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Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.10.2022

Coram

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

Crl.R.C.No.1224 of 2022

1.S.Ramesh Pothy
S/o.K.V.P.Sadayandi

2.S.Pothiraj
S/o.K.V.P.Sadayandi

3.S.Murugesh Pothy
S/o.K.V.P.Sadayandi

4.S.Mahesh Pothy
S/o.K.V.P.Sadayandi

5.S.Ashok Pothy
S/o.K.V.P.Sadayandi

.. Petitioners

Vs.

1.The Deputy Director,
Directorate of Enforcement,
(The Prevention of Money Laundering Act, 2002)
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, C Block,
Murugesan Naicker Office Complex,
84, Greams Road, Thousand Lights,
Chennai - 600 006.



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

Sridhar Dhanapal (expired)
S/o.Dhanapal

2.D.Senthil

3.S.Kumari
W/o.Sridhar Dhanapal

4.Dhanalakshmi Sridhar
W/o.Sridhar Dhanapal

5.J.Arul
S/o.A.Jayaraman

6.A.V.Kamalakaran
S/o.A.M.Venugopal

.. Respondents

[Respondents 2 to 6 not contested/
not necessary parties]

Criminal Revision Case filed u/s.397 r/w 401 of the Code of Criminal Procedure praying to call for the records relating to the proceedings dated 14.07.2022 made in Crl.M.P.No.9157 of 2022 in S.C.No.74 of 2017 on the file of Principal Sessions Court, Chennai and set aside the same.

For Petitioners : Mr.Nithyaesh Natraj
for M/s.Sri Law Associates, Mr.S.Ravi

For Respondents : Mr.P.Sidharthan
Special Public Prosecutor [ED]



WEB COPY



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

ORDER

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

This petition has been filed seeking to quash the order dated 14.07.2022 made in Crl.M.P.No.9157 of 2022 in S.C.No.74 of 2017 on the file of Principal Sessions Court, Chennai.

2. Since the entire facts of this case have been vividly captured in the order dated 18.02.2022 in Crl.O.P.No.2342 of 2022, we do not want to repeat the same and instead, we extract verbatim paragraphs 2 to 17 therefrom:

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

2.1. In Kanchipuram, there was a person, by name, D.Sridhar, against whom the local police had registered 26 criminal cases covering almost all the provisions of the Penal Code, including murder, attempt to murder, abduction, extortion, criminal intimidation, kidnapping, cheating, *etc.* It appears that he had fled to the Middle East, but, the investigation of the cases against him proceeded and they are at various stages now. We are told at the bar that Sridhar died in Cambodia on 04.10.2017.

2.2. Since the cases registered against him disclosed the commission of scheduled offences under the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA'] viz., 120-



WEB COPY



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

B, 302, 307, 364, 384 and 385 IPC and section 3 r/w 25 of the Indian Arms Act, 1959, the Enforcement Directorate registered a case in ECIR No.CEZO/03/2016 on 09.03.2016 and took up investigation under the PMLA.

2.3. It is the case of the Enforcement Directorate that D.Sridhar, by committing various criminal activities, had acquired wealth and purchased various properties in and around Kanchipuram. During the course of investigation, the Enforcement Directorate identified a property measuring 12945 sq.ft. in survey No.557/1A1A batch (for avoiding prolixity we refrain from mentioning all the survey numbers) as proceeds of crime. This property is the subject matter of the case at hand and therefore, we would call it as the “impugned property”.

2.4. The impugned property was purchased by Kumari, wife of Sridhar, from 9 persons *via* 10 sale deeds registered in December 2015 in the office of the Sub Registrar Joint II, Kanchipuram. Thereafter, Kumari settled the impugned property in favour of her daughter Dhanalakshmi Sridhar, who was 20 years old then, *vide* a deed of settlement dated 02.01.2016 registered as Document No.03 of 2016.

2.5. The petitioner belongs to the Pothy family, which runs a chain of textile outlets in various parts of Tamil Nadu. This Pothy family appears to be owning land measuring 64734 sq.ft. in Survey No.555/2, Kanchipuram, which is adjacent to the impugned property. The impugned property is a pathway connecting the main road with the property of the Pothys in Survey No.555/2. Therefore, the Pothy brothers, numbering 5, purchased the impugned property from Dhanalakshmi Sridhar for a total sale consideration of Rs.5,30,74,500/- by a deed of sale dated 29.02.2016 registered as Document No.1184/2016 and since then, they are in possession and enjoyment of the said property. Alleging that this property has been acquired by D.Sridhar’s family *via* criminal activities, the Enforcement Directorate passed an order of provisional attachment dated 02.09.2016 u/s.5 of the PMLA. This order of provisional



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

attachment was challenged by the Pothu brothers in W.P.No.34694 of 2016 and the matter was heard by one of us [P.N.Prakash.,J] and the petition was dismissed on 20.12.2016 observing as follows:

‘11. In Section 2(u), the words “any property and any person” are used. The Section does not say that at the relevant point of time, the property in question must be in the hands of the alleged offender. This can be elucidated with an example. A professional assassin would quote a price for an elimination from his hirer. The price will mostly be in terms of “money”. He would successfully complete his assignment and take his price in money. That is one proceeds of crime. The money will not be in the same avatar indefinitely. It would be converted to an immovable property either in the name of the offender or in the name of anyone else. Now, the character of proceeds of crime has changed from “money” to “immovable property”. When the same immovable property is sold, it cannot lose the characteristics of a proceeds of crime, though the purchaser may claim that he had legally purchased it through lawful sources. Of course, it is open for the purchaser to take a plea of lawful acquisition before the adjudicating authority and it is now too preposterous to hazard a guess on the outcome of such a plea.’

2.6. On 29.12.2016, the adjudicating authority confirmed the order of provisional attachment u/s.8(3) of the PMLA. Challenging the order of the adjudicating authority, the Pothu brothers approached the appellate Tribunal u/s.26 of the PMLA. The Pothu brothers contended that they were innocent purchasers and they did not know that their vendors had acquired the property *via* criminal activities of her father D.Sridhar. The Enforcement Directorate resisted the claim. However, the Tribunal, by order dated 11.01.2019, gave the following findings:

‘51. As mentioned earlier, the Appellants are bona-fide purchasers and they have not done anything against law. Furthermore, the Appellants are not involved in any



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

crime or money laundering and the Appellants are law abiding citizens running an organization in the field of textile business, with the family business being there for more than 85 years. No case of money laundering against the appellants is made out. The prosecution complaint under PML Act, 2002 was filed by the respondent against Ramesh Pothy with mala-fide intention and after thought on the date of passing the provisional attachment order.

52. I am of the opinion that complaint filed against Ramesh Pothy is not sustainable and is filed after-thought as the IO has failed to trace the amount paid by the appellant to the family members of Late Sridhar. In order to save its skin, the complaint against the Ramesh Pothy has been filed. This is because of the reasons that the appellants are not directly or indirectly involved in the money laundering. They have no direct link or nexus with deceased who has now passed away.

53. The appellants have no objection if criminal proceedings already pending against accused parties may continue as per law.

54. The appellants despite of above are agreeable to deposit a sum of Rs.6,47,25,000/- as value assessed by the ED in the Investigation Report with the respondent (without prejudice) in order to secure the entire value of the property filed by the ED in the reason to believe. The figure mentioned by the hearing officer in the impugned order is fanciful and accepted as per the case of ED in subsequent pleadings. The real figures are mentioned in the reason-to-believe on the basis of which the provisional attachment order was passed. The said figures could not have been changed.'

2.7. The appellate Tribunal set aside the order of provisional attachment of the impugned property and released it therefrom. Challenging the order of the appellate Tribunal, the Enforcement Directorate filed C.M.A.Nos.2904 of 2019 batch and the Pothy



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

brothers also filed C.M.A.Nos.3336 of 2019 batch. Though the Pothy brothers had succeeded before the appellate Tribunal, yet, they chose to file Civil Miscellaneous Appeals in the High Court as they were aggrieved with the observations of the appellate Tribunal in paragraph Nos.53 and 54 of the order dated 11.01.2019, extracted above.

2.8. A Division Bench of this Court heard both sides and disposed of the civil miscellaneous appeals on 25.09.2019 by a consent order, the terms of which are as under:

'8. When the matter is taken up today for hearing, the following is agreed upon:

- (i) The respondents shall not alienate or encumber the property sought to be attached;*
- (ii) The respondents are at liberty to use the property as a pathway;*
- (iii) Any road is to be laid by them would be at their own cost, for which, no equity can be claimed;*
- (iv) Any temporary shed put up by them also shall be at their own costs.*

9. All these arrangements are subject to the result of the adjudication in S.C.No.74 of 2017 by the Special Court, Chennai. The respondents shall pay a sum of Rs.2 lakhs (Rupees two lakhs only) without prejudice to the contentions in the pending case. These arrangements also subject to the result in S.C.No.74 of 2017 on the file of the Special Court, Chennai.

10. It is made clear that all the issues are left open to be decided by the Special Court. The Special Court, viz., the Principal Judge, City Civil Court, Chennai, shall dispose of S.C.No.74 of 2017 within a period of six months from the date of receipt of a copy of this order. The common order passed by the Appellate Tribunal stands modified to the extent indicated above. Consequently, the respondents shall not alienate and encumber the property sought to be attached and the condition imposed by the Appellate



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

Tribunal also stands modified. These appeals are disposed of accordingly. No costs.'

2.9. In the meanwhile, the Enforcement Directorate filed a complaint in S.C.No.74 of 2017 in the Special Court for PMLA cases (Principal Sessions Court, Chennai) u/s.3 and 4 of the PMLA against Sridhar [A1], Senthil [A2], Kumari [A3], Dhanalakshmi Sridhar [A4], Arul [A5], Kamalakannan [A6] and Ramesh Pothu [A7]. Challenging the prosecution, Ramesh Pothu [A7] has filed the present petition u/s.482 Cr.P.C.

3. Heard Mr.Nithyaesh Natraj, learned counsel appearing for the petitioner and Mrs.G.Hema, learned Special Public Prosecutor [ED] appearing for the respondent.

4. At the outset, Mrs.G.Hema, learned Special Public Prosecutor [ED], submitted that this Court had dismissed the quash petition of the co-accused in this case viz., Dhanalakshmi Sridhar in Crl.O.P.No.24316 of 2018 vide order dated 04.02.2021 and so this petitioner deserves the same fate. This order has been passed by a Division Bench of this Court, in which one of us [P.N.Prakash, J] was a member.

5. This Court had dismissed the quash petition of Dhanalakshmi Sridhar by holding that it would be too premature to quash the proceedings against her by saying that she would not be aware of the fact that the property was acquired by her father via criminal activities as there is a reverse burden u/s.24 of the PMLA, which has to be discharged by Dhanalakshmi Sridhar only during trial and not in proceedings u/s.482 Cr.P.C. However, in this case, there is absolutely no material to show that the petitioner herein was aware that the property was acquired by their vendor's father via criminal activities. Therefore, the dismissal of the quash petition of Dhanalakshmi Sridhar, the vendor of the property to the Pothu brothers, cannot be a bar for this Court to entertain this petition.

6. Mrs.G.Hema, learned Special Public Prosecutor [ED] contended that this Court has given a finding in W.P.No.34694 of 2016 that the



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

property is proceeds of crime and hence, it would not be proper for this Court to entertain this quash petition.

7. In W.P.No.34694 of 2016, the issue was not the criminal prosecution against the petitioner herein but the provisional order of attachment that was passed by the Enforcement Officer u/s.5(1) of the PMLA in respect of the impugned property. In that context, this Court had stated that the provisional attachment order cannot be quashed at the threshold as the said property *prima facie* appeared to have been acquired through proceeds of crime. However, the appellate Tribunal had set aside the attachment proceedings by rendering a finding of fact in paragraph No.51, extracted above, that the Pothy brothers were not involved in any crime or money laundering.

8. Mrs.G.Hema, learned Special Public Prosecutor [ED], further contended that in paragraph No.53 of the order of the appellate Tribunal, it is stated that the Pothy brothers have given an undertaking that they would have no objection for the criminal proceedings to continue as per law. In view of this undertaking, she stated that they cannot challenge the criminal proceedings in this petition u/s.482 Cr.P.C.

9. We are afraid, we cannot countenance this submission, because there cannot be any estoppel against statute. When a person has a statutory remedy, he cannot contract it out. That apart, the Pothy brothers have filed C.M.A.Nos.3336 of 2019 batch challenging paragraph Nos.53 and 54, extracted above, before a Division Bench of this Court, which has been alluded to above.

10. Now, the moot question is can the petitioner be prosecuted for the offences u/s.3 and 4 of the PMLA. The allegations against the petitioner in the impugned complaint in S.C.No.74 of 2017 that has been filed by the Enforcement Directorate are extracted hereunder:

'8.7. Shri S. Ramesh Pothy (Accused-7 herein) has acquired/purchased an immovable property in Kanchipuram District involved in money laundering and



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

worth around Rs.6.50 Crores, from the possession of Ms.Dhanalakshmi Sridhar (Accused-4 herein) and the said immovable property has been registered in the name of Shri S.Ramesh Pothy along with his brothers. The details of the said transactions are explained as under:

- Sridhar (A1) has involved in major criminal activities and committed Scheduled Offences and from the major criminal activities, he gained huge Proceeds of Crime. From the part of gained Proceeds of Crime, he acquired/purchased properties in his name and in the name of his family members and in the name of his associates.
- Sridhar (A1) has acquired the subject property from the part of proceeds of crime and registered the property in the name of his wife, Smt.S.Kumari. Subsequently, he has transferred the said property to his daughter through his wife and registered in the name of his daughter, Ms.Dhanalakshmi Sridhar.
- Immediately on transfer, Ms.Dhanalakshmi Sridhar has sold the said property, which was acquired from the major criminal activities by her father, to Sri.S.Ramesh Pothy (Accused 7 herein) and his 4 brothers and got only an amount of Rs.25,43,755/- by cash and the said transaction was not completed. Shri S.Ramesh Pothy has very well known that he is going to purchase the subject property, which is nothing but the part of proceeds of crime and Ms.Dhanalakshmi Sridhar is a daughter of the accused Sridhar and Sridhar has been involving with major criminal activities, considering, when in fact, Shri Ramesh Pothy has not settled the balance sale consideration to Ms.Dhanalakshmi Sridhar.
- Sri Ramesh Pothy is the Managing Director of M/s.Pothys Private Ltd, which was registered under the Companies Act, 1956 and he is the one who had ultimate control over the affairs of the company. Since, the Accused 7 herein, was already known that the subject



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

property was the part of proceeds of crime which involved in money laundering, he did not incline to settle the balance sale consideration to Ms.Dhanalakshmi Sridhar, who sold the subject property and for safer side, he has settled the balance sale consideration amount of Rs.5,00,00,000/- to Smt.S.Kumari, who was not a seller in the said transaction. Further, to escape from the clutches of law, he has misused the Company and made the payment in the name of "balance sale consideration" through the company that too, not to the seller, but to Smt.S.Kumari who is wife of Sridhar, the Accused 1 herein. The above narrated sale transactions made, within short span of time, between Sridhar, Smt.S.Kumari, Ms.Dhanalakshmi Sridhar, Shri S.Ramesh Pothy and his brothers and M/s.Pothys Private Ltd are very well within the ambit of the provision viz. "Interconnected Activities" under Section 23 of the PMLA, 2002. Keeping the above in view, it stands to reason that Shri S.Ramesh Pothy has indirectly involved and knowingly as a party in the offence of money laundering by way of acquiring the part of proceeds of crime which involved in money laundering in his name and his brothers name, from Sridhar (Accused 1 herein) through Smt.S.Kumarai (Accused 3 herein) and Ms.Dhanalakshmi Sridhar (Accused 4 herein) and made sale consideration through the company, in order to project/claim the said property as untainted property. It would not be out of place to humbly submit herein that through the POC sale transaction was made between Shri S.Ramesh Pothy (purchasers) & his brothers and Ms.Dhanalakshmi Sridhar (Seller), sale consideration transaction was made between M/s.Pothys Private Ltd. (who is not the purchaser) and Smt.S.Kumari (who is not the seller).

Therefore, Shri S.Ramesh Pothy has been knowingly and



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

actually involved in the money-laundering activity connected with the proceeds of crime derived by Shri Sridhar (Accused-1 herein), including its possession and acquisition, use and claiming and projecting the same as untainted properties and thus committed the offence of money laundering under Section 3 of PMLA, 2002 and has been guilty of offence of money laundering under Section 2(1)(p) r/w Section 3 of the PMLA, 2002, punishable under Section 4 of the said Act. '

11. A reading of the above shows that the petitioner, being the Managing Director of the Pothu brothers, has been prosecuted for purchasing the impugned property from the daughter of an alleged criminal. We are carefully using the word “alleged criminal” because Sridhar is no more alive for him to contest the allegations against him.

12. For a prosecution u/s.3 r/w 4 of the PMLA, the ingredients are two fold as held by the Supreme Court in ***Nikesh Tarachand Shah Vs. Union of India and Another***¹ :

'11. Having heard the learned counsel for both sides, it is important to first understand what constitutes the offence of money laundering. Under Section 3 of the Act, the kind of persons responsible for money laundering is extremely wide. Words such as “whosoever”, “directly or indirectly” and “attempts to indulge” would show that all persons who are even remotely involved in this offence are sought to be roped in. An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and “proceeds of crime” is defined under the Act, by Section 2(1)(u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (which is referred to in our judgment as the predicate offence). Thus,

¹ (2018) 11 SCC 1



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

whosoever is involved as aforesaid, in a process or activity connected with “proceeds of crime” as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property.’

(emphasis supplied)

13. A reading of the above clearly shows that for mulcting criminal liability u/s.3 and 4 of the PMLA, the prosecution should place materials before the Court to show that the person has not only acquired the property by committing a scheduled offence, but, he should have projected that property as untainted.

14. In this case, it is the definite case of the prosecution that the impugned property was acquired by Sridhar in the name of his wife by committing various criminal activities. Of course, a name lender to the principal accused can also be brought within the net of section 3 r/w 4 of the PMLA as abettors. In other words, where the principal offender projects a tainted property as an untainted one, not only will he be held liable, but also all others who had helped him to project the tainted property as untainted. It is not the case of the prosecution that the petitioner herein was projecting a tainted property as an untainted one nor is it their case that the petitioner had abetted D.Sridhar in projecting a tainted property as an untainted one. The petitioner was only a *bonafide* purchaser of the impugned property from the daughter of D. Sridhar.

15. Mrs.G.Hema, learned Special Public Prosecutor [ED] submitted that the petitioner had paid only Rs.25,43,755/- to Dhanalakshmi Sridhar, their vendor and not the entire sale consideration of Rs.5,30,74,500/-. The Enforcement Directorate obtained this information from the sale deed dated 29.02.2016,



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

which is a relied upon document. This sale deed clearly shows in page No.15, the schedule of payment that has been made by the Pothy brothers for the purchase of the impugned property. For the sake of convenience, we extract the payment portion from the said sale deed:

'NOW THIS DEED OF SALE WITNESSETH AS FOLLOWS:-

1. In pursuance to the above, the VENDOR doth hereby admit and acknowledge the receipt of the entire Sale consideration of Rs.5,30,74,500/- (Rupees Five Crores Thirty Lakhs Seventy Four Thousand and Five Hundred only) from the PURCHASERS as detailed hereunder:-

- a) Rs.2,00,00,000/- (Rupees Two Crores only) paid by RTGS Transfer from the account of the PURCHASERS to the account of Mrs.Kumari, as desired by the VENDOR, on 31.12.2015 in reference No.CIUBH15365304592*
- b) Rs.1,65,00,000/- (Rupees One Crore and Sixty Five Lakhs only) paid by RTGS Transfer from the account of the PURCHASERS to the account of Mrs.Kumari, as desired by the VENDOR, on 13.01.2016 in reference No.CIUBH16013301799*
- c) Rs.1,35,00,000/- (Rupees One Crore and Thirty Five Lakhs only) paid by RTGS Transfer from the account of the PURCHASERS to the account of Mrs.Kumari, as desired by the VENDOR, on 23.02.2016 in reference No.CIUBH16054302426*
- d) Rs.5,30,745/- (Rupees Five Lakhs thirty thousand seven hundred and forty five only) deducted being 1% TDS of the sale consideration.*
- e) Rs.25,43,755/- (Rupees Twenty Five Lakhs Forty three thousand seven hundred and fifty five only)*



WEB COPY



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

*paid by the PURCHASERS to the VENDOR
at the time of registration.*

16. This sale deed is a registered document, which the prosecution themselves rely upon. At this juncture, pertinent it is to point out that as per the judgment of the Supreme Court in **State of Orissa vs. Debendranath Padi**², u/s.482 Cr.P.C., documents of unimpeachable character of sterling quality can be looked into and relied upon by the Court for the purpose of deciding a quash petition in order to secure the ends of justice. A perusal of the above averments in the sale deed shows that the petitioner had paid various amount by RTGS to Kumari, the mother of Dhanalakhmi Sridhar on 31.12.2015, 13.01.2016 and 23.02.2016 and has also deducted TDS for that. This payment to the mother of Dhanalakshmi Sridhar, which has been reflected in the sale deed itself, cannot amount to an offence u/s.3 r/w 4 of the PMLA.

17. In view of the foregoing discussions, we are of the opinion that the prosecution of the petitioner u/s.3 and 4 of the PMLA in S.C.No.74 of 2017 is an abuse of process of law.

Ergo, this Criminal Original Petition is allowed and the prosecution *qua* the petitioner herein in S.C.No.74 of 2017 on the file of the learned Principal Sessions Judge, Chennai, is hereby quashed. However, in view of the undertaking given by the petitioner in the C.M.A.Nos.3336 of 2019 batch, he will have to abide by the verdict of the trial Court in S.C.No.74 of 2017 with regard to the confiscation of the impugned property u/s.8(5) (6) (7) and (8) of the PMLA. Consequently, connected miscellaneous petition is closed. "

3. To summarise the above, one Sridhar, a local don, purchased 12,945 sq.ft. of land in Kanchipuram in the name of his wife Kumari

² (2011) 3 SCC 351



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

WEB COPY

between 28.12.2015 and 30.12.2015 under a number of sale deeds by allegedly intimidating the owners of the lands. This property was settled by Kumari in favour of her daughter Dhanalakshmi on 04.01.2016. The Pothy family, represented by Ramesh Pothy, purchased this land from Dhanalakshmi by a deed of sale *viz.*, Document No.1184 of 2016 dated 29.02.2016 for a sum of Rs.5,30,74,500/-. Since Ramesh Pothy belongs to the Pothy family comprising several brothers, each having the suffix Pothy to his name, we would hereinafter refer to them collectively as "the Pothys". The payments that were made by the Pothys to Dhanalakshmi had been captured in paragraph No.15 of the order dated 18.02.2022, which has been extracted above.

4. Since the criminal cases against Sridhar disclosed the commission of a scheduled offence under the Prevention of Money Laundering Act, 2002 [hereinafter referred to as 'PMLA'], the Enforcement Directorate registered a case and thereafter, has filed a complaint in S.C.No.74 of 2017 in the Special Court for PMLA cases (Principal Sessions Court, Chennai) against Sridhar and others including Ramesh Pothy. In the mean while, the



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

Enforcement Directorate passed a provisional attachment order on 02.09.2016 of the said property, which was confirmed by the adjudicating authority on 29.12.2016. But, the Appellate Tribunal set aside the same with a direction to the Pothys to deposit Rs.6,47,25,000/- as they had given such an undertaking.

5. Aggrieved by the order of the Appellate Tribunal, the Enforcement Directorate and the Pothys approached this Court under Section 42 of the PMLA by filing 12 Civil Miscellaneous Appeals (six each) in C.M.A.Nos.2904, 2912, 2917, 2918, 2930, 2932, 2938, 3336 to 3342 of 2019, in which, final orders were passed on 25.09.2019, which has been referred to in paragraph No.2.8 of the order dated 18.02.2022 and the same has also been extracted supra. The order dated 25.09.2019 in the 12 Civil Miscellaneous Appeals were further modified on 11.11.2019 and the Pothys were directed to deposit Rs.10,00,000/- instead of Rs.6,47,25,000/- in S.C.No.74 of 2017, which they have complied with.

6. Since the prosecution against Ramesh Pothy in S.C.No.74 of 2017 was quashed by this Court in Crl.O.P.No.2342 of 2022 by order dated



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

18.02.2022, Ramesh Pothy filed a petition in Crl.M.P.No.9157 of 2022 in S.C.No.74 of 2017 u/s.8 (7) of the PMLA before the trial Court for releasing his property from attachment. After hearing either side, the trial Court, by the impugned order dated 14.07.2022, has dismissed the same, aggrieved by which, the present revision has been filed.

7. Heard Mr.Nithyaesh Natraj, learned counsel appearing for the petitioners and Mr.P.Sidharthan, learned Special Public Prosecutor [ED] appearing for the first respondent.

8. The Enforcement Directorate has filed a counter strongly objecting to the claim of Ramesh Pothy and praying for sustaining the order of the trial Court.

9. This Court gave its anxious consideration to the rival submissions.

10. Admittedly, the Pothys had paid Rs.5,30,74,500/- as sale consideration to Kumari and Dhanalakshmi for purchasing the property. It is not the case of the Enforcement Directorate that the Pothys were benamies



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

WEB COPY

of Sridhar or Kumari or Dhanalakshmi. The Pothys have disclosed the entire payments that were made for the purchase of the said property. The Enforcement Directorate was not able to trace Rs.5,30,74,500/-, which had gone into the kitty of Kumari and Dhanalakshmi and therefore, they are now holding on to the property of the Pothys.

11. In our considered opinion, when it is not the case of the Enforcement Directorate that the Pothys had purchased the property for a nominal consideration and that they are benamies of Sridhar and his family, the immovable property in the hands of the Pothys cannot be said to be "proceeds of crime". At the risk of repetition, this Court has quashed the prosecution against Ramesh Pothy holding that he was not involved either directly or indirectly in the money laundering offence with Sridhar and his family members.

12. Now, the question is, in view of the order passed in C.M.A.Nos.2904, 2912, 2917, 2918, 2930, 2932, 2938, 3336 to 3342 of 2019 and Crl.O.P.No.2342 of 2022, whether the Pothys can approach the



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

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trial Court for release of the property.

13. Mr.P.Sidharthan, learned Special Public Prosecutor [ED], contended that the Pothys will have to wait till the culmination of the trial to get back their property from the Special Court.

14. In order to appreciate the rival contentions, it may be appropriate to extract Section 8(7) of the PMLA:

"8 (7). Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may, involved in the offence of money-laundering after having regard to the material before it."

(emphasis supplied)

15. Section 8(7) of the PMLA came up for consideration before a Division Bench of this Court in Crl.R.C.No.448 of 2020 dated 16.08.2021 (The Assistant Director v. Canara Bank), wherein, this Court has held that Section 8(7) of the PMLA is a stand alone section and is not governed by the



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

proviso to Section 8(8) of the PMLA, as the latter would come into effect only after the culmination of the trial, but, whereas the former could be invoked during the pendency of the trial, if it is found that the trial is not progressing "for any other reason". In this case, there was no progress in the trial from 2017 onwards for various reasons.

16. That apart, as alluded to above, the property in question, which belongs to the Pothys cannot be confiscated in lieu of Rs.5,30,74,500/- in the hands of their vendors, to wit, Kumari and Dhanalakshmi. Of course, it would be open to the Enforcement Directorate to attach other properties of Kumari and Dhanalakshmi, if they are not able to trace the sum of Rs.5,30,74,500/-, but, that can, by no stretch of imagination, empower them to attach the buyers' properties for the sin of having purchased the same for a valid consideration from a tainted seller.

17. In fact, the appellate authority himself had questioned the Enforcement Directorate as to why they had not gone behind the sale



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

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consideration that was paid by the Pothys to Dhanalakshmi and Kumari, for which, there was no satisfactory explanation. It may be pertinent to extract the relevant portion from the order of the appellate authority:

"20. The respondent despite of having the details of bank account of the sellers in which the money was transferred did not attach the amount and accounts of Mrs.Kumari and Ms.Dhanalakshmi rather attach the subject matter of property. The requisite details of payments made to seller/accused persons including bank account details to which payments were made were given to the Adjudicating Authority, however the respondent had chosen to attach impugned property only in question. The IO and counsel has failed to give any answer as to why despite of having knowledge, why amount received from the appellants by the family members of accused were not traced and attached. The counsel and IO maintained silence on this aspect about the failure of IO."
(emphasis supplied)

18 As stated above, the sum of Rs.10 lakhs was deposited by the Pothys in the Special Court, pursuant to the directions of this Court in C.M.A Nos. 2904 of 2019 *etc.* batch *vide* order dated 25.09.2019. The relevant portion of the order dated 25.09.2019 is worth extracting:

“9. All these arrangements are subject to the result of the adjudication in S.C. No.74 of 2017 by the Special Court, Chennai. The respondents shall pay a sum of Rs.2 lakhs (Rupees two lakhs only) without prejudice to the contentions, in the pending case. These arrangements also subject to the result in S.C. No.74 of 2017 on the file of the Special Court, Chennai.

10 It is made clear that all the issues are left open to be



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Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

decided by the Special Court. The Special Court, viz., the Principal Judge, City Civil Court, Chennai, shall dispose of S.C. No.74 of 2017 within a period of six months from the date of receipt of a copy of this order.”



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

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19 Subsequently, at the instance of the Enforcement Directorate, the said batch of appeals was listed under the caption “for being mentioned” on 11.11.2019 and it may be apposite to extract the relevant portion from the order passed on 11.11.2019:

“5. Accordingly, we direct the respondent to deposit a sum of Rs.10,00,000/- (Rupees Ten Lakhs only) to the credit of S.C. No.74 of 2017 on the file of the Special Court, Chennai, within a period of eight weeks from the date of receipt of a copy of this order.

6. We make it clear that the earlier conditional order and the present one passed would certainly be subject to the final orders to be passed by the Special Court, Chennai.”

20 As adverted to above, the conditional order in C.M.A. No.2904 of 2019 was passed on 25.09.2019 and more than three years have rolled over since then, despite which, the trial in S.C. No.74 of 2017 has not even progressed to the stage of framing of charges. Since this Court has quashed the prosecution of Ramesh Pothy in S.C. No.74 of 2017 on the file of the Special Court for CBI Cases in Crl.O.P. No.2342 of 2022 by order dated 18.02.2022, the Pothys would be entitled to the sum of Rs.10 lakhs also. It is worth pointing out at this juncture that the Enforcement Directorate has not appealed against the order passed in Crl.O.P. No.2342 of 2022 quashing



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

the proceedings against Ramesh Pothy in S.C. No.74 of 2017. The relevant portion to this effect from the counter affidavit filed by the Enforcement Directorate is extracted:

“.... It is learnt that no appeal has been filed by the Department against the quash order of the High Court.”

In view of the above, the order passed by the Principal Sessions Court, Chennai, dated 14.07.2022 in Crl.M.P.No.9157 of 2022 in S.C.No.74 of 2017, is set aside and this Criminal Revision is allowed. As a sequel, Crl.M.P.No.9157 of 2022 in S.C.No.74 of 2017 filed by the petitioners before the trial Court is allowed and the trial Court is directed to release the subject property and also refund the sum of Rs.10,00,000/- deposited by the Pothys on the file of the trial Court.

[PNP, J.]

[TKR, J.]

19.10.2022

Index: Yes/No
gm/cad



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

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To

- 1.The Principal Sessions Judge,
Chennai.
- 2.The Deputy Director,
Directorate of Enforcement,
(The Prevention of Money Laundering Act, 2002)
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, C Block,
Murugesan Naicker Office Complex,
84, Greams Road, Thousand Lights,
Chennai - 600 006.
- 3.The Special Public Prosecutor [ED],
High Court, Madras.



WEB COPY



Order dated : 19.10.2022
Crl.R.C.No.1224 of 2022

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

gm

Crl.R.C.No.1224 of 2022

19.10.2022