IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.08.2024

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.No.16467 of 2022
and
W.M.P.Nos.23386, 15748, 18071 & 15749 of 2022

Shri Anitha R.Radhakrishnan ... Petitioner

Vs.

1. The Directorate of Enforcement,
Chennai Zonal office,
Shastri Bavan, III Block, III and IV Floor,
26, Haddows Road,
Chennai-600 006.

2. The Deputy Director,
Directorate of Enforcement,
Ministry of Finance,
Department of Revenue,
Chennai Zonal Office,
'B' Wing, 3, 4 and 5th Floor,
Shastri Bhavan,
No. 26 Haddows Road,
Chennai – 600006.
Email ddcezoii 4- ed@gov.in ... Respondents

Prayer :- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records connected with the impugned Enforcement case Information Report (ECIR) registered by the 2nd respondent being ECIR. No. /CEZO-II /21/ 2020, dated 22.12.2020 and all further proceedings emanating out of the impugned ECIR and quash the same.

For Petitioner	:	Mr.Siddharth Aggarwal for Mr.R.D.Ashok Kumar assisted by Mr.Anshuman Singh & Mr.Harsh Yadav.
For Respondents	:	Mr.A.R.L.Sundaresan, Additional Solicitor General of India assisted by Mr.N.Ramesh, Special Public Prosecutor for ED

O R D E R

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

The lis on hand has been instituted questioning the validity of initiation of proceedings under the Prevention of Money Laundering Act, 2002 (hereinafter referred as PMLA) in enforcement case information report dated 22.12.2020. The schedule offence is under the Prevention of Corruption Act, 1988 (hereinafter referred as PC Act), and the petitioner is charged under Section 13(2) r/w Section 13(1)(e). The investigating agency for the schedule offence is Vigilance and Anti-Corruption, Thoothukudi Detachment. Admittedly, the very initiation of proceedings by the Directorate of Enforcement is under challenge in the present writ proceedings.

2. A writ against initiation of such proceedings under PMLA/ show cause notice is entertainable if it is established that such proceedings are issued without any jurisdiction or tainted with the allegations of malafides. The petitioner has raised the ground of jurisdiction mainly relying on the scheme of PMLA with reference to the PC Act.

3. Let us first consider the scheme of PMLA to consider the jurisdictional point raised on behalf of the petitioner. Section 2(1)(u) defines "***proceeds of crime***" means *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]*;

4. Section 2(1)(v) defines "***property***" means *any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located*.

5. Section 3 enumerates "***Offence of money-laundering***" and reads as under: *Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*

6. Section 24 of the Act denotes "***Burden of proof***" and reads as under:

"In any proceeding relating to proceeds of crime under this Act,-

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."

7. The learned Senior Counsel, Mr. Siddharth Aggarwal, assisted by learned counsel Mr.R.D.Ashok Kumar for petitioners, would submit that Section 13 under the PC Act, was brought under the schedule in PMLA with effect from 01.06.2009. In the present case, the alleged disproportionate wealth, by the petitioner, was acquired from 14.05.2001 to 31.03.2006. The retrospective application of the amendment made in the schedule to PMLA was considered by the Hon'ble Supreme Court in the case of ***Vijay Madanlal Chaudhari Vs. Union of India*[1]*.** It is mainly contended that possessing disproportionate asset is one aspect of the matter. But such possession, whether can be construed as proceeds of crime within the definition of PMLA, is the issue to be considered for the purpose of setting aside the initiation proceedings by the Enforcement Directorate. It is emphasised that even in case a person possess disproportionate asset, such asset per se cannot be construed or brought under the definition of proceeds of crime under PMLA so as to initiate actions under the provisions of PMLA. Thus, there is a jurisdictional error occurred in the case of the petitioner while initiating the proceedings and thus, it is without jurisdiction.

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1 2022 SCC Online SC 929

8. To substantiate the said ground, the learned Senior Counsel Mr.Siddharth Aggarwal would rely on Paragraph No.270 of the Judgement in ***Vijay Madanlal Chaudhari's*** case (supra) wherein Apex Court made the following observations:

> *"270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until*

fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No.2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

9. The leaned Senior Counsel relied on the further observations made by the Apex Court in the case of ***Vijay Madanlal Chaudhari*** (supra) that the attachment must be only in respect of property which appears to be proceeds of crime and not all the properties belonging to the concerned person, who would eventually face an action of confiscation of proceeds of crime including prosecution for offence of money laundering. Therefore, there must be a prima facie opinion to be formed by the authorities and there is a reason to believe for initiation of action. Condition stipulated is that the

proceeds of crime must be established. In the absence of establishing the disproportionate asset as proceeds of crime, the initiation of proceedings becomes without jurisdiction. Mr.Aggarwal, learned Senior Counsel relied on Paragraph Nos. 472 and 473 of the judgement and would contend that certain appeals are detagged by the Apex Court and listed separately, mainly on the pretext that those cases are to be considered with reference to the facts involved to identify whether the proceeds of crime, within the definition of PMLA, is present.

10. The said issue is pending in respect of one matter/ one petition is pending and issue relating to retrospectivity is also raised in the said petition with reference to Section 13(1)(e) of PC Act. However, we are not on the said ground as far as the relief sought for in the present writ petition is concerned. Regarding retrospective insertion of Section 13 into Schedule to PMLA, it is made clear by the learned Additional Solicitor General of India that the Hon'ble Supreme Court in ***Vijay Madanlal Chaudhari's*** case (supra) in the very same Paragraph No.270, has clarified that "*the criminal activity may have been committed before the same had been notified as schedule offence for the purpose of the 2002 Act, but if the person has indulged in or*

continues to indulge directly or indirectly in dealing with the proceeds of crime, derived or obtained from such criminal activity even after it has been notified as schedule offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act- for continuing to possess of concede the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches unless fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the schedule offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime." Therefore, the date of possession of proceeds of crime is immaterial to initiate proceedings under PMLA. In the present case, possession of disproportionate wealth was identified and such disproportionate wealth was possessed in between the years 2001 and 2006. That being so, there is no impediment for the Enforcement Directorate to invoke the provisions of PMLA.

11. On facts, FIR in Crime No.4 of 2006 has been registered by Vigilance and Anti-Corruption, Thoothukudi detachment on 07.09.2006 under Section 13(2) r/w 13(1)(e) of PC Act. On 10.10.2008, first charge

sheet was filed. On 08.12.2009, Vigilance and Anti-Corruption filed a petition before the learned Chief Judicial Magistrate and Special Judge Thoothukudi in Special C.C. No. 08 of 2008, seeking for further investigation of the case. On 13.12.2010, second charge sheet has been filed by the Deputy Superintendent of Police along with enclosures before the Chief Judicial Magistrate and Special Judge, Thoothukudi in Special C.C. No.08 of 2008. Another application was filed seeking reinvestigation on 17.08.2011. Consequently, third charge sheet has been filed by the Vigilance and Anti-Corruption on 18.07.2013. Thereafter, the Enforcement Directorate registered the impugned proceedings on 22.12.2020, which is under challenge in the present writ proceedings.

12. The above facts would reveal that the process of further investigations were continued and the third charge sheet was filed by Vigilance and Anti-Corruption Department on 18.07.2013, and on 15.12.2017 an order framing charge was passed by the Special Judge for Vigilance and Anti-Corruption. Provisional order of attachment of eight (8) properties were made absolute till the disposal of the case on 05.02.2020. Thereafter, the Enforcement Directorate initiated impugned proceedings on

22.12.2020. The events, as narrated above, would be sufficient to form an opinion that the ground of retrospectivity raised by the petitioner cannot sustain. The investigations were in progress even after inserting Section 13 of PC Act, as predicate offence in the schedule under PMLA. At the time of filing of the charge sheet in the year 2013, holding disproportionate asset is a predicate offence under PMLA. Thus, we have no hesitation in arriving at a conclusion that the ground of retrospectivity cannot be taken into consideration for quashing the initiation proceedings by the Enforcement Directorate. In this context it is relevant to look into the observations made by the Apex Court in Paragraph No.250 of ***Vijay Madanlal Chaudhari's*** case (supra) which reads as under:

> *"The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present participle of word "relate" and the word "relatable" is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the*

scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e.,Section 2(1)(u)]."

13. It is mainly contended that possession of disproportionate asset per se would not constitute predicate offence. Mere possession would be insufficient to invoke the provisions of PMLA. In the context of the said submission, it is not in dispute that Section 13 of PC Act has been incorporated under Schedule to PMLA and thereafter, construed as predicate offence. The Hon'ble Supreme Court in ***Vijay Madanlal Chaudhari's*** case (supra) clarified that the date of commission of offence is immaterial for initiation of proceedings under PMLA. The requirement is to satisfy the provisions of PMLA and not the date on which the criminal misconduct was committed under the PC Act. Section 13 of PC Act as a whole has been inserted in schedule to PMLA and construed as predicate offence.

14. Section 2(1)(x) defines *"Schedule" means the Schedule to this Act*. Section 2(1)(y) defines *"Scheduled offence" means—*

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule."

15. Once the authorities found that there is presence of proceeds of crime within the meaning of Section 2(1)(u), they are empowered to initiate proceedings under PMLA. In the present case, Section 13 as a whole has been incorporated under the schedule to PMLA. Therefore, the arguments that mere possession of disproportionate assets cannot be a ground to form an opinion that such disproportionate wealth is proceeds of crime, deserves no merit consideration. Under Section 24 of the PMLA, it is for the affected person to prove that it is not the proceeds of the crime within the meaning of PMLA. The High Court, in exercise of the powers of Judicial Review under Article 226, cannot go into such disputed facts, which all are to be adjudicated during Trial, based on documents and evidences on record. Scope of judicial review if expanded in such nature of initial proceedings hampering further inquiry, then there is a possibility of miscarriage of justice. The parties must be allowed to establish their own case before the Court competent for arriving at a final decision. At the stage of initiation of proceedings, High Court is not expected to consider those grounds on merits so as to form an opinion, whether the disproportionate of wealth constitute a predicate offence or proceeds of crime or otherwise. For doing such an exercise, examination and scrutinisation of documents are necessary. Thus, in our opinion, it is beyond the scope of the power of judicial review and it is left open to the affected persons to prove that the disproportionate assets identified is not proceeds of crime under the provisions of PMLA. Therefore, the observations of the Hon'ble Supreme Court in ***Vijay Madanlal Chaudhari's*** case (supra), interpreting the provisions of the PMLA with reference to various possible circumstances, cannot have any assistance to the petitioner so as to quash the initiation of proceedings by the Enforcement Directorate under PMLA. The observations made by the Apex Court are the guiding factors for the purpose of application of facts and the said observations cannot be relied on and all such observations made by the Apex

Court cannot be raised as a ground for quashing the initiation of proceedings. Thus, various paragraphs referred on behalf of the petitioner in ***Vijay Madanlal Chaudhari's*** case (supra) may not have any direct assistance to the petitioner to quash the proceedings. It is for the petitioner to establish his case that the disproportionate asset is not falling under the definition of proceeds of crime under PMLA during the course of trial.

16. Nibbing the bud at the initial stage is not desirable. The authorities shall be permitted to conduct investigation to from final opinion. Paving way for longevity of the litigation based on ill motive of the litigants, at no circumstances be encouraged by the Courts. Initiation of proceedings per se would not provide cause for institution of writ proceedings, unless it is wholly without jurisdiction. Even an iota of doubt on jurisdiction must be held in favour of the investigating agency and not in favour of the affected person. Truth regarding the possession of disproportionate asset must be culled out by the agency by conducting thorough investigation and by following due process of law.

17.In the present case, the learned Additional Solicitor General of

India would submit that the Trial has commenced in the predicate offence. The Enforcement Directorate is in the process of conducting further investigation under PMLA.

18. The respondents shall proceed with the investigation and conclude the same as expeditiously as possible. Petitioner is expected to co-operate for early completion of the investigation.

19. With the above observations, the writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,) **(V.S.G.J.,)**
07.08.2024

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

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Chennai Zonal office,
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S.M.SUBRAMANIAM, J.

and

V.SIVAGNANAM, J.

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W.P.No.16467 of 2022

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