



C.M.A.Nos.2373 of 2023, 119 and 120 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	22.03.2024
Pronounced on	28.03.2024

C O R A M

THE HON'BLE MR. JUSTICE **KRISHNAN RAMASAMY**

C.M.A.Nos.2373 of 2023, 119 and 120 of 2024

and

C.M.P.Nos.22447 of 2023, 1034 and 1035 of 2024

M/s.KCP Infra Limited,
Formerly known as KCP Engineers Pvt Ltd.,
Rep by its Director,
Mr.K.Muthukumarasamy,
8A, 9A, Pricol Caledron Square Building,
Peelamedu, Avinashi Road,
Coimbatore.

...Appellant in all the appeals

Vs

1.The State of Tamil Nadu,
Rep by P.Vedarathinam,
Superintendent of Police,
Cyber Arangam, IIT Research Park,
Chennai, Deputation to V& AC
Chennai on OD Basis.

2.M/s.Aalam Gold & Diamond Private Limited,
Rep by its Director,
Mr.S.Saravana Kumar,
Regus, Amarasi Building,



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Old No.313, New No.455,
Block No.75, 7th Floor,
Anna Salai, Teynampet,
Chennai 600 018.

... Respondents in CMA.No.2373 of 2023

1.State Rep by,
The Superintendent of Police,
Special Investigation Cell,
Directorate of Vigilance and Anti-Corruption,
Chennai 16

2.M/s.Aalam Gold & Diamond Private Limited,
New No.455,
Block No.75, 7th Floor,
Anna Salai, Teynampet,
Chennai 600 018.

... Respondents in CMA.Nos.119 & 120 of 2024

Prayer in CMA.No.2373 of 2023:

Civil Miscellaneous Appeal filed under Section 11 of Criminal Law (Amendment) Ordinance, 1944, to allow the civil miscellaneous appeal by setting aside the order dated 28.07.2023 in CrI.M.P.No.10 of 2022 in Crime No.16/AC/2021/HQ on the file of the Special Court for the cases under Prevention of Corruption Act, Chennai.

Prayer in CMA.Nos.119 & 120 of 2024:

Civil Miscellaneous Appeal filed under Section 11 of Criminal Law (Amendment) Ordinance, 1944, to allow the civil miscellaneous appeal by setting aside the order dated 26.07.2023 in CrI.M.P.Nos.744 & 745 of 2023 in CrI.M.P.No.10 of 2022 in Crime No.16/AC/2021/SIC, on the file of the Special



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Court for the cases under Prevention of Corruption Act, Chennai.

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For Appellant in
CMA.No.2373/2023: Mr.N.L.Rajah, Senior counsel
for Mr.D.Ganesh Raj

For Appellant in
CMA.Nos.119 &
120 of 2024 : Mr.Hari Shankar for Mr.D.Ganesh Raj

For R1
in all appeals : Mr.P.S.Raman, Advocate General
Assisted by Mr.Edwin Prabakaran,
State Government Pleader,
Ms.R.Anitha,
Special Government Pleader,
Mr.R.Muniyapparaj,
Additional Public Prosecutor and
Mr.R.Siddharth, Government Advocate

For R2
in all appeals : Mr.P.Divakar

COMMON JUDGMENT

The appeal in CMA.No.2373 of 2023 has been filed against the order dated 28.07.2023 passed in CrI.M.P.No.10 of 2022 making the ad-interim order of attachment dated 01.02.2022 as absolute.

2. The appeal in CMA.No.119 of 2024 has been filed against the order



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dated 26.07.2023 passed in Crl.M.P.No.745 of 2023 in Crl.M.P.No.10 of 2022 extending the ad-interim order of attachment dated 01.02.2022 passed in Crl.M.P.No.10 of 2022 till the cognizance of the case is taken.

3. The appeal in CMA.No.120 of 2024 has been filed against the order dated 26.07.2023 passed in Crl.M.P.No.744 of 2023 to accept the additional affidavit in Crl.M.P.No.10 of 2022.

4. The brief facts of the case is as follows:

4.1 The appellant/Company namely M/s.KCP Infra Limited (Formerly KCP Engineers Limited) was initially started as a partnership firm in the year 2005 as an Infrastructure Development Firm. Later in the year 2011, the Company was incorporated as Private Limited Company in the name and style of KCP Engineers Private Limited.

4.2 Further, on 16.04.2021, the Company was converted into Public Limited Company and subsequently, the name was changed as KCP Infra



Limited with effect from 17.05.2021.

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4.3 In the year 2018, the writ petition in W.P.No.34845 of 2018 was filed by a 3rd party before this Hon'ble Court to direct the police to register an FIR against Mr.S.P.Velumani, who was the Former Minister for Municipal Administration and Water Supply, Government of Tamil Nadu, on the basis of its complaint dated 12.09.2018. On 18.10.2019, this Court directed the respondent to conduct a preliminary enquiry by senior IPS Officer named Ms.Ponni, Superintendent of Police. Based on the above said order, the preliminary enquiry was conducted and it was found that there was no criminal offence made out against Mr.S.P.Velumani.

4.4 Subsequently, due to the change in political dispensation in the State of Tamil Nadu, the FIR in Crime No.16 of 2021 was registered on 09.08.2021 against Mr.S.P.Velumani and others for the offence under Sections 120B read with Section 420, 409 of IPC and Section 13(2) read with 13(1)(c) and 13(1)(d) of Prevention of Corruption Act, 1988 read with Section 109 of IPC. In the said FIR, the appellant-Company has been arrayed as A3. The main allegations in the FIR are that when Mr.S.P.Velumani was the Minister, he has injudiciously



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awarded a Tender to the Contractors, who alleged to be benami of him including this appellant herein.

4.5 Mr.S.P.Velumani had filed a petition to quash the FIR in CrI.O.P.No.21565 of 2022 before this Hon'ble Court. This Court vide order dated 30.11.2022 quashed the FIR and observed that the said FIR is a colourable exercise of power by the police and clear abuse of process of law. Further, this Hon'ble Court had made an observation that the investigation Officer has failed to find out the link between A1 (Mr.S.P.Velumani) and the Contractors including the appellant-Company. That apart, the said order dated 30.11.2022 of this Court was confirmed by the Hon'ble Supreme Court by its order dated 27.03.2023 in SLP(CrI)No.58 of 2023.

4.6 On the basis of the FIR in Crime No.16 of 2021, the 1st respondent had filed an application in CrI.M.P.No.10 of 2022 on 25.01.2022 to attach the properties of the appellant before the Special Court. The Special Court, vide order dated 01.02.2022, granted an interim order of attachment of the appellant's property and on 28.07.2023, the said interim order was made absolute.



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5. In the above background, Mr.N.L.Rajah, learned Senior counsel for the appellant would submit that in the present case, the order was passed in terms of Section 4(1) of the Criminal Law (Amendment) Ordinance, 1944, (hereinafter called as “the said Ordinance”). As per the provisions of Section 10(a) of the said Ordinance, any interim order passed under Section 4(1) of the said Ordinance will be in force for a period of one year, unless and otherwise, if any application is made either by the Agent of State Government or Central Government, as stated in Section 10(a) of the said Ordinance, for the purpose of extension of the said order for further period. On the other hand, if no such application is made, the said interim order of attachment will be lapsed. Once the interim order is lapsed or its force come to an end, the same cannot be extended, unless and otherwise any fresh application is filed for the purpose of getting extension of attachment order already granted in terms of provision of Section 10(a) of the said Ordinance.

6. Further, the learned Senior counsel would submit that if any interim order is passed, under Section 4(1) of the said Ordinance, by virtue of the application filed in terms of Section 3 of the said Ordinance, the same shall be in



force for a period of one year. If the cognizance of offence is taken within the said period of one year, the said order shall be in force either until the orders are passed by the learned District Judge or learned Special Judge in accordance with the provisions of the Act or until the termination of the criminal proceedings.

7. He would contend that in the present case, no cognizance was taken and no charge sheet was filed till the expiry of one year from the date of passing of the original attachment order in terms of Section 4 of the said Ordinance. Even on 01.03.2023 also, only the charge sheet was filed, however, no cognizance has been taken by the Special Court in accordance with law even till date. Therefore, he would submit that the interim attachment order passed in terms of provision of Section 4 of the said Ordinance has been lapsed on 01.02.2023 itself and thus, thereafter, the question of extension of interim order or filing a petition for condonation of delay in filing of the extension application does not arise.

8. Further, he would submit that due to the non-filing of time extension application within the time limit as provided under Section 10(a) of the said Ordinance, i.e., within a period of one year from the date of passing of original



interim order of attachment, the said order passed by the Special Judge was lapsed, which means, thereafter, the said order was not in force. Thus, no extension application can be filed subsequent to the lapse of original attachment order.

9. Further, he would contend that if any application is filed in terms of Section 10(a) of the said Ordinance by the Agent of the State Government before the expiry of the interim attachment order, then only the Court will have power to extend the attachment for further period, otherwise, the Court will not have any *suo-motu* power to extend the interim order of attachment beyond the period of one year without any specific application filed by the Agent of the State Government before it lapsed. However, in the present case, no such application was filed in terms of provisions of Section 10(a) of the said Ordinance by the Agent of the State Government within a period of one year from the date of passing of original attachment order and hence, any order passed in the application, which was filed after the lapse of one year period, will not have any effect and the same is contrary to the provisions of Section 10(a) of the said Ordinance.



10. He would further submit that the extension application was filed on 28.06.2023 by virtue of Crl.M.P.No.745 of 2023 in Crl.M.P.No.10 of 2023 to extend the interim attachment order dated 01.02.2022, which is legally not sustainable for a simple reason that when the said extension application was filed, no attachment order was in force. Hence, when the attachment order is not in force, the question of filing either the extension application or any petition to condone the delay in filing the extension application, would not arise. Without considering the same and in non-application of mind, the learned Special Judge had made the ad interim order of attachment dated 01.02.2022 as absolute without any interim attachment order was in force at the time when it was made absolute. Thus such an order will not have any legal force.

11. Further, he would submit that no proper authorization was made in filing the application for extension of attachment order and further, by referring the said order dated 28.07.2023, he would submit that the learned Special Judge had only answered the 1st issue and the remaining issues were not answered. Thus, he would submit that the said order dated 28.07.2023 is liable to be set aside since the same has not been passed in accordance with the provisions of Sections 3, 4 and 10(a) of the said Ordinance.



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12. Further, the learned Senior counsel appearing for the appellant would submit that the application for interim order was made in terms of Section 3(1) of the said Ordinance and hence, Order 27 of the I Schedule to the Code of Civil Procedure, 1908, shall be applied to the said proceedings as per the terms of the provisions of Section 3(2) of the said Ordinance. Therefore, in the present case, the learned Special Judge had played dual role, i.e., first as a Special Judge dealing with the matter with regard to the criminal case and second as a District Judge as per the terms of Section 9(1) of the said Ordinance, wherein it has been stated that the attachment order has to be passed in terms of the provisions of CPC. In such case, the said attachment order is purely civil in nature and the same shall not be transferred to the Special Bench, handling MP/MLA case. In this regard, he had also referred to the judgment of this Court in ***K.Anbazhagan vs. The Director, Vigilance and Anti-Corruption and others*** reported in ***MANU/TN/1516/2006***.

13. Further, he would submit that the Hon'ble Apex Court in the matter of ***Ashwini Kumar Upadhyay vs. Union of India and another*** in ***W.P.(c)No.699 of 2016*** had held that only the criminal matters, against the MP/MLA, have to be



necessarily transferred to the Special Bench, which is constituted for handling the MP/MLA cases. When such being the case, since the present matter is purely civil in nature, this Court will occupy the jurisdiction since this case was numbered as civil miscellaneous appeal and this Court assumes the jurisdiction to deal with the civil miscellaneous appeal. Therefore, he would submit that the impugned orders dated 28.07.2023 and 26.07.2023 passed by the learned Special Judge are liable to be set aside.

14. Per contra, Mr.P.S.Raman, learned Advocate General, had filed a memo to transfer the present appeals to the Special Bench handling MP/MLA cases, stating that Mr.S.P.Velumani has also been impleaded in the charge sheet and presently, he is a sitting MLA of the State of Tamil Nadu and particularly, the attachment order is arising out of the criminal case, though it was passed by the Special Judge assuming the capacity as District Judge in terms of provisions of CPC. Further, he would submit that in the said case, at the request of the petitioners therein, the interim order of attachment passed by the learned Special Judge dated 01.02.2022 has been extended from time to time and hence, the one year period would apply from the last date of extension made by the learned Special Judge. Further, he would submit that even if no request was made by the



petitioners therein, the learned Special Judge will have power to *suo-motu* extend the interim order. Thus, at any cost, the ad-interim attachment order is in force continuously, even beyond the period of one year i.e., 01.02.2023, until the said interim order of attachment dated 01.02.2022 is made absolute vide order dated 28.07.2023. In this regard, he had also referred to the judgment of this Court in ***State vs. S.Babu and others*** in CrI.A.No.519 of 2017 dated 26.10.2017 and submitted that even the Court can extend the interim order on its own.

15. Further, with regard to the authorization of the affidavit is concerned, he would submit that the proper authorization was made by the then officers and even if the proper authorization was not made, the same can be cured at any point of time.

16. With regard to the other issues, which were not answered by the learned Special Judge is concerned, he would submit that since the learned Special Judge had answered and considered a particular issue, there is no need to convince the Court any further, so as to answer the remaining issues. Therefore, he would submit that the order passed by the learned Special Judge is strictly in accordance with law. Thus, he requests this Court to dismiss the present appeals.



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17. I have given due consideration to the submissions made by Mr.N.L.Rajah, learned Senior counsel appearing for the appellant and Mr.P.S.Raman, learned Advocate General, appearing for the respondent and also perused the entire materials available on record.

18. In the present case, an application was filed in terms of Section 3 of the said Ordinance and the ad interim order of attachment was passed in terms of Section 4 of the said Ordinance. There is no dispute on the aspect that the said interim attachment order will be in force for a period of one year as per the provisions of Section 10(a) of the said Ordinance. It would be apposite here to extract Section 10 of the the said Ordinance, which reads as follows:

“10. Duration of attachment. - An order of attachment of property under this Ordinance shall, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, continue in force

(a) where no Court has taken cognizance of the alleged scheduled offence at the time when the order is applied for, [one year] from the date of the order under sub-section (1) of section 4 or sub-section (2) of section 6, as the case may be, unless cognizance of such offence is in the meantime so taken, or unless, the District Judge on application by the agent of the [State Government or, as the case may be, the Central



Government] thinks it proper and just that the period should be extended and passes an order accordingly; or

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(b) where a Court has taken cognizance of the alleged scheduled offence whether before or after the time when the order was applied for until orders are passed by the District Judge in accordance with the provisions of this Ordinance after the termination of the criminal proceedings.”

19. A perusal of the above provisions would make it clear that any order passed would be in force for a period of one year, unless and otherwise the cognizance is taken or extended in the manner provided in Section 10(a) of the Act. If the cognizance is taken by the Court before the expiry of one year from the date of passing of original interim attachment order, the said interim order would continue until the termination of the criminal proceedings. In the present case, it is an admitted fact that the charge sheet was filed only on 01.03.2023, however, no cognizance has been taken by the Court till date. Even assuming that the filing of charge sheet would amount to taking of cognizance, as on the date of expiry of one year of the interim attachment order, i.e., 01.02.2023, admittedly no cognizance was taken by any Court of law and thus, the said order got lapsed immediately after the period of one year from the date of original interim attachment order dated 01.02.2022.



20. The arguments was made from the side of the prosecution stating that this order was extended from time to time by the Special Court. A reading of the order dated 01.02.2022, makes it very clear that the said order was not a conditional order, but it is an unconditional order. Further, in the order, it has been clearly stated that the interim attachment order was passed pending the petition. The result of the said order reads as follows:

“In the Result,

1. This court pass an order of Ad Interim attachment of the Property mentioned in Annexure I which is the FDR Numbering 189 to a tune of Rs.109,12,20,174/- and Annexure II the FDR Number in 3 to a tune of Rs.1,81,00,000/- pending this petition.

2. Issue Notice to the Respondent 1 and 2 by 21.02.2022.

3. The office is directed to send the Notice to the Respondent 1 and 2 along with the, Affidavit, Petition, the Government Order and the copy of the Order. Call on 21.02.2022.”

21. A reading of the above order makes it clear that it is an unconditional order and the same was passed to continue the order until pending the petition. Further, the Special Court in subsequent occasions had extended the said interim



order of attachment from time to time. The arguments were made on the side of the respondents that even if no request is made by the concerned petitioner for the extension of interim order, the Court can *suo-motu* extend the said interim order in the case of conditional order. In the present case, though the petition is pending for more than one year from the date of passing of interim attachment order, the same does not mean that the said interim attachment order would continue beyond the period of one year since the Statute determines the life of interim attachment order as one year.

22. No doubt, the Court can grant extension of the interim order either on the request was made from the side of the petitioners or by *suo-motu*, however, for granting extension, the said interim order must be in force. If the interim attachment order is lapsed on a particular date, even the Court cannot *suo-motu* extend the said order.

23. Further, it has been categorically stated in Section 10(a) of the said Ordinance that the interim order can be extended only by virtue of filing necessary application for extension of interim order by the Agent of the State Government or the Central Government and in the event of failure on the part of



the Agent of the State Government to file any extension application before the interim order got lapsed, the question of extension does not arise. In other words, once the order is lapsed, the same cannot be extended subsequently since no interim order is in force to extend or to make it absolute.

24. Yet another argument was also made by the learned Advocate General appearing for the 1st respondent that even on subsequent dates, the Special Court had extended the interim order of attachment from time to time. He further argued that considering the date of last extension, the one year period would start from the date of extension from time to time. However, this Court does not find any force in the aforesaid submissions made by the learned Advocate General, since Section 10(a) of the said Ordinance states that order of attachment of properties shall, continue in force, unless it is withdrawn earlier in accordance with the provisions of this Ordinance, where no Court has been taken cognizance of the alleged scheduled offence at the time when the order is applied for one year from the date of order under Sub-Section (1) of Section 4 or Sub-Section (2) of Section (6) unless cognizance of such offence is taken in the meantime or unless the District Judge on application by the Agent of State Government or Central Government, thinks it proper and just that the period



should be extended and passes an order accordingly. Therefore, when the original interim attachment order was passed, it will be in force only for a period of one year, unless and otherwise, if it is limited less than a year, in which case, the Court can extend the said order only for a period of one year and beyond the said period of one year, the question of extension of the interim order would not arise since the original attachment order will be lapsed after a period of one year from the date of said original attachment order.

25. In the present case, the interim order was lapsed as early as on 01.02.2023 and the learned Special Judge had granted the extension of interim order by allowing the application, which was filed on 28.06.2023 subsequent to the lapse of the interim attachment order. Even the application for condonation of delay in filing the extension application was filed on 18.07.2023 i.e., after the lapse of interim attachment order.

26. It is an admitted fact that no application for extension of interim order was made, in terms of provisions of Section 10(a) of the said Ordinance, before the lapse of interim attachment order passed by the learned Special Judge dated 01.02.2022. If any application was filed for extension before the lapse of said



order, the Court will have power to extend the same. However, once the order is lapsed, the only recourse for the prosecution is to file a fresh application and to get fresh orders on merit and for the same, no bar in the Statute. Hence, the order, which was lapsed, cannot be extended by virtue of filing the extension application along with the application for condonation of delay. Further, in the present case, the learned District Judge had dealt with the matter as if the interim order was in force and only the limitation fixed by the Statute was expired, thereby, he was under the impression that by condoning the delay, the order could be extended. The said understanding of the learned District Judge, who entertained the extension application along with application for condonation of delay, was not correct. In a case, where the time limit/limitation was prescribed within which either the appeal or other applications has to be filed to entertain the same, in such case even after the expiry of time limit or limitation, the original order will be in force and it will be available for implementation. However, in the present case, due to the time limit fixed by the Statute, the order became lapsed and nothing is available for implementation even in the old format of the order after it got lapsed. The interim attachment order is available for a period of one year from the date of passing of attachment order, whereas after the expiry of one year period, no such order is in force. Thus nothing is



available for implementation of anything further. Without taking all these aspects into consideration, the learned District Judge had made the said order absolute, when no such interim order was in force. Therefore, the question of making the order, which was not in force, as absolute does not arise.

27. Further, this Court would like to point out that it is for the prosecution, who has been handling the present subject matter, to file an appropriate application for the extension of interim attachment order in time in terms of Section 10(a) of the said Ordinance before it got lapsed, however, they had failed to do so. Since there was a failure on the part of the officers to file an appropriate application before the expiry of the said interim attachment order, no useful purpose will be served in approaching the Court for extending the order with the condonation petition, after the same got lapsed. Only the prosecution has to be blamed for their failure to file an appropriate application within time as prescribed in the Statute. If a Statute contemplates to act in a particular manner, a person, who intend to avail the remedy, is expected to act in the manner as contemplated in the Statute. However, in the present case, the prosecution had failed to do so. As stated above, other than prosecution, nobody can be blamed for allowing the interim attachment order to be lapsed. Even thereafter, the



prosecution could have filed a fresh application for getting fresh attachment orders. However, they had failed to do so.

28. For the above said reasons, this Court is unable to accept the contention of the learned Advocate General with regard to the aspect that the interim attachment order is in force, on the date, on which the said interim order was made absolute. Further, this Court is of the considered view that in the present case, since the interim attachment order was lapsed on 01.02.2023, subsequently extending the said interim attachment order and making the same as absolute are totally contrary to the provisions of Section 10(a) of the said Ordinance. When such being the case, the order passed by the learned Special Judge extending the interim attachment order is liable to be set aside. Accordingly, the order dated 26.07.2023 is set aside.

29. As far as the contention raised and memo filed to refer the matter to the Special Bench constituted to deal with MP/MLA cases since this CMA is arising out of the criminal case is concerned, this Court had already taken a decision in **K.Anbazhagan** case (referred supra), wherein it was held as follows:

“18. The Andhra Pradesh High Court in State of



Hyderabad v. K.V. Rao 1973 CRI. L.J. 1351 has held that the District Judge acting as a Criminal Court in attaching the property under the Criminal Law (Amendment) Ordinance 1944 has the Special power conferred upon him. Therefore, the District Court exercising the powers of attachment under the said ordinance 1944 is only a Criminal Court subordinate to the High Court under the Code of Criminal Procedure.

19. Differing from the aforesaid ratio laid down by the Andhra Pradesh High Court, the Bombay High Court in State of Maharashtra v. Ishwar Piraji Kalpatri AIR 2002 Bombay 423 has observed drawing inspiration from the authoritative pronouncement of the Hon'ble Supreme Court in S.A.L. Narayan Row v. Ishwarlal Bhagwandas that the proceedings relating to the attachment and disposal of property under the Criminal Law (Amendment) Ordinance 1944 are only civil proceedings and the aggrieved party as against the proceedings relating to attachment has to approach only the Civil Appellate jurisdiction of the High Court.

20. Inasmuch as the entire proceedings right from attachment to the disposal of the property after termination of trial are found to be purely civil in nature and the relevant provisions under Order 27 of the First Schedule to the Code of Civil Procedure, 1908 is found applicable, I hold that the learned Chief Judge, Small Causes Court, Chennai discharges



his function only as a Civil Judge and the order passed by him is appealable on the Civil Forum in the hierarchy. With due respect, differing from the view taken by the Andhra Pradesh High Court in the aforesaid authority, I fully concur with the ratio laid down by the Bombay High Court in the aforesaid authority.”

30. A reading of above would makes it clear that when a similar issue came up for hearing in **K.Anbazhagan** case (referred supra), this Court had already taken a view that it is civil in nature. When such being the case, a mere invoking of wrong jurisdiction by filing Criminal Revision Petition against the attachment order passed under CPC in a similar case, which was also entertained by the Court, would not deprive the rights of the present appellants to invoke the right jurisdiction of Civil Court.

31. Further, it is pertinent to point out that initially due to the writ petition filed by a 3rd party, a direction was issued by this Court to Ms.Ponni, Superintendent of Police, to enquire with regard to the involvement of Mr.S.P.Velumani into the fraudulent activities. Accordingly, a report was filed about the non-involvement of any of the illegality in issuing the tender process.



Thereafter, due to change in political dispensation in the State of Tamil Nadu, the FIR in Crime No.16 of 2021 was filed and hence, a Criminal Original Petition was filed to quash the said FIR and the same was allowed by this Court vide order dated 30.11.2022 and the said order was confirmed by the Hon'ble Supreme Court of India subsequently on 27.03.2023. After the passing of said order dated 27.03.2023, now as a 3rd attempt of investigation, again the charge sheet has been filed.

32. In the present case, the attachment order was passed in terms of provisions of Section 3(1) of the Act, for which the CPC will apply in terms of provisions of Section 3(2) of the Act and thus, the present appeal was filed and there is no dispute on this aspect.

33. Further, the Hon'ble Supreme Court in *Ashwini Kumar Upadhyay* case (referred supra) states that only the criminal matters has to be necessarily heard by the Special Bench, which has been formed to deal with MP/MLA cases. It would be apposite to extract the relevant portion of the said order, which reads as follows:

“20. Having considered the matter in detail, we direct



that:

(i) *Learned Chief Justices of the High Courts shall register a suo-motu case with the title, "In Re: designated courts for MPs/MLAs" to monitor early disposal of criminal cases pending against the members of Parliament and Legislative Assemblies. The suo-motu case may be heard by the Special Bench presided by the Learned Chief Justice or a bench assigned by them.*

(ii) *The Special Bench hearing the suo-motu case may list the matter at regular intervals as is felt necessary. The High Court may issue such orders and/or directions as are necessary for expeditious and effective disposal of the subject cases. The Special Bench may consider calling upon the Advocate General or the Public Prosecutor to assist the Court.*

(iii) *The High Court may require the Principal District and Sessions Judge to bear the responsibility of allocating the subject cases to such court or courts as is considered appropriate and effective. The High Court may call upon the Principal District and Sessions Judge to send reports at such intervals as it considers expedient.*

(iv) *The designated courts shall give priority:*



(i) first to criminal cases against MP's & MLA's punishable with death or life imprisonment then to (ii) cases punishable with imprisonment for 5 years or more, and then hear (iii) other cases.

The Trial Courts shall not adjourn the cases except for rare and compelling reasons.

(v) The learned Chief Justices may list cases in which orders of stay of trial have been passed before the Special Bench to ensure that appropriate orders, including vacation of stay orders are passed to ensure commencement and conclusion of trial.

(vi) The Principal District and Sessions Judge shall ensure sufficient infrastructure facility for the designated courts and also enable it to adopt such technology as is expedient for effective and efficient functioning.

(vii) The High Courts shall create an independent tab on their website providing district-wise information about the details of the year of filing, number of subject cases pending and stage of proceedings. We make it clear that while monitoring the subject cases, the Special Bench may pass such orders or give such additional directions as are necessary for early disposal of the subject cases.



34. In the present case, the said interim attachment order is purely civil in nature and in such case, it would be appropriate for the civil Courts to handle the present matter and that is the reason why the matter was numbered and listed before this Court. Thus, there is no merit in the memo filed by the respondent to refer the matter to the Special Bench, which is handling MP/MLA cases relating to criminal proceedings. That apart, if the request of the respondent is accepted, all the civil matters have to be transferred to the Special Bench and the same would result in stagnation of cases, due to which, the object of direction issued by the Hon'ble Supreme Court in *Ashwini Kumar Upadhyay* case (referred supra) would be defeated.

35. In view of the above, since this Court had taken a view that the interim attachment order dated 01.02.2022 was lapsed as early as on 01.02.2023, this Court is not inclined to delve into the other issues pertaining to the authorization of affidavit, etc, which are all curable in nature, in which the Court can pass appropriate orders after considering the facts and circumstances of the case.

36. Further, as held by this Court, the interim attachment order dated



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01.02.2022 was lapsed on 01.02.2023 and when there is no interim attachment order in force, the order dated 28.07.2023 has been passed by the learned Special Judge in Crl.M.P.No.10 of 2022 to make the said interim attachment order as absolute. When the interim attachment order was already lapsed, the question of making the said interim attachment order, which is not in force, as absolute does not arise. Thus, the said order dated 28.07.2023 will not have any legal sanctity, so as to give any legal effect. Therefore, the same is liable to be set aside. Accordingly, the order dated 28.07.2023 has been passed by the learned Special Judge in Crl.M.P.No.10 of 2022 is set aside.

37. In the result, these Civil Miscellaneous Appeals are allowed. No cost. Consequently, the connected miscellaneous petitions are also closed.

28.03.2024

Index: Yes/No
Internet: Yes/No
Speaking order/Non-speaking order
nsa

Note: Issue order copy today (28.03.2024)



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KRISHNAN RAMASAMY,J.

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(1/2)