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CRL.O.P.No.25837 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.O.P.No.25837 of 2023

and

CRL.M.P.Nos.17922 of 2023 & 11777 of 2024

1.Ms.Mohana @ Mohanammal

2.B.Nirmala

3.S.Devibala

... Petitioners

Vs.

The Assistant Director,
Director of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
2nd and 3rd Floor, "C" Block,
Murugaesan Naicker Complex,
No.84, Greams Road,
Chennai – 600 034.

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to stay the proceedings in C.C.No.41 of 2016, on the file of the Principal Sessions Judge, Chennai (Special Court Constituted under Section 43(1) of Prevention of Money Laundering Act, 2002) pending



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disposal of the above criminal original petition. To dispense with the personal appearance in C.C.No.41 of 2016, on the file of the Principal Sessions Judge, Chennai (Special Court Constituted under Section 43(1) of Prevention of Money Laundering Act, 2002) pending disposal of the above criminal original petition. To quash the complaint in C.C.No.41 of 2016 in ECIR/CEZO/1/2014/APS, on the file of the Principal Sessions Judge, Chennai (Special Court Constituted under Section 43(1) of Prevention of Money Laundering Act, 2002).

For Petitioners : Mr.Adithya Varadarajan

For Respondent : Mr.Rajinish Pathiyil
Special Public Prosecutor

ORDER

[Order of the Court was made by **S.M.SUBRAMANIAM, J.**]

The criminal original petition on hand has been instituted under Section 482 of Criminal Procedure Code to quash the final report in C.C.No.41 of 2016 in ECIR/CEZO/1/2014/APS, pending trial on the file of the Learned Principal Sessions Judge, Chennai.

2. The core argument advanced on behalf of the petitioner would be that the petitioner has not involved in any crime. The definition of “Proceeds



of crime” as defined under Section 2(1)(u) has not been satisfied. Therefore very initiation of action against the petitioner under the provisions of the Prevention of Money Laundering Act , 2002 [hereinafter referred as “PMLA”] is untenable.

3. The learned counsel for the petitioner would further contend that, the proceeds of crime has not been established and thus filing a complaint under Section 44 of PMLA would not arise at all. Therefore, the final report filed is liable to be set aside. To substantiate the said ground, the learned counsel for the petitioner relied on the observations made by the Hon'ble Supreme Court of India in paragraphs 51 and 52 in the case of ***Vijay Madanlal Choudhary and Others vs. Union of India and Others***¹. The Hon'ble Apex Court considered the definition of “Proceeds of crime” under PMLA.

4. Mr.Rajnish Pathiyil, learned Special Public Prosecutor appearing on behalf of the respondent would oppose by stating that the very same ground raised by the petitioner were considered by the Division Bench of this Court during the first round of litigation instituted in the criminal original petition in CrI.O.P.No.11726 of 2017 seeking to quash C.C.No.41 of 2016. This Court made the following observations;

¹ [2022 SCC Online SC 929]



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“2. On intelligence, the Inspector of Police, Katpadi Police Station, conducted a search in the premises of Mohana @ Mohanambal (A2) at No.34, Govindaraj Mudali Street, Tharapadavedu, Katpadi, on 25.05.2014 and seized around Rs.4 crores in cash, Fixed Deposit Receipts in the name of Nirmala (A3) and approximately 591 grams of gold and registered a case in Katpadi Police Station Crime No.163 of 2014 under Section 102 Cr.P.C. Thereafter, on 30.05.2014, Devibala (A4), wife of one Saravanan (A1) was arrested and the case was altered from Section 102 Cr.P.C. to Sections 120-B, 384, 420 IPC and Section 25(1-A) of the Arms Act, 1959.

3. In the said altered case, the names of Saravanan (A1), Mohana @ Mohambal (A2) and Nirmala (A3) also figured. Accordingly, they were also arrested and were remanded in judicial custody.

4. On coming to know of this, the Enforcement Directorate registered a case in E.C.I.R/CEZO/1/2014/APS and took up the investigation.

5. After completing the investigation, the Enforcement Directorate has initiated a prosecution in C.C.No.41 of 2016 before the



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Principal Sessions Court, Chennai (Special Court Constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002 [for brevity ?the PML Act?]), against Saravanan (A1), Mohana @ Mohambal (A2), Nirmala (A3), Devi Bala (A4), for the offences under Section 45(1) r/w 3 and 4 of the PML Act, for quashing which, Mohana @ Mohambal (A2), Nirmala (A3), Devibala (A4) are before this Court.

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10. The statements of the co-accused viz., Nirmala (A3) and Devibala (A4) are also to the same effect.

11. In such view of the matter, it cannot be stated that there are no prima facie materials against the accused for framing charges under the PML Act. This Court cannot go into disputed questions of fact, while dealing with a petition under Section 482 Cr.P.C.

Hence, this criminal original petition stands dismissed with liberty to the petitioner to raise all the points before the trial Court after the charges are framed. Connected Crl.M.Ps. are closed.”

5. Petition seeking quashing of the complaint in C.C.No.41 of 2016



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was dismissed by the Division Bench of this Court, which was affirmed by the Hon'ble Supreme Court of India in Special Leave Petition in S.L.P.Crl.No.1721 of 2022 dated 07.04.2022.

6. The petitioner articulated his case on the same line by stating that the proceeds of crime has not been established and therefore, initiation of proceedings under PMLA is unsustainable.

7. The proceeds of crime defined under Section 2(1)(u) is to be read in conjunction with Section 3 of PMLA. Section 3 stipulates “**Offence of money-laundering**” – “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”.

8. In Section 3 inserted by the Act 23 of 2019 clarified that mere possession, concealment, acquisition or use and projecting or claiming it as untainted property would be sufficient for punishing a person under Section 3 of PMLA. Therefore, the petitioners have to prove their innocence by under



going the trial.

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9. The learned counsel for the petitioners would submit that the proceeds of crime was recovered from the premises of A1. However, from the petitioners there is no seizer of proceeds of crime.

10. However, the said statement was disputed by the learned Special Public Prosecutor by stating that some of the proceeds of crime were seized from the premises of all the accused. A1 is the son of A3, A2 is the aunt of A1 and A3 is the mother of A1 and A4 is the wife.

11. Since all are closely related and the proceeds of crime are recovered from the premises of the accused persons, the ground taken that they are not involved nor in possession of the proceeds of crime cannot be adjudicated in the present quash proceedings. All such disputed issues are to be adjudicated during the course of trial and it is for the accused persons to defend their case in the manner known to law.

12. The burden of proof lies on the affected person under Section 24 of PMLA. That being the scope of the provisions of PMLA, the relief as such



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sought for to quash the final report deserves no merit consideration. All other grounds raised on facts are to be subjected before the Trial Court. However, the Trial Court may proceed with the case uninfluenced by the observations made in the present order, if any on merits.

13. With these observations, the Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

[S.M.S., J.] [V.S.G., J.]
21.08.2024

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Index : Yes
Speaking order
Neutral Citation : Yes



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To

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- 1.The Learned Principal Sessions Judge,
Chennai.
- 2.The Assistant Director,
Director of Enforcement,
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