IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2022

PRONOUNCED ON : 27.01.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Ms.JUSTICE R.N.MANJULA

CRL.O.P.No.3890 of 2017
AND CRL.M.P.No.2885 of 2017

VMT Spinning Mills India Private Limited
SF No.88/1, Sedan Thottam
Unjappalayam, Somanur
Coimbatore District
Tamil Nadu 641 668
Rep. by its Directorate
D.Sudha .. Petitioner/A-2

Vs.

The Assistant Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
2nd & 3rd Floor "C" Block
Murugesa Naicker Complex
84, Greams Road
Thousand Lights
Chennai 600 006 .. Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records relating to the complaint in C.C.No.56 of 2016 on the file of the Principal Sessions Judge, Chennai and quash the same as far as the petitioner is concerned.

For Petitioner Mr.B.Kumar
Senior Counsel for
Mr.I.Abrar Mohammed Abdullah

For Respondent Ms.G.Hema
Special Public Prosecutor for
Enforcement Directorate

O R D E R

P.N.PRAKASH, J.

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.56 of 2016 on the file of the Principal Sessions Court, Chennai, as against the petitioner herein.

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

2.1. The persons involved in the various transactions would be referred to by their respective names. One S.K.Karthikeyan and his family were running Ari Fabrics Ltd. in Coimbatore, which went into a loss. So, the Board of Directors of the said mill decided to sell it to one G.Srinivasan, who was introduced to them by one M.R.Thiyagarajan, an Auditor by profession. Accordingly, the said Srinivasan was appointed as an Additional Director in Ari Fabrics Ltd. and was requested to discharge the debts of the mill and redeem it.

2.2. Similarly, one K.Doraisamy and his family were running a spinning mill by name VMT Spinning Mills India Private Limited (for brevity “VMT Mills”) in Coimbatore District, which was also running in loss, as they were not able to discharge the loans that they had taken from Indian Overseas Bank, Kollupalayam Branch, where they were having their accounts. The said Srinivasan came into contact with the said Doraisamy and believing the former, the latter, entered into an agreement of sale on 12.11.2007 to manage VMT Mills and help it to come out of its financial crisis.

2.3. Srinivasan opened a bank account in the name of VMT Mills by submitting forged Board resolutions in Bank of Baroda, Udumalpet Branch on 16.06.2008. Similarly, he also opened a bank account in the name of Ari Fabrics Ltd. with forged Board resolutions in the same bank. The monies that were being generated from running VMT Mills and Ari Fabrics were being parked by Srinivasan in the two fake bank accounts for swindling.

2.4. On coming to know of this, Doraisamy of VMT Mills alerted Karthikeyan of Ari Fabrics Ltd., pursuant to which, Karthikeyan lodged a police complaint in the DCB, Coimbatore, based on which, a case in DCB Crime No.27/2009 was registered on 23.07.2009 for the offences under Sections 120-B IPC read with Sections 468, 471 and 409 IPC against Srinivasan (A1), Selvakumar (A2), Manoharan (A3), Venkatachalapathy (A4), Balan (A5) and Thiyagarajan (A6). It is seen that Balan (A5) was the then Manager of Bank of Baroda, Udumalpet Branch.

2.5. Likewise, Doraisamy also lodged a police complaint in Karumathampatti Police Station, based on which, a case in Karumathampatti P.S. Crime No.364/2009 was registered on 01.04.2009 for the offence under Section 420 IPC against Muthusivam (A1), Srinivasan (A2), Venkatesan (A3), Selvakumar (A4), Thiyagarajan (A5) and Rajesh (A6).

2.6. Since the case in DCB Crime No.27/2009 that was launched by Ari Fabrics Ltd. disclosed the commission of a 'scheduled offence' under the Prevention of Money Laundering Act, 2002 (in short "the PML Act"), the Enforcement Directorate registered a case in ECIR No.31/CEZO/PMLA/2009 on 31.10.2009 and took up investigation of the case. After completing the investigation, the Enforcement Directorate has filed a complaint in C.C.No.56/2016 in the Special Court for PML Act Cases, Chennai (Principal Sessions Judge, Chennai) for the offences under Sections 3 and 4 of the PML Act against Srinivasan (A1), VMT Mills represented by its Director D.Sudha (A2), Selvakumar (A3) and R.Manoharan (A4), for quashing which, VMT Mills has filed this Criminal Original Petition under Section 482 Cr.P.C.

3. Heard Mr.B.Kumar, learned Senior Counsel representing Mr.I.Abrar Mohammed Abdullah, learned counsel on record for VMT Mills and Ms.G.Hema, learned Special Public Prosecutor for the respondent/ Enforcement Directorate.

4. During the course of investigation by the Enforcement Directorate, they found a sum of Rs.17,05,277/- parked in the fake Current Account No.28780200000205 of VMT Mills in Bank of Baroda, Udumalpet Branch, which was ordered to be provisionally attached under Section 5(1) of the PML Act and thereafter, filed a complaint before the Adjudicating Authority. Pursuant thereto, the Adjudicating Authority initiated proceedings in the Original Complaint No.70/2010 under Section 8 of the PML Act against Srinivasan and VMT Mills represented by its Director Sudha.

5. Since it was the stand of VMT Mills that the current account that was opened by Srinivasan in the Bank of Baroda, Udumalpet Branch, was with the help of forged documents for the purpose of parking his ill gotten monies, they remained ex parte and did not contest the order of attachment of the sum of Rs.17,05,277/-. Thus, from the beginning, it is the case of VMT Mills that the sum of Rs.17,05,277/- that was found parked in the current account in the Bank of Baroda, Udumalpet Branch, does not belong to them at all. However, strangely, in the criminal prosecution in C.C.No.56/2016 that has been launched by the Enforcement Directorate, VMT Mills has been shown as 2nd

accused.

6. Mr.B.Kumar submitted that even going by the averments in the impugned complaint, VMT Mills was a victim of the crime that was committed by Srinivasan, inasmuch as, without the knowledge of the Directors of the said mill, Srinivasan had opened an account with forged documents in the name of VMT Mills in Bank of Baroda, Udumalpet Brnach, whereas, the mill was having its account in Indian Overseas Bank, Kollupalayam Branch; on coming to know of all this, Doraisamy, the then Managing Director of VMT Mills had lodged a complaint against Srinivasan, based on which, the police have registered a case in Crime No.364/2009.

7. Refuting this contention, Ms.Hema, learned Special Public Prosecutor submitted that the bank account in which a sum of Rs.17,05,277/- was found parked was in the name of VMT Mills and therefore, VMT Mills has to be arrayed as an accused. Though at the first blush, this argument of Ms.Hema may appear attractive, however, on a closer scrutiny of the facts, the fallacy in this argument is axiomatic.

8. Now, let us examine as to what the complaint in C.C.No.56/2016 states. Apposite it would be to extract paragraphs 7.2 and 7.3 of the impugned complaint :

> "7.2. Further Shri G.Srinivasan had deposited an amount of Rs.1,89,00,000/- in the above said fraudulent account of M/s.Ari Fabrics Ltd. with Bank of Baroda, Udumalpet Branch from the account of M/s.Bhagavathi Textiles, a non-existing entity. The above said amount of Rs.1,89,00,000/- was part amount of the total loan amount of Rs.15 crores obtained in the name of M/s.Bhagavathi Textile Mill from M/s.Global Trade Finance by way of furnishing bogus and fake bills. Similarly, Shri G.Srinivasan took over/acquired M/s.VMT Spinning Mills India Pvt. Ltd., on the condition that upon running of the Mill, the loan of Rs.10 Crores availed from IOB, Kollupalayam, Coimbatore in the name of the company would be redeemed. Whereas, Shri.G.Srinivasan had paid only an amount of Rs.2.25crores to IOB, Kollupalayam Branch and thereafter without making any payments had diverted the sale proceeds of the cotton yarn manufactured in the said mill to various other accounts held in the Bank of Baroda, Udumalpet Branch. In order to enable such diversion Shri G.Srinivasan also opened a current account in the name of M/s.VMT Spinning Mills India Pvt. Ltd., with the said Bank of Baroda by furnishing a fabricated board resolution passed purportedly by the Board of Directors of the said mill, authorizing Shri G.Srinivasan and one

Selvakumar to open the current account.

> 7.3. Shri G.Srinivasan, with an intention to cheat M/s.Global Trade Finance, by way of raising bonus bills in the name of non-existing mill, viz. M/s.Bhagavathi Textile Mills to the account of six other benami trading entities had obtained trade finance loan facilities. Further, Shri G.Srinivasan by opening unauthorised accounts in the name of M/s.Ari Fabrics and M/s.VMT Spinning Mills India Pvt. Ltd. with Bank of Baroda, Udumalpet Branch on production of fabricated authorisation letters had diverted amounts that ought to have been deposited in the original accounts of M/s.Ari Fabrics with the State Bank of India, Commercial Branch, Coimbatore and that of M/s.VMT Spinning Mills India Pvt. Ltd. with the Indian Overseas Bank, Kollupalayam Branch."
>
> (emphasis supplied)

9. As regards the proceeds of crime that is attributed to VMT Mills, paragraph 8(v) of the impugned complaint may be relevant :

> "8. From the investigation conducted into the offence of money laundering under PMLA, the following facts appear to emerge :
>
> (i) ... ...
>
> (ii) ... ...
>
> (iii) ... ...
>
> (iv) ... ...
>
> (v) In addition, the balance amount of Rs.17,05,277/- forming part of "proceeds of crime" as defined under Section 2(1)(u) of PMLA having been continued to be held in the above said account of M/s.VMT Spinning Mills India Pvt. Ltd. with Bank of Baroda, Udumalpet Branch even after the possession of the mill was restored back to the erstwhile Directors, including Smt.D.Sudha from the control of Shri G.Srinivasan and having been projected as untainted funds held in the bank account with Bank of Baroda, Udumalpet Branch, M/s.VMT Spinning Mills India Pvt. Ltd. has also committed the offence of money laundering as defined under Section 3 of the PMLA, punishable under Section 4 of the PMLA."

10. From a reading of the above, even according to the Enforcement Directorate, Srinivasan, to whom the affairs of Ari Fabrics Ltd. and VMT Mills were entrusted in good faith by their respective owners, had opened bank accounts in the name of those companies in the Bank of Baroda, Udumalpet Branch, with the connivance of Balan, Branch Manager and has parked the funds that were generated by him by indulging in cheating. One such

amount is, the sum of Rs.17,05,277/-, which was parked by Srinivasan in the fake account of VMT Mills that was opened by him in the Bank of Baroda, Udumalpet Branch, without the knowledge of the true owners of the mill.

11. Doraisamy died on 10.09.2009, after which his widow and daughter continued with the struggle to get back VMT Mills from the vice grip of Srinivasan. At last, through the proceedings in C.P.No.26/2010 in the Company Law Board, Chennai, the management of VMT Mills came back into the hands of Doraisamy's family from Srinivasan, as could be seen from the order dated 23.07.2014. Even in the Memorandum of Compromise dated 23.07.2014, that was entered into between the family members of late Doraisamy and Srinivasan group, which formed the basis of the order in C.P.No.26/2010, it is stated as follows :

> "9. The parties of the third part (here, it means Srinivasan & party) while managing the affairs of the Company has operated the bank account of the company and opened accounts in Bank of Baroda in the name of the Company and put through various transactions which are in no way connected with the affairs of the company or the parties of the second part (here, it means the family members of late Duraisamy), the parties of the third part are solely responsible for the said transactions including the opening and operation of the bank account for and on behalf of the company during the period when the parties of the third part were in the management. The balance amount remaining in the account which is now the subject matter with the investigation agencies will not be claimed by the company."
>
> (emphasis supplied)

12. The case of VMT Mills can be better explained with the following illustration. 'A' is an honest public servant. 'B', a dishonest public servant, opens a bank account in the name of 'A' and parks the bribe monies received by him in that account. Can 'A' be prosecuted along with 'B' under the Prevention of Corruption Act, 1988 ? The answer is an obvious 'No'. So too, VMT Mills, in whose name, Srinivasan had opened a fake bank account in Bank of Baroda, Udumalpet Branch and had parked Rs.17,05,277/-, cannot be prosecuted for money laundering.

13. Therefore, in our considered view, on the facts disclosed in the complaint itself, the prosecution of VMT Mills under Sections 3 and 4 of the PML Act is an abuse of process of law and accordingly, this criminal original petition is allowed and the prosecution in C.C.No.56 of 2016 on the file of the Principal Sessions Judge, Chennai, against VMT Mills alone

stands quashed. We make it clear that the quashment of the prosecution against VMT Mills in C.C.No.56 of 2016 would have no impact on the order of attachment of a sum of Rs.17,05,277/-, which prima facie appears to be proceeds of crime and which was sought to be projected by Srinivasan as untainted. It is open to the Enforcement Directorate if so advised, to even include the name of anyone involved in the affairs of VMT Mills, as a witness for the prosecution by filing an application under Section 311 Cr.P.C. before the trial Court in C.C.No.56 of 2016. Connected Miscellaneous Petition stands closed.

Sd/-
Deputy Registrar(CS)

//True copy//

Sub Assistant Registrar

gya

To

1.The Assistant Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
2nd & 3rd Floor "C" Block
Murugesa Naicker Complex
84, Greams Road
Thousand Lights
Chennai 600 006

2.The Principal Sessions Judge
Chennai

3.The Public Prosecutor
High Court, Madras.

4. The Special Public Prosecutor,
Enforcement Directorate.

+1cc to Mr.I.Abrar Mohammed Abdullah, Advocate SR.No.4813

CRL.O.P.No.3890 of 2017

MT(CO)
GMY(16/02/2022)