IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.10.2021

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mrs. Justice R.HEMALATHA

Crl.O.P.No.18139 of 2021
and Crl.M.P.No.9959 of 2021

1.Dr.P.Vijayan

2.V.Anitha .. Petitioners/Accused 1&2

Vs.

Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floor, No.84,
Murugesan Naickar Office Complex,
Greams road, Thousand Lights,
Chennai 600 061. .. Respondent/Complainant

Petition filed under Section 482 Cr.P.C. to set aside the rejection order dated 13.09.2021 in Crl.M.P.SR.No.12726 of 2021 in C.C.No.37 of 2015 on the file of the Principal Sessions Court, Chennai, with further direction to the learned Principal Sessions Judge, Chennai, to take the discharge petition on file and decide the same on merits.

For Petitioners : Mr.N.Baaskaran

For Respondent : Mr.Rajnish Pathiyil
Special Public Prosecutor
for Enforcement
Directorate

ORDER
[Made by P.N.PRAKASH, J.]

This criminal original petition has been filed seeking to set aside the rejection order dated 13.09.2021 in Crl.M.P.SR.No.12726 of 2021 in C.C.No.37 of 2015 on the file of the Principal Sessions Court, (Special Court under the Prevention of Money Laundering Act, 2002, [for brevity "the PML Act"] ), Chennai, with further direction to the learned Principal Sessions Judge, Chennai, to take the discharge petition on file and decide the same on merits.

2. The petitioners are facing a prosecution in C.C.No.37 of 2015 under Section 3 r/w 4 of the PML Act before the Principal Sessions Court, (Special Court for PML Act Cases), Chennai.

3. Earlier, the petitioners filed a quash petition under Section 482 Cr.P.C. in Crl.O.P.No.22222 of 2016, for quashing the prosecution against them on various grounds. The said quash petition was heard in detail by a Division Bench of this Court and by order dated 01.02.2021, dismissed the quash petition, the operative portion of which, reads as under:

> "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 to 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."

4. After the dismissal of the quash petition, the petitioners filed a discharge petition before the trial Court raising certain grounds and the trial Court refused to take the discharge petition on file by impugned order dated 13.09.2021, aggrieved by which, the petitioners are before this Court.

5. Heard Mr.N.Baaskaran, learned counsel for the petitioners and Mr.Rajnish Pathiyil, learned Special Public Prosecutor appearing for the respondent/Enforcement Directorate.

6. To appreciate the contentions of Mr.N.Baaskaran, learned counsel for the petitioners, it may be necessary to briefly state the allegations against the petitioners culled out from the order dated 01.02.2021 that was passed by this Court in

the quash petition in Crl.O.P.No.22222 of 2016:

"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."

7. Mr.N.Baaskaran, learned counsel for the petitioners contended that in the light of the judgment of the Supreme Court in Harish Dahiya @ Harish and Another Vs. State of Punjab and Others[1], even if a quash petition is dismissed, a discharge petition could be maintained.

8. We carefully perused the judgment of the Supreme Court in Harish Dahiya (supra). It is seen that the appellants in that case prayed for discharge from the prosecution before the trial Court in the light of a compromise petition. When the trial Court refused to discharge the accused on the ground that on an earlier occasion, a petition under Section 482 Cr.P.C. has been dismissed, the Supreme Court held that such a stand is untenable.

1 (2019) 18 SCC 69

9. On facts, in this case, the Division Bench in Crl.O.P.No.22222 of 2016, had gone into all the aspects of the case and found that there are prima facie materials for the trial Court to frame charges and had further permitted the petitioners to raise all their defences after the charges are framed. The petitioners are not permitting the trial Court to proceed with the framing of charges and instead, they have filed a fresh petition before the trial Court for discharge contending that the order dated 25.05.2015 that was passed by the adjudicating authority under Section 5 of the PML Act ordering interim attachment of the proceeds of a crime has been set aside by the appellate authority on 07.10.2015 and therefore, the complaint filed by the Enforcement Directorate before the Special Court on 30.11.2015 stands vitiated.

10. We are unable to persuade ourselves to agree with the submission made by the learned counsel for the petitioners, because, the appellate authority has only remanded the adjudication proceedings to the adjudicating authority for fresh disposal as under:

> "13. In the facts and circumstances, the appeal is allowed by way of remand without expressing any opinion as to the merits of the case. We direct the Adjudicating Authority to pass fresh adjudication order within six months from the date of this order after giving reasonable opportunity to the appellants to present their case/defence. The appellants shall file their pleadings and documents before the Adjudicating Authority within a period of 30 days from the date of this order or on a date as may be fixed by the Adjudicating Authority. During the pendency of proceedings before the Adjudicating Authority the provisional attachment order shall continue, but all the parties shall maintain status quo in respect of properties attached vide Provisional Attachment Order No.03/2015 dated 12th March, 2015 issued under Section 5(1) of PMLA. The appellants shall not transfer, commit waste, alienate or create any third party rights in the attached properties or transfer possession of the attached properties to any third party. Parties to bear their own cost."

11. In our considered opinion, Sections 3 and 4 of the PML Act are penal provisions and action taken thereunder is for punishment of the offender for projecting the proceeds of a crime as untainted property. Thus, the prosecution under Section 3 / 4 of the PML Act is an action in personam, whereas, the action taken by the adjudicating authority under Section 5 of

the PML Act is independent of the prosecution under Section 3 r/w 4 of the PML Act, inasmuch as, the adjudicating authority is empowered to ensure that the proceeds of the crime do not disappear and are available for the trial Court to confiscate the same at the end of the trial, depending upon the outcome of the trial.

12. In other words, the adjudication proceedings are step-in-aid. The Enforcement Directorate would have to prove the offence under Section 3 of the PML Act before the Special Court in accordance with the rules of evidence, coupled with various presumptions envisaged under the PML Act. Therefore, the order of the appellate authority setting aside the adjudication order and remanding the matter to the adjudicating authority for fresh disposal, can, by no stretch of imagination, vitiate the criminal prosecution before the Special Court under the Code of Criminal Procedure.

13. Therefore, we do not find any infirmity in the order of the Principal Sessions Judge, (Special Court for PML Act Cases), Chennai, declining to take up the discharge petition, as it was only a dilatory tactic that was being adopted by the petitioners to protract the trial.

In the result, this criminal original petition stands dismissed. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant 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,
Murugesan Naickar Office Complex,
Greams road, Thousand Lights,
Chennai - 600 061.

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

+1cc to Mr.N.Baskaran, Advocate Sr No.51529
+1cc to Mr.Rajnish Pathiyil, Advocate Sr No.51157

Crl.O.P.No.18139 of 2021

NMI (CO)
PR (22/10/2021)