BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

CRL.OP.(MD)No.7829 of 2022
and
CRL.M.P.(MD)No.5331 of 2022

1.K.P.Sindhu Bairavi
2.K.P.Karthik Balaji : Petitioners

Vs.

The Deputy Director,
Directorate of Enforcement,
Government of India,
No.6, Besant Road,
Chockkikulam,
Madurai – 625 002. : Respondent

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records relating to C.C.No.02 of 2022 on the file of the Special Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002 (The Hon'ble Principal Sessions Judge, Madurai) and quash the same against the petitioners.

For Petitioners	: Mr.AR.L.Sundaresan Senior Counsel for Mrs.AL.Ganthimathi
For Respondent	: Mr.R.Vijayarajan Special Public Prosecutor

O R D E R
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[Made by **P.N.PRAKASH, J.]**

The minimum facts that are required to decide this quash petition are as under:

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

1.2. One K.Pandiyarajan [A1], while working as Chief Manager, Indian Bank, Kodaikanal Branch, in the year 2013, had sanctioned a loan of Rs.60.77 Lakhs to M/s.Hill Island Resort, which later became a Non-Performing Asset, as the borrower had failed to repay the loan amount. On transfer to Paramakudi, the said Pandiyarajan had sanctioned a loan of Rs.268.92 Lakhs to one Mr.K.Athinarayanan and his wife R.Dhanalakshmi of M/s.Athi Group of Companies, which also became a Non-Performing Asset, as the borrowers had defaulted in repayment.

1.3. On a complaint given by the Indian Bank, the Central Bureau of Investigation [for brevity, 'CBI'] registered an FIR in RC MA1 2016 A 0043 on 19.12.2016, for the offences under Sections 120B and 420 IPC and Section 13(2) r/w. 13(1)(d) of the Prevention of Corruption Act, 1988, against Pandiyarajan and the borrowers. After completing the investigation, the CBI filed three final reports [charge sheets in C.C.Nos.6/18, 7/18 and 8/18], in the Court of the II Additional District Judge [Special Court for CBI cases, Madurai] against Pandiyarajan and the borrowers. The sum and substance of the allegations in the three charge sheets is that, Pandiyarajan had abused his official position and had sanctioned loans to the aforesaid persons in violation of Rules and norms, resulting in loss to the Bank and gain to the private borrowers.

1.4. Since the case registered by the CBI disclosed the commission of a Scheduled Offence under the Prevention of Money Laundering Act, 2002 [for brevity, 'PMLA Act'], the Enforcement

Directorate registered a case in ECIR/MDSZO/02/2017 dated 03.03.2017 and after completing the investigation, has filed a complaint in C.C.No.2/22, in the Principal Sessions Court, Madurai [Special Court for PMLA Act cases] against Pandiyarajan and nine others, including Pandiyarajan's children, K.P.Sindhu Bairavi [A8] and K.P.Karthik Balaji [A9], for quashing which, this quash application has been filed by K.P.Sindhu Bairavi [A8] and K.P.Karthik Balaji [A9].

2.Heard Mr.AR.L.Sundaresan, learned Senior Counsel for Mrs.AL.Ganthimathi, learned Counsel appearing for the petitioners and Mr.R.Vijayarajan, learned Special Public Prosecutor appearing for the respondent.

3.The Enforcement Directorate has filed a detailed counter affidavit refuting the various allegations raised by the petitioners / accused and justifying the prosecution.

4.Learned Special Public Prosecutor also brought to the notice of this Court, the recent judgment of the Supreme Court in ***Saranya Vs. Bharathi and another [(2021) 8 SCC 583],*** wherein the constitutional validity of the PMLA Act has been upheld.

5.Admittedly, Sindhu Bairavi and Karthik Balaji, who are the children of Pandiyarajan and Thenmozhi [wife of Pandiyarajan] have not been shown as accused either in the First Information Report or in the final reports filed by the CBI in C.C.Nos.6, 7 and 8/18. The crux of the allegation against them have been set out in Paragraph No.12 of the impugned complaint and the same reads as under:

> *"Accused No.8: Smt KP Sindhu Bairavi D/o Shri K.Pandiyarajan- Properties acquired in the name of M.Thenmozhi (A-6) by using part of proceeds of crime derived by Accused No.1, were settled in favour of her daughter Smt. KP Sindhu Bairavi in order to conceal the illegal origin of the immovable properties which were purchased using proceeds of crime. Smt.K.P.Sindhubairavi, who is fully aware of the fact that her mother Smt.Thenmozhi (A-6), who is a house wife having no separate source of income / earnings, accepted the immovable properties as gift and assisted in projecting the said immovable properties as untainted. Thus the accused (A-8) herein assisted A-1 and A-6 in projecting the properties acquired from the proceeds of crime as untainted thereby disguising the criminal origins of the source during acquisition. Thus Smt KP Sindhu Biravi had committed the offence of money laundering as*

defined under Section 3 and punishable under Section 4 of the PMLA.

Accused No.9: Shri KP Karthik Balaji S/o Shri.K.Pandiyarajan – Property acquired out of the proceeds of crime in the name of K.Pandiyarajan (A-1) was settled in favour of his son, Shri K.P. Karthik Balaji. Thus the accused (A-9) herein assisted Shri K.Pandiyarajan (A-1) in projecting the properties acquired from the proceeds of crime as untainted thereby disguising the criminal origins of the source during acquisition. Thus Shri KP Karthik Balaji had committed the offence of money laundering as defined under Section 3 and punishable under Section 4 of the PMLA."

6.At this juncture, it must be relevant to state here that Pandiyarajan is not prosecuted for possessing assets disproportionate to his known sources of income. He is being prosecuted by the CBI in the aforesaid three charge sheets for having indiscriminately granted loans to M/s.Hill Island Resort and M/s.Athi Group of Companies. Of course, a prosecution under the Prevention of Corruption Act, 1988, can be maintained against a public servant, if he had abused his official position, resulting in unlawful gain to a third party. We pored over the impugned complaint in C.C.No.2/2022 and found that the

Enforcement Directorate has not quantified anywhere the proceeds of crime that Pandiyarajan is said to have generated from the commission of the alleged criminal activity.

7.Be that as it may, coming to the case of Sindhu Bairavi and Karthik Balaji, it is the admitted case of the Enforcement Directorate that the properties were settled by Pandiyarajan and his wife in the name of their children, by way of two settlement deeds. The complaint clearly states that Thenmozhi [A6], the wife of Pandiyarajan had settled a land measuring 2 acres and 50 cents by a settlement deed dated 19.08.2015, in favour of her daughter Sindhu Bairavi, out of love and affection. Similarly, Pandiyarajan had settled a property measuring 0.94.0 ares in favour of his son Karthik Balaji, by way of a settlement deed dated 10.10.2019, out of love and affection. Both the settlement deeds are registered documents. Just because these two properties are in the names of Sindhu Bairavi and Karthik Balaji, it cannot be stated that they would be liable to be prosecuted under Section 3 r/w. 4 of the PMLA Act. Of course, if it is found that the said two properties have been purchased with the money generated from the alleged criminal activity, they are liable to be confiscated, which is an action in rem. However, the prosecution of the children of

Pandiyarajan and Thenmozhi, under the PMLA Act, on the ground that their parents had settled two properties in their name would be an abuse of process of law.

8.Both Sindhu Bairavi and Karthik Balaji have filed a joint affidavit dated 26.04.2022 before this Court, wherein, in Paragraph No.6, they have stated as follows:

> *"6.We also submit that so far as the gift deed executed by our mother on 19.08.2015 in favour of the 1st petitioner and our father on 10.08.2019 in favour of the 2nd petitioner herein, we state that both of us have not accepted the gift settlement; we have not taken possession of the property which was sought to be settled in our favour; we are not parties to the said settlement deed; and we hereby state that we do not claim any right in respect of the said properties which have been the subject matter of the said settlement deeds executed by our mother and our father. We forego the rights if any that has been transferred to us under the aforesaid settlement deeds."*

9.In fine, this Criminal Original Petition deserves to be allowed and consequently, the proceedings against Sindhu Bairavi [A8] and

Karthik Balaji [A9] in C.C.No.02 of 2022, pending on the file of the Principal Sessions Judge, Madurai, is hereby quashed. However, any decision with regard to the confiscation of the said two properties would have to be taken only by the Special Court under the PMLA Act. The connected miscellaneous petition is closed.

[P.N.P.,J.] & [R.H.,J.]
11.08.2022

Index : Yes/No
Internet : Yes/No
MR

To
1.The Deputy Director,
Directorate of Enforcement,
Government of India,
No.6, Besant Road,
Chockkikulam,
Madurai – 625 002.

2.The Special Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

P.N.PRAKASH, J.

and

R.HEMALATHA, J.

MR

ORDER MADE IN

CRL.OP.(MD)No.7829 of 2022

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