



Criminal Original Petition No.15636 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.11.2022

CORAM

**THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN**

**Criminal Original Petition No.15636 of 2015
and
M.P.No.1 of 2015**

Directorate of Enforcement, Chennai,
Government of India,
represented by
G.Augustine Paul Sudhakar,
Assistant Director [PMLA],
II & III Floor, MNO Complex,
No.84, Greams Road, Chennai - 6.

.. Petitioner

Vs.

1.Suresh Kumar @ Suresh
S/o.Azhaguraja Perumal

2.Inspector of Police,
Mamallapuram PEW,
Kancheepuram District.

.. Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to set aside the order dated 18.06.2015 in C.M.P.No.1631 of 2015 on the file of learned Judicial Magistrate, Thirukazhukundram, in Crime No.96/2015 on the file of Mamallapuram



PEW and direct not to return any of the properties in the subject case till the investigation is completed by the Directorate of Enforcement.

For Petitioner : Mr.S.Sasikumar
Special Public Prosecutor [ED]

For Respondents : Mr.N.Manoharan [R1]
Mr.R.Muniyapparaj
Additional Public Prosecutor [R2]

ORDER

[Made by **P.N.PRAKASH, J**]

On 04.11.2022, we passed the following order:

"The circumstances, under which, this criminal original petition under Section 482 Cr.P.C. has been filed by the Enforcement Directorate (for brevity "the ED") are under:

- On 05.03.2015, the Inspector of Police, Prohibition Enforcement Wing (PEW), Mamallapuram, intercepted a Toyota Innova car bearing Registration No.TN-09-AV-3256 near Vengambakkam-Veeranam link road and found that the vehicle was used for transporting illicit liquor. The driver of the vehicle was one Suresh Kumar @ Suresh (accused/first respondent herein).
- The police interrogated Suresh Kumar based on his police confession, his house in Puducherry was searched on the same day, from where, cash of Rs.28,35,000/- (Rupees Twenty Eight Lakhs and Thirty Five Thousand Only), nine items of gold ornaments totally weighing 163 gms., one silver anklet weighing 74 gms. and seven fake R.C. books were recovered under the cover of police mahazar.
- Thereafter, the police registered a case in Mamallapuram



PEW Crime No.96 of 2015 on 05.03.2015 for the offences under Sections 4(1)(aaa) and 4(1)-A of the Tamil Nadu Prohibition Act, 1937 (for brevity “the TNP Act”) r/w Rules 7 and 11 of the Rectified Spirit Rules, 2000 (Transporting) (for brevity “the RS Rules”) against Suresh Kumar.

- Suresh Kumar was arrested and remanded in judicial custody. The seized gold ornaments and silver anklet were produced before the District Munsif-cum-Judicial Magistrate Court, Thirukazhukundram, and the same were received in P.I.No.41 of 2015 dated 06.03.2015. Similarly, the cash of Rs.28,35,000/- was also produced before the District Munsif-cum-Judicial Magistrate Court, Thirukazhukundram and the same was received in P.I.No.42 of 2015 dated 07.03.2015.
- Since fake R.C. books were found in the possession of Suresh Kumar, the police filed an alteration report to include Sections 465, 467, 466, 468, 471 and 420 IPC along with the prohibition offences in Crime No.96 of 2015.
- Since the altered FIR disclosed the commission of scheduled offences under the Prevention of Money Laundering Act, 2002 (for brevity “the PML Act”), the ED registered a case in ECIR/CEZO/6/2015 dated 06.05.2015 and took up investigation. The Officials of ED obtained permission from the remanding Magistrate to interrogate Suresh Kumar in Central Prison and recorded his statements under Section 50 of the PML Act on 25.05.2015 in the presence of the prison authorities.
- Suresh Kumar filed an application in C.M.P.No.1631 of 2015 in Crime No.96 of 2015 under Section 451 Cr.P.C. in the Court of District Munsif-cum-Judicial Magistrate, Thirukazhukundram, for the interim custody of the seized cash and ornaments.
- After hearing the police, the learned Magistrate passed an order dated 18.06.2015 in C.M.P.No.1631 of 2015 dismissing the prayer for returning of the cash, but, allowing the prayer for returning of the ornaments to Suresh Kumar on certain conditions.



- On coming to know of this, the ED filed the present petition under Section 482 Cr.P.C., challenging the said order dated 18.06.2015 in C.M.P.No.1631 of 2015 on the ground that the cash and ornaments are proceeds of crime and cannot be returned to Suresh Kumar.

2. This Court passed the following interim order on 24.06.2015:

“Notice of motion returnable in four weeks.

If the seized gold is not in the safe locker of the Court, then, it may be transmitted and kept in the safe custody of the District Treasury by the learned Magistrate.

There shall be an order of interim stay. Notice.”

3. Mr.S.Sasikumar, learned Special Public Prosecutor (ED) submitted that the Deputy Director, ED, has passed a Provisional Attachment Order of cash and ornaments in P.A.O.No.22 of 2017 on 14.12.2017 provisionally attaching cash and ornaments that are in the *custodia legis* of the District Munsif-cum-Judicial Magistrate, Thirukazhukundram. He also stated that after due notice to Suresh Kumar, the Provisional Attachment Order has been confirmed by the adjudicating authority in O.C.No.869 of 2018 on 24.05.2018. He further submitted that after completing the investigation, the ED has filed a complaint in the Principal Sessions Court, Chennai (Special Court for PML Act Cases) in C.C.No.42 of 2018 against Suresh Kumar (A1) and Yogesh (A2) for the offences under Sections 3 and 4 of the PML Act, in which, summons is yet to be served on Suresh Kumar.

4. On receipt of notice, Suresh entered appearance through Mr.K.Gandhi Kumar, Advocate, in this petition.

5. Today, when the matter was taken up for hearing Ms.Niranjani Priya, Advocate (E.No.3498/2022; Mobile No.99400 50026) junior of Mr.K.Gandhi Kumar, Advocate, reported “no instructions”.



6. Today, A.Mahendran (Mobile No.94981 47044), Head Constable 213, Mamallapuram PEW, Kancheepuram District, is present.

7. On instructions, the learned Additional Public Prosecutor submitted that the investigation in Crime No.96 of 2015 was completed and police filed a final report before the Court of District Munif-cum-Judicial Magistrate, Thirukazhukundram, which was taken on file on 04.12.2015 as P.R.C.No.69 of 2015 for the offences under Sections 4(1)(aaa) and 4(1)-A of the TNP Act r/w 7 and 11 of the RS Rules, @ 465, 466, 467, 468, 471 and 420 IPC, against Suresh Kumar (A1) and Yogesh (A2). He further submitted that in the meanwhile, Suresh Kumar was released on bail and he appeared before the committal Court and after receiving the copies of papers under Section 207 Cr.P.C., the case was committed to the Court of Session, Chengalpattu, in S.C.No.196 of 2017 and was made over to the Assistant Sessions Court, (Principal Subordinate Court), Chengalpattu, for trial. Further, he submitted that Suresh was arrested in another case viz. Tiruppur North Police Station Crime No.1274 of 2021 under Section 379 IPC and after his release on bail in that case, he is in abscondance and Non Bailable Warrant (for brevity "NBW") has been issued by the Assistant Sessions Court, Chengalpattu, in S.C.No.196 of 2017 and the same is pending.

8. Since Suresh is in abscondance, he has failed to give instructions to his counsel, which has resulted in his counsel reporting "no instructions".

9. We do not want to proceed with this case without giving an opportunity of hearing to Suresh Kumar. Notice cannot be served on Suresh Kumar, as he is in abscondance and NBW against him is pending. Therefore, we appoint Mr.N.Manoharan, Advocate (E.No.821/1995) to appear for Suresh Kumar in this case.

10. Mr.S.Sasikumar, learned Special Public Prosecutor (ED) appearing for the petitioner is directed to serve a copy of the typed set of papers on Mr.N.Manoharan as well on Mr.R.Muniyapparaj, learned Additional Public Prosecutor.



Post the matter on 11.11.2022. In the meanwhile, the Registry is directed to call for a report from the learned District Munsif-cum-Judicial Magistrate, Thirukazhukundram, as to whether the ornaments covered in P.I.No.41 of 2015 and cash covered in P.I.No.42 of 2015 are available in the Court or in the treasury pursuant to our order dated 24.06.2015 and place the same before this Court on 11.11.2022."

2. Today Mr.T.Vijaya Kumar, Inspector of Police, PEW Mamallapuram [Mobile No.94981 95161] is present.

3. Heard Mr.S.Sasikumar, learned Special Public Prosecutor [ED], for the petitioner and Mr.N.Manoharan, learned counsel for the first respondent and Mr.R.Muniyapparaj, learned Additional Public Prosecutor, for the second respondent.

4. Though the District Munsif-cum-Judicial Magistrate, Thirukalukundram, has passed an order u/s.451 Cr.P.C. in CrI.M.P.No.1631 of 2015 on 18.06.2015 directing handing over of the ornaments to Suresh Kumar, this Court had stayed the said order in this petition on 24.06.2015. As stated above, thereafter, the Deputy Director of Enforcement has passed



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a provisional order of attachment in P.A.O.No.22 of 2017 on 14.12.2017, provisionally attaching the cash of Rs.28,35,000/- and the ornaments referred to above. This provisional order of attachment has also been served on Suresh Kumar through the Jailor, Central Prison, Madurai, on 20.12.2017. Thereafter, the Deputy Director filed a complaint in O.C.No.869/2018 before the Adjudicating Authority and the Adjudicating Authority has also confirmed the provisional order of attachment *vide* order dated 24.05.2018.

5. Now, the remedy that is available to Suresh Kumar is to approach the Tribunal u/s.26 of the Prevention of Money Laundering Act, 2002 [in short 'PMLA'] and thereafter, u/s.42 of the PMLA to the High Court. In the light of the order of the Adjudicating Authority passed u/s.8(3) of the PMLA confirming the provisional order of attachment, the ornaments cannot be handed over to Suresh Kumar. However, we are of the opinion that since the ornaments are not liable for confiscation u/s.14 of the Tamil Nadu Prohibition Act nor are they material evidence to connect the accused with



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the crime in question, no useful purpose will be served by keeping the ornaments in the custody of the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, as that would be an additional burden for the said Court.

6. Therefore, we direct the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, to hand over the ornaments in P.I.No.41/2015 dated 07.03.2015 in PEW Mamallapuram Crime No.96/2015 (now S.C.No.196/2017) on the file of learned Assistant Sessions Judge cum Principal Sub Judge, Chengalpet, to the Deputy Director, Directorate of Enforcement, Chennai, under proper receipt. Before handing over the same, the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, shall have the ornaments photographed, which should be attested by the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, as well the Deputy Director of Enforcement. The District Munsif-cum-Judicial Magistrate, Thirukalukundram, shall also draw a proceeding for handing over of the said ornaments to the Deputy Director



of Enforcement, in which both of them shall sign. Thereafter, the Deputy Director of Enforcement shall keep the ornaments in safe custody until further orders are passed in C.C.No.42 of 2018 on the file of learned Principal Sessions Judge [Special Court for PMLA cases], Chennai or on the orders of any other Court/Tribunal of competent jurisdiction. As regards S.C.No.196/2017 on the file of Assistant Sessions Court cum Principal Sub-Court, Chengalpet, the photographs, ornaments and the proceedings drawn by the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, could be marked to prove the factum of seizure of the ornaments, if required. The Deputy Director, Enforcement Directorate, shall approach the learned District Munsif-cum-Judicial Magistrate, Thirukalukundram, within three (3) months from the date of receipt of a copy of this order to collect the ornaments.

7. Accordingly, this Criminal Original Petition is allowed. As a consequence, the order dated 18.06.2015 in C.M.P.No.1631 of 2015 in PEW Mamallapuram Crime No.96/2015 that was passed by the learned District



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Munsif-cum-Judicial Magistrate, Thirukalukundram, in respect of

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ornaments alone is hereby set aside. Consequently, connected miscellaneous petition is closed.

We place on record our appreciation to Mr.N.Manoharan, Advocate, for the able assistance rendered by him in this case.

[PNP, J.] [TKR, J.]
11.11.2022

Index: Yes/No
gm

To

- 1.The Judicial Magistrate, Thirukazhukundram.
- 2.The District Munsif-cum-Judicial Magistrate, Thirukalukundram.
- 3.The Assistant Sessions Court cum Principal Sub-Court, Chengalpet.
- 4.The Inspector of Police,
Mamallapuram PEW, Kancheepuram District.
- 5.The Special Public Prosecutor [ED],
High Court, Madras.



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6. The Assistant Director [PMLA],
Directorate of Enforcement, Chennai,
II & III Floor, MNO Complex,
No.84, Greaves Road, Chennai - 6.

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