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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.R.C.Nos.71, 115, 116 & 311 of 2024
and
CRL.M.P.Nos.517, 519, 967, 970, 973, 974, 2894 & 2896 of 2024

1.Mr.Sidhant Gupta ... Petitioner in Crl.RC.No.71/2024

2.Mr.Narendar Kumar Gupta ... Petitioner in Crl.RC.No.115/2024

3.Mr.Vikas Kalra ... Petitioner in Crl.RC.No.116/2024

4.Mr.Farzanali Kadri ... Petitioner in Crl.RC.No.311/2024

Vs.

The Assistant Director,
Directorate of Enforcement,
Ministry of Finance, Government of India,
Chennai Zonal Office – I, 2nd and 3rd Floor,
C Block, Murugan Naicker Complex,
No.84, Greams Road, Thousands Lights,
Chennai – 600 006. ... Respondent in all Crl.RCs

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Prayer in Crl.R.C.No.71 of 2024: Criminal Revision Case is filed under Sections 397 and 401 of Criminal Procedure Code, pleased to call for the records in respect of order dated 29.11.2023 made in Crl.M.P.No.3253 of 2023 in Spl.C.C.No.5 of 2022 on the file of XIII Additional Special Judge for CBI, Chennai and set aside the order of dismissal of Discharge Petition and discharge the revision petitioner.

Prayer in Crl.R.C.No.115 of 2024: Criminal Revision Case is filed under Sections 397 and 401 of Criminal Procedure Code, pleased to call for the records in respect of order dated 29.11.2023 made in Crl.M.P.No.3251 of 2023 in Spl.C.C.No.6 of 2022 on the file of XIII Additional Special Judge for CBI, Chennai and set aside the order of dismissal of Discharge Petition and discharge the revision petitioner.

Prayer in Crl.R.C.No.116 of 2024: Criminal Revision Case is filed under Sections 397 and 401 of Criminal Procedure Code, pleased to call for the records in respect of order dated 29.11.2023 made in Crl.M.P.No.3252 of 2023 in Spl.C.C.No.4 of 2022 on the file of XIII Additional Special Judge for CBI, Chennai and set aside the order of dismissal of Discharge Petition and discharge the revision petitioner.

Prayer in Crl.R.C.No.311 of 2024: Criminal Revision Case is filed under Sections 397 and 401 of Criminal Procedure Code, pleased to stay all the proceedings of the case on the file of the Learned XIII Additional CBI Court, Chennai, pending disposal of the criminal revision petition. Dispense with the personal appearance of the petitioner in the proceedings of the case pending

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trial in Spl.C.C.No.7 of 2022 on the file of the Learned XIII Additional CBI Court, Chennai, pending disposal of the criminal revision petition. Set aside the order passed in Cr.M.P.No.7519 of 2023 dated 29.11.2023 in Spl.C.C.No.7 of 2022 by the Learned XIII Additional CBI Court, Chennai.

For Petitioners	: Mr.J.Sivanandharaj Senior Counsel For Mr.S.Ranjith Kumar (in Crl.R.C.Nos.71, 115 & 116/2024)
	: Mr.C.P.Palanichamy (in Crl.R.C.No.311/2024)
For Respondent	: Mr.P.Siddharth Special Public Prosecutor [For Enforcement Directorate] (in all Crl.RCs)

COMMON ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

Under assail is the order dated 29th November, 2023 passed in Crl.M.P.Nos.3253, 3251, 3523 & 7519 of 2023 in Spl.C.C.Nos.5, 6, 4 & 7 of 2022.

2. The petitioners / accused persons filed Discharge Petitions, which were rejected. Challenging the same the present criminal revision cases are

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filed.

3. It is not in dispute that Central Bureau of Investigation (CBI), Anti-Corruption Branch, Chennai registered First Information Report (F.I.R) under Section 120-B read with 420 of Indian Penal Code (IPC) and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988. The information received was that the Punjab National Bank (PNB), Mint Street, Chennai is authorised to deal in foreign exchange. 19 current accounts were fraudulently opened from January to May, 2015 over a period of five months. Through the said accounts, a huge amount to the tune of Rs.424.58/- Crores were transacted, which reached foreign countries including Hong Kong and United Arab Emirates (UAE).

4. Mr.J.Sivanandharaj, learned Senior Counsel appearing on behalf of the petitioners would mainly raise two grounds in order to assail the impugned order. The first ground raised is that the Enforcement Directorate failed to establish "proceeds of crime" within the meaning of Section 2(1)(u) of the Prevention of Money Laundering Act, 2002 [hereinafter referred as "PMLA"]. Secondly, money laundering has not been established so as to invoke Section 3 of the PMLA. Thus, invocation of PMLA is untenable.

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Further, it is contended that the petitioners have not dealt with the money transacted through Punjab National Bank. Therefore, the petitioners / accused persons are innocent of the allegations and no case against them is made out under PMLA. The Trial Court has not considered the mandatory requirements as contemplated under Section 2(1)(u) and Section 3 of the PMLA.

5. The learned Senior Counsel would urge this Court by contending that the investigation made by the Directorate of Enforcement would be insufficient to fit in the case of the petitioners under Section 3 of PMLA. The petitioners have not dealt with money transacted through Punjab National Bank. Therefore, there is no involvement of the petitioners for the purpose of invoking PMLA.

6. In order to substantiate the above two grounds, the learned Senior Counsel solicited our attention with reference to certain statements recorded and also the counter affidavit filed by the respondents. Referring the order impugned, the learned Senior Counsel would submit that the above two grounds raised by the petitioners in the discharge petition were not considered. Thus, the order impugned is liable to be set aside.

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7. The finding of the Trial Court that investigation of predicate offence is still pending is made without any materials available on record and based on such irrelevant consideration, the Discharge Petition has been rejected. Thus, the present criminal revision cases are to be considered.

8. Mr.P.Sidharathan, learned Special Public Prosecutor appearing on behalf of the Directorate of Enforcement would strenuously oppose by stating that proceeds of crime have been established. Sufficient documents are collected. The statements given by the petitioners / accused persons were taken into consideration for forming an opinion and to invoke the provisions of PMLA. In this context, the competent authority under PMLA during the course of investigation found that 19 bank accounts of Punjab National Bank, Mint Street, Chennai carried out 772 transactions and sent foreign exchange to the extent of 70871531.02/- U.S. Dollars equivalent to Rs.449,78,62,434/- (approx. Rs.450/- Crores) outside India in the guise of advance import remittance, but in actual no import took place. Majority of the money got diverted to Hong Kong and United Arab Emirates (UAE).

9. Pertinently, the details collected by the Enforcement Directorate as

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stated in the case information report reveals about 772 transactions. It is further stated that the details mentioned foreign outwards remittances were made on the guise of advance import remittances without there being any corresponding import into India were made on the strength of fabricated documents and as such falls under the ambit of "proceeds of crime", which were moved through the normal banking channel by projecting it as genuine transactions of advance remittances towards import of goods, in an attempt to legitimise its illicit origin and thereby committed International Trade based Money Laundering.

10. The brief summary of result in the information report states as under;

(a) During the investigation, it was revealed that Shri Sidhant Gupta incorporated M/s. Sanjita Polymet Limited, having registered address at Unit 1405, 14 Floor Bravely Commercial Centre. Tsim Sha Tsui, Kowloon, Hongkong, maintaining bank account no.112526215838 with HSBC Bank, Queens Road Branch and is the recipient of the proceeds of crime.

(b) Shri Sidhant Gupta's company. M/s. Sanjita Polymet Limited, carried out International Trade Based Money-Laundering, at the instance of

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undisclosed beneficial owner and end-use, which caused depletion of foreign exchange reserves of the Republic of India.

(c) Foreign exchange as advance was received by the said M/s. Sanjita Polymet Limited, to the extent of 3,91,916/- U.S. Dollars equivalent to Rs.2,50,86,018/- in 4 branches from India but corresponding exports to India were never made.

11. The learned Special Public Prosecutor relying on the counter affidavit filed by the respondents would submit that petitioners themselves in their statements accepted and stated that they are aware, and they very well understood before signing the company incorporation documents. Mr.Vikas Kalra petitioner in Crl.R.C.No.116 of 2024 visited Hong Kong multiple times and opened the company bank accounts and was therefore actively involved in the whole money laundering activity. Moreover, Mr.Vikas Kalra was being paid Rs.60,000/- and other remunerations for nothing except signing papers / documents and that he was suspicious of the illegal activities being carried out since the beginning. Still, Mr.Vikas Kalra did not raise any objection and let the illegal activities of money laundering continued for more than 6 months until the objective was achieved. Further, in his statements recorded

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under Section 50 of PMLA on 24.02.2022 and 13.06.2022, Shri Vikas Kalra had accepted of being associated with all the three companies i.e., M/s.Mehul Mining Limited, M/s.VS.Trading Private Limited and M/s.Sunrise Trading Private Limited.

12. The learned Special Public Prosecutor would further contend that the trade-based money laundering has happened through banking channel and the illegal foreign transactions where the beneficiaries being the said M/s.Mehul Mining Limited, M/s.VS.Trading Private Limited and M/s.Sunrise Trading Private Limited is placed well on record. The remitters were untraceable and non-existent dummy entities, which sent illicit origin funds to the tune of Rs.18.95/- Crore to the said entity having no genuine business in the guise of advance remittances towards import, all the said transactions / material is well made relied upon Document by the Enforcement Department in its Prosecution Complaint.

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13. The learned Special Public Prosecutor would state that had if the remitter bank is not induced by quotation provided by the said accused entities, foreign outward remittances would not be initiated or made by the bank. Hence, the sum to the tune of 70871531.02/- U.S. Dollars equivalent to Rs.449,78,62,434/- falls under the ambit of Proceeds of crime.

14. In view of the above submissions, learned Special Public Prosecutor would contend that the Trial Court has rightly rejected the discharge petition.

15. Let us now, firstly, consider Section 2(1)(u) of PMLA, which defines "***Proceeds of Crime***" means "any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad".

16. It is unnecessary to narrow down the scope of definition enumerated under Section 2(1)(u) of PMLA. The definition indicates that proceeds of crime is any property derived or obtained directly or indirectly.

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Therefore, the indirect involvement in the proceeds of crime would be sufficient to invoke the PMLA, if the predicate offence had been made out. In the present case, the Central Bureau of Investigation (CBI) has already registered a case and based on which the Enforcement Directorate invoked PMLA, since they identified proceeds of crime within the definition of Section 2(1)(u). The proceeds of crime as narrated in the counter affidavit filed by the respondent would be sufficient for the purpose of proceeding with the trial under PMLA.

17. Section 3 stipulates "***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 including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering".

18. The wider definition as amplified under Section 2(1)(u) along with Section 3 of PMLA would be sufficient for the purpose of invoking the provisions of PMLA. Section 3 denotes that a person who has indirectly attempts indulge. Therefore, even an attempt to indulge and knowingly

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assisting or knowingly is a party would be sufficient for the purpose of implicating a person under PMLA.

19. Further, Section 3 continues to say that a person actually involved in any process or actively connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. Therefore, several circumstances leading to money laundering are to be considered by the Courts while discharging a person from the clutches of PMLA.

20. The scope of discharge petition cannot be expanded nor be exercised in a lite manner. *Prima facie* case established would be sufficient to invoke the PMLA and the grounds raised by the petitioner with reference to certain disputed issues may be considered during the course of trial but certainly not while dealing with the Discharge Petitions.

21. All the grounds raised on merits need no consideration from the hands of the Court, while dealing with the Discharge Petitions. All those grounds are to be adjudicated during the course of trial. If at all a case has been proceeded in the absence of any jurisdiction or in the absence of any

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prima facie case falling under the provisions, then alone the Discharge Petitions are entertainable. Therefore, Courts at all circumstances are expected to exercise restraint in granting relief of discharge in such matters, where the financial and economic offences, which requires deeper analysis, since modus operandi being complex in nature.

22. The economic offences and the manner in which huge volume of money are transacted from inland to foreign countries are complex in nature. Therefore, raising certain doubts in the minds of the Court, discharge cannot be allowed. Contrarily, such grounds can be considered during the course of trial by the Court concerned.

23. In the present case, the respondents established a *prima facie* case that there is schedule offence registered by Central Bureau of Investigation (CBI) based on which Enforcement Directorate initiated action under PMLA. Enforcement Case Information Report (ECIR) is elaborate in nature, which would reveal about 772 transactions from Punjab National Bank, which were dealt with by various companies. It is found that certain shell companies are involved. The status of company, its nature of business and the involvement of the companies require to be considered elaborately during the course of

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trial through documents and evidences. Such an adjudication at the point of Discharge Petitions is impermissible.

24. The Enforcement Case Information Report (ECIR) furnished before this Court reveals that during investigation, the authorities found the petitioners are the recipient of proceeds of crime. Such findings in the Enforcement Case Information Report (ECIR) is to be adjudicated during the course of trial.

25. In this context Section 24 of PMLA denotes "***Burden of Proof***". "In any proceeding relating to proceeds of crime under PMLA in a case of a person charged with offence of money laundering under Section 3, the authority or Court shall unless the contrary is proved presume that such proceeds of crime are involved in money laundering and in the case of any other person, the authority or Court may presume that such proceeds of crime involved in money laundering". Therefore, the presumptions of the authorities, investigation conducted and documents collected would be sufficient to proceed against a person under PMLA. Unless contrary is proved, presume that such proceeds of crime are involved in money laundering. Therefore, the burden of proof lies on the affected person, who in

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turn has to prove his innocence during the course of trial. Adjudication of those materials placed by the petitioners would be unnecessary for this Court, while dealing with the discharge petitions.

26. The learned Senior Counsel appearing on behalf of the petitioner as well as the learned Special Public Prosecutor appearing on behalf of the respondent referred the Three Judges Bench of Hon'ble Supreme Court of India in the case of ***Vijay Mandal Choudary and Others vs. Union of India and Others***[1]. Various Legal principles considered by the Hon'ble Supreme Court are not in favour of the petitioners. The Hon'ble Supreme Court reiterated in numerous cases that application of legal principles settled are to be applied with reference to the facts of each case.

27. That being the basic element and principles of law, this Court do not find any reason to discharge the petitioner.

28. Consequently, the impugned order dated 29.11.2023 passed in Crl.M.P.Nos.3253, 3251, 3523 & 7519 of 2023 in Spl.C.C.Nos.5, 6, 4 & 7 of 2022 stands confirmed and the Criminal Revision Cases are dismissed. It is made clear that the Trial Court shall proceed with the case uninfluenced by

1 [2022 SCC Online SC 929]

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the observations made in this order, if any relating to merits or otherwise. Consequently, connected Miscellaneous Petitions are closed.

[S.M.S., J.] [V.S.G., J.]
12.08.2024

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Index : Yes
Speaking order
Neutral Citation : Yes

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To

1.The XIII Additional Special Judge for CBI,
Chennai.

2.The Assistant Director,
Directorate of Enforcement,
Ministry of Finance, Government of India,
Chennai Zonal Office – I, 2nd and 3rd Floor,
C Block, Murugan Naicker Complex,
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S.M.SUBRAMANIAM, J.
and
V.SIVAGNANAM, J.

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