IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.07.2023

Pronounced on : 11.08.2023

CORAM : JUSTICE N.SESHASAYEE

W.P.No.20537 of 2023
and WMP.No.19923 of 2023

Mohammed Bayasudeen ... Petitioner

Vs.

1.The Principal Director of Income Tax
New Income Tax Building
No.46 (Old No.108), Mahatma Gandhi Road
Chennai - 600 034.

2.The Deputy Commissioner of Income Tax
(Benami Prohibition) Initiating Officer
Door No.104, First Floor
Income Investigation Wing Building
No.108, M.G.Road, Nungambakkam
Chennai - 600 034. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari to call for the entire records in the order passed in F.No.PDIT (Inv).14(3)/2021-22 dated 16.03.2022 by the first respondent and quash the same.

For Petitioner	:	Mr.V.Ramamurthy
For Respondents	:	Ms.M.Sheela Special PP for R1 & R2

O R D E R

The petitioner herein challenges the proceedings of the first respondent dated 16.03.2022, in which he had granted sanction for prosecuting the petitioner under Section 55 of the Prohibition of Benami Property Transaction Act,1988.

2. The facts that lead up to the filing of the present petition may be stated as below :

- On 06.10.2018 at around 1.30 p.m., while the petitioner was standing in front of a certain lodge with a black bag in his hand, he was intercepted by the Inspector of Police, and he searched the bag and found cash worth Rs.34,60,000/- inside it. The petitioner immediately was taken into custody by the police. During interrogation, the petitioner had told the police official that the bag was handed over to him by his employer, Sultan Foumi. The police official then took the petitioner to the income tax office for the latter to probe into it.

- According to the petitioner, he is a native of Ramanathapuram, and was a school drop-out and that he came to Chennai in search of a job and got one under the aforesaid Sultan Foumi, who had a shop in Burma Bazaar, Chennai.
- While so, on 06.10.2018, Sultan Foumi entrusted a bag to the petitioner. The petitioner did not know what the bag contained. Even though the petitioner had provided the cellphone number and address of his employer Sultan Foumi, the I.T Official, instead of summoning the petitioner's employer, had directed the petitioner to produce him. The petitioner tried his best to find his employer, but he could not find him.
- Vide the impugned proceedings the petitioner was declared as a *benamidar*, but without any materials. The petitioner claims that he has little to do with the money seized from him as the cash recovered did not belong to him. Petitioner also pleads that he neither owns any movable or immovable property, nor is he an income tax assessee.

- While so, the first respondent without any application of mind has accorded sanction under Section 55 of the Act to prosecute the petitioner under Section 53 of the Act.

Hence, the petitioner has filed the writ of certiorari to quash the same.

3. Narrating the facts as above, the learned counsel for the petitioner took this Court through the recorded statement of the petitioner under Section 131(1A) of the Income Tax Act. In his statement given on 08.10.2018, the petitioner has categorically stated that the money belonged to his employer Sultan Foumi, and that he had little to do with the cash. The recording of the statement was stopped on the said date to enable the petitioner to bring his employer. The recording of the statement continued on the following date i.e., on 09.10.2018, and the petitioner reported that he could not bring his employer, and stated that his employer did not contact him after handing over the bag either. The petitioner also shared three mobile numbers of his employer Sultan Foumi, and also the latter's residential address, and also offered to show his residence. The proceedings for the day was then concluded. On 10.10.2018, the recording of the statement continued. On that date, it was confronted to the petitioner by the authority that at the address

given by the petitioner, it was discovered that the petitioner's employer was staying with certain Amjath, and as per the information provided by the manager of the apartment, Sultan Foumi had not visited the apartment for more than a week. Since Sultan Foumi was not in the address given, the petitioner was asked to explain the same. And the petitioner with all innocence had replied that he only knew the address which Sultan Foumi had given, and did not no anything more than that. The statement of the petitioner was also recorded subsequently on 22.11.2018, during which the petitioner had stated that between 10.10.2018 and 22.11.2018, he had not met his employer Sultan Foumi. This, the first respondent has failed to consider and without applying his mind to the same, it granted sanction for prosecution under Section 55 of the Act.

4.1 Per contra, the learned counsel for the respondents would submit that after recording the statement of the petitioner under Section 131(1A) of the Income Tax Act, the Deputy Commissioner of Income Tax, the second respondent in this case, referred the matter to Benami Prohibition Wing of the Income Tax Department. When once the property *prima facie* falls within the definition of *'benami transaction'* under Section 2(9) of the Act, then the

Initiating Authority will issue a show cause notice under Section 24(1) of the Act. In this case too, the petitioner was served with a show cause notice, and the seized property was also attached provisionally. During the enquiry by the Adjudicating Officer, the petitioner herein had made a reply wherein he had made a statement that on 04.10.2018, he had travelled to Chennai to collect monies from various relatives and friends, that he had in all Rs.35,00,000/-, out of which, he had spent Rs.40,000/- for various essential purchases and kept the balance Rs.34,60,000/- with him in the bag, and that while he was walking close to the Collectors Office bus stop to go to his native place, he was intercepted by the police. This statement is diametrically contrary to what he has given when he gave a statement under Sec.131(1A) of the I.T. Act.

4.2 The learned counsel added that under Sec. 2(9)(A) of the Act, the benami transaction is defined *inter alia* as "*a transaction or an arrangement - the property is held for immediate or future benefit, direct or indirect, of the person who has provided the consideration..*", but it is subject to certain statutory exceptions. Under Sec.2(9)(B) it includes any "*transaction or arrangement in respect of a property carried on or made a fictitious name*".

Under Sec.2(9)(D), it also includes "*a transaction or an arrangement in respect of a property where the person providing the consideration is not traceable or it is fictitious*". Today the petitioner has made conflicting statement regarding the ownership of the property. First he made a statement that it belonged to Sultan Foumi, later he changes his statement and states that it is his own money. Now it is this inconsistency that has prompted the authority to grant sanction under Section 55 of the Act for prosecuting the petitioner.

5. After weighing the rival submissions, this Court considers that it is too pre-mature stage for this Court to interfere with the decision of the first respondent to accord sanction for prosecution under Section 55 of the Act. So far as certain contradictory statements alleged to have been made by the petitioner is concerned, its merits can be decided only post prosecution. The fact of the matter is that, here is the petitioner who is found to possess unexplained cash which he tries to explain through conflicting versions. Whether a person Sultan Foumi exists itself now comes under the scanner, since the response of the petitioner to the notice under Sec.24(1) of the Act seems to suggest something different. Could Sultan Foumi be a fictitious

character? It is for the petitioner to explain.

6. The stage is too pre-mature for this Court go by the version of the petitioner. Consequently, this Court does not consider there is merit in this writ petition, and hence dismissed. No costs. Consequently, connected miscellaneous petition is closed.

11.08.2023

Index : Yes / No
Speaking order / Non-speaking order
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N.SESHASAYEE.J.,

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Pre-delivery order in
W.P.No.20537 of 2023

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