IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2022

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and
The Honourable Mr. Justice **G.CHANDRASEKHARAN**

Crl.O.P.Nos.23632 & 23633 of 2022

A.K.Sudevan .. Petitioner in Crl.O.P.No.23632 of 2022

R.Mahesh .. Petitioner in Crl.O.P.No.23633 of 2022

Vs.

State represented by
The Assistant Director,
Directorate of Enforcement, 2nd & 3rd Floor,
Murugesan Naicker Office Complex,
No.84, Greams Road, Thousand Lights,
Chennai – 600 006. .. Respondent in both petitions

Common Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the complaint as against the petitioner in C.C.No.13 of 2017 on the file of the IX Additional Court-CBI, Chennai (Special Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002) in E.C.I.R.No.CEZO/03/2015 on the file of the respondent.

For Petitioner in both petitions	:	Mr.Manojkumar
For Respondent in both petitions	:	Mr.Rajnish Pathiyil Special Public Prosecutor (ED)

COMMON ORDER

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

Since the foundational facts in both these cases arise from the same predicate offence, a common order is passed in both these cases.

2. The facts relating to the predicate offence are as under:

One Kamalakannan was working as an accountant in Dr.V.Seshaiah Diabetes Care and Research Institute (hereinafter referred to as "the hospital") for a pretty long time. On the allegation that the said Kamalakannan misappropriated huge amounts from the hospital, running to several crores, the hospital gave a complaint to the police, based on which, a case in Central Crime Branch Crime No.474 of 2014 was registered on 26.11.2014 for the offences under Sections 408, 420 and 468 r/w 120-B IPC against the said Kamalakannan and certain unnamed bank officials. Since the offences in the First Information Report were also offences enumerated in Schedule-A of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as "the PMLA"], the Enforcement Directorate registered a case in ECIR No.CEZO/03/2015 under the PMLA and took up investigation of the case. After completing the investigation, the Enforcement Directorate has filed a complaint in C.C.No.13 of 2017 for the offences under Section 3 r/w 4 of the PMLA against ten persons including Kamalakannan for quashing which, A.K.Sudevan (A7) and R.Mahesh (A8) have filed the present criminal original petitions under Section 482 Cr.PC.

3. Heard Mr.Manojkumar, learned counsel for the petitioners and Mr.Rajnish Pathiyil, learned Special Public Prosecutor appearing for the respondent.

4. The Enforcement Directorate has filed an elaborate counter dated 21.11.2022 justifying the prosecution of A.K.Sudevan (A7) and R.Mahesh (A8) under the PMLA.

5. On a reading of the impugned complaint, it is seen that Kamalakannan had approached A.K.Sudevan (A7) for the purchase of ten grounds of land in Mudichur and in connection with which, Kamalakannan had given an advance of Rs.2,00,000/- (Rs.1,00,000/- by cheque and Rs.1,00,000/- by cash) to A.K.Sudevan (A7) some time in April 2014. However, the deal did not go through. Therefore, A.K.Sudevan (A7) returned Rs.1,00,000/- to Kamalakannan, but, retained Rs.1,00,000/- with him as agreed. On these allegations, A.K.Sudevan (A7) has been included as an accused in this case.

6. It may be pertinent to extract the following allegations against A.K.Sudevan (A7) in the complaint:

> *"7.2 Shri A.K.Sudevan, S/o.late Shri. Kunjumani, in his statement dated 23.03.2015 has, inter alia, stated that Shri K.Kamalakannan, Accountant in Dr.V.Seshaiah Balaji Hospital, Aminjikarai, Chennai, approached him for purchase of 10 grounds of land at Padappai for Rs.50 lakh; that Shri K.Kamalakannan gave him Rupees one lakh in cash ad another Rupees one lakh by cheque towards the above transaction; that the agreement was to complete the*

transaction within 3 month; that Kamalakannan was neither above to pay the balance money nor came for any registration and therefore, he cancelled the agreement; that out of the Rs.2 lakh amount he repaid Rs.one lakh by cheque to Kamalakannan and retained the balance of Rs.one lakh, as the deal did not materialize successfully; knowing that the money received from Shri K.Kamalakannan was proceeds of crime laundered by Shri K.Kamalakannan out of the above crime under investigation by the CCB, police under FIR No.474/2014 and by the Enforcement Directorate under ECIR No.03/2015, he volunteered to deposit Rs.one lakh being the crime proceeds for the purpose of investigation.

....

10.9 It is submitted that Shri A.K.Sudevan (A-7) has directly involved in the activities connected to the proceeds of crime. He acquired and possessed the above said proceeds of crime of Rs.1,00,000/- received directly from Shri K.Kamalakannan towards investment in immovable property and kept as cash deposited into his bank account to project the same as untainted property thereby involved in the process of projecting the crime proceeds as untainted, thus have been guilty of offence of Money Laundering by *virtue of Section 2(1)(p) read with Section 3 of the PMLA and are liable to be punished under Section 4 of PMLA."*

7. We are afraid that even on the averments in the complaint, A.K.Sudevan (A7) cannot be prosecuted under Sections 3 and 4 of the PMLA for money laundering, inasmuch as, the deal itself did not go through and A.K.Sudevan (A7) has in fact handed over the sum of Rs.1,00,000/- to the Enforcement Directorate on 06.04.2015. To recapitulate, Kamalakannan, who is said to have misappropriated monies from the hospital, approached A.K.Sudevan (A7), who is the owner of ten grounds of land at Mudichur road, for buying it. Kamalakannan gave Rs.2,00,000/- as advance to A.K.Sudevan (A7). The question is, how would A.K.Sudevan (A7) know that the sum of Rs.2,00,000/- that was given by Kamalakannan as advance is a tainted money and that he should not sell his property to Kamalakannan. If the provisions of PMLA is so interpreted, no seller of a property, be it moveable or immovable, can be saved from a prosecution under the PMLA, if the buyer turns out to be an offender of a scheduled offence.

8. In such view of the matter, the prosecution of A.K.Sudevan (A7) under the PMLA cannot be sustained.

9. Now, coming to the case of R.Mahesh (A8), it is seen that R.Mahesh (A8) was working with Kamalakannan in the hospital and R.Mahesh (A8) had borrowed a sum of Rs.50,000/- from Kamalakannan for his marriage.

10. According to the Enforcement Directorate, the sum of Rs.50,000/- that was lent by Kamalakannan was proceeds of crime, in that, it was misappropriated by Kamalakannan from the said institution.

11. It may be pertinent to extract the following allegations against R.Mahesh (A8) in the complaint:

> *"7.4 Shri R.Magesh, S/o.Shri. M.Ravi, in his statement dated 8.05.2015, has, inter alia, stated that he joined Dr.V.Seshaiah Hospital, PH Road, Chennai, during April 2013 as Lab Manager for a monthly salary of Rs.30,000/-; that Shri Kamalakannan was the accountant of*

Dr.Seshaiah Hospital; that he borrowed Rs.50,000/- by cheque from Shri Kamalakannan for his marriage with a promise to return the money to him in two or three months; that before returning the Rs.50,000/- to Shri Kamalakannan, he was arrested in FIR No.474/2014 by CCB, Chennai and that the amount was lying in his savings account.

....

10.10 It is submitted that Shri R.Magesh (A-8) has directly involved in the activities connected to the proceeds of crime of Rs.50,000/- received from Shri K.Kamalakannan A-1 as loan. He acquired and possessed the above said proceeds of crime in the form of cash deposited into his bank account and projected the same as untainted property thereby involved in the process of projecting the crime proceeds as untainted, thus have been guilty of offence of Money Laundering by virtue of Section 2(1)(p) read with Section 3 of PMLA and are liable to be punished under Section 4 of PMLA."

12. For the sin of having borrowed Rs.50,000/- from Kamalakannan for his marriage, R.Mahesh (A8) cannot be made as a

principal offender or an abettor under the PMLA. Therefore, the prosecution of R.Mahesh (A8) also cannot be sustained under the PMLA.

With the above observation, these criminal original petitions stand allowed and the prosecution of A.K.Sudevan (A7) and R.Mahesh (A8) in C.C.No.13 of 2017 on the file of the IX Additional Court-CBI, Chennai (Special Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002), stands quashed.

(P.N.P.,J.) (G.C.S., J.)

22.11.2022

nsd

To

1.The Assistant Director,
Directorate of Enforcement, 2nd & 3rd Floor,
Murugesan Naicker Office Complex,
No.84, Greams Road, Thousand Lights,
Chennai – 600 006.

2.The Special Public Prosecutor
High Court, Madras

P.N.PRAKASH, J.
and
G.CHANDRASEKHARAN, J.

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