IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2021

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.P.NO.25670 OF 2019
AND
W.M.P.NOS.25155, 25156 & 25159 OF 2019

Padmanabhan Kishore .. Petitioner

Vs.

Directorate of Enforcement,
Government of India, Ministry of Finance,
Department of Revenue, II & III Floor, "C" Block,
Murugesa Naicker Office Complex,
84, Greams Road, Chennai - 600 006,
Represented by its Assistant Director.
.. Respondent

Prayer:-

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, calling for the records in C.C.No.60 of 2018 pending on the file of the Principal Sessions Court, (City Civil Court), Chennai, dated 07.12.2018 and quash the proceedings.

For Petitioner : Mr.Abudu Kumar Rajarathinam
for Mr.S.Ashok Kumar

For Respondent : Mr.N.Ramesh
Special Public Prosecutor (ED)

ORDER

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

This writ petition has been filed seeking to call for the records in C.C.No.60 of 2018 pending on the file of the Principal Sessions Court, (City Civil Court), Chennai, dated 07.12.2018 and quash the proceedings.

2. The minimum facts that are required to decide this quash petition are as under:

2.1 One Andasu Ravinder (A1), IRS, was working as Additional Commissioner of Income Tax, Chennai. On intelligence, the Central Bureau of Investigation (for brevity "the CBI") checked a car that was parked in front of the premises of the said Andasu Ravinder's (A1) house on 29.08.2011 and recovered a sum of Rs.50,00,000/- in cash. It is alleged that Andasu Ravinder (A1) and one Uttam Chand Bohra (A3) were in that car at that time.

2.2 During investigation, it came to light that the sum of Rs.50,00,000/- was handed over to the said Andasu Ravinder (A1) by one Padmanabhan Kishore (A2), petitioner herein, whose income tax file was pending with Andasu Ravinder (A1) for clearance. Since Padmanabhan Kishore (A2) wanted certain benefits, he had allegedly paid the sum of Rs.50,00,000/- as bribe to Andasu Ravinder (A1).

2.3 In connection with this seizure, the CBI registered an FIR in R.C.No.MA1 2011 A 0033 on 29.08.2011 and after completing the investigation, filed charge sheet in C.C.No.3 of 2013 before the Special Court for the CBI Cases, Chennai, for the offences under Section 120-B IPC and Sections 7, 12, 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988, against Andasu Ravinder (A1), Padmanabhan Kishore (A2), Uttam Chand Bohra (A3), Ramakrishnan (A4), T.Banusekar (A5) and P.Chandrasekaran (A6). Since the case registered by the CBI disclosed the commission of a 'schedule offence' under the Prevention of Money Laundering Act, 2002 (for brevity "the PML Act"), the Enforcement Directorate registered a case in E.C.I.R.No.13 of 2016 and after completing the investigation, filed a complaint in C.C.No.60 of 2018 against Everonn Education Limited and three others including Padmanabhan Kishore (A2) for the offences under Section 3 r/w 4 of the PML Act, for quashing which, Padmanabhan Kishore (A2) is before this Court.

3. Heard Mr.Abudu Kumar Rajarathinam, learned counsel representing Mr.S.Ashok Kumar, learned counsel on record for Padmanabhan Kishore (A2)/petitioner and Mr.N.Ramesh, learned Special Public Prosecutor (ED) appearing for the Enforcement Directorate/respondent.

4. A reading of the complaint shows that the proceeds of crime has been determined as the sum of Rs.50,00,000/-, which is the subject matter of the case in C.C.No.3 of 2013.

5. The allegations against Padmanabhan Kishore (A2) in the CBI case is that he had paid a bribe of Rs.50,00,000/- to Andasu Ravinder (A1) for certain favours. When the CBI went to the house of Andasu Ravinder (A1), they found the sum of Rs.50,00,000/- in a car outside his house, in which, Andasu

Ravinder (A1) and Uttam Chand Bohra (A3) were present. The CBI seized the sum of Rs.50,00,000/- and now it is the subject matter of the case in C.C.No.3 of 2013.

6. Going by the allegations of the CBI, it was Andasu Ravinder (A1), who has obtained the sum of Rs.50,00,000/- from Padmanabhan Kishore (A2). Therefore, the sum of Rs.50,00,000/- is undoubtedly the proceeds of a crime. The CBI has seized the sum of Rs.50,00,000/- immediately as stated above. It is a corpus delicti in the CBI case.

7. For attracting the penal provisions of the PML Act, the accused should have projected the proceeds of a crime as untainted money. In this case, the sum of Rs.50,00,000/- as long as it was in the hands of Padmanabhan Kishore (A2) could not have been stated as a tainted money because it is not the case of the CBI in C.C.No.3 of 2013 that Padmanabhan Kishore (A2) had mobilised Rs.50,00,000/- via a criminal activity. The sum of Rs.50,00,000/- became the proceeds of a crime only when Andasu Ravinder (A1) accepted it as a bribe. Even before Andasu Ravinder (A1) could project the sum of Rs.50,00,000/- as untainted money, the CBI intervened and seized the money in the car on 29.08.2011.

8. Therefore, the prosecution of Padmanabhan Kishore (A2) under the PML Act, in our considered opinion, is misconceived.

In the result, this writ petition is allowed and the proceedings in C.C.No.60 of 2018 pending on the file of the Principal Sessions Court, (City Civil Court), Chennai, are quashed against Padmanabhan Kishore (A2)/petitioner. No costs. Connected W.M.Ps. are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

nsd

To

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

2. The Assistant Director,
   Directorate of Enforcement,
   Government of India,
   Ministry of Finance,
   Department of Revenue,
   II & III Floor, "C" Block,
   Murugesa Naicker Office Complex,
   84, Greams Road,
   Chennai - 600 006,

3. The Special Public Prosecutor(For ED),
   Madras High Court,
   Chennai - 600 104.

+2cc to Mr.S.Ashok Kumar, Advocate, S.R.No.12636

SRII(CO)
CS/22/03/2021