IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.08.2024

CORAM :

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

Crl.R.C.No.1508 of 2022
and
Crl.M.P.Nos.17497 of 2022 & 11503 of 2024

M. Raj Kumar ... Petitioner

Vs.

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

Prayer : The Criminal Revision Case has been filed under Section 397 r/w 401 of Criminal Procedure Code to set aside the order passed by the XII Additional Special Court for CBI Cases & PMLA Act, Chennai on 30.09.2022 in Crl.M.P.No.3768 of 2022 in Spl.C.C.No.4 of 2020.

For Petitioner ... Mr. Nithyaesh Natraj

For Respondent ... Mr. S. Sasikumar,
Special Public Prosecutor (ED)

ORDER

Under assail in the criminal revision case is the judgment dated 30.09.2022 in Crl.M.P.No.3768 of 2022 in Spl.C.C.No.4 of 2020 on the file of the 12th the Additional Special Judge for CBI Cases, Chennai. The crux of the issue as narrated reveals that the petitioner in connivance with one late Arumugam, father of the first accused, cheated the defacto complainant Mr.V.Iyyadurai for Rs.4,76,60,000/- (Rupees Four Crores Seventy Six lakhs and Sixty Thousand only) by selling a Government owned land by using forged documents and out of the said amount, the petitioner's share of money was Rs.2,49,60,000/- (Rupees Two Crores Fourty Nine Lakhs and Sixty Thousand only), which is nothing but the proceeds of crime as defined under Section 2(1)(u) Prevention of Money Laundering Act (hereinafter referred as "PMLA"). The petitioner utilized the said proceeds of crime to enrich himself and for his personal needs and thereby projected such crime proceeds untainted, which is punishable under Section 3 and 4 of PMLA.

2.The learned counsel for the petitioner would strenuously contend that there is no reason to invoke the provisions of PMLA since the proceeds of crime has not been made out under Section 2(1)(u) of PMLA. More so, in the predicate offence in FIR No.374 of 2007 under Section 420, 465, 466, 467, 468 r/w. 471 & 120(B) of IPC by Central Crime Branch, Chennai, the final report has been filed. The FIR and Final report would be insufficient to establish the proceeds of crime as required under Section 2(1)(u) of PMLA. Thus, the invocation of PMLA by the respondents are improper and not in consonance with the spirit of the Act.

3.Secondly, before concluding the trial in the predicate offence, the Enforcement Directorate cannot commence the trial in the PMLA Court. In the event of acquittal in the predicate offence, there is no possibility of convicting the accused in PMLA. Thus, further proceedings are to be kept in abeyance.

4.The Statement of objects and reasons considered for PMLA is that it is being realised world over that money laundering possesses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Thus, the initiation of action under PMLA is distinct and different and need not be compared with the predicate offence, which is registered under the regular penal Laws. This special enactment provides scope for trial in respect of the offence of money laundering and thus, by referring to the predicate offence accused under PMLA cannot seek exoneration or to keep the proceedings in abeyance till such time the trial completed in predicate offence. Both the actions are distinct and different. The position has been considered in ***Vijay Madanlal Choudhary and others Vs. Union of India and others (and other appeals) reported in 2022 SCC OnLine SC 929.***

5.The Supreme Court in Vijaymathanlal's. case considered the explanation to Section 44(1)(d) inserted by Act 23 of 2019, which came into force on 01.08.2019 and held that the same is clarificatory in nature.

Section 44 (1) (d) states that "A Special Court while trying the scheduled offence or the offence of money laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973, as it applies to a trial before a Court of Session." Explanation (i) inserted by the amendment of 2019 reads, "For the removal of doubts, it is clarified that:- (i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act shall not be dependent upon any order passed in respect of the scheduled offence, and the trial of both sets of offences by same court shall not be construed as a joint trial;" Section 44(c) states that "if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed."

Therefore, the doubt raised by the learned counsel for the petitioner has been clarified by the Hon'ble Supreme Court in Vijayamathanlal's case with reference to Section 44(1)(d) and the explanations thereunder. There is no impediment for proceeding with the Trial for predicate offence and Special Court also can proceed for scheduled offences under the PMLA.

6.In the present case, the Enforcement Directorate in pursuance to the predicate offence in FIR No.374 of 2007 invoked the provisions of PMLA and found that proceeds of crime are established. The complaint under Section 45(1) r/w. 3 and 4 and Section 8(5) of PMLA would reveal that Mr.M.Rajkumar, auditor/petitioner had received an amount of Rs.2,49,60,000/-(Rupees Two Crore Forty Nine Lakhs and Sixty Thousand only) from Mr.Iyyadurai. In the alleged transaction based on the forged document (ECLR-page 35 (80) para 13) and thereby, the amount of Rs.2 Crores 49 lakhs 60000 mentioned in FIR No.374/2007 dated 20.07.2007 were nothing but proceeds of crime as per Section 2(1)(u) of PMLA. That apart, the subject land belongs to Government Adhi Dhravida Welfare Department. By fabricating and by creating bogus patta and other connected documents and by forging the High Court order, the lands are attempted to be appropriated for valid sale consideration. The entire modus operendi are to be considered in detail during the course of trial. This Court, at this stage, need not consider the grounds on merits for the purpose of discharging the accused.

7.The scope of discharge petition cannot be expanded for the purpose of adjudication of certain material evidence on merits. In the event of tracing out prima facie case relating to allegations, the Courts are expected to proceed with the Trial and not to discharge the accused persons. The probate value of the evidence cannot be considered by the Courts in a discharge petition and the credibility and trust worthiness are to be gone into after conducting a full fledged trial. Economic offences are complex in nature. Such offences required deeper consideration from the hands of the Trial Court with reference to the documents and evidence available on record. The High Court merely appreciating certain suspicious circumstances or considering the merits, cannot discharge the accused persons.

8.In the present case, in the predicate offence registered, the final report has already been filed and the Enforcement Directorate invoked the provisions of PMLA since they traced out proceeds of crime with reference to the predicate offence. Statements are recorded and the documents and other evidence are to be gone into and scrutinized during the Course of trial. Thus, there is no impediment for the trial Court to proceed with the trial by following the procedures as contemplated. The Trial Court has rightly rejected the discharge petition and findings made therein are candid and convincing does not warrant any interference from the hands of this Court. Accordingly, the Criminal Revision Case is dismissed. The Trial Court shall proceed with the Trial uninfluenced by the observations made by this Court in the present order regarding merits. Consequently, connected miscellaneous petitions are closed.

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

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Index : Yes/No
Internet: Yes/No
mrp

To

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3.The Public Prosecutor,
High Court, Madras.

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