



Order dated : 14.09.2022
Criminal Original Petition No.19880 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
and
THE HONOURABLE MR. JUSTICE RMT. TEEKAA RAMAN

Criminal Original Petition No.19880 of 2022

and

Crl.M.P.Nos.13073 & 13076 of 2022

P.Rajendran
S/o.Periyasamy

.. Petitioner

Vs.

The Assistant Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
II & III Floor, "C" Block,
Murugesu Naicker Office Complex,
No.84, Greaves Road,
Chennai - 600 006.

.. Respondent

Criminal Original Petition filed u/s.482 of the Code of Criminal Procedure praying to call for the entire records concerned in C.C.No.62 of 2016 on the file of the Special Court for Prevention of Money Laundering Act, 2002/Principal Sessions Judge, Chennai and quash the same insofar as the petitioner is concerned.



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For Petitioner : Mr.Sharath Chandran
for Mr.S.Ramesh

For Respondent : Mr.N.Ramesh
Special Public Prosecutor [ED]

ORDER

[Made by P.N.PRAKASH, J]

Seeking to quash the proceedings in C.C.No.62 of 2016 on the file of the Special Court constituted u/s.43(1) of the Prevention of Money Laundering Act, 2002 [Principal Sessions Judge], Chennai, the present petition has been filed.

2. At the outset, it may be necessary to state that in a prosecution under the Prevention of Money Laundering Act, 2002 [hereinafter referred to as the 'PMLA'], there will invariably be two sets of accused viz., one in the predicate offence and other in the prosecution launched by the Enforcement Directorate. Therefore, in order to avoid confusion, we are referring to the rank of the accused as set out in the impugned complaint in C.C.No.62 of 2016 that has been filed by the Enforcement Directorate.



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

3.1. One G.Srinivasan [A1] and R.Manoharan [A2] entered into a criminal conspiracy to cheat M/s.Global Trade Finance Limited [hereinafter referred to as "GTFL"], a subsidiary of Global Trust Bank, pursuant to which, R.Manoharan [A2], in collusion with S.Arivarasu [A5], Manager of GTFL, applied for a loan with fake documents. S.Arivarasu [A5] sanctioned a loan of Rs.15 crores on 16.05.2008 to a shell company by name M/s.Bhagavathi Textile Mills [in short "BTM"] purportedly owned by R.Manoharan [A2], which was actually siphoned off by G.Srinivasan [A1].

3.2. Out of the said sum of Rs.15 crores so siphoned off, G.Srinivasan [A1] used Rs.1.07 crores to purchase 166 acres of land in Pudukottai Village in the names of P.Venkatachalapathy [A4], P.Rajendran [A6] and K.Vignesh [A7] from K.Gunasekaran, R.Sivakumar, Chinnakkannu and G.Selvarani through various documents. The details of the sale deeds under which the lands were purchased with the money provided by G.Srinivasan [A1] to the



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buyers viz., P.Venkatachalapathy [A4], P.Rajendran [A6] and K.Vignesh [A7] have been set out in paragraph No.6.3 of the impugned complaint. The said P.Venkatachalapathy [A4], P.Rajendran [A6] and K.Vignesh [A7] gave a Power of Attorney in September 2009 to one R.Ayyappan in respect of the lands that were purchased by them with the funds provided by G.Srinivasan [A1]. K.Gunaseelan [A8] had purchased lands measuring 166 acres from P.Venkatachalapathy [A4], P.Rajendran [A6] and K.Vignesh [A7] through their power agent R.Ayyappan in February 2010. Thereafter, K.Gunaseelan [A8] sold those lands to S.Palanichamy [A9], C.Chellamuthu [A10], K.Kalimuthu [A11], V.Kuppusamy [A12], R.Natarajan [A13] and V.Nattuthurai [A14], as could be seen from the chart given in paragraph No.6.6 of the impugned complaint.

3.3. Reverting to the loan of Rs.15 crores that was obtained by BTM, as stated supra, it was found that G.Srinivasan [A1] and R.Manoharan [A2] had created fake documents in league with S.Arivarasu [A5], Manager of GTFL for obtaining loan.



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3.4. While this being so, GTFL was merged with State Bank of India and during reconciliation of the accounts, it was found that R.Manoharan[A2] obtained the loan by producing fraudulent documents.

3.5. Therefore, on a complaint given by the State Bank of India, the CBI registered a case in Crime No.RC-9(E)/2010 on 07.10.2010 and after completing the investigation, filed a final report in C.C.No.6 of 2011 in the Special Court for CBI cases, Coimbatore, for the offences u/s.120-B r/w 420, 467 and 471 IPC and Section 13 of the Prevention of Corruption Act against G.Srinivasan [A1] and others, in which P.Rajendran [A6] herein is not an accused. Since the CBI case disclosed the commission of a "scheduled offence" under the PMLA, the Enforcement Directorate registered a case in ECIR No.06/CEZO/PMLA/2011 and after completing the investigation, filed a complaint in C.C.No.62 of 2016 in the Special Court for Prevention of Money Laundering Act cases (Principal Sessions Judge, Chennai) for the offence u/s.3 r/w 4 of the PMLA against 15 persons including G.Srinivasan[A1], R.Manoharan [A2], P.Venkatachalapathy [A4], S.Arivarasu [A5], P.Rajendran [A6] and K.Vignesh [A7].



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3.6. This Court, in Crl.O.P.Nos.2821 and 5638 of 2017, has, by a detailed order dated 21.03.2022, quashed the PMLA prosecution in C.C.No.62 of 2016 against K.Gunaseelan [A8], S.Palanichamy[A9], C.Chellamuthu[A10], K.Kalimuthu [A11], V.Kuppusamy [A12], R.Natarajan [A13], V.Nattuthurai [A14] and S.Kuppusamy [A15] on the short ground that these persons were innocent purchasers, in that, they had purchased the said property from P.Venkatachalapathy [A4], P.Rajendran [A6] and K.Vignesh [A7].

4. While so, P.Rajendran [A6] has filed the present quash petition to quash the prosecution against him in C.C.No.62 of 2016.

5. Heard Mr.Sharath Chandran, learned counsel for the petitioner and Mr.N.Ramesh, learned Special Public Prosecutor [ED] for the respondent.

6. The crux of the allegation against P.Rajendran [A6] is that, G.Srinivasan [A1] and R.Manoharan [A2] had committed the criminal



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activity of cheating GTFL and had obtained a loan of Rs.15 crores from GTFL, out of which, G.Srinivasan [A1] had purchased a property by a sale deed dated 09.09.2009 in the name of P.Rajendran [A6], which, P.Rajendran [A6] had subsequently sold to the accused, against whom, this Court has quashed the prosecution, as stated above.

7. At this juncture, it may be relevant to extract the following paragraphs from the impugned complaint:

"6.3. Inasmuch as Shri G.Srinivasan during the inquiry has acceded that out of above funds he had purchased immovable property admeasuring about 166 acres in Pudukottai Village from S/Shri K.Gunasekaran, R.Sivakumar, Chinnakkannu and Smt.G.Selvarani, in the names of S/Shri Vignesh, P.Venkatachalapathy and Shri P.Rajendran, who were all associated/known to him, for a declared amount of Rs.1.07 Crores, inquiries were made with the said name lenders. Accordingly, Shri P.Rajendran in his statement dated 15.02.2012 (Annexure-XIII) under Section 50(2) & (3) of the PMLA, given before the Assitant Director (PMLA), Directorate of Enforcement, Chennai, in response to the enquiry on the details of the 5 acres and 76 cents of land registered in his name, vide Document No.1559/2009 of SRO, Chathirapatti had inter-alia stated that his younger brother, Shri Venkatachalapathy and Shri G.Srinivasan of Udumalpet were close friends; that Shri G.Srinivasan was looking after the business of the firm, M/s.Sri Pamba Spinning Mills, which was managed by his father; that his younger brother, Shri Venkatachalapathy joined with the above said Shri G.Srinivasan during the year 2005 and was



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looking after the business of the aforesaid M/s.Sri Pamba Spinning Mills; that later, in the year 2009, he came to understand that his younger brother, Shri Venkatachalapathy and Shri G.Srinivasan were in some problem; that his brother, Shri Venkatachalapathy, Shri G.Srinivasan and one Shri Selvakumar, who was working with his younger brother, were all arrested by the District Crime Branch, Coimbatore, during July 2009 and about a month later they were released on bail; that during September month the same year, Shri G.Srinivasan told him that for about 5.76 acres land in his name he had appointed one Shri.R.Sivakumar, who was working under him as its power holder and if the land was in the name of the said Sivakumar it would not be safe and hence he (Srinivasan) wished to write the same in his name; that he agreed for the same and gave his consent to get the above said 5.76 acres land transferred in his name as arranged by Shri G.Srinivasan; that the land under Survey No.103, having Patta No.395, totally constituted 17 acres and 28 cents and in that 1/3 portion, i.e., 5 acres and 76 cents was transferred in his name and registered as Document No.1559/2009 of SRO, Chatthirapatti with a specified consideration of Rs.3,64,000/- as arranged by Shri G.Srinivasan, but he neither received nor paid any money; that later, in the last week of September 2009, the said Shri G.Srinivasan told him to give power for the above said land of 5 acres and 76 cents land held in his name to one Shri.R.Ayyappan; that Shri G.Srinivasan prepared a Power Document and obtained his signature on it, which was registered in the SRO, Kaniyur as Document No.184/2009, that as was arranged by Shri G.Srinivasan, he gave power to the aforesaid Shri R.Ayyappan, S/o.Ramdas, a resident of No.57-B, Vinayaka Apartment, Padmavathi Nagar Main Road, Virugambakkam, Chennai - 92; that even for this he neither received nor gave any money either from / to the above said Shri G.Srinivasan or any other person, as the aforesaid land was not his and belonged only to Shri G.Srinivasan; that further, as requested by Shri G.Srinivasan he had been to Sub-Registrar's Office and signed as a witness in another document relating to power given by one Shri Vignesh to the aforesaid Shri Ayyappan for another land and that he did not have any connection or dealings with the above said Shri G.Srinivasan except the above.



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12.8. S/Shri P.Rajendran and K.Vignesh the other associates of Shri G.Srinivasan connived with him in the scheme fraudulent transactions and knowingly facilitated the investments of Shri G.Srinivasan in the immovable properties by consciously lending their names and acting as his benamis thereby camouflaged the said funds from its actual source. Thus, S/Shri P.Rajendran and K.Vignesh had actively facilitated utilization of a part of the aforesaid proceeds of crime, as defined under Section 2(1)(u) of PMLA towards investments in the immovable properties aggregating to Rs.53,16,200/- Shri G.Srinivasan, besides acquiring inherent pecuniary benefits for themselves.

13.6. It is humbly submitted that Shri P.Rajendran who was charged of having committed the scheduled offences, furthermore having lent his name for the purchase of the immovable properties and having actively connived with Shri G.Srinivasan in camouflaging the aforesaid immovable properties in which a part of the said proceeds of crime aggregating to Rs.53,16,200/- had been invested by Shri G.Srinivasan was actually involved in the process or activity connected to "proceeds of crime" defined under Section 2(1)(u) of PMLA and has thereby committed the offence of Money Laundering as defined under Section 2(p) read with Section 3 of the PMLA, which is punishable under Section 4 of the PMLA."

8. Mr.Sharath Chandran, learned counsel for the petitioner, submitted that since P.Rajendran [A6] is not an accused in the CBI case in C.C.No.6 of 2011, his prosecution by the Enforcement Directorate in C.C.No.62 of 2016 is illegal in the light of the recent judgment of the Supreme Court in the case



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of *Vijay Madanlal Choudhary and others v. Union of India and others*¹. In

support of this contention, he placed strong reliance on the following paragraphs in the said judgment:

"253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

467 (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

1 2022 SCC OnLine SC 929



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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."

9. Mr.Sharath Chandran, learned counsel, contended that when the accused in the predicate offence is discharged, acquitted or the proceedings against him are quashed, the prosecution under the PMLA cannot be maintained, which means that if a person is not prosecuted in the predicate offence, his position being far better than the former, cannot be prosecuted under the PMLA.

10. At the first blush, this argument did appear convincing. However, the fallacy in the aforesaid submission was highlighted by Mr.N.Ramesh, learned Special Public Prosecutor [ED], who brought to our notice that paragraph Nos.253 and 467(d) of the judgment of the Supreme Court in ***Vijay Madanlal's*** case [supra] deal with only the cases of persons named as



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accused in the predicate offence against whom the prosecution in the predicate offence is quashed or he is discharged/acquitted. This benefit cannot be extended to a person, who has not been arrayed as an accused in the predicate offence because the offence under the PMLA is a stand alone offence and is different and distinct from the predicate offence.

11. Learned Special Public Prosecutor submitted that for generating "proceeds of crime", a "scheduled offence" must have been committed, after the commission of the scheduled offence and generation of proceeds of crime, different persons can join the main accused either as abettors or conspirators for committing the offence of money laundering by helping him in laundering the proceeds of crime; such persons may not be involved in the original criminal activity that had resulted in the generation of "proceeds of crime", therefore, just because they were not prosecuted for the predicate offence, their prosecution for money laundering cannot be said to be illegal. There appears to be much force in the aforesaid submission, especially, in the light of paragraph 271 of the judgment in *Vijay Madanlal's* case [supra], which is



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extracted below:

"271. As mentioned earlier, the rudimentary understanding of 'money-laundering' is that there are three generally accepted stages to money-laundering, they are:

- (a) Placement : which is to move the funds from direct association of the crime.
- (b) Layering : which is disguising the trail to foil pursuit.
- (c) Integration : which is making the money available to the criminal from what seem to be legitimate sources."

12. That apart, paragraph No.467(d) of the *Vijay Madanlal's* case [supra] only speaks about the discharge/ acquittal or quashment of proceedings of the accused in the predicate offence and the consequences that will follow for him in the PMLA prosecution. In that context, the Supreme Court has held that such an accused cannot be prosecuted under the PMLA if the case against him in the predicate offence has been quashed or he has been discharged/acquitted. To be noted, a case is only an authority for what it decides, as observed by Lord Halsbury in **Quinn v. Leathem**², as follows:

"... that every judgment must be read as applicable to the particular facts proved or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but are governed and qualified by the

² 1901 AC 495



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particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides."

13. In **Rajendra Singh v. State of U.P. & others**³, the Supreme Court has approvingly cited the above passage.

14. We cannot enlarge the scope of paragraph 467(d) of *Vijay Madanlal's* case [supra] and read into it things that have not been said, in the name of logical reasoning. Law is not always logic.

15. On facts, we find that Rajendran [A6] had voluntarily lent his name for the purchase of the property under the sale deed dated 09.09.2009 with the tainted money that was generated by G.Srinivasan [A1] and R.Manoharan [A2] by committing a scheduled offence. Under Section 24 of the PMLA, there is a statutory presumption which can be discharged only during trial.

In the result, this Criminal Original Petition is devoid of merits and the same is accordingly dismissed. The trial Court shall proceed with the trial of

³ (2007) 7 SCC 328



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the case without in any manner influenced by what is stated above as the above observations are only for the limited purpose of disposing of this quash petition.

[PNP, J.] [TKR, J.]
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Index: Yes/No
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To

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