WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

Coram

The Honourable Mr. Justice P.N.PRAKASH
and
The Honourable Mr. Justice A.A.NAKKIRAN

Crl. O.P.Nos.2821 and 5638 of 2017
and
Crl.M.P.Nos.1992 and 1993, 4226 and 4227 of 2017

1.S.Palanichamy
2.C.Chellamuthu
3.K.Kalimuthu
4.V.Kuppusamy
5.R.Natarajan
6.V.Nattuthurai
7.S.Kuppusamy .. Petitioners/Accused in Crl.O.P.No.2821 of 2017

K.Gunaseelan .. Petitioner/Accused in Crl.O.P.No.5638 of 2017

Vs.

The Assistant Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floor, C Block,
Murugesa Naicker Office Complex,
No.84, Greams Road,
Chennai - 6. ... Respondent/Complainant in both the Crl.O.Ps

Petitions filed under Section 482 Cr.P.C. to call for the entire records concerned in C.C.No.62 of 2016 on the file of the Special Court of the Prevention of Money Laundering Act, 2002/Principal Sessions Judge at Chennai and quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.J.V.Niranjan in both the Crl.O.Ps

For Respondent : Mr.N.Ramesh, Spl. Public Prosecutor (ED) in both the Crl.O.Ps

WEB COPY

COMMON ORDER

[Order of the Court was 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 under Section 43(1) of Prevention of Money Laundering Act, 2002 (Principal Sessions Judge), Chennai, the present petitions have been filed.

2. The minimum facts that are required for deciding these two quash petitions are as follows:

2.1 For the sake of convenience, the parties would be referred to by their respective names.

2.2 One G.Srinivasan (A1) and R.Manoharan (A2) entered into a criminal conspiracy to cheat 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. Arivarasu (A5) sanctioned a loan of Rs.15 crores on 16.05.2008 which was siphoned off by Srinivasan (A1). Out of the said Rs.15 crores, 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, Chinnakannu and G.Selvarani through various documents. The details of the sale deed under which the lands were purchased with the money provided by Srinivasan (A1) to the buyers viz., Venkatachalapathy (A4), Rajendran (A6) and Vignesh (A7) have been set out in paragraph 6.3 of the impugned complaint. The said Venkatachalapathy (A4), Rajendran (A6) and 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 Srinivasan (A1). Gunaseelan (A8), who is the petitioner in Crl.O.P.No.5638 of 2011, purchased the lands measuring 166 acres from Venkatachalapathy (A4), Rajendran (A6) and Vignesh (A7) through their power agent Ayyappan in February, 2010. The purchases that were made by Gunaseelan (A8) have been set out in paragraph 6.5 of the impugned complaint, which reads as follows:

> 6.5 Shri K.Gunaseelan in his statement dated 20.02.2012 (Annexure XVI) under Section 50(2) & (3) of the PMLA, given before the Assistant Director (PMLA), Directorate of Enforcement, Chennai had inter-alia stated that he was engaged in procuring agricultural and other suitable lands his agricultural business; that during the month of February 2010, he purchased immovable properties at Dindigul District from one Shri R.Ayyappan, a resident of No.57-B, Vinayaka Apartment,

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

Padmavathi Nagar Main Road, Virugambakkam, Chennai - 92, who was the power of attorney of (1)P.Rajendran, a resident of Door No.85, Metrathi Village, Kaspa, Udumalaipet Taluk, Tirupur District (Annexure VIII), (2) P.Venkatachalapathy, a resident of Door No.4/756, Ayyalu Meenakshi Nagar, Darapuram Road, Udumalaipet Taluk, Tirupur District (Annexure VII) and (3) K.Vignesh, a resident of Door No.13-A, Mariappa Layout, Thillai Nagar, Udumalaipet, Tirupur District and got the same registered at the Chathirapatti SRO, Dindigul District as detailed hereunder:

Sl. No.	Details of Landed Properties	Doc.No.	Purchase Value
1.	5 Acres 76 Cents at Pudukottai Village, Ottanchatthiram Taluk	187/2010	Rs.3,64,000/-
2.	5 Acres 15 3/4 Cents at Pudukottai Village, Ottanchatthiram Taluk	188/2010	Rs.3,27,000/-
3.	42 Acres 25 Cents at Dasaripatti Village, Ottanchatthiram Taluk	189/2010	Rs.14,00,000/-
4.	112 Acres 53 Cents at Pudukottai Village, Ottanchatthiram Taluk	190/2010	Rs.37,00,000/-
	Total		Rs.57,91,000/-

2.3 Thus, from the above averments in the impugned complaint, it is seen that Gunaseelan (A8) had paid Rs.57,91,000/- for the purchase of 166 acres of land as aforesaid. Thereafter, Gunaseelan (A8) sold the lands so purchased to S.Palanichamy (A9), C.Chellamuthu (A10), K.Kalimuthu (A11), V.Kuppusamy (A12), R.Natarajan (A13), V.Nattuthurai (A14) as could be seen from the chart given in paragraph 6.6 of the impugned complaint. For the sake of convenience, we extract that chart also.

WEB COPY

Sl. No.	Details of Landed Properties	Doc.No.	Sale Value (in Rs.)	Details of Purchasers
1.	5 Acres 76 Cents at Pudukottai Village, Ottanchatthiram Taluk	379/2010	3,64,000/-	S.Palanichamy, S/o.Sellappa Gounder, Pottikkampatti, Chikkanaayakkanpatti Village, Ottanchatthiram Tk, Dindigul Dist.
2.	5 Acres 15 3/4 Cents at Pudukottai Village, Ottanchatthiram Taluk	380/2010	3,27,000/-	C.Chellamuthu, S/o.K.Chellamuthu, Paaraivalasu, Chikkanaayakkanpatti Village, Ottanchatthiram Tk, Dindigul Dist.
3.	42 Acres 25 Cents at Dasaripatti Village, Ottanchatthiram Taluk	381/2010	8,64,000/-	K.Kalimuthu, S/o.Kandasamy Gounder, Paaraivalasu, Chikkanaayakkanpatti Village, Ottanchatthiram Tk, Dindigul Dist.
4.	112 Acres 53 Cents at Pudukottai Village, Ottanchatthiram Taluk	382/2010	75,15,000/-	V.Kuppusamy, S/o.Veluchamy, Sengaatuppudur, Ambalikkai Village, Ottanchatthiram Tk, Dindigul Dist. R.Natarajan, S/o.Ramasamy, Paaraivalasu, Chikkanaayakkanpatti Village, Ottanchatthiram Tk, Dindigul Dist. V.Nattuthurai, S/o.N.Veluchamy, Vadipatti, Kaspa, Vadipatti Village, Ottanchatthiram Tk, Dindigul Dist.

2.4 While this being so, GTFL was merged with State Bank of India and during reconciliation of the accounts, it was found that GTFL had given the loan of Rs.15 crores to Manoharan (A2) based on fraudulent documents. 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. Since the final report that was registered by the CBI disclosed the commission of a "schedule offence" under Prevention of Money Laundering Act (for short 'PMLA'), the Enforcement Directorate registered a case in ECIR No.6/CEZO/PMLA/2011 under PMLA. The CBI completed the investigation in Crime No.RC-9(E)2010 and filed a charge sheet in C.C.No.6 of 2011 in the Special Court for CBI Cases, Coimbatore for the offence under Sections 120B r/w 420, 467, 471 IPC and Section 13 of Prevention of Corruption Act against Srinivasan (A1), Manoharan (A2), Selvakumar (A3), Venkatachalapathy (A4), Arivarasu (A5), Rajendran (A6) and Vignesh (A7). The said case is pending trial in the Special Court for CBI Cases, Coimbatore.

2.5 In the parallel track, the Enforcement Directorate completed their investigation and filed a complaint in C.C.No.62 of 2016 in the Special Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002 (Principal Sessions Judge), Chennai for the offence under Section 3 r/w 4 of PMLA against 15 persons including 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), for quashing which, A8 to A15 have filed the above said two quash petitions viz., Crl.O.P.Nos.2821 and 5638 of 2017.

3. Heard Mr.J.V.Niranjan, learned counsel for the petitioners/accused and Mr.N.Ramesh, learned Special Public Prosecutor for the Enforcement Directorate.

4. This Court carefully perused the impugned complaint in C.C.No.62 of 2016 and the accompanying documents. The admitted case of the Enforcement Directorate in the impugned complaint is that Srinivasan (A1) and Manoharan (A2) had conspired to take a loan, submitted fake documents to Arivarasu (A5), the Manager of GTFL and obtained a loan of Rs.15 Crores which they siphoned off for their personal use. At this juncture, it may be relevant to state here that, the Enforcement Directorate issued orders of provisional attachment under Section 5 of PMLA on 10.05.2012, attaching the lands that were purchased by A9 to A15 from Gunaseelan (A8).

5. A9 to A15 contested the provisional attachment before the Adjudicating Authority. However, the Adjudicating Authority by order dated 07.09.2012 in O.C. No.114 of 2012 confirmed the order of provisional attachment under Section 8(3) of PMLA. A9 to A15, challenging the order of the Adjudicating Authority, approached the Appellate Tribunal under Section 26 of PMLA,

https://hcservices.ecourts.gov.in/hcservices/

which was dismissed on 05.09.2014.

6. Aggrieved by the order of the Appellate Tribunal, A9 to A15 approached the Madurai Bench of this Court in CMA (MD) Nos.104 to 110 of 2015, in which a learned single Judge of this Court, by order dated 14.10.2015, held that A9 to A15 were innocent purchasers and set aside the provisional order of attachment.

7. Now, the short question is, whether the criminal prosecution in C.C. No.62 of 2016 that has been launched by the Enforcement Directorate under Section 3 r/w 4 of PMLA against A8 to A15 is sustainable or not.

8. It is the specific case of the Enforcement Directorate that A8 to A15 came into the picture only after the 166 acres of land were purchased by Venkatachalapathy (A4), Rajendran (A6) and Vignesh (A7). It is not the case of the Enforcement Directorate that A8 to A15 were involved along with A1 and A2 in the criminal activity viz., obtaining the loan from GTFL with fake documents.

9. For a prosecution under Section 3 r/w 4 of PMLA, the following three ingredients are essential viz.,

> (i) A criminal activity should have been committed;
>
> (ii) Some money should have been generated via the criminal activity;
>
> (iii) The money so generated (proceeds of crime) should have been projected as untainted one.

10. In this case, there is no shred of material to show that A8 to A15 had committed any criminal activity at all. A8 had purchased lands for his business from A4, A6 and A7 through their power agent Ayyappan and thereafter, he sold those lands to A9 to A15 for a valuable consideration. In paragraphs 13.7 and 13.8 of the impugned complaint, the allegations against A8 to A15 are as under:

> 13.7 It is humbly submitted that Shri K.Gunaseelan having purchased the immovable property from the power of attorney holder of Shri G.Srinivasan, by defying the conventional property transactions had facilitated camouflaging the aforesaid immovable properties in which a part of the said proceeds of crime in aggregating to Rs.53,16,200/- had been invested by Shri

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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.

13.8 It is humbly submitted that S/Shri S.Palanichamy, C.Chellamuthu, K.Kalimutthu, V.Kuppusamy, R.Natarajan, V.Nattuthurai and S.Kuppusamy without any justifiable means of income by lending their names and having projected themselves as the ultimate purchasers of the immovable properties had facilitated camouflaging the aforesaid immovable properties in which a part of the said proceeds of crime in aggregating to Rs.53,16,200/- had been invested by Shri G.Srinivasan, were actually involved in the process or activity connected to "proceeds of crime" defined under Section 2(1)(u) of PMLA and have 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.

11. In Nikesh Tarachand Shah Vs. Union of India and Another [(2018) 11 SCC 1], the Supreme Court has held as under :

"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

https://hcservices.ecourts.gov.in/hcservices/

WEB COPY

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)

12. In this case, 166 acres of land is not the subject matter of crime. The subject matter of the criminal activity is obtaining the loan of Rs.15 crores from GTFL by submitting forged documents. Therefore, the proceeds of the crime is Rs.15 crores. A fraction of the sum of Rs.15 crores viz., Rs.1.07 crores was invested by Srinivasan in real estate by purchasing lands in the name of A4, A6 and A7. Thereafter, A4, A6 and A7 sold the lands through their power agent Ayyappan to Gunaseelan (A8) who in turn sold the lands to A9 to A15. It is most pertinent to state here that the FIR for the 'scheduled offence' was registered by the CBI only on 06.10.2010 and these sale transactions had taken place much before that. Therefore, by no stretch of imagination, the purchasers of the land could be expected to anticipate that the land that they are intending to purchase must have been purchased by their vendors with monies generated by a criminal activity.

13. In the result, we are of the view that the prosecution of A8 to A15 for the offence under Section 3 r/w 4 of PMLA in C.C. No.62 of 2016 is an abuse of process of law. Therefore, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed. It is open to the Enforcement Directorate to take them as prosecution witnesses, if so advised.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

mmi

To

1. The Assistant Director,
   Directorate of Enforcement,
   Government of India,
   Ministry of Finance,
   Department of Revenue,
   2nd and 3rd Floor, C Block,
   Murugesa Naicker Office Complex,
   No.84, Greams Road, Chennai - 6.

2. The Special Court (Prevention of Money
Laundering Act)/ Principal Sessions Judge,
Chennai.

3. The Public Prosecutor,
High Court, Madras.

+3cc to Mr.P.T.GEOTOM, Advocate, S.R.No.19257

CRL.O.P. Nos.2821 and
5638 of 2017

GPL(CO)
CT 08/04/2022

WEB COPY