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Crl.OP.No.7578 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.11.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.OP.No.7578 of 2023
in Crl.MP.Nos.4863 of 2023

M.Venkatesan

...Petitioner

Versus

1.The Directorate of Enforcement
Chennai Zonal Office-II
Government Of India
3rd Floor III Block B Wing
Shastri Bhavan, Haddows Road,
Chennai – 600006.
represented by its
Deputy Director
(ECIR No.CEZO/14/2016)

2.The Central Bureau of Investigation
Anti Corruption Branch, Chennai
III Floor, Shastri Bhavan
Haddows Road, Nungambakkam
Chennai – 600 006.
rep by its Additional Superintendent of Police.

.. Respondents



CrI.OP.No.7578 of 2023

Prayer:-Criminal Original Petition filed under Section 482 of Cr.P.C., to direct the learned Principal Sessions Judge / Special Court for PMLA and CBI cases, Puducherry to conduct simultaneous trial of cases in Spl.CC.No.1 of 2016 pending on the file of the learned Principal Sessions Judge, Special Court for CBI Cases, Puducherry and Spl.CC.No.1 of 2019 pending on the file of the learned Principal Sessions Judge for PMLA cases, Puducherry (both are pending in the same Court).

For Petitioner : Mr.K.Thilageswaran

For Respondents : Mr.Ranjish Pathiyil
Spl.P.P. for enforcement – R1.
Mr.K.Srinivasan,
Spl.PP for CBI cases – R2.

ORDER

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

The case on hand has been instituted under Section 482 of Cr.PC to direct the Principal Sessions Judge / Special Court for PMLA and CBI cases, Puducherry to conduct simultaneous trial of cases in Spl.CC.No.1 of 2016 pending on the file of the Principal Sessions Judge, Special Court for



Crl.OP.No.7578 of 2023

CBI Cases, Puducherry and Spl.CC.No.1 of 2019 pending on the file of the same Court.

2. It is not in dispute that the petitioner is an accused both in the scheduled offence as well as under the provisions of Prevention of Money Laundering Act (herein after referred to as PMLA).

3. The learned counsel for the petitioner Mr.K.Thilageswaran would submit that in the event of completion of trial in PMLA case during the pendency of the predicate offence, the rights of the accused will be prejudiced. Therefore, the present petition is filed seeking simultaneous trial, both in PMLA case and in predicate offence registered under IPC.

4. To support the said proposition, the learned counsel for the petitioner would rely on the following judgments.

5. In the case of **Deputy Director, Directorate of Enforcement, Ministry of Finance V. G.Varadharajan** reported in **Manu/TN1222/2024** this Court made an observation as follows :



WEB COPY



CrI.OP.No.7578 of 2023

“16. We also find that the appellant / complainant had not made any attempt to invoke Section 44(1) of the PMLA as explained under the Statute. Since the predicate offence has also been pending in the same Court, the appellant / complainant ought to have asked for simultaneous trial in both the cases to avoid conflicting verdict and to avoid omission in marshalling evidence. For the reasons best known, they had allowed the PMLA case to proceed first and while doing so, also failed to place all the material documents though available to substantiate the fundamental requirement to proceed under the PMLA. ”

6. The contention of the petitioner is that the right to fair trial to an accused is a basic right, which needs to be protected. Presuming that trial in PMLA case ended in conviction, the petitioner may not get fair opportunity in the trial in predicate offence. There is a possibility of contradiction which may result in causing prejudice to the interest of an accused for fair



Crl.OP.No.7578 of 2023

WEB COPY

trial, thus, simultaneous trial must be conducted.

7. The learned Special Public Prosecutor appearing on behalf of the first respondent would also rely on line of judgments to show that the trial in PMLA is distinct from trial in predicate offence. The issue has been considered in several cases and the Courts have held that once complaint has been registered under the provisions of PMLA, it becomes stand alone process and there is no impediment for the Special Court to proceed with the PMLA trial. The PMLA trial is not dependant on the predicate offence. Thus there is no bar for conducting PMLA trial, during the pendency of the trial in predicate offence.

8. In support, the learned Special Public Prosecutor relied the case of **R.Subramanian v. CBI and another** reported in **2019 SCC Online Mad 6993** wherein the Court made the following observation :-

“23. No doubt, the offence of money laundering is inextricably linked with the scheduled offence and thereby, it would be the ultimate interest of the Prosecution to see



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CrI.OP.No.7578 of 2023

that charges for the predicate offence/scheduled offence are proved so as to bring the amounts involved in the cases for the predicate offence, within the ambit of the definition of ‘proceeds crime’. That is the reason the wisdom of the legislature have given the option to the Department to seek for a joint trial rather than to give the option to the accused, so that the delay may not be caused in the trial of the offence for the predicate offence.

24. Further, this Court is also of the view that allowing the trial to be continued in the CBI Court will not cause any prejudice to the Petitioner/A1. In fact, if the relief as sought for by the Petitioner/A1 is granted, serious prejudice would not only cause to the Prosecution, but also to the Petitioner/A1. That apart, even in the case of CBI and the complaint filed by the Enforcement Directorate, there cannot be any common evidence and the evidence of each case, has to be assessed independently for deciding the same. Therefore, the



WEB COPY



CrI.OP.No.7578 of 2023

contention of the learned counsel for the Petitioner/A1 that the evidence would be common in the CBI charge sheeted case as well as the case pending on the file of the Special Court for Prevention of Money Laundering is not sustainable in law. Hence, this Court is of the view that the cases, which are pending on the file of the CBI Court in connection with various offences, which were investigated in the year 2013, cannot be transferred to the Special Court for Prevention of Money Laundering as sought for by the Petitioner/A1. Consequently, this Court is not inclined to entertain the present Criminal Original Petition. However, this Court took note of the submissions made by the learned counsel for the 2nd Respondent that steps are being taken to file necessary application as per Section 44(1)(c) of the PMLA, seeking to transfer the case.”

9. In the case of V.Vijay Sai Reddy v. Enforcement Directorate



reported in **MANU/TL/1155/2021** the High Court of Telangana held as follows :

“21. Further, it is needless to state that oral and documentary evidence is the backbone to prove the guilt or innocence of the accused in a criminal trial. The trial in all criminal cases including money laundering offences is required to be conducted expeditiously. If the trial is delayed, it would result in impairment of the complainant to prove the case and also impairment of ability of the accused himself to defend his case. The factors like death, disappearance and non-availability of witnesses would also hamper the criminal administration of justice. Therefore, invariably, oral and documentary evidence is required to be placed on record expeditiously, to arrive at a just conclusion. Therefore, it is too early to say that the accused persons are likely to get acquittal in the scheduled offences. There are instances where conviction was recorded by the trial Court and the appellate Court



WEB COPY



CrI.OP.No.7578 of 2023

had set aside the said conviction. In the instant case, mere apprehension that the Court below is going to record conviction against the accused persons under PML Act and they are likely to get acquittal in the predicate/scheduled offences would not be a ground to stall the proceedings. In the given facts and circumstances of the case, it is difficult to state the result of the case of predicate/scheduled offence and its bearing over the proceedings or decision rendered in the subject offence under PML Act. Therefore, the contention raised that without proving the guilt of the accused in predicate/scheduled offences, trial of offences under PML Act cannot be proceeded with, is unsustainable. In view of the above observations, it cannot be held that unless proceeds of crime are established by putting the accused on trial, any prosecution of the person under PML Act would be premature and would be futile exercise. Since the offence under PML Act is a stand-alone offence and



WEB COPY



CrI.OP.No.7578 of 2023

not dependent on predicate/scheduled offences, it can be proceeded with independently without awaiting the outcome of result of scheduled offences or commencement of trial in the predicate/scheduled offences. Further, there is no requirement under law to conduct trials of both category of cases simultaneously. Therefore, the contention that Money Laundering offence starts at the end of predicate offence and commencement of trial in offence under PML Act shall not precede trial of predicate/scheduled offence, is unsustainable. ”

10. The Division Bench of this Court in **M.Rajkumar v. The Assistant Director, Directorate of Enforcement, Chennai** in **CrI.OP.No.5927 of 2018 dated 21.03.2022** held as follows :

“6. The answer to the above submission of Mr.Mohan lies in explanation (i) to Section 44 of the PML Act, which clearly states that the jurisdiction of the Special Court to try a person under the PML Act,



shall not be dependent upon any orders passed in respect of the predicate offence. Though this explanation has been included in the statute only subsequently, i.e., by Act 23 of 2019, its effect dates back to the coming into the force of the statute itself. It is true that the predicate offence and the PML offence should be tried by the Special Court, but, that stage has not reached at all in the instant case, because, the trial in C.C.No.3982 of 2015 has not begun. Even according to Mr.Mohan, summons have not been served on some of the accused even.

7. In Section 44(1)(a) of the PML Act, the legislature has not used the expression “cognizance by the Special Court”, but, “triable by the Special Court”. In the case at hand, the Magistrate has taken only cognizance of the offence in C.C.No.3982 of 2015, he may even discharge the accused or the superior Court may even quash the proceedings. Trial is said to



CrI.OP.No.7578 of 2023

begin in a criminal case, only after the charges are framed. When C.C.No.3982 of 2015 ripens to the stage of trial, then, by invoking Section 44(1)(a) and 44(1)(c) of the PML Act, C.C.No.3982 of 2015 can be transferred to the Special Court and not any time before that. To say that until the disposal of C.C.No.3982 of 2015, the Special Court cannot proceed with the trial in C.C.No.11 of 2017, is tantamount to nullifying explanation (i) to Section 44 of the PML Act.”

11. The three judges bench of Hon'ble Supreme Court in **Vijay Madanlal Choudhary v, Union of India & others** reported in **2022 SCC Online 929** in paragraphs 454 and 455 held as follows :-

“454. This Schedule has been amended by Act 21 of 2009, Act 2 of 2013, Act 22 of 2015, Act 13 of 2018 and Act 16 of 2018, thereby inserting new offences to be regarded as scheduled offence. The challenge is not on



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CrI.OP.No.7578 of 2023

the basis of legislative competence in respect of enactment of Schedule and the amendments thereto from time to time. However, it had been urged before us that there is no consistency in the approach as it includes even minor offences as scheduled offence for the purposes of offence of money-laundering, more so even offences which have no trans-border implications and are compoundable between the parties. The classification or grouping of offences for treating the same as relevant for constituting offence of money-laundering is a matter of legislative policy. The Parliament in its wisdom has regarded the property derived or obtained as a result of specified criminal activity, being an offence under the concerned legislation mentioned in the Schedule. The fact that some of the offences may be non-cognizable offences under the concerned legislation or regarded as minor and compoundable offences, yet, the Parliament in its



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CrI.OP.No.7578 of 2023

wisdom having perceived the cumulative effect of the process or activity concerning the proceeds of crime generated from such criminal activities as being likely to pose threat to the economic stability, sovereignty and integrity of the country and thus, grouped them together for reckoning it as an offence of money-laundering, is a matter of legislative policy. It is not open to the Court to have a second guess at such a policy.

455. Needless to underscore that the 2002 Act is intended to initiate action in respect of money-laundering activity which necessarily is associated with the property derived or obtained by any person, directly or indirectly, as a result of specified criminal activity. The prosecution under this Act is not in relation to the criminal activity per se but limited to property derived or obtained from specified criminal activity. Resultantly, the inclusion of criminal activity which has been regarded as non-cognizable, compoundable or minor



WEB COPY



CrI.OP.No.7578 of 2023

offence under the concerned legislation, should have no bearing to answer the matter in issue. In that, the offence of money-laundering is an independent offence and the persons involved in the commission of such offence are grouped together as offenders under this Act. There is no reason to make distinction between them insofar as the offence of money-laundering is concerned. In our opinion, therefore, there is no merit in the argument under consideration.”

12. In the case of **Sithick Raja V. Directorate of Enforcement** reported in **MANU/TN/1366/2024** Madurai Bench of this Court made the following observations in Paragraph 18 and 19 are as follows :-

“18. Unconcluded predicate offence trial is not a bar for proceeding under the PMLA. The said grounds raised by A6 and A7 is not sustainable in view of the Supreme Court judgment in Vijay Madanlal Choudhary and others vs. Union of India and others



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CrI.OP.No.7578 of 2023

(MANU/SC/0924/2022MANU/SC/0924/2022 :
2022:INSC:757 : 2022 LiveLaw (SC) 633). The Hon'ble
Supreme Court after considering the object of the PMLA
and the expression 'proceeds of crime' and 'money
laundering' used by the legislators had held that, PMLA is
a stand alone Act. The pre-requisite is a commission of a
predicate offence. It is not even necessary that the person
accused in the PMLA case must be an accused in the
predicate offence. Law even permits joint trial of both the
cases and it is not appropriate to canvass that only after
the trial in predicate offence end in conviction, the
proceeding in PMLA should commence. There is no bar for
simultaneous investigation or prosecution and it could be
easily understood from the frame of PMLA, which explicitly
provides for joint trial of both the predicate offence and the
money laundering offence by the same Court designated to
try PMLA offences. If, in case, the predicate offence finally
end in acquittal or discharge or quashed by the Court,



WEB COPY



Crl.OP.No.7578 of 2023

there can be no offence of money laundering.

19. For further clarity, it is sufficient to refer one paragraph in Vijay Madanlal Choudhary's case as paginated in MANU/SC/0924/2022MANU/SC/0924/2022 : 2022 Livelaw (SC) 633, which gives quietus to the said argument:-

"175A. Needless to underscore that the 2002 Act is intended to initiate action in respect of money-laundering activity which necessarily is associated with the property derived or obtained by any person, directly or indirectly, as a result of specified criminal activity. The prosecution under this Act is not in relation to the criminal activity per se but limited to property derived or obtained from specified criminal activity. Resultantly, the inclusion of criminal activity which has been regarded as non-cognizable, compoundable or minor offence under the concerned legislation, should have no bearing to answer the



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CrI.OP.No.7578 of 2023

matter in issue. In that, the offence of money-laundering is an independent offence and the persons involved in the commission of such offence are grouped together as offenders under this Act. ..."

13. With reference to the arguments as advanced between the parties Section 44 of PMLA deals with offences triable by Special Courts. Section 44(i)(a)(b)(c) enumerates as follows :-

(a) "an offence punishable under Section 4 and any scheduled offence connected to the offence under that Section shall be triable by the Special Court constituted for the area in which the offence has been committed :

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence.

(b)a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act



take cognizance of offence under section 3, without the accused being committed to it for trial.

Provided that after conclusion of investigation, if no offence of money laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

14. Explanation (i) and (ii) to Section 44 of the Prevention of Money



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Laundering Act, 2002 reads as under :-

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) 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.

15. Explanation (i) to Section 44 in unequivocal terms clarifies the jurisdiction of the Special Court, while dealing with the offence under this act during trial shall not be dependent upon any orders passed in respect of the Scheduled offence, and the trial in both the sets of offences by the same



Crl.OP.No.7578 of 2023

Court shall not be construed as joint trial.

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16. Therefore, the Special Court is competent and having jurisdiction to conduct separate trials both under PMLA case and for predicate offence, if it happens to be a same Special Court or even in case, the predicate offence is pending before any other Court. The Special Court dealing with the PMLA offence has got jurisdiction to conduct trial irrespective of the fact, whether the predicate offence is pending or otherwise. Thus pendency of the predicate offence is not a bar for continuing the trial under the PMLA by the Special Court.

17. It is not dependent on the predicate offence, after filing of the complaint under Section 45 of the PMLA Act and it becomes stand alone process as declared by the Hon'ble Supreme Court in *Vijay Madanlal Choudhary case* (cited supra). The completion of trial in PMLA Case is independent, since, nature of offence and the procedures contemplated are distinct and different.



Crl.OP.No.7578 of 2023

18. Since, the nature of money laundering offence is distinguishable and unconnected with the nature of offences under the IPC (presently BNS), one is not dependant on the other and that being the position, there is no impediment for the Special Court to continue the trial under PMLA even during the pendency of the trial under predicate offence.

19. The present petition before us has been instituted under Section 482 of Cr.PC for a direction to the Special Court to conduct simultaneous trial. When the procedures contemplated under the PMLA for trial are distinct and different, question of conducting simultaneous or joint trial would not arise at all. That apart, the accused in a PMLA offence cannot be allowed to make any attempt to stall the trial on economic offences, since the procedures contemplated are independent. Thus we are not inclined to consider the present petition.

20. Accordingly, the criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.]

[M.J.R., J.]

25.11.2024

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Internet : Yes/No

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Crl.OP.No.7578 of 2023

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To

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represented by its
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Crl.OP.No.7578 of 2023

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Crl.OP.No.7578 of 2023

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