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W.P.No.483 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 10.01.2023

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P.No.483 of 2023
AND
W.M.P.No.434 of 2023

M/s.Gold Quest International Pvt. Ltd.
Rep. by its Director
Selvi Pushpam Appala Naidu
No.7, Rain Tree Place
9th Floor, McNichols Road
Chetpet, Chennai 600 031

.. Petitioner

Vs.

1.The Appellate Tribunal under the
Prevention of Money Laundering Act 2005
New Delhi
Rep. by its Registrar
'A' Wing, 4th Floor
Loknayak Bhawan
Khan Market, New Delhi 110 003

2.The Adjudicating Authority under the
Prevention of Money Laundering Act 2005
New Delhi

3.The Directorate of Enforcement
Rep. by the Assistant Director
Government of India, Ministry of Finance
Department of Revenue
2nd and 3rd Floor, Murugesu Naicker Complex
No.84, Greaves Road, Chennai 600 006

.. Respondents



W.P.No.483 of 2017

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the 3rd respondent to lift the attachment of the petitioner's properties forming part of the attachment order in provisional attachment order No.08/2017 dated 05.04.2017 passed by the 3rd respondent, pending disposal of the appeal filed by the petitioner before the 1st respondent.

For Petitioner : Mr.P.Ramesh Kumar

For Respondents : Mr.S.Sasikumar
Special Public Prosecutor (ED)

ORDER

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

This writ petition has been filed seeking a direction to the 3rd respondent to lift the attachment of the petitioner's property forming part of the attachment order in provisional attachment order No.08/2017 dated 05.04.2017, pending disposal of Appeal No.1980 of 2017 filed by the petitioner before the 1st respondent.

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

2.1. An FIR in Crime No.454 of 2008 for the offences under Sections 4, 5 and 6 of the Prize Chits and Money Circulation Schemes (Banning) Act, 1978, and Section 420 read with Section 120-B IPC, was registered by the Sembium police against one M/s.Gold Quest International Pvt. Ltd. and others.



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2.2. Since the aforesaid FIR disclosed the commission of a scheduled offence under the Prevention of Money-Laundering Act, 2002 (in short “the PML Act”), the Enforcement Directorate registered a case in ECIR No.11 of 2016 and passed a provisional attachment order No.8 of 2017 dated 05.04.2017, attaching the properties belonging to M/s.Gold Quest International Pvt. Ltd. This provisional order of attachment was confirmed by the Adjudicating Authority, by order dated 29.08.2017 in O.C.No.772 of 2017. Aggrieved by the order of the Adjudicating Authority, the petitioner has preferred an appeal in Appeal No.1980 of 2017 in the Appellate Tribunal under the PML Act and the same is admittedly pending.

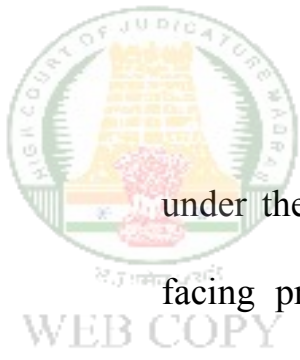
2.3. While that being so, it may be necessary to advert to the developments that took place in the predicate offence. It is seen that the investigation was completed in Crime No.454 of 2008 and a final report was filed in C.C.No.3876 of 2009 in the Special Court for CCB Cases, Chennai, against M/s.Gold Quest International Pvt. Ltd. and others.

2.4. During the pendency of this prosecution, a petition was moved in this Court, in a proceeding under Section 482 Cr.P.C. in CrI.O.P.No.24461 of 2016 seeking appointment of an Advocate Commissioner to settle the claims of various parties. That apart, another petition was filed CrI. O.P. No.30144 of 2019 seeking quashment of the aforesaid case in C.C.No.3876 of 2009.



2.5. While so, this Court, *vide* a common order dated 02.01.2020, dismissed CrI.O.P. No.24461 of 2016 as having become infructuous in view of appointment of Mr. Justice S. Jagadeesan as an Administrator *vide* order dated 23.10.2017 passed earlier, and allowed CrI.O.P. No.30144 of 2019 quashing the prosecution in C.C.No.3876 of 2009. Thus, from the above, it is clear that the prosecution for the scheduled offence against the petitioner does not survive any longer.

2.6. Now, coming to the scheduled offence, the Enforcement Directorate completed their investigation and filed a complaint in C.C.No.7 of 2018 in the Special Court for PML Act Cases, Chennai, against M/s.Gold Quest International Pvt. Ltd. and others for the offences under Section 3 read with Section 4 of the PML Act, seeking quashment of which, CrI.O.P. No.2279 of 2019 was filed before this Court by the petitioner herein along with certain others. Consequent to the quashment of the predicate offence by this Court by order dated 02.01.2020 in CrI.O.P. No.30144 of 2019, this Court, in CrI.O.P.No.2279 of 2019, quashed the prosecution initiated by the Enforcement Directorate in C.C.No.7 of 2018 *vide* order dated 12.09.2022, relying upon the judgment of the Supreme Court in ***Vijay Madanlal Choudhary and others vs. Union of India and others [2022 SCC OnLine SC 929]***, holding that when the predicate offence itself has been quashed, the prosecution of the same accused



under the PML Act, cannot be sustained. Thus, as on today, the petitioner is facing prosecution neither for the predicate offence nor for the scheduled offence under the PML Act.

2.7. While so, it is the grievance of the petitioner that, on account of the provisional order of attachment, as confirmed by the Adjudicating Authority, the properties attached thereunder are under encumbrance and therefore, they are not able to deal with the same. Under such circumstances, the petitioner has filed the instant petition seeking the relief as stated in the opening paragraph.

3. We explained to the learned counsel for the petitioner that earlier, there was no Presiding Officer in the Appellate Tribunal for PML Act Cases for a very long time and therefore, this Court was entertaining writ petitions in order to provide relief for the parties; however, now, Hon'ble Mr. Justice Munishwar Nath Bhandari, former Chief Justice of this Court, has been appointed as the Chairman of the Appellate Tribunal and when the Appellate Tribunal is very much functioning, it may not be appropriate for this Court to entertain this writ petition.

4. As a riposte, the learned counsel for the petitioner brought to the notice of this Court that the petitioner submitted a memo to the Appellate



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Tribunal on 16.12.2022, setting out all these facts and requesting the Appellate Tribunal to dispose of the appeal and that the said appeal was adjourned to 17.01.2023.

5. Be that as it may, we are not inclined to entertain this writ petition, especially, in the light of the fact that the Appellate Tribunal is functional and the appeal filed by petitioner is pending. Though this Court, under Article 226 of the Constitution of India, does have the power to issue directions to a Tribunal constituted under an enactment, we do not want to do that and instead, we request the Appellate Tribunal for PML Act Cases to take into consideration the aforesaid facts and dispose of the petitioner's appeal in Appeal No.1980 of 2017, expeditiously.

With the above observations, this writ petition stands disposed of.
No costs. Connected W.M.P. stands closed.

[P.N.P., J.] [N.A.V.,J.]

10.01.2023

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To

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4.The Public Prosecutor
High Court, Madras



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