IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.01.2022

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mrs.JUSTICE R.HEMALATHA

CRL.O.P.No.26898 of 2017
and CRL.M.P.No.15449 of 2017
AND
CRL.O.P.No.26902 of 2017
and CRL.M.P.No.15454 of 2017

R.Chandrasekaran ...Petitioner/Accused No.8 in both Crl.O.Ps

Vs.

The Deputy Director
Directorate of Enforcement
Government of India
2nd & 3rd Floor
Murugesa Naicker Complex
No.84, Greams Road
Chennai 600 006 ..Respondent/Complainant in both Crl.O.Ps

Prayer in Crl.O.P.No.26898 of 2017 : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records and quash the impugned complaint against the petitioner/A-8 in C.C.No.49 of 2016 on the file of the Principal Sessions Judge, Chennai for the offence of 'money laundering' under Section 3, punishable under Section 4 of Prevention of Money Laundering Act, 2002.

Prayer in Crl.O.P.No.26902 of 2017 : Criminal Original Petition filed under Section 482 Cr.P.C. to call for the entire records and quash the impugned complaint against the petitioner/A-2 in C.C.No.20 of 2015 on the file of the Principal Sessions Judge, Chennai for the offence of 'money laundering' under Section 3, punishable under Section 4 of Prevention of Money Laundering Act, 2002.

For Petitioner in both Crl.O.P.s	Mr.G.Prabhakaran
For Respondent in Crl.O.P.No.26898 of 2017	Mr.Rajnish Pathiyil Special Public Prosecutor for Enforcement Directorate
For Respondent in Crl.O.P.No.26902 of 2017	Mr.P.Sidharthan Special Public Prosecutor for Enforcement Directorate

COMMON ORDER

P.N.PRAKASH, J.

These Criminal Original Petitions viz., Crl.O.P.Nos.26898 and 26902 of 2017, have been filed to quash the complaints against the petitioner in C.C.No.49 of 2016 and C.C.No.20 of 2015, respectively, on the file of the Principal Sessions Judge, Chennai.

2. Since both the prosecutions are against the same petitioner and the allegations against him are also similar, both these Criminal Original Petitions are considered and decided by this common order.

3. The issue that requires to be decided in these cases falls in a very narrow compass.

3.1. One Chandrasekaran (petitioner herein) was the Senior Branch Manager, Housing Finance Branch, Syndicate Bank, Mylapore, Chennai, during 19.05.2006 to 15.11.2008. While he was so functioning, one S.Kumar @ Vijayakumar approached him, for grant of housing loans and personal loans to various borrowers.

3.2. On the strength of the documents produced by the said Vijayakumar and the various borrowers, Chandrasekaran appears to have granted housing loans and personal loans to the tune of Rs.19.69 crores (Rs.5.21 crores + Rs.14.48 crores), during the said period and soon, it came to light that the loans were granted to the said borrowers, based on forged documents. The loans also became Non-Performing Assets.

3.3. The matter came to the notice of the Central Bureau of Investigation and cases were registered in this regard.

After completing the investigation, the CBI filed seven charge sheets against Chandrasekaran and others, for the offences under Section 120-B IPC read with Sections 420, 468 and 471 IPC read with Sections 13(1)(d) and Section 13(2) of the Prevention of Corruption Act, 1988, before the Special Court for CBI Cases, Chennai.

3.4. The sum and substance of the allegations in the charge sheets filed by the CBI are that, Chandrasekaran had, in abuse of his official position as Senior Branch Manager of Syndicate Bank, granted housing loans and personal loans to the co-accused named therein, in violation of the rules. Since the charge sheets filed by the CBI disclosed the commission of a scheduled offence under the Prevention of Money Laundering Act, 2002 (in short "the PML Act"), the Enforcement Directorate registered cases in ECIR No.9 of 2013 and ECIR No.8 of 2013 and after completing the investigations, filed two complaints in C.C.No.20 of 2015 (covering four CBI charge sheets in which Chandrasekar is an accused) and C.C.No.49 of 2016 (covering three CBI charge sheets in which Chandrasekar is an accused) in the Special Court for Prevention of Money Laundering Act Cases (Principal Sessions Court), Chennai, for the offences under Section 3 read with Section 4 of the PML Act against Chandrasekaran and 23 others, for quashing which, Chandrasekaran is before this Court.

4. Heard Mr.G.Prabhakaran, learned counsel for Chandrasekaran and Mr.Rajnish Pathiyil and Mr.Sidharthan, learned Special Public Prosecutors for the respondent/Enforcement Directorate.

5. Mr.Prabhakaran, learned counsel for Chandrasekaran submitted that Chandrasekaran is facing prosecutions before the Special Court for CBI Cases, for the sin of having recklessly granted housing loans and personal loans to Vijayakumar and others and therefore, for the same act, he cannot be prosecuted under Section 3 read with Section 4 of the PML Act.

6. Refuting the above submission of Mr.Prabhakaran, Mr.Rajnish Pathiyil and Mr.Sidharthan, learned Special Public Prosecutors of the Enforcement Directorate, took this Court through the speech of the Hon'ble Finance Minister in the Parliament, while tabling amendments to Section 2(1)(u) and Section 3 of the PML Act via Act 23 of 2019. Much reliance was placed on the following portion of the speech of the Hon'ble Finance Minister, in the Parliament which reads as under :

"It has been experienced that certain doubts have been expressed as regards the definition of 'proceeds of crime' included in clause (u) to sub-section (1) of section 2 of the Act of 2002. It is observed that the object and intention of the legislature while enacting Act of 2002 is wrongly understood to mean that only the property which is derived or obtained as definition of 'proceeds of crime' and the Act of 2002 would apply only to such property. The intention of the legislature had always been that the property derived or obtained, directly or indirectly by any person as a result of not only the commission of the scheduled offence but also any criminal activity relatable to the scheduled offence would also fall within the definition of 'proceeds of crime'. Accordingly, a clarification is proposed to be inserted in clause (u) to sub-section (1) of section 2 to clarify that 'proceeds of crime' shall include property not only derived or obtained from the commission of the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence."

7. Thereafter, the learned Special Public Prosecutors took us through the explanation that was added to Section 2(1)(u) as well Section 3 of the PML Act by Act 23 of 2019 and submitted that mere participation of a person directly or indirectly in a criminal activity that led to the generation of "proceeds of crime", would, by itself, attract the provisions of Section 3 read with Section 4 of the PML Act.

8. Though at the first blush, this argument of the learned Special Public Prosecutors did sound attractive, the fallacy in this argument, can be explained by expatiating on Section 2(1)(u) and Section 3 of the PML Act.

9. Section 2(1)(u) of the PML Act defines the expression "proceeds of crime". In consonance with the speech of the Hon'ble Finance Minister alluded to above, explanation clauses have been added to Section 2(1)(u) as well Section 3 of the PML Act. From a careful analysis of Section 2(1)(u) and Section 3 of the PML Act, one can draw the following inference :

For attracting the offence of money laundering, the following ingredients require to be satisfied :

(a) There should have been a criminal activity that finds a place in the schedule of PML Act;

(b) The criminal activity should have resulted in the generation of "proceeds of crime"; and

(c) The proceeds of crime so generated should have been projected as untainted property.

10. We are unable to subscribe to the arguments of the learned Special Public Prosecutors that, on satisfying the conditions set out in (a) and (b) itself, the offence of money laundering would stand attracted because, such an interpretation would fall foul of the law laid down by the Supreme Court in Nikesh Tarachand Shah Vs. Union of India and Another [(2018) 11 SCC 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, 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)

11. We are aware that the explanations to Section 2(1)(u) and Section 3 of the PML Act were added by Act 23 of 2019 only w.e.f. 01.08.2019, subsequent to the judgment of the Supreme Court in Nikesh Tarachand (supra). But, in our considered opinion, that has, in no way, altered the legal position nor set at naught the observations of the Supreme Court in paragraph 11 (supra).

12. The explanation to Section 3 of the PML Act, cannot have the effect of expanding the horizons of the mother penal provision. The 'explanation' by itself cannot create a new offence. As held by the Supreme Court in Bihta Cooperative Development Cane Marketing Union Ltd. and Another Vs Bank of Bihar and Others (AIR 1967 SC 389), the explanation must be read as to harmonise with and clear up any ambiguity in the main section and that it should not be so construed as to widen the ambit of the section. The interpretation proffered by the learned Special Public Prosecutors that mere generation and possession of the proceeds of a crime by the commission of a criminal activity, would attract the penal provisions of PML Act, would lead to disastrous results, which we propose to demonstrate with the following illustration. Section 392 IPC- Robbery, is a scheduled offence under the PML Act. A person commits robbery of Rs.1 crore at knife point from the cashier at a bank and decamps with the booty. The sum of Rs.1 crore is undoubtedly "proceeds of crime". The robber hides the booty in a pit, near his house. He is arrested by the police and pursuant to his disclosure, which is relevant under Section 27 of the Evidence Act, 1872, the sum of Rs.1 crore is recovered by the police. Going by the arguments of the learned Special Public Prosecutors, the robber would be liable under Section 3 read with 4 of the PML Act for the possession of the proceeds of crime. Official statistics show that in the State of Tamil Nadu, 2023 robbery cases were registered in the year 2020. The Enforcement Directorate had not registered 2023 ECIRs under the PML Act because, they are aware that mere generation of proceeds of crime via a criminal activity without anything more, cannot attract PML Act. In the above illustration, the robber should have projected the sum of Rs.1 crore, being the proceeds of crime, as untainted property. The Enforcement Directorate cannot be heard to say that every robber would be liable under the PML Act, but, that they would pick and choose only the best amongst

them to prosecute under the PML Act. Thus, when a robber cannot be prosecuted under the PML Act for the offence of robbery simpliciter, his accessories like conspirators and abettors, cannot also be prosecuted under the PML Act, in the absence of any material to show that they had projected the fruits of the crime as untainted property.

13. We also foresee, yet another serious legal repercussion that may creep into the system, if the view of the learned Special Public Prosecutors is accepted. The police can register a case for a scheduled offence against a person, have his confession statement recorded by an Enforcement Officer, in the guise of an investigation under the PML Act and use it as an extra-judicial confession in both the prosecutions and thereby, put to prejudice innocent persons even. The Enforcement Directorate would become a parallel police system, in that, they would be forced to record ECIRs, in every case, in which some proceeds of crime gets generated by a criminal activity that finds a place in the schedule of the PML Act.

14. Now, coming to the cases at hand, the allegations against Chandrasekaran in the two complaints are set out below :

The allegations set out in paragraph 6.2 of the complaint in C.C.No.20 of 2015, read as follows :

> "6.2. Shri.R.Chandrasekaran (A-2 herein) has dishonestly processed & sanctioned the loans based on forged and fabricated documents, as submitted by Shri.S.Kumar @ Vijayakumar (A-3 herein) in the names of the accused borrowers (A-4 to A-21) for the purpose of purchase of various housing sites and construction of houses/flats thereof, and has knowingly involved himself in the process and activity connected with the proceeds of the crime. Therefore, Shri.R.Chandrasekaran (A-2 herein) is guilty of offence of money laundering under the PMLA, 2002."

Similarly, the allegations set out in paragraph 30.8 of the complaint in C.C.No.49 of 2016, read as under :

> "30.8. Shri.R.Chandrasekaran (A-8 herein) had dishonestly processed & sanctioned the loans based on forged and fabricated documents, as submitted by Shri.S.Kumar @ Vijayakumar (A-1 herein) in the names of the borrowers as arranged by Shri.S.Kumar @ Vijayakumar for the

purpose of purchase of various housing sites and construction of houses thereof, and has knowingly involved himself in the process and activity connected with the proceeds of crime. He has also knowingly assisted Shri.S.Kumar @ Vijayakumar, in acquiring the aforesaid properties out of the proceeds of the crime involved in the afore mentioned charge sheets filed by CBI, ACB, Chennai. Thus, it is very well confirmed that Shri.R.Chandrasekaran (A-8 herein) has knowingly assisted with A-1 in the offence of money laundering and knowingly is a party in acquisition and use of the proceeds of crime and projecting the same as untained property. Therefore, Shri.R.Chandrasekaran (A-8 herein) has been guilty of offence of money laundering under Section 2(1)(p) r/w Section 3 of the PMLA, 2002."

A reading of the above shows that Chandrasekaran is being prosecuted for the offence under Section 3 read with Section 4 of the PML Act, for having sanctioned the housing loans and personal loans to the co-accused in violation of banking rules. As stated by us above, he is now facing seven prosecutions that have been launched against him by the CBI in the Special Court for CBI Cases, for having sanctioned the loans. In the absence of any material to show that Chandrasekaran had directly or indirectly assisted the borrowers in projecting the total loan amount of Rs.19.69 crores (Rs.5.21 crores + Rs.14.48 crores) as untainted property, the impugned complaints against Chandrasekaran under the PML Act are, in our opinion, an abuse of process of law.

In view of the foregoing discussions, these criminal original petitions deserve to be allowed and accordingly, these petitions are allowed and the prosecutions qua Chandrasekaran in C.C.No.49 of 2016 and C.C.No.20 of 2015 on the file of the Principal Sessions Judge, Chennai, are hereby quashed. Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

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

+1 CC to Mr.Rajnish Pathiyil, Advocate sr 3580
+1 CC to Mr.P.Sidharthan, Advocate sr 3324
+4 Ccs to Mr.G.Prabhakaran, Advocate sr 3589 & 3590.

CRL.O.P.Nos.26898 & 26902 of 2017

PL(CO)

SP(11/02/2022)