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W.P.No.3863 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **02.09.2024**

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

and

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.No.3863 of 2023

and W.M.P.No.3940 of 2023

T.R.Paarivendhar

... Petitioner

Vs.

1. The Deputy Director,
Directorate of Enforcement,
Government of India,
Shasthri Bhavan,
Chennai - 600 006.

2. The Assistant Director,
Directorate of Enforcement,
Government of India,
Shasthri Bhavan,
Chennai - 600 006.

... Respondents

PRAYER: This Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Mandamus, to forbear the respondents from any way summoning or investigating the petitioner and his family member on account of the case against one Madhan and others in F.I.R. Crime No.143 of 2016 under the provision of Prevention of Money Laundering Act (PMLA) as the FIR in Crime No.143 of 2016 has been quashed as for as the petitioner



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herein is concerned, which has also become final which completely oust the jurisdiction of the respondents from invoking any provision of PMLA against the petitioner.

For Petitioner : Mr.B.Kumar,
learned Senior Advocate
for M/s.J.Nandagopal

For Respondents : Mr.N.Ramesh
Special Government Pleader

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ORDER

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

The Writ Petition on hand has been instituted to forbear the respondents from any way summoning or investigating the petitioner and his family member on account of the case against one Madhan and others in F.I.R. Crime No.143 of 2016 under the provision of Prevention of Money Laundering Act (PMLA) as the FIR in Crime No.143 of 2016 has been quashed as far as the petitioner herein is concerned, which has also become final which completely oust the jurisdiction of the respondents from invoking any provision of PMLA against the petitioner.



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2. Mr.B.Kumar, learned Senior Counsel appearing on behalf of the petitioner would mainly contend that the scheduled offence has been quashed in respect of the petitioner herein. The petitioner filed Special Leave Petition (Crl.) No.7295 of 2017 challenging the final judgment and order dated 06.09.2017 in Crl.O.P.No.3154 of 2017 passed by the High Court of Madras. The Hon'ble Supreme Court passed final orders on 22.09.2017 as follows:-

"a) All the claimants are directed to approach the High Court with the aforesaid request by filing affidavits stating that they have no objection in quashing the criminal proceedings arising out of the aforesaid FIR insofar as the petitioner is concerned.

b) On filing the affidavits the High Court shall quash the proceedings arising out of the aforesaid FIR insofar as the petitioner is concerned.

c) Till the time these affidavits are filed and the order of the quashing is passed by the High Court the amount shall not be disbursed and the amount shall be disbursed only after filing of the affidavits.

d) The petitioner shall also be involved in the aforesaid process so that he is able to verify that only genuine persons have filed the affidavits and received the payments.

The Special Leave Petition is disposed of accordingly.

Pending application(s), if any, stands disposed of accordingly."



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3. The learned Senior Counsel would contend that in compliance with the orders of the Hon'ble Supreme Court of India, the victims received the money and given acknowledgments. Since the petitioner has complied with the conditional order passed by the Hon'ble Apex Court, the learned Single Judge of this Court quashed F.I.R. in Crime No.143 of 2016 in CrI.O.P.No.3154 of 2017. Pertinently, the F.I.R. was quashed as against the petitioner herein alone.

4. Relying on the quashment of the F.I.R., the learned Senior Counsel relied on the observation made by the Hon'ble Supreme Court in the case of *Vijay Madanlal Choudhary Vs. Union of India* reported in **2022 SCC OnLine SC 929**, wherein it is contended that the scheduled offence has been quashed against the petitioner and therefore, no proceeding under the PMLA can be instituted against the petitioner.

5. The learned Special Public Prosecutor appearing on behalf of the respondents would oppose by stating that the F.I.R. was quashed in respect of the petitioner only with reference to the scheduled offence and still the Enforcement Directorate is empowered to proceed with the case under the PMLA, if required or if additional materials are available against other accused or any other person, who have involved in an offence under Section 3 of PMLA.



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Mere settlement of money to the victims in the scheduled offence would not be a ground to seek exoneration from appearing before the competent authority under the PMLA in response to the summons or notice issued. The petitioner is not entitled for an absolute exoneration from the proceedings at this stage, since the investigations are going on in respect of the scheduled offence against the other accused persons.

6. In the order passed in the case of *Madhan Vs. State rep. by Assistant Director, Directorate of Enforcement*, reported in (2017) 2 LW (Cri) 446, [Mr.Madhan is A1 in the predicate offence in Crime No.143 of 2016], this Court made the following observations:-

"33. When the police case is so specific that Pachamuthu shared the common intention under Section 34 IPC and used Madhan for collection of capitation fee, the Enforcement Directorate has projected a difference picture in the complaint as if Madhan had collected the money from 133 parents and had not given the same to Pachamuthu, but has purchased four properties in his name that have been listed in the complaint. The Enforcement Directorate has built up this case on the strength of Pachamuthu's statement to the effect that he had not asked Madhan to collect any money nor was the money given to him. Of course, Pachamuthu has not completely disowned Madhan. He has stated that Madhan is an office bearer of his political outfit, viz., IJK party. It is quite strange as to how the Enforcement Directorate could have expected Pachamuthu to be so



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guile to confess to them, "Yes, Yes! I only asked Madhan to collect money from the students and he had handed over the money to me". Pachamuthu would have given such a confession only if he had credulously believed that the Enforcement Officer is also a priest of a Catholic church to whom confessions can be made for a ticket to heaven, albeit the fact such a confession would land him up in jail in this life. With a battery of legal minds at Pachamuthu's command, it is too naive for the Enforcement Directorate to have expected Pachamuthu to confess. In fact, even during the hearing of this bail application, an advocate (whose name this Court does not want to refer to and cause embarrassment to him) intervened on behalf of Pachamuthu to refute the contentions of the counsel for Madhan. This Court refused audience to that counsel on the ground that this is a bail petition and not a public interest litigation.

37. According to the police and the Enforcement Directorate, 133 parents have been cheated to the tune of Rs.91 crores. The Enforcement Directorate has listed 4 properties belonging to Madha, totally valued at Rs.6,34,50,000/- as representing the proceeds of the crime. Even assuming for a moment that these are proceeds of the crime, this Court poses to itself the question as to where is the balance of Rs.84,65,50,000/-.

46. It is true that Section 24 does shift the burden of proof on the accused. However, the said presumption can be applied in the criminal case, only if the prosecution submits sufficient materials to satisfy the ingredients of the penal provision, viz., Section of the PMLA. In this case, Pachamuthu himself had deposited Rs.75 Crores and has given a bank guarantee for Rs. 10 Crores, to which, the



Enforcement Directorate has turned a Nelson's eye. But, the Enforcement Directorate asserts that the four properties were acquired by Madhan from and out of the money he had received from 133 parents. In fact, records from the file of the XI Metropolitan Magistrate Court show that after this Court, in CrI.O.P.No.3710 of 2017, had directed Madhan to deposit the title deeds of the properties, Madhan has sworn to an affidavit dated 22.03.2017 attested by the Superintendent of Prisons (since he was in jail then), wherein, he has explained the source by which he had purchased the properties. How is it that the Enforcement Directorate did not even attempt to get a copy of this affidavit from the XI Metropolitan Magistrate and had instead, proceeded to complete the investigation and file the complaint?

56. Apart from the above 7 parents, about 50 parents, in their written complaints to the Commissioner of Police, have implicated Pachamuthu. What is intriguing is, why have the Enforcement Directorate recorded the statements of only 7 parents out of 133 parents and that too, in a distorted fashion exonerating Pachamuthu, but, implicating Madhan. Whom are they wanting to save?

57. The learned Additional Solicitor General sought to explain this by submitting that the investigation by the Enforcement Directorate is still in progress, but, as regards Madhan alone, the investigation has been completed. This submission of the learned Additional Solicitor General runs contrary to the following averments in page no.33 of the prayer (c) of the complaint, "c. To permit the complainant to file additional/supplementary complaint, if any on completion of investigation as the further investigation is still going



on."

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60. Further, from the materials collected by the Enforcement Directorate and the police, this Court is able to apparently see that Madhan is not the solitary player in this sordid episode. There are prima facie materials to show that a well-oiled syndicate had existed, by which, affluent parents who were over-ambitious in wanting to make Doctors of dull heads, struck deals and received cash, for which, Sudhir issued receipts to the parents like the sample extracted above, on the strength of which, admissions were given to their wards and the cash went to the kitty of the management, as could be seen from the confession of a co-accused, who has even handed over a videograph to the police showing the handing over the loot at the office of SRM University in Mambalam."

7. The offence has not been wiped off in entirety in respect of the scheduled offence. The hands of the competent authority under the PMLA cannot be tied. In the event of considering the relief as such sought for in the present Writ Petition, the very objectives of the PMLA will be defeated.

8. Let us now consider the powers conferred on the competent authority under the PMLA. Section 44(1)(d)(ii) enumerates that *"the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or*



documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not".

9. Regarding the powers of the authorities to summon, Section 50 of the PMLA contemplates procedures as under:-

(1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:--

- (a) discovery and inspection;*
- (b) enforcing the attendance of any person, including any officer of a [reporting entity] and examining him on oath;*
- (c) compelling the production of records;*
- (d) receiving evidence on affidavits;*
- (e) issuing commissions for examination of witnesses and documents; and*
- (f) any other matter which may be prescribed.*

(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.



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(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not--

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the [Joint Director].

COMMENTS

Under this section, the Director appointed under Section 48 has the powers conferred on the Civil Court under the Code of



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Civil Procedures, 1908 in respect of matters covered by section 13 of the Act. Sub-section (2) confers powers on the authorities to summon persons whose attendance is necessary to give evidence or produce any record during course of investigation or proceeding. Sub-section (3) directs persons summoned to appear before the officers upon a summon and to state the truth on the subject of the summons. Under sub-section (5), powers of impounding records have been conferred on the authorities subject to the rules made in this behalf. The powers of Assistant/Deputy Director to impound and retain records are circumscribed by proviso to sub-section (5).

10. The statutory powers conferred on the competent authorities under the PMLA cannot be curtailed or the petitioner is entitled to seek any order in the nature of an injunction restraining the authorities from issuing summon/notice for the purpose of conducting enquiry or to investigate the offence of money laundering under the PMLA. Mere quashment of the F.I.R in respect of the petitioner alone in predicate offence would not wipe off the offence of money laundering and still the authorities are empowered to conduct further investigation, if required, or to trace out proceeds of crime under Section 2(1)(u) of the PMLA. The very objective of the PMLA to prevent money laundering and to provide power for confiscation of property cannot be taken away by issuing a Writ of Mandamus to forbear the authorities from summoning any person under the PMLA. Such an omnibus direction if issued



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would undoubtedly defeat the very purpose and objective of the PMLA. Thus, the relief sought for in the present petition cannot be entertained by this Court.

11. The present Writ Petition has been filed mainly on the ground that the victims have received money and filed affidavits stating that they have received the money paid by them to the accused or to the institution. Based on the affidavit, the High Court quashed the proceedings in compliance with the directions issued by the Hon'ble Supreme Court of India. Mere repayment of money involved in a crime would not wash away the offence of money laundering under the PMLA, if any committed. Still the authorities are empowered to conduct investigation by summoning any person or otherwise and in the presence of any "proceeds of crime" within the definition of PMLA, there may not be any impediment for proceeding with the case by following the procedures as contemplated. The authority of Law conferred under the PMLA to the competent authorities cannot be taken away by issuing a Writ of Mandamus.

12. In the event of receipt of any summons or notices from the respondents, the petitioner is bound to appear and offer his explanations along with documents, if any, for the purpose of establishing his innocence or otherwise. Contrarily filing a Writ Petition securing an absolute exoneration



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from the statutory proceedings cannot be encouraged nor any such relief can be granted by the High Court.

13. Thus, We do not find any reasons to consider the relief as such sought for in the Writ Petition since such prayer is not entertainable in law. Hence, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, the connected Miscellaneous Petition is closed.

(S.M.S., J.) and (V.S.G., J.)
02.09.2024

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Internet : Yes
Index : Yes
Speaking order : Yes



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S.M.SUBRAMANIAM, J.
and
V.SIVAGNANAM, J.

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To

1. The Deputy Director,
Directorate of Enforcement,
Government of India,
Shasthri Bhavan,
Chennai - 600 006.
2. The Assistant Director,
Directorate of Enforcement,
Government of India,
Shasthri Bhavan,
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