IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.09.2024

CORAM

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

Crl.O.P.Nos.10416, 7812 & 9345 of 2022
and
Crl.M.P.Nos.6234, 4573 & 5426 of 2022

[Crl.O.P.No.10416 of 2022
and
Crl.M.P.No.6234 of 2022]:

S.Muralidharan ... Petitioner/Accused No.1

Vs.

The Deputy Director,
Directorate of Enforcement,
Government of India,
2^{nd} & 3^{rd} Floor,
Murugesa Naicker Complex,
No.84, Greams Road,
Chennai-600 006. ... Respondent

Prayer :- Criminal Original Petition filed 482 of the Criminal Procedure Code, 1973, to call for the entire records and quash the impugned complaint against the Petitioner/Accused No.1 in C.C.No.20 of 2015 on the file of the Hon'ble Principal Sessions Judge at Chennai for offence of 'money laundering' under Section 3, punishable under Section 4 of PMLA, 2002.

For Petitioner : Mr.D.Nagesh Babu

For Respondent : Mr.P.Sidharthan
Special Public Prosecutor for ED

[Crl.O.P.No.7812 of 2022
and
Crl.M.P.No.4573 of 2022]:

V.G.Subramaniam ... Petitioner/Accused No.6

Vs.

The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
2nd & 3rd Floor,
Murugesa Naicker Complex,
No.84, Greams Road,
Thousand Lights,
Chennai-600 006. ... Respondent

Prayer :- Criminal Original Petition filed 482 of the Criminal Procedure Code, 1973, to call for the entire records and quash the impugned complaint against the Petitioner/Accused No.6 in C.C.No.49 of 2016 on the file of the Hon'ble Principal Sessions Judge at Chennai for offence of 'money laundering' under Section 3, punishable under Section 4 of PMLA, 2002.

For Petitioner : Mr.G.Prabhakaran

For Respondent : Mr.P.Sidharthan
Special Public Prosecutor for ED

[Crl.O.P.No.9345 of 2022
and
Crl.M.P.No.5426 of 2022]:

S.Raman ... Petitioner/Accused No.7

Vs.

The Deputy Director,
Directorate of Enforcement,
Government of India,
2nd & 3rd Floor,
Murugesa Naicker Complex,
No.84, Greams Road,
Chennai-600 006. ... Respondent

Prayer :- Criminal Original Petition filed 482 of the Criminal Procedure Code, 1973, to call for the entire records and quash the impugned complaint against the Petitioner/Accused No.7 in C.C.No.49 of 2016 on the file of the Hon'ble Principal Sessions Judge at Chennai for offence of 'money laundering' under Section 3, punishable under Section 4 of PMLA, 2002.

For Petitioner	:	Mr.D.Nagesh Babu
For Respondent	:	Mr.P.Sidharthan Special Public Prosecutor for ED

COMMON ORDER

(Order of the Court was delivered by S.M.Subramaniam J.)

Under assail are the complaints registered by the Enforcement Directorate under Section 45(1) r/w Section 3, 4 & 8(5) of the Prevention of Money Laundering Act, 2002 (hereinafter referred as PMLA).

2. A1 is Mr.S.Muralidharan, Senior Branch Manager, Syndicate Bank at Mylapore Branch, Chennai (petitioner in Crl.O.P.No.10416 of 2022). A2 is Mr. R.Chandrasekaran was also a Senior Manager at Mylapore Branch. A3 is S.Kumar @ Vijay Kumar, a builder, building material supplier and real estate agent. A4 is the business partner of A3. A5 to A14 and A16 are relatives of A3. A15 is a friend of A3 in C.C.No.20 of 2015.

3. The Syndicate Bank filed a complaint before the Central Bureau of Investigation (CBI) and the said complaint was registered in 8 charge sheets on 14.05.2013 under Section 120(B) r/w 420, 468 & 471 IPC and under Section 13(2) r/w 13(1)(D) of Prevention of Corruption Act, 1988. The charge sheet filed by the CBI in the predicate offence would reveal that A1 and A2 in pursuance of criminal congruence has accepted loan proposal and accepted application filed by A3. A3, along with his relatives and friends, submitted forged and fabricated documents including income tax statements, financial statements, balance sheet, approval plans, sale agreement etc., pretending to be genuine. Excepting the said forged and fabricated documents, A1 sanctioned and disbursed 17 Sindhi Nivas (Housing Loans) to ineligibile borrowers A5 to A14. The charge sheet further proceeds by

stating that A1 & A2 sanctioned loans to the ineligible borrowers i.e., A15 and A16 without conducting pre and post sanction investigation verifications as per the declarations made in the loan applications. Pertinently, all the accuseds, i.e., A3 to A16 stood as guarantors for the respective borrowers. The loan amount was credited as pay order into the current account of non-existing company namely K.V.Construction, allegedly flouted by A3 and A4. On receipt of the loan amount from the Bank, A3 and A4 diverted the said funds to various other activities and allowed the present loan to became non-performing asset (NPA). A3 and A4 and other accused have purchased a factory premises by creating fabricated documents and other income tax related documents and obtained loan with the assistance to A1. The financial loss to the Syndicate Bank was approximately calculated as Rupees 6 Crores and 75 Lakhs.

4. On 08.08.2013, in pursuance of the scheduled offence registered by the CBI, a complaint under Section 45(1) was registered under PMLA. Simultaneously, Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, (SARFAESI Act) proceedings were initiated by the Bank. Since ECIR was recorded and a complaint under

Section 45 was registered, the Enforcement Directorate continued their further actions independently by following the procedures as contemplated under the PMLA.

5. The complaints filed under Section 45 is sought to be quashed in the present petitions by the accused persons. The learned counsel for the respective Petitioners Mr.D.Nagesh Babu and Mr.G.Prabhakaran would urge this Court by stating that the petitioners were holding the post of Managers in Syndicate Bank and they are not experts to verify the genuinity of the documents produced by the borrowers. The Bank Managers are not trained to ascertain the genuinity of the documents. Therefore, they are unconnected with the proceeds of crime and consequently, the complaint registered under Section 45 is liable to be assailed. The learned counsel for the petitioners would further contend that the housing loans were sanctioned based on the legal opinion offered by the Bank Panel Counsel and the Managers acted based on the legal opinion and the valuation report submitted by the panel lawyers. That being so, the Bank Managers cannot be implicated in PMLA case as they are absolutely unconnected with the proceeds of crime which is an element mandatory for invoking the provisions of PMLA.

6. In support of the said contentions, the learned counsel for the petitioners would urge that except by stating that the Managers have assisted the borrowers for sanctioning of loans based on the forged and fabricated documents, there is no allegation set out in their complaint. The said statements would be insufficient to establish an offence as contemplated under Section 3 of PMLA and on that ground also the present petitions are to be considered.

7. The learned Special Public Prosecutor Mr.P.Sidharthan would strenuously oppose by stating that the definition of proceeds of crime cannot be narrowed down. The wider scope of Section 3, relating to offences under PMLA, cannot be confined to the actual involvement of the persons. Section 3 of PMLA is capable of reaching the persons, who have directly or indirectly attempted to indulge or knowingly assisted the persons through whom the proceeds of crime are identified. Therefore, the scope of Section 3 of PMLA is wider enough to cover all the persons, who have involved in the proceeds of crime and it may not be required that such persons must possess the proceeds of crime. If such persons knowingly assist for money laundering, it will squarely fall within the ambit of Section 3 of PMLA.

Thus, there is no infirmity in respect of the complaint registered against these accused persons.

8. The scope of expression "*including*" has been considered by the Hon'ble Supreme Court of India in the case of ***Vijay Madanlal Choudhary vs. Union of India***[1.], in paragraph no. 265, which is extracted hereunder:

> *"265. To put it differently, the section as it stood prior to 2019 had itself incorporated the expression "including", which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money-laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word "and"*

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preceding the expression "projecting or claiming" therein. This Court in Pratap Singh v. State of Jharkhand459, enunciated that the international treaties, covenants and conventions although may not be a part of municipal law, the same be referred to and followed by the Courts having regard to the fact that India is a party to the said treaties. This Court went on to observe that the Constitution of India and other ongoing statutes have been read consistently with the rules of international law. It is also observed that the Constitution of India and the enactments made by Parliament must necessarily be understood in the context of the present-day scenario and having regard to the international treaties and convention as our constitution takes note of the institutions of the world community which had been created. In Apparel Export Promotion Council v. A.K. Chopra, the Court observed that domestic Courts are under an obligation to give due regard to the international conventions and norms for construing the domestic laws, more so, when there is no inconsistency between them and there is a void in domestic law. This view has been restated in Githa Hariharan, as also in People's Union for Civil Liberties, and National Legal Services Authority v. Union of India."

9. In paragraph no.268 of ***Vijay Madanlal Choudhary's*** case (supra), the Hon'ble Supreme Court of India considered the word “and” in Section 3 as “or” as under:

> *“268. Independent of the above, we have no hesitation in construing the expression “and” in Section 3 as “or”, to give full play to the said provision so as to include “every” process or activity indulged into by anyone, including projecting or claiming the property as untainted property to constitute an offence of money-laundering on its own. The act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money-laundering. In other words, it is not open to read the different activities conjunctively because of the word “and”. If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily frustrated by the simple device of one person possessing proceeds of crime and his accomplice would indulge in projecting or claiming it to be untainted property so that neither is covered under Section 3 of the 2002 Act.*

10. Plain reading of Section 3 of PMLA, in the context of the interpretation given by the Hon'ble Supreme Court of India in ***Vijay Madanlal Choudhary's*** case (supra) would be sufficient to form an opinion that the persons who have knowingly assisted for commission of the offence of money laundering also can be implicated as accused under PMLA. The language employed under Section 3 of PMLA would amplify "*whosoever, knowingly assist or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime*". It is clear that the word employed between these phrases are "or". Therefore, any person, knowingly assist or knowingly is a party, is also an offender.

11. In the present case, the investigation conducted by the Enforcement Directorate revealed that housing loans / additional housing loans / mortgaged loan / personal loan, to the tune of Rupees 5 Crore 21 Lakhs, in the name of A4 to A24 were recommended by Mr.S.Kumar(A3). Investigation revealed that the above loans were obtained through forged and fabricated documents including income tax statements, financial statements, balance sheets, approval plans, sale agreement etc., all pretending to be genuine. The properties purchased in the name of A4 to A24 were in

possession and enjoyment of A4 to A25, who were the lenders to A3. The investigation conducted by the competent authority, in exercise of powers conferred under Section 5(1) of PMLA and the consequential provisional attachment made, was confirmed by the adjudicating authority in O.C. No.359 of 2015 dated 07.01.2015. Statements recorded under Section 50(2) and (3) of PMLA revealed that A3 to A24 have no sufficient sources of income. They are neither assesses of income tax nor possessed any property. They lend their names to A3 Mr.S.Kumar in acquiring the above said property based on the incision of the request made by A3.

12. We have gone through the relevant portions of the records whereby the petitioner's/ accused person's involvement regarding in the offence of money laundering is referred. Though, the learned counsel for the petitioners would submit that these accused were not in possession of proceeds of crime, nor assisted the other accused persons for securing loan fraudulently, such grounds are to be adjudicated by conducting full-fledged trial and this Court, while dealing with the present petitions seeking to quash complaints, cannot consider such factual disputes involved.

13. Complaints under PMLA can be quashed only if the case of the Enforcement Directorate is “groundless". If the Court forms an opinion that in any angle there is no possibility of proceeding with the trial nor the prosecution has no material available on record, then alone the Court can quash the complaint but not otherwise. Even an iota of doubt regarding availability of material must go in favour of the prosecution, since the scope of PMLA cannot be compared with the other penal laws. PMLA is a special enactment and code in itself. It contemplates procedures and the scope of offence of money laundering. Section 3 of PMLA, is wider enough and incomparable with the other penal laws. Once the statements are recorded under Section 50 of PMLA and primary materials are collected by the Enforcement Directorate, then it is for the accused to establish their innocence under Section 24 of the PMLA. The burden of proof lies on the accused under PMLA. Therefore, this Court is of the considered opinion that quashing of the complaint would cause prejudice to the prosecution in the present case.

14. Since there are specific allegations in the complaint that the petitioners/ accused persons have knowingly assisted the other accused for

securing loans from the Syndicate Bank fraudulently and by producing forged documents, their involvement now cannot be determined by this Court and it is for the petitioners to establish their innocence under Section 24 of the PMLA, during the course of trial.

15. The respondents/ prosecution is able to establish that there is a prima facie case for trial. Thus, we are not inclined to consider the relief as such sought for in the present petitions. However, the Trial Court shall proceed with the trial uninfluenced by the observations, if any, made in the present order relating to the facts and decide the issues on merits independently.

16. With these observations, the Criminal Original Petitions are dismissed. Consequently, the connected miscellaneous petitions are closed.

(S.M.S.J.,) **(N.M.,J.)**
23.09.2024

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

To

1. The Deputy Director,
Directorate of Enforcement,
Government of India,
2nd & 3rd Floor,
Murugesa Naicker Complex,
No.84, Greams Road,
Chennai-600 006.

2.Principal Sessions Judge, Chennai.

3. The Public Prosecutor,
High Court of Madras.

S.M.SUBRAMANIAM, J.

and

N.MALA, J.

(sha)

Crl.O.P.Nos.10416, 7812 & 9345 of 2022

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