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CrI.O.P.No.16117 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM :

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

CrI.O.P.No.16117 of 2024

&

CrI.M.P.No.9832 of 2024

Jaffer Sadiq

...

Petitioner

Vs.

The Assistant Director,
Directorate of Enforcement,
Chennai Zonal Unit – 1,
5th & 6th Floor, BSNL Administrative
Building, Kushkumar Road,
Nungambakkam, Chennai-600 034. ...

Respondent

Prayer: The criminal original petition has been filed under Section 482 of Cr.P.C. to call for the records pertaining to the arrest order dated 26.06.2024 passed by Shri Sunil Shankar Yadav, Assistant Director in File No.ECIR/CEZO-1/09/2024, on the file of the Joint Director, Directorate of Enforcement, Chennai Zonal Unit-1 and quash the same and all consequent proceedings thereto.

For Petitioner

: Mr.Abdulkumar Rajarathinam
Senior Counsel
for Mr.K.M.Kalicharan

For Respondent

: Mr.N.Ramesh
Special Public Prosecutor (for ED)

ORDER



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

Under assail is the order dated 26.06.2024 passed by Shri Sunil Shankar Yadav, Assistant Director in File No.ECIR/CEZO-1/09/2024, on the file of the Joint Director, Directorate of Enforcement, Chennai Zonal Unit-1.

2.The criminal original petition has been instituted under Section 482 of Cr.P.C. to quash the arrest order dated 26.06.2024. The learned Senior Counsel Mr.Abdulkumar Rajarathinam appearing on behalf of the petitioner would mainly contend that the impugned arrest order is directly in violation of Section 19 (3) of the Prevention of Money Laundering Act, 2002 (hereinafter referred as PMLA). It is contended that the petitioner was formally arrested on 26.06.2024 by the Enforcement Directorate and remanded to judicial custody on 15.07.2024. Thus, the respondent has failed to comply with the mandatory requirement as contemplated under Section 19 of PMLA.

3.In order to substantiate the said contention, the learned senior counsel would refer the observation made by the Supreme Court of India in the case of ***Vijay Madanlal Choudhary and others Vs. Union of India and others reported in 2022 SCC online SC 929***. The Apex Court in Vijay Madanlal case cited supra reiterated the spirit of Section 19 of PMLA in unequivocal terms. Section 19 of PMLA confers power to arrest. Sub section (1) reads as under:



(1) If the Director, Deputy Director, Assistant Director or any other officer authorised in this behalf by the Central Government by general or special order, has on the basis of material in his possession, reason to believe (the reason for such belief to be recorded in writing) that any person has been guilty of an offence punishable under this Act, he may arrest such person and shall, as soon as may be, inform him of the grounds for such arrest.

Sub Section 3 reads as under:

(3) Every person arrested under sub-section(1) shall, within twenty-four hours, be taken to a Special Court or Judicial Magistrate or a Metropolitan Magistrate, as the case may be, having jurisdiction:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of arrest to the Special Court or Magistrate's Court.

4.Taking exception, the learned Senior Counsel for the petitioner would urge that in the present case, the petitioner had not been produced within 24 hours before the Special Court and thus, the impugned order of arrest is null and void.

5.Mr.N.Ramesh, learned Special Public Prosecutor appearing on behalf of



the respondent would strenuously oppose by stating that the submission made on behalf of the petitioner is factually incorrect. The petitioner was formally arrested on 26.06.2024. The impugned order of arrest itself would indicate that on the date of passing of the arrest order, the petitioner was lodged in jail No.4, Tihar Jail, Delhi. Since the Enforcement Directorate found him guilty of an offence punishable under the provisions of PMLA, formal arrest has been made by invoking Section 19(1) of PMLA.

6. With reference to the contentions raised on behalf of the petitioner that he was not produced before the Special Court within a period of 24 hours as contemplated under Section 19 (3), the proceedings of the Special Judge/ Principal Special Judge, Chennai, dated 15.07.2024, in E.C.I.R/CEZO-I/09/2024 reveals the following facts.

“The accused Jaffer Sadiq was formally arrested by the Assistant Director Mr. Sunil Shankar Yadav, Directorate of Enforcement, Zone-1, Chennai on 26.6.2024 in terms of Sec. 19 of PMLA, 2002. A request was made before this court to issue P.T. Warrant in connection with the ECIR/CEZO/I/09/2024 on 27.6.2024 and P.T. Warrant was issued on 28.6.2024 for the production of the accused on 2.7.2024. On 2.7.2024, a memo was received by this Court through Email from the office of the Superintendent, Central Jail No.4, Tihar, New Delhi, expressing their inability to produce the accused on 2.7.2024



stating that due to shortage time permission from Chief Metropolitan Magistrate, Central District, Tis Hazari Court, Delhi could not be obtained from the Trial Sessions Hon'ble Court of Delhi, which is mandatory for outstation production of the accused. Therefore, at the request of the respondent, again on 2.7.2024 the issuance of P.T.Warrant to produce the accused before this Court, a fresh P.T.Warrant was issued with sufficient time to produce the accused before this Court on 15.7.2024.

The accused was formally arrested by the Assistant Director, Enforcement Directorate, Zone – I, Chennai, while he was in judicial custody in S.C.No.150/2024 on the file of Special Judge, NDPS Cases, Patiala House Courts, New Delhi. The accused has not come into the physical custody of the respondent at all, instead, he continues to be in judicial custody in connection with the case filed by the NCB, New Delhi. Therefore, it is not necessary for the production of the accused before this Court or before the nearest Magistrate within 24 hours from the time of the formal arrest and it cannot be considered as a violation either u/s 19 of PMLA or u/s 167 of Cr.P.C.

7. With reference to the above factual position made available in the order passed by the Special Judge/ Principal Special Judge, Chennai, it is relevant to extract the findings of the Hon'ble Supreme Court of India in the case of



V.Senthil Balaji Vs.State Represented by Deputy Director and Others reported

in (2024) 3 Supreme Court Cases 51 regarding Section 19 of PMLA, which

reads as under:

***“INTERPLAY BETWEEN SECTION 19 OF THE
PREVENTION OF MONEY LAUNDERING ACT, 2002 AND
SECTION 167 OF THE CODE OF CRIMINAL PROCEDURE, 1973:***

74.We have already touched upon the mandatory function that a Magistrate is to undertake while dealing with a case of remand. He is expected to do a balancing act. As a matter of rule, the investigation is to be completed within 24 hours and therefore it is for the investigating agency concerned to satisfy the Magistrate with adequate material on the need for its custody, be it police or otherwise. This important factor is to be kept in mind by him while passing the judicial order. We reiterate that [Section 19](#) of the PMLA, 2002, supplemented by [Section 167](#) CrPC, 1973 does provide adequate safeguards to an arrested person. If [Section 167](#) CrPC, 1973 is not applicable, then there is no role for the Magistrate either to remand or otherwise.

75.Such a Magistrate has a distinct role to play when a remand is made of an accused person to an authority under the PMLA, 2002. It is his bounden duty to see to it that [Section 19](#) of the PMLA, 2002 is duly complied with and any failure



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*would entitle the arrestee to get released. The Magistrate shall also peruse the order passed by the authority under **Section 19(1)** of the PMLA, 2002. **Section 167** of the CrPC, 1973 is also meant to give effect to **Section 19** of the PMLA, 2002 and therefore it is for the Magistrate to satisfy himself of its due compliance. Upon such satisfaction, he can consider the request for custody in favour of an authority, as **Section 62** of the PMLA, 2002, does not speak about the authority which is to take action for non-compliance of the mandate of **Section 19** of the PMLA, 2002. A remand being made by the Magistrate upon a person being produced before him, being an independent entity, it is well open to him to invoke the said provision in a given case. To put it otherwise, the Magistrate concerned is the appropriate authority who has to be satisfied about the compliance of safeguards as mandated under **Section 19** of the PMLA, 2002.”*

8. Section 65 of PMLA stipulates that “the provisions of the Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act”. PMLA being a special enactment will prevail over the general law and therefore, we have no hesitation in forming an opinion that the respondents have made arrest and thereafter, followed the procedures as contemplated under the provisions of



PMLA and we do not find any infirmity as such.

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9. In the case of *State of Inspector of Police, Anti Land Grabbing Special Cell, City Crime Branch, Trichy vs. K.N.Nehru and Others* reported in *2012 (1) MWN (Cr.) 4 (DB)*, the Division Bench of Madurai Bench of Madras High Court held as follows;

“15.if an accused already is in judicial custody in connection with some other case, when the Investigating Officer wants to arrest him in connection with a different case, some confusion may surface regarding the mode of arrest. As has been held by the Hon'ble Supreme Court in CBI, vs. Anupam J.Kulkarani, reported in 1992 (3) SCC 141], he can effect formal arrest of the accused in prison. As provided in Section 46(1) of the Code of Criminal Procedure by effecting arrest in prison, the Police Officer cannot take him into custody at all, because the detention of such accused in judicial custody has already been authorized by the Magistrate in connection with some other case. Therefore, without the authority of the Magistrate, it is not possible in law for the police officer to remove the accused after effecting arrest in prison either to the Jurisdictional Magistrate or to the nearest Magistrate for the purpose of remand.



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28. A close reading of Dinesh Dalmia's case, as referred to above, would keep things beyond any shadow of doubt that unless the accused is "in the physical custody" of the police on arrest, the question of production of the accused within 24 hours from the time of such formal arrest cannot be insisted upon. To put it otherwise, if a formal arrest is effected, as held in Anupam Kulkarni's case, when the accused is already in custody, in connection with a different case, the accused continues to be in judicial custody in connection with the former case and he never comes to the physical custody of the police, in connection with the case relating to which formal arrest is effected.

29. Therefore, there is no legal mandate that the accused should be thereafter produced before the Jurisdictional Magistrate or nearest Magistrate, within 24 hours of such formal arrest. ”

10. Therefore, in view of the settled legal position of law, if a person is already in judicial custody in connection with another case, can be formally arrested in respect of investigation of the subsequent case. Therefore, the requirements of Section 19(3) of the provisions of PMLA is complied with and



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thus, there is no violation.

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11. Thus, the criminal original petition is devoid of merits and stands dismissed. Consequently, connected miscellaneous petition is closed.

[S.M.S., J.] [V.S.G., J.]

30.08.2024

Index: Yes/No

Speaking/Non-speaking order

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1. The Assistant Director,
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Chennai Zonal Unit – 1,
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Building, Kushkumar Road,
Nungambakkam, Chennai-600 034.

2. The Public Prosecutor,
High Court, Madras.



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