IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2024

CORAM :

THE HON'BLE MR. JUSTICE M.S.RAMESH

AND

THE HON'BLE MR. JUSTICE SUNDER MOHAN

Crl.R.C.No.1951 of 2023
&
Crl.M.P.Nos.18134 and 18135 of 2023

Tomy G Poovatil ...Petitioner/Accused – 5

vs.

Director of Enforcement, Government of India
Represented by its Assistant Director (PMLA),
Chennai Zonal Office, Zone – II, 3rd, 4th and 5th Floor
III Block, B – Wing, Shastri Bhavan,
26, Haddows Road, Chennai – 600 006. …Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w 401 Cr.P.C. to call for the original records and set aside the order dated 13.10.2023 in Crl.M.P.No.4486 of 2023 in Spl.C.C.No.14 of 2022 passed by the learned

Principal Special Judge for CBI cases, VIII Additional City Civil Court, Chennai.

For Petitioner : Mr.K.P.Anantha Krishna

For Respondent : Mr.P.Sidharthan
Special Public Prosecutor
For ED cases

ORDER

(Order of the Court was made by SUNDER MOHAN,J.)

This revision petition has been filed challenging the order of dismissal passed in the discharge petition filed by the petitioner.

2 (i). The petitioner, who is arrayed as 5th accused in Spl.C.C.No.14 of 2022, filed a discharge petition before the Trial Court, *inter alia,* stating that the petitioner was not involved in the concealment, possession, or use of proceeds of crime and that he was a Bank Manager who was involved in the disbursal of loans, and there is no evidence to show that he had knowingly assisted the other accused/borrowers in acquiring or dealing with the proceeds of crime.

(ii) The respondent/Director of Enforcement, Government of India, resisted the said petition, stating that the petitioner, in conspiracy with others, had sanctioned a loan and disbursed it by violating the Rules and Regulations; that the petitioner knowingly assisted the principal accused in the generation and acquisition of proceeds of crime fraudulently, and therefore, it is a matter for trial.

(iii) The Trial Court found that there is a *prima facie* case to show that the petitioner facilitated the borrowers to obtain proceeds of crime under the scheduled offence and hence, the petitioner was not entitled to discharge.

(iv) Aggrieved by the said order, the petitioner has preferred the instant revision.

3. Mr.K.P.Anantha Krishna, the learned counsel for the petitioner, submitted that the allegations in the present complaint are similar to the allegations made by the Central Bureau of Investigation in the predicate offence; and that there is no allegation in the complaint to show that the

petitioner was involved in the proceeds of crime said to have been generated by the borrowers out of the loan amount. The learned counsel relied upon the Judgment in ***Pavana Dibbur Vs. Directorate of Enforcement*** reported in ***[2023] 0 Supreme (SC) 1184*** in support of his submission.

4.(i) Mr.P.Sidharthan, learned Special Public Prosecutor, for the respondent, *per contra,* submits that the complaint contains the allegation that the petitioner knowingly assisted the borrowers in the generation and acquisition of proceeds of crime fraudulently; and that there are materials in support of the said allegation.

(ii) The learned Special Public Prosecutor relied upon the Judgment of this Court in Crl.O.P.No.27174 of 2022 dated 16.12.2022, wherein, under similar circumstances, this Court held that if an accused "knowingly assists" in any manner in the process or activity connected with the proceeds of crime, he would be liable for the offence under Section 3 of the Prevention of Money Laundering Act, 2002.

5. We have carefully considered the rival submissions on either side.

6. The allegation against the petitioner in the complaint, *inter alia,* reads as follows:

> *(f)* ***Concealment, Possession, acquisition, use and projecting and claiming the proceeds of crime as untainted: -*** *Thus, as evident above Tomy G Poovattil knowingly assisted Galeel Rahman and Sirajuddin in generation and acquisition of proceeds of crime fraudulently. Further he knowingly facilitated diversion of proceeds of crime to the bank accounts controlled by Galeel Rahman and Sirajuddin for concealment and use by projecting and claiming the same as untainted. Thus, by indulging in the above said activities he has committed the offence of money laundering as defined under Section 3 of the PMLA, 2002, which is punishable under Section 4 of the PMLA, 2002.*

7. It is the case of the petitioner that he was only a Branch Manager; that the loan was sanctioned by the Zonal Office; that it cannot be said that the loan was sanctioned by the petitioner; and that in any case, the petitioner had not knowingly assisted in any activity relating to the proceeds of crime.

8. In similar circumstances, this Court in Crl.O.P.No.27174 of 2022

dated 16.12.2022 refused to discharge the Bank Manager, who claimed that he has only sanctioned loan and had no connection with the proceeds of crime. This Court at paragraphs 13 and 14 observed as follows:

> "*13. As stated supra, the predicate offence against the petitioner is that he fraudulently sanctioned and disbursed the loan. The loan is, therefore, the proceeds of crime. It is necessary to notice that the scope of Section 3 is wide enough to cover all persons who "directly or indirectly <u>attempts to indulge or knowingly assists</u> or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime." It is clear that even a person who knowingly assists in any process or activity connected with the proceeds of crime would also be caught within the net of Section 3. In the case on hand, on a reading of the complaint, the allegation is that, but for the role played by the petitioner, the loans could not have been sanctioned and disbursed to A-1. Prima facie, these allegations would attract Section 3 of the PML Act. We are fortified in coming to this conclusion in the light of a recent decision of the Supreme Court in Directorate of Enforcement Vs. Padmanabhan Kishore (2022 SCC Online SC 1490),*

wherein, it was observed as under:

"14. The further question to be answered is : whether the role played by respondent could come within the purview of Section 3 of the PML Act?

15. Said Section 3 states, inter alia, that whoever knowingly <u>assists or knowingly is a party</u> or is actually involved in <u>any process</u> or activity connected with proceeds of crime including its concealment, <u>possession, acquisition</u> or use shall be guilty of offence of money-laundering.

It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the public servant, the offence would be of misappropriation or species thereof but certainly not of bribe. The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime" including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such

> *active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide enough to cover the role played by such person."*
>
> *14. At the risk of repetition, the case set up in paragraph 10.6 of the complaint is that, A-5 had sanctioned and disbursed the credit facilities/loan. But, for the alleged active participation and assistance of the petitioner/A-5 the money so disbursed would not have assumed the character of proceeds of crime. Consequently, it cannot be said that the alleged role played by the petitioner does not come within the net of the definition of proceeds of crime under Section 3 of the PML Act.*

9. Though the learned counsel for the petitioner had attempted to distinguish the facts in that case, we are of the view that the question as to whether the petitioner knowingly assisted the borrowers, in any activity relating to the proceeds of crime is a matter that has to be adjudicated only in the trial and not in a discharge petition. It is well settled that in a discharge petition if on the materials, the Court finds that there is a grave suspicion against the accused, it is sufficient to frame a charge. Therefore, we leave it open for the petitioner to raise all his contentions, which are

factual in nature, before the Trial Court.

10. Therefore, this Criminal Revision Petition is liable to be dismissed and, accordingly, dismissed. The order dated 13.10.2023 made in Crl.M.P.No.4486 of 2023 on the file of the learned Principal Special Judge for CBI Cases, VIII Additional City Civil Court, Chennai, is hereby confirmed. Consequently, the connected miscellaneous petitions are closed.

(M.S.R.,J) **(S.M.,J)**

30.01.2024

Index : yes/no
Neutral citation : yes/no
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To
1.The Principal Special Judge,
CBI,
VIII Additional City Civil Court,
Chennai.

2.The Assistant Director (PMLA),
Director of Enforcement, Government of India
Chennai Zonal Office, Zone – II, 3rd, 4th and 5th Floor
III Block, B – Wing, Shastri Bhavan,
26, Haddows Road, Chennai – 600 006.

3.The Public Prosecutor,
High Court, Madras.

M.S.RAMESH,J.

and

SUNDER MOHAN,J.

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