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Crl.OP.Nos.28477 of 2023 and 916 of 2024
and WP No.1024 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2024

CORAM :

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

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.OP.Nos.28477 of 2023 and 916 of 2024
and WP No.1024 of 2023
and WMP Nos.1009, 1010, 1011 and
1013 of 2023 in WP No.1024 of 2023
and Crl.MP.No.565 of 2024 in Crl.OP.No.916 of 2024

Crl.OP.No.28477 of 2023

1.Shri.Dhanraj Kochar	.. 1 st Petitioner/A1
2.Shri.Inderchand Kochar	.. 2 nd Petitioner/A2
3.Shri.Ramesh Kumar Kochar	.. 3 rd Petitioner/A4
4.Shri.Jitesh Kumar Kochar	.. 4 th Petitioner/A5
5.Smt.Sarala @ Sarala Kanwar	.. 5 th Petitioner/A6
6.Smt.Rajkumari	.. 6 th Petitioner/A8

v.

The Assistant Director,
Directorate of Enforcement,
Govt. of India, Chennai Zonal Office-1,
V & VI Floor, BSNL Administrative Building,
No.2, Kushkumar Road, Nungambakkam,
Chennai – 600 034. .. Respondents



Crl.OP.Nos.28477 of 2023 and 916 of 2024
and WP No.1024 of 2023

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records on the file of the complaint filed by the respondent pertaining to Spl.C.C.No.6 of 2023 in ECIR No.CEZO-I/39/2021 dated 26.05.2023 pending on the file of the Additional Special Judge (XII Additional Judge-CBI) under the provisions of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the 'PMLA Act') and quash the same as illegal, arbitrary and abuse of process of law.

Crl.O.P.No.916 of 2024

1.Anitha .. 1st Petitioner/A7
2.Shri Shrenik Kumar Kochar .. 2nd Petitioner/A9

v.

The Assistant Director,
Directorate of Enforcement,
Govt. of India, Chennai Zonal Office-1,
V & VI Floor, BSNL Administrative Building,
No.2, Kushkumar Road, Nungambakkam,
Chennai – 600 034. .. Respondents

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records in and connected with Spl.C.C.No.6 of 2023 on the file of the learned XII Additional Special Judge for CBI Cases, Special Court for PMLA Cases, Chennai in File NO.ECIR/CEZO-I/39/2021 and quash the same.

For Petitioners :
in Crl.O.P.No.28477/23 Mr.Nithyesh Natarajan



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for Mr.Anirudh A Sriram
in CrI.O.P.No.916/24 : Mr.B.Sathish Sundar

For Respondent : Mr.Sakthi Aatharsh
in both CrI.O.Ps. for Mr.Rajinish Pathiyil
Special Public Prosecutor (ED)

WP No.1024 of 2023

1.Naveen Kumar Kochar
2.Naveen Kumar Kochar, HUF,
Rep. by its Karta,
Naveen Kumar Kochar

3.Shantibai
4.Nethal
5.Priyanka Kochar
6.Mrs.Kruti Mehta .. Petitioners

v.

1. The Deputy Director,
Directorate of Enforcement,
2nd and 3rd Floor, Murugesan Naicker Complex,
84, Greams Road, Thousand Lights,
Chennai – 600 006.

2. The Adjudicating Authority, PMLA,
Room No.26, 4th Floor,
Jeevan Dheep Building,
Parliament Street,
New Delhi 110 001. .. Respondents

Writ Petition filed under Article 226 of Constitution of India, for
issuance of a writ of certiorari,

(i) calling for the records and quash the Enforcement Case



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Information Report in ECIR No.CEZO-I/39/2021 dated 31.03.2021 registered by the 1st respondent insofar as these petitioners are concerned;

(ii) calling for the records of the 1st respondent with regard to the impugned order of provisional attachment passed by the 1st respondent under Section 5(1) of the Prevention of Money Laundering Act, 2002 in Order No.11/2022 in ECIR No.CEZO-I/39/2021 dated 30.9.2022 insofar as the Schedule-A & Schedule-B, C properties are concerned and quash the same as untenable in law, unreasonable, illegal, wholly without jurisdiction; and

(iii) calling for the records and quash the complaint (OC) No.1828 of 2022 in PAO No.11/2022 in ECIR NO.CEZO-I/39/2021 dated 26.10.2022 issued under Section.5(5) of Prevention of Money Laundering Act, 2002 – PMLA 2002 dated 30.09.2022 on the file of the 1st respondent, insofar as these petitioners are concerned pending disposal of the present writ petition.

For Petitioners : Mr.Nithyesh Natarajan
For Mr.Anirudh A Sriram
For Respondents : Mr.Sakthi Aatharsh
for Mr.Rajinish Pathiyil
Special Public Prosecutor (ED)

COMMON ORDER

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

The Accused Nos.1,2,4,5,6,7,8 and 9, facing trial in Spl.S.C.No.6 of



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2023 in ECIR No.CEZO-I/39/2021 dated 26.05.2023 on the file of the learned XII Additional Special Judge for CBI Cases, Special Court for Prevention of Money Laundering Act (hereinafter referred to as 'PMLA') Cases, Chennai, on the complaint filed by the respondent herein, have preferred the above quash petitions in Crl.O.P.Nos.28477 of 2023 and 916 of 2024 .

2. By common order dated 05.01.2024 made in WP No.13425 of 2023 and Crl.O.P.No.28042 of 2023, this Court has quashed the complaint in ECIR No.CEZO-I/39/2021 dated 26.05.2023, at the instance of one Suresh Kumar D.Kochar, who was arrayed as A3 in the complaint.

3. In the above said order, this Court has observed that the complaint refers to conspiracy to commit an offence under Section 409 of the IPC, which is not a scheduled offence and therefore, the complaint is not maintainable in view of the judgment of the Hon'ble Supreme Court in ***Pavana Dibbur Vs. The Directorate of Enforcement*** [MANU/SC/1271/2023]. The relevant portion of the order reads as follows:



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“8. In the complaint, the respondent has stated in paragraph 3 (i) as

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“(i) As submitted above, Shri Dhanraj Kocha and his family members in connivance with the said three Authorised Signatories of M/s.D R Foundations and Estates Pvt. Ltd. cheated Shri M.S Hameed through a criminal conspiracy and this fact i.e., the commission of scheduled offence [Section 120 B] is proved in the trial held in the predicate offence.”

9. As stated earlier, the petitioner was convicted for the offence of 409 r/w 109 and 120B of the IPC. Therefore, the predicate offence alleged and proved is conspiracy to commit offence under Section 409 of the IPC which is not a scheduled offence. Therefore, even assuming that there are proceeds of crime, it cannot be said to be as a result of commission of a scheduled offence, which is a prerequisite to maintain a complaint under Section 3 of the PMLA. The above referred observations of the Hon'ble Supreme Court are squarely applicable to the facts of the instant case. The complaint is therefore liable to be quashed on that sole ground, and hence, we are not expressing any opinion on the other submissions made by the learned counsel for the petitioner.

10. Since the respondent lacks jurisdiction under the PMLA, the communications sent to the Bank to withhold the portion of the compensation amount payable to the petitioner by the CMRL, also cannot be sustained. As stated earlier, during the pendency of the writ petition, the respondents passed a provisional attachment order dated 23.11.2023 bearing F.No.ECIR/CEZO-1/39/2021. Even in the said provisional attachment order, the respondent has stated that the petitioner has committed an offence under Section 120B of the



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IPC. The relevant portion reads as follows:

“17. Investigation revealed that Shri Dhanraj Kochar and his family members in connivance with the said three Authorized Signatories of M/s.D R Foundations and Estates Pvt. Ltd. cheated Shri M.S Hameed through a criminal conspiracy and this fact i.e., the commission of scheduled offence [Section 120B] is proved in the trial held in the predicate offence....”

11. Since the respondent has no jurisdiction to invoke the provisions of PMLA, as there are no proceeds of crime relating to any scheduled offence, the proceedings impugned in the Writ Petition is also liable to be set aside. Consequentially, though the Provisional Attachment Order: 13/2023 has not been challenged, we are inclined to hold that the said attachment order is also without jurisdiction.

4. The above would show that this Court had quashed the entire complaint in Spl.C.C.No.6 of 2023. It is needless to say that the complaint against the petitioners herein, also cannot be sustained.

5. WP No.1024 of 2023, has been filed for quashing of the following three orders:-



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(i) ECIR No.CEZO-I/39/2021 dated 31.03.2021 registered by the

1st respondent insofar as these petitioners are concerned;

(ii) provisional attachment passed by the 1st respondent under Section 5(1) of the Prevention of Money Laundering Act, 2002 in Order No.11/2022 in ECIR No.CEZO-I/39/2021 dated 30.9.2022 insofar as the Schedule-A & Schedule-B, C properties are concerned; and

(iii) the complaint (OC) No.1828 of 2022 in PAO No.11/2022 in ECIR NO.CEZO-I/39/2021 dated 26.10.2022 issued under Section.5(5) of Prevention of Money Laundering Act, 2002 – PMLA 2002 dated 30.09.2022 on the file of the 1st respondent, insofar as these petitioners are concerned.

6. Since the complaint itself is not maintainable, the respondent has no jurisdiction to attach the properties of the petitioners and therefore the order of attachment passed under Section 5(5) of the Prevention of Money Laundering Act, 2002 dated 30.09.2022 impugned in this writ petition, is liable to be quashed and hence, quashed.

7. At this juncture, Mr.C.S.S.Pillai, learned counsel representing one



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of the victims/defacto complainant in the predicate offence submitted that the victim has filed the petition to implead himself in the instant quash petitions. However, the said petition is not before us. Even assuming that the petition for impleading has been filed by the defacto complainant in the predicate offence, the same would not have any relevance in the instant quash petitions as we are now concerned with the complaint filed by the respondent which does not relate to proceeds of a scheduled offence.

8. In the result, the Crl.O.P.Nos.28477 of 2023 and 916 of 2024 and the Writ Petition No.1024 of 2023 are allowed as prayed for and the orders impugned therein are quashed. Consequently, the connected Miscellaneous Petitions are closed.

(M.S.R.,J.) (S.M.,J.)
29.01.2024

Index : yes/no
Neutral citation : yes/no
Speaking Order/Non-Speaking Order
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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

ars

To

1. The Assistant Director,
Directorate of Enforcement,
Govt. of India, Chennai Zonal Office-1,
V & VI Floor, BSNL Administrative Building,
No.2, Kushkumar Road, Nungambakkam,
Chennai – 600 034.

2. The Deputy Director,
Directorate of Enforcement,
2nd and 3rd Floor, Murugesan Naicker Complex,
84, Greaves Road, Thousand Lights,
Chennai – 600 006.

3. The Adjudicating Authority, PMLA,
Room No.26, 4th Floor,
Jeevan Dheep Building,
Parliament Street, New Delhi 110 001.

4. The Public Prosecutor,
High Court, Madras.

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(2/2)

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1013 of 2023 in WP No.1024 of 2023
and Crl.MP.No.565 of 2024 in Crl.OP.No.916 of 2024

M.S.RAMESH,J.,
AND
SUNDER MOHAN,J.,

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

After passing of final orders on 29.01.2024, at the instance of the petitioners' counsel, the matter is listed today under the caption “For Being Mentioned”.

2. Learned counsel for the petitioners submitted that pending ECIR Proceedings No.CEZO-I/39/2021 dated 31.03.2021, which was quashed by us, certain movable properties were seized by the respondents. In this background, learned counsel for the petitioners seeks for clarification with regard to the return of movable properties.



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3. Learned Special Public Prosecutor (ED) appearing for the respondent submits that in view of the final orders being passed, wherein, the proceedings as well as the complaint have been quashed, the petitioners would be entitled for the movables.

4. In view of the above submission, Paragraph No.8 of the order dated 29.01.2024 stands modified as follows:

“ 8. In the result, the CrI.O.P.No.28477 of 2023 and 916 of 2024 and the Writ Petition No.1024 of 2023 are allowed as prayed for and in view of quashing of the impugned orders, the respondents shall release all the movable properties that were seized in connection with ECIR No.CEZO-I/39/2021 dated 31.03.2021 within a period of six weeks from the date of receipt of a copy of this order.”



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5. All the other observations and findings rendered in the order dated 29.01.2024 shall stand unaltered.

6. Registry is directed to issue fresh order copy.

(M.S.R.,J.) (S.M.,J.)
07.02.2024

Index : yes/no
Neutral citation : yes/no
Speaking Order/Non-Speaking Order
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07.02.2024