IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Jay Sengupta

C.R.R. 3468 of 2018
CRAN 5 of 2019
(Old No. CRAN 4042 of 2019)

Ramesh Chandra Singh
Vs
Assistant Director, Enforcement Directorate,
Government of India & Ors.

For the petitioner : Mr. Debasish Roy
Mr. Satadru Lahiri
Mr. Safdar Azam
Ms. Sreemayi Roy

.....Advocates

For the Enforcement Directorate : Mr. Lokenath Chatterjee
Mr. Subhajit Das

.....Advocates

Heard lastly on : 18.07.2024

Judgment on : 03.10.2024

Jay Sengupta, J:

1. This is an application for quashing of proceeding in respect of ECIR No. KLZ/16/2017 dated 17.10.2017 so far as the present petitioner is concerned.

2. Learned senior counsel representing the petitioner submitted as follows. From the stand taken by the Enforcement Directorate, it appeared that ECIR: KLZO/16/2017 was registered on 17.10.2017 on the basis of CBI FIR No. RC0102017A0021 dated 11.09.2017. In the CBI case, charge sheet had been filed. It was the contention of the Enforcement Directorate that during the course of the enquiry in the ECIR case registered by them. It was allegedly found that the petitioner had amassed huge amount of wealth, which could not have been from his known source of income. In the CBI case after completion of investigation charge sheet was filed against one Samiran Kumar Mondal. On the prayer of the Enforcement Directorate initially a provisional order of attachment was passed by the adjudicating authority on 01.10.2019. It subsequently came to be confirmed on 19.03.2020. After completion of their enquiry the Enforcement Directorate lodged a complaint against the petitioner and his relatives before the learned Special Court under the Prevention of Money Laundering Act on 25.08.2020 which was registered as ML Case No. 10 of 2020. Although the Inspectors and/or the officials of the Provident Fund authorities were supposed to hold inspection at the business establishment as planned and guided by the recommendation made by Shram Suvidha Portal, the petitioner and his subordinates allegedly held inspection at random in various establishments without the recommendation of the said Portal. With regard to the disproportionate assets amassed by the petitioner and his relatives, the CBI also registered a case being RC012018A0012 dated 19.11.2018 for having assets to the tune of Rs.56,47,789/-, disproportionate to their known source of income. It was the contention of the Enforcement Directorate that quashing of the proceedings of Case No. ECIR: KLZO/16/2017 dated 17.10.2017 was not permissible in view of the judgement delivered by the Hon'ble Supreme Court in the case of Vijay Madan Lal Choudhary & Ors. vs UOI & Ors., (2022) SCC Online Sc 929 as in the case of CBI RC0102017A0021 dated 11.09.2017 charge sheet had been filed and the proceedings were pending before the appropriate Court. The contentions the Enforcement Directorate were the product of jugglery of facts without addressing the actual state of affairs which had been brought into the records of this revisional application before this Hon'ble Court by way of filing supplementary affidavit on behalf of the petitioner. The Enforcement Directorate deliberately chose not to address the main issue raised by the petitioner in his favour for quashing of the proceedings of Case No. ECIR: KLZO/16/2017 and also the proceedings of Case No. ML 10 of 2020 now pending before the Learned Judge, Special Court, PMLA, Kolkata. With regard to the purported misdeeds of Samiran Kumar Mondal the CBI initiated Case No. RC0102017A0021 dated 11.09.2017, a charge sheet was filed in the said case against Samiran Kumar Mondal. But, the petitioner was only a witness in the said charge sheet. It was nobody's case that the proceeds of the crime of the CBI Case which were amassed by Samiran Kumar Mondal went to the coffers of the petitioner and/or his family members. In the complaint which was filed by the Enforcement Directorate against the petitioner and his family members being Case No. ML 10 of 2020 it was nowhere suggested that the Enforcement Directorate found any money trail from the proceeds of the crime of the CBI case. ML Case No. 10 of 2020 copy of which was also placed on record stood on its own about the assets amassed by the petitioner and his relatives which were disproportionate to their known source of income. Now, with regard to the disproportionate assets as submitted by the Enforcement Directorate, the CBI had also registered a case being Case No. RC012018A0012 dated 19.11.2018. In this case Closure Report was filed on behalf of the CBI and which was accepted by the Court of competent jurisdiction. The Enforcement Directorate claimed the petitioner's disproportionate assets to be around Rs. 2,89,50,536/- whereas at the time of registration of the First Information Report, the CBI brought it down to Rs. 56,47,789/- and at the time of filing of the Closure Report, it came down to Rs. 9,88,978/- which as per the CBI was 8.25% of the income of the petitioner and his family members from all known sources of income. Reliance was placed on the judgement reported in Krishnanand Agnihotri Vs. The State of Madhya Pradesh, (1977) 1 SCC 816. The petitioner's argument was based on the judgement of the Hon'ble Apex Court in the case of Vijay Madan Lal Choudhary and Ors. Vs UOI and Ors., (2022) SCC Online SC 929 wherein it was held that if the allegations of the scheduled offences were obliterated in the eye of law being in the form of acquittal, quashment, then the proceedings initiated under the Prevention of Money Laundering Act on the basis of such scheduled offences would also come to its legal death. In absence of accusation of any scheduled offences, there could not be any existence of a proceeding under the Prevention of Money Laundering Act. In the instant case the CBI had initiated a proceeding under the Prevention of Corruption Act against Samiran Kumar Mondal in which charge sheet was filed and the petitioner was a witness in the said charge sheet. The proceedings which had been initiated by the Enforcement Directorate were on the basis of such proceedings launched by the CBI. Admittedly, the petitioner being a witness in the said case, could not be said to have committed any contravention of the Prevention of Money Laundering Act with regard to the accusation made in the CBI case. A second case was initiated by the Enforcement Directorate, which was not in any way connected with the CBI case i.e., the petitioner and his family members on their own had amassed wealth disproportionate to their known source of income. On this issue an investigation was launched by the CBI for certain scheduled offences, which was also terminated by a Court. The petitioner at no point of time submitted that the present ECIR: KLZO/16/2017, or for that matter, the complaint filed by the Enforcement Directorate being Case No. ML 10 of 2020 would be effaced, but what the petitioner was submitting was that in view of non existence of any scheduled offences against the petitioner, the proceedings of Case No. ML 10 of 2020 should be quashed so far as the petitioner and his family members were concerned. Reliance were placed on judgements/orders of the Hon'ble Apex Court in i) Vijay Madan Lal Choudhary and Ors. vs UOI and Ors. (2022) SCC Online SC 929, ii) J. Sekar @ Sekar Reddy Vs. Directorate of Enforcement (2022) 7 SCC 370, iii) Parvathi

Kollur and Anr. Vs. State by Directorate of Enforcement, (2022) Livelaw (SC) 688., iv) Adjudicating Authority (PMLA) and Ors. Vs. Shri Ajay Kumar Gupta and Ors. (Criminal Appeal Nos. 391-392/2018), v) M/s. Nik Nish Retali Ltd. and Anr. Vs. Assistant Director, Enforcement Directorate, Government of India and Ors. (CRR No. 2752 of 2018), (2022) SCC Online (Cal) 4044, vi) Krishnanand Agnihotri Vs. The State of Madhya Pradesh, (1977) 1 SCC 816.

3. Learned counsel appearing on behalf of the Enforcement Directorate submitted as follows. FIR No. RC 0102017A0021 dated 11.09.2017, under Section 7 of the Prevention of Corruption Act, 1988, was registered by the Central Bureau of Investigation (hereinafter also referred to as "CBI"), Anti-Corruption Branch (hereinafter also referred to as "ACB"), Kolkata, on the basis of a complaint from one Avinandan Ghosh, who was engaged in his family business being run in the name and style of M/s Ghosh Engineering Co., a proprietorship firm. The said complaint was made against Samiran Kumar Mondal, Enforcement Officer, SRO, Ministry of Labour & Employment, Employees Provident Fund Organisation (hereinafter also referred to as "EPFO"), Park Street, Kolkata, for demanding bribe. A trap was laid by the CBI and the suspected officer Samiran Kumar Mondal was arrested red-handed while taking bribe (FIR No. RC0102017A0021 dated 11/09/2017). A Charge Sheet in the FIR No. RC 0102017A0021 dated 11.09.2017 was filed by CBI, ACB, Kolkata vide No. 35/2017 dated 27.12.2017 under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, against Samiran Kumar Mondal, the then Enforcement Officer, Employee's Provident Fund Organisation, Sub Regional

Office, Park Street, Kolkata, for demanding illegal gratification of Rs. 30,000/- from one Ashok Ghosh, proprietor of M/s Ghosh Engineering Co. and father of Avinandan Ghosh and subsequently, accepting amount of Rs.20,000/- as the demanded bribe amount. On the basis of CBI FIR No. RC 0102017A0021 dated 11.09.2017, investigation under the provisions of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA") was initiated by recording an Enforcement Case Information Report (ECIR) bearing number KLZO/16/2017 on 17.10.2017 against Samiran Kumar Mondal and others. Since, the offences punishable under Section 7 of the Prevention of Corruption Act, 1988, were Scheduled Offences under PMLA, further information was gathered, which revealed that Samiran Kumar Mondal and other associated officers, namely (1) Ramesh Chandra Singh, Assistant Provident Fund Commissioner, (2) Dipak Bhattacharya, Enforcement Officer and (3) Sukumar Shaw, Enforcement Officer, were also involved in illegal activities dealing with provident fund matters. Ramesh Chandra Singh, the petitioner herein, was the immediate superior officer of Samiran Kumar Mondal, E.O., Dipak Bhattacharya, E.O., Sukumar Shaw, E.O., and they carried out inspections as per the instructions of the petitioner (ECIR bearing number KLZO/16/2017 dated 17.10.2017. The Enforcement Directorate conducted searches on various premises Samiran Kumar Mondal and Ramesh Chandra Singh and seized documents related to movable and immovable properties and cash of Rs. 10.6 lakhs and jewellery and subsequently, Enforcement Directorate had filed an application under Section 17(4) of the PMLA for retention of seized properties and documents, before the Adjudicating Authority, New Delhi, under PMLA, being O.A. No. 245 of 2018. The said Original Application contained panchanamas and necessary particulars and documents. The Adjudicating Authority allowed retention of seized documents and properties vide its order dated 19.12.2018 in O.A. No. 245 of 2018. On the basis of investigation under the PMLA, 2002, the immovable and movable properties collectively valued at Rs. 2,89,50,536/-, along with accrued interest and benefits thereon, were provisionally attached under Section 5(1) of PMLA, 2002, vide Order No. 13 of 2019 dated 01.10.2019 dated 01.10.2019, on reasons to believe that the said properties were involved in money laundering and were proceeds of crime under PMLA, 2002, which was confirmed by the learned Adjudicating Authority, PMLA, 2002, New Delhi, vide Order dated 19.03.2020 in O.C. 1218 of 2019. A Prosecution Complaint, being ML 10 of 2020, was filed on 25.08.2020 against the petitioner, Sharda Singh, mother of the petitioner, and Sangita Singh, wife of the petitioner, for their involvement in the offences of money laundering, and the case was being tried in CBI Court 1, Bankshall Court, Kolktata. Cognizance of the same was also taken by the learned Special Court under PMLA, necessary eviction notices under sub-section (4) of Section 8 of the PMLA dated 25.05.2022 were also issued against the properties belonging to the family members of the petitioner. Even though the petitioner was not initially named an accused in CBI FIR No. RC 0102017A0021 dated 11.09.2017, but during the course of investigation under the Prevention of Money Laundering Act, 2002 (PMLA), it was seen that EPFO officials were not allowed to undertake inspection at different business establishments at random, but inspections were planned and guided by the recommendations made by the "Shram Subidha" portal. It was also seen that the petitioner and his team, including Samiran Kumar Mondal, Enforcement Officer, had made random inspections in different companies without any recommendation made in the said portal. Ajitesh Kumar, Regional Provident Fund Commissioner, in his letter dated 06.07.2018 vide No. EPFO/RO/P.St./Adm/AVS/Part/Vol-I/584/898 provided a detailed list of inspections done without recommendation of the said portal. Further, during the course of investigation conducted under PMLA, 2002, it was found that during the period of 2011 to 2016, the petitioner had worked as an Enforcement Office at different Sub-Regional and Regional offices of EPFO in West Bengal and was subsequently promoted to the rank of Assistant Provident Fund Commissioner in EPFO. Samiran Kumar Mondal, Enforcement Officer, Dipak Bhattacharya, Enforcement Officer, Sukumar Shaw, Enforcement Officer had worked with the petitioner in different formations of EPFO. The petitioner, upon being promoted to the rank of Assistant PF Commissioner assumed the position to influence the business organisation under his jurisdiction, directly and also through the other officers and had accrued huge amount of wealth, which was not commensurate with his income. Merely not being named as an accused in the predicate offence, on the basis of which investigation was commenced by the Enforcement Directorate, did not absolve the petitioner from being investigated or treated as an accused in proceedings commenced under the provisions of the PMLA. In this regard, reliance was placed on the judgement of the Hon'ble Supreme Court of India dated February 24, 2023, passed in The Directorate of Enforcement vs. M. Gopal Reddy (Criminal Appeal No. 534 of 2023 @ SLP (Crl) No. 8260/2021). It was, inter alia, held by the Hon'ble Supreme Court, "Now so far as the submissions on behalf of respondent no.1 that respondent no.1 was not named in the FIR with respect to the scheduled offence and that the other accused are discharged/acquitted is concerned, merely because other accused are acquitted, it cannot be a ground not to continue the investigation against respondent no.1". Reliance was also placed on the judgement of the Hon'ble Madras High Court dated September 14, 2022, in P. Rajendran vs. The Assistant Director, Directorate of Enforcement, Government of India (Criminal Original Petition No. 19880 of 2022 and Crl. M.P. Nos. 13073 and 13076 of 2022. It had been, inter alia, held, "paragraph nos. 253 and 467 (d) of the judgement of the Supreme Court in Vijay Madanlal's case (supra) deal with only the cases of persons named as accused in the predicate offence against whom the prosecution in the predicate offence is quashed or he is discharged/acquitted. This benefit cannot be extended to a person, who has not been arrayed as an accused in the predicate offence because the offence under the PMLA is a standalone offence and is different and distinct from the predicate offence". Meanwhile, CBI, ACB, Kolkata, lodged another FIR, vide number RC0102018A0012 dated 19.11.2018 against the petitioner and his wife, Sangita Singh, under Sections 13(2) and 13(1)(b) of the Prevention of Corruption Act, 1988, and under Section 109 of the Indian Penal Code, 1860. After preliminary investigation in the mater, it was learnt that the petitioner had amassed assets disproportionate to his known sources of income, to the tune of Rs. 56,47,789/-, which the petitioner had not been able to account for satisfactorily. However, the said FIR was closed by the CBI whereupon the case was also closed by the learned Court. The ratio of the decisions of the Hon'ble Supreme Court of India in the matter of Vijay Madan Lal Choudhary and Ors. vs. Union of India and Ors., as reported in 2022 SCC Online Sc 929 and J. Sekar @ Sekar Reddy vs. Directorate of Enforcement as reported in (2022) 7 SCC 370, to the extent it related to predicate offences i.e., the accused being discharged/acquitted in scheduled offences leading to a conclusion that there could not be any offence of money laundering, did not apply squarely to the facts of the instant case, inasmuch as the prayer in the application pertained to quashing of ECIR No. KLZO/16/2017 dated 17.10.2017 arising from CBI RC No. RC0102017A0021 dated 11.09.2017, which had neither been closed by the CBI nor by any learned Court. The judgements sought to be relied upon by the petitioner were not applicable and relevant to the facts and circumstances of the case.

4. I heard the submissions of the learned counsel for the parties and perused the revision petition, the affidavits, investigation papers as produced on behalf of the Enforcement Directorate and written notes of submissions.

5. In Vijay Madanlal Choudhary (supra), the Hon'ble Supreme Court upheld the validity of several salient features of the PML Act. Among other things, it was held there that if a 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.

6. The Hon'ble Apex Court in Pavana Dibbur Vs. Directorate of Enforcement Directorate, reported at 2023 SCC Online SC 1586, relied on the ratio laid down in Vijay Madanlal Choudhary (supra) and, inter alia, held as under:

> *"……….*
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> *a. It is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as the accused in the scheduled offence;*
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> *b. Even if an accused shown in the complaint under the PMLA is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get benefit of the orders of quashing the proceedings of the scheduled offence;*
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> *…………."*

7. Therefore, from a careful perusal of the said Act and relevant decisions, the following propositions, which are relevant to the present lis, emerge:

(a) In order to be proceeded against under the PML Act, one need not be an accused in the predicate offence case.

(b) Although the two may cover common facts, the ingredients of the offences in the predicate offence case and the PML Act case are quite distinct.

(c) If the predicate offences are quashed or dropped in the parent case fully or even as against a particular accused, the said accused would get similar benefit in the case under the PML Act.

8. Admittedly, the present proceeding under the PML Act relates to predicate offences in a case instituted by the CBI, which has not been dropped and/or quashed. It is still pending. It is a different thing that in the said parent case, the petitioner has still been shown as witness. The proposition of law that an accused in a PML Act case need not be an accused in the predicate offences case covers this issue.

9. The proceeding that has been dropped is an independent one that was started against the petitioner on charges, inter alia, of amassing disproportionate assets. This case too was initiated by the CBI. But, the instant PMLA proceeding does not owe its origin to the purported predicate offences contained in such subsequent case started by the CBI. Therefore, the dropping of such subsequent proceeding would hardly have much bearing on the PML Act case started in respect of first case concerning predicate offences.

10. It is also contended by the petitioner that parking of money fraudulently obtained by the accused in the first predicate offences case has not been alleged in clear terms in the present PML Act case. However, there is a clear inkling that the racket was organised by such provident fund employees as the petitioner. Without being guided by recommendations as required, illegal inspections were carried out, protection money demanded and taken. In fact, the prime accused in the first case allegedly acted under instructions of the petitioner who was a superior officer. The minutest details about the roles played by each are best left for the trial Court to deliberate upon.

11. Besides, several materials and evidence have been collected pointing towards the involvement of the petitioner. Huge amounts of money and assets have been located and seized, which the petitioner purportedly failed to account for.

12. The allegations levelled against the petitioner indeed involve disputed questions of fact that cannot be gone into at this stage.

13. In view of the above discussions, I do not find any merit in the petitioner's application for quashing of proceeding. Therefore, the same is dismissed, however without any order as to costs. The connected application stands disposed of accordingly.

14. However, the petitioner shall be at liberty to agitate all the points taken up herein before the learned Trial Court at an appropriate stage.

15. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon completion of requisite formalities.

(Jay Sengupta, J.)