IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :03.11.2022

Pronounced on :10.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.Nos.14803 of 2019 and 3983 of 2021
and
Crl.M.P.Nos.7246 of 2019 and 13629 of 2022

Crl.O.P.No.14803 of 2019:

1.T.K.Rama Krishnan
2.R.Nanda Kumar .. Petitioners

/versus/

1.The State rep.by
The Inspector of Police,
Central Crime Branch,
EDF Team-2, Vepery,
Chennai 600 007.

2.M.Ravishankar

3.The Joint Director,
Directorate of Enforcement,
Chennai Zone-I.
(R3-Suo Motu impleaded as per order
dated 08.09.2022 in Crl.O.P.No.3983 of 2021
and 14803 of 2019 and Crl.M.P.No.13629
of 2022 and 7246 of 2019) .. Respondents

<u>Prayer:</u> Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to the FIR in Crime No.406 of 2018 (C-9036756) dated 24.09.2018 of CCB, EDF-I, Team-II, Vepery, Chennai 600 007 and quash the same.

For Petitioners :Mr.P.Wilson, Senior Counsel for
Mr.P.Wilson Associates

For Respondents :Mr.N.S.Suganthan
Government Advocate (Crl.Side) for R1

Mr.V.Karthik, Senior Counsel for
Mr.D.Lakshmipathy for R2

Mr.N.Ramesh, Special PP(ED) for R3

COMMON ORDER

Crl.O.P.No.14803 of 2019 has been filed by T.K.Rama Krishnan and his son R.Nanda Kumar, who are shown as A1 and A3 in the First Information Report registered on 24.09.2018 by CCB-I, EDF Team-2, Vepery, Chennai, to quash the complaint.

Crl.O.P.No.3983 of 2021 has been filed by the defacto complainant M.Ravishankar, to transfer the investigation to the second respondent the Central Bureau of Investigation.

2. Brief facts stated in the complaint given by M.Ravishankar/defacto complainant is as below:-

The complainant is doing an Event Management Consultant Business in the name and style of M/s A.K.R.Events and his college mate Rajkumar

(A4) is also doing an Event Management Company in the name and style of M/s United Sports Associates Private Limited. During the month of January 2016, A-4-Rajkumar, his father Mr.Ramakrishnan (A1), his wife Sharmila Jothiprakasam (A2) and his brother Nandakumar (A3) met the complainant and represented that A4-Rajkumar had asked them to meet the complainant and informed him that if he invested a sum of Rs.20 crores, they would conduct events by combining Mr.Sachin Tendulkar, Mrs.Anjali Tendulkar, Mr.Shane Warne and Mrs.Elizabeth to participate in events at Mumbai and later on in other countries. Further, they lured that the investment amount will fetch them four-fold profit and insisted to transfer the funds. As the complainant was not much interested in it, they constantly approached him and convinced him. Believing A-4 representation, the complainant paid a sum of Rs.24.30 crores by cheques. RTGS and cash breakup of payments: As cash, Rs.3,02,40,000/- to A3 (R.Nandhakumar), Rs.3,54,50,000/- to A1(Ramakrishnan) and Rs.6,97,50,000/- to A2 (Sharmila Jothiprakasam). By cheques and through RTGS: A sum of Rs.10,75,60,000/- to A4(Rajkumar) of

M/s United Sports Associates Pvt.Ltd on various dates in the year 2016. After receipt of the amount, the accused neither arranged any events nor returned the received amount and cheated a sum of Rs.24.30 crores and threatened with dire consequences. Hence, the complaint.

3. The Central Crime Branch has registered the complaint in Crime No.406 of 2018 under Sections 406, 420, 506(i) r/w 34 of IPC and taken up for investigation. Pending these Criminal Original Petitions, this Court sought for Status Report from the Investigating Officer, who has filed the Report dated 08.09.2022, which reads as below:-

> "3.It is submitted that the above said complaint was forwarded to the Inspector of Police, EDF-I, Team-2 and a case was registered in Chennai Central Crime Branch Crime No.406 of 2018 under Sections 406, 420, 506(i) r/w 34 IPC on 24.09.2018 and taken up for investigation.
>
> 4.It is submitted that ROC incorporation particulars were obtained for M/s United Sports Associates Pvt.Ltd. A2-

Sharmila Jothiprakasam is the Managing Director of the said association incorporated on 29.09.2015 and A4-Rajkumar is the Additional Director of the said association from 07.12.2015.

5.It is submitted that account details of Complainant was obtained fromhDFC Bank, Kodambakkam Branch Account No.50100058271151. Further, account details of A-4 Rajkumar was obtained from karur Vysya Bank, Mogappair Branch Account No.1263152000000520.

6.It is submitted that the complainant was examined and his statement was recorded. He submitted the Xerox copy of Memorandum of Understanding dated 02.03.2016 between M/s United Sports Associates Pvt.Ltd. Represented by the MD Mrs.Sharmila Jothiprakasam (A-2) and the complainant Ravishankar Proprietor of M/s A.K.R.Events.

7.It is submitted that A1 and A3 were examined on 27.03.2019 under Section 41-A Cr.P.C. On 14.05.2019 A-2 Sharmila Jothiprakasam was enquired under Section 41-A Cr.P.C. A4 Rajkumar is suspected to be in Australia and he was not yet examined at that time.

8.It is submitted that during enquiry, A2 Sharmila stated that the complainant is stranger to her and neither the M/s United Sports Associates Pvt.Ltd. Company not herself have any connection with him. There was not proof of document for Rs.6,97,50,000/- given by the complainant to her. The company has never authorised the said Rajkumar to have any business transaction with the complainant's company. The said Rajkumar was only holded the post of Additional Director for a period of time. There is no business dealing with the complainant or his company and no money was ever transferred by him or his company into her personal account or that of the company and she claimed that she has not signed any Memorandum of Understanding agreement dated 02.03.2016 and her signature seem to be forged.

9.During the investigation, it was found that Rs.10,75,60,000/- was transferred through bank transaction from 10.03.2016 to 20.09.2016 on various dates from complainant's 3 bank accounts to A-4's KVB bank account. Further, the complainant had not filed any document to substantiate his claim that he had paid a sum of Rs.3,45,50,000/- and Rs.6,97,50,000/- to A-2 and a sum of

Rs.3,02,40,000/- to A-3.

10.It is submitted that believing the words of the accsed persons, in the year 2016, the complainant gave the amount to the accused persons as follows:-

A1-Ramakrishnan-cash of Rs.3,02,40,000/-.

A2-Sharmila Jothiprakasam-cash of Rs.6,97,50,000/-

A3-Nandhakumar-cash of Rs.3,54,50,000/- total cash of Rs.13,54,40,000/-.

From A4's bank account, the following amounts were transferred to the accused persons.

(i)A-1's Ramakrishnan A/c 1263155000074046-Rs.1,66,95,000/-.

(ii)One Gnanakantham, mother of A-4 vide A/c No.1263155000098270-Rs.2,81,18,089/-.

(iii)One Kavitha, wife of A-4 vide A/c No.1263155000098270-Rs.2,81,18,089/-.

(iv)A-3's A/c No.1263155000007548-Rs.1,68,30,000/-.

(v)A-2's A/c No.52016050900241580, 52016051300257246-Rs.80,00,000/-

Totalling Rs.10,72,68,000/-.

11.It is submitted that on 07.09.2022, A4 Rajkumar was examined u/S 41(A) Cr.P.C., and statement was recorded. During enquiry, he stated as follows. He moved to Australia in the year 1996 and worked in multiple industries including Airline, Telecommunications and Textiles and further started event management in Australia in the name of M/s United Sports Associates PTY Ltd., and in USA and other countries he conducted various sports events and corporate events with top sports personalities. The complainant Ravishankar and A4-Rajkumar were classmates in DG Vaishnav College, Chennai. The complainant Ravishankar participated in one of the event organised by A4 Rajkumar's M/s Sports Associates PTY Ltd in Dubai held at October 2015 along with his team. Later, he discussed abour organising AR Rahman musical concret under the banner of AKR Events along with his events in various countries and agreed to facilitate the complainant's musical event. So, in the event to be conducted at US on November 2015, he agreed that all the expenses that he incur to conduct the event will be reimbursed by him after they send the invoice for the expenses incurred and all the remittances, for the amount payable against the official invoices raised were received officially following all regulations by NEFT/RTGS to his NRO account.

12.It is submitted that in the complaint the complainant allegs that a large sum of money was paid by cash to his father, brother and one more person called Sharmila. It is submitted that A-4 Rajkumar stated that his father, brother or to his knowlede Sharmila never had any business association with the complainant and there was notransaction whatsoever as alleged by the complainant and in the complainant, it is mentioned that Sharmila is wife of Rajkumar, which is not true and thus entire complaint is false and fabricated.

13.Also it is submitted that A4-Rajkumar stated that there is no Memorandum of Understanding entered between Ravishankar and Sharmila and he never signed as witness in the Memorandum of Understanding dated 02.03.2016. On the date of MOU, he claimed that he was in Australia and not in India. There is no transaction between Ravishankar and his family members. The money paid by him was for the serivces rendered by him as evidenced by the invoices and emails. It is submitted that A-4 Rajkumar further stated that the complainant has dragged his family members into his complaint only to humiliate them out of personal Vendetta. He has given the complaint out of personal malafide motives under false names.

4. Since in the course of arguments, it was stated that the Enforcement Directorate has probed the matter and investigated the veracity of the transactions alleged in the complaint, the Enforcement Directorate was impleaded as third respondent vide order dated 08.09.2022. The Assistant Director of Enforcement Directorate has submitted the Status Report, which reads as below:-

> "8.Therefore, to ascertain the alleged cash transfer, the bank account statements of defacto complainant maintained with Canara Bank, SBI and HDFC Bank were called for by the 3rd respondent/ED and on perusal of the same, it was revealed that Shri Ravi Shankar has transferred a large amount to bank account of Shri.Rajkumar bearing No.1263152000000520 maintained with Karur Vysya Bank and as such bank statements of account No.1263152000000520 was also called for by 3rd respondent/ED

vide email dated 31.08.2020.

9.I submit that as such after obtaining administrative approval, summons U/s 50(2) was issued to Shri.Ravishankar on 09.09.2020 in summons S.No.113 requesting him to appear and produce documents on 16.09.2020. However, in response to the summon dated 09.09.2020, shri Ravi Shankar vide his letter dated 12.09.2020 had infomed that due to some prior engagement on 16.09.2020, he could not appear and requested four weeks' time for his appearance. Accepting his request, summons in S.No.118 dated 30.09.2020 requesting him to appear on 05.10.2020 was issued. But the sid summon was returned undelivered with a postal endorsement that 'refused' as in the address 13/6 is mentioned in place of 13/16. Therefore, again fresh summon dated 07.10.2020 was issued to Shri.M.Ravishankar addressed to 13/16, 8th Street, Dr.Subbaraya Nagar, Kodambakkam, Chennai-24 by requiring him to appear on 14.10.2020. Even the summon dated 07.10.2020 was also returned undelivered with a postal endorsement “Door locked” on 19.10.2020. Meanwhile an oral request was received from Shri.M.Ravishankar that he would appear on 20.10.2020. On 20.10.2020 Shri.Ravishankar appeared before the IO and gave his voluntary statement u/s 50(2) & (3) of PMLA Act reiterated that he had transferred Rs.10,75,60,000/- to the account of Shri.Rajkumar by way of RTGS and cheque and remaining amount of Rs.13,50,00,000/- was given in cash to Shri Ramakrishnan, Shri.Nandhakumar and Smt.Sharmila Jothiprakasam through his former employee namely, Shri.Rajesh and through a staff Shri.Rajkumar namely Shri.Manoj and sought time till 26.10.2020 for submitting the Death Certificate of his mother and particulars of his former employee and another person namely, Shri.Manoj (employee of Rajkumar).Further, Shri.M.Ravishankar had sent a letter dated 21.12.2020 along with the contact details of Shri.M.Rajesh and Shri.Manoj who are acquainted with the cash transactions with M/s United Sports Associates Pvt.Ltd and Death Certificate of his mother.

10.I submit that Summons u/s 50 PMLA was again issued to Shri. Ravishankar and to Shri.Rajkumar on 19.01.2021 requiring them to appear on 28.01.2021 and 29.01.2021 respectively. In response to the summons, Shri.Rajkumar appeared on 01.02.2021, however the summons issued to Shri.Ravishankar was returned with postal endorsement “addressee absent-intimated delivered”.

11.I submit that on 01.02.2021 and 22.03.2021 statement under Sections 50(2) & (3) of PMLA of Shri.Rajkumar was recorded and Shri.Rajkumar in his statement had stated that the amount received in to his account was towards reimbursement of expenses incurred for the events organised in Dubai,New York, Houston, Los Angles and Mumbai in the year 2015-2016.

12.I submit that summons under Section 50(2) of PMLA were issued to Shri.Ramakrishnan, Shri.Rajkumar, Shri.Nandha Kumar and Mrs.Sharmila Jothiprakasam dated 18.07.2022 requiring them to appear on 01.08.2022, 01.08.2022, 01.08.2022 and 02.08.2022. Summons issued to Mrs.Sharmila Jothiprakasam was returned undelivered with postal endorsement “left”. Pursuant to the receipt of summons Shri.Ramakrishnan, Shri.Rajkumar, Shri.Nandha Kumar appeared on 18.08.2022 wherein statement of Shri.Rajkumar and Shri.Nandhakumar were recorded under Sections 50(2) & (3) of PMLA. However, Shri.Ramakrishnan took adjournment and promised to appear on 22.08.2022, but failed to appear.

13.I submit that Mrs.Sharmila Jothiprakasam was again summoned vide Summon dated 22.08.2022 to appear on 12.09.2022 but vide letter dated 11.09.2022 she took adjournment for three weeks citing medical reasons.

14.It is submitted that investigation under PMLA is under progress to achieve the objectives of the PMLA and to punish the offenders of Money Laundering and to confiscate the properties involved in Money Laundering."

5. The accused 1 and 3, who are the petitioners in Crl.O.P.No.14803 of 2019 are the father and son. They claim innocence and also alleged that the complaint is a malice prosecution. The reading of the complaint does not indicate any direct accusation against these petitioners. The allegation of giving huge sum of Rs.3,54,50,000/- to the first petitioner(A1) and Rs.3,02,40,000/- to the second petitioner(A3) by cash is pure figment of imagination and no prudent man without any record will ot give such an huge sum to the stranger. The imaginary complaint is exposed by the omission of stating time, place and date of handing over the cash to the petitioners. The only documentary evidence to support the complaint is transfer to Rs.10,75,60,000/- through RTGS to one Rajkumar, who is shown

as 4th accused.

6. In the First Information Report. According to the complaint, the 4th accused is running a company by name M/s United Sports Associates Private Limited. These petitioners are no way connected with the said company. While so for any outstanding between the defacto complainant and the 4th accused, there is no necessity to hand over the huge sum of Rs.3,54,50,000/- to the first petitioner (A1) and Rs.3,02,40,000/- to the second petitioner(A3). Referring an e-mail sent by the defacto complainant to the 2nd petitioner (A3) calling him to share mobile number and the said e-mail being dated 16.03.2018, the learned counsel appearing for the petitioners submitted that from this e-mail it is made clear that on 16.03.2018, when the defacto complainant sent the e-mail to the second petitioner was not even aware of the mobile number of the second petitioner and he has requested to share the mobile number for business deal. While so, the allegation of

investing Rs.20,00,00,000/- during the month of January 2016 with the 4th accused and alleging that he has given more than Rs.3,00,00,000/- to each of the petitioners is improbable and unbelievable allegation.

7. But then, from the Status Report filed by the Investigating Officer as well as the Enforcement Directorate, who has seized of the matter to investigate whether there is any proceeds of crime, apparently, we find both the defacto complainant and the accused persons have not sofar properly co-operated for the investigation. Only after certain directions by this Court, it appears that they started responding to the summons issued by the Investigating Agency. Sofar no substantial evidence produced by the defacto complainant to substantiate his claim few remittance of money as cash to the accused 1, 2 and 3. Only evidence is the remittance of money through RTGS to the 4th accused. Also the description of the second accused as wife of the fourth accused is found to be a false averment made in the complaint. For A-4 (Rajkumar) a sum of Rs.10,75,60,000/- through RTGS alleged to have been

given for conducting different events in USA during the month of November 2015. A4 (Rajkumar) during the investigation has also informed that he is not a party to the Memorandum of Understanding alleged to have been entered on 02.03.2016 between Ravishankar, (the defacto complainant) and Sharmila Jothiprakasam, (the second accused) and the description in the complaint that the seocnd accused Sharmila Jothiprakasam is the wife of the fourth accused is a false statement. The false statement is knowingly made to create an impression that the entire family of Ravishankar has been involved in the alleged offence.

8. The Investigating Officer has taken steps to check the genuineness of document sofar collected and the veracity of the statements given by the respective accused persons as well as the defacto complainant remains to be deceided.

9. From the Status Report filed by the Enforcement Directorate,

they have positively asserted that the said Sharmila Jothiprakasam (the second accused) is not the wife of Rajkumar as alleged in the complaint. The allegation as found in the complaint attracts provisions of Prevention of Money Laundering Act, 2002 for which the defacto complainant and the accused persons will be held liable if the allegations are found to be true. Therefore, on registration of the complaint by the CCB, Chennai for the predicate offence. The Enforcement Directorate has taken note of the allegation of huge cash transferred between the defacto complainant and the accused persons and after getting administrative approval, summons has been issued and the matter is under investigation from money laundering angle.

10. From these facts, this Court finds that the complaint is only a tip of the iceberg. Though there may not be any specific evidence of cash transfer to these petitioners to support the complaint, the transaction of money between these petitioners and the defacto complainant may attract the provisions of Prevention of Money Laundering Act, 2002. Hence,

Prosecution for Indian Penal Code offence cannot be ruled out at this nascent stage of investigation conducted by the two destincted Specialised Agencies. It will be too pre-mature to conclude that the complaint is inherently improbable. Unless and until the investigation Agency is allowed to conduct the investigation, it is highly preposterous to declare the petitioners are innocent of the claim alleged.

11. Admittedly, these petitioners are known to the defacto complainant Rajkumar (A4) is the son of the first petitioner and elder brother of second petitioner. Though the second petitioner Sharmila Jothiprakasam is not the wife of the fourth accused, she and the fourth accused are the Directors of M/s United Sports Associates Private Limited and sofar material collected and admitted by the petitioners themselves, it is seen that more than Rs.10 cores has been transferred into the account of M/s United Sports Associates Private Limited through Bank.

12. In view of the above fact, this Court finds that the complaint, which is under investigation by the two different Specialised Agencies cannot be termed as an action by malice taken by the disgruntled elements. Though some allegations is made against the defacto complainant that he has dual identity one as Ravi Shankar and another as Muhammed Rafiq with Indian Passport is also the matter for probe by the Agencies. Just because the complaint has been registered at the instance of the tainted person, the truthfulness of the complaint cannot be doubted without testing he can never always be the complainant, if the evidence available and collected from the course of investigation indicates that the defacto complainant himself is an accused, there is no bar under the law to prosecute the defacto complainant for the offence committed.

13. Therefore, this Court finds no reason to interfere with the on going investigation in Crime No. 406 of 2018. Hence, **the Criminal Original**

Petition No.14803 of 2019 is dismissed. Consequently connected Miscellaneous Petition is closed.

14. Sofar the request of the defacto complainant that the investigation has to be transferred to CBI appears to be tactics to prevent the present Investigating Agency from proceeding further. While the investigation conducted sofar with limited co-operation extended by the defacto complainant as well as the accused persons is good enough and this Court finds no reason for transfer of Investigating Agency as prayed in Crl.O.P.No.3983 of 2021. Accordingly, **this Criminal original Petition No.3983 of 2021 is dismissed.** Consequently, connected Miscellaneous Petition is closed.

10.11.2022

Index:yes
speaking order/non speaking order
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To :

1.The Inspector of Police, Central Crime Branch, EDF-1,
Team-2, Chennai-7.

2.The Joint Director,
The Central Bureau of Investigation,
"A" Wing, III Floor, Rajaji Bhavan,
Besant Nagar, Chennai 600 090.

3.The Public Prosecutor, High Court, Madras.

4.The Special Public Prosecutor, (E.D),
High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Delivery Common Order made in
Crl.O.P.No.14803 of 2019 and 3983 of 2021
and
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<u>10.11.2022</u>