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Crl.R.C.No.1262 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE DR. JUSTICE A.D. MARIA CLETE

Crl.RC.No.1262 of 2024
and
Crl.M.P.11046 of 2024

The Assistant Director (PMLA),
Directorate of Enforcement,
Ministry of Finance,
Chennai Zonal Office - II,
3rd Floor, Tower-II, BSNL Administrative Building,
Greens Road, Chennai - 600 006.

... Petitioner/Complainant

Vs.

Ashok Anand

... Respondent/Accused No.2

Prayer: Criminal Revision Petition filed under Section 397 r/w Section 401 of Criminal Procedure Code, 1908, to set aside the order dated 30.04.2024 passed in Crl.M.P.No.4236 of 2023 in Special CC.No.2 of 2022 on the file of the Court of Principal Sessions Judge Cum-Special Judge (Under PMLA) Act at Puducherry.



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For Petitioner : Mr.N.Ramesh
Special Public Prosecutor
For Respondent : Mr.M.S.Krishnan
Senior Counsel for
Mr.Anirudh Krishnan

ORDER

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

Under assail is the order dated 30.04.2024 passed in CrI.M.P.No.4236 of 2023 in Special CC.No.02 of 2022 on the file of the learned Principal Sessions Judge-cum-Special Judge (under PMLA Act) at Puducherry.

2. The Assistant Director (PMLA), Directorate of Enforcement is the revision petitioner and the respondent herein filed a petition under Section 309 of Cr.P.C. to postpone the commencement of trial in Special C.C.No.02 of 2022. The Trial Court relying on the Judgements in the case of *Vijay Madanlal Choudhary Vs. Union of India*, reported in *2022 SCC Online SC 929* and the subsequent cases allowed the petition, which provided a cause for the Enforcement Directorate to institute the present revision petition.

CONTENTIONS OF THE RESPONDENT:

3. Mr.M.S.Krishnan, the learned Senior Counsel appearing on behalf of the respondent would mainly contend that the Criminal Revision Petition is not maintainable and beyond the scope of Section 397 (2) of Cr.P.C. He would



urge the Court that the order impugned cannot be construed as final order and the trial alone is postponed pending disposal of the criminal appeal filed by the respondent against the order of conviction passed in the predicate/schedule offences.

4. It is not in dispute between the parties that the predicate offence registered against the respondent ended with an order of conviction and an appeal preferred is still pending. During the pendency of the criminal appeal, if PMLA case is tried, there is likelihood of causing prejudice to the respondent. Therefore, the trial court considered the fact that the predicate offence and the PMLA offence are inter-linked and in the event of an acquittal, there is possibility of exonerating the respondent from the PMLA proceedings and under those surmises, the petition filed under Section 309 was allowed.

5. The learned Senior Counsel would submit that the order under challenge is an interlocutory order and there is an express bar under Sub Section (2) to Section 397 of Cr.P.C. Therefore, the petition is liable to be rejected in *limine*. Secondly, he would contend that the offence of money laundering under Section 3 of PMLA is dependent on the schedule offence and once in the schedule offence the accused is acquitted as per the legal position laid down in



Vijay Madhanlal Choudhary's case as cited supra, the accused in the PMLA is entitled for an acquittal. Therefore, proceeding with the trial during the pendency of the criminal appeal would cause prejudice to the interest of the respondent, who is the accused in the PMLA case. Thus, the trial court is right in allowing the petition. That apart, postponement of trial under PMLA, would cause no prejudice to the Enforcement Directorate.

6. In support of the above contentions, the learned Senior Counsel relied on the Judgment in the Case of **Girish Kumar Suneja Vs. CBI** reported in **(2017) 14 SCC 809**, where the Hon'ble Supreme Court interpreted Section 397 of Cr.P.C.

7. In the case of **Hardeep Singh Vs. State of Punjab** reported in **(2014) 3 SCC 92**, the Apex Court made an observation that trial means determined all issues adjudging the guilt or the innocence of a person, the person has to be aware of what is the case against him and it is only at the stage of framing of the charges that the Court informs him of the same, the "trial" commences only on charges being framed.

8. Relying on the Judgments, the learned Senior Counsel would



contend that charges are yet to be framed. Admittedly, the trial has not commenced. That being the stage which remains, no prejudice would be caused in the event of postponement of trial in the PMLA case.

ARGUMENTS ON BEHALF OF THE PETITIONER:

9. Mr.N.Ramesh, the learned Special Public Prosecutor would strenuously oppose by stating that postponement of trial *sine die* would affect the prosecution side. Right to speedy trial is a constitutional right available to the accused as well as the prosecution and such a right need not be infringed unnecessarily by invoking powers conferred under Section 307 Cr.P.C. Trial Court has misunderstood the scope of Section 309 and postponed the trial. Thus, the criminal revision petition is maintainable before the High Court under Section 397 Cr.P.C.

10. It is contended that after recording ECIR, investigations are conducted to trace out the offence of money laundering under PMLA. Once the offence of money laundering is traced out, complaint under Section 44 and 45 of PMLA has been registered. Therefore, the investigation conducted for the offence of money laundering is independent and distinct. Thus, it cannot be linked with the pendency of criminal appeal filed against the order of conviction in the scheduled offence. Once the investigations are completed under PMLA, the process become standalone process. Thus, the trial must go on.



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11. Considering the arguments as advanced between the learned Senior Counsel for the respondent and the learned Special Public Prosecutor for the petitioner to the lis, Section 309 of Cr.P.C. provides power to postponement or adjourn proceedings. Sub-Section (2) to Section 309 of Cr.P.C stipulates that " If the Court, after taking cognizance of an offence, or commencement of trial, finds it necessary or advisable to postpone the commencement of or adjourn, any inquiry or trial, it may, from time to time, for reasons to be recorded, postpone or adjourn the same on such terms as it thinks fit, for such time as it considers reasonable, any may by a warrant remand the accused if in custody."

12. In the context of Sub-section (2) to Section 309 of Cr.P.C, the impugned order, which is under challenge in the present revision petition reveals that the petition was filed to postpone the commencement of trial in the above case. The trial court granted the relief of postponement of the commencement of trial till the disposal of Crl.A.No.724/2018, which is pending before the High Court in respect of schedule offence wherein, the respondent has been convicted.

13. Section 397 (1) of Cr.P.C. reads as under:

"The High Court or any Sessions Judge may call for and



examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record."

.....

14. Sub-Section (2) to Section 397 of Cr.P.C. reads as under:

"(2) The powers of revision conferred by sub-section (1) shall not be exercised in relation to any interlocutory order passed in any appeal, inquiry, trial or other proceeding."

15. Sub-Section (1) to Section 397 of Cr.P.C. confers power to the High Court to call for and examine the record of any proceedings before any inferior criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding.

16. Sub-Section (2) to Section 397 of Cr.P.C. states that powers of



revision conferred by Sub-Section (1) shall not be exercised in relation to the interlocutory order passed in any appeal inquiry, trial or other proceeding.

17. In the present case, an application filed under Section 309 Cr.P.C. was allowed. The powers conferred on the High Court under Section 397 (1) would be sufficient to entertain the criminal revision petition against the order passed under Section 309 Cr.P.C. When the High Court is conferred with the powers to verify the correctness and legality of the order, the revision petition would lie. Thus, the maintainability point raised deserves to be rejected.

18. The learned Senior Counsel for the respondent mainly contended that in the event of an acquittal in the criminal appeal in the schedule offence, the respondent is entitled to be exonerated from the PMLA proceedings. In this context, it is relevant to consider the scope of PMLA.

19. Section 65 of PMLA stipulates that "Code of Criminal Procedure, 1973 to apply." Accordingly, the provisions of Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of the Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.



20. When Section 65 of PMLA stipulates that the special enactment namely PMLA would prevail over Cr.P.C. Thus, the reliance placed on by the learned Senior Counsel would have no assistance to support the case of the respondent. When the procedures contemplated under PMLA are independent and distinct to other penal laws, the same would prevail over the general provisions and the commencement of proceedings under PMLA, thereafter will be a standalone process.

21. Section 71 of PMLA states that the provisions of PMLA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

22. Holistic reading of the provisions of PMLA would indicate that schedule offence is prerequisite condition for initiation of proceedings under PMLA. Once proceedings are initiated under PMLA by recording ECIR, thereafter the investigation and offence of money laundering traced out by the Enforcement Directorate become independent and to be dealt with under the provisions of PMLA and the application of Cr.P.C is undoubtedly limited in view of Section 65 and 71 of PMLA.



23. ECIR cannot be equated with FIR. The schedule offence is quintessential for initiation of proceedings and recording of ECIR but both the offences cannot be placed on the same footing. PMLA proceedings are distinct and the said Act is a complete code in itself. Whereas scheduled offences are tried under other penal laws. When two documents are difference and distinct in their own nature, a combined reading and implication cannot be adduced to them.

24. ECIR is born from FIR, but once the ECIR is born, the umbilical cord that connects the ECIR with FIR loses its relevance and the ECIR becomes an independent document in itself. Consequently, a new life in the form of ECIR emerges, which has breath on its own without the support of FIR. So, the FIR and ECIR become two different documents and both tend to take shape on its own, independent of each other.

25. “Proceeds of Crime” is the focal point for an ECIR, whereas scheduled offence is dealt with under the FIR. Further reliance may be relevant with reference to the judgment in the case of *Vijay Madanlal Choudhary vs. Union of India and Others* reported in *2022 SCC Online SC 929* and



Rajinder Singh Chada vs. Union of India³. Both these judgments have noted

the distinction between FIR and ECIR. More so, ECIR is treated as an internal document.

26. In **Vijay Madanlal's** case (supra), the relevant portion to support this contention is, as extracted below;

“457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding

3. W.P. (CRL) 562/2023 & CRL.M.A. 5126/2023



against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the Accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.

27. Further, in the case of ***Rajinder Singh Chada vs. Union of India*** cited supra, the Delhi High Court held as follows;

“32... Since the ECIR has not been equated with a FIR and has been held to be an internal document, there cannot



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possibly be a restriction to bringing on record on any subsequent scheduled offence registered by way of an FIR alleged to have been committed in respect of the same transaction which was the subject matter of such ECIR.

34 ...It is clarified that since this Court is of the opinion that the ECIR, as explained in Vijay Madanlal Choudhary (supra) cannot be equated with an FIR and as per the stand of the department, the same is only for administrative purposes, there is no impediment in taking the third FIR on record which related to the same project forming the basis for registration of the first two FIRs, resulting in initiation of the impugned ECIR."

28. In cases as such, where initiation of PMLA proceedings *prima facie* proceeds of crime has been placed, there arises a pertinent question as to whether the Court can stall such proceedings in spite of preliminary findings of the existence of proceeds of crime. The conscience of this Court is directed towards delivery of justice and though the FIR of schedule offence stands quashed or the trial ended with an order of acquittal on mere technical grounds without analysing the merit of the schedule offence, then the case is to be considered on its merits. When "proceeds of crime" is placed in parallel investigation by the Enforcement Directorate, this gives rise to another question once proceeds of crime in *prima facie* unearthed and ECIR been brushed aside



on the ground that the criminal appeal against an order of conviction is pending.

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29. In the present case, PMLA proceedings are set in motion and *prima facie* findings have already made, investigation completed and complaint was filed. The Court has to frame charges and proceed with the trial. At this stage, it is not a viable ground to take a view that pendency of criminal appeal against an order of conviction is a bar for the continuance of trial with reference to offence under PMLA.

30. A blanket application of the observations made by the Apex Court in ***Vijay Madhanlal Choudhary's*** case will not advance the object set out under PMLA, 2002 and in turn will defeat its primary object. The ***Vijay Madhanlal Choudhary's*** case is a binding precedent for all Courts below and on careful application of the judgement, analysing on a case to case basis, the output shall defer for each case and not render the same result.

31. Therefore, the preposition laid down in ***Vijay Madhanlal Choudhary's*** case being applied with reference to the petition filed for quashment of ECIR or complaint need not be applied in the present case, in view of the fact that the respondent has been convicted in the schedule offence



and the conviction as on today stands against him and mere pendency of the criminal appeal need not be a ground for postponement of trial in PMLA case.

32. In any angle, pendency of a criminal appeal cannot be an absolute bar for proceeding with the PMLA trial, which is now being undertaken by the Special Court for PMLA. Both the trial in the schedule offence and the trial in the PMLA case are distinct and different and the nature of offences are distinguishable.

33. The wider implications and ramifications of the offence of money laundering cannot be equated with the offence under the other penal laws. The objective of PMLA are to protect the economic status of our Country. Therefore, we are of the considered opinion that the trial court has committed an error in postponement of PMLA trial during the pendency of the criminal appeal. The same claim may be made by the convicted persons on the ground that they have a right of further appeal to the Supreme Court and considering all these facts, we are inclined to interfere with the order impugned.

CONCLUSION:

34. Accordingly, the impugned order dated 30.04.2024 in Crl.M.P.No.4236 of 2023 in Special C.C.No.02 of 2022 on the file of the



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learned Principal Sessions Judge, Puducherry is quashed and the criminal

Revision Petition stands **allowed**. Consequently, connected miscellaneous petition is closed. However, we made it clear, that the trial Court shall proceed with the trial uninfluenced by the observations that have made with reference to the facts of the case in the present order.

[S.M.S., J.]

[A.D.M.C., J.]

25.09.2024

Index: Yes/No

Speaking/Non-speaking order

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To

The Assistant Director (PMLA),
Directorate of Enforcement,
Ministry of Finance,
Chennai Zonal Office - II,
3rd Floor, Tower-II, BSNL Administrative Building,
Greens Road, Chennai - 600 006.



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