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CRL.R.C.No.88 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.09.2024

PRONOUNCED ON : 01.10.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

CRL.R.C.No.88 of 2024
and
CRL.M.P.Nos.747 & 749 of 2024

1.S.K.Karthikeyan

2.M/s.ARI Fabrics Limited,
Represented by its Managing Director,
S.K.Karthikeyan,
1-90/52, Palani – Udumalpet Road,
Chitrakulam Post, Palani – 624 621. ... Petitioners

Vs.

The Assistant Director,
Director of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
II and III Floor “C” Block,
Murugesu Naicker Office Complex,
#84, Greaves Road,
Chennai – 600 006. ... Respondent

Prayer: Criminal Revision Case has been filed under Section 397 read with



CRL.R.C.No.88 of 2024

Section 401 of Criminal Procedure Code, to call for the records and set aside the order passed by the Learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai in Crl.M.P.No.3465 of 2023 dated 12.10.2023 in C.C.No.60 of 2016.

For Petitioners	: Mr.M.Ajmal Khan Senior Counsel For Mr.E.M.Sajith
For Respondent	: Mr.Cibi Vishnu Special Public Prosecutor

ORDER

S.M.SUBRAMANIAM, J.

Under assail is the judgment dated 12th October, 2023 passed in Crl.M.P.No.3465 of 2023 in C.C.No.60 of 2016.

2. The petitioners instituted a petition for discharge under Section 239 of Criminal Procedure Code, which was rejected by the Special Court for CBI Cases. The petitioners are Accused Nos.8 and 14 respectively.

**BRIEF FACTS:**

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3. Tripartite agreement between A1-Srinivasan and the petitioners herein were signed on 13.02.2008, whereby, inter-alia possession of a company was handed over to A1-Srinivasan and the 1st petitioner and other shareholders sold their respective shareholding to A1. Pursuant to the Memorandum of Understanding dated 13.02.2008 entered into between A6 / Company represented by A1 and Annur Jayabalaji Textiles, machineries were purchased by A6 out of proceeds of crime and such machineries were delivered and installed in the factory of the 2nd petitioner ARI Fabrics Limited / A14 in between 13.02.2008 and 09.05.2008. On 10.12.2008, the 1st petitioner here Mr.S.K.Karthikeyan was appointed as Director of English Cotton Company Private Limited, which is handed over by the A1-Srinivasan. On 23.07.2009 FIR No.27 of 2009 was registered based on the complaint, 1st petitioner herein against A1-Srinivasan. The FIR was registered by Coimbatore District Crime Branch for the offences under Section 120(b), 468, 471, 409 IPC.

4. During August and September, 2009, the 1st petitioner Mr.S.K.Karthikeyan took possession of the 2nd petitioner / A14 from A1-Srinivasan. In between April and June, 2010, A1 took back the administration



CRL.R.C.No.88 of 2024

of the 2nd petitioner / company from the 1st petitioner herein. On 10.12.2010 a complaint regarding scheduled offence under Prevention of Money-Laundering Act, 2002 [herein after referred as “PMLA”] was received by Central Bureau of Investigation (CBI) from SBI Global Factories Limited. Consequently, on 28.11.2011, CBI filed chargesheet No.10 of 2011 in the scheduled offence IPC 120B, 420 and Sections 13(2) read with 13(1)(a) and (d) of the Prevention of Corruption Act, 1988.

5. The Central Bureau of Investigation (Bank Security and Frauds Cell), Bangalore upon completion of investigation filed its final report before the Principal Special Judge for CBI Cases at Coimbatore under Section 173(2) of the Criminal Procedure Code, 1973 in Chargesheet No.10 of 2011 dated 28.11.2011, alleging commission of offences punishable as stated in the above paragraph.

6. The 1st petitioner / Mr.S.K.Karthikeyan has written a letter to State Bank of India (SBI) regarding One Time Settlement (OTS) for 2nd petitioner / Company. In the said letter dated 12.04.2014, the 1st petitioner states that he is the Managing Director of the 2nd petitioner / Company. Thereafter, on 23.05.2016, the complaint was filed in CC.No.60 of 2016, under Section 45



CRL.R.C.No.88 of 2024

read with Sections 3, 4, 8(5) and 70(1) and (2) of the PMLA. Subsequently, supplementary complaint was filed on 17.11.2021 in CC.No.60 of 2016, wherein, the petitioners were included as accused persons.

7. Based on the informations and the scheduled offence registered in FIR dated 07.10.2010, the competent authorities of the Enforcement Directorate formed an opinion regarding *prima facie* case and had reason to believe that an offence of money laundering as defined under Section 3 of PMLA appeared to have been committed. Enforcement Case Information Report (ECIR) was recorded in the year 2011.

8. The petitioners filed Discharge Petition under Section 239 of Criminal Procedure Code.

ARGUMENTS ON BEHALF OF THE PETITIONERS:

9. Mr.M.Ajmal Khan, learned Senior Counsel appearing on behalf of the petitioners would mainly contend that the 1st petitioner is the whistle blower, who in turn registered a complaint against A1-Srinivasan. The bank transactions and the alleged misappropriation of funds were brought to the notice of the Police Authorities by the 1st petitioner. Therefore, implicating



the petitioners as accused under PMLA is unjustifiable. The CBI investigated and filed final report in predicate offence. The petitioners have not been stated as accused persons. The 1st petitioner is a witness. Based on the predicate offence, ECIR Nos.3 and 4 of 2011 were recorded, wherein, the petitioners have not been cited as accused. Only in the supplementary complaint, the present petitioners are cited as Accused Nos.8 and 14 respectively. Therefore, the very initiation *per se* is untenable. The allegations levelled against the petitioners A8 and A14 are that A8 had knowledge of criminal activities of A1 and a party for the investments A1 in A14 company. The petitioner orchestrated the release of mortgaged properties, which were embroiled with the proceeds of crime. It is further stated that, earning of the company (Rs.2.29/- Crores) during the possession of A1 and during the possession of A8 (Rs.5.68/- Crores) from July, 2009 and April 2010 and the funds transferred by the A1 (Rs.10.04/- Crores) totally to the extent of Rs.18.03/- Crores is proceeds of crime. On that basis, the petitioners have allegedly said to have committed offence punishable under Section 2(3) read with Section 3 of PMLA.

10. Learned Senior Counsel would submit that the allegations are baseless and bereft of details. The petitioners have no way connected with the



CRL.R.C.No.88 of 2024

activities of A1 and they who registered complaint against A1 regarding misappropriation of funds of the Bank. Therefore, impleading the petitioners as accused are not based on any material available, but based on mere surmises. The petitioners have no knowledge about the illegalities or the alleged offence of money laundering. Soon after the petitioners noticed irregularities in financial transactions, they have registered complaint against A1. Therefore, the Special Court ought to have considered the discharge petition filed by the petitioners.

11. Learned Senior Counsel would urge this Court by stating that the Trial Court has not properly considered the statements of the petitioners recorded under Section 50 of PMLA in Question No.13. The 1st petitioner / A8 has stated that he is aware of the criminal activities committed by G.Srinivasan and diversion of funds derived through Trade Finance facility availed from M/s.Global Trade Financial Limited by him sometime during the month of July, 2009. Trial Court failed to note the fact that the said illegality was brought to the notice of the Police Authorities through complaint by the 1st petitioner and based on his complaint, the FIR No.27 of 2009 dated 23.07.2009 was registered by District Crime branch, Coimbatore. Therefore, the petitioners have no knowledge about the alleged offence of



CRL.R.C.No.88 of 2024

money laundering and including them as accused is beyond the scope of Section 3 of PMLA.

12. Mr.M.Ajmal Khan, learned Senior Counsel relied on the judgment of the Hon'ble Supreme Court of India in the case of ***State of Tamil Nadu vs. R.Soundirarasu and Others***¹, and the case of ***Sanjay Kumar Rai vs. State of Uttar Pradesh and Another***².

13. In respect of the above judgments, the Hon'ble Supreme Court of India has considered the interpretation of the word “groundless” means that there is no ground for presuming that the accused has committed an offence. In the case of ***Sanjay Kumar Rai*** cited *supra*, the Apex Court has reiterated about the entertainability of the discharge petition and consideration of merits involved regarding *prima facie* case for the purpose of invoking the provisions to discharge an accused.

14. The above two judgments are relating to the principles to be followed for deciding discharge petition. However, the case of the petitioners is to be tested with reference to the *prima facie* case under PMLA, whether

1. (2023) 6 SCC 768
2. (2022) 15 SCC 720



CRL.R.C.No.88 of 2024

made out or not.

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REPLY BY THE RESPONDENT:

15. Mr.Cibi Vishnu, learned Special Public Prosecutor appearing on behalf of the Enforcement Directorate would strenuously oppose by stating that *prima facie* case has been found against the petitioners / A8 and A14. When the materials available on record were found by the Enforcement Directorate and supplementary complaint has been filed including the petitioners as accuseds. Thus, the contention of the petitioners that they have no knowledge about the alleged offence of money laundering is incorrect. The Enforcement Directorate has not implicated the petitioners hurriedly. They have recorded the statement of the petitioners under Section 50 and after investigation found that the petitioners have involved in the offence of money laundering. On securing materials, they have been implicated as accuseds in supplementary complaint filed on 17.11.2021 in CC.No.60 of 2016.

16. The contention of the petitioners that they have not been arrayed as accused in predicate offence, does not mean that the petitioners cannot be prosecuted for the offences of money laundering under the provisions of



CRL.R.C.No.88 of 2024

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17. In the case of *V.M.Ganesan vs. Directorate of Enforcement*³, this Court has clearly laid down that;

“12.

(b) Any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act. Section 5(1) of the Act has another proviso. The second proviso to Section 5(1) of the Act states that notwithstanding anything contained in clause (b) of Section 5(1) of the Act, any property of any person may be attached, if the officer concerned has reason to believe that such property was involved in Money-Laundering and that if it was not attached, it may frustrate any proceedings under the Act.

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20. As a matter of fact. the case of the petitioner

3. W.P.No.24432 of 2014 dated 17.11.2014



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CRL.R.C.No.88 of 2024

in the second writ petition is squarely covered by the second proviso to Section 5(1) of the Act. The petitioner in the second writ petition is not an accused in any of the criminal complaints. None of the three contingencies indicated in the first proviso has arisen in the case of the petitioner in the second writ petition. His case falls under the category of "any property of any person" under the second proviso to Section 5(1) of the Act. This is on the basis that today, he is in possession of a property which represents the proceeds of a crime allegedly committed by the petitioner in the first writ petition.

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23. If a complaint has been registered against an individual and the complaint is under investigation, his case would at least be covered by second proviso. To say that a person accused of committing an offence will not even come within the meaning of the expression "any person" under the second proviso, would tantamount to placing him in a much better position than a third party who do not commit any offence, but merely came into possession of the property that represents the proceeds of the crime. Therefore, on the first contention raised by the petitioner, I hold that if a complaint has been registered against a person and a final report is already filed, his



WEB COPY



CRL.R.C.No.88 of 2024

case would be covered by the first proviso. But, if a complaint has been registered against a person and a final report has not yet been filed, he would stand along with any other person against whom no complaint is lodged, but who is covered by the second proviso to Section 5(1) of the Act.

.....

28.

“(u)“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.”

29.

(i).....

(ii)

(iii) That it should have been obtained or derived by any person as a result of criminal activity relating to a Scheduled Offence.

.....

.....

35. Though the second proviso to Section 5(1) enables the Competent Authority to attach “any property of any person”, the word “property” should be understood only in the context of the definition under Section 2(1)(v). Consequently, such property should also satisfy the following criteria, namely, (a) that it



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CRL.R.C.No.88 of 2024

was derived or obtained directly or indirectly, (b) by any person, and (c) as a result of criminal activity relating to a scheduled offence.”

18. Learned Special Public Prosecutor reiterated that the case against the petitioners A8 and A14 are set out in detail in the supplementary complaint, which would be sufficient to form an opinion that a *prima facie* case has been made out against the petitioners for implicating them as accuseds in the PMLA case.

DISCUSSIONS:

19. Regarding the contention of the petitioners that they have no knowledge about the alleged offence of money laundering, it is relevant to consider the findings of the trial court in the impugned judgement wherein it is recorded as follows;

“30. Therefore, such amount has to be considered as proceeds of crime. As A8 had knowledge about the criminal activities of A1, the turn over for Rs.5,68,93,826/- also shall be considered proceeds of crime. A8 had been made statement before the Enforcement Directorate that he is continuing as one of the Director of M/s.English Cotton Company India Pvt Ltd., till the date of statement given before Enforcement



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CRL.R.C.No.88 of 2024

Directorate. On that score the following questions were arisen:- (1) Whether A1 had been invested money derived from the proceeds of crime in scheduled offence into A14 company to run business or not? (2) Whether A8 had been knowledge about the involvement of criminal activities of A1 in the scheduled offence or not? (3) Whether A8 had become one of the Director of English Cotton Company India Pvt Ltd., out of proceeds of crime in the scheduled offence alleged to have been committed by A1 or not? It is needless to say that the above said questions are being triable issues and they can be decided only after full- fledged trial but not at this stage.”

20. Beyond the findings of the Special Court in the impugned judgment, this Court independently considered the *prima facie* case made out against the petitioners regarding “Proceeds of Crime”. In this regard, it is relevant to extract paragraph 12.3 of supplementary complaint, which reads as under;

“**12.3.** Inasmuch as the funds obtained through trade finance/ factoring facility from GTFL were diverted in the aforesaid manner solely for the purpose of embezzlement of such funds, the money trail identified and compiled hereunder are reckoned as the investment made towards acquiring/ taking over of AFL. This apart certain receipts in the accounts



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CRL.R.C.No.88 of 2024

operated by Shri G.Srinivasan and the erstwhile management of AFL, recognized as trade proceeds/receipts of AFL for the period after its acquisition/takeover by Shri G.Srinivasan and its retrieval by Shri S.K.Karthikeyan were reckoned in separate worksheets as the proceeds derived out of the Investment in AFL and included in the said compilation. Thus, it is revealed that part funds fraudulently derived out of the aforesaid criminal activities by Shri G.Srinivasan from GTFL aggregating to Rs.10.04 crores, reckoned as the proceeds of crime has been invested for acquiring/taking over of AFL. It is also pertinent to note that S/Shri G.Srinivasan and R.Selvakumar had admitted to the reinvestment of profits/receipts yielded out of the aforesaid investment in furtherance of the business of AFL thereby resulting in accrual of about Rs.18.03 Crores with AFL as proceeds of crime.”

21. Regarding the specific role of the accused persons abetting the commission of offence of money laundering by directly / indirectly attempts to indulge or knowingly assist or knowingly is a party or its involved in concealment / possession / acquisition or use in projecting or claiming it as untainted property in terms of Section 3 of PMLA are traceable in paragraphs 24.2 and 24.3 of supplementary complaint, which reads as under;



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CRL.R.C.No.88 of 2024

“24.2. It is humbly submitted that in view of the foregoing, Shri S.K.Karthikeyan, then Managing Director of AFL who had the knowledge of the criminal activities of Shri G.Srinivasan and his fraudulent diversion funds derived as a consequence of the aforesaid criminal activities, identifiable as “proceeds of crime” defined under Section 2(1)(u) of PMLA having knowingly been a party to cause the direct investment in AFL of Rs.10.04 crores and thereafter having indulged with trade proceeds/earnings of AFL resulting out of the said investment totally accrued to the extent of Rs.18.03 crores besides attempting to connive in the projection of the same as untainted properties has committed the offence of money laundering defined under Section 2(p) read with Section 3 of the PMLA, which is punishable under Section 4 of the PMLA.

24.3. It is humbly submitted that Shri S.K.Karthikeyan having orchestrated the sale executed under the OTS scheme for the release of the said immovable properties of AFL offered as collateral security for the loans availed by AFL, which were embroiled with the proceeds of crime and thereby having actually involved in the process connected with the proceeds of crime in his attempt to use the same by claiming it as untainted property has committed the offence of money laundering defined under Section 2(p) read with Section 3 of PMLA, which is punishable



CRL.R.C.No.88 of 2024

under Section 4 of PMLA.”

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22. Copy of the statements of the 1st petitioner on 02.03.2016, 03.03.2016 and 04.06.2016 given under Sections 50(2) and 50(3) of PMLA before the Assistant Director, Directorate of Enforcement, Chennai would also reveal that prima facie case has been made out against the petitioners for implicating them as accused persons in the alleged offences under PMLA.

23. While considering the petition for discharge under Section 239 of Criminal Procedure Code, the Court has to consider the complaint and supplementary complaints, if any, and the materials relied on in the complaint for forming a *prima facie* opinion, whether the accused can be discharged or not. If the Court found that the very complaint / charge is groundless, then alone the discharge petition is to be considered.

24. In the case of ***R.Soundirarasu*** cited *supra*, the Hon'ble Apex Court defined the meaning of word “groundless”. In paragraph 62 of the judgment it is held that “The word “groundless”, in our opinion, means that there must be no ground for presuming that the accused has committed the offence”. The word “groundless” used in Section 239 Criminal Procedure Code means that the materials placed before the Court do not make out or are not sufficient to



make out a *prima facie* case against the accused. In paragraph 67 it is reiterated that the word “groundless” means that there is no ground for presuming that the accused has committed an offence.

25. Therefore, it is all about a *prima facie* case made out in the complaint / supplementary complaints and the materials relied on for the purpose of forming a *prima facie* opinion or reason to believe as far as cases under PMLA are concerned. If *prima facie* case is traceable with reference to the materials available on record, then discharge of an accused would not arise and the trial must go-on.

26. As far as the case on hand is concerned, the findings of the Trial Court are categorical with reference to the *prima facie* case made out against the petitioners for the alleged offences committed under Section 3 of PMLA. The Trial Court elaborately considered the material including the statements of the petitioners recorded under Section 50 of PMLA and formed an opinion that A1 and A8 had made statements under Section 50 PMLA before the Enquiry Officer about the projection of “proceeds of crime” as untainted one, thereby *prima facie* appears that the petitioners A8 and A14 were also involved in the offence of money laundering punishable under Section 4 read



CRL.R.C.No.88 of 2024

with Section 3 of PMLA.

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27. The said findings are made based on the materials available on record more specifically in the supplementary complaint and based on the statements recorded under PMLA. The petitioners herein have not raised any further or other grounds for the purpose of interfering with the findings of the Special Court in the judgment impugned. Thus, we have arrived at an irresistible conclusion that the petitioners have to face trial in the manner known to law. However, the Special Court shall proceed with the trial uninfluenced by the findings if any made on facts in the present order.



CRL.R.C.No.88 of 2024

WEB COPY 28. With the above observations, the Criminal Revision Case stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

[S.M.S., J.] [N.S., J.]
01 .10.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

- 1.The Learned Principal Special Judge for CBI Cases,
VIII Additional City Civil Court,
Chennai.
- 2.The Assistant Director,
Director of Enforcement,
Government of India,
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- 3.The Special Public Prosecutor,
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CRL.R.C.No.88 of 2024

S.M.SUBRAMANIAM, J.
and
N.SENTHILKUMAR, J.

Jeni

CRL.R.C.No.88 of 2024

01.10.2024