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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.1905 of 2023

K. Murali Krishna ... Petitioner

Vs.

The Deputy Director,
Directorate of Enforcement,
(The Prevention of Money Laundering Act,2002)
Ministry of Finance, Department of Revenue,
2nd and 3rd Floor, C Block,
Murugesan Naicker Office Complex, 84,
Greams Road, Thousand Lights,
Chennai 600 006 ... Respondent

PRAYER: Criminal Revision Case has been filed under section 397 r/w. 401 of Cr.P.C. to set aside the Order of the Special Judge for CBI Cases, XII Additional Judge, Chennai dated 05.09.2023 passed in CMP No.9324 of 2022 in Spl.C.C.No.7 of 2021.

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For Petitioner : Mr. A. Nagarajan
for Mr. Leo Valan,

For Respondents : Mr.N. Ramesh,
Special Public Prosecutor ,
Enforcement Directorate.

ORDER

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

The Criminal Revision Case on hand has been instituted challenging the Order dated 05.09.2023 passed in Crl.M.P.No.9324/2022 in Spl.C.C.No.7 of 2021 in ECIR.No.5 of 2017. The 5th accused in ECIR is the revision petitioner before us. The discharge petition filed by the petitioner under section 227 of Cr.P.C has been rejected by the Trial Court, thus, the present revision came to be instituted.

2. The learned counsel for the petitioner would mainly contend that the petitioner is no way connected with the banking transaction. He assisted A1 to fill forms in the Indian Bank and he was not even aware about the identity of A1 and therefore, he has been wrongly implicated in the criminal case. It is contended that the petitioner identified one Mr.Kannan and subsequently, came to know that he is not Kannan and Kannan was impersonated and the actual name of that person is

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Mr.Kavinsiddarth. In order to substantiate the said contention, the learned counsel for the petitioner would cite certain statements recorded by the Enforcement Directorate.

3. Mr.Ramesh, learned Special Public Prosecutor**,** appearing for the Enforcement Directorate, would strongly oppose by stating that the connections between A1 and A5 are established and admitted. However, it will be pre-mature to take final decision in this aspect. The petitioner/A5 has to prove his innocence by undergoing trial and the case on hand is not a fit case for allowing the discharge petition. The Trial Court has rightly rejected the same, thus, the revision is to be rejected.

4. Mr. Ramesh, the learned Special Public Prosecutor would contend that large scale money-laundering are identified by Enforcement Directorate. Through Nationalized Banks, several thousands of Crores of Rupees were transferred from India to Foreign Countries and group of persons, by adopting modus, transferred huge money. The Enforcement Directorate is in the process of identifying all such persons involved in money laundering. Therefore, discharge petition, if allowed would hamper the trial. In respect of other accused, charges were already framed

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and the case is riped for trial. On account of interim stay in the present revision petition, charges are unable to be framed in respect of the petitioner/accused.

5. Section 3 of PMLA 2002 enumerates offence of money laundering. Accordingly, whosoever, directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity, connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property, shall be guilty of offence of money laundering. The wider scope provided under Section 3 would amplify that persons indirectly attempted can be brought under the provisions of PMLA. Beyond that, a person actually involved in any process is amenable to prosecution under PMLA. The phrases used under Section 3 are unambiguous. In between each phrase, word employed is “or”.

6. Accordingly, the following persons can be brought under Section 3 of the Prevention of Money Laundering Act:-

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(i) Persons directly or indirectly attempts to indulge

(ii) Knowingly assist

(iii) Knowingly is a party

(iv) He is actually involved in any process

(v) Activity connected with the proceeds of crime including concealment, possession, acquisition.

(vi) Use and projecting as untainted property

(vii) claiming it as untainted property

(viii) shall be guilty of offence of money laundering.

Therefore, the scope of Section 3 cannot be narrowed down by the Courts for the purpose of discharging the accused.

7. Section 24 of PMLA stipulates "burden of proof". Accordingly, in any proceedings relating to proceeds of crime under PMLA, in the case of a person charged with the offence of money laundering under section 3, the authority or the Court shall, unless contrary is proved, presume that such proceeds of crime are involved in money laundering and in the case of any other person the authority or Court, may presume that such proceeds of crime also are involved in money laundering.

8. The role of the petitioner M.Muralikrishna/A5 has been stated in the complaint filed under Sections 44 and 45 for offence committed under Section 3 as

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follows:

" 1. He filled the Account Opening Form (AOF) of current account No. 6462857692 in the name and style of M/s BK Electro tool Products maintained with Indian Bank, Thousand Lights Branch, Chennai; in his own handwriting at the request of A-1.

2. He filled the Pay-in-slip of Rs. 5,000.00 on 01.09.2016 for the purpose of opening current account No. 6462857692 in the name and style of M/s BK Electro tool Products maintained with Indian Bank, Thousand Light Branch, Chennai in his own handwriting at the request of A-1.

3. He filled the Account Opening Form (AOF) of current account No. 67366144836 in the name and style of M/s B K Electro tool Products maintained with SBT, Mount Road branch; in his own handwriting at the request of A-1.

4. He filled Cheque bearing No. 747503 dated 15.09.2016 for Rs.13,500.00 drawn on Indian Bank, Thousand Light Branch; in his own handwriting at the request of A-1.

5. He filled Cheque bearing No. 747504 dated 12.09.2016 for Rs. 13,500.00 drawn on Indian Bank, Thousand Lights branch; in his own handwriting at the request of A-1.

6. He filled Cheque bearing No. 747506 dated 21.09.2016 for Rs. 24,700.00 drawn on Indian Bank, Thousand Light Branch; in his own handwriting at the request of A-1.

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7. He filled Cheque bearing No. 747507 dated 22.09.2016 for Rs. 18,000.00 drawn on Indian Bank, Thousand Light Branch; in his own handwriting at the request of A-1.

8. He filled Cheque bearing No. 747508 dated 21.09.2016 for Rs. 12,896.00 drawn on Indian Bank, Thousand Light Branch; in his own handwriting at the request of A-1.

9. He filled Cheque bearing No. 747510 dated 23.09.2016 for Rs. 26,000.00 drawn on Indian bank, Thousand Light Branch; in his own handwriting at the request of A-1.

10. He filled cheque bearing No. 747511 dated 27.09.2016 for Rs. 24,000.00 drawn on Indian bank, Thousand Lights branch; in his own handwriting at the request of A-1.

11. That the A-5 indirectly assisted the A-1 in the matter of filling-up the Account Opening Form (AOF) and Cheque Leafs and knowingly a party in the activity connected with the Proceeds of Crime."

9. The above statement in the complaint would reveal that the petitioner/A5 indirectly assisted A1 in the matter of filling up the account form and check leafs and knowingly a party in the activity connected with the proceeds of crime. The said allegations are subject matter of trial, which cannot be gone into by this Court at the initial stage. In a discharge petition, the Courts are not expected to go into the truthfulness of the allegations and such an endeavour must be undertaken

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during the course of trial. The allegations primafacie make out to proceed against the petitioner/A5.

10. The Trial Court, while dealing with the discharge petition, made a categorical finding that the petitioner/A5 had indirectly assisted A1 and A7 in the matter of filling up the account opening form and cheque leafs. Thus, he has knowingly indulged in the activity connected with the proceeds of trial. Further findings are made that the documents as well as the evidence produced by the complaint reveals that the petitioner/A5 had indirectly assisted A1 and A7 in the matter of filing up the account opening form and cheque leafs. The findings in the order impugned would be sufficient to form an opinion that the case on hand is not a fit case to discharge. Therefore, the petitioner is at liberty to defend his case during the course of trial.

11. With the above observations, the order impugned stands confirmed and consequently, Criminal Revision Case is dismissed.

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

08.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

mrp

To

The Deputy Director,
Directorate of Enforcement,
(The Prevention of Money Laundering Act,2002)
Ministry of Finance, Department of Revenue,
2nd and 3rd Floor, C Block,
Murugesan Naicker Office Complex, 84,
Greams Road, Thousand Lights,
Chennai 600 006

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