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Crl.R.C.Nos.1697 & 1699 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.08.2024

PRONOUNCED ON : 30.08.2024

CORAM

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

Crl.R.C.Nos.1697 & 1699 of 2022
and
Crl.M.P.Nos. 19918 & 19938 of 2022

Pallab Sinha ... Petitioner in Crl.R.C.No.1697/2022

Jagmohan Meena ... Petitioner in Crl.R.C.No.1699/2022

Vs.

The Deputy Director,
Directorate of Enforcement,
II & III Floor, C-Block,
Murugesu Naicker Office Complex,
No.84, Greaves Road,
Chennai-06.

... Respondent in both the Crl.R.Cs.

PRAYER in Crl.R.C.No.1697/2022: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the order dated 15.11.2022 passed in Crl.M.P.No.3136 of 2021 in C.C.No.19 of 2017 on the file of The XIII Additional Special Judge for CBI Cases, Chennai.



Crl.R.C.Nos.1697 & 1699 of 2022

PRAYER in Crl.R.C.No.1699/2022: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records and set aside the order dated 15.11.2022 passed in Crl.M.P.No.3373 of 2021 in C.C.No.19 of 2017 on the file of The XIII Additional Special Judge for CBI Cases, Chennai.

For Petitioners in
both the Crl.R.Cs. : Mr.R.Raja Rathinam,
Senior Counsel for
Mr.M.S.Sriram &
Mr.A.Ashwin Kumar

For Respondent : Mr.P.Siddharthan
Special Public Prosecutor for ED

COMMON ORDER

(S.M.Subramaniam J.)

Under Assail is the judgement dated 15.11.2022 passed in Crl.M.P.No.3136 of 2021 and Crl.M.P.No.3373 of 2021 in C.C.No.19 of 2017.

2. The facts in brief are that Mr.K.Baskar (A1), Pallabh Sinha (A2), N.Giriprasad (A4) and Jagmohan Meena (A5) were working at Unaccompanied Baggage (Air), Customs, Chennai during the period between 18.06.2009 and 23.11.2009.



3. On 23.11.2009, a surprise check was conducted by CBI at the Unaccompanied Baggage Unit of Chennai, (Air) Customs, at the Air Cargo Complex, Chennai, on the information that their officials of Customs, working in Unaccompanied Baggage (Air) Unit obtained illegal gratification from the passengers arriving at Chennai from foreign countries for clearance of their unaccompanied baggage by charging less or no duty through private person. An FIR was filed by CBI in RC MAI 2009 A 0060, against four Superintendents of Customs, four Preventive Officers of Customs, one Senior Tax Assistant and two private persons under Sections 7, 8, 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act 1988 r/w 120(B) IPC.

4. The 5th accused was arrested on 23.11.2009 and the first accused was arrested on 24.11.2009. An amount of Rs.7,60,000/- cash was seized by CBI from the residence of the 5th Accused on 24.11.2009. On 26.11.2009 one Mr.Haniffa approached CBI and handed over Rs.8,00,000/- cash, stating that earlier in the 3rd week of November 2009, it was handed over to him by the 1st accused. The 2nd accused and the 4th accused were arrested by the CBI on 27.11.2009 and the 2nd accused was put under custodial interrogation on the next day i.e., on 28.11.2009.



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5. Mr.Haniffa approached CBI on 28.11.2009 and handed over Rs.12,40,000/- cash, stating that earlier it was handed over to him by the 2nd accused which was later seized by the CBI. Further the CBI seized an amount of Rs.26,00,000/- from the residence of the 4th accused on the same day. On 27.06.2011, the CBI filed a charges sheet in C.C.No.1 of 2013, arraying 31 persons as accused including 13 officials of Customs Department, who were posted at Unaccompanied Baggage (Air) Unit, Air Cargo Unit Complex, Chennai, under Sections 120-B r/w 420, 468, 471 of IPC and under Sections 7, 8 and 13(2) r/w 13(1)(a)(b) of Prevention of Corruption Act, 1988, and the trial is pending.

6. ECIR No.07/2012 was registered by the Enforcement Directorate on 18.07.2012 based on the FIR dated 23.11.2009 filed by the CBI. The provisional attachment of Rs.26,00,000/- seized from the 4th accused was completed on 28.03.2014 which was confirmed by the adjudicating authority on 27.08.2014.

7. The provisional attachment, of Rs.8,00,000/- seized from the 1st accused and Rs.7,60,000/- seized from the 5th accused, was completed on



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28.03.2017, which was confirmed by the adjudicating authority on 02.08.2017.

8. On 11.10.2017, a complaint was made under Prevention of Money Laundering Act, 2002 (PMLA), against K.Baskar (Superintendent of Customs), Pallabh Sinha (Superintendent of Customs), B.Pugezenth (Superintendent of Customs), N.Giriprasad (Preventive Officer), Jagmohan Meena (Preventive Officer), G.Kumar (Agent), S.Raj Kumar (Agent) and T.P. Rajmohan (Agent) in CC No.19 of 2017 on the file of XIII Additional Special Court for CBI cases, Chennai.

9. In the year 2021 discharge petitions were filed by the accused nos.1, 2, 4 and 5 in CC.No.19 of 2017. The Additional Special Court for CBI Cases, Chennai, dismissed all the four Criminal M.Ps. by a common order dated 15.11.2022. Challenging the said order, the present revision petitions came to be instituted.

10. The learned Senior Counsel, Mr. R.Raja Rathinam, appearing on behalf of the petitioners would mainly contend that the cash seized by the



CBI on 24.11.2009, 26.11.2009 and 28.11.2009 were deposited immediately in the Court custody. When it was deposited in the Court custody in the year 2009 itself, the petitioners were not in possession of “Proceeds of Crime”. As per the pre-amended PMLA, concealment or possession were not an offence and the pre-amended Section 3 reads as : *“Whosoever directly or indirectly attempts to indulge or knowingly assist, 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”*

11. In the present case, soon after the seizure of money by the CBI, it was deposited in the Court and after the deposit of the seized money in the Court, the petitioners were not in possession of the Proceeds of Crime and the possession and concealment etc., were inserted under Section 3 by way of an amendment in the year 2013. The said amendment cannot have retrospective application so as to initiate action under PMLA against the petitioners.

12. The learned Senior Counsel would contend that the amendment



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cannot have retrospective effect and therefore, in the year 2009 onwards, the petitioners were not in possession of Proceeds of Crime. Therefore, registration of ECIR No.07/2012 in the year 2012 is untenable. Relying on the pre-amended Section 3 of PMLA, the learned Senior Counsel reiterated that no offence under PMLA has been made out against the petitioners and the said ground has not been considered by the Trial Court. Thus, the Crl.R.C. is to be allowed.

13. The learned Special Public Prosecutor, Mr.P.Siddharthan, appearing on behalf of the respondent would strenuously oppose by stating that erroneous interpretation of Section 3 of PMLA, advanced by the petitioners, deserves no merit consideration.

14. With reference to the question raised, whether mere acquisition of Proceeds of Crime / accumulation of money by indulging in corrupt practice will fall under the ambit of Section 3 of PMLA or not, has been replied by the respondents as under :-

“Reliance is placed on the ruling laid down by the Hon'ble Supreme Court of India in the case of Vijay Madanlal Choudhary vs Union of India, had stated as



follows:

"467. (v)(a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected".



15. Therefore, it is submitted that the Act of the Petitioner, indulging in corrupt practice, clearly amounts to an offence of money laundering as per the definition of Section 3 of PMLA and the Petitioner can discharge the burden under Section 24 of PMLA by establishing that the attached properties were not involved in money laundering and that they have not committed any offence under PMLA only during trial. Prima facie case is made out against the Petitioner and he cannot be discharged at this stage. The Petitioner has to establish before the Court that the amount seized and attached is not involved in money laundering, which can be done during trial and therefore this petition is not maintainable.

16. The Hon'ble Supreme Court has categorically laid down that mere possession of tainted money will also fall within the definition of money laundering and the said provision even before it was amended included possession also as an offence within its fold and that it is not unconstitutional. Hence the contention that the mere possession of tainted money was not an offence at that time cannot be countenanced in view of the clear dictum laid down by the Hon'ble Supreme Court. Therefore, the ground raised by the Petitioner that the offence of money laundering is not made in



this case is rejected.”

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17. Whether retrospective effect can be given to amendment made to Section 3 of PMLA, though the offence was registered in the year 2009, was considered by the Hon'ble Supreme Court of India in the case of ***Vijay Madanlal Chaudhary Vs. Union of India***¹ and the relevant paragraph is extracted as under:

“270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime,

1. 2022 SCC Online SC 929



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derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act-for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all”.

Hence, the learned counsel for the respondent submits that the said contention under para (a) to (i) are liable to be dismissed.



18. The expression "money-laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money- laundering. This is amply clear from the original provision, which has been further clarified by insertion of Explanation vide Finance (No. 2) Act, 2019, Section 3, as amended. The act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money-laundering. In other words, it is not open to read the different activities conjunctively because of the word "and". If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily frustrated by the simple device of one person possessing proceeds of crime and his accomplice would indulge in projecting or claiming it to be untainted property so that neither is covered under Section 3 of the 2002 Act. Thus, a person who is as long as in possession and enjoyment of Proceeds of Crime, PMLA can certainly be invoked. It is also



submitted that the subsequent amendments made to the PMLA in respect of Section 3 of PMLA has been upheld by the Hon'ble Supreme Court of India on the premise that all the said amendments are in clarificatory in nature.

19. Whether mere receipt of bribe money is an act of money laundering or not is elaborately considered by the Apex Court of India in the case of ***Y.Balaji Vs. Karthik Dasari***² as follows:-

*“99. It is this bribe money that constitutes the 'proceeds of crime' within the meaning of section 2(1)(u) of PMLA. It is no rocket science to know that a public servant receiving illegal gratification is in possession of proceeds of crime. The argument that the mere generation of proceeds of crime is not sufficient to constitute the offence of money-laundering, is actually preposterous. As we could see from Section 3, there are six processes or activities identified therein. They are, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; and (vi) claiming as untainted property. If a person takes a bribe, he acquires proceeds of crime. So, the activity of "**acquisition**" takes place. Even if he does not retain it but "**uses**" it, he will be guilty of the offence of money- laundering, since "use" is one of the six*

2. 2023 LiveLaw (SC) 440



activities mentioned in Section 3".

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Admittedly the Petitioner herein had fixed the bribe amount and received illegal gratification through Shri G Kumar for the fraudulent clearance of goods in commercial quantity in the guise of unaccompanied baggage during his tenure in the UB (Air) Unit. Hence, mere acquisition of bribe amounts to proceeds of crime and thereby falls under section 3 of PMLA. Hence, such a contention is ought to be rejected.

20. Pertinently, the Division Bench of this Court, in the case of Padmanabhan Kishore Vs. Directorate of Enforcement, supported the views raised by the petitioner in the present revision petition. However, the said case was taken by way of an appeal before the Hon'ble Supreme Court of India by the Enforcement Directorate in the case of ***Directorate of Enforcement Vs. Padmanabhan Kishore***³. The Hon'ble Supreme Court of India, while reversing the judgment of the Division Bench of this High Court, held as follows:-

3. 2022 SCC Online SC 1490



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“16. 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



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enough to cover the role played by such person.

17. On a bare perusal of the complaint made by the Enforcement Directorate, it is quite clear that the respondent was prima facie involved in the activity connected with the proceeds of crime.”

21. The very same Division Bench, in the subsequent judgment in the case of ***R.Kannan Vs. Assistant Director, Directorate of Enforcement*** in Crl.O.P.No.27174 of 2022 dated 16.12.2022, followed the ratio laid down by the Hon'ble Supreme Court in the case of ***Directorate of Enforcement Vs. Padmanabhan Kishore*** (supra). The Division Bench relied on Paragraph Nos.14 and 15 of the said judgement which reads 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 assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-



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laundering.”

22. Therefore, the ground raised on retrospectivity by the petitioner deserves no merit consideration. Even as per the pre-amended Section 3 of PMLA, i.e., “*Whosoever directly or indirectly attempts to indulge or knowingly assist, 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, involvement in corrupt activities itself is Proceeds of Crime within the definition of Section 2(1)(u) of PMLA. That being the scope of pre-amended Section 3, question of discharging the petitioners on the ground that they did not possess the Proceeds of Crime after 2009, is untenable and is rejected.

23. The Trial Court considered both the pre-amended Section 3 and the principles laid down by the Apex Court in *Vijay Madanlal Chaudhary's case* (supra), the scope of Section 2(1)(u) in conjunction with Section 3 has



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been considered by the Trial Court in a right direction as held by the Hon'ble Supreme Court of India and thus, we do not find any infirmity in respect of the findings made by the Trial Court in the order impugned.

24. Thus, the impugned order stands confirmed and accordingly, the present Criminal Revision Petitions are dismissed. No Costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.,)

(V.S.G.J.,)

30.08.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)



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To

1. XIII Additional Special Judge for CBI Cases, Chennai.

2.The Deputy Director,
Directorate of Enforcement,
II & III Floor, C-Block,
Murugesu Naicker Office Complex,
No.84, Greaves Road,
Chennai-06.

3.The Public Prosecutor, High Court, Madras.



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Crl.R.C.Nos.1697 & 1699 of 2022

S.M.SUBRAMANIAM, J.

and

V.SIVAGNANAM, J.

(sha)

Pre-Delivery Order in
Crl.R.C.Nos.1697 & 1699 of 2022

30.08.2024