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WP No.13425 of 2023 and
CrI.O.P.No.28042 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.12.2023

PRONOUNCED ON : 05.01.2024

CORAM :

THE HON'BLE MR. JUSTICE S.S.SUNDAR
AND
THE HON'BLE MR.JUSTICE SUNDER MOHAN

WP No.13425 of 2023
and CrI.O.P.No.28042 of 2023
and WMP No.13100 of 2023 in WP No.13425 of 2023
and CrI.M.P.No.19467 of 2023 in CrI.O.P.No.28042 of 2023

WP No.13425 of 2023

Shri Suresh Kumar D Kochar

.. Petitioner

v.

1. The Deputy Director,
Directorate of Enforcement,
O/o.Jt. Director, Chennai Zonal Office,
2nd and 3rd Floor, Murugesan Naicker Complex,
84, Greams Road, Chennai – 600 006.

2. The Assistant Director,
Directorate of Enforcement,
O/o.Jt. Director, Chennai Zonal Office,
2nd and 3rd Floor, Murugesan Naicker Complex,
84, Greams Road, Chennai – 600 006.



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3. Special District Collector,
Land Acquisitions,
Chennai Metro Rail Limited,
METROS, Anna Salai,
Nandanam, Chennai – 600 035.

.. Respondents

Writ Petition filed under Article 226 of Constitution of India, for issuance of a writ of certiorarified mandamus, calling for the records of the 2nd respondent herein in and connected with order dated 06.03.2023 in F.No.ECIR/CEZO-1/39/2021 quash the same as being without authority of law and illegal and direct the said respondent to act on the representation of the petitioner dated 19.02.2023 and give their no objection for acquisition of property situated at Old Survey No.43(Part), Block 18, Kolathur Village, Chennai and payment of compensation thereof by the 3rd respondent.

CrI.O.P.No.28042 of 2023

Shri Suresh Kumar D Kochar

.. Petitioner

v.

The Assistant Director,
Directorate of Enforcement,
Govt. of India,
Chennai Zonal Office-1,
V & VI Floor, BSNL Administrative Building,
No.2, Kushkumar Road, Nungambakkam,
Chennai – 600 034.

.. Respondents



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Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in and connected with Spl.C.C.No.6 of 2023 on the file of the learned XII Additional Special Judge for CBI Cases, Special Court for PMLA Cases, Chennai and quash the same.

For Petitioner
in both cases : Mr.B.Sathish Sundar
For Respondent : Mr.Rajinish Pathiyil (for R1&R2)
in both cases : Special Public Prosecutor

COMMON ORDER

(Order of the Court was delivered by SUNDER MOHAN,J.)

The 3rd accused, facing trial in Spl.S.C.No.6 of 2023 on the file of the learned XII Additional Special Judge for CBI Cases, Special Court for Prevention of Money Laundering Act (hereinafter referred to as 'PMLA') Cases, Chennai, on the complaint filed by the respondent herein, has preferred the above quash petition. He has also filed the above writ petition to quash the order dated 06.03.2023 in F.No.ECIR/CEZO-1/39/2021 and to consider his representation dated 09.03.2023, to give no objection for him to claim compensation that was deposited for acquiring his lands by the authorities of Chennai Metro Rail Limited (hereinafter referred to as 'CMRL').



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2. The brief facts leading to the filing of the above petitions are as follows:

(a) Between 2004 and 2006, several complaints were filed against one Dhanraj Kochar (A1) and others alleging that properties of a company by the name of DR Foundations and Estates Private Limited were misappropriated and sold to the kith and kin of the said Dhanraj Kochar for inadequate consideration.

(b) On 04.08.2006, FIR No.815 of 2006, was registered by J-9 Thuraipakkam Police Station for offences under Sections 408, 420, 468, and 120B of the IPC against the petitioner and others that the complainant had entrusted Rs.1.71 Crores to the company, DR Foundations and Estates Pvt. Ltd.,; that Dhanraj Kochar and others had misappropriated the same by withdrawing the money; and that the said Dhanraj Kochar had purchased properties in the name of his kith and kin.



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(c) On 14.04.2007, the police filed the final report after investigation in the said FIR in C.C.No.530 of 2007 on the file of the learned Judicial Magistrate, Alandur. The petitioner and others were convicted for the offence under Sections 409 r/w 109 and 120B of the IPC. The petitioner preferred an appeal before the learned Additional District and Sessions Judge, Chengalpattu, in CrI.A.No.82 of 2017.

(d) On 10.10.2022, the learned Additional District and Sessions Judge, Chengalpattu, dismissed the appeal and confirmed the conviction against the petitioner. The petitioner has preferred CrI.R.C.No.1577 of 2022, which is pending before this Court.

(e) Another FIR in Cr.No.73 of 2018 was registered by Central Crime Branch, Chennai, for the offence under Sections 420 and 34 of IPC on the complaint given by one Sathak Ahmed Shaw, S/o.M.S.Hameed (de-facto complainant in Cr.No.815 of 2006), alleging that the petitioner and others cheated the de-facto complainant by entering into a joint venture with



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another company.

(f) The petitioner and others filed quash petitions before this Court in CrI.O.P.Nos.7325, 11095, and 11427 of 2018, praying for the quashing of FIR in Cr.No.73 of 2018. This Court, by order dated 15.02.2020, quashed the said FIR. It is reported that this order has not been challenged before the Hon'ble Supreme Court.

(g) Similarly, another FIR was registered against the petitioner and others in Cr.No.100 of 2014 for the offence under Sections 406, 420, and 506(i) of the IPC which was also quashed by this Court in CrI.O.P.Nos.15716/2017 and 8609 of 2019, etc. batch on 16.08.2022. The SLP preferred against the said order was also dismissed by the Hon'ble Supreme Court on 01.09.2023 in SLP (CrI.) Diary No.5737/2023.

(h) Meanwhile, the respondent herein recorded an ECIR in F.No.ECIR/CEZO-1/39/2021 and attached the properties belonging to the



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petitioner and others to the tune of Rs.62 Crores. The respondent also sent a communication to the bank authorities not to disburse the sum of Rs.43,34,528/- which is part of the compensation deposited by the CMRL authorities for acquiring the land belonging to the petitioner. The petitioner had requested the 2nd respondent in the writ petition for a 'no objection certificate', to withdraw the amount deposited as compensation in his bank account. The 2nd respondent rejected the said request saying that though the FIR in Cr.No.100 of 2014 has been quashed, the proceedings under the PMLA to trace the proceeds of crime can be continued since another case is still pending.

3. During the pendency of the writ petition, the respondent also produced the provisional attachment order dated 23.11.2023, which states that a sum of Rs.43,34,528/- payable to the petitioner by the CMRL shall not be transferred, disposed of, removed, parted with, or otherwise dealt with unless or until specifically permitted by the authorities of the Enforcement Directorate.



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4. (i) The learned counsel for the petitioner submitted that the impugned complaint in CrI.O.P.No.28042 of 2023 is not maintainable in view of the recent judgment of the Hon'ble Supreme Court in ***Pavana Dibbur Vs. The Directorate of Enforcement*** [MANU/SC/1271/2023], wherein the Hon'ble Supreme Court held that Section 120-B of IPC would become a scheduled offence only if the criminal conspiracy is to commit any offence included in parts A, B or C to the schedule to the PMLA.

(ii) The learned counsel for the petitioner submitted that in the instant case, the complaint only refers to 120B of IPC (i.e) conspiracy to commit the offence under Section 409 of IPC, which is not a scheduled offence and therefore, it cannot be termed as proceeds of a crime for the respondent to maintain a complaint. The learned counsel therefore submitted that the consequential communication sent by the respondent to withhold the payment of compensation to the petitioner and the attachment order are



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unsustainable and prayed for allowing the petitions.

5. Mr.Rajinish Pathiyil, the learned Special Public Prosecutor submitted that though the matter is covered by the judgment of the Hon'ble Supreme Court in ***Pavana Dibbur***'s case [cited supra], he may be permitted to file a counter to refute some of the factual averments made by the petitioner in the petitions. The learned Special Public Prosecutor also submitted that even if two FIRs were quashed, the equivalent property to the value of the property derived or obtained as a result of criminal activity could be attached. Therefore, the learned Special Public Prosecutor submitted that the grounds on which the writ petition was filed, are unsustainable.

6. We have perused the complaint and the impugned orders in the Writ Petition and the Criminal Original Petition. Though initially we had ordered notice in the Criminal Original petition to enable the respondent to file a counter, we were inclined to take up the matter along with the Writ



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Petition since the facts necessary to decide the above petitions are not in dispute and the issue is directly covered by the decision of the Hon'ble Supreme Court.

7. The impugned complaint is on the basis that the petitioner was convicted for the predicate offences under Sections 120B, 409 r/w 109 of the IPC. There is no dispute with regard to the said fact. The offence under Section 409 of the IPC is not a scheduled offence. The question is whether the respondent can maintain the complaint if the predicate offence is the offence of criminal conspiracy. The Hon'ble Supreme Court answered this question in *Pavana Dibbur's* case [cited supra]. The relevant observations are extracted hereunder.

“25. The legislative intent which can be gathered from the definition of the scheduled offence under clause (y) of sub- Section (1) of Section 2 of the PMLA is that every crime which may generate proceeds of crime need not be a scheduled offence. Therefore, only certain specific offences have been included in the Schedule. Thus, if the submissions of the learned Additional Solicitor General are accepted, the Schedule will become meaningless or redundant. The reason is that even if an offence



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registered is not a scheduled offence, the provisions of the PMLA and, in particular, Section 3 will be invoked by simply applying Section 120-B. If we look at Section 120-B, only because there is a conspiracy to commit an offence, the same does not become an aggravated offence. The object is to punish those involved in conspiracy to commit a crime, though they may not have committed any overt act that constitutes the offence. Conspiracy is an agreement between the accused to commit an offence. If we look at the punishments provided under Section 120-B, it becomes evident that it is not an aggravated offence. It only incorporates the principle of vicarious liability. If no specific punishment is provided in the Statute for conspiracy to commit a particular offence, Section 120-B Section 120-B treats a conspirator of the main accused as an abettor for the purposes of imposing the punishment. The interpretation suggested by the ED will defeat the legislative object of making only a few selected offences as scheduled offences. If we accept such an interpretation, the statute may attract the vice of unconstitutionality for being manifestly arbitrary. It cannot be the legislature's intention to make every offence not included in the Schedule a scheduled offence by applying Section 120-B. Therefore, in our view, the offence under Section 120-B of IPC included in Part A of the Schedule will become a scheduled offence only if the criminal conspiracy is to commit any offence already included in Parts A, B or C of the Schedule. In other words, an offence punishable under Section 120-B of IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is otherwise a scheduled offence.



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26. Coming back to the facts of the case, in the charge sheets filed in the alleged scheduled offences, there is no allegation of the commission of criminal conspiracy to commit any of the offences included in the Schedule. As pointed out earlier, except for Section 120-B of the IPC, no other offence in the schedule has been applied. Therefore, in this case, the scheduled offence does not exist at all. Hence, the appellant cannot be prosecuted for the offences punishable under Section 3 of the PMLA.”

8. In the complaint, the respondent has stated in paragraph 3 (i) as follows:



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“(i) As submitted above, Shri Dhanraj Kocha and his family members in connivance with the said three Authorised Signatories of M/s.D R Foundations and Estates Pvt. Ltd. cheated Shri M.S Hameed through a criminal conspiracy and this fact i.e., the commission of scheduled offence [Section 120 B] is proved in the trial held in the predicate offence.”

9. As stated earlier, the petitioner was convicted for the offence of 409 r/w 109 and 120B of the IPC. Therefore, the predicate offence alleged and proved is conspiracy to commit offence under Section 409 of the IPC which is not a scheduled offence. Therefore, even assuming that there are proceeds of crime, it cannot be said to be as a result of commission of a scheduled offence, which is a prerequisite to maintain a complaint under Section 3 of the PMLA. The above referred observations of the Hon'ble Supreme Court are squarely applicable to the facts of the instant case. The complaint is therefore liable to be quashed on that sole ground, and hence, we are not expressing any opinion on the other submissions made by the learned counsel for the petitioner.



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10. Since the respondent lacks jurisdiction under the PMLA, the communications sent to the Bank to withhold the portion of the compensation amount payable to the petitioner by the CMRL, also cannot be sustained. As stated earlier, during the pendency of the writ petition, the respondents passed a provisional attachment order dated 23.11.2023 bearing F.No.ECIR/CEZO-1/39/2021. Even in the said provisional attachment order, the respondent has stated that the petitioner has committed an offence under Section 120B of the IPC. The relevant portion reads as follows:

“17. Investigation revealed that Shri Dhanraj Kochar and his family members in connivance with the said three Authorized Signatories of M/s.D R Foundations and Estates Pvt. Ltd. cheated Shri M.S Hameed through a criminal conspiracy and this fact i.e., the commission of scheduled offence [Section 120B] is proved in the trial held in the predicate offence....”

11. Since the respondent has no jurisdiction to invoke the provisions of PMLA, as there are no proceeds of crime relating to any scheduled



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offence, the proceedings impugned in the Writ Petition is also liable to be set aside. Consequentially, though the Provisional Attachment Order: 13/2023 has not been challenged, we are inclined to hold that the said attachment order is also without jurisdiction.

12. With the above observations, the Criminal Original Petition and the Writ Petition are allowed, as prayed for. Consequently, the connected Miscellaneous Petitions are closed.

(S.S.S.R.,J.) (S.M.,J.)
05.01.2024

Index : yes/no
Neutral citation : yes/no
Speaking Order/Non-Speaking Order
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5. The Public Prosecutor,
High Court, Madras



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S.S.SUNDAR,J.

AND

SUNDER MOHAN,J.

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Pre-delivery common order in
WP No.13425 of 2023
and CrI.O.P.No.28042 of 2023

05.01.2024