IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.S. SUNDAR

AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.R.C.No.1932 of 2023
and
Crl.M.P.No.18056 of 2023

P.Rajendran ... Revision Petitioner

Vs.

State represented by the Assistant Director,
Directorate of Enforcement,
Government of India, Ministry of Finance,
Department of Revenue, II & III Floor, "C" Block,
MurugesaNaicker Office Complex,
No.84, Greams Road,
Chennai - 600 006. ... Respondent

Criminal Revision Case filed under Section 397 & 401 Cr.P.C., to set aside the order of dismissal of the discharge petition passed by the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, in Crl.M.P.No.2166 of 2023 in C.C.No.62 of 2016 dated 26.09.2023 in ECIR No.06/CEZO/PMLA/2011.

For Petitioner : Mr.K.K.Sivasshanmugam

ORDER

(Order of the Court was made by **S.S. SUNDAR, J.**)

This Criminal Revision Case is filed against the order of dismissal of the discharge petition, passed by the Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, in Crl.M.P.No.2166 of 2023 in C.C.No.62 of 2016, dated 26.09.2023, in ECIR No.06/CEZO/PMLA/2011.

2.The case of the prosecution is that the petitioner, who is arrayed as A6 in C.C.No.62 of 2016, purchased an extent of land measuring 5.76 Acres for sale consideration of Rs.3,64,000/- under registered sale deed dated 09.09.2009 vide Document No.1559 of 2009 from the funds provided by A1 namely G.Srinivasan. A8 to A15 are subsequent transferees of the lands from A4, A6 and A7. The allegation is that A1, along with other accused, committed an act of cheating of a non-banking financial institution and obtained a loan of Rs.15 Crores. A1 is said to have purchased 166 Acres of land through A4, A6/petitioner and A7 by giving them Rs.1.07 Crores with a portion of loan amount. Hence, the case.

3.The 6th accused in the said case has filed this revision against the dismissal of his petition before the Court below to discharge him of the alleged charges under Section 3 of the Prevention of Money Laundering Act, 2002.

4.The only point urged by the learned counsel for the revision petitioner is that the petitioner is not an accused under scheduled offence. It is his further submission that, except the allegation of purchase of small extent of 5.76 Acres of property, the petitioner did not have any role in the commission of offence committed by A1 along with others.

5.Section 3 of the Prevention of Money Laundering Act, 2002, reads as follows :

> ***"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 and projecting it as untainted property shall be guilty of offence of money laundering.”

6.First of all, the scope of Section 3 of 2002 Act has been considered in several decisions and a larger Bench of the Hon'ble Supreme Court in ***Vijay Madanlal Choudary and others Vs. Union of India and others***, reported in ***2022 SCC Online SC 929***, has interpreted Section 3 of 2002 Act, having regard to the plain language employed.

7.From the bare language of Section 3 of 2002 Act, the Hon'ble Supreme Court held that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence.

8.The Hon'ble Supreme Court also held that the process or activity can be in any form. It may be one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, the Hon'ble Supreme Court has interpreted the provisions to include any activity connected with the proceeds of crime.

9.The Hon'ble Supreme Court further has observed that a criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of 2002 Act and if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been noticed as scheduled offence, shall be liable to be prosecuted for offence of money-laundering under the 2002 Act.

10.The conclusion of the Hon'ble Supreme Court in *Vijay Madanlal's case [cited supra]* can be summarised as follows:

> **“***(I)Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word 'and'*

preceding the expression projecting or claiming as 'or'; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise. [Para 187(v)(a), Page 533].

(II)Independent of the above, we are clearly of the view that the expression 'and' occurring in Section 3 has to be construed as 'or', to give full play to the said provision so as to include 'every' process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity. [Para 187(v)(b), Page 533]

(III)The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected. [Para 187(v)(c), Page 533].

(IV)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.[Para 187(v)(d); Page 533, 534]

(V)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 moneylaundering against him or any one claiming such property being the property linked to stated scheduled offence through him. [Para 187(v)(d); Page 533, 534]"

11.In the present case, the allegation against the petitioner is that the petitioner had voluntarily lent his name for the purchase of the property under sale deed dated 09.09.2009 from and out of the funds that was mainly generated by the accused Nos.1 and 2 by committing a scheduled offence. The point raised by the learned counsel for the petitioner/A6 is that the property was acquired by the petitioner/A6 out of his own money. This is a factual issue and it has to be decided only at the time of trial. Therefore, this Court is unable to find a *prima facie* case to admit this revision.

12.Hence, this Criminal Revision Case is dismissed at the admission stage itself. Consequently, connected miscellaneous petition is also dismissed.

(S.S.S.R., J.) (S.M., J.)
15.11.2023

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Internet : Yes
Index : Yes / No
Neutral Citation : Yes / No

To

1.The Principal Special Judge for CBI Cases,
VIII Additional City Civil Court,
Chennai.

2.The Assistant Director,
Directorate of Enforcement,
Government of India, Ministry of Finance,
Department of Revenue, II & III Floor, "C" Block,
MurugesaNaicker Office Complex,
No.84, Greams Road,
Chennai - 600 006.

3.The Public Prosecutor,
High Court, Madras.

S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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