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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.01.2024

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.16500 of 2023

R.Thatheeshwaran @ Nagulan
@ Tamilvanan

.. Petitioner

vs.

1.State rep.by
Inspector of Police
'Q' Branch, Kancheepuram Police Station.
(Cr.No.1 of 2020)

2.Deputy Director
Directorate Enforcement
Cochin.

.. Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.878 of 2022 on the file of the learned Judicial Magistrate-I, Chengalpattu and set aside the order dated 6.3.2023 in Crl.MP.No.1055 of 2023.

For Petitioner : Mr.G.Sriram
For Respondents : Mr.A.Gopinath
Government Advocate (Crl. Side) for R1
Mr.N.Ramesh
Special Public Prosecutor for (ED)
for R2

ORDER

This criminal original petition has been filed challenging the order passed by

the Court below in Crl.MP.No.1055 of 2023 in C.C.No.878 of 2022, wherein the Court



below has dismissed the application seeking for return of the case property on the ground that the property is a subject matter of ED proceedings.

2.The 1st respondent in the course of investigation in Crime No.1 of 2020, seized the Car and iPhone belonging to the petitioner. The petitioner filed an application before the Court below seeking for the return of these properties. The Court below dismissed the application on the ground that ED proceedings are pending. Aggrieved by the same, the present criminal original petition has been filed before this Court.

3.When the matter came up for hearing on 15.9.2023, this Court suo motu impleaded the Directorate of Enforcement, Cochin, as the 2nd respondent in this criminal original petition. This Court also directed the learned counsel for the petitioner to serve notice on the learned Special Public Prosecutor appearing on behalf of the impleaded 2nd respondent. This direction was given since this Court wanted to ascertain the stand of the Enforcement Directorate in this case pertaining to the property.

4.The 2nd respondent has filed a reply. On going through the reply, it is seen that NIA is now investigating a case and in the course of investigation, 10 accused persons were arrested. A charge sheet has also been filed before the Special Court on 15.12.2021 against 12 accused persons. Since the predicate offence falls within the scheduled offence, the Enforcement Directorate got into the picture. In the



course of enquiry, certain properties were identified and a provisional attachment order was passed on 8.4.2022. One such property was the Car that belonged to the petitioner. The Enforcement Directorate has justified the attachment of the Car belonging to the petitioner in the following manner:

17. That as per the statement of the petitioner/accused recorded u/s 50(20 & (3) of the PMLA, 2002 on 11.2.2022, he inter alia stated that he is a Sri Lankan who came to India illegally in 2007: that he met Shri Suresh Raj in Madurai Jail and he also got associated with S/Shri Satkunam @ Sabeshan and Soundararajan; that he and Sabeshan started a partnership firm having name Ms. Puthiya Uthayam Gobika Enterprises which was into transactions of Western Union, Money Gram, Riya Money etc; that illegal money generated through drug business by Sabeshan was converted into white money at the Gobika Enterprises; that he deposited cash in CDM many times; **that he owned a Innova purchased in 2019 with the help from Sabeshan;** that he was associated with Satkunam and he had worked with suspect persons in this case and he was aware of the case registered by NIA.

18. That Shri Satkunam @ Sabeshan parked proceeds of crime generated by him in the bank accounts maintained in his own name and that in the name of his partner Shri Thatheeswaran. Shri Satkunam did not have any legal income and he used his firms as a frontal for laundering of proceeds of crime generated by him through commission of scheduled offence. In his statement dated 8.3.2022, on being asked about his source of income for purchase of Toyota Innova Vehicle No/TN 10 AV 5476 registered in his name, he could not furnish any satisfactory reply/evidence.

5. Heard Mr.G.Sriram, learned counsel for the petitioner, Mr.A.Gopinath, learned Government Advocate (Crl. Side) for R1 and Mr.N.Ramesh, learned Special Public Prosecutor (ED) for R2.



6.It was brought to the notice of this Court by the learned Special Public Prosecutor appearing on behalf of the Enforcement Directorate that the provisional order of attachment has been confirmed and that no steps have been taken to file any appeal against that order. That apart, the complaint has also been filed before the Competent Court under the provisions of the PMLA, Act 2002.

7.The learned counsel for the petitioner questioned the very power and jurisdiction of the Enforcement Directorate to get into this issue and prevent the petitioner from getting the Car returned back to him.

8.The learned Government Advocate (Crl.Side) appearing on behalf of the 1st respondent submitted that the property that was seized is now a subject matter of attachment by the Enforcement Directorate and therefore, the Court below was perfectly right in dismissing the application filed by the petitioner.

9.In the considered view of this Court, the petitioner will not be permitted to collaterally attack the steps taken by the Enforcement Directorate to attach the property, in this petition. The legality or otherwise of the steps initiated by the Enforcement Directorate has to be questioned separately in the manner known to law.

10.The Court below took into consideration the fact that the Car was also a subject matter of attachment in the Enforcement Directorate proceedings and



therefore, did not entertain the application filed by the petitioner. Such stand taken by the Court below does not suffer from any illegality or infirmity and it does not require the interference of this Court.

11.If the petitioner has any other mode of offsetting the value of the property that has now been attached by the Enforcement Directorate under the relevant Rules, it will be left open to the petitioner to invoke the said Rule and seek for the return of property.

12.The Court below has not taken into consideration the status of the iPhone in this case which has also been seized in the course of investigation. This iPhone has not been attached by the Enforcement Directorate. Therefore, it will be left open to the petitioner to file a fresh application before the Court below seeing for return of the iPhone. It is left open to the respondent to take their stand on such application being filed and the Court below shall pass orders in the application in accordance with law within a period of four weeks.

13.In the light of the above discussion, this criminal original petition stands dismissed.

19.01.2024

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
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N. ANAND VENKATESH,, J.

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To

1. Inspector of Police
'Q' Branch, Kancheepuram Police Station.
(Cr.No.1 of 2020)
2. The Deputy Director
Directorate Enforcement
Cochin.
3. Judicial Magistrate-I,
Chengalpattu.
4. The Public Prosecutor,
High Court of Madras,
Madras.

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