



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**Reserved on : 19.11.2021**

**Delivered on : 02.12.2021**

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**CORAM:**

**THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN**

**and**

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN**

**Crl.O.P. (MD)No.14561 of 2020**

**and**

**Crl.M.P. (MD)Nos.6856 of 2020 & 2166 of 2021**

Dhayanidhi Alagiri

... Petitioner/Accused No.3

-VS-

Directorate of Enforcement,  
Rep. by the Assistant Director,  
Government of India,  
II & III Floor, C Block,  
No.84, Murugesu Naicker Office Complex,  
Thousand Lights,  
Chennai - 600 006.

... Respondent/Complainant

**Prayer:-** Petition filed under Section 482 of Cr.P.C. to quash the summon dated 10.11.2020, [D.No.504, dated 11.11.2020] issued by the learned II Additional District Judge for C.B.I. Cases, Madurai, in C.C.No.3 of 2020, which was taken cognizance based on the complaint in ECIR/CEZO/11/2013 registered under Section 45 read with Sections 70 and 8 (5) of the Prevention of Money-Laundering Act, 2002, on the file of the respondent.

|                |   |                                                                                                                                           |
|----------------|---|-------------------------------------------------------------------------------------------------------------------------------------------|
| For Petitioner | : | Ms.P.Bagyalakshmi                                                                                                                         |
| For Respondent | : | Mr.R.Sankaranarayanan<br>Assistant Solicitor General of India<br>Asst by Mr.R.Vijayarajan<br>Special Public Prosecutor for<br>Enforcement |

**ORDER**

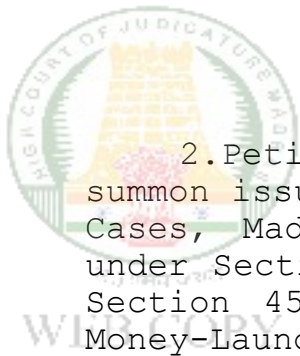
**S.VAIDYANATHAN, J.**

**and**

**G.JAYACHANDRAN, J.**

The petitioner herein is the third accused in C.C.No.3 of 2020 on the file of the Special Court for PMLA Cases (Court of Principal Sessions Judge) Madurai.

<https://hdservices.courts.gov.in/hdservices/>



2. Petition under Section 482 of Cr.P.C. is filed to quash the summon issued by the learned II Additional District Judge for C.B.I. Cases, Madurai, in C.C.No.3 of 2020, calling for his attendance under Section 61 of Cr.P.C., to answer the charge of offences under Section 45 read with Sections 70 and 8(5) of the Prevention of Money-Laundering Act, 2002 [in short 'the PMLA'].

3. This petition is filed to quash the said summon broadly on the following two grounds:-

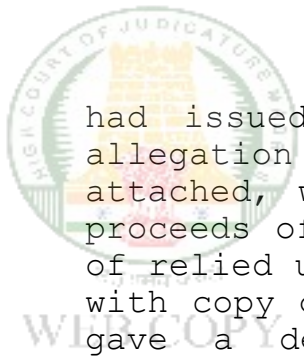
(a) Firstly, the petitioner contends that there is a statutory infirmity in taking cognizance of the Enforcement Directorate complaint by the learned Special Judge without registering F.I.R. at the commencement of its investigation as provided under Section 154 of Cr.P.C.

(ii) Secondly, the adjudicating proceedings initiated under the PMLA against the petitioner herein for provisional attachment of his property was held to be unsustainable by the adjudicating authority, vide order dated 11.10.2019. While a competent authority has held that the property possessed by the petitioner herein does not fall within the meaning of 'proceeds of crime' as defined under the PMLA, under the same proceedings i.e., in ECIR/CEZO/11/2013, the Enforcement Directorate cannot continue the prosecution against the petitioner under Section 45 read with Sections 70 and 8 (5) of the PMLA.

**The background of the case:-**

4. Based on the complaint given by the Village Administrative Officer, Keelavalavu Village, Madurai District, a case in Crime No.161 of 2012 was registered against this petitioner and two others for the offences under Section 120-B read with Sections 447, 379, 430, 420, 465, 467, 468, 471, 116, 202, 409, 304, 511, 109, 114 and Section 34 of I.P.C. and Section 3(1)(ii) of TNPPDL Act, 1992 and Section 6 read with Sections 3(a) and 4(a) of the Explosive Substances Act. After completion of investigation, final report before the learned Judicial Magistrate filed in P.R.C.No.30 of 2018.

5. Since the offences registered by the Keelavalavu Police in Crime No.161 of 2012 discloses commission of scheduled offence by the accused persons, the Enforcement Directorate being satisfied that there is a *prima facie* case of an offence of money-laundering as defined under Section 3 of the PMLA and punishable under Section 4 of the said Act, registered ECIR/CEZO/11/2013, dated 18.09.2013 and took up the investigation as per the provisions of the PMLA. Consequently, the Enforcement Directorate issued the Provisional Attachment Order [PAO], dated 23.04.2019 and submitted a complaint dated 01.05.2019 before the adjudicating authority along with copies of relied upon documents. The complaint was taken on file by the adjudicating authority as Original Complaint (OC) No.1141 of 2019. The adjudicating authority after taking cognizance of the complaint,



had issued a show cause notice dated 21.05.2019 to answer the allegation that the subject properties, which were provisionally attached, were purchased out of illegally acquired funds or out of proceeds of crime and fixed personal hearing on 03.07.2019. Copies of relied upon documents were also furnished to the petitioner along with copy of the complaint dated 01.05.2019. The petitioner herein gave a detailed reply dated 30.07.2019, to the adjudicating authority explaining the legitimacy and the source of funds, from which, the subject properties were purchased. Corroborative material evidences, like Bank Account statements, Balance Sheets etc. of the Companies, wherein the petitioner has been associated and had substantial gains, copies of Income Tax Returns for the relevant periods and other relevant materials were also furnished along with the reply.

6.After enquiry, the adjudicating authority arrived at a finding that there is no material to substantiate the contentions of the respondents made to justify the Provisional Attachment of the petitioner's property dubbed as proceeds of crime. The reasoning and conclusion of the adjudicating authority was as below:-

*''(a) There are no materials to substantiate the contentions of the respondents justifying the provisional attachment of the properties of the petitioner, vide P.A.O., dated 23.04.2019 and the properties standing in the name of the petitioner are not involved in money-laundering.*

*(b) The Enforcement Directorate failed to annex the translated version in English while filing the relied upon documents [RUD] before him. None of the said statements have referred to the name of the petitioner herein in relation to the business activities of the first accused. All of them have referred to the name of the second accused in relation to the activities of the first accused. Significantly, none of them have assigned any role or involved in relation to the quarrying activities referred to in the charge sheet and as referred to by the Enforcement Directorate in the course of investigation. Nothing is deposed by the named witnesses, who have given statements under Section 50 of the PMLA against the petitioner herein, in relation to any activity of laundering of the proceeds of crime.''*

7.In the above said circumstances, the complaint filed by the Enforcement Directorate before the Special Court to proceed against the petitioner and two others was taken on file and summons were issued.



8.In the said complaint filed by the Enforcement Directorate, Rep. by its Assistant Director, M/s.Olympus Granites Private Limited, Madurai, Rep. by its Managing Director S.Nagarajan is the first accused, S.Nagarajan is the second accused and A.Dhayanidhi [the petitioner] is the third accused.

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9.The complaint is filed under Section 45 read with Sections 70 and 8(5) of the PMLA, on the premise that the case in Crime No.161 of 2012 on the file of Keelavalavu Police Station is the predicate offences under Section 120-B, 411, 420, 471 and 304(ii) of I.P.C. and Sections 3(a) and 4(a) of the Explosives Substances Act, 1908 committed by the first accused, represented by its shareholders viz., the second and the third accused. The alleged offences are offences mentioned in the schedule to the PMLA. The evidence available since indicated *prima facie* case of an offence of money-laundering, the Enforcement Case Information Report [ECIR] No.11/2013, dated 18.09.2013, was recorded and investigation conducted. The statements of persons concerned as well as the witnesses were recorded as per Section 50 of the PMLA. The statements had revealed that M/s.Olympus Granites Private Limited (A1), S.Nagarajan (A2) and A.Dhayanidhi (A3) and two other individuals had unlawfully generated income, which is proceeds of crime, embroiled in its accusation of the assets in the name of the first accused Company and assets in their individual name. A part of the crime proceeds have been moved into the organizational system of the first accused Company and has been shown as licit in the books of account. The pecuniary benefits gained through the criminal activities were mixed and blended with the regular sale. The pecuniary benefits were utilized to acquire immovable/movable properties in the names of A1 to A3. For the scheduled offence, case has been filed in P.R.C.No.30 of 2018 [Crime No.161 of 2012, Keelavalavu Police Station], dated 30.06.2018. Whereas, the properties suspected to be the proceeds of crime and held by the first accused Company and other accused persons sought to be provisionally attached invoking Section 5 of the PMLA in O.C.No.1141 of 2019.

10.For the offence of money-laundering, a complaint is filed against the first accused Company and five other individuals, seeking to take cognizance of the offence of money-laundering and pass an order of confiscating the properties involved in money-laundering. The said complaint was taken cognizance by the Special Court, numbered as C.C.No.3 of 2020. The causation of summon in the said complaint is the subject matter of this Petition.

11.The learned counsel appearing for the petitioner vehemently argued that when the adjudicating authority had held that the properties sought to be provisionally attached does not fall within the meaning of proceeds of crime, the plea to confiscate the same by virtue of Section 8(5) of the PMLA, is premature, illegal and beyond the scope of Sections 45 and 70 of the Act. Further, it was



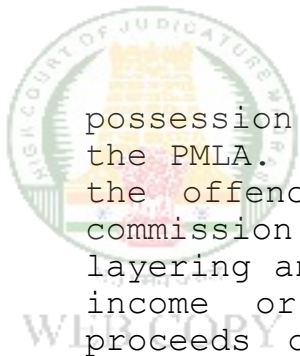
submitted that issuance of summons based on the complaint on the assumption that the petitioner had involved in the activity of money-laundering is contrary to the finding of the adjudicating authority recorded after giving due opportunity to the parties concerned.

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12.Per contra, the learned Assistant Solicitor General of India appearing for the respondents besides filing a detailed reply, would contend that the proceedings initiated for provisional attachment of the property under Chapter - III of the PMLA is independent to the criminal prosecution initiated under Chapter - II of the PMLA. In the instant case, no doubt, the adjudicating authority being not satisfied with the records, had set aside the order of provisional attachment of the proceeds of crime held in the name of the petitioner herein. However, this will not enure any immunity on the petitioner herein from being prosecuted under Chapter - II of the PMLA. Further, the learned Assistant Solicitor General of India would submit that the order of the adjudicating authority relied by the petitioner herein is subjected to appeal and not reached finality. Therefore, the observation and finding of the adjudicating authority have no relevance to the prosecution launched against the petitioner herein under Section 45 read with Sections 70 and 8(5) of the PMLA. The evidence collected in the course of investigation reveals that the first accused Company, in which, the petitioner herein was the Director/shareholder and had interest in the Company while it was making wrongful gain by illegal and unauthorized quarrying.

13.Regarding the cognizance of taking complaint of the Assistant Director of Enforcement Directorate by the learned Special Judge, the learned Assistant Solicitor General of India would submit that under Section 45 of the PMLA, the Special Court is empowered to take cognizance on a complaint in writing made by the Director or any Officer of the Central Government or State Government authorized in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government. The provisions of Section 45 of the PMLA is notwithstanding anything contained in the Code of Criminal Procedure. Therefore, the learned Assistant Solicitor General of India would submit that the plea raised by the learned counsel for the petitioner that there is legal error in taking cognizance of the offence by the Special Court without registering a complaint under Section 154 of Cr.P.C. is unsustainable.

14.The learned Assistant Solicitor General of India would further submit that the crime of money-laundering and holding the proceeds of crime are not one and the same. The process of money-laundering passes through many stages. It is not always the person, who has committed a scheduled crime will be holding the proceeds of the crime. The crime of money-laundering is prosecuted under



possession of *Corpus delicti* is adjudicated under Chapter - III of the PMLA. The said adjudication is preventive in nature. As far as the offence of money-laundering is concerned, it commences from commission of crime and end with laundering the illicit money by layering and moving it into a system to show it as if it is a licit income or untainted property. For launching prosecution, the proceeds of crime derived out of the predicate offence may be available or may not be available. If available, it may in the hands of the person, who has commissioned the scheduled crime or by any third party. Even assuming the authorities unable to establish the fact that the assets available in the hands of the petitioner herein is proceeds of crime, it will not take away the rigour of prosecuting him for the commission of crime. Therefore, the crime of money-laundering, which is now the subject matter of C.C.No.3 of 2020, cannot be whittle down or quashed for the reason that the adjudication proceedings for provisional attachment is set aside. Prosecution under Section 45 of the PMLA not dependant on the action of Provisional Attachment or the result of the Provisional Attachment initiated under Section 5 of the PMLA.

15.The learned Assistant Solicitor General would also submit that the provisional attachment of the crime proceeds is a preventive action to secure the proceeds of crime, in case, if it is proved that the accused have involved in money-laundering and the proceeds of crime, which is to be confiscated, should not be concealed/transferred or screened or diluted. To ensure the confiscation of the fruits of the crime, provisional attachment order is sought for. Order passed by the adjudicating authority refusing to confirm the Provisional Attachment shall have no bearing in the judicial process of prosecuting the accused under Chapter - II of the PMLA.

16.Heard the learned counsel for the petitioner and the learned Assistant Solicitor General of India for the respondent.

17.For better understanding of the rival submissions made by the respective learned counsels, it is necessary to analyse the relevant Sections of the PMLA, which are extracted below:-

***''3.Offence of money-laundering.-***

*Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*

***Explanation.-*** For the removal of doubts, it is hereby clarified that, -

*(i) a person shall be guilty of offence of*



money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property; or
- (f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

#### **4.Punishment for money-laundering.-**

Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "'which may extend to seven years'", the words "'which may extend to ten years'" had been substituted.

#### **5.Attachment of property involved in money-laundering.-**

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime



under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report for complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this Section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this Section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act:

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this Section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) of section 8, whichever is earlier.



(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

**Explanation.**— For the purposes of this sub-section 'person interested', in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

### **8 Adjudication. —**

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred



to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized frozen property or record shall—

(a) continue during investigation for a period not exceeding three hundred and sixty five days or the pendency of the proceedings relating to any offence under this Act before a Court or under the corresponding law of any other country, before the competent Court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of Section 8 or Section 58-B or sub-section (2-A) of Section 60 by the Special Court.

**Explanation.-** For the purposes of computing the period of three hundred and sixty five days under clause (a), the period during which the investigation is stayed by any Court under any law for the time being in force shall be excluded.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under Section 5 or frozen under sub-section (1-A) of Section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1-A) of Section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it



shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of Section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money-laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money-laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

#### **44. Offences triable by Special Courts.-**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-

(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that Section shall be triable by the Special Court



constituted for the area in which the offence has been committed:

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or;

(b) a Special Court may upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under Section 3, without the accused being committed to it for trial:

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

(c) if the Court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed;

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.

**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 scheduled offence, and the trial of both sets of offences by the same Court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court



regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

**45. Offences to be cognizable and non-bailable.—**

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence under this Act shall be released on bail or on his own bond unless—

(i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and

(ii) where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who is under the age of sixteen years or is a woman or is sick or infirm, or is accused either on his own or along with other co-accused of money-laundering a sum of less than one crore rupees may be released on bail, if the Special Court so directs:

Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by—

(i) the Director; or

(ii) any officer of the Central Government or State Government authorised in writing in this behalf by the Central Government by a general or a special order made in this behalf by that Government.

(1A) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed.

(2) The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

**Explanation.—** For the removal of doubts, it is clarified that the expression "'Offences to be



cognizable and non-bailable'' shall mean and shall be deemed to have always meant that all offences under this Act shall be cognizable offences and non-bailable offences notwithstanding anything to the contrary contained in the Code of Criminal Procedure, 1973 (2 of 1974), and accordingly, the officers authorised under this Act are empowered to arrest an accused without warrant, subject to the fulfilment of conditions under Section 19 and subject to the conditions enshrined under this section.''

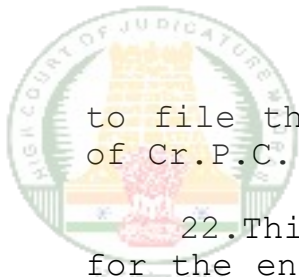
18.A careful reading of the above provisions of the PMLA, will expose the dual fallacies in the petitioner's submission. Firstly, the impugned complaint filed by the respondent, reads as below:-

'The complainant is the Assistant Director, Directorate of Enforcement, Ministry of Finance, Government of India and the complaint is being filed under Section 45 of the Prevention of Money-Laundering Act, 2002 [hereinafter referred to as PMLA, 2002], for commission of offence defined under Section 3 of the PMLA, 2002 and punishable under Section 4 of the PMLA, 2002, against the aforesaid persons. It is submitted that the complainant is the authorized person for filing the complaint read with Notification vide Notification GSR.441(E), dated 01.07.2005, as amended by GSR.579(E), dated 29.08.2013, issued by Central Government and Order in F.No.6/14/2008-ES, dated 11.11.2014 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, Circular Order (Tech.) No.8/2015, dated 26.08.2015, issued by the Directorate of Enforcement, H. Qrs. New Delhi.''

19.Thus, the complaint by the Authorised Officer is akin to a private complaint under Section 200 of Cr.P.C. and it is not a final report by Police Officer under Section 173(2) of Cr.P.C. It is clearly stated in the complaint that it is filed by the Officer, who is duly authorized by the Central Government to file complaint in writing in tune with the second proviso to Section 45(1) of the PMLA [extracted supra].

20.Both the Sections 44 and 45 of the PMLA commence with the *non-obstante* clause, indicating the complaint in writing by a duly Authorised Officer to be taken cognizance by the learned Special Judge without the accused being committed, notwithstanding anything contained in the Cr.P.C.

21.In view of the above, this Court has no hesitation to hold <https://hccs.courts.mca.gov.in/eservices/> the petitioner/A3 regarding locus of the respondent



to file the complaint without registering F.I.R. under Section 154 of Cr.P.C. is unfounded and held against the petitioner.

22.This Court, on a careful reading of the object and reason for the enactment of the PMLA and its provisions, clear in its mind that the intention of the legislators is to achieve two objects. First, to prevent money-laundering and next to provide for confiscation of property derived from or involved in money-laundering. While Chapter - II of the PMLA deals with prosecuting the Company and persons involved in money-laundering and thereby, prevent money-laundering, Chapter - III provides for preventing the proceeds of crime being further diluted or disbursed pending trial of the prosecution for money-laundering. The adjudication process under Chapter - III is independent and it is the quasi judicial authority exercising the power to ensure that any person, who is in possession of any proceeds of crime does not conceal, transfer or deal with in any manner which may result in frustrating any proceedings relating to confiscation.

23.In the subject complaint [C.C.No.3 of 2020], the respondent herein pray for two reliefs. One to proceed against the accused persons for money-laundering and second to confiscate the proceeds of crime. As far as the punishment for money-laundering is concerned, Section 4 of the Act prescribes rigorous imprisonment for a period of not less than three years, but which may extend to seven years and shall also be liable to fine. Provided the proceeds of crime involved in money-laundering relating to offences under the Narcotic Drugs and Psychotropic Substances Act, the period of imprisonment may extend to ten years. The finding of the adjudicating authority is not a clean chit to the petitioner herein for the offence of money-laundering. At the most, it is only a finding regarding the properties, which were sought to be provisionally attached are not proceeds of crime. The said finding of the adjudicating authority not to be understood that the petitioner has not committed a crime of money-laundering. At the risk of repetition, the relevant provision regarding the offence of money-laundering again extracted below:-

***''3.Offence of money-laundering.-***

*Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*

***Explanation.-*** For the removal of doubts, it is hereby clarified that, -

*(i) a person shall be guilty of offence of money-laundering if such person is found to have*



directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property; or
- (f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.''

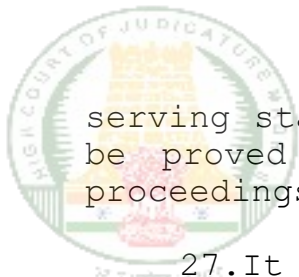
24.As explained in the Act under Section 3(i) and (ii), a person shall be guilty of the offence of money-laundering, if he is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party in one or more process or activities connected with proceeds of crime. The process or activities are mentioned in the Act are,

- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property; or
- (f) claiming as untainted property.

Clause (ii) of Section 3 of the Act says that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

25.Therefore, in the opinion of this Court a *prima facie* satisfaction of the adjudicating authority in a preventive proceedings regarding certain properties, noway stand in the way of prosecuting the person accused of the offence of money-laundering, which covers not only possession but also use or concealment.

26.Now, coming to the plea raised by the petitioner herein that he is no way connected with the first accused Company, this Court finds that this plea is a self-serving statement, contrary to the statement of the witnesses recorded by the respondent and the records collected during the investigation. Even if the said self-



serving statement of the petitioner herein is true, the same has to be proved in the course of trial and a petition to quash the proceedings is not the recourse for the petitioner.

27.It is to be noted that the adjudicating authority though found the listed properties, which are in the name of the petitioner, are not proceeds of crime, at the same time, it has confirmed the PAO in respect of the Company viz., M/s.Olympus Granites Private Limited, in which, the petitioner herein has pecuniary interest.

28.At this juncture, it would be appropriate to peruse the provisions of Section 70 of the PMLA, which reads as below:-

***''70. Offences by companies.-***

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

***Explanation 1.-*** For the purposes of this Section,-

(i) *''company''* means any body corporate and includes a firm or other association of individuals; and

(ii) *''director''*, in relation to a firm, means a partner in the firm.'

***Explanation 2.-*** For the removal of doubts, it is



*hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal judicial person shall be contingent on the prosecution or conviction of any individual.''*

29. Therefore, even assuming the finding of the adjudicating authority has reached finality, the summons issued to the petitioner herein cannot be treated as premature or illegal, since the petitioner is liable to face the trial both in his individual capacity as well as a person in-charge and responsible for the conduct of the business of AI Company, which has alleged to have contravened the provisions of the PMLA.

30. For the above said reasons, this Court holds that this Petition is devoid of merits and liable to be dismissed. Accordingly, it is dismissed. Consequently, connected Miscellaneous Petitions are closed. The trial Court is directed to proceed with the complaint in C.C.No.3 of 2020 and dispose it as expeditiously as possible, preferably on day-to-day basis, without adjourning the matter beyond five working days at any point of time.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1. The II Additional District Judge for CBI Cases,  
Madurai.

2. The Assistant Director,  
Directorate of Enforcement,  
Government of India,  
II & III Floor, C Block,  
No.84, Murugesu Naicker Office Complex,  
Thousand Lights, Chennai - 600 006.

3. The Special Public Prosecutor for Enforcement,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.VIJAYARAJAN, Advocate ( SR-37323[F]  
dated 03/12/2021 )

order in

**CrI.O.P. (MD)No.14561 of 2020**

**02.12.2021**

(CO)

GC(10.12.2021) 18P 5C

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