IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.21111 of 2021
and W.M.P.No.22372 of 2021

Nesamanimaran Muthu ... Petitioner
Rep.by his Special power of Attorney
Mr. Joseph Anand Muthu .

Vs.

The Deputy Director,
Office of the Joint Director,
Directorate of Enforcement, Chennai Zone II
III Block, III and IV Floor, Shastri Bhavan,
No.26, Haddows Road, Chennai 600 006.
... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Calling for the records relating to the impugned Summon in F.No.T-3/ CEZO- II / 77/ 2020 (SA) dated 09.03.2021 issued by the Respondent and subsequent summons dated 07.06.2021 and 09.08.2021 arising out of same file number and quash the same for being a roving and fishing expedition ex- facie illegal barred by limitation in violation to Government of India Mutual Legal Assistance Treaty Guidelines Arbitrary null and void.

For Petitioner : Dr.M.R.Venkatesh

For Respondents : Mr.N.Ramesh
Special Government Pleader (Education)

O R D E R

The petitioner has filed this writ petition seeking issuance of Writ of Certiorari calling for the records relating to the impugned Summon in F.No.T-3/ CEZO- II / 77/ 2020 (SA) dated 09.03.2021 issued by the Respondent and subsequent summons dated 07.06.2021 and 09.08.2021 arising out of same file number and quash the same for being a roving and fishing expedition ex- facie illegal barred by limitation in violation to Government of India Mutual Legal Assistance Treaty Guidelines Arbitrary null and void.

2. The deponent of affidavit is the brother and Special Power of Attorney agent of the petitioner and he is competent to swear this affidavit on behalf of the petitioner. The petitioner was on a full time employment as Managing Director of Magnum Global Pvt. Limited, Singapore, a company incorporated in Singapore, wherein he was one of the promoters. The petitioner was issued an employment pass by the Government of Singapore. In the meanwhile, the petitioner became the citizen of cyprus and he became a 'person resident outside India'. While the fact being so, the respondent herein has served with the impugned summons dated 09.03.2021 at the property owned by one of the Companies of M.G.M.Group, i.e., Anand Transport Pvt. Ltd and sought for certain information in the said summon i.e., to submit copies of Income Tax returns, Bank accounts both in India and outside India, all immovable properties, list of all companies / trusts/ firms etc., wherein the petitioner at any point of time were a Director / shareholder / trustee / signatory and all investment in shares of various companies and especially to provide information as to whether any proceedings were initiated under the Foreign Exchange Management Act (FEMA). Though the petitioner through a representative has produced almost all the information sought for by the respondent, the respondent was continuously asking further details and documents, by issuing further summons dated 07.06.2021 and 09.08.2021. Challenging all the summons , the present petition is filed by the petitioner.

3. The learned counsel appearing for the petitioner submitted that if there is any investigation by the Officers of the Enforcement Directorate under FEMA, there has to be a 'contravention' committed by any person. However the impugned summon does not mention directly as to anything about any alleged contravention by this petitioner as mandated by FEMA. Without any such material as to the alleged contravention, no proceedings can be initiated. Though the petitioner through a representative has produced almost all the information sought for by the respondent, the respondent was continuously asking further details and documents, without pointing out any contravention by grossly exceeding his authority and hence prays for quashment of the impugned summons.

4. The learned Special Public Prosecutor (Enforcement Directorate) appearing for the respondent submitted that the Directorate of Enforcement received an information against the petitioner. The said information was subsequently further developed during the course of investigation and various further documents / details were gathered which not only indicate

serious FEMA contraventions but also indicate money laundering and undisclosed foreign assets. During the course of current investigation, it also came to notice that the petitioner was also involved in another FEMA violation related to Tamilnad Mercantile Bank Limited, wherein a penalty of Rs.36 crores was levied.

5. It is further stated that with respect to the information, in order to investigate the FEMA contraventions, the Directorate has issued summons under Section 37 of FEMA, 1999 r/w Section 131(1) of the Income Tax Act, requiring him to attend personally at the office on 17.03.2021 to give evidence and to produce the documents specified. It is most respectfully submitted that all the details required in the notice are very specific, called for after thorough analysis of the Balance sheets of these companies and are very important and most relevant for the purpose of current investigation. In response to the notices, the petitioner failed to submit any of the details called for and thereby further summons were issued. Without furnishing the details sought for by the Enforcement Directorate, the petitioner is playing the tactics for derail and delaying the investigation and filed this Writ Petition with sole motive of stopping the investigation. Therefore, in the interest of justice, the petitioner be directed to comply with the summons dated 09.03.2021 and 09.08.2021 and attend personally the ED's office to give evidence and prays for dismissal of this petition.

6. This Court has carefully considered the rival submissions and also perused the materials placed before it.

7. Facts in the present case is not in dispute. The Directorate of Enforcement received an information against the petitioner and with respect to the information, in order to investigate the FEMA contraventions, the Directorate has issued summons under Section 37 of FEMA, 1999 r/w Section 131(1) of the Income Tax Act, requiring him to attend personally at the office on 17.03.2021 to give evidence and to produce the specified documents. The respondent Enforcement Directorate is diligently doing their duty in investigating the case and as claimed by the petitioner, if there is no contravention on the part of him, he shall produce all the required documents before the respondent and prove his bonafide. Therefore, this Court is not inclined to interfere with the impugned summons.

8. For the reasons aforesaid, this Writ Petition is dismissed. However liberty is granted to the petitioner to participate in the investigation proceedings, in compliance of the summons dated 09.03.2021 and 09.08.2021 and shall attend the enquriy either in person or through his authorized

representative before the respondent Office. No costs. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Director,
Office of the Joint Director,
Directorate of Enforcement, Chennai Zone II
III Block, III and IV Floor, Shastri Bhavan,
No.26, Haddows Road, Chennai 600 006.

W.P.No.21111 of 2021

SSI(CO)
CT 24/01/2022