IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.08.2024

CORAM

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

Crl.R.C.No.2029 of 2023
and
Crl.M.P.Nos. 18730 & 18732 of 2023

S.Krishnaveni ... Petitioner

Vs.

The Assistant Director,
Directorate of Enforcement,
Ministry of Finance,
Department of Revenue,
3rd Floor, Shastri Bhavan,
26, Haddows Road,
Nungambakkam,
Chennai. ... Respondent

PRAYER: 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 17.08.2023 made in Crl.M.P.No.243 of 2022 in Spl.C.C.No.5 of 2021 on the file of the Hon'ble XIV Additional Special Judge for CBI cases at Chennai by allowing this Criminal Revision Petition.

For Petitioner : Mr.J.Ranjith Kumar

For Respondent : Mr.Cibi Vishnu,
Special Public Prosecutor for ED

ORDER

(S.M.Subramaniam J.)

The Criminal Revision Petition on hand has been instituted to assail the judgement dated 17th August 2023, in Criminal M.P.No.243 of 2022, in Special CC. No.5 of 2021, passed by XIV Additional Judge for CBI Cases Chennai.

2. The petitioner is the 6th accused in the Special CC No.5 of 2021. It is not in dispute that the Enforcement Directorate filed a complaint under Section 44 and 45 of Prevention of Money Laundering Act, 2002 (PMLA). The petitioner before us has filed a miscellaneous petition seeking discharge under Section 227 Cr.P.C. The Trial Court rejected the miscellaneous petition which resulted in filing of the present revision petition before this Court.

3. The learned counsel for the petitioner would mainly contend that the alleged offence took place between the years 2012 to 2016 and the property

attached by the Enforcement Directorate was purchased even prior to the alleged commission of offence. Thus, the very initiation per se is untenable.

4. The learned Special Public Prosecutor, appearing on behalf of the respondent, would oppose by stating that though the petitioner purchased the vacant site prior to 2012, construction was made in between the years 2012 and 2016 and the sources of income has not been produced by the accused persons. Since the petitioner could not prove the source of income, the Trial Court rejected the petition filed, seeking discharge.

5. The findings of the Trial Court reveals that the land was purchased by the petitioner vide Document No.338 of 2010 and the house was constructed in the year 2015-2016. The provisional attachment order was issued by the respondent Department under Section 5(1) to PMLA vide PAO No.1 / 2020.

6. In order to implicate the petitioner, the respondent relied upon the statement given by the petitioner under Section 50 of PMLA before the Assistant Director, Directorate of Enforcement, Chennai, dated 19.11.2019,

stating that she had constructed the house by borrowing money from A2's relatives. However, the petitioner was neither able to name any such relative from whom she had borrowed money, nor produced any proof of actual payment. The land was purchased before the period of crime and the same was mortgaged by the petitioner and was redeemed and developed with construction only during the year 2015-2016, which corresponds with the period of crime.

7. The learned counsel for the petitioner would raise yet another point that the petitioner is not an accused in the schedule offence and therefore, she cannot be implicated in the case registered under PMLA. In this context, it is relevant to consider Section 3 of PMLA which enumerates 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 1[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. Therefore, mere possession or concealment would be sufficient to

implicate a person under PMLA. It is not necessary that such person should be an accused in the schedule offence. Possession and concealment, being an offence under Section 3 of PMLA, the petitioner, who is an employee in Postal Department, Government of India, was found to be in possession along with her husband.

9. The said proposition has been considered by the Hon'ble Supreme Court of India, in the case of ***Pavana Dibbur Vs. Directorate of Enforcement***[1]**,** in paragraph No.17, which is extracted as under:

> "17. *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 IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA.*

1. 2023 SCC Online SC 1586

> *An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC 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 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 Choudhary1 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."*

10. In view of the legal position as stated above, the ground raised by the petitioner, that she is not an accused in the schedule offence, is immaterial and has no relevance for the purpose of implicating the petitioner under PMLA. More so, the petitioner herself has given a statement before the

Assistant Director, Directorate of Enforcement, Chennai, on 19.11.2019 which was relied upon for the purpose of implicating the petitioner.

11. The Trial Court has considered this aspect and rejected the petition on the ground that the petitioner has to prove her case during the course of trial.

12. We do not find any infirmity in respect of the findings given by the Trial Court in rejection of the discharge petition. Thus, the judgement impugned dated 17th August 2023, in Crl.M.P.No.243 of 2022, in Special CC No. 5/2021 stands confirmed.

13. The Trial Court may proceed with the trial, uninfluenced by the observation, if any, made by this Court in the present Judgement.

14. Accordingly, the Criminal Revision Case stands dismissed. No Costs. Consequently, connected miscellaneous petition is closed.

(S.M.S.J.,) **(V.S.G.J.,)**

20.08.2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
(sha)

To

1. XIV Additional Special Judge for CBI cases at Chennai

2.The Assistant Director,Directorate of Enforcement,
Ministry of Finance, Department of Revenue,
3rd Floor, Shastri Bhavan,26, Haddows Road,
Nungambakkam,Chennai.

3.The Public Prosecutor, High Court, Madras.

S.M.SUBRAMANIAM, J.

and

V.SIVAGNANAM, J.

(sha)

Crl.R.C.No.2029 of 2023

20.08.2024