IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MRS. JUSTICE N.MALA

Crl.R.C.Nos.342 & 343 of 2024
and
Crl.M.P.Nos. 3157, 3158, 3162 & 3164 of 2024

[Crl.R.C.No.342 of 2024
and
Crl.M.P.Nos. 3157, 3158 of 2024]

Smt.Kumaran Praseetha ... Petitioner

Vs.

The Assistant Director,
Directorate of Enforcement,
Government of India,
Chennai Zone Office – II,
Shastri Bhavan,
4th Floor, B-Wing,
No.26, Haddows Road,
Chennai- 600 006. ... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the order dated 14.02.2024 passed in Crl.M.P.No.10687 of 2023 by Learned XXI Additional

Session Judge at Chennai in Spl.C.C.No.7 of 2023 pending trial before the Learned XII Additional Special Court for CBI, Chennai.

[Crl.R.C.No.343 of 2024
and
Crl.M.P.Nos. 3162 & 3164 of 2024]

R.Vinayagam ... Petitioner

Vs.

The Assistant Director,
Directorate of Enforcement,
Government of India,
Chennai Zone Office – II,
Shastri Bhavan,
4th Floor, B-Wing,
No.26, Haddows Road,
Chennai- 600 006. ... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the order dated 14.02.2024 passed in Crl.M.P.No.10688 of 2023 by Learned XXI Additional Session Judge at Chennai in Spl.C.C.No.7 of 2023 pending trial before the Learned XII Additional Special Court for CBI, Chennai.

For Petitioners in both the cases : Mr.R.Vivekananthan

For Respondent in both the cases : Mr.P.Sidharthan, Special Public Prosecutor for ED.

COMMON ORDER

(S.M.Subramaniam J.)

Under assail is the judgement dated 14.02.2024 in Criminal M.P.No.10687 and 10678 of 2023 in Special C.C. No.7 of 2023, rejecting the discharge petition filed by the petitioners under Section 227 of Cr.P.C.

2. The petitioners are Accused Nos. 2 and 4. Admittedly, proceedings under Prevention of Money Laundering Act, 2002 (herein after referred as PMLA) has been instituted against the petitioners. Based on the scheduled offences, ECIR was recorded, complaint under Section 44 of PMLA, was registered and cases are pending for Trial. The petitioners moved discharge petitions, under Section 227 Cr.P.C., mainly on the the ground that the respondents have not established any "proceeds of crime" for initiation of proceedings under PMLA, more specifically before the year of 2013.

3. The learned counsel for the petitioner would mainly contend that in the absence of any predicate offence and proceeds of crime, with reference to the year 2006 onwards, the proceedings initiated under PMLA cannot

sustain. In support of his contention, he relied on the case of ***Pavana Dibbur vs. Directorate of Enforcement***[1]**,** where the Apex Court, in paragraph no.19, has dealt about the acquisition of the first and second property in that particular case, wherein, it is observed that the allegations against the appellant in the complaint is that :

> "*she purchased the property worth crores, though she did not have the source of income which would generate enough money to buy the subject properties. The allegation against the appellant is that she allowed and facilitated accused no. 1- Madhukar Angur, to conceal the siphoned/misappropriated amounts by using her bank account. Another allegation is that she is shown to have purchased the second property from accused no. 1, though she did not have the resources to pay the consideration. The allegation is that she allowed the accused no. 1 to use her bank accounts to facilitate siphoning the proceeds of the crime. Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, ex-facie, cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its*

1 2023 SCC OnLine SC 1586

acquisition. The case of the appellant is that she possessed a substantial amount, as can be seen from the declaration made by her under the Income Declaration Scheme, 2016 in September 2016 and therefore, at the time of the acquisition of the second property, more than sufficient money was available with her to acquire the second property. The issue of whether the appellant used tainted money to acquire the second property can be decided only after the evidence is adduced. This is not a case where any material is placed on record to show that the sale consideration was paid from a particular Bank Account of the appellant. Therefore, it is not possible to record a finding at this stage that the Second property was not acquired by using the proceeds of crime. We also make it clear that we have considered the issue only in the context of the applicability of the PMLA. We have not dealt with the issues of valuation and legality of the sale deeds."

4. Relying on the above paragraph, the learned counsel for the petitioners reiterated that the Special Court has not considered the fact that the subject money, possessed by the petitioners was prior to the year 2013.

The Enforcement Directorate has not established proceeds of crime or predicate offence and no case was registered. Thus, the petitioners are entitled to be discharged under Section 227 Cr.P.C.

5. The learned Special Public Prosecutor, strenuously opposed by contending that three cases are pending for trial as detailed under:

Sl.No.	FIR No., Date & Name of the Police Station	Sections involved
1.	36/2015 dated 05.02.2015 in Vengal Police Station; Subsequently transferred to CBCID under FIR No.01/2015 dated 25.02.2015 and corresponding Charge Sheet filed before Hon'ble Judicial Magistrate-I, Thiruvallur.	147, 148, 149, 120-B, 506(ii), 307, 302 of IPC & Section 25(1-B)(a) of Indian Arms Act.
2.	77/2015 dated 13.02.2015 in Sriperumbudur Police Station.	147, 341, 342, 384 & 506(ii) of IPC
3.	289/2016 dated 27.04.2016 in Sunguvarchatram Police Station.	302, 147, 148, 341, 120B, 109, 114, 149 of IPC

6. Regarding the scheduled offence, the complaint registered under Section 44 PMLA, states as under:

> *"Various offences mentinoed in the FIRs registered by the Predicate agency, as mentioned above, includes multiple scheduled offences under Prevention o Money Laundering Act 2002, such as:*

(a)Sections 120(B), 302, 307, 384, 386 & 399 of Indian Penal Code, 1860;
(b)Section 25 of Indian Arms Act, 1959; and
(c)Sections 3, 4 & 5 of Indian Explosive Substances Act, 1908.

Therefore, the Directorate of Enforcement, Chennai Zone-II, Chennai registered a case bearing ECIR No.CEZO-II/02/2021 on 08.01.2021 against Shri D.Sankar alias Shri PPGD Sankar alia Charles S/o Late Shri Dharmalingam, under the provisions of the Prevention of Money Laundering Act, 2002."

7. Based on the scheduled offence under PMLA, ECIR was recorded and thereafter, statements under Section 50 was recorded by the Enforcement Directorate and the complaint, under Section 44 of PMLA, was registered. The complaint, more specifically paragraph nos. 8.11 and 8.12, reads as under:

*"**8.11.** On, **15.11.2021, Shri D. Sankar** was again summoned under Section 50 of PMLA, 2002 and his further statement was recorded on 15.11.2021. In his voluntary statement given before the Assistant Director*

of Enforcement, Chennai he inter-alia explained, with regard to the 30 properties documents vide Document No. 3731/2014 in the name of Smt. K. Praseetha, that the said property was purchased from Vinayagam and registered in the name of Praseetha; that the said property was earlier purchased by Kumaran and was registered in the name of Kumaran's sister's husband Shri Vinayagam(A4), who is doing the wood scrap business; that from 2006 onwards for the development of of business of Sri Vinayagam, he used to give amounts to him; that during 2014 he asked Vinayagam either to settle the dues or to transfer the properties under the 30 documents in the name of Praseetha; that in response, Shri Vinayagam told him that he will give the 30 properties in the name of Praseetha and accordingly as per Sankar's direction the 30 properties were registered in the name of Praseetha on 29.03.2014. In response to a specific question as to how much money he lent to Vinayagam, he stated that, he has been giving amounts to Vinayagam from 2006 onwards and has not maintained any accounts for the transactions made; that the amounts were personally handed over to Vinayagam in cash and not through bank transactions. Regarding the source of income for the amount paid to Shri Vinayagam, he explained that it was from his real estate *and industrial scrap business.* ***[The claim which Shri D. Sankar could not substantiate during the course of further investigation and admitted that the source of cash is not from any legal business, as discussed in ensuing paras].***

8.12. *Summons was again issued to Shri D.Shankar vide Summons No.PMLA/SUMMON/CEZO2/2022/62 dated 03.01.2022 for his appearance on 06.01.2022. In response to the summons, he intimated his inability to appear as per schedule, citing certain engagements and finally he appeared on 19.01.2022.*

In his voluntary statement, under Q. No. 9 of the statement, with regard to the property document No. 3731/2014 executed by Shri R Vinayagam in the name of Smt. Praseetha at the instructions of Shri D. Sankar in lieu of money given by Shri D. Sankar to Shri R Vinayagam, he was asked that he has stated in his earlier statements dated 6.04.2021 and 15.11.2021 that he has given cash to Shri R. Vinayagam from 2006 onwards, and ***he was asked to specify the quantum of the cash given by him to Shri R. Vinayagam. In response to the same, he stated that since it happened years back so he is not able to recollect but its around***

Rs 80,00,000/-.*"*

8. Relying on the allegations in the complaint, the learned Special Public Prosecutor would reiterate that based on the scheduled offence, actions are initiated under PMLA and with reference to the grounds raised by the petitioners that it will not cover the money possessed by the petitioners prior to the year 2013, is incorrect and running counter to Section 3 of the PMLA. In this context, the respondents would rely on the findings of the Apex Court in the case of ***Vijay Madanlal Choudhary v. Union of India***[2], which is extracted as follows:

> *"43. 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*

2 2022 SCC OnLine SC 929

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 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."

9. The scope of Section 3 of PMLA was expanded by way of

Amendment Act 23 of 2019. The explanation (ii) to Section 3 of PMLA would indicate that "*the process or activity connected with the proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever*"

10. It is needless to state that if the money / property is possessed by any person, prior to the registration of predicate offence and unconnected with the proceeds of crime with reference to Section 2(1)(U) of the Act of PMLA, then question of initiation of action under PMLA would not arise at all. However, if the competent authority has got a reason to believe that such money/ property is connected with the proceeds of crime and there are materials to establish the same, then it is a subject matter of trial, and to be tried.

11. The case on hand is not a case, where the properties purchased were totally unconnected with the proceeds of crime. The learned Special Public Prosecutor would submit that 50 documents were registered and there

are links between all the criminal cases registered against these accused persons. When facts are interlinked and the properties purchased by way of 50 documents are interconnected, and the proceeds of crime are inseparable, the present petition deserves no merit consideration. It is for the accused to prove their case under Section 24 of PMLA during the course of trial and not by filing a petition under Section 227 of Cr.P.C.

12. In the present case, the complaint registered by the Enforcement Directorate would reveal link between the proceeds of crime with reference to the properties purchased, prior to registration of predicate offence. In this context, the respondents filed a counter statement wherein paragraph no.10 reads as under:

> *"the FIRS. and reports filed by Police, from the statements of Shri D. Sankar corroborated with the statements of Shri R. Vinayagam, Shri T. Munusamy and Smt. K. Praseetha as well as from the financial statements of Shri D Shankar, as well as the entire factual matrix and circumstances of the case, it is clearly evident that these properties are proceeds of crime. That Shri D. Sankar and Smt. K. Praseetha being the general power of attorney*

holder; and Shri T. Munusamy and Shri R. Vinayagam being the executors of General Power of attorney are in possession of proceeds of crime being the 79 properties in the form of holding of General Power of Attorney pertaining to the properties mentioned in above Para 7 of the Prosecution Complaint, which are involved in Money-Laundering. Also, It is noted that the properties are being transacted by the accused persons by way of consideration paid through cash modes and hence there is a complete non-availability of money trail in the banking channels for such properties. This makes the properties and their transaction vulnerable to further diversions by way of fraudulent practices by the accused persons."

13. It is relevant to record the findings of the Trial Court, more specifically paragraph nos.20 and 21 of the impugned order, which reads as follows:

"20. The 2019 amendment of Section 3 of PML Act clarifies, that the date of commission of the predicate offence is not relevant and that if a person projects the proceeds of crime is untainted, it is a continuing offence. The object of the amendment of Section 3 of the PML Act is to bring within its net any

person, who directly or indirectly attempts to indulge or knowingly assists another in Money Laundering. Further, according to Section 24 of the PML Act, the onus is on the accused to prove that such proceeds of crime are not involved in Money Laundering. Therefore there is no merits in the arguments advanced by the Learned Counsel the petitioner.

21. In this case to prove the case of the complaint, the complainant submitted 52 documentary evidences corroborative with 11 witnesses. Further, in this case on hand, perusal of the statements and documents produced by the complainant, appears that there is a prima facie case made out against the petitioner, hence the submission made by the petitioner that there is no evidence against the petitioner is not acceptable one."

14. Since the respondents could able to establish prima facie case for initiation of PMLA and the Special Court also rightly considered the scope of the grounds raised by the petitioners and rejected the discharge petitions, we are not inclined to interfere with the findings of the Special Court. The petitioners are at liberty to defend their case during the course of trial.

However, the Trial Court shall decide the issues uninfluenced by the findings, if any, made relating to the facts in the present order.

15. With these observations, the Criminal Revision Cases are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,) **(N.M.J.,)**
18.09.2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
(sha)

To

1. XXI Additional Session Judge, Chennai.

2. XII Additional Special Court for CBI, Chennai.

3.The Assistant Director,
Directorate of Enforcement,
Government of India,
Chennai Zone Office – II,
Shastri Bhavan,
4th Floor, B-Wing,
No.26, Haddows Road,

Chennai- 600 006.

4.The Public Prosecutor,
High Court, Madras.