IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16.04.2024

CORAM:

THE HON'BLE MR.JUSTICE M.S.RAMESH
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.No.3535 of 2023
and
Crl.M.P.No.2211 of 2023

1.M/s.Yazhini Realtors Pvt.Ltd.,
Rep. by its Director A.M.Mohan,
No.18/20, Crescent Road,
Shenoy Nagar (West),
Chennai – 600 030.

2.A.M.Mohan

3.M.Shobana ...Petitioners/Accused 1 to 3

Vs

The Assistant Director,
Director of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floors,
Murugesa Naicker Complex,
No.84, Greams Road,
Chennai – 600 006. ...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C.No.51 of

2016 in ECIR No.02 of 2013 in File No.ECIR/02/CZO/PMLA/2013 (KCM) pending on the file of the Principal Sessions Court, Chennai and to quash the same, in the light of the law laid down by the Hon'ble Supreme Court of India in Vijay Madanlal Choudhary and others vs. The Union of India, reported in 2022 SCC Online SC 929.

For Petitioners : Mr.S.Sathiaseelan

For Respondent : Mr.V.Parivallal,
Special Public Prosecutor

ORDER

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

Heard Mr.S.Sathiaseelan, learned counsel for the petitioners and Mr.V.Parivalla, learned Special Public Prosecutor, for the respondent.

2. While the 2nd petitioner herein is the Director of the 1st petitioner Company, the 3rd petitioner is the wife of the 2nd petitioner. An FIR in Crime No.96 of 2010 (later re-numbered as Crime No.184 of 2014 on the file of EDF Wing II, City Crime Branch, Vepery, Chennai), dated 25.02.2010, came to be registered against the petitioners herein for the offences under Sections 419 and 420, read with Section 34 of the Indian Penal Code (IPC). Since the criminal offences registered against the petitioners were scheduled offences under the provisions of the Prevention of Money Laundering Act (PMLA), the respondent herein

had registered an Enforcement Case Information Report (ECIR) No.02 of 2013. Consequently, a complaint under Section 45(1), read with Sections 3, 4 and 8(5) of PMLA was also filed in C.C.No.51 of 2016 before the Principal Sessions Court, Chennai. In the meantime, charges came to be framed in Crime No.184 of 2014 by the City Crime Branch, Chennai, which culminated into C.C.No.6084 of 2018 on the file of the XI Metropolitan Magistrate Court, Saidapet.

3. Pending these proceedings, the defacto complainant and the petitioners herein had entered into a joint memo of compromise. Recording the compromise, a learned Single Judge of this Court had quashed the proceedings in C.C.No.6084 of 2016, as well as the FIR in Crime No.184 of 2014, through orders passed in Crl.O.P.Nos.16055 and 16349 of 2017 and 21025 of 2018, dated 12.04.2019. In spite of quashing of the proceedings relating to the scheduled offences, the proceedings initiated by the respondent herein in C.C.No.51 of 2016 were kept pending, which prompted the petitioners to file the present Criminal Original Petition.

4. It is a settled proposition of law that when the accused are finally discharged from the predicate offences, there can be no offence of

money laundering. Hence, any incidental action that may have been taken against such persons by the Enforcement Directorate, would also become infructuous. In the case of ***Vijay Madanlal Choudhary & Others Vs. Union of India and Others*** reported in ***(2022 SCC OnLine SC 929,*** this legal position was reiterated in the following manner:-

> ***"467. ... (v)(d)*** *The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the 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 or any one claiming such property being the property linked to stated scheduled offence through him."*

5. The fact that the FIR in Crime No.96 of 2010, as well as the complaint in C.C.No.6084 of 2016 on the file of the XI Metropolitan Magistrate Court, Saidapet, both relating to the scheduled offences, have been quashed by this Court in Crl.O.P.Nos.16055 and 16349 of 2017 and 21025 of 2018 on 12.04.2019, are not disputed by the respondents. In view of the law laid down by the Hon'ble Supreme Court in *Vijay Madanlal Choudhary's case,* as extracted above, the consequential proceedings initiated by the respondent under the provisions of the PMLA, cannot be legally sustained.

6. Accordingly, the Writ Petition stands allowed and the impugned proceedings in C.C.No.51 of 2016 in ECIR No.02 of 2013 in File No.ECIR/02/CZO/PMLA/2013 (KCM), pending on the file of the Principal Sessions Court, Chennai, is quashed. Consequently, connected miscellaneous petition is closed.

(M.S.R.,J.) **(S.M.,J.)**
16.04.2024

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
hvk

M.S.RAMESH,J.
AND
SUNDER MOHAN,J.

hvk

Copy to:-

1.The The Assistant Director,
Director of Enforcement,
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2.The Public Prosecutor
High Court of Madras,
Chennai – 600 104.

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