WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.Nos.4373, 4380 & 4388 of 2020
and
W.M.P.Nos.5166 to 5168, 5174, 5175, 5177, 5182 to 5184 of 2020

1.P.Palanichamy ... Petitioner in WP.No.4373/2020

2.P.Senthil Kumar ... Petitioner in WP.No.4380/2020

3.P.P.Suresh Kumar ... Petitioner in WP.No.4388/2020

Vs.

The Directorate of Enforcement,
Represented by its Deputy Director,
Chennai Zonal Office,
2nd and 3rd Floor, C Block,
Murugesa Naicker Complex,
84, Greams Road,
Thousands Lights,
Chennai – 600 006. ... Respondent in 3WPs

WEB COPY

Prayer in WP.No.4373/2020: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records pertaining to impugned summon dated 29.01.2020 in ECIR/CEZO/15/2013 S.No.045 issued by the Respondent to the petitioner and quash the same.

Prayer in WP.No.4380/2020: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records pertaining to impugned summon dated 29.01.2020 in ECIR/CEZO/15/2013 S.No.046 issued by the Respondent to the petitioner and quash the same.

Prayer in WP.No.4388/2020: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the records pertaining to impugned summon dated 29.01.2020 in ECIR/CEZO/15/2013 S.No.047 issued by the Respondent to the petitioner and quash the same.

For Petitioners	: Mr.P.Wilson Senior Counsel For M/s.P.Wilson Associates (In 3WPs)
For Respondent	: Mr.Rajnish Pathiyil Special Public Prosecutor [For Enforcement Directorate] (In 3WPs)

WEB COPY

COMMON ORDER

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

Under assail is the summons issued by the Enforcement Directorate to the petitioners under Section 50(2) of the Prevention of Money Laundering Act, 2002 [hereinafter referred as 'PMLA'].

2. The petitioners challenge the summons on the ground that they had responded to the earlier summons issued by the Enforcement Directorate. Therefore, the Enforcement Directorate ought not to have issued the impugned summons.

3. Mr.P.Wilson, learned Senior Counsel appearing on behalf of the petitioners would mainly contend that, on October 16, 2014, the petitioners had submitted a detailed explanation in response to an earlier summon. They provided elaborate and relevant facts, summaries and summarises for consideration before the competent authority. Therefore, the impugned summons, issued after filing complaint in C.C.No.10 of 2018, is untenable. Further, Explanation (ii) to Section 44(1)(d) was inserted by Act 23 of 2019.

WEB COPY

Moreover, the respondents are seeking the petitioners to resubmit the same materials that were already submitted by the petitioners vide order their representation dated 16.10.2014.

4. Mr.Rajnish Pathiyil, learned Special Public Prosecutor appearing behalf of the respondent/Directorate of Enforcement would oppose by stating that even after filing of a complaint under Section 45 of PMLA, the competent authority is empowered to issue summons for the purpose of further investigation, collecting evidences, or gathering informations.

5. The learned Special Public Prosecutor relied on Section 44(1)(d) Explanation (ii) of the PMLA, which clearly empowers the authorities to issue summons even after filing of complaint. Further, he contends that the issuance of summons is a procedural aspect that has been duly followed. On receipt of summons, the petitioners are expected to submit further representations or explanations as may be sought for by the competent authority.

6. We have carefully considered the arguments advanced by the learned Senior Counsel appearing on behalf of the petitioners and the learned

WEB COPY

Special Public Prosecutor appearing on behalf of the respondent.

7. Section 44(1)(d) Explanation (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".

8. The aforesaid Explanation was inserted by the Act 23 of 2019. However, the impugned summon was issued on 29.01.2020, subsequent to the amendment and insertion of Explanation (ii) to Section 44(1)(d).

9. Although the alleged offence occurred prior to the amendment, impugned summons were issued after insertion of Explanation Clause under Section 44(1)(d)(ii). Therefore, there is no impediment for the authorities to issue summons for the purpose of collecting further information, documents, etc.

https://www.mhc.tn.gov.in/judis

WEB COPY

10. In this context, it is relevant to consider the ratio laid down by the Hon'ble Supreme Court of India in the case of ***Vijay Madanlal Choudhary and Others vs. Union of India and Others*[1]*,*** wherein, the Apex Court ruled as follows:

> "**270.** Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002

1. [2022 SCC Online SC 929]

WEB COPY

> Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No.2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

11. The impugned summons were issued under Section 50(2) and (3) of PMLA, which reads as under:

> *"**(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*

WEB COPY

evidence or to produce any records during the course of any investigation or proceedings under this Act.

(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."*

12. The aforementioned provision is unambiguous that all persons summoned shall be bound to attend in person or through their authorized agents, as the Officer may direct. Furthermore, they shall be bound to state the truth on any subject respecting which they are examined or make statements, and to produce such documents as may be required.

13. Sub-Section (3) to Section 50 in unequivocal terms, reiterates that the person summoned shall be bound to attend in person. Specifically, if the Enforcement Directorate summon a particular Officer by designation, only that Officer shall appear before the Enforcement Directorate.

WEB COPY

14. Courts at no circumstances shall dilute the rigor of investigation in money laundering cases instituted under the provisions of PMLA. Any judicial interference at the summons issuance stage may cause prejudice to an effective investigation. Therefore, the Courts should allow Investigating Agencies to function fairly and freely, enabling them to cull out the truth by collecting all necessary evidence, obtaining statements from the concerned individuals, and initiate all appropriate actions by following the due procedures as contemplated under the provisions of PMLA.

15. Therefore, granting any leniency regarding appearance or otherwise, by the Courts based on misplaced sympathy or taking a lenient view, would undoubtedly hamper the investigation process. This would inevitably result in allowing individuals to escape from the clutches of PMLA proceedings, which is undesirable.

16. This exactly is the reason why the Constitutional Courts across the country have time and again reiterated that no petition against notice, summons are entertainable, unless the issuance of such notice or summons is by an authority lacking jurisdiction. Courts are not expected to adjudicate disputed facts in petitions filed against summons or notices. All such

WEB COPY

disputed factual aspects are to be adjudicated by the competent Authority for taking final decisions by following due process as contemplated under PMLA.

17. As far as the grounds raised on behalf of the petitioners are concerned, the impugned summons having been issued after insertion of explanation clause under Section 44(1)(d), cannot said to be infirm. The explanation clause clarifies that the offence of money laundering is a continuing offence, and the power to conduct further investigation is conferred. Therefore, this Court do not find any infirmity for conducting further investigation by issuing summons to any person under Section 50(2) of PMLA.

18. In this regard, the petitioners are at liberty to submit their further explanations, documents, defence statements, etc., to the respondent in response to the impugned summons. The respondent may proceed with the further course of action as expeditiously as possible, and uninfluenced by any of the observations made relating to facts in this order.

https://www.mhc.tn.gov.in/judis

WEB COPY

WEB COPY

19. With the above observations, the Writ Petitions are hereby dismissed. Consequently, the connected Miscellaneous Petitions are closed. There shall be no order as to costs.

[S.M.S., J.] **[M.J.R., J.]**
28.11.2024

Index : Yes
Speaking order / Non-speaking order
Neutral Citation : Yes

Jeni

To

1.The Deputy Director,
The Directorate of Enforcement,
Chennai Zonal Office,
2nd and 3rd Floor, C Block,
Murugesa Naicker Complex,
84, Greams Road,
Thousands Lights,
Chennai – 600 006.

2.The Additional Public Prosecutor,
Madras High Court.

WEB COPY

S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

Jeni

W.P.Nos.4373, 4380 & 4388 of 2020

28.11.2024