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Crl.Rc.No.1520 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2024

CORAM :

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

Crl.Rc.No..1520 of 2022

against

Crl.M.P.No.7727 of 2022

in

Spl.C.C.No.03 of 2022

M.V.Swaminathan

... Petitioner/Accused

Vs.

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

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records relating to the proceedings made in Crl.M.P.No.7727 of 2022 in Spl.C.C.No.03 of 2022 dated 16.11.2022 on the file of the Honb'le VIII Additional Special Court for CBI Cases at Chennai and set aside the same.



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For Petitioner : Mr.Nithyaesh Natraj
for M/s.Sri Law Associates

For Respondent : Mr.P.Sidharthan
Special Public Prosecutor (ED)

JUDGMENT

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

Under assail is the Order dated 16.11.2022 in Crl.M.P.No.7727 of 2022 in Spl.C.C.No.03 of 2022.

2. Petition under Section 227 of Cr.P.C., has been instituted before the Principal Special Court for CBI Cases in C.C.No.03/2022 seeking relief to discharge the accused from the offence of Money Laundering as defined under Section 3 and punishable under Section 4 of Prevention of Money Laundering Act (hereinafter referred to as 'PMLA').

3. The Special Court rejected the petition, which resulted in institution of the present criminal revision petition.

4. Mr.Nithyaesh Natraj, the learned Counsel appearing on behalf of the petitioner would submit that the predicate offence allegedly



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committed by the petitioner was under Section 13 (2) r/w 13 (1) (e) of the Prevention of Corruption Act, 1988. He was prosecuted for the offence for possessing disproportionate wealth. The disproportionate wealth in the predicate offence was acquired between the period from 01.01.1998 and 30.09.2008. Admittedly, the petitioner was convicted in the criminal case on 06.04.2016 under the Prevention of Corruption Act. The criminal appeal filed is pending and suspension of sentence has been granted.

5. When the facts stand as it is, the respondent herein initiated action under PMLA through ECIR dated 18.05.2017. The complaint was filed in Spl.C.C.No.03/2022 on 31.03.2022.

6. The learned Counsel for the petitioner would urge that the disproportionate wealth accumulated as per the predicate offence was Rs.25,42,701/- and during the relevant point of time, the ceiling of Rs.30,00,000/- was contemplated for invoking PMLA. Since the amount of disproportionate wealth possessed by the petitioner is lesser than that of the ceiling fixed under the Act, the very initiation is *per se* is invalid. Secondly, it is contended that the amendment and insertion of Act 2 of



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2013 with effect from 15.02.2013 cannot have retrospective effect, so as to include the disproportionate assets accumulated in between the years 1998 and 2008. On that score also the initiation of action under PMLA becomes invalid. Thirdly, it is contended that the petitioner was convicted under Prevention of Corruption Act for possessing disproportionate wealth and for the same offence, the PMLA has been invoked. Therefore, it is hit by the principles of double jeopardy and thus unconstitutional.

7. The learned Counsel for the petitioner relied on para.270 of *Vijay Madanlal case* reported in **2022 SCC Online SC 929**. The three Judges bench of the Apex Court in unequivocal terms reiterated that such actions in the absence of establishing proceeds of crime are untenable. Therefore, the Trial Court has not considered these aspects while dealing with the discharge petition. Thus, the revision petition is to be allowed.

8. Mr.P.Sidharthan, the learned Special Public Prosecutor would strenuously oppose by stating that the trial court has elaborately



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considered all these grounds. Prevention of Corruption Act and invocation of PMLA by the respondent cannot be compared with. The predicate offences though under the Prevention of Corruption Act and the petitioner was convicted, the petitioner continued to possess the proceeds of crime, which resulted in initiation of action under PMLA. So long as a person possess the proceeds of crime and PMLA being a Central Act, there is no impediment for the Enforcement Directorate to register case and prosecute the persons, who continued to possess the proceeds of crime as defined under Section 2 (1) (u) of PMLA.

9. Regarding the ceiling of Rs.30,00,000/- , the learned Special Public Prosecutor would reply by stating that the amendment came into force with effect from 15.02.2013. The offence has been shifted from Part-B to Part-A. Once the offences have been brought under Part-A, then the ceiling is erased. Therefore, the very contention of the petitioner in this regard is untenable. The offence was transferred from Part-B to Part-A in the year 2013 and thereafter the petitioner continued to possess the proceeds of crime and the Enforcement Directorate initiated action on 18.05.2017 and as on the date of the registration of the case under PMLA



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proceeds of crime existed. Thus, there is no infirmity and the ground raised in this regard is untenable.

10. Question of double jeopardy would not arise in this case. Section 71 of PMLA stipulates that “the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.” The Central Act will have overriding effect and prevail over the State enactments. Though, the petitioner was convicted under the Prevention of Corruption Act, the proceeds of crime within the meaning of Section 2(1) (u) continued to be under the possession of the petitioner as on the date of registration of ECIR on 18.05.2017. Therefore, on the date of registration of case under PMLA, the proceeds of crime existed. Thus, there is no violation of the provisions of PMLA.

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 scheduled offence or the value of any such property or where such



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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



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cause prejudice to the interest of nation's wealth. Therefore, Section 3 cannot be interpreted in a narrow manner, so as to exclude the offence relating to possession of disproportionate wealth pertaining to the previous years.

13. In the present case, though the disproportionate assets were accumulated in between the years 1998 and 2008 and the petitioner was convicted on 06.04.2016, the disproportionate wealth accumulated continued to be with the possession of the petitioner and that provided cause for the Enforcement Directorate to institute action under PMLA.

14. The scope of PMLA is independent and cannot be compared with the dealing of offences under other enactments including Prevention of Corruption Act. The very purpose and object of PMLA is to deal with economic offences. Therefore, the provisions are stand alone and the Enforcement Directorate is conferred with the powers to prosecute the persons under Section 3 of the PMLA.



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15. In view of the said fact, the principles of double jeopardy has no application. The other grounds raised by the petitioner are connected with the merits of the case. Section 24 of the Act provides burden of proof and it lies on the affected persons. Therefore, the petitioner has to establish their innocence during the course of trial through documents and evidences available on record. Grounds touching upon the merits cannot be adjudicated in a discharge petition. The probate value of the evidences cannot be considered while dealing with the discharge petition by the Courts. Any such adjudication would cause prejudice to the interest of either of the parties and result in miscarriage of justice. All such grounds are to be considered during the course of trial elaborately. Thus, we are not inclined to consider those grounds raised, which all are connected with the merits of the case.

16. *Prima facie*, we do not find any reason to interfere with the order impugned, since the respondent could able to establish that there is a *prima facie* case to invoke the provisions of PMLA and rightly they have done it. It is for the parties to establish their respective case before the trial court in the manner known to law.



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17. With these observations, the order impugned dated 16.11.2022 in Crl.M.P.No.7727 of 2022 in Spl.C.C.No.3 of 2022 stands confirmed. Consequently, this Criminal Revision Petition stands **dismissed**. It is made clear that the trial court may proceed with the trial uninfluenced by the observations, if any made relating to the merits of the case.

[S.M.S., J.] [V.S.G., J.]
14.08.2024

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No
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To
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The Assistant Director,
Directorate of Enforcement,
(The Prevention of Money Laundering Act, 2002)
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, C Block, Murugesan Naicker Office Complex,
84, Greaves Road, Thousand Lights, Chennai - 600 006.



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