would return the Two lakhs rupees being the value of the furniture and fitting procured out of the crime proceeds for the purpose of investigation and further action under the provisions of PMLA.

10.11. It is submitted that Smt.Mobeen Unnisa (A-9) was knowing assisting and knowingly as a party in the activities connected to projecting the proceeds of crime amounting to Rs.2,00,000/- as untainted. She, during the course of crime period, acquired and possessed some electrical fittings, furniture, computers, etc purchased by Shri Kamalakannan for an amount of Rs.4,50,000/- out of the crime proceeds and used the same in her office. After registration of the criminal case against Shri K.Kamalakannan, Smt Mobeen Unnisa was in possession / use of the items and admitted to return Rs.2,00,000/- as the value equivalent for the said furniture & fixture in her possession which was purchased out of crime proceeds by Shri Kamalakannan. Smt Mobeen Unnissa cash deposit of Rs.1,00,000/- as fixed deposit receipt (FDR) with IDBI Bank towards repayment of the crime proceeds in her possession in the form of furniture & fixture out of the admitted amount of Rs.2,00,000/-. However, the FDR was pre-closed by Smt Mobeen Unnissa with a deliberately intention to conceal the identity of the crime proceeds and thereby directly indulged in the activity connected with the concealment of the crime proceeds and to project the same as untainted property, thereby involved in the process of projecting the crime proceeds as untainted, thus have been guilty of offence of Money Laundering by virtue of Section 2(1)(p) read with Section 3 of PMLA and are liable to be punished under Section 4 of PMLA.'

5. A complete reading of the complaint shows that over a period of time, Kamalakannan appears to have siphoned off huge amounts from the hospital and has diverted the funds to various ventures. In one such venture, Kamalakannan had taken a flat on rent in Mahalingapuram, Kodampakkam, Chennai - 600 034 and had spent around Rs.4,50,000/- for furnishing the same. Mobeen Unnisa [A9] admittedly was the proprietor of M/s.Sparta Software

Solutions and her husband was also working in the hospital. Therefore, Kamalakannan had approached Mobeen Unnisa [A9] for development of a software for the hospital, for which, Mobeen Unnisa [A9] had not received any payment except an initial sum of Rs.10,000/-, even after completing the work.

6. When Mobeen Unnisa [A9] started pestering Kamalakannan for payment, he told her to occupy the flat in Mahalingapuram, Kodampakkam, Chennai – 600 034 and do her business and that he would also share the rent for the flat. Believing him, Mobeen Unnisa [A9] shifted to the flat and was doing business, but, unfortunately, Kamalakannan was not sharing the rent. Therefore, Mobeen Unnisa [A9] quit the flat, but, cleverly sold the furniture in the flat for Rs.2 lakhs and appropriated the same for the dues to her from the hospital as well from Kamalakannan. The complaint shows that Mobeen Unnisa [A9] had acquired Rs.2,00,000/- from the sale of the furnitures, out of which, she has invested Rs.1,00,000/- in a fixed deposit, which was, later on, foreclosed and appropriated to herself.

7. On the aforesaid facts, we are afraid that Mobeen Unnisa [A9] cannot be prosecuted for the offences u/s.3 and 4 of the PMLA. Admittedly, Mobeen Unnisa [A9] is not an accused in CCB Crime No.474 of 2014, which has now culminated in a final report in C.C.No.9149 of 2017 and is pending on the file of Special Magistrate Court for CCB cases, Chennai. Of course, just because a person has not been shown as accused in the predicate offence, it does not mean that the said person can be absolved of criminal liability u/s.3 and 4 of the PMLA. However, for fastening criminal liability under the PMLA, it is trite that mere acquisition of money from committing a predicate offence is not sufficient. For attracting Sections 3 and 4 of the PMLA, the accused should have committed a predicate offence, acquired some proceeds of crime and should have projected the proceeds of crime as untainted. Of course, a person, who knowingly assists the main offender for projecting the proceeds of crime as untainted can also be prosecuted u/s.3 and 4 of the PMLA along with the principal offender.

8. In this case, on facts disclosed in the complaint, there is no shred of evidence to show that Mobeen Unnisa [A9] ever knew that Kamalakannan had swindled money from the hospital. As stated above, with the proceeds of crime, Kamalakannan had furnished a rented flat by purchasing sophisticated furniture and other things and had kept it ready for occupation. When Mobeen Unnisa [A9] started asking Kamalakannan for payment for the software work done by her,

Kamalakannan asked her to occupy the flat and also told her that he would share the rent. Accordingly, Mobeen Unnisa [A9] occupied the flat, but, Kamalakannan did not even share the rent nor make payment for the work that was already done by her to the hospital. Mobeen Unnisa [A9] sold the furniture for Rs.2,00,000/- and is in possession of it.

9. Mr.Rajnish Pathiyil, learned Special Public Prosecutor [ED], drew the attention of this Court to the word ''possession'' that finds a place in the explanation to Section 3 of the PMLA, which was inserted by way of Act 23 of 2019. Learned Special Public Prosecutor contended that the explanation so included cannot be said to be prospective and that it would be retrospective since it only clarifies the parent provision.

10. One can have no quarrel with the aforesaid proposition. However, the usage of the expression ''possession'' in the said explanation has to be read with the previous paragraph in the said explanation.

11. We are unable to fit the act of Mobeen Unnisa [A9] in selling the furniture of Kamalakannan for Rs.2,00,000/- and appropriating the money to herself, within the contours of the explanation to Section 3 of the PMLA.

12. In such view of the matter, we find that the prosecution of Mobeen Unnisa [A9] is an abuse of process of law.

For the aforesaid reasons, this Criminal Original Petition is allowed and the proceedings in C.C.No.13 of 2017 in the Court of Principal Sessions Judge, Chennai (Special Court constituted u/s.43(1) of the Prevention of Money Laundering Act, 2002) in ECIR No.CEZO/03/2015 on the file of the respondent, is quashed insofar as this petitioner is concerned. The trial Court shall expeditiously proceed further with the complaint in C.C.No.13 of 2017. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

gm

To

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

2.The Assistant Director,
Directorate of Enforement,
2^{nd} & 3^{rd} Floor,
Murugesha Naicker Office Complex,
No.84, Greams Road, Thousand Lights,
Chennai – 600 006.

3.The Special Public Prosecutor [ED],
High Court, Madras.

+1cc to Mr.T.Balaji, Advocate SR.No.64066
+1cc to Mr.Rajnish Pathiyil, SPP, Advocate SR.No.64520

Criminal Original Petition No.2835 of 2019

KJ(CO)
GN(17/12/2021)