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Crl.O.P.No.26708 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.11.2024

PRONOUNCED ON : 22.11.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

Crl.O.P.No.26708 of 2017

1.C.Manoharan

2.M.Thenmozhi

3.C.Lakshmi

... Petitioners

Vs.

The Assistant Director,
Directorate of Enforcement,
Ministry of Finance, Department of Revenue,
II & III Floor, 'C' Block,
Murugesu Naicker Office Complex,
#84 Greaves Road, Chennai – 600 006.
Respondent

...

PRAYER: Criminal Revision is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case pending trial in C.C.5 of 2017 on the file of the Principal Sessions Judge at Chennai and quash the same.



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For Petitioner : Mr.A.Natarajan, Senior Counsel
for Mrs.A.Madhumathi

For Respondent : Mr.Rajnish Pathiyal
Special Public Prosecutor for ED

ORDER

S.M.SUBRAMANIAM, J.

The lis on hand has been instituted seeking to assail the complaint filed under Section 45 read with Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA, 2002)

2. The petitioners are A1, A2 and A3 in C.C.No.5 of 2017.

I. BRIEF FACTS OF THE CASE:

3. The Additional Superintendent of Police, CBI, ACB, Chennai, registered an FIR vide RC.14(A)2014 dated 28.03.2014 against Mr.C.Manoharan, Proprietor of M/s.Shree Sai Enterprises, and authorised representative of M/s.Nithish Tools Private Limited and Shri V.Karunaraj, Proprietor of M/s.Sivasakthi Enterprises, four officers of customs



Department, and unknown others for commission of offences punishable under Sections 120 B r/w 420, 467, 468 and 471 of IPC and Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act and substantive offences with regard to causing loss to the tune of Rs.4.30 Crores to the Customs Department, on account of Customs duty evasion in the import of Carbide inserts imported vide 9 bills of entry during the period from 2009-2011.

4. On completion of investigation, charge sheet was filed under Section 173(2) of Cr.P.C before the learned Chief Judicial Magistrate, Coimbatore. The offences for which charge sheet was filed are Scheduled offences under Section 2(1)(y) of PMLA, 2002 and hence, the Enforcement Directorate filed Enforcement Case Information Report (ECIR) No. 07/2015 dated 11.05.2015 against the petitioners/A1 to A3. Consequently, investigation was launched.

5. Prior to the registration of ECIR, the Directorate of Enforcement commenced investigation into the imports made by M/s.Nithish Tools Private Limited and M/s.Shree Sai Enterprises under the provisions of Foreign Exchange Management Act, 1999 (hereinafter referred to as FEMA, 1999) as



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information received from the Directorate of Revenue Intelligence, Chennai, revealed a case of investigation in January 2012 into the imports made by M/s Nithish Tools Private Limited and M/s Shree Sai Enterprises. Show cause notice was issued on 13.04.2013 demanding differential duty of Rs.13,79,42,157/- from M/s.Nithish Tools Private Limited and Rs.3,00,77,659/- from M/s.Shree Sai Enterprises.

6. Consequent to the investigation under the PMLA Act, the Directorate of Enforcement filed the complaint under Sections 45 r/w 3 and 4 of PMLA Act. The *prima facie* case relating to proceeds of crime under Section 2(1)(u) of PMLA, 2002 and offence of money laundering under Section 3 are made out, the complaint has been filed before the competent Court.

II. CONTENTIONS ON BEHALF OF THE PETITIONER:

7. Mr.Natarajan, the learned Senior Counsel appearing on behalf of the petitioners would mainly contend that, admittedly the import was made out by the Company M/s.Nithish Tools Private Limited and declarations to



the customs was made on behalf of the Company and the Company is a legal person. Therefore, without implicating the company as one of the accused, filing complaint against the Directors alone is not maintainable. In this regard, the learned Senior Counsel relied on Section 70 of PMLA, 2002. Once the alleged offence has been made against the company without impleading the company, the Managing Director and Director of the company cannot be impleaded as an accused and therefore, the very foundation for PMLA is in violation of Section 70 of PMLA and on that score, the complaint is liable to be set aside.

8. The petitioners 2 and 3 are also liable for business transactions of the company and after admitting the same, they are no way connected with the day-to-day affairs and administration of the company. Thus, there is no reason to implicate the petitioners 2 and 3 as accused Nos.2 and 3 in PMLA proceedings.

9. The learned Senior Counsel appearing on behalf of the petitioners would contend that the transactions and the allegations both under the predicate offence and the PMLA offence are one and the same. The CBI



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has already initiated proceeding for IPC offences against the petitioners in C.C.No.9 of 2015 pending on the file of the learned Chief Judicial Magistrate, Coimbatore. Therefore, the present complaint under PMLA is not maintainable.

III. REPLY BY THE RESPONDENT:

10. Mr.Rajnish Pathiyal, learned Special Public Prosecutor appearing on behalf of the respondent would strenuously oppose by stating that, based on the FIR registered by the Additional Superintendent of Police, CBI, ACB Chennai and having noted that scheduled offences are involved, the Enforcement Directorate filed ECIR and commenced investigation by following the procedures as contemplated under PMLA. After investigation, *prima facie* case has been made out for prosecution under the provisions of PMLA against the petitioners and after collecting all relevant materials, a statutory complaint under Section 45 was filed before the competent Court. When *prima facie* offence has been made out under the PMLA, it would be sufficient to continue the prosecution and the very institution of the present petition seeking quashment of complaint is untenable.



IV. ANALYSIS:

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11. The petitioners have stated that the company imported the goods. Declarations on behalf of the company were made before the Customs Department. Therefore, in the absence of implicating the company as an accused, the Managing Director and the Director cannot be implicated as accused persons in their individual capacity.

12. Section 70 of the PMLA clearly states that, when a contravention has been committed by a Company, the Company as well as every person who at the time of commission of the offence was in charge of and was responsible to the Company are said to have committed the offence of money laundering. Section 70(1) of the PMLA, 2002 is extracted hereunder for ease of reference:

"70. Offences by companies: -

(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as



the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

"Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention"

13. It is incorrect to equate an offence under Section 138 of the NI Act and an offence of money laundering for the reason that, when an offence under the NI Act is committed by a Company i.e., when a cheque is issued by a Company, the act is done by the person who is in control of the affairs of the Company in his official capacity. Therefore, the Company being a juristic person becomes an offender and the inclusion of the Company as an Accused in the Complaint becomes indispensable. However, if an offence of money laundering is committed, even if the Predicate offence is committed by the Company and the person in control of the same in his official capacity, the



act of money laundering i.e., the concealment, possession, acquisition or use of the proceeds of crime and projecting or claiming the same as untainted property may be done by the person in charge of the Company in his individual capacity and the Company may not have any involvement in the laundering of the proceeds of crime whatsoever. In such a scenario, the persons in control of the Company can alone be arrayed as Accused and a failure to array the Company itself as an Accused will not vitiate the Complaint, since the Company committed the predicate offence, need not have committed the offence of money laundering. During investigation, if it is found that the Company itself has satisfied the ingredients mentioned under Section 3 of the PMLA and that it had committed an offence of money laundering, then the Company and the persons in control of its affairs will also be proceeded against for the said offence.

14. Section 70 of the PMLA is similarly worded to the provisions contained in various penal statutes such as Section 34 of the Drugs and Cosmetics Act, 1940; Section 10 of The Essential Commodities Act, 1955, Section 140 of the Customs Act, 1962; Section 38 of the Narcotic Drugs and Psychotropic Substances Act, 1985; Section 17 of The Prevention of Food



Adulteration Act, 1954; Section 9AA of the Central Excise Act, 1944; Section 33 of the Insecticides Act, 1968, etc., Even though these provisions are similarly worded to Section 70 of the PMLA, the position of law with regard to the said provisions is on a similar footing to that of Section 141 of the NI Act, which is relied upon by the Petitioners/Accuseds and clearly distinct from an offence under Section 3 of the PMLA. Where an offence is committed by a Company under the different enactments set out above, the Company as well as the person in charge of the Company are proceeded with as the contravention is committed by the Company and since the Company is a juristic person, the person who is in charge of the day-to-day affairs of the Company i.e., its Director etc., are prosecuted. The Company, namely M/s. NTPL has been arrayed as an Accused in the predicate offence i.e., C.C. No.9 of 2015 on the file of the Learned Chief Judicial Magistrate's Court, Coimbatore. However, a subtle distinction arises when it comes to the prosecution of offences under PMLA wherein Section 3 being the penal offence reads as follows:

3. Offence of money-laundering Whosoever directly or indirectly attempts to indulge or knowingly is a party or is actually involved in any process or activity connected (proceeds of crime including its



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concealment, possession, acquisition or use and projecting or claiming) it as untainted property shall be guilty of offence of money-laundering..."

15. As seen above, the act of concealment, possession, acquisition or use and projecting or claiming is classified to be an element or ingredient which would result in the invocation of Section 3 of the PMLA, in which case, actions can be initiated against any person, which may be an official of the Company or not, *dehors* the person's position in the Company. The Hon'ble Supreme Court held that even a person in charge of a Company can be prosecuted separately. Even though the Judgements were rendered under the Drugs and Cosmetics Act, 1940, the principles are deducible.

16. In the case of ***Sheoratan Agarwal and Anr. V. State of Madhya Pradesh***¹, the Hon'ble Supreme Court held as below,

"6..... Any one or more or all of them may be prosecuted and punished 6re Company alone may be prosecuted. The person in charge only may be

¹MANU/SC/0112/1984



prosecuted The conniving officer may individually be prosecuted One, some or all may be prosecuted. There is no statutory compulsion One, or person-in-charge or an officer of the Company may not be prosecuted unless he be ranged alongside the Company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the Company. It does not lay down any Condition that the person-in-charge or an officer of the Company may not be separately prosecuted if the Company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the Company Section 10 lists the person who may be held guilty and punished when it is a Company that contravenes an order made Under Section 3 of the Essential Commodities Act, Naturally, before the person-in-charge or an officer of the Company is held guilty in that capacity it must be established that there has been a contravention of the Order by the Company. That should be axiomatic and that is all that the Court laid down in State of Madras v. C.V. Parekh (supra) as a careful reading of that case will show and not that the person-incharge or an officer of the Company must be arraigned simultaneously along with the Company if he is to be found guilty and punished."



17. In the case of ***State Vs. Dindayal Agarwala and Others***², the

Hon'ble High Court of Orissa held as follows,

"11. Trial court relied upon the decision of this Court reported in ILR (1975) Cut 86 (Santikumar Agarwala v. State (1979) 48 CLT 1 (State of Orissa v. Paban Kumar Agrawal, where relying upon observation of Supreme Court in the decision reported in MANU/SC/0195/1970) (The State of Madras v. C. V. Parekh) partners were acquitted on the ground that term (firm) has not been made an accused. In another unreported decision in Cri. Revn. No. 183 of 1978 decided on 19-4-1979 (Chandra. Sekhar Das v. State) same view has been taken. However, in the decision in ILR (1978) Cut 291 (State of Orissa v. Sib Narayan Patro, it has been observed (at page 304):

".....But merely because the firm has not been prosecuted, that cannot absolve the responsibility of the respondents who are directly connected with the transaction"

Of course, in this decision, earlier decision reported in ILR (1975) Cut 86 (supra) has not been taken into

² MANU/OR/0234/2990



consideration possibly because the same was not brought to the notice of the Court. In (1979) 48 CLT 1 (supra) it has not been followed on the ground that the learned Judge has relied only on Section 10 of the Act and decision of the Supreme Court in MANU/SC/0195/1970(supra) as well as of this Court in LR (1975) Cut 85 (supra) were not brought to the notice of the Court. In case, Section 10 as applied by this Court would have continued, the earlier decision reported in ILR (1975) Cut 86 (supra) would have been binding on me unless I would have preferred to refer the matter to the Division Bench to examine correctness of either of the decisions. However, considering the decisions reported in ILR (1975) Cut 86 (supra) and MANU/SC/0195/1970 (supra) Supreme Court has now decided in MANU/SC/0112/1984 (supra) that it is not necessary that the company or the firm is to (be) made an accused to sustain conviction of the officers, director, or partners. In the said decision, it has been observed as follows (at page 1825):

"..... If the contravention of the order made Under Section 3 is by a Company, the persons who may be held guilty and punished are (1) the Company itself (2) every person who, at the time the contravention was committed, was in charge of, and was responsible



to, the company for the conduct of the business of the company whom for short we shall describe as the person in charge of the company, and (3) any, director, manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, whom for short we shall describe as an officer of the company. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person in charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person in charge or an officer of the Company may not be prosecuted unless he be ranged alongside the company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the company it does not lay down any condition that the person-in-charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the Company Section 10 lists the person who may be held guilty and punished when it is a company that contravenes an order made Under Section 3 of the Essential Commodities Act. Naturally, before the person-in-charge or an officer of the company is held



guilty in that capacity it must be established that there has been a contravention of the order by the Company That should be axiomatic and that is all that the Court laid down in State of Madras v. C. V. Parekh MANU/SC/0195/1970 (supra) as a careful reading of that case will show and not that the person in-charge or an officer of the company must be arraigned simultaneously along with the Company if he is to be found guilty and punished

View in ILR (1975) Cut 86 (supra) and similar view in (1979) 48 CLT 1 (supra) and Cri Revn. No. 183 of 1978 decided on 19-4-1979 (supra) that Firm is to be made an accused for prosecuting partners is no longer binding on me in view of the observation of Supreme Court in MANU/SC/0112/1984 (supra) and the said view of this Court stood overruled. In case, decision reported in MANU/SC/0195/1970(supra) would not have been considered in MANU/SC/0112/1984(supra) it might have been open to me to examine if view expressed in MANU/SC/0112/1984 (supra) can prevail over the view expressed in MANU/SC/0195/1970(supra) in case I would have come to conclusion that both views are inconsistent to each other. Said question no more arises since Supreme Court has itself explained its earlier view. Thus, analysed, there cannot be any escape from the conclusion that the ground of



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acquittal is not sustainable.

18. In the case of ***State of Punjab Vs. Kasturi Lal and Others***³, the Hon'ble Supreme Court held as follows:

7. The section appears to our mind to be plain enough. If the contravention of the order made under Section 3 is by a company, the persons who may be held guilty and punished are (1) the company itself, (2) every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company whom for short we shall describe as the person-in-charge of the company, and (3) any director, manager, secretary or either officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, whom for short we shall describe as an officer of the company. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person-incharge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory

³ MANU/SC/0566/2004



compulsion that the person-in-charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the company. It does not lay down any condition that the person-in-charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them may be separately prosecuted or along with the company. Section 10 lists the person who may be held guilty and punished when it is a company that contravenes an order made under Section 3 of the Essential Commodities Act. Naturally, before the person in-charge or an officer of the company is held guilty in that capacity it must be established that there has been a contravention of the order by the company."

19. The Economic offences like money laundering stand on far graver footing, as they harm the society as a whole and lead to illicit accumulation of wealth. The offence of money laundering being a serious offence affecting the society and country at large should be dealt with in a much stricter sense.



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20. The Petitioners/Accused herein have been charged for the offence of money laundering in their individual capacity consequent to the predicate offence. The predicate offence was committed by the Accused herein through the Company. Therefore, the Company has been arrayed as an Accused in C.C. No. 9 of 2015 on the file of the Learned Chief Judicial Magistrate's Court, Coimbatore. It is pertinent to note that, from the investigation conducted by the Enforcement Directorate, the “proceeds of the crime” committed have been traced to immovable properties in the name of the three Accuseds herein and not in the name of the Company. The investigation is still being continued and if it is found that any proceeds of crime have been purchased beneficial to the Company, then the Company and the Petitioners as Directors have to be proceeded against for the said offence by way of a supplementary Complaint as provided under Section 44(1)(d) Explanation (ii) of the Prevention of Money Laundering Act.

21. According to Section 65 of PMLA, the provisions of Cr.P.C shall apply insofar as they are not inconsistent with the provisions of PMLA, to arrest, search, and seizure, attachment, confiscation, investigation,



prosecution, and all other proceedings under the PMLA. Accordingly, where a provision in PMLA is silent on any of these aspects, the provision of Cr.P.C on that particular aspect can be pressed into service. In the instant case, Section 70 of the PMLA clarifies that, when an offence is said to have been committed by a Company, a Company as well as every person who at the time of commission of the offence was in charge of and was responsible to the Company are said to have committed the offence of money laundering.

22. In light of the language employed under Section 3 of the PMLA, any person 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 and projecting it as untainted property shall be guilty of offence of money laundering. Therefore, if a person other than a Company is also found to have committed the offence as contemplated under Section 3 of the PMLA punishable under Section 4 of the PMLA the person can be arraigned as an Accused.

23. It has been repeatedly held by the Courts that the person Accused of committing an offence under Section 3 of the PMLA need not even be arrayed as an Accused in the prosecution of the predicate offence as



long as the said person has satisfied the ingredients mentioned under Section 3 of the PMLA. The Hon'ble Supreme Court of India in "**Pavana Dibbur vs.**

The Directorate of Enforcement⁴ had held as follows:

“15. Coming back to Section 3 of the PMLA, on its plain reading, an offence Under Section 3 can be committed after a scheduled offence is committed For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence Under Section 3 of the PMLA. To give a concrete example, the offences Under Sections 384 to 389 of the Indian Penal Code relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An Accused may commit a crime of extortion covered by Sections 384 to 389 of Indian Penal Code and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said Accused in the concealment of the proceeds of extortion. In such a case, the person who assists the Accused in the scheduled offence for concealing the proceeds of the crime of extortion can

⁴ MANU/SC/1271/2023



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be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence. Under Section 3 of the PMLA is alleged must have been shown as the Accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary MANU/SC/0924/2022 supports the above conclusion. The conditions precedent for attracting the offence Under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in Clause (u) of Sub-section (1) of Section 3 of the PMLA”

24. The ingredients of the offence of money laundering U/s. 3 of the PMLA are that any person who is involved in the **"Concealment, Possession, Acquisition, use and Projecting or Claiming it as Untainted Property"** shall be guilty of offence of Money-Laundering. The investigation conducted under the PMLA revealed that the proceeds of crime derived in the commission of the Scheduled Offence in C.C. No. 9 of 2015 pending before the Chief Judicial Magistrate Court, Coimbatore are in the form of eight immovable properties that have been acquired and possessed by the Accused and that they have been projecting the same as untainted properties.



Therefore, the Accused have allegedly committed the offence of money laundering. The principle laid down in "**Pavana Dibbur vs. The Directorate of Enforcement**" (Supra) is squarely applicable to the facts of the instant case.

25. The contention of the 2nd and the 3rd Petitioner herein are that they had nothing to do with the day-to-day administration of the Company, will not hold water, even if proved to be true by the Accuseds in trial, since the Complaint under PMLA was filed against them for the possession, acquisition, use of the proceeds of crime, while claiming the same to be untainted property and not for the offences committed by them in their capacity as the Directors of the Company.

26. In the case *M.V.Swaminathan Vs. The Assistant Director, Directorate of Enforcement*⁵, this Hon'ble Court held as follows:

"11. With reference to the arguments, Section 2(1) (u) defines "proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a



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scheduled offence or the value of any such property or where such property is taken or held outside the country then the property equivalent in value held within the country or abroad." Thus, it is relevant to consider the scope of Section 3 which provides offence of money laundering. Section 3 stipulates that "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 using and projecting it as untainted property shall be guilty of offence of money laundering." Therefore, mere possession of proceeds of crime would be sufficient to invoke the provisions of PMLA. Using the proceeds of crime by itself is an offence. Since the scope of Section 3 is wider enough to cover various Circumstances in order to curb the economic offences, High Court cannot restrict its meaning so as to restrain the Authorities from invoking the provisions of PMLA.

12. The very statement of objects and reasons for enactment is that it was realised world over that money laundering possess a serious threat not only to the financial systems of country but also to their integrity and sovereignty. Therefore, the scope if narrowed down would cause prejudice to the interest



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of nation's wealth."

27. In ***S. Jayalakshmi vs. Directorate of Enforcement, Chennai***

Zone⁶, this Hon'ble Court held as follows:

"31. In this context, proviso clause of Section 70 of PMLA contemplates that "Provided that nothing contained in this sub section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contraventions"

32. Pertinently, Section 70 of PMLA deals about Offences by Companies. Sub Section (1) to Section 70 of PMLA enumerates "Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly Therefore, it is immaterial whether a

⁶ MANU/TN/4712/2024



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person is holding a particular post in a company or assisted for commission of an offence directly or indirectly in his/her capacity as a share holder. Section 70 of PMLA has to be read harmoniously in the context of Section 3 of PMLA. Section 3 of PMLA contemplates "Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party" therefore, the very purpose of Section 70 of PMLA is not to exclude any person in connection with a company, whether he/she is a Director, Shareholder or Executive etc.

33. Section 70 of PMLA cannot be read in isolation in view of the spirit of Section 3 of PMLA. Section 3 of PMLA, if to be implemented effectively, then Section 70 of PMLA, as enumerated under the Act, is to be scrupulously followed. Therefore, a general principle that shareholder is not liable for prosecution under general law cannot have any implication with reference to a shareholder against whom a not liable for prosecution under general penal law cannot have any implication with reference to a is launched under PMLA in the present case, the petitioner admittedly prosecution was holding 86% shares of the company. Her then husband is also on accused Under Section 70 of PMLA, it is not only the person who af the time of contravention, was in charge of the company but



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every person who was responsible to the company for the conduct of the business of who was my, as well as the company proceeded against on the convention and are liable to be proceeded against and punished accordingly."

28. It has been repeatedly reiterated by the Hon'ble Apex Court that the offence of Money-Laundering is a stand-alone offence. The offence under the Customs Act is totally different and distinct from the offence of Money-Laundering. The Petitioners/Accuseds are attempting to paint two distinct offences, as if it is the very same transaction. Therefore, the submission of the Petitioner/Accused that the subject matter of investigation by the Department of Customs and ED emanates from the same transaction is incorrect. It is wrong to state that only when predicate/schedule offence is proved can the prosecution under the PMLA proceed. A prosecution of an offence of Money Laundering can be initiated only when an FIR is registered for the commission of a scheduled offence, the Prevention of Money Laundering Act does not state that the same has to be proved for the prosecution under the PMLA to proceed.

29. The Hon'ble Apex Court in "**Vijay Madanlal Choudhary and**



Ors -Vs- Union of India and Ors" (Supra) had also held that the investigation conducted by the Respondent Department is into the offence of money laundering and the same can be established through the prosecution of the offence of money laundering independent of the predicate offence. The Hon'ble Court held as follows:

269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence except the proceeds of crime derived or obtained as a result of that crime..."



30. This Hon'ble Court in its order dated 25.09.2024 in ***Assistant Director (PMLA) -Vs- Ashok Anand***⁷ made the following observation while explaining the distinction between the proceedings in the predicate offence and the Money- Laundering Offence:

"19. Section 65 of PMLA stipulates that "Code of Criminal Procedure, 1973 to apply. Accordingly, the provisions of Code of Criminal Procedure, 1973 shall apply, in so far as they are not inconsistent with the provisions of the Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

20. When Section 65 of PMLA stipulates that the special enactment namely PMLA would prevail over Cr.P.C. Thus, the reliance placed on by the learned Senior Counsel would have no assistance to support the case of the respondent. When the procedures contemplated under PMLA are independent and distinct to other penal laws, the same would prevail over the general provisions and the commencement of proceedings under PMLA, thereafter will be a standalone process.

⁷ Crl.R.C.No.1262 of 2024



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21. *Section 71 of PMLA states that the provisions of PMLA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.*

22. *Holistic reading of the provisions of PMLA would indicate that schedule offence is prerequisite condition for initiation of proceedings under PMLA. Once proceedings are initiated under PMLA by recording ECIR, thereafter the investigation and offence of money laundering traced out by the Enforcement Directorate become independent and to be dealt with under the provisions of PMLA and the application of CrPC is undoubtedly limited in view of Section 65 and 71 of PMLA*

23. *ECIR cannot be equated with FIR. The schedule offence is quintessential for initiation of proceedings and recording of ECIR but both the offences cannot be placed on the same footing. PMLA proceedings are distinct and the said Act is a complete code in itself. Whereas scheduled offences are tried under other penal laws. When two documents are difference and distinct in their own nature, a combined reading and implication cannot be adduced to them.* 24. *ECIR is born from FIR, but once the ECIR is born, the*



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umbilical cord that connects the ECIR with FIR loses its relevance and the ECIR becomes an independent document in itself. Consequently, a new life in the form of ECIR emerges, which has breath on its own without the support of FIR. So, the FIR and ECIR become two different documents and both tend to take shape on its own, independent of each other.

...32. In any angle, pendency of a criminal appeal cannot be an absolute bar for proceeding with the PMLA trial, which is now being undertaken by the Special Court for PMLA. Both the trial in the schedule offence and the trial in the PMLA case are distinct and different and the nature of offences are distinguishable. 33. The wider implications and ramifications of the offence of money laundering cannot be equated with the offence under the other penal laws. The objective of PMLA are to protect the economic status of our Country. Therefore, we are of the considered opinion that the trial court has committed an error in postponement of PMLA trial during the pendency of the criminal appeal. The same claim may be made by the convicted persons on the ground that they have a right of further appeal to the Supreme Court and considering all these facts, we are inclined to interfere with the order impugned. "



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31. In the case "**V. Vijay Sai Reddy -Vs- Enforcement Directorate**" MANU/TL/1155/2021 the Hon'ble Telangana High Court held the following regarding the relationship between the proceedings in the money laundering case and in the schedule offence.

"21. Further, it is needless to state that oral and documentary evidence is the backbone to prove the guilt or innocence of the accused in a criminal trial. The trial in all criminal cases including money laundering offences is required to be conducted expeditiously. If the trial is delayed, it would result in impairment of the complainant to prove the case and also impairment of ability of the accused himself to defend his case. The factors like death, disappearance and non-availability of witnesses would also hamper the criminal administration of justice. Therefore, invariably, oral and documentary evidence is required to be placed on record expeditiously, to arrive at a just conclusion. Therefore, it is too early to say that the accused persons are likely to get acquittal in the scheduled offences. There are instances where conviction was recorded by the trial Court and the appellate Court had set aside the said conviction. In



the instant case, mere apprehension that the Court below is going to record conviction against the accused persons under PML Act and they are likely to get acquittal in the predicate/scheduled offences would not be a ground to stall the proceedings. In the given facts and circumstances of the case, it is difficult to state the result of the case of predicate/scheduled offence and its bearing over the proceedings or decision rendered in the subject offence under PML Act. Therefore, the contention raised that without proving the guilt of the accused in predicate/scheduled offences, trial of offences under PML Act cannot be proceeded with, is unsustainable. In view of the above observations, it cannot be held that unless proceeds of crime are established by putting the accused on trial, any prosecution of the person under PML Act would be premature and would be futile exercise. Since the offence under PML Act is a stand- alone offence and not dependent on predicate/scheduled offences, it can be proceeded with independently without awaiting the outcome of result of scheduled offences or commencement of trial in the predicate/scheduled offences. Further, there is no requirement under law to conduct trials of both category of cases simultaneously. Therefore, the contention that Money Laundering offence starts at the end of predicate offence and commencement of



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trial in offence under PML Act shall not precede trial of predicate/scheduled offence, is unsustainable."

32. The Constitutional validity of Section 50 of the PMLA has been challenged and upheld in **"Vijay Madanlal Choudhary and Ors -Vs- Union of India and Ors"** (Supra) and Hon'ble Supreme Court had stated that, the same is both admissible and relevant in a criminal trial. If the Accused specifically alleges that the statements were obtained by the Complainant by way of coercion, the same is to be proved by the Accused in trial and not through empty accusations in this Criminal Original Petition. By action of Section 24, a presumption is formed against the Accused for having committed an offence of money laundering and the burden to prove the contrary will be on the Accused. Section 24 of the PMLA is extracted hereunder for reference:

"24. In any proceeding relating to proceeds of crime under this Act (a) in the case of or shall, unless of money laundering section the Authority or Court shall, unless the contrary is proved presume that such proceeds of crime are involved in money-laundering and (b) in the case of any other person the Authority



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or Court, may presume that such proceeds of crime are involved in money-laundering.”

33. In view of the discussions made in the aforementioned paragraphs, we have no hesitation in arriving at a conclusion that the present petition is devoid of merits and the petitioners have to face the trial. However, the Trial Court shall proceed with the trial uninfluenced by the observations made in the present order with reference to the facts, if any.



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34. Accordingly, the Criminal Original Petition in Crl.O.P.No.26708 of 2017 is dismissed. Consequently, the connected Miscellaneous petitions, if any, are closed.

(S.M.S.,J.)

(M.J.R.,J.)

22.11.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

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To
The Assistant Director,
Directorate of Enforcement,
Ministry of Finance, Department of Revenue,
II & III Floor, 'C' Block,
Murugesu Naicker Office Complex,
#84 Greaves Road, Chennai – 600 006.



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S.M.SUBRAMANIAM, J.

and

M.JOTHIRAMAN, J.

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Pre-Delivery Order in
Crl.O.P.No.26708 of 2017

22.11.2024