IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

CRIMINAL ORIGINAL PETITION NO.5099 OF 2018
AND
CRL.M.P.NOS.2533 AND 2534 OF 2018

Naidu Amrutesh Reddy
S/o.Naidu Adikesava Reddy ...Petitioner / Accused No.1

Vs.

The Assistant Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, ''C" Block,
Murugesa Naicker Office Complex,
No.84, Greams Road, Chennai - 600 006. ...Respondent

Criminal Original Petition filed under section 482 of the Code of Criminal Procedure calling for the records and quash the complaint in C.C.No.14 of 2017 in ECIR/11/CEZO/2011 (VSK) on the file of the Principal Sessions Court, Chennai (Special Court constituted under section 43(1) of the Prevention of Money Laundering Act, 2002) qua the petitioner.

For Petitioner : Mr.V.Karthic, Senior Counsel
assisted by Mr.Adithya Varadarajan
for M/s.Sarvabhauman Associates

For Respondent : Mr.Rajnish Pathiyil
Special Public Prosecutor [ED]

O R D E R
[Order of the Court was made by P.N.PRAKASH, J]

This petition has been filed seeking to quash the complaint in C.C.No.14 of 2017 in ECIR/11/CEZO/2011 (VSK) on the file of the Principal Sessions Court, Chennai (Special Court constituted under section 43(1) of the Prevention of Money Laundering Act, 2002) qua the petitioner.

2. The minimum facts that are required for deciding this petition are as under :

2.1. The subject matter of this litigation is a vacant land with a shed measuring 67 cents in survey Nos.47/1 and 47/2 in Valsaravakkam Village, Saidapet Taluk, Chennai (for brevity "the subject land"), which lawfully belonged to one Kamalakannan.

2.2. The said Kamalakannan sold 33.5 cents out of 67 cents of the subject land to one Alamelu on 06.07.1973 vide document No.2395 of 1973 on the file of the SRO, Kodambakkam. Similarly, he sold the balance of 33.5 cents of the subject land to one Mangalam, who is Alamelu's sister on 06.07.1973 vide document No.2396 of 1973 on the file of the SRO, Kodambakkam. Mangalam and Alamelu were issued patta in patta Nos.810 and 811, respectively, for the lands that were purchased by them from Kamalakannan.

2.3. Alamelu died on 20.12.2003, leaving behind as her heirs, her husband D.Rajaram and son R.Sairam. The said Rajaram and Sairam gave a Power of Attorney in respect of Alamelu's land to one D.Nagarajan vide document No.290 of 2004 registered on the file of the SRO, Tiruvannamalai. It may be relevant to state here that the said D.Nagarajan is none other than the brother of D.Rajaram and also the husband of Mangalam.

2.4. While these two sisters viz., Mangalam and Alamelu, were enjoying the subject land so purchased, the land sharks on troll, were attracted and they plotted to cheat the gullible sisters. Prime vacant land near Kollywood area attracted the attention of land sharks, who found that the Mangalam - Alamelu group was an ordinary middle class one with no political clout or muscle power. So, they adopted the following modus operandi to usurp the subject land.

2.5. One R.S.Narayanan, descended from the blues and claimed himself to be the successor-in-interest of a 99 year leasehold right over the subject land. On the basis of such a fallacious claim, R.S.Narayanan, entered into a lease agreement in November 2007 with one K.G.Ramesh Raj and thereby, created the first encumbrance on the subject land.

2.6. Thereafter, one K.P.R.Ramanathan, another alleged land shark, created a Power of Attorney dated 06.06.2008, purported to have been executed by Mangalam and Alamelu as if they were residing in Australia and this document was adjudicated by the DRO, Coimbatore in F.Dis.Nos.381 & 382 of 2008 on 06.06.2008. It is to be noted that Alamelu was not even alive on the date of the alleged execution of the Power of Attorney. Armed with the said Power of Attorney, K.P.R.Ramanathan entered into two sale agreements, both dated 12.06.2008, with one N.Vasan and had both the documents registered as document Nos.3139 and 3140 of 2008 on the file of the SRO, Virugambakkam.

2.7. In the parallel track, the scene shifted from the Sub Registrar's Office to the portals of the Court, when the said Narayanan filed a suit in O.S.No.309 of 2008 in the Court of the District Munisf, Poonamallee, against Mangalam and Alamelu, for a declaration that the subject land belongs to him as a legitimate lessee. Mangalam filed a suit in O.S.No.372 of 2008 in the Court of the District Munsif, Poonamallee, against K.P.R.Ramanathan.

2.8. The frauds reached such great heights that on a complaint given by D.Nagarajan, husband of Mangalam, the CCB, Chennai, registered a case in Crime No.34 of 2009 against K.G.Ramesh Raj and five others, for the offences under Sections 465, 468, 461, 474, 420 read with 120-B IPC.

2.9. After completing the investigation in Crime No.34 of 2009, the CCB filed a final report in C.C.No.5718 of 2010 in the Court of the XI Metropolitan Magistrate, Saidapet, against the six accused named in the FIR, for the aforesaid offences.

2.10. While all these were happening, Naidu Amrutesh Reddy, the petitioner herein, also put his hat into the ring, by coming forward to purchase the subject land from one Suruli Andavar, who represented to the former that he has title to the subject land via a sale deed dated 12.04.1967, registered as document No.1427 of 1967 on the file of the SRO, Saidapet.

2.11. On 09.03.2011, the Enforcement Directorate registered a case in ECIR No.11 of 2011, since the charge sheet in C.C.No.5718 of 2010 disclosed commission of a scheduled offence under the PMLA, namely, Section 420 IPC. While the Enforcement Directorate were proceeding with the investigation, Naidu Amrutesh Reddy paid Rs.4.33 crores to Suruli Andavar and purchased the subject land vide sale deed dated 10.11.2011, registered as document No.6266 of 2011 on the file of the SRO, Virugambakkam. The Revenue Authorities transferred the patta of the subject land in favour of Naidu Amrutesh Reddy.

2.12. When D.Nagarajan, the de facto complainant in Crime No.34 of 2009, got scent of these subsequent events, he filed a petition under Section 173(8) Cr.P.C. before the Metropolitan Magistrate (Special Court for Exclusive Trial of Land Grabbing Cases), for further investigation and the said petition was allowed. Pursuant to the order of the Special Court, the CCB filed an additional final report in C.C.No.66 of 2013 against the original six accused and also against the five new accused viz., Naidu Amrutesh Reddy, Suruli Andavar, Karthikeyan, Saraswathi and Mynavathy.

2.13. The Enforcement Directorate appears to have provisionally attached the subject land under Section 5 of the PML Act and the attachment has been subsequently confirmed by the Adjudicating Authority.

2.14. Now, the Enforcement Directorate has filed the impugned complaint in C.C.No.14 of 2017 before the Principal Sessions Judge [Special Court for PML Act cases], Chennai for the offences under Sections 3 and 4 of the PML Act, against four accused, including Naidu Amrutesh Reddy, for quashing which, Naidu Amrutesh Reddy is before this Court.

3. Heard Mr.V.Karthic, learned Senior Counsel appearing for Naidu Amrutesh Reddy and Mr.Rajnish Pathiyil, learned Special Public Prosecutor appearing for the Enforcement Directorate.

4. Today, Naidu Amrutesh Reddy [petitioner herein] is present in the Court and he is identified by Mr.V.Saikumar, Assistant Director and Officer on Special Duty, Enforcement Directorate, Chennai.

5. On coming to know of this petition, Mr.K.Thilageswaran, Advocate, representing Mangalam and D.Nagarajan [power agent of D.Rajaram and R.Sairam] in the predicate offence, is present.

6. At the outset, Mr.V.Karthic, learned Senior Counsel, submitted that Naidu Amrutesh Reddy was really taken for a ride by Suruli Andavar, in that, Suruli Andavar had fabricated a sale deed dated 12.04.1967 as if one Kamalakannan had sold the subject land to him (Suruli Andavar); with the connivance of the registration officials, Suruli Andavar gave a registration number to that fabricated document as document No.1427/1967; then Suruli Andavar and the registration officials had inserted document No.1427/1967 in the records of the office of the Sub-Registrar and therefore, the encumbrance certificates also started reflecting the existence of the fabricated document, viz., document No.1427/1967; believing that Suruli Andavar is the lawful owner of the subject land, Naidu Amrutesh Reddy paid Rs.4.33 crores to Suruli Andavar and purchased the property by a deed of sale dated 10.11.2011 registered as document No.6266/2011; only thereafter, did Naidu Amrutesh Reddy realise that the subject land was already the subject matter of a criminal case in CCB Crime No.34/2009 and C.C.No.5718 of 2010 on the file of the XI Metropolitan Magistrate, Saidapet; when the real owners viz., Mangalam and Alamelu sisters came to know of the sale deed document No.6266/2011, they have filed a suit in O.S.No.117/2012 in the District Munsif Court, Poonamallee, [now

re-numbered as O.S.No.186/2013 on the file of the II Additional District and Sessions Court, Poonamallee] against Suruli Andavar [D1], Naidu Amrutesh Reddy [D2], R.S.Narayanan [D3], Sub-Registrar, Saidapet [D4], Sub Registrar, Virugambakkam [D5], Tahsildar, Ambattur [D6] and Tamil Nadu Housing Board, Ambattur [D7] for declaring the sale deed dated 10.11.2011, Document No.6266/2011 as null and void.

7. Mr.V.Karthic, learned Senior Counsel, further submitted that Naidu Amrutesh Reddy is ready and willing to give up all claims to the subject land and is also ready to put the original owners in possession. Naidu Amrutesh Reddy has sworn to an affidavit dated 14.03.2022, which is taken on record and in paragraph Nos.17 to 21, it is stated as follows:

> "17. I state that since it is now made abundantly clear by various proceedings that my vendor namely Suruli Andavar had no title whatsoever to the Subject Property, I am voluntarily giving up all rights, claims over the Subject Property and I am also handing over the physical possession of the property to the Original Landowners.
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> 18. I State than I will not make any claim with respect to title or any monetary claims presently or in the future against the Subject Property situate at Door No.20, Sri Devikuppam Main Road, No.75, Valasaravakkam Village, Ambattur Taluk, Thiruvallur District in Survey Nos.47/1 and 47/2 against the Original Landowners.
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> 19. I state that I also consent to cancel the bogus sale deed executed by Suruli Andavar in my favour dated 10.11.2011 registered as Document No.6266/2011 on the file of the SRO, Virugambakkam.
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> 20. I state that I have already instructed my counsel to withdraw the appeal pending before the Appellate Authority and undertake to withdraw the appeal on the next date of hearing.
>
> 21. I state that I am ready to cooperate with the authorities in any manner towards facilitation of the smooth handing over of the property in favour of the Original Landowners, to bring to book the accused persons and I am ready and willing to depose as a witness during trial if called by the respondent herein."

8. This Court gave its anxious consideration to the aforesaid submissions of Mr.V.Karthic, learned Senior Counsel

and examined the impugned complaint filed by the Enforcement Directorate in C.C.No.14 of 2017 in order to find out if there are sufficient materials to prosecute Naidu Amrutesh Reddy for the offence u/s.3 r/w 4 of the PML Act, dehors, the affidavit dated 14.03.2022 that has been filed by him.

9. A complete reading of the complaint discloses as to how various persons had indulged in attempting to grab the subject land belonging to Mangalam and Alamelu sisters at various stages and the same has been set out in detail. Coming to the money trail, in paragraph No.8.1 of the impugned complaint, it is stated as follows:

> '8.1. In terms of the Sale Deed dated 10.11.2011 registered as Document No.6266 of 2011 of SRO, Virugambakkam executed by Shri T.Suruli Andavar for the conveyance of the aforesaid land of extent 68 cents in Survey No.47/1 and 47/2 of Valasarawakkam Village to Shri Naidu Amrutesh Reddy the total sale consideration of Rs.4,33,00,000/- was pronounced to have been disbursed by the buyer as detailed hereunder:

S. No.	Receipient	Mode & Date	Amount
1.	T.Suruli Andavar	Cheque No.000010 dated 4.3.2011 of Bank of Baroda	1,00,000
2.	T.Suruli Andavar	DD No.368652 dated 23.4.2011 of Andhra Bank, Esplande Branch, Chennai	9,00,000
3.	T.Suruli Andavar	DD No.368650 dated 23.04.2011 of AB, Esplande Br.	51,00,000
4.	K.G.Ramesh, S/o.G.Ganesan	DD No.368651 dated 23.04.2011 of AB, Esplande Br.	25,00,000
5.	R.S.Narayanan, S/o. K.S.Raghunathan	DD No.368653 dated 23.04.2011 of AB, Esplande Br.	15,00,000
6	T.Suruli Andavar	Cheque No.410993 dated 13.05.2011 of AB, Esplande Br.	50,00,000
7.	T.Suruli Andavar	Cheque No. 735283 dated 16.08.2011 of AB, Esplande Br.	50,00,000

S. No.	Receipient	Mode & Date	Amount
8.	T.Suruli Andavar	Cheque No.737633 dated 13.10.2011 of AB, Esplande Br.	50,00,000
9.	T.Suruli Andavar	DD No.511137, dated 09.11.2011 of AB, Esplande Dr.	50,00,000
10.	T.Suruli Andavar	DD No.511138, dated 09.11.2011 of AB, Esplande Dr.	50,00,000
11.	T.Suruli Andavar	DD No.511139 dated 09.11.2011 of AB, Esplande Br.	50,00,000
12.	T.Suruli Andavar	DD No.511136 dated 09.11.2011 of AB, Esplande Br.	32,00,000

10. Thus, from the above, it is clear that Naidu Amrutesh Reddy has, over a period of time, paid Rs.4.33 crores via cheques and demand drafts to Suruli Andavar, K.G.Ramesh and R.S.Narayanan towards the sale consideration of the subject land. Paragraph No.8.2 of the complaint shows as to how Suruli Andavar has used the amounts received by him from Naidu Amrutesh Reddy by disbursing them to various other parties.

11. Thus, from the above averments in the complaint, it is clear that it is Naidu Amrutesh Reddy, who has paid Rs.4.33 crores to Suruli Andavar for purchasing the subject land under sale deed bearing document No.6266/2011. There are no materials to show that he had, in any manner, generated proceeds of crime by dealing with the subject land and has projected the same as untainted money. In the impugned complaint, the proceeds of crime is shown as the subject land, which has been purchased by Naidu Amrutesh Reddy under a sale deed bearing document No.6266/2011 from Suruli Andavar, who was not the actual owner. For fastening criminal liability u/s.3 r/w 4 of the PML Act, the following ingredients are necessary:

(a) a criminal activity should have been committed;
(b) from the criminal activity, some money (proceeds of crime) should have been generated;
(c) the proceeds of crime, so generated, should have been projected as untainted one.

12. In this context, it may be relevant to refer to para 11 in the judgment of the Supreme Court in Nikesh Tarachand Shah

Vs. Union of India and Another[1]:

"11. Having heard the learned counsel for both sides, it is important to first understand what constitutes the offence of money laundering. Under Section 3 of the Act, the kind of persons responsible for money laundering is extremely wide. Words such as "whosoever", "directly or indirectly" and "attempts to indulge" would show that all persons who are even remotely involved in this offence are sought to be roped in. An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and "proceeds of crime" is defined under the Act, by Section 2(1)(u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (which is referred to in our judgment as the predicate offence). Thus, whosoever is involved as aforesaid, in a process or activity connected with "proceeds of crime" as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property. "

(emphasis supplied)

Therefore, we find that the ingredients for fastening criminal liability u/s.3 r/w 4 of the PML Act against Naidu Amrutesh Reddy are absent in the impugned complaint.

13. To recapitulate the facts, even according to the Enforcement Directorate, Naidu Amrutesh Reddy had paid Rs.4.33 crores to Suruli Andavar, who was not the actual owner, for purchasing the subject land and had the sale registered as Document No.6266/2011. It is not the case of the Enforcement Directorate that Naidu Amrutesh Reddy sold the said subject land to someone, knowing full well that he has no title to it, obtained the sale consideration of Rs.4.33 crores via the said criminal activity and projected the amount as an untainted.

14. In such view of the matter, we pass the following order:

(a) the prosecution in C.C.No.14/2017 on the file of Principal Sessions Court [Special Court for PML Act cases], Chennai, is quashed as against Naidu Amrutesh Reddy [A1];

1 (2018) 11 SCC 1

(b) It is open to the Enforcement Directorate to examine Naidu Amrutesh Reddy as a witness in their prosecution of the other accused in C.C.No.14 of 2017, if so advised.

(c) It is open to Mangalam and the power of attorney appointed by the legal heirs of the deceased Alamelu to approach the Special Court for PML Act where C.C.No.14/2017 is pending for filing appropriate applications for restoration of the subject land by raising the order of attachment under Rule 3A of the Prevention of Money Laundering [Restoration of Property] Rules, 2016, if so advised.

(d) The trial Court viz., Principal Sessions Court, Special Court for PML Act cases, Chennai, is directed to complete the trial in C.C.No.14/2017 expeditiously, in any event, within a period of six months from the date of receipt of a copy of this order against the other accused.

In the result, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

gya/gm

To

1. The Principal Sessions Judge,
Chennai.
(Special Court constituted under section 43(1) of the Prevention of Money Laundering Act, 2002)

2. The II Additional and District Sessions Court,
Poonamallee.

3. IX Metropolitan Magistrate,
Saidapet, Chennai.

4. The Assistant Director,
Directorate of Enforcement, Government of India,
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, ''C" Block,
Murugesa Naicker Office Complex,
No.84, Greams Road, Chennai - 600 006.

5. The Sub Registrar,
Virugambakkam.

6.The Special Public Prosecutor [ED],
High Court, Madras.

7.The Sub Registrar,
Saidapet.

+4ccs to Mr.Adithya Varadarajan, Advocate, Sr.No.17892

+1cc to M/s.Rajinish Pathiyil, Advocate, Sr.No.17296

Criminal Original Petition No.5099 of 2018

MG(CO)
RVM(04/04/2022)