IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.09.2024

PRONOUNCED ON : 17.10.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MRS.JUSTICE N.MALA

Crl.O.P.No.19431 of 2024
and
Cr.A.Sr.No.13597 of 2024

Directorate of Enforcement
Rep. by the Deputy Director,
Government of India,
Ministry of Finance, Department of Revenue,
No.2, 5th & 6th Floor,
BSNL Administrative Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034. ... Petitioner

Vs.

1.M/s.Kanishk Gold Pvt. Ltd.,
No.8, Palamathur Village,
Uthiramerur Main Road,
Natarajapuram, Pukkathurai Village,
Kanchipuram District – 603 309
Represented by Managing Director,
Shri Bhoopesh Kumar Jain.

2.Shri Bhoopesh Kumar Jain,
"The Art", Block No.2, 6th Floor,
28/29, Kothari Road, Nungambakkam,
Chennai – 600 034.

3.M/s.Mohanlal Jewellers Pvt. Ltd.,
Rep. by their Managing Director,
Shri M.Suresh Khatri,
Old No.12/1, NSC Bose Road,
Sowcarpet, Chennai – 600 001.

4.Shri M.Suresh Khatri,
No.9, Thambusamy Road,
Kilpauk, Chennai – 600 010. ... Respondents

PRAYER: Criminal Revision is filed under Section 482 of the Code of Criminal Procedure, to grant leave to the petitioner to file Appeal against the order of acquittal of the respondents/accused by judgment dated 20.09.2023 in C.C.No.13 of 2018 passed by the Principal Sessions at Chennai/Special Court under PMLA.

For Petitioner	: Mr.AR.L.Sundaresan Additional Solicitor General of India asst. by Mr.N.Ramesh, Special Public Prosecutor for ED
For Respondent	: Mr.K.Balasubramaniam (for R1 & 2) Mr. N.R.Elango, Senior Counsel for Mr.A.Nagarasan (for R3 & 4)

O R D E R

S.M.SUBRAMANIAM, J.

The present Criminal Original Petition has been instituted to grant leave to the petitioner herein to prefer an appeal against the order of acquittal of the respondents/accused by judgment dated 20.09.2023 in C.C.No.13 of 2018 on the file of the Principal Sessions Judge/Special Court under Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA).

2. The Directorate of Enforcement is the petitioner. A complaint dated 21.03.2018 was lodged by the General Manager, State Bank of India (SBI), Chennai. The Central Bureau of Investigation (CBI) registered FIR in Crime No.RC.05/E/2018/CBI/BS&FC/BLR on 21.03.2018 for the offences under Sections 120-B, 420, 467, 468 and 471 IPC r/w Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988 against M/s.Kanishk Gold Private Limited., (KGPL), Chennai and its Promoter-Director Shri Boopesh Kumar Jain and others and unknown Public Servants and unknown others. The sum and substance of the allegations in the FIR is that, during the

year 2011, a consortium of 14 banks with SBI as the lead bank, had sanctioned working capital credit facilities which KGPL had allegedly diverted, resulting in loss to the banks to the tune of Rs.824.15 crores as on 31.12.2017.

3. Based on the FIR registered by CBI, the Enforcement Directorate recorded a case in ECIR No.CEZO-I/07/2018 on 22.03.2018 under PMLA and investigated under the PMLA, collected materials and filed complaint before the Special Court for PMLA, Chennai in C.C.No.13 of 2018.

4. The investigation carried out by the Directorate of Enforcement revealed that the accused M/s. Kanishk Gold Pvt. Ltd., represented by its Managing Director, Shri Bhoopesh Kumar Jain & others have availed huge loans from various banks in the name of working capital facilities by fraudulent means and they have;

(a) Laundered/rotated the loan funds within their own Bank Accounts;

(b) received/sent funds by way of RTGS/NEFT from/to their own accounts maintained by them in various Banks in Consortium as well as out of the Consortium;

(c) further sent money to various jewellers in the pretext of buying gold bullion and have received money in the guise of sale of gold jewellery, wherein most of the transactions were only on paper.

(d) diverted the crime proceeds derived by them by the commission of Scheduled Offences.

5. They have caused wrongful loss to the Banks in Consortium, which is estimated to the tune of Rs.824.15 Crores (Outstanding as of 31.12.2017) plus accrued interest from 01.01.2018 and corresponding wrongful gain to themselves, during the period between 2009 and 2017.

6. On completion of the investigation under PMLA, a prosecution complaint was filed, which was taken cognizance by the Special Court for PMLA/the Principal Sessions judge at Chennai, in C.C.No.13 of 2018. The prosecution examined 28 witnesses and marked 10 Exhibits to prove the case. None was examined on the side of the accused. After trial, the Special Court has passed judgement, acquitting all the accused.

7. The Enforcement Directorate filed Criminal Appeal against the order of acquittal of the respondents/Accused by judgment dated 20.09.2023 in C.C. No. 13 of 2018.

8. Mr.AR.L.Sundaresan, the learned Additional Solicitor General of India appearing for the petitioner would mainly contend that burden of proof on the part of the accused were not discharged under Section 24 of PMLA. The Special Court relied on the rejection order for interim attachment which is insignificant. Rejection of provisional attachment would not be a ground to grant acquittal and the provisional attachment would loose its significance, when the final order has been passed. The Enforcement Directorate marked certain clinching documents, which were not considered by the Special Court.

9. In this context, the learned Additional Solicitor General of India relied on Ex.D3 viz., Order of Adjudicating Authority in respect of respondents 3 and 4 dated 17.10.2018. It is mainly contended that Special Court formed an opinion that Ex.P3 is only a copy of the Forensic Audit Report and it is neither original nor a certified copy. However, it is brought to

the notice of this Court that the bank officials, subsequently certified Ex.P3, Forensic Audit Report. When Ex.P3 has been downloaded from the authorized computer and subsequently certified, would not have been brushed aside by the Court. Therefore, the opinion formed by the Special Court that the Forensic Audit Report, which is a vital document as inadmissible seems to be incorrect.

10. Mr.N.R.Elango, learned Senior Counsel appearing on behalf of the respondents 3 and 4 would oppose by stating that, A3 and A4 are absolutely unconnected with the offence of money laundering. They were not the holders of proceeds of crime, which is mandatory for invoking the provisions of PMLA. The Special Court has categorically considered the validity of Ex.P3 document and its admissibility under Section 65-B of the Evidence Act. When the Forensic Audit Report is neither original nor a certified copy, it is inadmissible in evidence. Thus the Trial Court is right in acquitting the respondents 3 and 4. Subsequent certification granted by the bank officials would not validate an inadmissible evidence.

11. Mr.N.R.Elango, learned Senior Counsel would solicit the attention of this Court, with reference to the findings made by the Adjudicating Authority about the involvement of respondents 3 and 4 in proceeding dated 17.10.2018 (Ex.D3). It is contended that the Investigating Officer herself admitted the fact that the Forensic Audit Report has not been certified nor original. The findings made by the Adjudicating Authority with reference to the provisional attachment order is also admitted by the Investigating Officer in her evidence. Considering the evidence of Investigating Officer and relying on the inadmissible evidences, the Trial Court acquitted the respondents 3 and 4. Therefore, the petition to leave deserves to be rejected.

12. Pertinently, the Three Judges Bench of the Hon'ble Supreme Court of India, in the case of ***Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal and Others***[1] considered Section 65-B(4) of the Evidence Act, 1872. The relevant portion of the judgment reads as follows,

> ***"51.*** *On an application of the aforesaid maxims to the present case, it is clear that though Section 65-B(4) is mandatory, yet, on the facts of*

1 2020 7 SCC 1

this case, the respondents, having done everything possible to obtain the necessary certificate, which was to be given by a third party over whom the respondents had no control, must be relieved of the mandatory obligation contained in the said sub-section.

***52.** We may hasten to add that Section 65-B does not speak of the stage at which such certificate must be furnished to the Court. In Anvar P.V. [Anvar P.V. v. P.K. Basheer, (2014) 10 SCC 473 : (2015) 1 SCC (Civ) 27 : (2015) 1 SCC (Cri) 24 : (2015) 1 SCC (L&S) 108], this Court did observe that such certificate must accompany the electronic record when the same is produced in evidence. We may only add that this is so in cases where such certificate could be procured by the person seeking to rely upon an electronic record. However, in cases where either a defective certificate is given, or in cases where such certificate has been demanded and is not given by the person concerned, the Judge conducting the trial must summon the person/persons referred to in Section 65-B(4) of the Evidence Act, and require that such certificate be given by such person/persons. This, the trial*

Judge ought to do when the electronic record is produced in evidence before him without the requisite certificate in the circumstances aforementioned. This is, of course, subject to discretion being exercised in civil cases in accordance with law, and in accordance with the requirements of justice on the facts of each case. When it comes to criminal trials, it is important to keep in mind the general principle that the accused must be supplied all documents that the prosecution seeks to rely upon before commencement of the trial, under the relevant sections of the CrPC."

13. In the case of ***Central Bureau of Investigation v. A.Raja and Others,***[2] the Hon'ble High Court of Delhi, with reference to grant of leave to the CBI to prefer an appeal, held as follows,

"234........ No doubt numerous judgments have also been placed where this court and the Apex Court have made certain observations regarding the points to be considered at the time of entertaining an application for leave to appeal which can be

2 2024 SCC Online Del 1938

culled out as under:

a. The order of granting / refusing the leave to appeal should not be a cryptic order.

b. There must be strong and compelling reasons for grant of leave to appeal.

c. The High Court must examine whether a prima facie case has been made out or arguable points have been raised. d. The High Court must consider relevant material, sworn testimony of prosecution witnesses. High Court must apply its mind and record reasons [may be in brief] in support of this view.

e. The High Court must examine the material on record to see whether prima facie it requires deeper scrutiny and re- appreciation/review of reconsideration of evidence.

238. Before proceeding further it is also pertinent to mention here that the present case is a case of a very different nature where the criminal proceeding were initiated on the basis of the direction of the Apex Court. The Apex Court monitored the investigation. It is not an ordinary criminal offence.

239. The present case is a case pertaining to economic offence and it has been held time and again that economic offence constitute a separate class and required to be handled with a different approach.

242. The Court is fully conscious of the fact that rules of appreciation of evidence and trial remains the same in all cases, be it an economic offence or other offences. However, the courts cannot have a static approach and must have dynamic approach in consonance with the facts alleged in a particular case."

14. With reference to the above principles, this Court could form an opinion that certain vital issues decided by the Special Court under PMLA ought to be considered. PMLA is a special enactment and Code in itself. Therefore, the procedures to be adopted under PMLA are not akin to that of the procedures to be followed under the other penal laws. Certain unique features under PMLA are objected to protect the economic position of our Country, which is to be considered in its spirit, so as to ensure that the vital documents and its validity ought to be carefully considered in a right perspective. The case on hand is a large scale economic offence, running to Rs.824.15 crores. Therefore, the grounds raised by the petitioner with

reference to the findings of the Special Court deserves further adjudication from the hands of this Court.

15. Undoubtedly, right of appeal against the order of acquittal by the prosecution is restricted, as the accused had the benefit of acquittal on the ground that charge against him had not been proved before the Trial Court. However, when the prosecution was not able to point out clinching ground or error resulting in miscarriage of justice or an erroneous conclusion, then the High Court would not hesitate to grant leave to the prosecution to prefer an appeal against an order of acquittal. Admissibility of ground to grant leave depends on the facts of each case. Complete justice to the parties being the objective, the prosecution in the event of raising grounds to the satisfaction of the Court, then they are entitled to secure leave from the Court to prefer an appeal against an order of acquittal.

16. In the present case, the prosecution is able to establish that vital documents relied on by the Enforcement Directorate to prove the offence of money laundering has been treated as an inadmissible evidence, merely on the ground that the statements taken from the bank computer has not been certified nor original was filed. Admittedly, the said document Ex.P3,

Forensic Audit Report was subsequently certified by the bank officials and it was produced before the Trial Court. But the Trial Court has not taken into consideration and formed an opinion that the bank statements are wholly inadmissible, which resulted in an order of acquittal. Thus, we have no hesitation in forming an opinion that the petitioner in present case is entitled to prefer an appeal against the order of acquittal.

17. Consequently, leave is granted to the petitioner to file an Appeal against the order of acquittal of the respondents by judgment dated 20.09.2023 in C.C.No.13 of 2018 passed by the Principal Sessions at Chennai/Special Court under PMLA. Thus, the Criminal Original Petition stands allowed.

18. The Registry is directed to number the Criminal Appeal and list the same for admission.

(S.M.S.J.,) **(N.M.J.,)**
17.10.2024

Index : Yes
Internet: Yes
Speaking order
Neutral Citation : Yes

gd

To
Directorate of Enforcement
Rep. by the Deputy Director,
Government of India,
Ministry of Finance, Department of Revenue,
No.2, 5th & 6th Floor,
BSNL Administrative Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034.

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

gd

Pre-Delivery Order in
Crl.O.P.No.19431 of 2024

17.10.2024