IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	21.06.2024
Pronounced on	02.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH
AND
THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.A.Nos.619 of 2021 & 272 of 2019

Liyakhath Ali ...Appellant in Crl.A.No.619/2021

Mani Anbazhagan ...Appellant in Crl.A.No.272/2019

Vs.

State rep. by
Assistant Director,
Directorate of Enforcement,
Chennai Regional Office,
Murugesa Naiyakar Complex,
No.84, Greams Road, Chennai. ...Respondent in Crl.A.No.619/2021

State rep. by
Deputy Director,
Directorate of Enforcement,
Govt. of India, Ministry of Finance,
Department of Revenue,
Murugesa Naiyakar Complex,
No.84, Greams Road, Chennai. ...Respondent in Crl.A.No.272/2019

PRAYER in Crl.A.No.619 of 2021: Criminal Appeal filed under Section

374(2) of the Criminal Procedure Code to set aside the order in C.C.No.3/2017 dated 02.11.2021 on the file of the 12th Additional Special Court for CBI, Chennai.

PRAYER in Crl.A.No.272 of 2019: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code to set aside the judgment of conviction dated 13.03.2019 on the file of the XII Special Court for CBI Cases at Chennai in C.C.No.18/2017.

For Appellant in both cases : Mr.Govindarajan for Ms.S.Gunasekaran

For Respondent in both cases : Mr.AR.L.Sundaresan, assisted by Mr.N.Ramesh, Special Public Prosecutor

COMMON JUDGMENT

M.S.RAMESH,J.

In both these Criminal Appeals, arising out of the judgments of the XIIth Additional Special Court for CBI Cases, Chennai, passed in C.C.Nos.3 of 2017 and 18 of 2017, the appellants have been convicted for the offence under Section 4 of the Prevention of Money Laundering Act (hereinafter referred to as 'PMLA') and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1 Crore, in default of which to undergo one year rigorous imprisonment.

2.(i) It is the case of the prosecution that the appellant in Crl.A.No.272 of 2019 [Mani Anbazhagan] was acting as a single point contact for the company by the name, M/s.Galaxy Impex; that he opened the current account in the name of the said company; that the said company was run by Liyakhath Ali, the appellant in Crl.A.No.619 of 2021; that taking advantage of the laxity prevailing in the Thousand Lights Branch of Indian Bank, the appellant [Mani Anbazhagan] managed to receive the account opening form and opened a current account, by making use of a form signed by the said Liyakhath Ali, in the absence of Liyakhath Ali; that the appellants had produced forged Bills of Entry and other imported documents in respect of the said M/s.Galaxy Impex and six other entities and made an outward remittance to the extent of USD2786300 = Rs.18,66,54,241/- under the guise of importing television and air conditioners; that a case in Cr.No.63 of 2017 was registered by the CCB, Chennai for the offences under Sections 465, 467, 468, 471 and 420 of the IPC; that since a scheduled offence was committed and the appellants generated huge proceeds of crime and were involved in the proceeds of crime, they are liable to be convicted under Section 4 of the PMLA.

(ii) It is further alleged that Liyakhath Ali, the appellant in Crl.A.No.619 of 2021 had also opened the account in the assumed name of Vaseem Liyakhath Ali with an intention to escape from the clutches of law and had given false statements to the respondent as to the person managing the affairs of the company.

3. Though the learned counsel for the appellants submitted that there are several infirmities in the evidence adduced by the prosecution and the judgment of the trial Court, they did not canvass the said points. However, they prayed for a reduction of the sentence, considering the nature of the offence, the evidence adduced and the role played by the appellants.

4. The learned Additional Solicitor General, *per contra* submitted that the respondents have established that a scheduled offence was committed; that the said offence generated proceeds of crime and that the appellants had

dealt with the proceeds of crime and therefore, committed the offence of money laundering. He therefore submitted that the judgment of conviction and the sentence imposed on the appellants, are justified and there is no reason to interfere with them.

5. Though, the learned counsel for the appellants had not made any submissions on the merits of the case, in order to satisfy ourselves as to the correctness of the finding of guilt rendered by the trial Court, we had examined the evidence.

6. It is to be noted that though, both the appellants were involved in the offence of money laundering, the complaint against Liyakhath Ali, appellant in Crl.A.No.619 of 2017 was filed initially and the case was taken on file in C.C.No.3 of 2017 on the file of the XII Additional Special Court for CBI Cases, Chennai. The appellant in Crl.A.No.272 of 2019, was prosecuted by way of a separate complaint and his case was taken on file in C.C.No.18 of 2017. Though, the facts are interconnected and the appeals in both the cases were taken up together, we propose to analyse the evidence independently, as both the appellants were tried separately and the evidence

adduced against them, is slightly different.

7. (a) (i) In ***C.C.No.18 of 2017 [Crl.A.No.272 of 2019]***, the prosecution had examined 15 witnesses, marked 44 exhibits and one material object, to establish its case.

(ii) PW1, who was working in Thousand Lights Branch of Indian Bank and had opened the current account in the name of M/s.Galaxy Impex and in the names of six other companies by name (a) Green International (b) Metal Traders (c) Snow City & Co., (d) Bold Trend Exim (e) Aegusta Hitech Trade and (f) Harijohn Trading. He also would speak about the fact that the appellant-Mani Anbazhagan submitted the application forms and the said Liyakhath Ali visited the bank and personally received the cheque book in respect of M/s.Galaxy Impex. He had also seen the Proprietors of the other companies, viz., Eliyas Peer Mohammed and Rasol Khan.

(iii) PW2 was working as Assistant Commissioner at Chennai Customs and he had deposed that the Bills of Entry shown to him, were appeared in the EDI system maintained in the office and issued the certificate-Ex.P3 in which he had stated that except for one Bill of Entry, 24 other Bill of Entries, were not genuine. PW3 was working as a Cashier in Indian Bank, Thousand Lights Branch and had identified the photographs of the appellant which were taken from the CCTV footage maintained at the bank.

(iv) PW4 was working as a Cashier and had identified the appellant and about making payments based on the Bearer cheques of the company.

(v) PW5 is the Assistant Commissioner of Commercial Taxes Department and has marked a letter issued by the Additional Chief Secretary, Commercial Taxes Department, to show that M/s.Galaxy Impex had not registered with the Commercial Taxes office.

(vi) PW6 was working as Manager, Thousand Lights Branch of Indian Bank and had suspected the payment made to foreign countries and has asked the officials of the Bank, to conduct enquiry and on enquiry, they informed the customs officials and lodged the complaint with the police and thereafter with the respondent herein.

(vii) PW7 was working as an Inspector in CCB and had registered the case for the scheduled offence in Cr.No.63 of 2017 and also speaks about the fact that the name of the appellant in the said FIR was wrongly mentioned as Kannan instead of Anbazhagan.

(viii) PW8 who was working as a Regional Transport Officer and speaks about the driving licence issued to one Waseem Liyakhath Ali. PW9 is the friend of the appellant and had identified the appellant in the CCTV footage before the respondent.

(ix) PW10 had assisted the respondent in the investigation. PW11 identified the appellant and the Proprietors of the other companies from the CCTV footage and photographs.

(x) PW12 was working as Chief Manager in the Indian Bank and has spoken about the details of payments sent to foreign countries from the accounts of M/s.Galaxy Impex and documents containing the details of the account was marked as Ex.P23. PW13 was working as Assistant Manager and speaks about the outward remittances made from the current accounts of the other six companies and also about the fact that the appellant was representing the above mentioned companies and submitting documents. PW14 is the Deputy Director, who had enquired PW4 and recorded her statement. PW15 is the investigating officer.

(b) (i) As regards the evidence in ***C.C.No.3 of 2017 [Crl.A.No.619 of 2021***], the prosecution had examined 11 witnesses, marked 56 exhibits and 5 material objects, to establish its case.

(ii) Interestingly, the appellant in Crl.A.No.272 of 2019 was examined as a witness in C.C.No.3 of 2017, wherein the appellant-Liyakhath Ali was tried. By and large, the nature of the evidence let in, in this case, is the same, with minor changes in the array of witnesses.

(iii) PW1 in this case was examined as PW1 in the other case. He had spoken about the opening of the account in the name of seven companies and about the fact that the appellant-Liyakhath Ali, received the cheque book on behalf of M/s.Galaxy Impex. He had marked the documents relating to the account opening form. PW2 was working in the Customs department and had certified that out of twenty-five Bills of Entry, twenty-four were not genuine. He was examined in the other case.

(iv) PW3 was working at the YBMS Clearing and Forwarding Agency and had spoken about the fact that except for one Bill of Entry, other Bill of Entries, were forged. PW4 was working in the Commercial Taxes Department and has spoken about the fact that M/s.Galaxy Impex was not registered with the Commercial Taxes office.

(v) PW5 was working in Indian Bank, Thousand Lights Branch and speaks about the conduct of the enquiry with regard to the payments made from the accounts of seven banks and about giving the complaint to the CCB and also about the complaint given to the Enforcement Directorate. PW6 was working as Inspector in CCB and speaks about the registration of FIR in Cr.No.63 of 2017 for the offences under Sections 465, 467, 468, 471 and 420 of the IPC.

(vi) PW7 was working in the Income Tax Department and speaks about the income tax accounts in the names of the appellant-Liyakhath Ali and his family members. PW8 was working as an Assistant Director in the Enforcement Directorate and speaks about recording the statements of witnesses and assisting the investigating officer.

(vii) PW9 is the investigating officer, who speaks about the attachment of Rs.1,75,49,753/- held in the account of the appellant-Liyakhath Ali and also about the details of the investigation conducted by him. PW10, is the investigating officer in Cr.No.63 of 2017 and speaks about the investigation conducted in the said case.

(viii) PW11 is Mani Anbazhagan, the appellant in Crl.A.No.272 of 2019. He speaks about the fact that the appellant-Liyakhath Ali had visited the Indian Bank for obtaining the cheque Book of M/s.Galaxy Impex and thereby proving the link between the appellant and M/s.Galaxy Impex.

(ix) The appellant had examined 5 witnesses viz., DW1 to DW5 and marked 12 exhibits viz., Ex.D1 to Ex.D12, on his side.

8. From the above evidence, the prosecution had established that forged Bill of Entries, were produced by the appellants and outward

remittances to the tune of Rs.18,66,54,241/- were sent to various accounts outside India. The evidence also establishes that a scheduled offence was committed, which generated proceeds of crime and the appellants had dealt with the proceeds of crime.

9. The trial Court in both the cases had elaborately considered all the evidence on record and found the appellants guilty of the offence. On re-appreciation of the entire evidence on record, which is elaborately discussed in the judgment of the trial Court, we find that the finding of guilt against both the appellants herein, is justified and there is no reason to interfere with the same. The appellants were unable to discredit the prosecution case in any manner. The prosecution had established the foundational facts and the appellants have not rebutted the statutory presumption under Section 24 of the PMLA.

10. However, as regards the sentence imposed on the appellants, we find that the appellants had been sentenced to the maximum sentence of seven years and also directed to pay fine of Rs.1 Crore and to undergo a

default sentence for a period of one year.

11. On this aspect, we may observe that it has been consistently held in several decisions of the Hon'ble Supreme Court that while awarding sentences, a Judge has a wide discretion within the statutory limits and therefore, there cannot be any uniformity in imposition of such offences. In the case of ***State of Rajasthan Vs. Mohan Lal and Another*** reported in ***(2018) 18 SCC 535,*** it has been held that while imposing the punishment, the Courts will have to take into account certain principles while exercising their discretion in sentencing, such as proportionality, deterrence and rehabilitation. In a proportionality analysis, it is necessary to assess the seriousness of an offence in order to determine the commensurate punishment for the offender. The seriousness of an offence depends, apart from other things, also upon its harmfulness.

12. The Hon'ble Court in the case of ***Soman*** **v.** ***State of Kerala*** reported in ***(2013) 11 SCC 382,*** observed thus:-

> *"27.1. Courts ought to base sentencing decisions on various different rationales — most prominent amongst which would be proportionality and deterrence.*
> *27.2. The question of consequences of criminal action can be*

relevant from both a proportionality and deterrence standpoint.

27.3. Insofar as proportionality is concerned, the sentence must be commensurate with the seriousness or gravity of the offence.

27.4. One of the factors relevant for judging seriousness of the offence is the consequences resulting from it.

27.5. Unintended consequences/harm may still be properly attributed to the offender if they were reasonably foreseeable. In case of illicit and underground manufacture of liquor, the chances of toxicity are so high that not only its manufacturer but the distributor and the retail vendor would know its likely risks to the consumer. Hence, even though any harm to the consumer might not be directly intended, some aggravated culpability must attach if the consumer suffers some grievous hurt or dies as result of consuming the spurious liquor."

13. The same is the verdict of the Hon'ble Supreme Court in the case of ***Alister Anthony Pareira*** **v.** ***State of Maharashtra*** reported in ***(2012) 2 SCC 648,*** wherein it was observed as follows:-

"84. Sentencing is an important task in the matters of crime. One of the prime objectives of the criminal law is imposition of appropriate, adequate, just and proportionate sentence commensurate with the nature and gravity of crime and the manner in which the crime is done. There is no straitjacket formula for sentencing an accused on proof of crime. The courts

have evolved certain principles: the twin objective of the sentencing policy is deterrence and correction. What sentence would meet the ends of justice depends on the facts and circumstances of each case and the court must keep in mind the gravity of the crime, motive for the crime, nature of the offence and all other attendant circumstances."

14. On an overall appraisal of the aforesaid decisions, it could be said that the imposition of sentence by a Court would be determinable on the facts and circumstances of each case and would be within the discretion of the concerned Court.

15. However, the exercise of such discretion also came to be dealt with by the Hon'ble Supreme Court in the case of ***Swamy Shraddananda Vs. State of Karnataka*** reported in ***(2007) 12 SCC 288,*** wherein it was held as follows:-

> ***"66.*** *There is a clear and discernible necessity of caution to set the maximum punishment in an offence. And also by implication there must be intensive and exhaustive inquiry into accused-related parameters before employing the maximum sentence by a court of law. Therefore, discretion to the judiciary in this respect (to declare the maximum punishment) is of utmost*

> *critical and seminal value. Reasons must be detailed setting clearly why any punishment other than the maximum punishment will not suffice. This is a general and age-old rule of sentencing which has been statutorily recognised under Section 354(3)."*

16. Thus, though discretion is vested with the Court in imposing the period of punishment, such discretion is required to be exercised by giving reasons, when the maximum punishment is opted to be imposed.

17. In the instant case, the Trial Court, though had imposed on both the appellants the maximum sentence of 7 years, we are not convinced by the reasons given by the trial Court for imposing the maximum sentence. By adopting the ratio laid down in ***Swami Shraddananda's case (supra),*** and considering the nature of offence, the evidence let in by the prosecution, and the fact that the property of the appellant in Crl.A.No.619 of 2021, has been attached and ordered to be confiscated, we are of the view that the ends of justice would be met if the maximum sentence of 7 years of rigorous imprisonment is reduced to 4 years of rigorous imprisonment.

18. For all the foregoing reasons, the impugned judgments passed by the XII[th] Additional Special Court for CBI Cases, Chennai, in C.C.No.3/2017, dated 02.11.2021 and C.C.No.18/2017, dated 13.03.2019, insofar as they imposes the maximum punishment of 7 years of rigorous imprisonment on both the appellants, is modified to 4 years of rigorous imprisonment. All other observations and findings, leading to the conviction and the fine amount of Rs.1 Crore, in default of payment to undergo rigorous imprisonment for a period of one year, stand confirmed. The order with regard to confiscation of the property in C.C.No.3 of 2017, is also confirmed.

19. Accordingly, both the Criminal Appeals stand partly allowed.

[M.S.R.,J.] **[S.M.,J.]**
02.08.2024

Index:Yes/No
Neutral Citation:Yes/No
Speaking order/Non-speaking order
<u>Issue order copy by 07.08.2024</u>
hvk/ars

To

1.The Assistant Director,

Directorate of Enforcement,
Chennai Regional Office,
Murugesa Naiyakar Complex,
No.84, Greams Road, Chennai.

2.The Deputy Director,
Directorate of Enforcement,
Govt. of India, Ministry of Finance,
Department of Revenue,
Murugesa Naiyakar Complex,
No.84, Greams Road, Chennai.

M.S.RAMESH, J.
and
SUNDER MOHAN, J.

ars

Pre-delivery common judgment made in
Crl.A.Nos.619 of 2021 & 272 of 2019

02.08.2024