IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.10.2022

Coram

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

Crl.O.P.No.29065 of 2018
and
Crl.M.P.No.17006 of 2018

1.Ajay Kumar Gupta
S/o.Late Om Prakash Gupta

2.Veenita Gupta
W/o.Ajay Kumar Gupta ... Petitioners

Vs.

The Assistant Director,
Directorate of Enforcement,
2nd & 3rd Floor,
Murugesa Naicker Complex,
84, Greams Road, Thousand Lights,
Chennai - 600 006. ... Respondent

Criminal Original Petition filed u/s.482 of the Code of Criminal Procedure praying to call for the entire records pending on the file of the learned VIII Additional Principal Special Judge for CBI Cases, City Civil Court, Chennai, in C.C.No.12 of 2018 and quash the entire complaint and proceedings initiated against the petitioners.

For Petitioners : Mr.V.S.Venkatesh

For Respondent : Mr.N.Ramesh
Special Public Prosecutor [ED]

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O R D E R

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

Seeking to quash the proceedings in C.C.No.12 of 2018 on the file of the learned VIII Additional Principal Special Judge for CBI Cases, City Civil Court, Chennai, the present petition has been filed.

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

(i) Ajay Kumar Gupta was working as Assistant Commissioner of Central Excise and Customs sometime in the year 2005. The Central Bureau of Investigation [in short "CBI"], registered a case in FIR No.RCMA1 2005A 0031 on 29.06.2005 against Ajay Kumar Gupta and his wife Veenita Gupta for holding assets disproportionate to their known sources of income and after completing the investigation, they filed a charge sheet in C.C.No.18 of 2009 in the Special Court for CBI cases, Chennai, for the offences u/s.13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988.

(ii) Pursuant to the above, the Enforcement Directorate registered a case in ECIR No.CEZO/08/2015 and after completing the investigation, they have filed a complaint in C.C.No.12 of 2018 against Ajay Kumar Gupta [A1] and his wife Veenita Gupta [A2] for the offences u/s.3 r/w 4 of the Prevention of Money Laundering Act, 2002, which is pending on the file of the VIII Additional Principal Judge for CBI Cases (Special Court for PMLA cases), City Civil Court, Chennai, for quashing which, this petition has been filed by the accused.

3. Heard Mr.V.S.Venkatesh, learned counsel for the petitioner and Mr.N.Ramesh, learned Special Public Prosecutor [ED], appearing for the respondent.

4. Mr.V.S.Venkatesh, learned counsel for the petitioner, submitted that Ajay Kumar Gupta [A1] and his wife Veenita Gupta [A2] have been acquitted in the prosecution for the predicate offence, *viz.*, in C.C.No.18 of

2009 on 29.12.2017 by the learned XIV Additional Special Judge for CBI Cases. Therefore, in the light of the recent judgment of the Supreme Court in ***Vijay Madanlal Choudhary and others v. Union of India and others***[1], the prosecution in C.C.No.12 of 2018 on the file of VIII Additional Principal Judge for CBI Cases (Special Court for PMLA cases), City Civil Court, Chennai, cannot be sustained.

5. On facts, Mr.N.Ramesh, learned Special Public Prosecutor [ED], conceded that Ajay Kumar Gupta [A1] and his wife Veenita Gupta [A2] have been acquitted in the predicate offence.

6. At this juncture, it may be necessary to extract the relevant paragraphs in ***Vijay Madanlal's*** case [supra]:

> "253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before

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the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

467 (d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. <u>If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.</u>"

(emphasis supplied)

7. In the light of the law laid down by the Supreme Court in ***Vijay Madanlal's*** case [supra], which has been extracted above, this petition deserves to be allowed.

P.N.PRAKASH, J.

and
RMT. TEEKAA RAMAN, J.
gm

Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.12 of 2018 on the file of VIII Additional Principal Special Judge for CBI Cases, City Civil Court, Chennai, are quashed. Consequently, connected miscellaneous petition is closed.

[PNP, J.] **[TKR, J.]**
18.10.2022

Index: Yes/No
gm

To
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3.The Public Prosecutor,
High Court, Madras.

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