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Crl.O.P.No.18582 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2024

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN**

**Criminal O.P.No.18582 of 2018
and Crl.M.P.No.9776 of 2018**

S.Madhan

... Petitioner

Vs.

State represented by Assistant Director
Directorate of Enforcement, Government of India
Ministry of Finance, Department of Revenue, 2nd and
3rd Floor, No.84, Murugesu Naicker Office Complex
Greens Road, Chennai in ECIR No.CEZO/04/2017.

.... Respondent

Prayer: Criminal Original Petition under Section 482 of Cr.P.C., to call for the records in C.C.No.15 of 2017 on the file of the Principal Sessions Court (Special Court constituted under Section 43(1) of the PMLA), Chennai in ECIR No.CEZO/04/2017 on the file of the respondent police and quash the same.

For Petitioner : Mr.L.Infant Dinesh

For Respondent : Mr.N.Ramesh
Special Public Prosecutor for E.D.



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ORDER

(Order of the Court was made by S.M.SUBRAMANIAM, J.)

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Under assail is the complaint filed by the Enforcement Directorate (hereinafter referred to as 'ED') under Section 45(1) read with Sections 3,4 and 8(5) of the Prevention of Money Laundering Act (hereinafter referred to as 'PMLA').

2. A complaint was filed under the PMLA based on the scheduled offence registered in Crime No.143 of 2016 for the alleged offences under Sections 420 and 406 IPC. Admittedly, the scheduled offence exists as far as the present petitioner / accused is concerned. After registering ECIR, the ED launched investigation which resulted in filing of a complaint under Section 45 of the PMLA.

3. Learned counsel for the petitioner would mainly contend that the properties allegedly said to be the 'proceeds a crime' by the respondents were purchased prior to the registration of scheduled offence. Few properties were purchased by availing bank loan. Therefore, the properties said to be 'proceeds of crime' would not fall under the definition of 'proceeds of crime' under the PMLA and thus the complaint itself is to be quashed.



4. Learned counsel for the petitioner would contend that the petitioner collected money based on the instructions given Mr.Paarivendhar, the Chairman of SRM University. However, the petitioner was not aware of the fact regarding the reason for such instruction or the purpose for which money has been collected from the parents of the students. Therefore, there is no basis for registration of complaint under the PMLA and the present petition is to be considered.

5. Mr.N.Ramesh, learned Special Public Prosecutor appearing for the respondents strenuously opposed the petition by stating that Section 50 statement given by the petitioner / accused reveals 'proceeds of crime' within the definition of Section 2(1)(u) of the PMLA. During the course of investigation, the authorities traced out the 'proceeds of crime' and an order of provisional attachment was made under Section 5(1) of the Act, which was confirmed by the adjudicating authority under Section 8. The petitioner preferred an appeal under Section 26 of the Act before the appellate Tribunal, which is pending. Since a prima facie case has been made out and the 'proceeds of crime' is established, the present petition instituted under Section 482 of Cr.P.C. has to be rejected.

6. The arguments of the petitioner is that he is not involved in the offence of alleged cheating of the parents of the students and he collected money



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pursuant to the instructions given by the Chairman of SRM University and therefore he cannot be prosecuted either under IPC or under PMLA. It is contended that the monies collected from the parents were handed over to the Chairman, SRM University and those persons were not implicated as accused in the PMLA case.

7. In this regard, the learned Special Public Prosecutor would submit that summons / notices were issued to all those persons named by the petitioner and in certain cases, the said notices are challenged before the High Court and a final order has now been passed in respect of Mr.T.R.Paarivendhar in W.P.No.3863 of 2023 dated 02.09.2024. Therefore, the investigation against all those persons are in progress and all appropriate actions will be initiated after completion of investigation and by following the due process as contemplated under the PMLA.

8. Section 2(1)(u) defines "*proceeds of crime*" as any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad. It is unambiguous that the value of such property is also defined as "*proceeds of crime*" under Section 2(1)(u).



9. In this context, subsequent phrases under the definition was inserted by the Finance Act, 2015 with effect from 14.05.2015, whereby the provision states that " or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad". Therefore, the value of any such property is to be construed as "proceeds of crime" since the property equivalent in value held within the country also can be taken into consideration for the purpose of proceeding under the provisions of PMLA.

10. The definition of "proceeds of crime" under Section 2(1)(u) has been considered by the Supreme Court in ***Vijay Madanlal Choudhary and Others -vs- Union of India*** reported in **2023 SCC Online SC 929**. Para 298 of the judgment reads as under:

"298. It was also urged before us that the attachment of property must be equivalent in value of the proceeds of crime only if the proceeds of crime are situated outside India. This argument, in our opinion, is tenuous. For, the definition of "proceeds of crime" is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of any such property. If the property is taken or held outside the country, even in such a case, the property equivalent in value held within the country or abroad can be proceeded with. The definition of "property" as in Section



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2(1)(v) is equally wide enough to encompass the value of the property of proceeds of crime. Such interpretation would further the legislative intent in recovery of the proceeds of crime and vesting it in the Central Government for effective prevention of money laundering.

11. The Apex Court, while rejecting the arguments of the learned counsel therein, made an observation that the definition of "proceeds of crime" is wide enough not only to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of such property.

12. Therefore, the arguments advanced on behalf of the petitioner that the properties purchased prior to the alleged commission of offence would not fall under the definition of "proceeds of crime" is unacceptable and in our considered opinion, with reference to the judgment of the Supreme Court, such property is also liable to be attached and to be proceeded with by following the procedures as contemplated under PMLA.

13. Regarding 'proceeds of crime' in the present case, it is relevant to consider the relevant portion of the complaint registered by the Enforcement Directorate under Section 45, which reads as under:



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" In his further statement dated 27/04/2017, Shri S. Madhan had stated inter alia that, during the year 2014, he received Rs. 40 Lakhs for each student for admission into MBBS, in SRM University, totaling to the tune of Rs. 16 Crores, from the 40 students and gave the received amount to Shri Parivendhar; that however there was no recognition or approval obtained from Medical Council of India for Chennai Medical College, Trichy (SRM); that in the year 2015; the students' parents, who had paid him money started pressurizing him to give admission in Chennai Medical College, Trichy or else give back the money paid by them, that in such situation the SRM Management was not in a position to refund the received money and the pressure was mounted more, from the 40 parents, that he refunded the amount to 20 parents and organized MBBS seats in Satyasai Medical Collage Mahabalipuram for remaining 20 studente: that simultaneously, he started collecting money for the admission for MBBS in Trichy Medical College for the year 2015-2016 from 133 parents and the money so collected was totalling to the tune of Rs. 91 Crores approx); that the same amount entirely paid to Shri Parivendhar of SRM University on weekly basis, that however the Medical Council of India did not grant permission/approval for Chennai Medical College, Trichy in the year of 2015 and 2016; that the problem raised again and the parents forced them to give admission in SRM group, after which the SRM management directly came forward to sort it out the issue of parents and informed the parents to wait for next year, as the MCI recognition was received in the month of November 2015, and it was too late for the MBBS seat for the Year 2015. Hence, the parents accepted the management's words and waited for 2016-2017, after which the problem arose slowly between him and Shri Parivendhar, that as per the directions of Shri Parivendhar, the amount totaling to Rs. 91



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Crores collected from 133 parents for the year of 2015 and 2016 for SRM Group Colleges was handed over to Shri Sukumar (PA to Shri Parivendhar) in approximately 15 times/instalments by cash; that he(Madhan) did not give any receipt to parents for the cash received from them, but he gave a slip mentioning the student's name, course and year; that he did not receive any receipt from Shri Parivendhar after handing over the cash; that he did not receive any commission for MBBS admission, but he used to get the commission of Rs. 10,000 for Engineering courses and had not utilized the money for his expenditure; that he had paid a refund amount of Rs. 16 Cr to 40 students from the collection amount from the Movie titled 'Linga' and from the collection amount from other movies; that his personal expenditure and his both families' expenditure come around Rs. 3.50 Lakhs per month; that his source of income is from movie distribution and production and Engineering admissions; that he is an Income Tax assessee and also a regular tax payer."

14. Identification of 'proceeds of crime' which was involved in money laundering has been set out in the complaint as under:

" 6. Investigations under the provisions of PMLA revealed se far and ascertained that Shri S. Madhan has generated the proceeds of crime from the scheduled offences and from the part of proceeds of crime, he has acquired and possessing the following immovable properties in his name and others, and projecting/claiming such part of proceeds of crime as untainted properties. Fürther, Shri S.



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Madhan has not stated/indicated any legitimate source of income through which these properties were acquired. Hence, the investigation under PMLA revealed so far that the following immovable properties are part of proceeds of crime which involved in money laundering and liable to be attached under section 5(1) of the Act and the subsequent confiscation under section 8(5) of the PMLA:

Schedule of Immovable Properties

S.No.	Document No. and Date / Name of Owner	Address of the property	Value of the Property (ascertained by the Registration authority)
1.	837/2016 15.02.2016 Shri.Madhan	1235 Sq.ft of land bearing Plot No.2, Door No.7C, New No.60, Gangappa Naidu Street, Vadapalani, Chennai 600 026.	Rs.1,90,00,000/-
2.	1277/2016 05.04.2016 Shri.Madhan	1119, 1250 Sq.ft Undivided share of land in 60132 Sq.ft bearing "Orchards Yarlagadda Venkkanna Chowdhary Residential NSK Salai, (Arcot Road), Saligramam, Chennai 600 093.	Rs.4,25,00,000/-
3.	748/2013 15.03.2013 Shri.Madhan	2.98 Acres of land and house bearing Survey No.231, Village Vadakkevila, Iravipuram, Quilon-691011, Kerala	Rs.9,50,000/-
4.	3782/2007	3.23 Acres of land and house bearing Survey No.201, Village Mundaykal, Iravipuram, Quilon-691011, Kerala.	Rs.10,00,000/-
		Total	Rs.6,34,50,000/-



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15. In view of the fact that 'proceeds of crime' has been set out in the complaint impugned in the present petition and the identification of proceeds of crime also has been set out, the grounds raised by the petitioner deserves no merit consideration and all other grounds raised on merits or regarding appreciation of materials would be considered only by the Trial Court. However, the Trial Court while proceeding with the trial, has to consider the materials available on record independently and uninfluenced by the findings recorded by this Court in this petition relating to facts.

16. With the above observations, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

(S.M.S.,J.) (M.J.R.,J.)
14.11.2024

NCS : Yes/No
Index : Yes/No

KST



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To

The Assistant Director
Directorate of Enforcement,
Government of India
Ministry of Finance,
Department of Revenue,
2nd and 3rd Floor,
No.84, Murugesu Naicker Office Complex
Greaves Road,
Chennai.



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AND
M.JOTHIRAMAN, J.

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