IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.02.2021

PRONOUNCED ON : 23.02.2021

CORAM

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

CRL.O.P.No.29216 of 2018
AND
CRL.M.P. No.17112 of 2018

T.K.S.Pugazhendhi .. Petitioner /5th Accused

Vs.

Directorate of Enforcement
Rep. by its Deputy Director
(The Prevention of Money Laundering Act, 2002)
Government of India
Ministry of Finance
Department of Revenue
2nd & 3rd Floor, C Block
Murugesan Naicker Complex
84, Greams Road, Thousand Lights
Chennai 6 .. Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to quash the proceedings in C.C.No.13 of 2018 pending on the file of the Principal Sessions Judge, (Spl.Court for PMLA Cases) Chennai as against the petitioner.

For Petitioner : Mr.N.Ramakrishnan
for M/s.Waron and Sai Rams

For Respondent : Mr.R.Sankaranarayanan
Additional Solicitor General
assisted by Mr.N.Ramesh
Special Public Prosecutor for ED

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O R D E R

P.N.PRAKASH, J.

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

2. On a complaint lodged by the General Manager, State Bank of India (SBI), Chennai, the CBI registered an FIR in Crime No.RC.05/E/2018-BS&FC/BLR on 21.03.2018 for the offences under Sections 120-B, 420, 467, 468 and 471 IPC read with Sections 13 (2) and 13(1)(d) of the Prevention of Corruption Act, 1988, against M/s.Kanishk Gold Pvt. Ltd. (in short "KGPL"), Chennai and five named accused. The sum and substance of the allegations in the FIR is that, during 2011, a consortium of 14 banks with SBI as the lead bank, had sanctioned working capital credit facilities which KGPL (A1) had allegedly diverted, resulting in loss to the banks to the tune of Rs.824.15crores as on 31.12.2017. Since the FIR disclosed the commission of a 'schedule offence' under the Prevention of Money Laundering Act, 2002 (in short "the PML Act"), the Enforcement Directorate registered a case in ECIR No.CEZO-I/07/2018 on 22.03.2018, conducted investigation under the PML Act, collected materials and filed a complaint in C.C.No.13 of 2018 in the Court of the Principal Sessions Judge (Special Court), Chennai, against KGPL (A1), Bhoopesh Kumar Jain (A2), Mohanlal Jewellers Pvt. Ltd. (in short "MJPL") (A3), Suresh Khatri (A4) and T.K.S.Pugazhendhi (A5) for the offence under Section 3 read with 4 of the PML Act, for quashing which, Pugazhendhi (A5) is before this Court under Section 482 Cr.P.C.

3. Heard Mr.N.Ramakrishnan for M/s.Waron and Sai Rams, learned counsel for Pugazhendhi (A5) and Mr.R.Sankaranarayanan, learned Additional Solicitor General assisted by Mr.N.Ramesh, learned Special Public Prosecutor appearing for the Enforcement Directorate.

4. The sum and substance of the allegation in the impugned complaint is that, KGPL (A1) obtained huge loans from a consortium of banks headed by the State Bank of India (SBI) and did not use the loans for the intended purpose; KGPL (A1) had purchased three properties from Pugazhendhi (A5) for which, the sale consideration shown in the sale deeds were not actually given and instead, KGPL (A1) and Pugazhendhi (A5) had entered into a conspiracy in the form of a Memorandum of Understanding (MOU) dated 27.12.2016, in order to offer the property of Pugazhendhi (A5) as collateral security to the banks.

5. The allegation against Pugazhendhi (A5) is available in paragraph 17.1 at page 60 of the complaint. The complaint clearly states that, KGPL (A1) had purchased three properties from Pugazhendhi (A5) viz. property A, B and C; property A was registered in the name of KGPL (A1) vide document No.5075 of 2016 dated 30.12.2016 and the sale consideration was shown as Rs.5,19,27,600/-; properties B and C were purchased by KGPL (A1) vide sale deed No.5058 of 2016 dated 29.12.2016 for a total sale consideration of Rs.3,52,61,200/-.

6. It is the specific case of the Enforcement Directorate that the sale consideration shown in the sale deed, was not actually transferred to Pugazhendhi (A5) and only a sum of Rs.4,61,08,373/-, was in fact transferred to Pugazhendhi (A5). Both Bhoopesh Kumar Jain (A2) and Suresh Khatri (A4), in their statements to the Enforcement Directorate, have stated that, the full sale consideration was not transferred to Pugazhendhi (A5) because, Pugazhendhi (A5) had only wanted a loan from KGPL (A1), for which, he gave his properties as security. KGPL (A1), in stead of giving a mortgage loan to Pugazhendhi (A5), had the properties transferred in their name by paying Rs.4,57,25,000/- to Pugazhendhi (A5), but, both KGPL (A1) and Pugazhendhi (A5) have entered into a MOU dated 27.12.2016, under which, Pugazhendhi (A5) had agreed to return Rs.4,57,25,000/- within one year to KGPL (A1) and on such return, KGPL (A1) should reconvey the property.

7. It is Pugazhendhi's case that, after having agreed so, KGPL (A1) gave his property as collateral security to the banks on 02.01.2017, for which, on the complaint of Pugazhendhi (A5), a separate case in Crime No.4 of 2018 has been registered by the Central Crime Branch-II, Chennai on 10.01.2018 against KGPL (A1).

8. According to the Enforcement Directorate, the MOU dated 27.12.2016 is a sham and nominal document. However, investigation conducted by the Enforcement Directorate shows that, only a sum of Rs.4,57,25,000/- was actually given to Pugazhendhi (A5) as against the sum of Rs.8,71,88,800/- disclosed in the two sale deeds. Pugazhendhi (A5) has also filed suit against KGPL (A1) to set aside the two sale deeds dated 29.12.2016 and 30.12.2016, on the ground that he did not actually sell the properties, but, gave them as securities for the loans he had taken from KGPL (A1).

9. On these admitted facts, we are unable to decipher as to how Pugazhendhi (A5) can be prosecuted under Section 3 of the PML Act, for allegedly projecting tainted money as untainted money. It is not the case of the Enforcement Directorate that

Pugazhendhi (A5) had purchased the three properties from the funds provided by KGPL (A1). It is their specific case that Pugazhendhi (A5) had helped KGPL (A1) by executing two sale deeds for the three properties so that, KGPL (A1) could give them as collateral to the banks. Even if we proceed to agree with the above theory and hold that the MOU dated 27.12.2016 was sham and nominal, yet, that cannot bring Pugazhendhi (A5) within the net of PML Act. Pugazhendhi (A5) can at the most be prosecuted for the predicate offence that has been registered by the CBI against KGPL (A1), for having conspired with KGPL (A1) to get loans from the banks by giving his properties for a sham value.

10. In this very prosecution, we have dismissed the quash petitions in Crl.O.P.Nos.20127 and 25688 of 2018 that were filed by Suresh Khatri (A4) and MJPL (A3) respectively, on the ground that there are prima facie materials to show that they indulged in money laundering.

In the result, this Criminal Original Petition is allowed and the proceedings against Pugazhendhi (A5) in C.C.No.13 of 2018 on the file of the Principal Sessions Judge, Chennai, is quashed. Connected Crl.M.P is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

gya

To

1.The Deputy Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
2nd & 3rd Floor, C Block
Murugesan Naicker Complex
84, Greams Road, Thousand Lights
Chennai 6

2.The Principal Sessions Judge(Spl.court for PMLA Cases)
Chennai

3.The Spl. Public Prosecutor for enforcement cases
High Court, Madras

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+2cc to M/s.Waraon & Sai Rams, Advocate SR.11145

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