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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2022

Coram

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

and

THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

Criminal Original Petition No.2342 of 2022

and

Crl.M.P.No.1030 of 2022

Ramesh Pothy

S/o.K.V.P.Sadayandi

.. Petitioner/Accused

Vs.

The Deputy Director,
Directorate of Enforcement,
(The Prevention of Money Laundering Act, 2002)
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, C Block,
Murugesan Naicker Office Complex,
84, Greams Road, Thousand Lights,
Chennai - 600 006.

.. Respondent/Complainant

Criminal Original Petition filed u/s.482 Cr.P.C. praying to call for the records relating to the complaint in S.C.No.74 of 2017 on the file of the learned Principal Sessions Judge, Chennai, dated 24.02.2017 and quash the same insofar as it relates to the petitioner.

For Petitioner : Mr.Nithyaesh Natraj

for M/s.Sri Law Associates, Mr.S.Ravi

For Respondent : Mrs.G.Hema,

Special Public Prosecutor [ED]

ORDER

[Order of the Court was made by P.N.PRAKASH, J]

This petition has been filed seeking to quash the complaint in S.C.No.74 of 2017 on the file of the learned Principal Sessions Judge, Chennai, dated 24.02.2017, insofar as it relates to the petitioner.



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

2.1. In Kanchipuram, there was a person, by name, D.Sridhar, against whom the local police had registered 26 criminal cases covering almost all the provisions of the Penal Code, including murder, attempt to murder, abduction, extortion, criminal intimidation, kidnapping, cheating, etc. It appears that he had fled to the Middle East, but, the investigation of the cases against him proceeded and they are at various stages now. We are told at the bar that Sridhar died in Cambodia on 04.10.2017.

2.2. Since the cases registered against him disclosed the commission of scheduled offences under the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA'] viz., 120-B, 302, 307, 364, 384 and 385 IPC and section 3 r/w 25 of the Indian Arms Act, 1959, the Enforcement Directorate registered a case in ECIR No.CEZO/03/2016 on 09.03.2016 and took up investigation under the PMLA.

2.3. It is the case of the Enforcement Directorate that D.Sridhar, by committing various criminal activities, had acquired wealth and purchased various properties in and around Kanchipuram. During the course of investigation, the Enforcement Directorate identified a property measuring 12945 sq.ft. in survey No.557/1A1A batch (for avoiding prolixity we refrain from mentioning all the survey numbers) as proceeds of crime. This property is the subject matter of the case at hand and therefore, we would call it as the "impugned property".

2.4. The impugned property was purchased by Kumari, wife of Sridhar, from 9 persons via 10 sale deeds registered in December 2015 in the office of the Sub Registrar Joint II, Kanchipuram. Thereafter, Kumari settled the impugned property in favour of her daughter Dhanalakshmi Sridhar, who was 20 years old then, vide a deed of settlement dated 02.01.2016 registered as Document No.03 of 2016.

2.5. The petitioner belongs to the Pothy family, which runs a chain of textile outlets in various parts of Tamil Nadu. This Pothy family appears to be owning land measuring 64734 sq.ft. in Survey No.555/2, Kanchipuram, which is adjacent to the impugned property. The impugned property is a pathway connecting the main road with the property of the Pothys in Survey No.555/2. Therefore, the Pothy brothers, numbering 5, purchased the impugned property from Dhanalakshmi Sridhar for a total sale consideration of Rs.5,30,74,500/- by a deed of sale dated 29.02.2016 registered as Document No.1184/2016 and since then,



they are in possession and enjoyment of the said property. Alleging that this property has been acquired by D.Sridhar's family via criminal activities, the Enforcement Directorate passed an order of provisional attachment dated 02.09.2016 u/s.5 of the PMLA. This order of provisional attachment was challenged by the Pothu brothers in W.P.No.34694 of 2016 and the matter was heard by one of us [P.N.Prakash.,J] and the petition was dismissed on 20.12.2016 observing as follows:

'11. In Section 2(u), the words "any property and any person" are used. The Section does not say that at the relevant point of time, the property in question must be in the hands of the alleged offender. This can be elucidated with an example. A professional assassin would quote a price for an elimination from his hirer. The price will mostly be in terms of "money". He would successfully complete his assignment and take his price in money. That is one proceeds of crime. The money will not be in the same avatar indefinitely. It would be converted to an immovable property either in the name of the offender or in the name of anyone else. Now, the character of proceeds of crime has changed from "money" to "immovable property". When the same immovable property is sold, it cannot lose the characteristics of a proceeds of crime, though the purchaser may claim that he had legally purchased it through lawful sources. Of course, it is open for the purchaser to take a plea of lawful acquisition before the adjudicating authority and it is now too preposterous to hazard a guess on the outcome of such a plea.'

2.6. On 29.12.2016, the adjudicating authority confirmed the order of provisional attachment u/s.8(3) of the PMLA. Challenging the order of the adjudicating authority, the Pothu brothers approached the appellate Tribunal u/s.26 of the PMLA. The Pothu brothers contended that they were innocent purchasers and they did not know that their vendors had acquired the property via criminal activities of her father D.Sridhar. The Enforcement Directorate resisted the claim. However, the Tribunal, by order dated 11.01.2019, gave the following findings:

'51. As mentioned earlier, the Appellants are bona-fide purchasers and they have not done anything against law. Furthermore, the Appellants are not involved in any crime or money laundering and the Appellants are law abiding citizens running an organization in the field of textile business, with the family business being there for more than 85 years. No case of money laundering against the



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appellants is made out. The prosecution complaint under PML Act, 2002 was filed by the respondent against Ramesh Pothy with mala-fide intention and after thought on the date of passing the provisional attachment order.

52. I am of the opinion that complaint filed against Ramesh Pothy is not sustainable and is filed after-thought as the IO has failed to trace the amount paid by the appellant to the family members of Late Sridhar. In order to save its skin, the complaint against the Ramesh Pothy has been filed. This is because of the reasons that the appellants are not directly or indirectly involved in the money laundering. They have no direct link or nexus with deceased who has now passed away.

53. The appellants have no objection if criminal proceedings already pending against accused parties may continue as per law.

54. The appellants despite of above are agreeable to deposit a sum of Rs.6,47,25,000/- as value assessed by the ED in the Investigation Report with the respondent (without prejudice) in order to secure the entire value of the property filed by the ED in the reason to believe. The figure mentioned by the hearing officer in the impugned order is fanciful and accepted as per the case of ED in subsequent pleadings. The real figures are mentioned in the reason-to-believe on the basis of which the provisional attachment order was passed. The said figures could not have been changed.'

2.7. The appellate Tribunal set aside the order of provisional attachment of the impugned property and released it therefrom. Challenging the order of the appellate Tribunal, the Enforcement Directorate filed C.M.A.Nos.2904 of 2019 batch and the Pothy brothers also filed C.M.A.Nos.3336 of 2019 batch. Though the Pothy brothers had succeeded before the appellate Tribunal, yet, they chose to file Civil Miscellaneous Appeals in the High Court as they were aggrieved with the observations of the appellate Tribunal in paragraph Nos.53 and 54 of the order dated 11.01.2019, extracted above.

2.8. A Division Bench of this Court heard both sides and disposed of the civil miscellaneous appeals on 25.09.2019 by a consent order, the terms of which are as under:

'8. When the matter is taken up today for hearing, the following is agreed upon:



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- (i) The respondents shall not alienate or encumber the property sought to be attached;
- (ii) The respondents are at liberty to use the property as a pathway;
- (iii) Any road to be laid by them would be at their own cost, for which, no equity can be claimed;
- (iv) Any temporary shed put up by them also shall be at their own costs.

9. All these arrangements are subject to the result of the adjudication in S.C.No.74 of 2017 by the Special Court, Chennai. The respondents shall pay a sum of Rs.2 lakhs (Rupees two lakhs only) without prejudice to the contentions in the pending case. These arrangements also subject to the result in S.C.No.74 of 2017 on the file of the Special Court, Chennai.

10. It is made clear that all the issues are left open to be decided by the Special Court. The Special Court, viz., the Principal Judge, City Civil Court, Chennai, shall dispose of S.C.No.74 of 2017 within a period of six months from the date of receipt of a copy of this order. The common order passed by the Appellate Tribunal stands modified to the extent indicated above. Consequently, the respondents shall not alienate and encumber the property sought to be attached and the condition imposed by the Appellate Tribunal also stands modified. These appeals are disposed of accordingly. No costs.'

2.9. In the meanwhile, the Enforcement Directorate filed a complaint in S.C.No.74 of 2017 in the Special Court for PMLA cases (Principal Sessions Court, Chennai) u/s.3 and 4 of the PMLA against Sridhar [A1], Senthil [A2], Kumari [A3], Dhanalakshmi Sridhar [A4], Arul [A5], Kamalakannan [A6] and Ramesh Pothy [A7]. Challenging the prosecution, Ramesh Pothy [A7] has filed the present petition u/s.482 Cr.P.C.

3. Heard Mr.Nithyaesh Natraj, learned counsel appearing for the petitioner and Mrs.G.Hema, learned Special Public Prosecutor [ED] appearing for the respondent.

4. At the outset, Mrs.G.Hema, learned Special Public Prosecutor [ED], submitted that this Court had dismissed the quash petition of the co-accused in this case viz., Dhanalakshmi Sridhar in CrI.O.P.No.24316 of 2018 vide order dated 04.02.2021 and so this petitioner deserves the same fate. This order has been passed by a Division Bench of this Court, in which one of us [P.N.Prakash, J] was a member.



5. This Court had dismissed the quash petition of Dhanalakshmi Sridhar by holding that it would be too premature to quash the proceedings against her by saying that she would not be aware of the fact that the property was acquired by her father via criminal activities as there is a reverse burden u/s.24 of the PMLA, which has to be discharged by Dhanalakshmi Sridhar only during trial and not in proceedings u/s.482 Cr.P.C. However, in this case, there is absolutely no material to show that the petitioner herein was aware that the property was acquired by their vendor's father via criminal activities. Therefore, the dismissal of the quash petition of Dhanalakshmi Sridhar, the vendor of the property to the Pothy brothers, cannot be a bar for this Court to entertain this petition.

6. Mrs.G.Hema, learned Special Public Prosecutor [ED] contended that this Court has given a finding in W.P.No.34694 of 2016 that the property is proceeds of crime and hence, it would not be proper for this Court to entertain this quash petition.

7. In W.P.No.34694 of 2016, the issue was not the criminal prosecution against the petitioner herein but the provisional order of attachment that was passed by the Enforcement Officer u/s.5(1) of the PMLA in respect of the impugned property. In that context, this Court had stated that the provisional attachment order cannot be quashed at the threshold as the said property prima facie appeared to have been acquired through proceeds of crime. However, the appellate Tribunal had set aside the attachment proceedings by rendering a finding of fact in paragraph No.51, extracted above, that the Pothy brothers were not involved in any crime or money laundering.

8. Mrs.G.Hema, learned Special Public Prosecutor [ED], further contended that in paragraph No.53 of the order of the appellate Tribunal, it is stated that the Pothy brothers have given an undertaking that they would have no objection for the criminal proceedings to continue as per law. In view of this undertaking, she stated that they cannot challenge the criminal proceedings in this petition u/s.482 Cr.P.C.

9. We are afraid, we cannot countenance this submission, because there cannot be any estoppel against statute. When a person has a statutory remedy, he cannot contract it out. That apart, the Pothy brothers have filed C.M.A.Nos.3336 of 2019 batch challenging paragraph Nos.53 and 54, extracted above, before a Division Bench of this Court, which has been alluded to above.

10. Now, the moot question is can the petitioner be prosecuted for the offences u/s.3 and 4 of the PMLA. The



allegations against the petitioner in the impugned complaint in S.C.No.74 of 2017 that has been filed by the Enforcement Directorate are extracted hereunder:

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'8.7. Shri S. Ramesh Pothy (Accused-7 herein) has acquired/purchased an immovable property in Kanchipuram District involved in money laundering and worth around Rs.6.50 Crores, from the possession of Ms.Dhanalakshmi Sridhar (Accused-4 herein) and the said immovable property has been registered in the name of Shri S.Ramesh Pothy along with his brothers. The details of the said transactions are explained as under:

- Sridhar (A1) has involved in major criminal activities and committed Scheduled Offences and from the major criminal activities, he gained huge Proceeds of Crime. From the part of gained Proceeds of Crime, he acquired/purchased properties in his name and in the name of his family members and in the name of his associates.
- Sridhar (A1) has acquired the subject property from the part of proceeds of crime and registered the property in the name of his wife, Smt.S.Kumari. Subsequently, he has transferred the said property to his daughter through his wife and registered in the name of his daughter, Ms.Dhanalakshmi Sridhar.
- Immediately on transfer, Ms.Dhanalakshmi Sridhar has sold the said property, which was acquired from the major criminal activities by her father, to Sri.S.Ramesh Pothy (Accused 7 herein) and his 4 brothers and got only an amount of Rs.25,43,755/- by cash and the said transaction was not completed. Shri S.Ramesh Pothy has very well known that he is going to purchase the subject property, which is nothing but the part of proceeds of crime and Ms.Dhanalakshmi Sridhar is a daughter of the accused Sridhar and Sridhar has been involving with major criminal activities, considering, when in fact, Shri Ramesh Pothy has not settled the balance sale consideration to Ms.Dhanalakshmi Sridhar.
- Sri Ramesh Pothy is the Managing Director of M/s.Pothys Private Ltd, which was registered under the Companies Act, 1956 and he is the one who had ultimate control over the affairs of the company. Since, the Accused 7 herein, was already known that the subject property was the part of proceeds of crime which involved in money laundering, he did not incline to settle the balance sale consideration to Ms.Dhanalakshmi Sridhar, who sold the subject



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property and for safer side, he has settled the balance sale consideration amount of Rs.5,00,00,000/- to Smt.S.Kumari, who was not a seller in the said transaction. Further, to escape from the clutches of law, he has misused the Company and made the payment in the name of "balance sale consideration" through the company that too, not to the seller, but to Smt.S.Kumari who is wife of Sridhar, the Accused 1 herein. The above narrated sale transactions made, within short span of time, between Sridhar, Smt.S.Kumari, Ms.Dhanalakshmi Sridhar, Shri S.Ramesh Pothy and his brothers and M/s.Pothys Private Ltd are very well within the ambit of the provision viz. "Interconnected Activities" under Section 23 of the PMLA, 2002. Keeping the above in view, it stands to reason that Shri S.Ramesh Pothy has indirectly involved and knowingly as a party in the offence of money laundering by way of acquiring the part of proceeds of crime which involved in money laundering in his name and his brothers name, from Sridhar (Accused 1 herein) through Smt.S.Kumarai (Accused 3 herein) and Ms.Dhanalakshmi Sridhar (Accused 4 herein) and made sale consideration through the company, in order to project/claim the said property as untainted property. It would not be out of place to humbly submit herein that through the POC sale transaction was made between Shri S.Ramesh Pothy (purchasers) & his brothers and Ms.Dhanalakshmi Sridhar (Seller), sale consideration transaction was made between M/s.Pothys Private Ltd. (who is not the purchaser) and Smt.S.Kumari (who is not the seller).

Therefore, Shri S.Ramesh Pothy has been knowingly and actually involved in the money-laundering activity connected with the proceeds of crime derived by Shri Sridhar (Accused-1 herein), including its possession and acquisition, use and claiming and projecting the same as untainted properties and thus committed the offence of money laundering under Section 3 of PMLA, 2002 and has been guilty of offence of money laundering under Section 2(1)(p) r/w Section 3 of the PMLA, 2002, punishable under Section 4 of the said Act. '

11. A reading of the above shows that the petitioner, being the Managing Director of the Pothy brothers, has been prosecuted for purchasing the impugned property from the daughter of an alleged criminal. We are carefully using the word "alleged criminal" because Sridhar is no more alive for him to contest



the allegations against him.

12. For a prosecution u/s.3 r/w 4 of the PMLA, the ingredients are two fold as held by the Supreme Court in Nikesh Tarachand Shah Vs. Union of India and Another¹ :

'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)

13. A reading of the above clearly shows that for mulcting criminal liability u/s.3 and 4 of the PMLA, the prosecution should place materials before the Court to show that the person has not only acquired the property by committing a scheduled offence, but, he should have projected that property as untainted.

14. In this case, it is the definite case of the prosecution that the impugned property was acquired by Sridhar in the name of his wife by committing various criminal activities. Of course, a name lender to the principal accused can also be brought within the net of section 3 r/w 4 of the PMLA as abettors. In other words, where the principal offender

¹ (2018) 11 SCC 1



projects a tainted property as an untainted one, not only will he be held liable, but also all others who had helped him to project the tainted property as untainted. It is not the case of the prosecution that the petitioner herein was projecting a tainted property as an untainted one nor is it their case that the petitioner had abetted D.Sridhar in projecting a tainted property as an untainted one. The petitioner was only a bonafide purchaser of the impugned property from the daughter of D. Sridhar.

15. Mrs.G.Hema, learned Special Public Prosecutor [ED] submitted that the petitioner had paid only Rs.25,43,755/- to Dhanalakshmi Sridhar, their vendor and not the entire sale consideration of Rs.5,30,74,500/-. The Enforcement Directorate obtained this information from the sale deed dated 29.02.2016, which is a relied upon document. This sale deed clearly shows in page No.15, the schedule of payment that has been made by the Pothy brothers for the purchase of the impugned property. For the sake of convenience, we extract the payment portion from the said sale deed:

' NOW THIS DEED OF SALE WITNESSETH AS FOLLOWS:-

1. In pursuance to the above, the VENDOR doth hereby admit and acknowledge the receipt of the entire Sale consideration of Rs.5,30,74,500/- (Rupees Five Crores Thirty Lakhs Seventy Four Thousand and Five Hundred only) from the PURCHASERS as detailed hereunder:

- a) (Rupees Two Crores only) paid by RTGS Rs.2,00,00,000/ Transfer from the account of the PURCHASERS to the account of Mrs.Kumari, as desired by the VENDOR, on 31.12.2015 in reference No.CIUBH15365304592
- b) (Rupees One Crore and Sixty Five Rs.1,65,00,000/ Lakhs only) paid by RTGS Transfer from the account of the PURCHASERS to the account of Mrs.Kumari, as desired by the VENDOR, on 13.01.2016 in reference No.CIUBH16013301799
- c) (Rupees One Crore and Thirty Five Rs.1,35,00,000/ Lakhs only) paid by RTGS Transfer from the account of the PURCHASERS to the account of Mrs.Kumari, as desired by the VENDOR, on 23.02.2016 in reference No.CIUBH16054302426



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d) Rs.5,30,745/-

(Rupees Five Lakhs thirty thousand seven hundred and forty five only) deducted being 1% TDS of the sale consideration.

e) Rs.25,43,755/-

(Rupees Twenty Five Lakhs Forty three thousand seven hundred and fifty five only) paid by the PURCHASERS to the VENDOR at the time of registration.

16. This sale deed is a registered document, which the prosecution themselves rely upon. At this juncture, pertinent it is to point out that as per the judgment of the Supreme Court in State of Orissa vs. Debendranath Padi², u/s.482 Cr.P.C., documents of unimpeachable character of sterling quality can be looked into and relied upon by the Court for the purpose of deciding a quash petition in order to secure the ends of justice. A perusal of the above averments in the sale deed shows that the petitioner had paid various amount by RTGS to Kumari, the mother of Dhanalakhmi Sridhar on 31.12.2015, 13.01.2016 and 23.02.2016 and has also deducted TDS for that. This payment to the mother of Dhanalakshmi Sridhar, which has been reflected in the sale deed itself, cannot amount to an offence u/s.3 r/w 4 of the PMLA.

17. In view of the foregoing discussions, we are of the opinion that the prosecution of the petitioner u/s.3 and 4 of the PMLA in S.C.No.74 of 2017 is an abuse of process of law.

Ergo, this Criminal Original Petition is allowed and the prosecution qua the petitioner herein in S.C.No.74 of 2017 on the file of the learned Principal Sessions Judge, Chennai, is hereby quashed. However, in view of the undertaking given by the petitioner in the C.M.A.Nos.3336 of 2019 batch, he will have to abide by the verdict of the trial Court in S.C.No.74 of 2017 with regard to the confiscation of the impugned property u/s.8 (5) (6) (7) and (8) of the PMLA. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

gm



To

1. The Principal Sessions Judge,
Chennai.
2. The Deputy Director,
Directorate of Enforcement,
(The Prevention of Money Laundering Act, 2002)
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, C Block,
Murugesan Naicker Office Complex,
84, Greaves Road, Thousand Lights,
Chennai - 600 006.
3. The Special Public Prosecutor [ED],
High Court, Madras.

+1cc to M/s.Sri Law Association, Advocate, S.R.No.10897

Criminal Original Petition No.2342 of 2022

GMR(CO)
SU(08/03/2022)