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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 02.07.2021

PRONOUNCED ON : 14.07.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL.O.P.No.9819 of 2019

AND

CRL.M.P. No.5132 of 2019

Dr.Gunaseelan

...Petitioner/A2

Vs.

Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
II & III Floor, "C" Block
Murugesu Naicker Complex
84, Greaves Road
Chennai 6

Rep. by its Assistant Director

...Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.1/2019 in F.No.ECIR/4/CEZO/Z-II/2016 (VSK) on the file of the Principal Sessions Court, Chennai (Spl. Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002) and quash the same.

For Petitioner : Mr.B.Kumar, Senior Counsel
for Mr.S.Ramachandran

For Respondent : Mr.P.Saravanan
Special Public Prosecutor for ED

O R D E R

P.N.PRAKASH.J

For the sake of convenience, the parties will be referred to by their names.

2. This petition under Section 482 Cr.P.C. has been filed by Dr.Gunaseelan (A2) to quash the prosecution in C.C.No.1/2019 that has been launched against him by the Enforcement Directorate for the offence under Section 3 read with 4 of the Prevention of Money Laundering Act, 2002 (in short "the PML Act").



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3. Heard Mr.B.Kumar, learned Senior Counsel representing Mr.S.Ramachandran, learned counsel on record for Dr.R.Gunaseelan (A2) and Mr.P.Saravanan, learned Special Public Prosecutor appearing for the Enforcement Directorate.

4. To appreciate the rival contentions, it may be necessary to set out the foundational facts.

4.1. One Dr.S.Murugesan (A1) was a Member of the Dental Council of India and Dr.R.Gunaseelan (A2) was nominated by the Tamil Nadu State Government as a Member of the Dental Council of India.

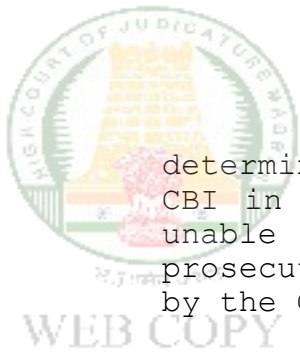
4.2. Adhiparasakthi Dental College & Hospital, Melmaruvathur (in short "Adhiparasakthi College"), which was already offering B.D.S. course in their college, wanted affiliation for M.D.S. course.

4.3. It is alleged that Dr.S.Murugesan (A1) demanded a bribe of Rs.25,00,000/- for giving M.D.S. affiliation for Adhiparasakthi College and they also agreed for it. The CBI got wind of this and maintained surveillance around Dr.S.Murugesan's (A1's) clinic on 07.01.2013. On that day, representatives of Adhiparasakthi College came to Dr.S.Murugesan's (A1's) clinic and while they were handing over the sum of Rs.25,00,000/-, the CBI sleuths swooped on them and seized the bribe amount of Rs.25,00,000/-.

4.4. The CBI registered a case in RC.MA1.2013.A.0001 dated 08.01.2013, against Dr.S.Murugesan (A1) and others. Arrest was made and the seized amount of Rs.25,00,000/- was produced in the Special Court for trial of cases under Prevention of Corruption Act, Chennai. The CBI completed the investigation and filed a final report in C.C.No.15/2014 in the Court of the IX Additional Special Court for CBI Cases, Chennai, for the offences under Sections 120-B read with 420 IPC and Sections 7, 8, 12 & 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 (in short "the PC Act") against Dr.S.Murugesan (A1) and 12 others, in which, Dr.R.Gunaseelan is not an accused.

4.5. The registration of the aforesaid case by the CBI, triggered the registration of a case by the Enforcement Directorate under the PML Act and after completing the investigation, the Enforcement Directorate has filed the impugned complaint against Dr.S.Murugesan (A1) and five others, in which, Dr.R.Gunaseelan has been shown as A2.

5. A reading of paragraph 7.4 of the complaint in C.C.No.1/2019 shows that the proceeds of crime has been



determined as the sum of Rs.25,00,000/- that was seized by the CBI in the clinic of Dr.S.Murugesan (A1) on 07.01.2013. We are unable to understand as to how, Dr.R.Gunaseelan (A2) can be prosecuted under the PML Act, for the seizure of Rs.25,00,000/- by the CBI in the clinic of Dr.S.Murugesan (A1).

6. For maintaining a prosecution under Section 3 of the PML Act, the following three ingredients are sine qua non :

(a) A person should have committed a criminal activity;

(b) that criminal activity should have generated some proceeds of crime;

(c) such proceeds of crime should have been projected by the accused as untainted property.

7. In this case, the proceeds of crime quantified by the Enforcement Directorate at Rs.25,00,000/-, being the bribe amount that was received by Dr.S.Murugesan (A1) in his clinic on 07.01.2013, was seized by the CBI and therefore, there was no scope for Dr.R.Gunaseelan (A2) to project it as untainted money. Superadded, Dr.R.Gunaseelan (A2) is not a co-accused even in the prosecution that has been launched by the CBI in C.C.No.15/2014 against Dr.S.Murugesan (A1) and the representatives of Adhiparasakthi College.

8. Mr.Saravanan, learned Special Public Prosecutor submitted that in the complaint in C.C.No.1/2019, apart from Adhiparasakthi College, there are also averments relating to another case viz., Asan Memorial corruption case. Therefore, we analysed those allegations, in order to find out if Dr.S.Murugesan (A1) had generated any proceeds of crime and had projected them as untainted.

9. The impugned complaint of the Enforcement Directorate shows that Dr.S.Murugesan (A1) had demanded Rs.1 crore from Asan Memorial educational institution to give them permission for starting dental course. In connection with this allegation, the CBI registered a case in RC.MA1.2013. A.0004 dated 08.02.2013 and after completing the investigation, filed a final report in C.C.No.13/2014 in the IX Additional Special Court for CBI Cases against Dr.S.Murugesan (A1) and Dr.R.Gunaseelan (A2) for the offences under Sections 120-B read with Sections 7, 8, 12 and 13 (2) read with 13(1)(d) of the PC Act.

10. This Court, by order dated 26.03.2019, quashed the prosecution against Dr.R.Gunaseelan (A2) in CrI.O.P.No.3177 of 2019, by holding that he was not at all involved in the alleged bribe that was received from Asan Memorial by Dr.S.Murugesan (A1). However, by the same order, this Court, dismissed the



quash petition of Dr.S.Murugesan (A1) in Crl.O.P.No.17027 of 2014 and directed him to face trial.

11. Be that as it may, the Enforcement Directorate has narrated the events relating to the Asan Memorial case in the impugned complaint, but, has not stated what was the proceeds of crime that was acquired by Dr.R.Gunaseelan (A2) and which was projected by him as untainted property. The impugned complaint filed by the Enforcement Directorate is predicated on the bribe amount of Rs.25,00,000/- relating to Adhiparasakthi College, which, as stated by us above, cannot form the basis for prosecuting Dr.R.Gunaseelan (A2).

In the result, this Criminal Original Petition is allowed and the proceedings against Dr.R.Gunaseelan (A2) in C.C.No.1/2019 on the file of the Principal Sessions Court, Chennai, is quashed. Connected Crl.M.P is closed.

s/d-
Assistant Registrar(CS VII)

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Sub-Assistant Registrar

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To

1. The Assistant Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
II & III Floor, "C" Block
Murugesu Naicker Complex
84, Greaves Road
Chennai 6.
2. The Principal Sessions Judge
Chennai.
3. The Public Prosecutor
High Court, Madras.

+1 CC to Mr.S.Ramachandran, Advocate, Sr 33883.

CRL.O.P.No.9819 of 2019

PVS(CO)
LS(28/07/2021)