

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side**

Present:

The Hon'ble Justice Jay Sengupta

**CRR 40 of 2019
CRAN 1 of 2019 (Old No: CRAN 2479 of 2019)
With
CRR 41 of 2019
CRAN 1 of 2019 (Old No: CRAN 2481 of 2019)**

**Mili Ghosh
Versus
The Union of India & anr.**

For the petitioner : Mr. Sandip Kumar Bhattacharyya
Mr. Apalak Basu
Mr. Dipta Banerjee
..... Advocates

For the ED : Mr. Vipul Kundalia
Mr. Anurag Roy
Ms. Uneaza Ali
.....Advocates

Heard lastly on : 15.03.2023

Judgment on : 20.07.2023

Jay Sengupta, J.:

1. These are applications under Sections 397/401 read with Section 482 of the Code of Criminal Procedure, inter alia, praying for setting aside the impugned order dated 19.09.2018 passed by the learned Judge, Special (CBI) Court No. 1, Bichar Bhawan Calcutta in M.L. Case No. 02 of 2007 under Section 45 read with Section 3 and Section 4 of the Prevention of Money Laundering Act, 2002 (State versus Gopinath Das and Ors.) and the impugned order dated 19.09.2018 passed by the said Court in ML Case No. 1 of 2007 under similar provisions, respectively, wherein the petitioner's applications for discharge from the said cases were rejected. As common facts and questions of law were involved, the two revisions were taken up for hearing together.

2. Mr. A. Bhattacharyya, learned counsel for the petitioner, submitted as follows. The genesis of the present case were the two letters of complaint lodged with the CBI, by the officials of the State Bank of India and the Oriental Bank of Commerce dated 23.05.2006 and 09.06.2006, respectively. It was alleged in the said letters of complaint that one Mr. Gopinath Das, the proprietor of M/s Hindustan International had allegedly entered into a criminal conspiracy with some persons and in furtherance to the said conspiracy had prepared forged and fabricated documents were then submitted to the banks as a result of which a sum of Rs. 12,28,22,463/- was allegedly misappropriated from the State Bank of India and a sum of Rs. 6.76 crore was allegedly misappropriated from the Oriental Bank of Commerce. Subsequently, on the basis of the letters of complaint as above

referred, a case was registered by the CBI, an investigation was carried out and ultimately a charge-sheet was filed before the learned Judge, 3rd Special (CBI) Court, Calcutta against certain persons named therein. It would be pertinent to note that the present petitioner was not named in the letter of complaint, the formal FIR, nor in the charge-sheet. The Enforcement Directorate subsequently carried out a preliminary inquiry into the business affairs of the said M/s Hindustan International. It transpired that there was an agreement dated 17.03.2006 between the said Mr. Gopinath Das and the husband of the petitioner, Mr. Subrata Ghosh, by virtue of which the shares of a company known as the Dheklapara Tea Co. Ltd., were sold to the said Gopinath Das. The net sum of money was transferred to the Current Account of the husband of the petitioner, Mr. Subrata Ghosh. The said current account was in the name of Mr. Subrata Ghosh only and the petitioner had no connection with the same. It was not the case of the prosecution that the present petitioner received even a single penny in her account. It was not the case of the prosecution that the applicant knew the principal offender, Mr. Gopinath Das, who according to the case of the prosecution, had siphoned off the funds. Accordingly, the first part of Section 3 of the PMLA was clearly not applicable against her. The second part of the provisions of Section 3 spoke about the knowledge of committing the crime of money laundering of an accused person. Admittedly it was not the case of the prosecution that the applicant herein had any kind of knowledge regarding the alleged commission of the offence. It was the case of the prosecution that Mr. Gopinath Das has transferred a sum of Rs. 2.14

crore to the bank account of one Mr. Subrata Ghosh. Any further transaction from the said account by Mr. Subrata Ghosh, who was the solitary account holder of the current account would lose its character as a tainted money unless and until the knowledge of the beneficiary about the money being tainted was brought on record. It is the case of the prosecution that out of the money that was allegedly given by Mr. Gopinath Das to Mr. Subrata Ghosh, an amount of more than Rs. 2 lakhs, was given to the Union Bank of India, to foreclose the house building loan, which Mr. Subrata Ghosh availed for the purpose of purchasing a flat at Tollygunge. Admittedly the loan account was in the joint name of Mr. Subrata Ghosh and his wife, Mrs. Mili Ghosh, being the applicant herein. The applicant was the second account holder in the house building loan. In these peculiar circumstances of the case, the bank became the primary beneficiary as it had received its money back. The said company, being the Dheklapara Tea Company Ltd., was a public limited company and the present applicant/petitioner was a mere share-holder in it. She was not a director of the company. The opposite parties during the course of their arguments before this Hon'ble Court also produced a document being an alleged money receipt which was issued in favour of the petitioner by her husband Mr. Subrata Ghosh. The said receipt indicated that the husband of the petitioner Mr. Subrata Ghosh had received a sum of Rs. 6,51,000/- in cash, from the petitioner. It was contended by the prosecution that such receipt would indicate that the petitioner was somehow connected with any tainted money. This was for the purpose of causing prejudice to the applicant and

nothing else. The petitioner had been arraigned as an accused in this case on the basis of presumption only, which had no place in the eye of law. Three judgments were relied on by the prosecution. In the case of P. Chidambaram versus Directorate of Enforcement, 2019 (9) SCC 24, Section 26 of the Indian Penal Code was dealt with in absence of a specific definition of “reason to believe” in the PML Act. This judgment supported the case of the defence and not the case of the prosecution. This case was related to a bail application and is not applicable in connection with this case. So far as the other two decisions were concerned, i.e., The Deputy Director, Directorate of Enforcement and Ors. versus Axis Bank and Ors., 2019 (2) Crimes 181(Del) and J. Sekar vs. Union of India (2018) 246 DLT 610, both the cases were relating to confiscation or attachment of property. Confiscation of a property and a criminal trial against a person are two different aspects having two different kinds of requirements and as such, these two judgments were not applicable. The consequences of the failure of prosecution for the scheduled offence upon the offence of Money Laundering was no longer res integra, as had been held by the Hon’ble Supreme Court of India in the case of Vijay Madanlal Choudhary & ors. versus Union of India & Ors., decided on 27.07.2022. Such view was also re-iterated by the Hon’ble Supreme Court in the case of Parvathi Kollur & Anr. Versus State by Directorate of Enforcement, as decided on 16.08.2022. Although the prosecution had harped on Section 24 of the Act, they had remained strangely silent about the knowledge, which was one of the essential elements for constituting an offence of Money Laundering under Section 3 of

the PML Act. The entire prosecution case did not reveal any element of knowledge which could be attributed to the present petitioner and as such, the question of her prosecution for the offence of Money Laundering as defined in Section 3 of the Act, did not and could not arise.

3. Mr. Kundalia, learned counsel representing the respondents, submitted as follows. One Gopinath Das, after discounting bills of lading, purchased the Dheklapara Tea Estate from the said Subrata Ghosh and transferred a sum of Rs. 2,14,00,000/- into his account. The said sum was transferred into the account of Subrata Ghosh through various transactions for a period from January 4, 2005 to January 30, 2006. Out of the said sum of Rs. 2,14,00,000/-, a flat in the joint name of Subrata Ghosh and Mili Ghosh was purchased in Kolkata for a total consideration value of Rs. 17,25,000/-. A payment of Rs. 1,50,000/- was made as per receipt dated March 29, 2006. A further amount of Rs. 6,51,610/- was paid by Mili Ghosh to Subrata Ghosh evidenced in money receipt. The accused petitioner had shown in her balance sheet on 31.03.2006 that the value of the shares held by her in the Dheklapara Tea Company was valued at an amount of Rs. 2,20,000/- and held cash in hand for an amount of Rs. 6,25,685.53/-. In addition to the above, reliance was placed upon the statement of the current account held by Subrata Ghosh which had various transaction and which in the absence of appropriate narration could not be collated and was treated as coming squarely within the purview of Section 3. The provisional attachment confirmation order dated 23rd September, 2009, clearly mentioned that with regard to the property in question, no evidence was

produced by the petitioner herein to show that the source of the money used to buy the property was anything other than laundered money originating from Gopi Nath Das that flowed into the account of Subrata Ghosh, who was the husband of the petitioner. Also there was a finding in the aforesaid provisional attachment confirmation order that even though the petitioner had taken a loan purportedly to finance the flat in question, there was no evidence that the petitioner actually paid that amount to the seller or to her husband Subrata Ghosh for payment to the seller. It was an admitted fact on behalf of Subrata Ghosh vide the statement in page 283 of the RUD that he transferred shares in Dheklapara Tea Estate held by him and his family members to Gopi Nath Das for Rs. 2.25 crore. This showed that the family members including the petitioner had the requisite knowledge and intention to obtain money from Gopi Nath Das, which brought them under the ambit of money laundering. Further, Subrata Ghosh admitted that the proceeds of crime received from Gopi Nath Das were used to purchase properties including the flat in question, as per page 300 and 301 of the RUD. In *Vijay Madanlal Choudhary versus Union of India* (2022 SCC Online SC 929), it was held that possession of proceeds of crime constituted offence of money laundering. The provisions of PMLA were attracted when proceeds of crime were involved in any process or activity including mere possession of such proceeds of crime. Section 24 of PMLA applied to both proceedings before the Adjudicating Authority and the Special Court. If the involvement of a person in any process or activity connected to proceeds of crime was established, then the onus shifted on that person to rebut the legal

presumption that the proceeds of crime were not involved in money laundering. Thus, when there was a clear finding by the Adjudicating Authority that the petitioner had not been able to show that the source of the funds used to buy the property in question as distinct from the proceeds of crime originating from Gopi Nath Das, then the onus to rebut the presumption that the petitioner had not contravened Section 3 of the PMLA shifted on to the petitioner herself. Thus, prima facie satisfaction for the Court existed to presume that such proceeds of crime were involved in money laundering as under Section 24(b). Consequently, the petitioner had to rebut such presumption in the course of trial, and could not bypass such procedure under law by way of a discharge application.

4. I heard the learned counsels for the parties, perused the application, affidavits, the records of the case and the written notes of submissions.

5. For a proper adjudication of the lis, it would be necessary to quote the following provisions of the Prevention of Money Laundering Act, 2002 -

Section 2. sub-section (u) “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad]; [Explanation. – For the removal of doubts, it is hereby clarified that “proceeds of crime” include property not only derived or obtained from 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;]

Section 3. Offence of money-laundering. – Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

[Explanation. – For the removal of doubts, it is hereby clarified that, -

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely: -

- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property; or
- (f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

6. Therefore, proceeds of crime means not only a property derived or obtained directly, but also indirectly as a result of criminal activity relating to a scheduled offence. The explanation to the provision would make it

further clear that the proceeds of crime would also include property derived or obtained as a result of criminal activity relatable to a scheduled offence.

7. In the present case, it is alleged that a part of the laundered money was parked with the husband of the petitioner in his account. This was, in turn, used by the petitioner and her said husband for purchasing a property. Therefore, the monetary trail would make it abundantly clear that the altered form of such tainted money can fairly be termed as proceeds of crime.

8. Section 3 of the PMLA Act, 2002 practically brings within the ambit of money laundering any activity or process connected to an act of money laundering. A person can be hauled up for money laundering if he either directly or indirectly attempts to indulge in or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime. So far as the present petitioner is concerned, she could come within its swipe, if not for directly or indirectly attempting to indulge, at least for knowingly assisting or knowingly being a party or for actually getting involved in a process or activity connected to the proceeds of crime.

9. The explanation to Section 3 of the said Act sets out the process or activities connected with the proceeds of crime that could attract the offence of money laundering, their concealment or possession or acquisition or use or projecting as untainted property or claiming as untainted property. In the present context, the petitioner could be held responsible for any of the above referred processes or activities.

10. For better clarity, the bare facts prima facie constituting an offence may have to be culled out from the entire factual matrix. First, the present petitioner although claiming to be a home maker and an unsuspecting wife of the accused who had allegedly received the tainted money from the prime offender in the scheduled offence, was nevertheless a prime shareholder in the sham company along with her husband and other relatives. It was the fraudulent transfer of shares in this company that started the process by which money was illegally laundered. Thereafter, the present petitioner was absent from the picture for the immediately succeeding sequence of events. She comes in again when a part of the tainted money parked in her husband's account was used as consideration for purchasing a property in their joint names.

11. In view of the above facts, it cannot be said that no prima facie case is made out against the petitioner, more particularly in the peculiar circumstance that not only was the tainted money used for purchasing a property in the joint names of the petitioner and the husband, but the petitioner had also been a shareholder in the company the transfer of whose shares was itself a subject matter of the case of money laundering.

12. Even if the petitioner wants to deny any knowledge of the money used being obtained by fraudulent means, she has to do the same if and once a trial commences. Before that, on the present facts it may have to be presumed, in terms of Section 24 of the PML Act, that such proceeds of crime were involved in money laundering.

13. The decision of the Hon'ble Apex Court in Vijay Madanlal Choudhary (supra) only further strengthens the case against the petitioner. There, Section 24 of the PML Act was held to be constitutionally valid.

14. As prima facie case is made out against the present petitioner in the facts and circumstances of the present case, she cannot be exonerated from the charges at this stage and before a full-fledged trial commences.

15. In view of the above discussions, the revisional applications are dismissed. The connected applications are, accordingly, disposed of.

16. However, there shall be no order as to costs.

17. The learned Trial Court shall however not be swayed by any observation made by this Court in this revision as the same were made at this stage only for deciding the revisional application.

18. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J.)