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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.03.2022
PRONOUNCED ON : 21.03.2022

CORAM

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

CRL.O.P.No.5927 of 2018

M.Rajkumar

..Petitioner

Vs.

The Assistant Director
Directorate of Enforcement
Government of India
Department of Revenue
2nd & 3rd Floor
Murugesu Naicker Complex
84, Greaves Road
Chennai 600 006

..Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the complaint filed by the respondent in C.C.No.11 of 2017 pending on the file of the XII Additional Special Court for CBI Cases (Special Court for Prevention of Money-Laundering Act Cases), Chennai and direct the same to be adjourned or kept in abeyance till the disposal of C.C.No.3982 of 2015 on the file of the Metropolitan Magistrate Court, Egmore (Special Court for CCB and CB-CID Cases), Allikulam, Chennai.

For Petitioner Mr.B.Mohan

For Respondent Mr.S.Sasikumar
Special Public Prosecutor for
Enforcement Directorate

O R D E R

P.N.PRAKASH, J.

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



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- On a complaint lodged by one V.Ayyadurai, the CCB registered an FIR in Crime No.374 of 2007 on 20.07.2007 against one Rajkumar and others, for the offences under Sections 420, 465, 466, 467, 468 read with 47 and 120-B IPC.
- After completing the investigation, the CCB filed a final report (charge sheet) on 24.11.2015 in the Court of the Metropolitan Magistrate for CCB and CB-CID Cases, Chennai, against Rajkumar (A-1/petitioner herein) and six others, for the offences under Sections 120-B, 466, 467, 468, 471, 420 read with 465 IPC.
- It is the case of the CCB that Rajkumar was working as an Auditor in Madras Madurai Properties Pvt. Ltd. (in short "MMPPL"); Rajkumar along with the co-accused viz., Ramaiya Chettiar, represented to MMPPL that the property in door No.58/59, survey No.915, Hunters Road, measuring around 10 grounds, belongs to Ramaiya Chettiar that the same is for sale, to substantiate which, fabricated documents were given, on the strength of which, MMPPL purchased the said 10 grounds land for Rs.4,79,60,000/- and thereafter, they came to know that the title documents were fabricated ones and the said land belongs to the Government.
- On registration of the FIR, the Enforcement Directorate registered a case in ECIR.No.1 of 2008 on 25.01.2008 and after the CCB filed the charge sheet in C.C.No.3982 of 2015 on 24.11.2015, the Enforcement Directorate filed a complaint in C.C.No.11 of 2017 in the Special Court for PMLA Cases, Chennai, on 25.04.2017, against one Subramanian and Rajkumar, for the offences under Section 45(1) read with Sections 3, 4 and 8(5) of the Prevention of Money Laundering Act, 2002 (in short "the PML Act").
- Under such circumstances, Rajkumar has filed the instant criminal original petition under Section 482 Cr.P.C. with the following prayer :

"To call for the records in C.C.No.11 of 2017 pending on the file of the XII Additional Special Court for CBI Cases (Special Court for PML Act Cases), Chennai and direct the same to be adjourned or kept in abeyance, till the disposal of C.C.No.3982 of 2015 pending on the file of the Metropolitan Magistrate Court (Special Court for CCB and CB-CID Cases), Allikulam, Chennai."

2. Heard Mr.B.Mohan, learned counsel for Rajkumar and Mr.S.Sasikumar, learned Special Public Prosecutor appearing for the Enforcement Directorate.



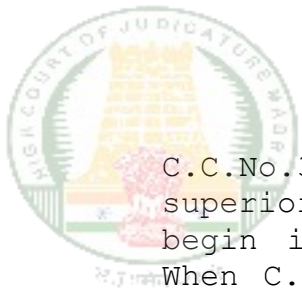
3. Mr.Mohan strenuously took this Court through the meaning of the word "crime" in Black's Law Dictionary and submitted that until it is proved in the police case that Rajkumar has committed the offence under Section 420 IPC, can he be prosecuted under the PML Act. He placed strong reliance on Article 20(2) of the Constitution of India, in this regard.

4. There is a fundamental fallacy in the above submission of Mr.B.Mohan, in that, for invoking Article 20(2), *ibid.*, it must be first shown that the accused was tried or convicted of an offence and if he is being tried for the same offence again, only then, he can seek the protection of double jeopardy under Article 20(2) *ibid.* (See *State of Mizoram Vs. C.Sangnghina* [(2019) 13 SCC 335]). In anticipation of a conviction in the police case, the accused cannot seek to stall the PML Act trial, by invoking Article 20(2), *ibid.* Even according to Mr.Mohan, the trial in C.C.No.3982 of 2015 has not even begun and so, there is no question of pleading double jeopardy.

5. Mr.Mohan took us through Section 44(1)(a) of the PML Act and submitted that the trial in C.C.No.3982 of 2015 should be conducted only by the Special Court and not by the regular Metropolitan Magistrate. He further built up his arguments, by taking us through the definition of the expression "proceeds of crime" in Section 2(u) of the PML Act and also read Section 3 of the PML Act, in support of his contention that, until the predicate offence is determined, the prosecution under the PML Act cannot proceed further.

6. The answer to the above submission of Mr.Mohan lies in explanation (i) to Section 44 of the PML Act, which clearly states that the jurisdiction of the Special Court to try a person under the PML Act, shall not be dependent upon any orders passed in respect of the predicate offence. Though this explanation has been included in the statute only subsequently, *i.e.*, by Act 23 of 2019, its effect dates back to the coming into the force of the statute itself. It is true that the predicate offence and the PML offence should be tried by the Special Court, but, that stage has not reached at all in the instant case, because, the trial in C.C.No.3982 of 2015 has not begun. Even according to Mr.Mohan, summons have not been served on some of the accused even.

7. In Section 44(1)(a) of the PML Act, the legislature has not used the expression "cognizance by the Special Court", but, "triable by the Special Court". In the case at hand, the Magistrate has taken only cognizance of the offence in



C.C.No.3982 of 2015, he may even discharge the accused or the superior Court may even quash the proceedings. Trial is said to begin in a criminal case, only after the charges are framed. When C.C.No.3982 of 2015 ripens to the stage of trial, then, by invoking Section 44(1)(a) and 44(1)(c) of the PML Act, C.C.No.3982 of 2015 can be transferred to the Special Court and not any time before that. To say that until the disposal of C.C.No.3982 of 2015, the Special Court cannot proceed with the trial in C.C.No.11 of 2017, is tantamount to nullifying explanation (i) to Section 44 of the PML Act.

In the result, this criminal original petition is dismissed as being devoid of merits.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gya
To

1.The Assistant Director
Directorate of Enforcement
Government of India, Department of Revenue
2nd & 3rd Floor, Murugesu Naicker Complex
84, Greaves Road, Chennai 600 006

2. The Principal Sessions Judge
(Special Court for PML Act Cases), Chennai

3.The Metropolitan Magistrate Court
(Special Court for CCB and CB-CID Cases)
Allikulam, Chennai

4.The Public Prosecutor
High Court, Madras

+1 CC to Mr.B.Mohan, Advocate sr 13706
+1 CC to Mr.S.Sasikumar, Advocate sr 19469.

CRL.O.P.No.5927 of 2018

RSI (CO)
SP(01/04/2022)