IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.01.2021

PRONOUNCED ON : 04.02.2021

Coram

THE HON'BLE MR. JUSTICE P.N.PRAKASH
AND
THE HON'BLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P. Nos. 24200 and 24202 of 2017
and
Crl.M.P.Nos.13992 & 13994 of 2017

J.Sekar @ Sekar Reddy .. Petitioner in Crl.O.P.No.24200 of 2017/ Accused 1

M/s. SRS Mining,
Represented by its partner Shri J.Sekar. .. Petitioner in Crl.O.P.No.24202 of 2017/ Accused 4

Vs.

The Directorate of Enforcement,
Represented by its,
Assistant Director,
Government of India,
Ministry of Finance, Department of Revenue,
II & III Floors, C Block,
Muregesa Naicker Office Complex,
No.84, Greams Road, Thousand Lights,
Chennai-600 006. .. Respondent in both Crl O.Ps/ Complainant

Criminal Original Petitions filed under Section 482 of Criminal Procedure Code praying to call for the records in C.C.No.2 of 2017 on the file of the Principal Sessions Court, Special Court for PMLA cases, Chennai and quash the same.

For Petitioners in Crl.O.P.No.24200 of 2017: Mr.Abdul Saleem for S.Saravanan

For petitioner in

Crl.O.P.No.24202 of 2017: Mr.Elambharathi

For Respondent in both Crl.O.Ps : Mr.N.Ramesh
Special Public Prosecutor
for Enforcement Directorate

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in C.C. No.2 of 2017 on the file of the Principal Sessions Court, Special Court for PMLA cases, Chennai.

2.The petitioner in Crl.O.P.No.24200 of 2017 is the first accused and the petitioner in Crl.O.P.No.24202 of 2017 is the fourth accused in C.C.No.2 of 2017 before the Principal Sessions Court, Special Court for PMLA cases, Chennai, in the prosecution launched under the Prevention of Money Laundering Act, 2002 for short ''PMLA''. The issue involved in both the petitions is one and the same. Hence, both the petitions are decided by this common.

3. We have heard Mr.Abdul Saleem, learned counsel for the petitioner in Crl.O.P.No.24200 of 2017 and Mr.Elambharathi, learned counsel for the petitioner in Cr.O.P.No.24202 of 2017 and Mr.N.Ramesh, learned Special Public Prosecutor appearing for the respondent and we have also perused the materials on record.

4. Learned counsel for the petitioners submitted that the petitioners seek to quash the case in C.C.No.2 of 2017 on the file of the Principal Sessions Court, Special Court for PMLA 2002, Chennai on the following grounds:

(i) On 08.12.2016 and 09.12.2016, the Income Tax Authorities Chennai conducted search in the residential office premises of Shri S.Sekar reddy and others and seized currencies and gold. The Income Tax Department informed the CBI about the seizure of currencies and gold. The CBI arrested the petitioners in Crime No.RC.MA1 2016 A0040 dated 19.12.2016 for the offence under Section 120(B) r/w 409, 420 IPC and 13(2), r/w 13(1) (C) and 13(1) (d) of Prevention of Corruption Act. The petitioners filed a bail petition and the CBI also filed a petition for police custody. Both the petitions were dismissed on 30.12.2016. To fill up the lacuna and to secure police custody, the CBI filed the second FIR in Crime No.RC MAI 20016 A0051 on 30.12.2016 and CBI further registered the third FIR in Crime No. RC MAI 2016 A0052 for the same transaction with similar offences. The FIR in RC MAI 20016 A0051 and RC MAI 2016 A0052 were quashed by this Court on 27.06.2018 in Crl.O.P.No.409 of 2017. Based on the FIR in RC.MA1 2016 A0040 dated 19.12.2016, the respondent filed enforcement case in information report (ECIR) No.19/2016 against these petitioners and others and investigated under the PMLA. The CBI, after a long period, filed the closure report in Crl.M.P.No.2604 of 2020 in RC.MA1 2016 A0040 before the XI Additional Sessions CBI Court. The learned judge accepting the closure report, closed the FIR. Thus, the CBI concluded the investigation in Crime No. RC.MA1 2016 A0040 under Section 120(b) r/w 409, 420 IPC and 13(2), r/w 13(1) (C) and 13(1) (d) of Prevention of Corruption Act against the petitioner Shri J.Sekar Reddy and others by filing a closure report under Section 173 (2) of Cr.P.C and dropping the action against A1 to A6 for lack of sufficient evidence, so that it was held that the accused persons have not committed any offence of cheating or conspiracy as alleged in the FIR. Since the schedule offence does not exist, the charges of money laundering cannot survive as prosecution is emerged on the ''Proceeds of Crime'' arising from commission of schedule offences.

(ii) The trial of the offences under the PMLA can never proceed without crime and unless that is established, any trial which proceeds under the PMLA would be pre-mature and if it proceeds, then, the court will have to assume that the accused is guilty of the schedule offences which would be against the spirit of the Act and the same would tantamount to double jeopardy, which has been declared unconstitutional and offences under Section 3 and 4 are not at all attracted as there is no offence committed, no hawala transactions or any other offence committed to give rise to proceeds of crime and consequent representation by the Petitioner of the same as untainted money.

(iii)While granting bail in the schedule Offence, the learned Special Judge for CBI has clearly observed that there is no material to connect the petitioner with the offence and no overt or covert act of omission or commission has been attributed to him. Since no specific act has been attributed to the petitioner in the schedule Offence, no 'proceeds of crime' connected with the said schedule Offence has been identified to be in possession of petitioner.

(iv) No person can be either prosecuted or proceeded against for the contravention of the PMLA unless the "proceeds of crime" are identified and relatable only to the criminal activity concerning a 'schedule Offence'. Indubitably, the respondents have miserably failed to even point out a remote link or connection of the money sought to be attached is the "proceeds of crime" as contemplated under the PMLA. Thus, the entire proceedings are without any substance whatsoever.

5. The learned counsel for the petitioners in order to support his case relied upon the following cases in ''Umesh Badrinarayan Bangur versus K.Nageshwar Rao'' , ''Nikesh Tarachand Shah Vs. Union of India and another'' and ''Inspector of Police, CBI/SCB, Cochin Vs. Assistant Director, Directorate of Enforcement (PMLA), cochin Zone'' and thus, the learned counsel for the petitioner has prayed to quash the above said case.

6.The learned counsel for the respondent submitted that though the commission of schedule offence in FIR has been closed by filing closure report, the Special Court, while dealing with the offences under this PMLA shall not depend upon any orders passed in respect of the schedule offence to support his arguments. He relied upon the explanation of Section 44 of the PMLA which reads as follows:

> 44. (d)
>
> ''[Explanation.-- For the removal of doubts, it is clarified that,--
>
> (i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the schedule offence, and the trial of both sets of offences by the same Court shall not be construed as joint trial;''

and also relied upon the decision of this Court in M/s.VGN Developers Pvt Ltd and Anr Vs the Deputy Director, Directorate of Enforcement, (Crl.O.P.No.9796 of 2019), in which this Court dismissed the quash petition and remitted the cases for trial and thus submitted that these two Criminal Original Petitions have no merits and they are liable to be dismissed.

7.The learned counsel for the petitioners submitted that the case in M/s.VGN Developers Pvt Ltd and Anr Vs the Deputy Director, Directorate of Enforcement, was factually different and that case was a criminal activity with involvement of Bank Officials. But in this case, the involvement of Bank Officials has no evidence, the allegation is not proved, no criminal activity with reference to any schedule offence is evident, there is no evidence to show the ''proceeds of Crime'' in possession of the petitioners and submitted that the decision in M/s VGN Developers is not applicable to the instant case.

8. We have considered the submissions of the learned counsel for the parties and also perused the materials available on record.

9.The background of the case is that on 08.12.2016 and 09.12.2016, the Income Tax Authority, Chennai, has conducted searches in the residential/office premises of the petitioner viz. Shri. J.Sekar Reddy and other accused persons. In the course of search, they seized following currencies and gold:

S.No.	Name of the premises	Cash (in Rs.)	Gold (in Kg)
1.	Residential premises of M.Premkumar, New No. 22, Old No.20, Kikpauk Garden Colony, 1st Cross Street, Kilapuk, Chennai	2,00,00,000/-	30 (valued at Rs.8,56,99,350/-)
2.	26/14, Yogambal Street, T.Nagar, Chennai	14,94,89,000/-	3 (valued at Rs. 86,13,000/-)
3.	No.36, Sudhama Building, Flat No.1, 1st Floor, Rear Block, Vijayaragava Road, T.Nagar, Chennai	88,55,34,000/-	--
4.	No.47, 49, VBC Solitaire, Bazhullah Road, T.Nagar, Chennai	1,48,66,800/-	1.5 (valued at 42,54,000)
5.	Room No.603, 606, the Residency, G.N.Chetty Road, T.Nagar, Chennai	-	93.995 (valued at Rs. 26,86,40,961/-)
Total		106,98,89,800/-	128.495 (valued at Rs.36,72,07,311/-)

After the search, the Income Tax Authorities informed the CBI Authorities. The CBI Authorities enquired and registered FIR in Crime No. RC.MA1 2016 A0040 under Section 120(b) r/w 409, 420 IPC and 13(2), r/w 13(1) (C) and 13(1) (d) of Prevention of Corruption Act. Apart from this FIR, the CBI registered two other FIRs against the petitioners/accused in RC MAI 20016 A0051 and RC MAI 2016 A0052 for the same offences which were quashed by this Court on 27.06.2018.

10. Since the offences under Sections 120(B), 420 IPC 1860 and Sections 13(2), r/w 13(1) (c) and 13(1)(d) of Prevention of Corruption Act, 1988 were schedule offences under Section 2(1)(x) and 2(1)(y) of the PMLA, the Enforcement Case Information Report (ECIR) No.19 of 2016 dated 19.12.2016 was registered against the petitioner Shri.J.Sekar Reddy and others. The respondent had enquired and conducted investigation. After recording the statement of the petitioners and others, the

respondent found new currencies of Rs.2,000/- for a total value of Rs.33,74,92,000/-. The details are as follows:

Sl.No.	Description	Amount (in Rs.) New Currency
1.	Amount seized by Income Tax Department from the Premises at Yogambal Stree, T.Nagar, Chennai, which was subsequently deposited in the Government P.D. Account of the Director of Income Tax (Inv.), Chennai (said to be owned by S/Shri Sekar Reddy, S.Ramachandran, K.Rethinam, partners of M/s SRS Mining)	1,63,06,000/-
2.	Amount seized by Income Tax Department from the Premises at Sudhamma Building, T.Nagar, Chennai, which was subsequently deposited in the Government P.D. Account of the Director of Income Tax (Inv.), Chennai (said to be owned by S/Shri Sekar Reddy, S. Ramachandran, K.Rethinam, partners of M/s SRS Mining)	8,00,00,000/-
3.	Amount Seized by Income Tax Department from the Premises Venu Jewellers, which was subsequently deposited in the Government P.D. Account of the Director of Income Tax (Inv.), Chennai (said to be owned by S/Shri Sekar Reddy, S.Ramachandran, K.Rethinam, partners of M/s SRS Mining)	11,86,000/-
4.	Amount Seized by Income Tax Department from Tata Ace Vehicle No.TN-23-BC-5757 which was subsequently deposited with SBI Main Branch, Vellore (Said to be owned by S/Shri Sekar Reddy, S.Ramachandran, K.Rethinam, Partners of M/s SRS Mining)	24,00,00,000/-
Total		33,74,92,000/-

11. The petitioner Shri.J.Sekar Reddy/A4 is a partner in SRS Mining doing sand business. According to the respondent, Shri.Sekar Reddy diverted the amount during the demonetisation period and converted the old currency notes into new currency notes. The allegation against the petitioner read as follows:

''6. That Shri J.Sekar Reddy (A-1) is the lion partner in the SRS Mining, who stationed at Chennai, had managed to receive daily collection of money pertaining to SRS Mining sand business collected from various places. Upon receiving such amounts, Shri Sekar Reddy used to divert the amounts as per his plan and more particularly in the instant case during the demonization period, he had managed and arranged to convert the old currency into the new currency as explained in the foregoing paragraphs. His partners S/Shri S.Ramachandran and K.Rathinam were admittedly used to arrange through their men in transporting the said daily collection of SRS Mining to reach Shri Sekar Reddy at Chennai. Thus in getting such conversations of demonitised notes into new currency and into 1kg gold bars, Shri J.Sekar Reddy had committed criminal offences specified under section 120B r/w.409 & 420 IPC 1860 r/w.section 13(2), 13(1)(c) & (d) of Prevention of Corruption Act, 1988; that out of these section 120B & 420 IPC, 1860 and Section 13(2), 13(1) (c) & (d) of Prevention of Corruption Act, 1988; are schedule offences under PMLA as envisaged in section 2 (1) (x) & 2 (1)(y) of PMLA that from the said criminal activities, he acquired the part of proceeds of crime in the form of movable property as mentioned in the schedule of property detailed above, as defined under section 2(1)(u) of PMLA. It has also been brought on record that he had arranged in conversion of new currency to the extent of Rs.6-7 crores through Parasmal Lodha who through his Hong Kong sources managed such conversion in India throug Mahaveer Hirani and Ashok M jain. It is submitted that though in his statements, Shri Sekar Reddy refused to divulge factual information in respect of Amarpal as referred by Shri Parasmal Lodha in his statement , it was found that in one of the loose sheets seized by the Income-tax Authorities from Sekar Reddy's premises (as referred in para 5.1 above) clearly mentions as entry of Ämarpal"and when showed and asked the same, Shri Sekar Reddy had intentionally did not reveal anything. Further, he had also managed to convert the unaccounted money in the form of old high denomination notes,

> generated from the sand mining business with the help of certain bank officials of various banks into new currency notes, which are being projected as untainted properties. He also managed to convert demonitised currencies into 1kg. gold bars through Shri Premkumar. Investigations under PMLA reveals that Shri J Sekar Reddy(A1) has involved in criminal activities and committed schedule offences in terms of section 2(1)(x) and 2(1)(y) of the PMLA, and by committing schedule offences he generated proceeds of crime in terms of section 2 (1)(u) of the Act and from the part of proceeds of crime, he managed to convert the unaccounted money in the form of old high denomination notes, generated from the sand mining business with the help of certain bank officials of various banks into new currency notes and into gold bars through Premkumar and projecting/claiming the same as untainted properties, thus he directly indulged in the offence of money laundering by virtue of section 3 of PMLA and punishable under section 4 of the PMLA''.

12.The argument of the counsel for the petitioners, that the trial of the offences under the PMLA can never proceed, when the FIR with regard to the schedule offence was closed for want of evidence and in the absence of connected evidence with a crime of schedule offence, the prosecution for offences under Sections 3 and 4 of the PMLA is unsustainable, cannot be accepted. We have considered the reliance placed by the learned counsel for the petitioners. The Principle stated therein is unhelpful to support the case of the petitioners, as our case is factually different. Because, from a reading of the provisions in the PMLA that though the commission of schedule offence is a fundamental pre-condition for initiating proceedings under the Act, ''the offence of money laundering is independent of the schedule offences'', the scheme of the PMLA indicates that it deals only with laundering of money acquired by committing the schedule offence. In other words, the PMLA deals only with the process or activity with the ''Proceeds of the Crime'' including its concealment, possession, acquisition or use. So that in the Act under Section 44 explanation (i) clearly indicated that the Special Court while dealing with the offence under the Act shall not be dependent upon any orders passed, in respect of the schedule offence.

13. Another argument of the learned counsel for the petitioners that the observation of the trial Court, while

granting bail, that there is no material to connect the petitioner with the offence will not be enough to quash the case which has to be decided only on legal evidence let in by the respondent. Therefore, we find that the argument of the learned counsel for the petitioners in this aspect is legally unsustainable and is accordingly rejected.

14. In this case, the Income Tax Department seized a total value of cash of Rs.106,98,89,800/- and gold of 128.495 kg, worth Rs.36,72,07,311/. Further, the respondent found Rs.33,74,92,000/- in the denomination of Rs.2,000/- notes during the demonetisation period. It is common knowledge that the Government of India demonetised Rs.500/- and Rs.1,000/- currency notes on 08.11.2016 and ordinary people stood in serpentine queues to exchange their old notes for new ones. While that being so, the seizure of around Rs.33 crores of brand new Rs.2,000/- denomination notes from the petitioners herein is indeed intriguing. After having registered three FIRs, the CBI suddenly changed course and filed a closure report, which is still more intriguing.

15. The learned counsel for the petitioners brought to the notice of this Court that, a learned Single Judge of this Court quashed two out of three FIRs that were registered by the CBI. In our opinion, as stated above, the explanation to Section 44 (1) of the PMLA is complete answer to the statement of the learned counsel for the petitioners. The distinction that the counsel for the petitioners sought to make for distinguishing the law laid down by this Court in VGN Developers (supra) is a distinction without a difference. Considering the above fact, we should not forget that money laundering, being an economic offence, poses a serious threat to the National economy and National interest and committed with cool calculation and deliberate design and with motive of personal gain regardless of the consequences to the society. We find no merit in these petitions.

In the result, these Criminal Original Petitions are dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vsn

To

1.The Assistant Director,
  Government of India,
  Ministry of Finance, Department of Revenue,
  II & III Floors, C Block,
  Muregesa Naicker Office Complex,
  No.84, Greams Road, Thousand Lights,
  Chennai-600 006.

2.The Principal Sessions Judge,
  Special Court for PMLA 2002
  Chennai.

3.The Public Prosecutor,
  High Court, Madras.

+2cc to Mr.M. Vijaya Mehanath, Advocate, S.R.No.5967, 5968

PVS(CO)
SM/01/03/2021

Crl.O.P.Nos. 24200 and 24202 of 2017
and
Crl.M.P.Nos.13992 & 13994 of 2017