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Crl.A.No.803 & 809 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM :

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

Crl.A.No.803 & 809 of 2024

Ramanujam Sesharatnam ... Petitioner in Crl.A.No.803 of 2024
Sudharshan Venkatraman ... Petitioner in Crl.A.No.809 of 2024
Vs.

Directorate of Enforcement,
Rep. By its Deputy Director,
Chennai Zonal Office, 3rd Floor, C Block,
Murugesu Naicker Complex Lights,
Chennai – 600 006. ... Respondent in both Appeals

PRAYER in Crl.A.No.803 of 2024: Criminal Appeal filed under Section 374 (2) of Cr.P.C., filed to call for the records in Spl.C.C.No.12 of 2022 on the file of the learned XIII Additional Special Judge for CBI cases, Chennai and set aside the order dated 28.07.2023.

PRAYER in Crl.A.No.809 of 2024: Criminal Appeal filed under Section 374 (2) of Cr.P.C., filed to call for the records in Spl.C.C.No.13 of 2022 on the file of the learned XIII Additional Special Judge for CBI cases, Chennai and set aside the order dated 28.07.2023.

For Petitioner : Mr.P.R.Raman, Senior Counsel
for Mr.G.Sriram



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Crl.A.No.803 & 809 of 2024

For Respondents : Mr.P.Sidharthan,
Special Public Prosecutor for ED

ORDER

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

Under assail is the order dated 28.07.2023 passed in Spl.C.C.No.12 of 2022 and Spl.C.C.No.13 of 2022 on the file of the Learned XIII Additional Special Judge for CBI cases, Chennai.

2. The appellants before us are the accuseds in Spl.C.C.No.12 of 2022 and Spl.C.C.No.13 of 2022 pending on the file of the XIII Additional Special Judge for CBI Cases. The respondent/Enforcement Directorate/prosecution filed a petition under Section 4 of the Fugitive Economic Offenders Act, 2018.

3. The Enforcement Directorate have filed a case in Spl.C.C.No.4 of 2021 against the appellants and other accused persons for the alleged offences under Sections 44, 45, 3 r/w 70(4) of the PMLA, 2002. The petition was filed under the Fugitive Economic offenders Act (hereinafter



Crl.A.No.803 & 809 of 2024

referred as Act, 2018) to attach the properties of the appellants/accuseds.

The Trial Court allowed the petitioner filed by the Enforcement Directorate, which resulted in institution of the present Criminal Appeals.

4. Mr.P.Raman, the learned Senior counsel appearing on behalf of the appellants would submit that summons as contemplated under the Act, 2018 have not been complied with, more specifically, under Section 10, which resulted in miscarriage of justice. The Trial Court failed to ascertain the fact regarding the non service of summons as stipulated under Section 10 of the Act, 2018. Section 10 of the Act, 2018 denotes notice and reads as follows,

10. (1) Where an application under section 4 has been duly filed, the Special Court shall issue a notice to an individual who is alleged to be a fugitive economic offender.

(2) The notice referred to in sub-section (1), shall also be issued to any other person who has any interest in the property mentioned in the application under sub-section (2) of section 4.

(3) A notice under sub-section (1) shall—

(a) require the individual to appear at a specified place and time not less than six weeks from the date



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Crl.A.No.803 & 809 of 2024

of issue of such notice; and

(b) state that failure to appear on the specified place and time shall result in a declaration of the individual as a fugitive economic offender and confiscation of property under this Act.

(4) A notice under sub-section (1) shall be forwarded to such authority, as the Central Government may notify, for effecting service in a contracting State.

(5) The authority referred to in sub-section (4) shall make efforts to serve the notice within a period of two weeks in such manner as may be prescribed.

(6) A notice under sub-section (1) may also be served to the individual alleged to be a fugitive economic offender by electronic means to—

(a) his electronic mail address submitted in connection with an application for allotment of Permanent Account Number under section 139A of the Income-tax Act, 1961;

(b) his electronic mail address submitted in connection with an application for enrolment under section 3 of the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016; or

(c) any other electronic account as may be prescribed, belonging to the individual which is accessed by him over the internet, subject to the satisfaction of the Special Court that such account has been recently



WEB COPY



Crl.A.No.803 & 809 of 2024

accessed by the individual and constitutes a reasonable method for communication of the notice to the individual.

5. Since the Act, 2018 provides confiscation of properties of the alleged offenders under the Act 2018, the consequences would result in infringement of property right of the accused persons. The right to property being a constitutional right under Article 300A of the Constitution of India, it can be taken away only by the Authority of law. Therefore, Act 2018 contemplates the particular procedure for service of summons/notice to the alleged fugitive offenders. Section 10(1) of the Act contemplates, where an application under Section 4 has been duly filed, the Special Court shall issue a notice to an individual, who is alleged to be a fugitive economic offender. Sub Section 3(a) to Section 10 stipulates that a notice under Sub section 1 shall require the individual to appear at a specified place and time not less than 6 weeks from the date of issuance of such notice. Pertinently, Sub Section 5 to Section 10 contemplates *“The authority referred to in sub-section (4) shall make efforts to serve the notice within a period of two weeks in such manner as may be prescribed.”*



Crl.A.No.803 & 809 of 2024

WEB COPY

6. We have examined the records produced by the respondent/Enforcement Directorate. It is not in dispute that the notice was issued in compliance with Section 10 (3)(a) of the Act, 2018. However, after examining the acknowledgement regarding service of summons to the accused persons, we could not find that it was not served in compliance with Sub Section 5 to Section 10 of the Act, 2018. It is to be examined, whether the summons/notice were served within a period of two weeks or not.

7. The documents produced by the respondent/Enforcement Directorate would reveal that notice was served to Mr.Ramanujam Sesharatnam in Crl.A.No.803 of 2024 on 03.07.2023 and in respect of other appellant Mr.Sudharshan Venkatraman in Crl.A.No.809 of 2024, it was not served to him. In any event, the notice served on Mr. Mr.Ramanujam Sesharatnam is not in consonance with the time limit stipulated under Sub Section 5 to Section 10 of the Act, 2018. As far as, Mr.Sudharshan Venkatraman is concerned, there is no proof to establish that summons/notice was served on him in person. In both the appeals, the service of notice became incomplete with reference to the date of hearing



Crl.A.No.803 & 809 of 2024

fixed by the Enforcement Directorate i.e., 20.07.2023. We find that the service of notice made on the appellants are not in compliance with Section 10 of the Act, 2018 and thus, the trial Court had committed an error in allowing the application filed by the Enforcement Directorate.

8. In view of the facts and circumstances, we have arrived an irresistible conclusion that the summons/notice served on the appellants are not in consonance with the procedure contemplated under Section 10 of the Act, 2018, and thus, we are inclined to consider the present appeals. Consequently, the order the impugned in Spl.C.C.No.12 of 2022 and Spl.C.C.No.12 of 2022 dated 28.07.2023 passed by the Special Court under Section 12 of the Fugitive Economic Offenders Act, 2018 are set aside. The matter is remanded back to the learned XIII Additional Special Judge for CBI cases, Chennai to consider the applications filed by the respondent afresh and thereafter, pass appropriate orders on merits and in accordance with law in compliance with Section 10 of the Fugitive Economic Offenders Act, 2018.



Crl.A.No.803 & 809 of 2024

9. Accordingly, the Criminal Appeals are allowed.

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[S.M.S., J.]

[V.S.G., J.]

29.10.2024

Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

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Crl.A.No.803 & 809 of 2024

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To

- 1.The XIII Additional Special Judge for CBI cases, Chennai
- 2.The Deputy Director,
Directorate of Enforcement,
Chennai Zonal Office, 3rd Floor, C Block,
Murugesu Naicker Complex Lights,
Chennai – 600 006.



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V.SIVAGNANAM, J.

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