IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.09.2024

PRONOUNCED ON : 17.10.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MRS.JUSTICE N.MALA

Crl.O.P.No.28587 of 2023

A.Sudha ... Petitioner

Vs.

The Assistant Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
3rd Floor, 3rd Block, 'B' Wing,
No.26, Haddows Road,
Chennai – 600 006. ... Respondent

PRAYER: Criminal Revision is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint in C.C.No.60 of 2016 on the file of the VIII Additional District Judge for CBI Cases, Chennai and quash the same as far as the petitioner is concerned.

For Petitioner : Mr.I.Abrar Mohamed Abdullah

For Respondent : Mr.AR.L.Sundaresan
Additional Solicitor General of India
asst. by Cibivishnu,
Special Public Prosecutor for ED

ORDER

S.M.SUBRAMANIAM, J.

FACTS OF THE CASE:

The lis on hand has been instituted to quash the Additional/Supplementary complaint filed under Section 45 r/w Sections 3, 4, 8(5) and 70(1)(2) of the Prevention of Money Laundering Act, 2002 (hereinafter referred as PMLA).

2. A Tri-Party Agreement dated 12.11.2007 was executed between A1/Mr.G.Srinivasan, petitioner and petitioner's family and VMT Spinning Mills India Private Limited, whereby, inter-alia, possession of VMT Spinning Mills India Private Limited was handed over to Al/ Mr.G.Srinivasan.

3. Subsequently, a second Tri-Party Agreement was executed on 08.07.2008 between A1/Mr.G. Srinivasan, petitioner and petitioner's family,

and VMT Spinning Mills India Private Limited, whereby, inter-alia, it is confirmed that petitioner and petitioner's family have transferred their shareholding in VMT Spinning Mills India Pvt to Al/Mr. G.Srinivasan for a consideration of Rs. 97.33 lakhs.

4. The petitioner's father Late Mr.Doraisamy lodged a complaint against Al/Mr.G. Srinivasan on 08.04.2009 (FIR No. 383 of 2009), and took back possession of the assets of VMT Spinning Mills India Private Limited, from Al/Mr.G.Srinivasan in May, 2009. Mr.Doraisamy passed away on 10.09.2009. The petitioner in her statements under Section 50 of PMLA dated 23.03.2016 and 24.03.2016 admits knowledge of her father taking back possession of the company in May, 2009 and that she was aware of the criminal activities of Al/ Mr. G. Srinivasan since the end of 2008.

5. CBI received a complaint from SBI Global Factors Limited on 10.12.2010 and subsequently filed a charge sheet on 28.11.2011 which is the Schedule/Predicate Offence.

6. On 09.01.2012 yet another Tri-Party Agreement was executed

between the petitioner & her family members, VMT Spinning Mills India Private Limited, and a person named Mr.Durai. Whereby, inter-alia, land, building, and machinery of VMT Spinning Mills India Private Limited were sold to Mr.Durai for Rs.5.14 crores of which Rs.2.50 crores was received as advance by the petitioner and her mother.

7. The Petitioner has sold the assets of VMT Spinning Mills India Private Limited. Though she is a party to the first Tri- Party agreement dated 12.11.2007, and second Tri-Party agreement dated 08.07.2008, whereby the petitioner and her family members sold their entire shareholding in VMT Spinning Mills India Private Limited to Al. The said fact has been admitted by the petitioner.

8. Subsequently, on 23.07.2014, Memorandum of Compromise was executed between VMT Spinning Mills India Private Limited, Al and petitioner and petitioner's family. Whereby the first and second Tri-Party agreements dated 12.11.2007 and 08.07.2008 are cancelled, and petitioner and petitioner's family pay A1/Mr. G. Srinivasan a sum of Rs.2.65 crores.

9. Clause 7 of the Memorandum of Compromise states that Al is unable to hand over to the petitioner the Original share certificates relating to VMT Spinning Mills India Private Limited since the same is under custody and possession of CBI and that the Petitioner is to seek issuance of duplicate share certificates from the company, on the basis of the Memorandum of Compromise and the orders to be passed by the Company Law Board.

10. Pertinently, the petitioner in her statement under Section 50 of PMLA, dated 24.03.2016 states that she does not remember handing over the share certificates to A1.

11. On 25.10.2017, the Registrar of Companies issues Form No. STK-7 whereby VMT Spinning Mills India Private Limited had been strike off from the register of companies, and the company stood dissolved for non filing of statutory returns.

12. However, the Petitioner continues to represent VMT Spinning Mills India Private Limited even after 25.10.2017, including before the High Court of Madras in Crl.OP.No.3890 of 2017 in which Judgment was

pronounced on 27.01.2022.

13. A part of the Proceeds of Crime generated by various accuseds, including Al, was deposited in the bank accounts of VMT Spinning Mills India Private Limited to an extent of Rs.5,69,13,194/- and a further sum of Rs.2,32,20,148/- was generated as trade receipts by VMT Spinning Mills India Private Limited using the proceeds of crime.

14. The petitioner has admitted in her statement under section 50 of PMLA that she was aware of the criminal activities of Al since the end of 2008. Though the petitioner sold her shareholding in VMT Spinning Mills India Private Limited to Al in 2008, VMT Spinning Mills India Private Limited had received proceeds of crime to an extent of Rs. 8,01,33,342/-. However, on 09.01.2012 the petitioner has sold all the assets of VMT Spinning Mills India Private Limited to a person named Mr.Durai for a consideration of Rs.5.14 crores of which Rs.2.50 crores was received as advance by the petitioner and her mother, and the balance Rs.2.65 Crores was paid by Mr.Durai to Al under the Memorandum of Compromise dated 23.07.2014.

15. Thereafter, the Petitioner causes VMT Spinning Mills India Private Limited not comply with statutory obligations of filling annual returns, and this causes the Registrar of Companies to issue Form No. STK-7 dated 25.10.2017, whereby VMT Spinning Mills India Private Limited had been strike off the register of companies. Thus, from and after 25.10.2017 VMT Spinning Mills India Private Limited ceased to exist. However, the Petitioner files Crl.OP.No.3890 of 2017 in February 2022, before the Registrar of Companies strike off the VMT Spinning Mills India Private Limited and after stuck of on 25.10.2017, the Judgment was pronounced by this High Court on 27.01.2022 and there is no mentioning in the said judgment about the actions of the Registrar of Companies strike off VMT Spinning Mills India Private Limited.

16. It is not made clear before this Court, whether the fact regarding strike off the company namely VMT Spinning Mills India Private Limited was brought to the notice of this Court in Crl.O.P.No.3890 of 2017 or not. However, the fact remains that there is no reference or mentioning about the actions taken by the Registrar of Companies strike off VMT Spinning Mills India Private Limited.

17. The petitioner had sold all the assets of VMT Spinning Mills India Private Limited and received consideration of Rs.5.14 crores and thereafter, ensured that VMT Spinning Mills India Private Limited was dissolved, but continues to prosecute Crl.OP.No.3890 of 2017 even in the year 2022 and the judgment was pronounced on 27.01.2022. Admittedly, VMT Spinning Mills India Private Limited is in receipt of proceeds of crime to the extent of atleast Rs.8,01,33,342/-. However, now there is no VMT Spinning Mills India Private Limited, and all the assets of VMT Spinning Mills India Private Limited has been sold by the petitioner for a consideration of Rs.5.14 crores to Mr.Durai.

CONTENTIONS OF THE PETITIONER:

18. In the context of the above factual matrix, Mr.I.Abrar Mohamed Addullah, the learned counsel for the petitioner would submit that the Division Bench of this Court allowed the Crl.OP.No.3890 of 2017 filed by VMT Spinning Mills India Private Limited and quashed complaint filed in C.C.No.56 of 2016. In the concluding paragraph, the Division Bench made an observation that, it is open to the Enforcement Directorate to even include

the name of anyone involved in the affairs of VMT Spinning Mills India Private Limited, as a witness for the prosecution by filing an application under Section 311 Cr.P.C before the Trial Court. As far as the company is concerned, the Criminal Original Petition was allowed and C.C.No.56 of 2016 was quashed. Therefore, filing Additional/Supplementary Complaint thereby implicating the petitioner and other persons are untenable and beyond the scope of Section 44 Explanation Clause of PMLA. In the original complaint, the petitioner was not an accused. Even in case, the Enforcement Directorate decided to proceed against the petitioner, she must be called as witness to depose about the affairs of VMT Spinning Mills India Private Limited. Thus, implicating the petitioner as an accused by filing Supplementary complaint is in violation of Section 44 Explanation (2) of PMLA.

19. It is further contended that, in the Supplementary Complaint in C.C.No.60 of 2016, VMT Spinning Mills India Private Limited has not been made as an accused and there is no specific allegation against the petitioner/Mrs.Sudha. In the absence of any specific allegation, implicating the petitioner into the affairs of VMT Spinning Mills India Private Limited,

the actions initiated by the respondents arraying the petitioner as an accused is untenable. In this context, the petitioner relied on the judgments of the Hon'ble Supreme Court of India in the case of ***Aneeta Hada v. Godfather Travels and Tours and Private Limited***[1] and ***Himanshu v. B.Shivamurthy and Another***[2]**.**

20. Thirdly, the learned counsel for the petitioner argued about the maintainability of Additional/Supplementary complaint. The impugned Supplementary complaint in C.C.No.60 of 2016 was filed on 17.11.2021. The last statement of the persons recorded was done on 24.03.2016. Section 44 Explanation (2) of PMLA would denote that *"the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not."*

20(i). Relying on the above explanation to Section 44 of PMLA, it is contended that in the absence of any further investigation to bring further

1 2012 5 SCC 661
2 2019 3 SCC 797

evidence, oral or documentary, against any accused persons, there is no scope for filing Supplementary affidavit, merely based on the statement already obtained from the petitioner.

21. The petitioner contended the effect of judgement dated 27.01.2022 in Crl.O.P.No.3890 of 2017 dated 27.01.2022 is also to be considered. The said Criminal Original Petition was filed to quash C.C.No.56 of 2016 by VMT Spinning Mills India Private Limited. The High Court quashed the complaint, as far as the VMT Spinning Mills India Private Limited is concerned. However, liberty is granted to the Enforcement Directorate to examine the persons involved in the company as witness. Therefore, implicating the petitioner as accused by filing Supplementary complaint is running counter to the spirit of the order passed by the High Court in Crl.O.P.No.3890 of 2017 dated 27.01.2022.

22. The six properties listed out as provisionally attached cannot be termed as proceeds of crime, since the acts constituting the scheduled offence took place after the acquisition. It is evident that those six properties were possessed prior to the period of scheduled offence and thus, the said

properties cannot be construed as proceeds of crime. In this regard, the petitioner relied on the judgment of the Hon'ble Apex Court in the case of ***Pavana Dibbur v. Directorate of Enforcement*[3].**

23. Finally, the learned counsel for the petitioner would submit that the impugned Supplementary complaint is nothing but gross abuse of process of law. Though the High Court quashed the complaint in C.C.No.56 of 2016 and granted liberty to include the persons, who are all connected with VMT Spinning Mills India Private Limited as witnesses, there is no reason whatsoever to implicate the petitioner as an accused in the impugned Supplementary complaint.

REPLY BY THE RESPONDENTS:

24. Mr.AR.L.Sundaresan, the learned Additional Solicitor General of India appearing on behalf of the respondents would strenuously oppose by stating that, it is a clear case where the proceeds of crime are established. The learned Additional Solicitor General of India drew the attention of this Court with reference to the details set out in paragraph Nos.16.3, 17.4 of the

3 2023 SCC Online SC 1586

supplementary complaint and also paragraph Nos.24.7 and 24.8 of the supplementary complaint impugned in the present petition. Perusal of the above details would be sufficient to form an opinion that the proceeds of crime is present and therefore, all other contentions raised by the petitioner have to be adjudicated during the course of trial.

25. Regarding the order passed by the Division Bench in Crl.O.P.No.3890 of 2017 dated 27.01.2022, the learned Additional Solicitor General of India would contend that on 25.10.2017, the Registrar of companies had issued Form No.STK-7, whereby VMT Spinning Mills India Private Limited had been strike off the register of companies, and the company stood dissolved for non-filing of statutory returns, However, the case proceeded against non existent company in Crl.O.P.No.3890 of 2017 and order was passed on 27.01.2022, whereby the proceeding against the non-existent company was quashed. Therefore, the reliance placed by the petitioner on the judgment would not of any avail to them.

26. The two judgments relied by the petitioner i.e., ***Aneeta Hada v. Godfather Travels and Tours and Private Limited***[1] and ***Himanshu v.***

1 2012 5 SCC 661

B.Shivamurthy and Another[2] are concerned, they are not applicable to the facts of the present case in C.C.No.60 of 2016, since both the relied upon judgments relate to prosecution under Section 138 of the Negotiable Instruments Act, whereas C.C.No.60 of 2016 in the present case relates to prosecution under PMLA. The petitioner in her individual capacity has allegedly committed the offence of Money Laundering as defined under Section 3 of PMLA. Thus, those two judgments are factually incomparible and distinguishable.

27. The instant quash petition stems from C.C.No.60 of 2016, whereas the reliance placed on the petitioner relates to C.C.No.56 of 2016. Pertinently the petitioner and her late mother were not accused in C.C.No.56 of 2016. Importantly the offence of Money Laundering is a continuous offence and therefore, there is no impediment for the Enforcement Directorate to file supplementary complaint in the event of identifying materials relating to proceeds of crime and offence of money laundering.

28. The petitioner having been a Director of VMT Spinning Mills India Private Limited had caused the said company not to file its statutory

2 2019 3 SCC 797

returns, which resulted in the Registrar of Companies to strike off the said company from the register of companies and thereby, the company stood dissolved. As on the date of the order of the High Court 27.01.2022 in Crl.O.P.No.3890 of 2017 filed by VMT Spinning Mills India Private Limited represented by the petitioner was non existent and therefore, the reliance placed by the petitioner deserves no merit consideration.

29. The properties that have been attached, are the subject matter of challenge by the petitioner before the PMLA Appellate Tribunal, and during the pendency of such proceedings the petitioner also approached this Court by way of CMA No. 1001 of 2024 and the same is pending on the file of this Court.

30. Explanation (2) to Section 3 of PMLA would make it abundantly clear that the offence of money laundering is a continuous offence. The petitioner admits that the Proceeds of Crime generated by Al and received by the petitioner's father and VMT Spinning Mills India Private Limited have been returned to Al by selling the assets of VMT Spinning Mills India Private Limited (which has received about Rs. 8 crores of proceeds of

crime), and this is precisely what has been complained of in the Complaint/Supplementary Complaint by the complainant. Explanation (ii) to section 44(1)(d) of PMLA specifically permits) subsequent/supplementary complaint.

DISCUSSIONS:

31. The present petition has been instituted to quash the additional/supplementary complaint filed by the Enforcement Directorate in C.C.No.60 of 2016. Thus, most of the grounds raised by the petitioner on merits, deserves no elaborate adjudication for the purpose of deciding the quash petition. It would be sufficient, if the Court finds that there are *prima facie* materials available on record to establish an offence under Section 3 of PMLA. The scope and spirit of the provisions under PMLA need not be compared with the regular penal laws. PMLA being code in itself, the facts are to be considered with reference to the provisions under PMLA. The wider implications of money laundering and the object of special enactment are of paramount importance, while considering the issues raised in quash petitions.

32.In the case of ***Vijay Madanlal Choudhary and Others V. Union of***

India and Others[4], the Hon'ble Supreme Court of India with reference to the interpretation under Section 3 of PMLA, 2022 held as follows,

> *"**269.** From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.*
>
> ***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*

4 2022 SCC Online SC 929

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, 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 moneylaundering 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 moneylaundering 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."

33. In order to understand whether proceeds of crime is traced out in the present case, it is relevant to extract paragraphs Nos. 16.3, 17.4, 24.7 and 24.8 of the impugned supplementary complaint.

"16.3.Inasmuch as the funds obtained through trade finance/ factoring facility from GTFL were diverted in the aforesaid manner solely for the purpose of embezzlement of such funds, the money trail identified and compiled hereunder are reckoned as the investment made towards acquiring/ taking over of VMT. This apart certain receipts in the accounts operated by Shri G.Srinivasan and the erstwhile management of VMT, identified as trade proceeds/receipts of VMT during the period after its acquisition/takeover by

Shri G.Srinivasan as per worksheet (Annexure-XVIII) and after its retrieval by Shri K.Duraisamy as reflected in the extract of the account with IOB, Kollupalayam Branch (Annexure-LVIII) were recognized as the proceeds derived out of the investment in VMT and included in the said compilation. Thus, it is revealed that part funds fraudulently derived out of the aforesaid criminal activities by Shri G.Srinivasan from GTFL aggregating to Rs.5.69 crores, reckoned as the proceeds of crime has been invested for acquiring/taking over of VMT. It is also pertinent to note that S/Shri G.Srinivasan and R.Selvakumar had admitted to the reinvestment of profits/receipts yielded out of the aforesaid investment in furtherance of the business of VMT thereby resulting in accrual of about Rs.8.01 crores with VMT as proceeds of crime.

17.4. From the business or earnings of VMT, funds were generated/transferred into the personal accounts of the Directors of erstwhile management of VMT including Shri K.Duraisamy without any proper rationale. Also, cash withdrawals were effected from the bank accounts *comprising the business accruals of VMT without any perceptible underlying trade or liability. Further, an entity founded by the members of a family as Shareholders & Directors with their own investment was later incorporated as a private limited company with its entire shareholding and control over its management vesting with them. As such the financial interests/revenues' of the company and its founder Directors are not distinct but have got amalgamated beyond separation. Hence as a corollary, the proceeds of crime embroiled in the assets and business of VMT enfolded the personal financial interests/earnings of the founder Directors and their assets. Moreover, the company VMT having been struck off and dissolved by the Registrar of Companies, Tamilnadu, Coimbatore vide Notice No.STK-7/ROCCBE/2017/4 dated 25.10.2017, the financial interests/earnings as well as the revenues of the company are presently vested only with the descendants of Shri K.Duraisamy.*

24.7. It is humbly submitted that in view of the foregoing, Smt. D.Vasanthamani and Smt. Sudha, the then Director of VMT who had the *knowledge of the criminal activities of Shri G.Srinivasan and his fraudulent diversion funds derived as a consequence of the aforesaid criminal activities, identifiable as "proceeds of crime" defined under Section 2(1)(u) of PMLA having knowingly been a party to cause the direct investment in VMT of Rs.5.69 crores and thereafter having indulged with trade proceeds/earnings of VMT resulting out of the said investment totally accured to the extent of Rs.8.01 crores besides attempting to connive in the projection of the same as untainted properties has committed the offence of money laundering defined under Section 2(p) read with Section 3 of the PMLA, which is punishable under Section 4 of the PMLA.*

24.8.It is humbly submitted that Smt. D.Vasanthamani and Smt. Sudha having orchestrated the sale executed under the OTS scheme for the release of the Chemi-104 Said immovable properties of VMT offered as collateral security for the loans availed By VMT, which were embroiled with the proceeds of crime and thereby having actually involved in the process connected *with the proceeds of crime in his attempt to use the same by claiming it as untainted property has committed the offence of money laundering defined under Section 2(p) read with Section 3 of PMLA, which is punishable under Section 4 of PMLA."*

34. Section 65 of PMLA provides Code of Criminal Procedure, 1973 to apply. Provisions of the Cr.P.C shall apply insofar as they are not inconsistent with the provisions of this Act. Therefore, the special enactment namely PMLA would prevail over and the grounds raised and the judgments relied on, relating to other penal laws would have no application and thus, the arguments of the petitioner in this regard deserves no merit consideration.

35. Section 71 of PMLA also enumerates that the provisions of PMLA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Therefore, the very contention of the petitioner questioning the validity of the supplementary complaint filed in impugned C.C.No.60 of 2016 is untenable.

36. Regarding Section 44 Explanation Clause, it is only an

explanation provided to Section 44 is relied upon by the petitioner. The explanation to a provision cannot be read as provision by itself. When the power to file supplementary complaint has not been questioned, the reliance placed on the explanation by the petitioner is unacceptable.

37. Once the proceeds of crime has been established under Section 21(u) of PMLA and an offence is made out under Section 3, the process thereafter must be construed as standalone process. Therefore, this Court is of the considered opinion that the reference made about the other penal provisions would not have any implication in the cases relating to PMLA.

38. The present petition has been filed to quash supplementary complaint registered in C.C.No.60 of 2016 dated 17.11.2021. Since the respondents could able to establish *prima facie* case with reference to the materials available on record, we could arrive at an irresistible conclusion that the petitioner has to face trial and defend her case. However, the trial Court shall proceed with the case, uninfluenced by the findings, if any made on facts in the present order.

39. Accordingly, the Criminal Original Petition stands dismissed. Consequently, the connected Miscellaneous Petition if any, is closed.

(S.M.S.J.,) **(N.M.J.,)**
17.10.2024

Index : Yes
Internet: Yes
Speaking order
Neutral Citation : Yes
gd

To
The Assistant Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
3rd Floor, 3rd Block, 'B' Wing,
No.26, Haddows Road,
Chennai – 600 006.

S.M.SUBRAMANIAM, J.

and
N.MALA, J.

gd

Pre-Delivery Order in
Crl.O.P.No.28587 of 2023

17.10.2024