IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2022

CORAM

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

WRIT PETITION NO.22872 OF 2018
AND
W.M.P.NOS.26742 AND 26743 OF 2018

R.Subramanian ... Petitioner

.Vs.

1. The Union of India,
Represented by its Secretary,
The Department of Revenue,
the Ministry of Finance (Revenue),
No.128-A, North Block,
New Delhi - 110 001.

2. The Deputy Director,
The Directorate of Enforcement,
Chennai Zonal Office,
3rd Floor, C Block,
Murugesa Naicker Complex No.84,
Greams Road, Chennai - 600 006. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India praying issuance of a Writ of Certiorari to quash the order under PAO 5/2018 dated 28.03.2018 issued by the second respondent u/s.5(1) of the said Act and all actions of the second respondent pursuant to the said PAO 5/2018.

For Petitioner : Mr.R.Subramanian
Party-in-Person

For Respondents : 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 quash of the order passed in PAO 5/2018 dated 28.03.2018 by the second respondent u/s.5(1) of the Prevention of Money Laundering Act, 2002 [for brevity 'PMLA'] and all actions of the second respondent pursuant to the said PAO 5/2018.

2. Heard Mr.R.Subramanian, party-in-person and Mrs.G.Hema, learned Special Public Prosecutor [ED].

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

Mr.R.Subramanian [petitioner in-person] was running a concern by name M/s.Subhiksha Trading Services Ltd. In connection with that, certain irregularities surfaced resulting in the Central Bureau of Investigation, Bangalore, registering a case in RC-4(E)/2013 on 26.07.2013 for the offences u/s.120-B r/w 420 IPC and section 13(2) r/w 13(1) of the Prevention of Corruption Act, 1988, for bank fraud. After completing the investigation, the Central Bureau of Investigation has filed a charge sheet in C.C.No.9635 of 2014 in the Court of Additional Chief Metropolitan Magistrate, Egmore, Chennai, against the petitioner and others for the offence u/s.420 IPC. Thus, it appears that the offences under the Prevention of Corruption Act, that was initially cited in the First Information Report, have been dropped and that only the offence u/s.420 IPC has been included in the final report. While that being so, since section 420 IPC is a scheduled offence under the PMLA, the Enforcement Directorate registered a case in ECIR/CEZO/8/2014 dated 26.09.2014. Thereafter, the Enforcement Directorate passed a provisional attachment order in PAO 5/2018 on 28.03.2018 attaching three flats standing in the name of certain other entities on the premise that those three flats have been purchased by the petitioner via the proceeds of crime that was said to have been generated by him by committing the offence u/s.420 IPC in the year 2007 and 2008. Challenging the provisional attachment order, the petitioner filed the present petition on 27.08.2018 and the same is pending without any orders passed thereon.

4. In the mean while, the Enforcement Directorate filed a complaint in PAO 5/2018 before the Adjudicating Authority for

confirmation of the provisional order of attachment. The Adjudicating Authority took up the same in OC No.969/2018 and issued notice to the petitioner and others. On notice, the petitioner participated in the adjudication proceedings and raised his objections in this regard by contending that the predicate offence u/s.420 IPC relates to the year 2007 and 2008, on which date, section 420 IPC was not a scheduled offence under the PMLA and that section 420 IPC was included in the PMLA with effect from 01.06.2009. Similarly, the petitioner had raised other grounds also apart from the above before the Adjudicating Authority. The Adjudicating Authority considered the matter and by order dated 10.09.2018 confirmed the provisional order of attachment, aggrieved by which, the petitioner has filed a regular appeal in the Appellate Tribunal under the PMLA and the same is pending.

5. While these proceedings were going on, the Enforcement Directorate completed the investigation and filed a complaint in C.C.No.4/2018 in the Special Court for PMLA cases for the offences u/s.3 r/w 4 of PMLA against the petitioner and others. The petitioner filed a revision petition u/s.397 Cr.P.C. before this Court challenging the cognizance order of the Special Court and the said revision petition in Crl.R.C.No.630 of 2018 was dismissed by a learned single Judge of this Court on 10.10.2018. Challenging the order of the learned single Judge in Crl.R.C.No.630 of 2018, the petitioner has filed a Special Leave Petition before the Supreme Court, which was admitted and has been converted as C.A.Crl.682 of 2019. At the time of admission, the Supreme Court has passed the following order:

> 'Delay condoned.
>
> Leave granted.
>
> Tag the matter along with Criminal Appeal Nos.391-392 of 2018.
>
> In the meantime, there shall be stay of proceedings under the Prevention of Money Laundering Act.'

6. In this background, the present writ petition has come up for final disposal. At the outset, the petitioner contended that a three Judge Bench of the Supreme Court is hearing the PMLA matters including C.A.Crl.No.682/2019 and the judgment is awaited and sought for an adjournment.

7. However, Mrs.G.Hema, learned Special Public Prosecutor [ED], submitted that the present writ petition has become infructuous inasmuch as the provisional order of attachment has been confirmed by the Adjudicating Authority, challenging which, the petitioner has filed an appeal before the Appellate Tribunal and the same is pending.

8. We gave our anxious consideration to the aforesaid submission. A reading of the interim order of the Supreme Court shows that all further proceedings under the PMLA have been stayed and we are afraid that the said order may not cover the present writ proceedings, especially, in view of the fact that in the present writ proceedings, the petitioner has challenged only the provisional attachment order, which has been confirmed by the Adjudicating Authority against which, the petitioner's appeal is pending before the Appellate Tribunal.

9. The scheme of PMLA is two fold. The provisional attachment orders are normally passed to ensure that at the time of the judgment in the main prosecution before the Special Court, the proceeds of crime are available for the purpose of confiscation. In other words, neither through the provisional attachment order nor through the adjudication order can the attached property be finally confiscated to the State. Final confiscation can be done only by the Special Court which is dealing with the prosecution u/s.3 and 4 of the PMLA.

10. The petitioner contended that in this writ petition, the very jurisdiction of the Enforcement Directorate to register a ECIR in respect of the offence u/s.420 IPC that was allegedly committed by him in the year 2007 and 2008, has been raised and therefore, this writ petition cannot become infructuous.

11. Admittedly, the same ground has been raised by the petitioner in C.A.Crl.No.682 of 2019, which is pending before the Supreme Court and if the petitioner succeeds in the Supreme Court, the entire prosecution in C.C.No.4 of 2018 against him would fall like a pack of cards. As rightly contended by Mrs.G.Hema, learned Special Public Prosecutor [ED], the present writ petition, in our opinion, has become infructuous as what is challenged is only the provisional order of attachment, which has become final. Aggrieved by the final order of attachment, the petitioner's appeal before the Appellate Tribunal is also pending. In such view of the matter, we are of the opinion that there is no necessity to keep this writ petition pending on the file of this Court for days on end. The petitioner is at liberty

to raise all these points before the Appellate Tribunal where his appeal is pending.

Accordingly, this Writ Petition is closed as infructuous. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary,
The Union of India
The Department of Revenue,
Ministry of Finance (Revenue),
No.128-A, North Block,
New Delhi - 110 001.

2. The Deputy Director,
The Directorate of Enforcement,
Chennai Zonal Office,
3rd Floor, C Block,
Murugesa Naicker Complex No.84,
Greams Road, Chennai - 600 006.

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

WRIT PETITION NO.22872 OF 2018

SPD(CO)
PBS/18/03/2022