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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 22.09.2021

(Pronounced on : 05.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.382 of 2018
and
Crl.M.P.Nos.4653 and 4654 of 2018
and
Crl.R.C.No.383 of 2018
and
Crl.M.P.Nos.4655 and 4656 of 2018

B.Gowthaman
Proprietor of M/s.Victory Computers,
M/s.Indira Engineering Company &
M/s.Divya Seam & Packs (Fruit & Pulp),
New Address: No.2/505, Suguma Bavan,
Mambakkam Main Road,
Medavakkam, Chennai - 600 100.
....Petitioner in Crl.R.C.No.382 of 2018

1. M/s.Kanya Electornics,
Rep.by B.Subash,
No.133, Nelson Manickam Road,
Choolaimedu, Chennai.

2. Shri B.Subash,
S/o.Balaram,
Manging Director of M/s.Kanya Electronics P.Ltd.,
No.10, ECR Road,
Mandavellipakkam,
Chennai - 600 028 ...Petitioner in Crl.R.C.No.383 of 2018

.. Vs ..

The Assistant Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floor, C Block,
Murugesa Naicker Office Complex,
No.84, Greams Road, Thousand Lights,
Chennai - 600 006. ... Respondent in both Crl.R.Cs

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PRAYER in Crl.R.C.No.382 of 2018: Criminal Revision Case filed under Section 397 r/w. 401 of Cr.P.C., to call for the records of the Principal Sessions Court, Chennai with reference to Crl.M.P.No.4023 of 2017 in C.C.No.43 of 2016 pending on its file and set aside the same.

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For petitioner : Mr.S.Babu
For Mr.P.V.Sudakar in both cases

For Respondent : Mr.Rajnish Pathiyil
Special Public Prosecutor (Crl.Side)
in both cases.

COMMON ORDER

The accused A1 and A2 in C.C.No.43 of 2016 filed Crl.R.C.No.383 of 2018 and the third accused has filed Crl.R.C.No.382 of 2018.

2. The respondent filed C.C.No.43 of 2016 before the learned Principal Sessions Judge at Chennai alleging offence under Prevention of Money Laundering Act. Pending trial, A1 and A2 filed Crl.M.P.No.4429 of 2017 under Section 227 of Cr.P.C seeking discharge from the above Calender Case C.C.No.43 of 2016. The discharge petition filed by A3 in Crl.M.P.No.4023 of 2017 and on dismissal, the above Criminal Revision Petitions have been filed by the respective accused.

3. Heard the learned counsel for the petitioner and the learned respective Special Public Prosecutor (Crl.Side)

4. On perusal of the records, it emerges from the proceedings of the trial Court that:-

(a)The Central Bureau of Investigation, BS&FC, Bangalore, based on the said allegations mentioned by Deputy General Manager, M/s.Union Bank of India, Nodal Regional Office, Chennai in the complaint, registered an FIR bearing No.RC/7(E)/ 2008/CBI/BS&FC/BLR on 25.09.2008 for the offences punishable under Section 120B r/w 420, 467, 468 & 471 of I.P.C 1860 and Section 13 (2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 against Shri D.Kalaiselvan, the then Chief Manager, Union Bank of India, Nungambakkam Branch, Chennai, M/s.Kannya

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Electronics Private Limited, and its Directors Shri B.Subhash and Shri P.N.Ramakrishnan alleging fraud in the sanction and disbursement of credit facilities to M/s.Kannya Electronics Private Limited.

(b) The Central Bureau of Investigation (CBI), BS&FC, Bangalore, on completion of the investigation filed a charge sheet before the CBI Special Court, Chennai under CC.No.46 of 2009 dated 24.11.2009 against Shri D.Kaliachelvan (A1), Shri B.Subash (A2), Shri P.N.Ramakrishnan (A3), M/s.Kannya Electronics Private Limited (A4), B.Gouthaman (A5), and Shri V.Rajesh (A6) alleging that by their acts of criminal conspiracy cheated the Union Bank of India, by impersonation / using forged documents, etc and induced the Union Bank of India to part with the funds and have caused wrongful loss to the said bank to the tune of Rs.8.41 crore plus interest as on 22.01.07 works out to Rs.10.77 crore and corresponding wrongful gain was derived by the said accused persons. In the said charge sheet, CBI invoked Section 120-B r/w 419, 420, 467, 468, 471 of I.P.C 1860 and Section 13(2) (d) of the Prevention of Corruption Act, 1988 against the said above sadi accused persons.

(c) In as much as Section 120-B, 419, 420, 467, 471 of I.P.C 1860 r/w Section 13 of Prevention of Corruption Act, 1988, are “schedule offences” under Section 2(1) (y) of the Prevention of Money Laundering Act, 2002, (PMLA) and on the basis of the information / documents available with this Directorate, prima facie, there appeared to be a case of "money laundering offence" under Section 3 of PMLA and accordingly an Enforcement Case Information Report (ECIR) No.60/CEZO/2010 was registered on 18.11.2020 to investigate under Prevention of Money Laundering Act (in, short PMLA).

(d) Bank account of M/s.Kannya Electronic Private Limited held with State Bank of India became Non Performing Account (NPA) during October, 2006. M/s.Indian Overseas Bank initiated recovery proceedings by disposal of the immovable property owned by Shri B.Subash at Greenway Road through SARFAESI action on 15.02.2007 as the bank had lien over the said property. Under the circumstances, Shri B.Subash defrauded the funds of Union Bank of India for settlement of outstanding dues with State Bank of India and Indian Overseas Bank.

(e) During the investigation under PMLA, 2002, the Department has issued the Provisional Attachment Order in PAO NO.14/2015 dated 07.12.2015 under Section 5(1) of the PMLA, 2002. The Adjudicating Authority, PMLA, New Delhi in O.C.No.535 of 2015 dated 27.05.2016 confirmed the above provisional attachment in PAO No.14 of 2015 that the property provisionally attached is involved in money laundering.

(f) The applicant has filed a Prosecution Complain in C.C.No.43 of 2016 under Section 45(1) read with Section 3, 4 & 8 (5) of the PMLA, 2002, on 31.01.2016 against the petitioner's herein before the Principal Sessions Judge, Chennai with the prayer to punish the offenders of the money laundering and also to grant the Order of Confiscation of the attached/confirmed properties which involved in money-laundering. The learned Special Court has taken the prosecution complaint in C.C.No.43 of 2016 on cognizance and issued the summons to the petitioners.

5. Thus, the above accused A1, A2 and A3 are filed the respective C.M.P under Section 227 of Cr.P.C seeking for discharge. Counter was filed before the learned Sessions Judge and the learned Principal Sessions Judge on observing certain facts and dismissed the petitions.

6. The learned counsel for the petitioner in support of the petition under Section 227 of Cr.P.C contended that by virtue of provision under Section 220 of Cr.P.C there cannot be to separate trial for the same set of facts and draw a similarity between C.C.No.46 of 2009 and C.C.No.43 of 2016.

7. The next contention is that in the [C.B.I case] C.C.No.46 of 2009 as per prosecution the Branch Manager of Indian Overseas Bank D.Kalaiselvan had a criminal conspiracy accused person on the ground of which it is alleged in C.C.No.46 of 2009 [CBI case] and the present C.C.No.43 of 2016 [PMLA case] that the money has been obtained by cheating the bank and hence there cannot be no two separate trials and further, the prime accused namely, Kalaiselvan has not been arrayed as an accused in the [P.M.L.A's case] viz., C.C.No.43 of 2016. The prosecution respondent enforcement authority is screening the prime accused in this case.

8. The learned counsel for the petitioner contended that as per Section 220 of Cr.P.C there cannot be two separate trials for the same set of facts which are subject matter of C.C.No.46 of 2009 and C.C.No.43 of 2016. Even according to the prosecution, the petitioner never handled the cash, the monetary transactions have all taken place through Bank and they are genuine, open transactions and no crime has been committed by the petitioner. As per prosecution, the Branch Manager of the Indian Overseas Bank, D.Kalaiselvan had a criminal conspiracy with the accused persons and on account of which it is alleged in C.C.No.46 of 2009 and the presence C.C.No.43 of 2016 that the money has been obtained by cheating the Bank. The said allegation and accusations are all baseless because the said Kalaiselvan has not been arrayed as an accused in this case. Thus, there are technical flaws in the prosecution and final report and as such no legally maintainable charge can be framed.

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Therefore, the petitioner may be discharged from C.C.No.43 of 2016.

9. The learned Special Public Prosecutor (Crl.Side) contended that the powers of the PMLA under various provision sections 24&71 of the PMLA's Act.

10. After hearing the submissions and after perusing the orders passed by the trial Court, on facts the initial case C.C.No.46 of 2009 is filed by C.B.I alleging fraud in sanction and disbursement of credit facility to the first accused herein Mrs.Kanya Electroncis Private Limited.

11. The basis facts in C.C.No.43 of 2016 is that the Kanya Electronics A1 had bank account with State Bank of India that fallen as Non Performing Act (N.P.A) during October 2009 and accordingly the Indian Overseas Bank initiated the proceedings for the disposal of immovable property through 'SARFAESI' [Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act,2002] action and proceeded against the secured debt in which, it is alleged that, the funds obtained from Union Bank of India for running the accused company has been defrauded for settlement of outstanding dues with State Bank of India and Indian Overseas Bank.

12. The contention of the petitioner is that:

a) There cannot be two separate trial for the same facts in view of Section 220 of Cr.P.C;

b) In C.C.No.46 of 2009, the Bank Manager Kalaiselvan was arrayed as A1. However he was screened in this P.M.L.A's case C.C.No.43 of 2016.

c) Non-inclusion of that person in the subsequent case is a technical flaw and fatal to the prosecution.

d) As per the prosecution, the Branch Manager of Indian Overseas Bank Kalaiselvan on criminal conspiracy with accused persons and helped the other accused in getting the loan amount by the permitting impersonation and falsification of the Court and granted the loan.

e) Mere non inclusion of that person in the subsequent P.M.L.A's case is not a ground for discharge. It is always open to the respondent investigation agency to add him as an accused, when on investigation that discloses his involvement in the P.M.L.A's case, if any and hence the said contention stands negatived.

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13. In Sri Sachin Narayan V.The Income Tax Department, by its Deputy Director of Income Tax (W.P.No.5299 of 2019 etc batch dated 29.08.2019), the High Court of Karnataka has stated as follows:-

> 27. ....It is not necessary that a person has to be prosecuted under the PML Act only in the event of such person having committed schedule offence. The prosecution can be independently initiated only for the offence of money laundering as defined under Section 3 read with Section 2(p) which provides that "money laundering"having the meaning assigned to it under Section 3 of the Act."

> 15. The High Court of Sikkim in Usha Agarwal V.Union of India through its Secretary (WP (C) No.23 of 2015 dated 29.08.2017 has observed as under;

> ....The prosecution can be independently only for the offence of money-laundering as defined in Section 3 and Section 2(p) which provides that- money-laundering has the meaning assigned to it in Section 3".

14. The scrutiny of financial transactions of M/s.Kannya Electronics Private Limited vis-a-vis the manner of depositing Rs.1.71 Crore with Indian Overseas Bank by Shri B.Subash revealed the existence of distinct fund flow arrangement among the companies floated by his family members and one part of the "crime proceeds", i.e., part of the cash credit facility and part of the Inland letter of credit facility availed from the Union Bank of India has been utilized towards the deposit amount paid with Indian Overseas Bank by projecting the same as untainted/legitimate money.

15. Theory of the prosecution in C.C.No.43 of 2016 is that the amount of loan in C.C.No.46 of 2009 is "process of crime".

16. It is seen that there is a specific allegation against the accused that the part of the Inland letter of credit facility availed from Union Bank of India has been utilized towards the deposit amount to deposit the Indian Overseas Bank to comply with the orders of Hon'ble Supreme Court in S.L.P by projecting the same has untightened and legitimate the money. As per the prosecution case in C.C.No.43 of 2016, the amount of loan in C.C.No.46 of 2009 is "proceeds of Crime".

17. The Money Laundering investigation is entirely different from the investigation being carried out by other law enforcement agencies and hence, trial of case under P.M.L.A is

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no way connected with trial of other predicate offence.

18.The petitioner can very well discharge the burden before the trial Court under Section 24 of PMLA. Further PMLA always have an overriding effect over other acts as per the proviso to Section 71 of the PMLA notwithstanding anything inconsistent therewith contained in any other law for the time being in force. As per the provisions of Sec.65 of PMLA, the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, which is not applicable to present case.

19. Accordingly, the contention of the accused is that running of two criminal trial is opposed to provision under Section 220 of Cr.P.C stands negatived.

20.The offence of money laundering is cognizable and non-bailable under Section 45(1) of the PMLA, 2002.

21. Section 24 of the PMLA, the burden to prove the case is on the part of the petitioner alone.

22. Thus, I find that in view of the specific allegation against the accused that the loan by way of Inland letter of credit facility availed from Union Bank of India was not utilized for the purpose for which it was availed however utilized towards the amount to be deposited in the Non Performing Account (NPA) in the Indian Overseas Bank. The "proceeds of the crime" that is the credit facility availed by A1 through forged and fabricated document of companies owned by A3. Subsequently passed on A1 Bank account held with Indian Bank of Hyderabad to project the money Rs.1.75 crores deposited with the Indian Bank as untainted. It is the specific case of the prosecution as stated supra. During the course of investigation the "proceeds of crime" in the form of Rs.1.71 crores were identified to be laundering as the amount towards the DRT auction sale in the name of A2.

23. As stated supra, the proviso section 24 of the PMLA Act the burden to prove the case is on the part of the petitioner namely the accused, to show the amount deposited is untainted amount and not in the manner has projected by the prosecution and hence I find that there is a "sufficient material to presume" that the accused has committed the offence as stated in the final report and it is for the matter of trial to prove the charges and the presumptions therefor and also to discharge burden as contemplated in the special criminal enactment viz., PMLA Act.

24. Hence, in this view of the matter, I find that the

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petitioners are not entitled to discharge in view of the prima facie case has been made out to presume that the accused have committed the offence under the provision of PMLA Act and hence, they have to face the trial and hence, these Criminal Revision Petitions are devoid of merits and the same is hereby dismissed.

25. In the result, these Criminal Revision Petitions are dismissed. Consequently, connected Crl.M.Ps are closed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

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To

1.The Principal Sessions Judge,
Chennai.

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

3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.P.V.Sudhakar, Advocate, S.R.No.52192
+2cc to Mr.Rajenish Pathiyil, Advocate, S.R.No.51892, 51893

Crl.R.C.No.382 of 2018 and
Crl.M.P.Nos.4653 and 4654 of 2018 and
Crl.R.C.No.383 of 2018 and
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