BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.07.2023

DELIVERED ON : 10.08.2023

CORAM

THE HON'BLE MR JUSTICE M.S.RAMESH
AND
THE HON'BLE MR JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.3086 of 2023
and Crl.M.P.(MD)No.2822 of 2023

1.S.Srividhya
2.Sreepriya
3.S.Vimala
4.Lalitha
5.Srisharanya .. Petitioners/ Accused

Vs.

1.The Assistant Director (PMLA),
Directorate of Enforcement,
Government of India,
Chennai Zonal Office – II,
5th Floor, III Block, B Wing,
Shastri Bhavan, 26, Haddows Orad,
Chennai – 600 006.
(File No.ECIR/CEZ0-II/04/2019/LKV/AD
dated 07.08.2019) .. 1st Respondent / complainant

2.The Deputy General Manager,
Indian Bank,
Trichy Zone,
Trichy. .. 1st Respondent / defacto complainant

Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the charge sheet filed in C.C.No.11 of 2022 on the file of the learned II Additional District Court (CBI Cases), Madurai and quash the same as against the petitioners.

For Petitioners	:	Mr.E.Om Prakash, Senior Counsel and Mr.V.Ramesh for Mr.D.Srinivasaragavan
For Respondents	:	Mr.AR.L.Sundaresan, Addl. Solicitor General of India, Assisted by Mr.K.R.Laxman, Central Govt. Senior Panel Counsel for R1 No Appearance for R2

ORDER

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

The Central Bureau of Investigation, Banks Securities & Fraud Cel (BS & FC), Bangalore (CBI) had registered a case in FIR No.20 of 2018, dated 16.10.2018, for the offences under Sections 120-B, 406, 420, 468 & 471 of the Indian Penal Code, on the basis of a complaint from the Indian Bank, Tricy Zone against M/s.Cethar Limited (hereinafter referred to as the 'Company'), its Chairman and others.

2. The gist of the complaint is that M/s.Cethar Ltd., Trichy and its Directors had committed the offences by inducing M/s.Indian Bank and other member banks to grant various credit facilities, by suppression of facts and subsequently misappropriated the funds, thereby causing loss to the extent of Rs.1,344.96 Crores to the consortium banks. It is alleged that there was huge fund diversion from the Company, which is managed by the Directors, to its subsidiaries and related entities and made investments. Since the offences under Section 120-B, 420 and 471 IPC are scheduled offences, under paragraph 1 Part A of the Prevention of Money Laundering Act, 2002, (PMLA) an ECIR bearing No.ECIR/04/CEZO-II-2019, dated 07.08.2009 was registered by the Enforcement Directorate, Chennai against the company and its Directors, including the petitioners herein, for commission of an offence under Section 3 of PMLA. Statements of the petitioners and others were recorded under Section 50 of PMLA and after investigation, the Directorate of Enforcement / first respondent had filed the Enforcement Case Information Report (ECIR). The complaint filed under Sections 44 and 45 of the PMLA for the alleged offence under Section 3 of the PMLA was taken on file in C.C.No.11 of 2022, by II Additional District Court (CBI) Cases, Madurai. While the Company has been arrayed as first accused therein, the second and third accused are its Chairman and Managing Director respectively of the first accused company. The petitioners 1, 2 and 5 are the daughters of the second accused, the third petitioner is the wife of the second accused and the fourth petitioner is the wife of the third accused. All the petitioners herein have been arrayed as accused Nos.4 to 8 in the proceedings. The petitioners now seek to quash these proceedings.

3. Mr.E.Om Prakash, learned Senior Counsel and Mr.V.Ramesh, learned counsel, who appeared on behalf of the petitioners herein submitted that these petitioners herein were never Directors or in-charge of any affairs relating to the management of the company and have nothing to do with the financial decision making affairs of the company. Apart from the third petitioner, the other petitioners are not even shareholders of the company. By drawing our attention to certain factual aspects to substantiate that the petitioners had sufficient independent source of income, out of which, jewelleries and properties have been purchased, the claim of the first respondent that such properties were purchased out of the proceeds of crimes, is not based on any material evidence. He further submitted that the entire complaint is based on surmises and assumption which cannot be a ground for invoking the provisions of PMLA against the female members of the family, merely because they happened to be close family relatives of the second and third accused.

4. On the other hand, Mr.AR.L.Sundaresan, learned Additional Solicitor General of India, submitted that the present petition under Section 482 of Cr.P.C. itself is not maintainable, since the complaint makes out a *prima facie* case based on the petitioners' statements recorded under Section 50 of PMLA. According to him, the offence under the PMLA is a stand alone offence. While the predicate offences that were registered by the CBI for the offences under Sections 406, 420, 468 and 471 r/w 120-B of the Indian Penal Code, the offences under Sections 420, 471 and 120-B of I.P.C., are scheduled offences under the PMLA. The basis of the complaint is on the material collected in the investigation which implicates the petitioners of having indulged with the proceeds of crime and having projected it as untainted property is a guilty of the offence of money laundering.

5. Section 50 of PMLA, confers power on the authorities under the Act to summon any person for production of documents and to give evidence in connection with the complaint. Accordingly, the statement sof all these petitioners herein were recorded.

6. As per the statement of the first petitioner /4th accused, she was the Director of the company and drawing a salary of Rs.1 lakh from the year 2014-15 onwards. She had also stated that from 2006 to 2012, she had worked in M/s.Cethar Vessels and after that she worked in M/s.Pipelines Ltd., upto 2013-14. According to her, the funds for incorporation of M/s.Cethar Healthcare was provided by the second and third accused.

7. The second petitioner / 5th accused had stated that she had given an unsecured loan of Rs.25 lakhs to M/s.Cethar Healthcare Services Private Limited between 2006-2013.

8. The third petitioner/6th accused has stated that she is a shareholder of M/s.Cethar Healthcare Services.

9. According to the fourth petitioner /7th accused, the jewels seized by the first respondent belonged to her.

10. The fifth petitioner / 8th accused is one of the shareholders of M/s.Cethar Limited and she had worked in Cethar Energy Limited and thereafter became a Director of M/s.Dynepro Private Limited.

11. On the basis of the statements of these petitioners, the Directorate of Enforcement had alleged that all these petitioners had directly or indirectly had nexus with the first accused company and therefore, cannot claim that they were not in-charge of any affairs relating to the management of the company.

12. The proceeds of crime include properties that are not only derived or obtained from the scheduled offences, but would also include those properties, which may be directly or indirectly derived or obtained as a result of any criminal activity relatable to the schedule offences. When any person is charged for an offence under Section 3 of PMLA, there is a presumption that the proceeds of crime are involved in money laundering.

13. The impugned complaint is based on the statements given by the petitioners herein and in view of the statements made therein, the authority or the Court shall presume that the petitioners had involved with the proceeds of crime and acquired properties and attempted to claim it as untainted property and accordingly, the requirement for the offence under Section 3 of PMLA is made out.

14. When the complaint, on the face of it, establishes a *prima facie* case for the Special Court to adjudicate, the attempt made by the learned Senior Counsel to impress the Court on factual records to disprove the claim of the respondents that the proceeds are not of a crime, would be impermissible for this Court to appreciate in a petition to quash the complaint under Section 482 Cr.P.C.. In other words, when the averments in the complaint *prima facie* makes out an offence under Section 3 of PMLA against the petitioners herein, analysing the records to prove otherwise, is a process to be undertaken by the trial Court and not in a petition under Section 482 Cr.P.C.

15. The learned Senior Counsel for the petitioners placed reliance on a decision of a coordinate Bench of this Court in the case of ***L.Sivaramakrishnan and another Vs. the Deputy Director, Directorate of Enforcement*** passed in ***Crl.O.P.No.24856 of 2016, dated 04.02.2021,*** to substantiate that when the *prima facie* materials disclose that the properties of these petitioners are untainted and acquired through sources which were not proceeds of crime, the complaint itself is liable to be quashed. The facts involved in Sivaramakrishnan's case (supra) is distinguishable from the petitioners' case. In the case before the coordinate bench, the Enforcement Director, in their complaint, had not mentioned that the accused had acquired any proceeds of crime and the cause of action for the offence of money laundering arose before loans were sanctioned therein and not after that. This apart, in the predicate offence registered by the CBI, investigation was completed and charge sheet was already filed, as per which the said Sivaramakrishnan was not found to have benefited financially from the criminal activities. Thus, having found so, the coordinate bench disagreed with the Enforcement Director that the salary of the accused therein would not amount to proceeds of crime and the consequent properties purchased will not stand tainted. It is in this background, the coordinate Bench had proceeded to quash the complaint.

16. However, in the instant case, the statements made by the petitioners under Section 50 of PMLA indicate the possible commission of offence under Section 3 of PMLA. The charge sheet has also not been filed in the instant ase. Above all, in view of the statements made by the petitioners indicating their nexus with the first accused Company, there was a possibility that they could be involved in the management of the company, which possibility requires to be established through the proceeds of a full fledged trial.

17. The scope of the powers of the Court to quash the complaint under Section 482 Cr.P.C. has been time and again dealt by the Hon'ble Supreme Court, in a catena of decisions, by holding that such powers requires to be exercised in the rarest of rare cases, the exceptions to which have been repeatedly pointed out. In the case of ***State of Haryana and others Vs. Bhajan Lal and others*** reported in ***1992 Suppl. (1) SCC 335,*** some of the exceptions for quashing the complaint under Section 482 Cr.P.C., were pointed out in the following manner:

> *"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 concerned Act (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 concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide 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."

18. In a recent decision of the Hon'ble Supreme Court in ***Anoop Bartaria and others Vs. Deputy Director Enforcement Directorate and another*** reported in ***2023 SCC OnLine SC 477***, the dictum in Bhajan Lal's case (supra) was followed and by pointing out that the case involved therein, did not fall under any of the exceptions pointed out in Bhajan Lal's case and in view of the material to show *prima facie* involvement of the accused for the offence of money laudering, the Supreme Court had refused to quash the complaint.

19. In the case before us also, the grounds raised by the petitioners do not fall under any of the category pointed out in Bhajan Lal's case. On the other hand, the material on record does make out a *prima facie* case to implicate the petitioners for the offence of money laundering, as contemplated under PMLA. In this background, we do not find any reason to entertain the prayer sought for in the present petition.

20. Before parting with the case, we would like to clarify that the observations and findings rendered by us in the present case, are only for the purpose of substantiating the *prima facie* case before us for the purpose of refusing to exercise our powers under Section 482 Cr.P.C. Thus, neither the Special Court handling the impugned complaint nor the investigating authorities shall be influenced by any of the observations made by us in this order. We reiterate that the Court should not be influenced or place reliance on our observations during the course of any further proceedings. We would also point out here that we have refrained to address the factual submissions made by the petitioners for establishing that the properties were not purchased out of the proceeds of the crime, since such specific reference to these facts may have a bearing in the ensuing adjudication of the impugned proceedings.

21. In the result, the Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

(M.S.R.,J.) (M.N.K.,J.)
10.08.2023

NCC : Yes
Index : Yes

vsm

To

1.The Assistant Director (PMLA),
Directorate of Enforcement,
Government of India,
Chennai Zonal Office – II,
5th Floor, III Block, B Wing,
Shastri Bhavan, 26, Haddows Orad,
Chennai – 600 006.

2.The Deputy General Manager,
Indian Bank,
Trichy Zon

3.The Central Government Senior Panel Counsel,
Madurai Bench of Madras High Court,
Madurai.

M.S.RAMESH, J.
and
M.NIRMAL KUMAR,J.

vsm

Crl.O.P.(MD)No.3086 of 2023

10.08.2023