IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 14.10.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr. JUSTICE RMT.TEEKAA RAMAN

W.P.No.22975 of 2022and W.M.P.No.21979 of 2022,

Crl.R.C.No.608 of 2022 and C.M.P.Nos.6401 & 6402 of 2022
AND
Crl.R.C.No.609 of 2022 and C.M.P.Nos.6398 & 6399 of 2022

W.P.No.22975 of 2022 :

T.D.Sonia .. Petitioner/A-4

Vs.

The Deputy Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue, 2nd and 3rd Floor
Murugesa Naicker Complex
No.84, Greams Road
Thousand Lights, Chennai 600 006 .. Respondent

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, to call for the records pertains to the case in Spl.C.C.No.1 of 2020 pending on the file of the learned XIV Additional Sessions Judge for CBI Cases at Chennai (Special Court constituted u/s 43(1) of the Prevention of Money-Laundering Act, 2002 and quash the same.

For Petitioner	:	Mr.ARL.Sundaresan Senior Counsel for Mr.A.Saravanan
For Respondent	:	Mr.P.Sidharthan Special Public Prosecutor (Enforcement Directorate)

Crl.R.C.No.608 of 2022 :

T.D.Sonia .. Petitioner/A-4

Vs.

The Deputy Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue, 2nd and 3rd Floor
Murugesa Naicker Complex
No.84, Greams Road
Thousand Lights, Chennai 600 006 .. Respondent

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. praying to set aside the order passed by the learned XIV Additional Sessions Judge for CBI Cases at Chennai (Special Court constituted u/s 43(1) of the Prevention of Money-Laundering Act, 2002) in Crl.M.P.No.8009 of 2021 dated 02.05.2022 and consequently allow the discharge petition filed by the petitioner in Crl.M.P.No.8009 of 2021 in Spl.C.C.No.1 of 2020 on the file of the learned XIV Additional Sessions Judge for CBI Cases at Chennai (Special Court constituted u/s 43(1) of the Prevention of Money-Laundering Act, 2002).

For Petitioner	:	Mr.ARL.Sundaresan Senior Counsel for Mr.A.Saravanan
For Respondent	:	Mr.P.Sidharthan Special Public Prosecutor (Enforcement Directorate)

<u>Crl.R.C.No.609 of 2022</u> :

T.D.Tataji .. Petitioner/A-3

Vs.

The Deputy Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue, 2nd and 3rd Floor
Murugesa Naicker Complex
No.84, Greams Road
Thousand Lights, Chennai 600 006 .. Respondent

Criminal Revision preferred under Section 397 read with 401 Cr.P.C. praying to set aside the order passed by the learned XIV Additional Sessions Judge for CBI Cases at Chennai (Special Court constituted u/s 43(1) of the Prevention of Money-Laundering Act, 2002) in Crl.M.P.No.11655 of 2019 dated 29.10.2021 and consequently allow the discharge petition filed by the petitioner in Crl.M.P.No.11655 of 2019 in Spl.C.C.No.1 of 2020 on the file of the learned XIV Additional Sessions Judge for CBI Cases at Chennai (Special Court constituted u/s 43(1) of the Prevention of Money-Laundering Act, 2002).

For Petitioner	:	Mr.ARL.Sundaresan Senior Counsel for Mr.A.Saravanan
For Respondent	:	Mr.P.Sidharthan Special Public Prosecutor (Enforcement Directorate)

C O M M O N O R D E R

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

In view of commonality of issue involved, these writ petition and criminal revisions are considered and decided by this common order.

2. For the sake of convenience, the parties will be referred to by their respective names.

3. The facts leading to the filing of the instant petitions are as under :

3.1. One T.D.Naidu, father of Tataji and Sonia obtained huge loans from Andhra Bank and Union Bank of India for starting a medical college in the name of D.D.Medical College in Tiruvallur and also took amounts to an extent of Rs.16.65 crores from students, for giving admission without even getting the necessary permission from the Medical Council of India. In connection with this, several FIRs were filed by the Inspector of Police, Kanakamma Chatram Police Station, Tiruvallur.

3.2. Since the FIR registered disclosed the commission of offences punishable under Sections 406, 420, 468, 471 and 506 IPC, the Enforcement Directorate registered a case in ECIR No.13/2013 on 15.11.2013 and after completing the investigation, the Enforcement Directorate has filed a complaint in Spl.C.C.No.1 of 2020 in the XIV Additional Sessions Court (Special Court for PMLA Cases), Chennai against (i) T.D.Naidu/A-1, (ii) T.D.Prabhavathy/A-2, (iii) T.D.Tataji/A-3, (iv) T.D.Sonia/A-4, (v) R.Varadarajan/A-5 and (vi) N.Raveendranadha Reddy/A-6.

3.3. After completing investigation, the Enforcement Directorate has filed a supplementary complaint also against the aforesaid persons on 13.08.2018 with additional allegations.

3.4. The allegations found in the complaint against Tataji/A-3 read as under :

> "10.3. Shri T.D.Tataji (A3 herein) had knowingly assisted Shri T.D.Naidu (A1 herein), who has defrauded several persons including several innocent students, Andhra Bank, Union Bank of India, which are Public Financial Institutions/Nationalised Banks etc., to several crores of rupees, who is not having any legitimate source of income proportionate to the assets he owns in his name or in the name of the Trusts, which he was managing. Shri T.D.Tataji does not have any independent source of substantial income. Shri T.D.Tataji has knowingly assisted Shri T.D.Naidu in acquiring the aforesaid properties out of the proceeds of the crimes involved in various aforementioned offences and has been enjoying the income derived from the said properties and claiming the same as untainted properties. Thus, it is very well confirmed that Shri T.D.Tataji (A3 herein) has indirectly involved in the offence of money laundering and knowingly is a party in possession, acquisition and use of the proceeds of crime and projecting the same as untainted property. Therefore, Shri T.D.Tataji (A3 herein) has been guilty of offence of money laundering under section 2(1)(p) r/w Section 3 of the PMLA, 2002."

3.5. Similarly, the allegations against Sonia/A-4 in the complaint read as under :

> "10.4. Ms.T.D.Sonia (A4 herein), had knowingly assisted Shri T.D.Naidu (A1 herein), who has defrauded several persons including several innocent students, Andhra Bank, Union Bank of India, which are Public Financial Institutions/Nationalised Banks, etc., to several crores of rupees, who is not having any legitimate source of income proportionate to the assets he owns in his name or in the name of the Trusts, which he was managing. Ms.T.D.Sonia (A4 herein) does not have any independent

source of substantial income. Ms.T.D.Sonia (A4 herein) has knowingly assisted Shri T.D.Naidu in acquiring the aforesaid properties out of the proceeds of the crimes involved in various aforementioned offences and has been enjoying the income derived from the said properties and claiming the same as untainted properties. Thus, it is very well confirmed that Ms.T.D.Sonia (A4 herein) has indirectly involved in the offence of money laundering and knowingly is a party in possession, acquisition and use of the proceeds of crime and projecting the same as untainted property. Therefore Ms.T.D.Sonia (A4 herein) has been guilty of offence of money laundering under section 2(1)(p) r/w section 3 of the PMLA, 2002."

3.6. In the supplementary complaint, the details of the properties standing in the name of Tataji and Sonia have been set out and they include not only immovable properties, but also high-end vehicles, including a Mercedes Benz.

3.7. Tataji filed a petition in Crl.O.P.No.2763 of 2017 to quash the prosecution against him in Special C.C.1 of 2020 before the XIV Additional Special Court for PMLA Cases, the earlier avatar of which is C.C.No.31 of 2015 on the file of the Principal Sessions Court (Special Court for PMLA Cases), which was dismissed by this Court on 02.03.2021 with the following observations :

"6.In the opinion of this Court, the date of birth given by the petitioner is a question of fact, which cannot be decided in a petition under

> Section 482 Cr.P.C. and the same has to be decided only by the trial Court during trial. If it is found that with the proceeds of crime, the properties were purchased in the name of the petitioner whilst he was a minor, then it would be a good case for the petitioner before the trial Court."

3.8. Thereafter, Tataji filed a petition in Crl.M.P.No.11655 of 2019 in Spl.C.C.No.1 of 2020 under Section 239 Cr.P.C. seeking discharge, which has been dismissed by the trial Court on 29.10.2021, aggrieved by which, Tataji has preferred Crl.R.C.No.609 of 2022.

3.9. The discharge petition filed by Sonia before the trial Court in Crl.M.P.No.8009 of 2021 in Spl.C.C.No.1 of 2020 under Section 227 Cr.P.C., also came to be dismissed on 02.05.2022, challenging which, she has preferred Crl.R.C.No.608 of 2022.

3.10. Coming to W.P.No.22975 of 2022, it has been filed by Sonia for quashing the prosecution in Spl.C.C.No.1 of 2020.

4. Heard Mr.ARL.Sundaresan, learned Senior Counsel representing Mr.A.Saravanan, learned counsel on record for Tataji and Sonia and

Mr.P.Sidharthan, learned Special Public Prosecutor for the Enforcement Directorate.

5. Mr.ARL.Sundaresan contended that Tataji and Sonia have not been shown as accused in the predicate offence and therefore, their prosecution under the PML Act, cannot be sustained. In support of this contention, he placed strong reliance on the judgment of the Supreme Court in *Vijay Madanlal Choudhary and Others Vs. Union of India and Others (2022 SCC OnLine SC 929)*, wherein, it is held as follows :

> "467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:
>
> (i) ... ...
> (v) ... ...
> (d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

Based on the above, he contended that Tataji and Sonia are on a better footing, in that, they have not been arrayed as accused in the predicate offence itself and hence, their prosecution under the PML Act cannot be sustained.

6. We carefully considered the aforesaid submissions of the learned Senior Counsel and we are unable to countenance the same. This issue was considered by this very Bench answering against the accused in Crl.O.P.No.19880 of 2022 decided on 14.09.2022.

7. Mr.ARL.Sundaresan's further contention is that the immovable properties were purchased much before the loans that were allegedly obtained from the banks by T.D.Naidu and those properties were only settled on Tataji and Sonia and hence, their prosecution for the alleged possession of the alleged proceeds of crime, cannot be sustained.

8. This, in our view, is a disputed question of fact which could be decided only during trial and not in revision proceedings or in a petition under Article 226 of the Constitution of India. That apart, a reading of the

supplementary complaint shows that high-end cars were purchased in the name of Tataji and Sonia and they were using them. To answer this point, we may profitably allude to the statement of law in paragraph 295 of *Vijay Madanlal Choudhary* (stated *supra*), which reads as under :

> "295. As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money-laundering. It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. <u>It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime</u>. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act."
>
> (emphasis supplied)

Thus, a reading of the above paragraph shows that even if the accused was not involved in the criminal activity that generated the proceeds of crime, but, if he is involved in some way or the other with the proceeds of crime so generated, he would be liable to be prosecuted under Section 3 read with 4 of the PML Act. Whether the cars were purchased from and out of the proceeds of crime, is also a question of fact which has to be decided only during trial.

9. In such view of the matter, we do not find any infirmity in the orders dated 29.10.2021 and 02.05.2022 passed by the trial Court in the discharge petitions in Cr.M.P.Nos.11655 of 2019 and 8009 of 2021, respectively, warranting interference by this Court. Similarly, there are *prima facie* materials against Sonia and therefore, the prosecution against her cannot be quashed.

10. In view of the above, the instant petitions *viz*., W.P.No.22975 of 2022 filed by Sonia seeking quashment of the prosecution in Spl.C.C.No. 1 of 2020 on the file of the Special Court for PMLA Cases, Chennai and Crl.R.C.Nos.608 and 609 of 2022 preferred by Sonia and Tataji, respectively, challenging the dismissal orders in their discharge petitions, stand dismissed. No costs.

11. Mr.ARL.Sundaresan submitted that the presence of Tataji and Sonia before the trial Court may be dispensed with during trial.

12. Accepting the aforesaid submission, the presence of Tataji and Sonia may be dispensed with on the following conditions :

i. They shall appear before the trial Court on or before 01.12.2022 and execute a bond for Rs.50,000/- each under Section 88 Cr.P.C. without sureties;

ii. They shall disclose the name of their Advocate, whom they have engaged in this case and shall also state that notice to the said Advocate, is tantamount to notice to them;

iii. They shall be present before the trial Court on the date of framing of charges;

iv. After framing of charges and questioning, they shall file individual affidavits stating that the Advocate engaged by them, will conduct their case in their absence and cross-examine the witnesses on the day they are examined-in-chief and will not adopt any dilatory tactics, as held by the Supreme Court in *Vinod Kumar vs. State of Punjab*

(2015)3 SCC 220;

v. They shall appear before the trial Court for questioning under Section 313 Cr.P.C. and on the date of judgment;

vi. On such affidavit being filed by them, the trial Court may consider their applications under Section 317 Cr.P.C. liberally and dispense with their presence for trial;

vii. If they adopt any dilatory tactics, the trial Court is empowered to insist upon their presence and even remand them in judicial custody, as held by the Supreme Court in *State of Uttar Pradesh v. Shambhu Nath Singh JT 2001(4) SC 319*;

viii. If any of them absconds, a fresh FIR can be registered under Section 229A IPC; and

ix. A copy of the affidavit to be filed by them before the trial Court, shall be served on the learned Special Public Prosecutor of the trial Court.

(P.N.P.,J.) (T K R, J.)
14.10.2022

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To

1.The Deputy Director
O/o.The Joint Director
Directorate of Enforcement
Chennai Zonal Office-I
2nd and 3rd Floor, Murugesa Naicker Complex
No.84, Greams Road, Chennai 600 006

2.The Public Prosecutor
High Court
Madras

P.N.PRAKASH, J.
AND
RMT.TEEKAA RAMAN, J.

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W.P.No.22975 of 2022
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