IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.R.C.No.538 of 2024
and
CRL.M.P.No.4994 of 2024

Shri M.Hari Babu ... Petitioner

Vs.

The Assistant Director,
Director of Enforcement,
Chennai Zonal Office – I,
5th and 6th Floor, BSNL Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034. ... Respondent

Prayer: Criminal Revision Case is filed under Section 397 read with Section 401 of Criminal Procedure Code, pleased to set aside the order dated 06.02.2024 passed in Crl.M.P.No.8140 of 2023 in Spl.C.C.No.4 of 2023 on the file of the Learned VIII Additional Sessions Judge, Principal Court for CBI Cases, Chennai.

For Petitioner : Mr.Nithayesh Natarajan

For Respondent : Mr.Rajinish Pathiyil
Special Public Prosecutor

ORDER

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

The criminal revision case has been instituted to assail the order dated 6th February, 2024 in Crl.M.P.No.8140 of 2023 in Spl.C.C.No.4 of 2023, rejecting the petition filed by the petitioner seeking discharge.

2. The learned counsel for the petitioner would mainly contend that the question of jurisdiction has been raised by the petitioner on the ground that proper Officer has not initiated action under the Customs Act, 1962.

3. At the out set, genesis of the proceedings are under challenge pending before the Division Bench of this Court and therefore, trial need not go on at this juncture. Further, criminal original petition filed to quash schedule offence is also pending before the learned Single Judge of this Court, wherein, further appearance of the petitioner has been dispensed with by way of an interim order. In the case of ***S.Martin vs. Directorate of***

Enforcement[1]**,** the Hon'ble Supreme Court of India has granted interim order and the case of the petitioner is to be proceeded with only after the disposal of the said case by the Hon'ble Apex Court of India.

4. Lastly, it is contended that order passed under Section 135 of the Customs Act, 1962 would not constitute proceeds of crime. Therefore, the very initiation of proceeds under PMLA against the petitioner is untenable. There is no possibility of proceeds of crime in the present case. The Authorised Officer has not quantified the evasion in clear terms. Therefore, the ambiguity is in favour of the petitioner.

5. Mr.Rajinish Pathiyil, learned Special Public Prosecutor appearing on behalf of the respondent would oppose by stating that the jurisdictional point raised by the petitioner before the Division Bench is technical in nature. Further, it relates to civil proceedings and even presuming that the case of the petitioner is accepted by the Division Bench, it is a rectifiable error and the proper Officer has to issue fresh the proceeding. Therefore, the said ground cannot be the basis for the purpose of discharging the petitioner from the PMLA proceedings. The competent authority under the PMLA categorically quantified the evasion and the material evidences are available. Therefore,

1 [S.L.P.Crl.No.4768 of 2024]

the statement of the petitioner that the evasion has not been quantified is incorrect. With reference to the interim order granted in the *Martin's* case cited supra, the same cannot be a ground for the purpose of discharging the petitioner from the PMLA proceedings.

6. Beyond the above submissions and counter submissions, the findings of the Trial Court in the impugned order reveals that the petitioner confessed that he had purchased seven properties worth about Rs.24,13,000/- and that the source of the properties are out of the business income of M/s. Bhavani Diamond Tools and the above said properties are reflected in the ITR filed in the name of M/s. Bhavani Diamond Tools.

7. From the investigation and the materials available on record with the Enforcement Directorate, a *prima facie* case was established that the petitioner, proprietor of M/s. Bhavani Diamond Tools has indulged in evasion of customs duties by mis-declaring the original values, which were paid to the overseas suppliers at the time of import of goods and that the proceeds of crime which were generated from the criminal activity, i.e., short payment of appropriate duties by mis-declaration of values to the customs authorities were utilised in acquiring the properties.

8. In view of the above said findings, the very ground raised by the petitioner that there is no basis to establish proceeds of crime deserves adjudication during the course of trial based on materials and evidences available on record. Such disputed issues cannot be the basis for the purpose of discharging the accused from the PMLA proceedings. The probate value of evidences are to be considered during the course of trial and the High Court while considering the discharge petition cannot appreciate evidences, which may cause prejudice to either of the parties or result in miscarriage of justice.

9. Thus, the petitioner is at liberty to raise all the grounds during the course of trial and the trial shall proceed with the case following the due procedures. However, the Trial Court shall proceed uninfluenced by any of the observations made in the present order, if any relating to factual aspects.

10. Accordingly, the order dated 06.02.2024 passed in Crl.M.P.No.8140 of 2023 in Spl.C.C.No.4 of 2023 stands confirmed and the Criminal Revision Case is dismissed. Consequently, connected Miscellaneous Petition is closed.

[S.M.S., J.] **[V.S.G., J.]**
21.08.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

To

1.The Learned VIII Additional Sessions Judge,
Principal Court for CBI Cases, Chennai

2.The Assistant Director,
Director of Enforcement,
Chennai Zonal Office – I,
5th and 6th Floor, BSNL Building,
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and
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