IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.11.2023

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.28656 of 2018
and Crl.M.P.No.14371 of 2023

D.Suresh Rao ...Petitioner/A2

vs.

The Assistant Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floor, C Block,
Murugesa Naicker Office Complex,
No.84, Greams Road,
Thousand Lights, Chennai- 600 086. ...Respondent

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in C.C.No.1 of 2017 on the file of the XIV Additional Special Judge, Chennai and quash the proceedings against him in the said case.

For Petitioner :: Mr.N.Manoharan
For Respondent :: Mr.Rajnish Pathiyil
Special Public Prosecutor

ORDER

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

Though a petition to vacate stay in Crl.M.P.No.14371 of 2023 is filed, this Court with consent of parties has taken up the case for final disposal.

2. This Criminal Original Petition is filed to quash the criminal proceedings in CC No.1 of 2017 on the file of the learned XIV Additional Special Judge, Chennai.

3. The brief facts that are necessary for the disposal of this petition are as follows:

(i) The petitioner is shown as A2 in the complaint for the alleged offence of money laundering under Section 3 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as '2002 Act').

(ii) The Deputy Director, Directorate of Enforcement, Chennai, registered an information in ECIR No.05/2012, following the registration of a complaint in Cr.No.71 of 2012 on 03.02.2012, for offences under Sections 120(B), 406 and 420 of IPC.

(iii) The petitioner has challenged the proceedings in CC No.1 of 2017 mainly on the ground that the case has been registered in continuation of a predicate offence which is registered in Crime No.71 of 2012 for offence under Sections 120-B, 406 and 420 of IPC on 03.02.2012, wherein there is no specific allegation against the petitioner involving him for commission of any offence. It is contended by the petitioner that an offence under 2002 Act, cannot be dealt with before the scheduled offences have been tried and proved.

4. It is the case of the petitioner that no final report in relation to the predicate offence viz., offence in Crime No.71 of 2012 has been laid before the Court by the Investigation Officer viz., Inspector of Police, Crime Branch, Chennai-8. In this background, the learned counsel submitted that the PMLA authorities have no authority or power of jurisdiction to investigate or ascertain by any authorised legal process, at least to know

what is the proceeds of a crime.

5. Therefore, the main contention of the petitioner is that an action under 2002 Act cannot be instituted without first determining the proceeds of crime and the learned counsel states that it is possible only after the trial in respect of the predicate offence. It is stated that initiation of prosecution under 2002 Act is therefore premature and unsustainable in law.

6. The next point submitted by the petitioner is that the petitioner's involvement is not found in the FIR in Crime No.71 of 2012. Though the name of the petitioner was referred to in Cr.No.71 of 2012 there was no offence alleged against the petitioner. The learned counsel then submitted that the petitioner was shown as A2 in the impugned complaint only on the basis of his statement. Referring to the entire statement of the petitioner, learned counsel submitted that the statement that was obtained from the petitioner when he was in custody, cannot be the basis for proceeding against the petitioner for an offence under the 2002 Act. Learned counsel for the petitioner also referred to Section 3 of the 2002 Act.

7. Even after hearing the lengthy submissions of the learned counsel for the petitioner by referring to several documents, this Court *prima facie* finds that the petitioner's involvement is admitted by the petitioner from the materials produced and the submissions of the petitioner himself.

8. 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.

9. 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 deprived or obtained as a result of criminal activity relating to or in relation to a scheduled offence.

10. 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.

11. 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.

12. 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 money-laundering 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]

13. In the present case, the petitioner himself has admitted his acquaintance with the 1st accused. The FIR in the predicate offence may not ofcourse reveal the involvement of the petitioner. However, the statement obtained from the witnesses who were examined in connection with the predicate offence would show how the petitioner was introduced to the bank officials as person who is the authorised signatory of the business concern of the 1st accused.

14. Though the learned counsel for the petitioner pointed out that the petitioner was not a Partner or a share holder in the business concern and the account was purely in the name of the enterprises, which is not

connected with the petitioner, the case of the petitioner that he has no connection with the predicate offence under Section 3 of the 2002 Act, cannot be accepted. Despite the fact that the petitioner was not shown in any of the documents relating to the business concern of the 1st accused, the petitioner himself has admitted that substantial amount that was mobilised following the predicate offence alleged to have been committed by the 1st accused, was transferred to the accounts of the petitioner. In the statement of the petitioner it is shown that a sum of Rs.20 Crores had been transferred to the accounts of the petitioner. Though the petitioner states that a sum of Rs.16 Crores and a further sum of Rs.3 Crores had been re-transferred at the request of the 1st accused, still he has not accounted for the entire money that was allegedly transferred to the account of the petitioner.

15. The learned counsel for the petitioner submitted that the statement of the petitioner under Section 50(2) and (3) of 2002 Act, was given under coercion and hence, it cannot be the basis for prosecution. This Court is of the view that it is for the trial Court to decide the said issue and this Court cannot adjudicate this issue in the instant quash petition.

16. The learned counsel appearing for the petitioner relied upon some portion of the statement given by the petitioner and submitted that the respondent have not taken note of the said statement. It is premature to consider the merits of the defence that may be taken by the petitioner at the time of trial. Petitioner's involvement cannot be denied in view of the interpretation of provisions of Section 3 of the 2002 Act, by the Hon'ble Supreme Court.

17. It is admitted that the petitioner has purchased a flat by paying substantial cash. The actual consideration that was paid for the property is not disclosed by the petitioner. However, even on a face value, a sum of Rs.45 lakhs is paid as sale consideration by the petitioner.

18. The learned counsel for the petitioner submitted that the 1st accused has obtained power of attorney document even on the very date of sale and that therefore, he is not involved. The Deed of Power of Attorney is not a document of conveyance and therefore, the petitioner is the true

owner of the property as on date. The petitioner's counsel indirectly admitted that the consideration was not paid by him. This would go to show that the proceeds of crime had been utilised for the purchase of the property. The explanation now offered by the petitioner may not lead to the conclusion that the petitioner is not involved in the offence for which he is facing trial. So, this Court finds no merit in any of the submissions of the learned counsel for the petitioner and he has not made out any ground for quashing.

19. The Hon'ble Supreme Court in the ***State of Haryana Vs. Bajanlal,*** reported in **1992 Supp (1) SCC 335** has listed the circumstances under which this Court can exercise power under Section 482 of Cr.P.C., to quash a complaint. The illustrative categories indicated by the Hon'ble Supreme Court are as follows:

> "102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have

extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent

person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the Act concerned (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the Act concerned, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fides and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'"

20. This Court is unable to find any one of the circumstances indicated in the judgment of the Hon'ble Supreme Court to quash the complaint as against the petitioner. Therefore, finding that there is no merit in this quash petition, the Crl.O.P.No.28656 of 2018 is **dismissed.** Any observations made by this Court in this proceedings will be only for the purpose of considering the quash petition and the trial Court is at liberty to pass final orders uninfluenced by any of the observations made by this Court. Consequently, the connected Criminal Miscellaneous Petition is closed.

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

02.11.2023

Index: Yes/No
Speaking/Non-Speaking order
Neutral Citation: Yes/No.
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To

The Assistant Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
2nd and 3rd Floor, C Block,
Murugesa Naicker Office Complex,
No.84, Greams Road,
Thousand Lights, Chennai- 600 086.

S.S.SUNDAR,J.

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