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Crl.R.C.No.82 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2024

PRONOUNCED ON : 28.08.2024
CORAM

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

Crl.R.C.No.82 of 2024
and
Crl.M.P.No. 646 of 2024

Ms.S.Jayalakshmi

... Petitioner

Vs.

Directorate of Enforcement,
Chennai Zone-I,
rep. by its Deputy Director,
5th Floor, BSNL Administrative Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034.

... Respondent

PRAYER: Criminal Revision is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the proceedings made in Crl.M.P.No.6422 of 2022 in Spl.C.C.No.02 of 2021 dated 13.10.2023 on the file of Hon'ble IX Additional Special Judge for CBI Cases, Chennai and set aside the same.

For Petitioner : Mr.Nithyash Natarajan for
M/s.Sri Law Associates.



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

ORDER

(S.M.Subramaniam J.)

Under assail is the judgement dated 13th October, 2023 in Crl.M.P.No.6422 of 2022 in Spl.C.C.No.2 of 2021.

2. The petitioner is Accused No.16 and she filed a petition under Section 227 of Criminal Procedure Code for discharge. Since the petition has been dismissed, the present Criminal Revision Case came to be instituted.

3. The petitioner is the then wife of Mr.C.Sivasankaran. The facts of the case are that the company, by name M/s Win Wind Oy, Finland (WWO) was sanctioned loan by M/s IDBI Bank, DIFC Branch, Dubai, for financial assistance of EURO 52 Million - (INR equivalent to 322.40 crores) towards Working Capital Facility, Capital Expenditure (CAPEX) and Loan Equivalent Ratio (LER). Due to lack of business, the company could not carry on the business and eventually ended up only accumulating losses. Later, WWO applied for Voluntary Bankruptcy and approached the Court of Finland who



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appointed Bankruptcy Estate Administrator (BEA) on 03.10.2013 for liquidation of assets.

4. After that, senior officials of IDBI Bank suggested to grant loan to M/s Axcel Sunshine Limited (M/s.ASL) based in the British Virgin Islands, for non-productive purpose to a tune of 83 Million USD to use the same for repaying the loan of M/s WWO and other associate companies of Siva Groups. Accordingly, the IDBI, DIFC Branch, Dubai disbursed a loan to the tune of 67 Million USD to M/s Axcel Sunshine Limited on 05.03.2014. The loans disbursed had not been utilised for the purpose for which it was availed from the IDBI Bank. Thus, the petitioners have involved in the process and activity of placement layering an integration of the proceeds of crime.

5. The petitioner sates that she was no way connected with the first loan disbursed to WWO Finland or the second loan disbursed to M/s.ASL, BV Island by IDBI Bank. As a shareholder of SIHL, the petitioner has neither given any consent, nor signed any resolution passed by SIHL to borrow money from IDBI Bank or to offer collateral security for loan.



6. In the meantime, CBI, BS & FC registered FIR No.09 dated 13.04.2018 under Section 120 B r/w Sections 409, 420 of IPC, r/w Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988. Since the case registered by the CBI disclosed an offence under Section 120B r/w 420 of IPC, r/w Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act, 1988, which is a schedule offence under Section 2(1)(y) of Prevention of Money Laundering Act, 2002 (herein after referred as PMLA), the respondent had registered a case in ECIDR/CEZO/1/10/2018 on 01.05.2018 for further investigation. The petitioner was not arraigned as an accused, either in the FIR or in the ECIR. Further she was not arraigned as accused in the final report filed by the CBI for the offence's under Sections 120(B) and 420 of IPC before the Additional Chief Metropolitan Magistrate, Egmore, Chennai, on 24.12.2022 in C.C.No.554 of 2023.

7. On completion of investigation, the respondent issued the Provisional Attachment Order (PAO) No. 01/2019 dated 31.01.2009 and attached the immovable properties of the companies in terms of Section 5(1) of PMLA. The petitioner states that no movable or immovable properties of the petitioner were attached. The respondent preferred a prosecution



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complaint in Special C.C.No.02 of 2021 dated 10.01.2021 under PMLA before the Trial Court, in which the petitioner has been arrayed as Accused No.16. The petitioner was arraigned as accused in representative capacity in respect of A7, A22, A23, A24 and A25. The petitioner filed a Crl.M.P.No.5543 of 2021 before the Trial Court to delete her name in terms of Section 305 Cr.P.C. which was allowed vide order dated 18.07.2022. Thereafter, the petitioner filed a petition under Section 227 Cr.P.C. for discharge from PMLA prosecution proceedings. The said petition has been dismissed vide order dated 13.10.2023 which resulted in filing of the present Criminal Revision Case.

8. The learned counsel for the petitioner would mainly contend that the allegations in the complaint under PMLA does not, prima facie, constitute the offence of money laundering as defined under Section 3 of PMLA. To prosecute a person under PMLA, commission of an offence under any of the schedule offence is a sine qua-non. The petitioner has not even arraigned as an accused in the FIR or in the ECIR. Despite the fact that the Trial Court noted the point that the petitioner has not been arraigned as an accused in the Charge-sheet filed by the CBI, for the offences under Section 120 and 420 of



IPC, the fact that the petitioner is a mere shareholder and she has no involvement in the administration of the company, has not been taken into consideration.

9. The learned counsel for the petitioner, Mr.Nithyash Natarajan would contend that the Trial Court made a finding in Paragrpah No.10 of the impugned order that *“the statements, documents, and other materials produced by the respondent along with the complaint, do not contain any incriminating material against petitioner/A16 to relate her with any money laundering activities as stated under Section 3 of PMLA”*. In spite of the above finding, the discharge petition is dismissed.

10. The Trial Court made an erroneous finding that the petitioner was charged under Section 70 of PMLA which is factually incorrect. The prosecution complaint reveals that the petitioner was charged with the offence under Section 3 r/w Section 4 of PMLA. The learned counsel for the petitioner mainly contended that the petitioner, though a major share holder of the company, not participated in any of the proceedings. It is a settled law that the share holders of the company cannot be prosecuted in the absence of



any specific evidence to hold their involvement in the commission of crime.

Mere status of a person as a share holder per se cannot be a ground to implicate the shareholder in a criminal proceedings. The entire case of the petitioner rests on the ground that she is a shareholder of the company and had not participated in any of the proceedings. She had no knowledge or given consent for any decision and therefore, she cannot be implicated as an accused in PMLA proceedings. There is no material evidence in the complaint to allege that the contravention has taken place with the consent or connivance of the petitioner. The presumptive role of the petitioner, in her capacity as a major shareholder of the company, has no basis and is untenable.

11. Mr. Nityash Natarajan, learned counsel for the petitioner relied on the Judgement of the Hon'ble Supreme Court in the case of ***Sunil Bharti Mittal Vs. Central Bureau of Investigation***¹.

12. In Paragraph Nos. 42 and 43 of the above judgement, the Hon'ble Supreme Court observed that a corporate entity is an artificial person which acts through its Officers, Directors, Managing Director, Chairman, etc. If

1. (2015) 4SCC 609



such a company commits an offence involving *mens rea*, it would not normally be an intend and action of that individual who would act on behalf of the company. It would be more so, when the criminal act is that of conspiracy. However, at the same time, it is the cardinal principle of criminal jurisprudence that there is no vicarious liability unless the statutes specifically provides so.

13. The Supreme Court said that an individual who has perpetrated the commission of an offence on behalf of a company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which he can be implicated in those cases where the statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.

14. The judgement of the Calcutta High Court, in the case of ***Shree Hanuman Cotton Mills Ltd. and others vs Union of India and others***², has been referred wherein Calcutta High Court made an observation which is extracted hereunder :

2. W.P.A No.17513 2022 dated 26.09.2022



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“32. In the present case, a portion of the property of the petitioner no.1-company and shares in the names of Mahesh and Alka in the company have been attached. The respondents allege that such fraction corresponds with the shareholding ratio of the accused Mahesh, Alka and their family in the petitioner no. 1-company.

33. Bacha Guzdar (supra) is a landmark judgment on the now-settled proposition that shareholders, irrespective of the size of their shareholding in a company, have no rights whatsoever in the assets of the company. The ratio of the said judgment has been followed in Electronics Corporation (supra), Pesticides & Brewers (supra) and a series of other judgments of the Supreme Court, our court and other High Courts as well.

34. It is nobody's case that any of the accused persons are directors of the petitioner no. 1-company. The respondents' best case is that they are shareholders in the company. Hence, there is no scope of lifting the legal fiction of corporate veil in the present case, since, in their capacity as mere shareholders of the petitioner no. 1-company, the accused persons have no right, title and/or interest whatsoever in the assets of the company.

35. The respondents have cited certain decisions in support of their contention that even third party properties can be attached. The first of such judgments is



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Vijay Madanlal (supra). The relevant paragraph in this context, which is relied on by the respondent no. 2, is paragraph 65 thereof. The Supreme Court holds therein that “... The sweep of Section 5 (1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act.””

15. The Delhi High Court, in the case of **Anita Kaur Vs. Universal Weather and Aviation India Pvt. Ltd.**³, held as follows :

“8. We remain unimpressed. The first of the aforesaid argument is against the very grain of Company Law. A Company is a distinct legal entity from its shareholder, even if all the shares are held by one person only. Thus, merely because the defendant no. 2 holds 100% of the shareholding of the defendant no. 1 Company, would not make the defendant no. 2 liable for

3. Manu/DE/2350/2014



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the dues and acts of the defendant no. 1. Admittedly both defendant no. 1 and defendant no. 2 are separate legal entities. No case for piercing of the corporate veil is made out. The Supreme Court in Vodafone International Holding B.V. Vs. Union of India (2012) 6 SCC 613 (para 101) has held that a Company is a separate legal persona and the fact that all its shares are owned by one person or by the parent Company has nothing to do with its separate legal existence.”

16. Relying on the above judgements, the learned counsel for the petitioner would reiterate that there is no material evidence against the petitioner even in the complaint to establish about her involvement in an offence warranting prosecution under the provisions of the PMLA. The trial Court, though made a finding in this regard, refused to grant relief without any valid reason. Thus, the present revision case is to be considered.

17. The learned Additional Solicitor General of India Mr.AR.L.Sundaresan, assisted by Mr.Cibi Vishnu, Special Public Prosecutor appearing on behalf of the respondent, would oppose the contentions of the petitioner by stating that the contentions of the petitioner that there is no



evidence in the complaint filed by the respondent, is incorrect. The Trial Court has rightly appreciated the evidences made available in the complaint and rejected the discharge petition. (i) It is a fact that a scheduled offence has taken place and the CBI had on 13.04.2018 registered FIR No. 09/2018 and subsequently filed charge sheet/complaint before Additional Chief Metropolitan Magistrate for CBI Cases, Egmore, Chennai, in C.C. No. 554 of 2023. The relevant provisions that are scheduled offences are under Sections 120B and 420 IPC, and under Section 13 of the Prevention of Corruption Act. (ii) the aforementioned scheduled offence has resulted in the generation of proceeds of crime in the form of loans availed from IDBI Bank and default in repayment of loan and failing to use the loan for the purpose for which it was availed, (iii) the Petitioner is involved in the process and activity of placement, layering, and integration of the proceeds of crime. Hence the three foundational facts as required to be established by the Respondent/Complainant are established and therefore, Section 24 of PMLA would be applicable and Paragraph Nos.343 to 345 of the Judgment of the Hon'ble Supreme Court in *Vijay Madanlal Choudry Vs Union of India*⁴ would be of relevance.

4. 2022 SCC OnLine SC 929



18. Paragraph No.11 of the complaint gives a summary of the investigation under PMLA, especially Paragraph Nos.11.1 to 11.3, and the chart enclosed to the Written Submissions of the respondent also illustrates the same.

19. Admittedly, in the year 2007, the Petitioner acquired from A-1/her former husband, 86% shareholding in A-7/Siva Industries & Holdings Limited (SIHL), subsequently A-7's 100% wholly owned subsidiary based in Finland A-8/Win Wind Oy availed a loan of 52 million Euros from IDBI Bank on 19.10.2010, and the loan was defaulted and a second loan of 67 million USD was availed from IDBI Bank in March, 2014 by A-2/Axcel Sunshine Limited, in British Virgin Islands and this loan was placed, layered, integrated, and routed through various entities, including A-3/Broadcourt Investments Limited in British Virgin Islands, and finally reaches the account of A-7/SHIL and has been used to repay the earlier loan of 52 million Euros.

20. Admittedly the Petitioner was divorced from A-1 on 27.03.2014 and after the divorce, A-1 transferred his shareholding in A-3/Broadcourt Investments Limited in British Virgin Islands to the Petitioner, and



furthermore the Petitioner is a 50% shareholder in A-22/Chennai Properties and Investments Ltd. which has been paying A-1's hotel bills in Hotel Leela Palace bills as recently as 2020. Significantly the Petitioner even denied the fact that she was the shareholder of A- 3/Broadcourt Investments Limited in her Section 50 PMLA statement and only on being confronted with evidence did she later on admit to her shareholding in A-3/Broadcourt Investments Limited.

21. The Petitioner's argument, that she is not an accused in the predicate offence, and to be discharged in the prosecution under PMLA, is incorrect and untenable, since it is a settled proposition that a person may not have committed the predicate offence but has subsequently been involved in the offence of money laundering thus attracting Section 3 of PMLA. This proposition has been settled by the Hon'ble Supreme Court in *Vijay Madanlal Choudry's case (supra)* in Paragraph No.270, and in the case of *Pavana Dibbur Vs. Directorate of Enforcement*⁵, in Paragraph No.17, and also by this Hon'ble High Court in the case of *P. Rajendran Vs. Asst Director, Directorate of Enforcement*⁶, in Paragraph Nos. 9 to 14.

5. 2023 SCC Online Mad 1586

6. 2022 SCC Online Mad 9007



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22. The Petitioner has relied upon the judgment of the Hon'ble Supreme Court in *Vijay Madanlal Choudry's* case, however, the said judgment in fact supports the Respondent/Complainant since admittedly a scheduled offence has taken place and the same is being prosecuted by the CBI, the said scheduled offence has resulted in the generation of proceeds of crime, and the petitioner is involved in the process and activity of placement, layering, and integration of the proceeds of crime.

23. The Petitioner is 86% shareholder of A-7 (SIHL) since 2007. Thus, decisions of A-7 company were taken by her or under her directions are matters of trial. When admittedly 86% of the shares in A-7 (SIHL) are held by the petitioner, it is too tall a story to say she does not have control over the affairs of the company, that too at the stage of discharge.

24. The Petitioner has relied upon a judgment of the Hon'ble High Court of Delhi in *Anita Kaur- Vs Universal Weather and Aviation India Private Limited (supra)*, however, the same is not applicable since it relates to a civil suit filed under CPC.



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25. Considering the arguments, Section 3 of PMLA is wide enough to cover indirect attempt to indulge in money laundering activity. The Section 3 of PMLA stipulates 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 [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*”.

26. The economic related special enactments and its objectives are to be considered by the Courts while dealing with the cases under such special enactments including PMLA. The Statements of Objects and Reasons for PMLA is that money laundering possess a serious threat, not only to the financial systems of the country but also to its integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are also taken into consideration by the Parliament while enacting PMLA. Such objectives are to be borne in mind while dealing with the cases under PMLA and the cases registered under PMLA cannot be dealt akin to that of the criminal cases registered under general penal provisions. The



economic related offences stand in a different footing, *modus operandi* of money laundering being complex in nature, an iota of doubt in the nature of transactions must be held in favour of the Enforcement Directorate and based on negligible differences discharge under Section 227 Cr.P.C. cannot be granted. Therefore, appreciation of evidences in discharge petitions are absolutely unnecessary and in the event of any such finding, the same would result in causing prejudice to either of the parties. If the enforcement directorate is able to establish a prima facie case against the accused persons, it would be sufficient to allow the trial to go on. Certain technical grounds cannot override the effect of other material evidences available on record in the complaint filed by the Enforcement Directorate under PMLA.

27. Carving out a line between the material evidences available in the complaint and the grounds taken by the accused persons, seeking discharge, are to be considered with reference to the objectives of the PMLA. The scope of Section 3 of PMLA cannot be narrowed down so as to grant exoneration from the proceedings merely on the ground that a person is not directly connected with the affairs of a company. Section 3 of PMLA unambiguously stipulates that whosoever indirectly attempts to indulge or knowingly assist or



knowingly is a party, are also guilty of offence of money laundering. Mere concealment or possession or use, would be sufficient to prosecute a person under Section 3 of PMLA. The connecting material evidences would be sufficient for the purpose of allowing the trial to go on. It is not necessary that there must be a direct link between the accused and the offence of money laundering. Indirect involvement and the connecting link, if established, would be sufficient for the purpose of prosecuting the person and therefore, discharge under Section 227 of Criminal Procedure Code in respect of PMLA cases cannot be granted akin to that of the criminal cases registered under the general penal laws. The standard of material evidences, proof, required to prosecute a person under PMLA need not be compared with the material evidences required to prosecute the person under the general criminal law. The scope of PMLA is distinct and different and the objectives are louder in order to protect the economy of the State. The ill-effects of money laundering had been debated in the Parliament and such special enactments are made to curb money laundering and therefore, material evidences required for prosecuting the person under PMLA cannot be equated with the material evidences required for the purpose of prosecuting a person under the general penal law.

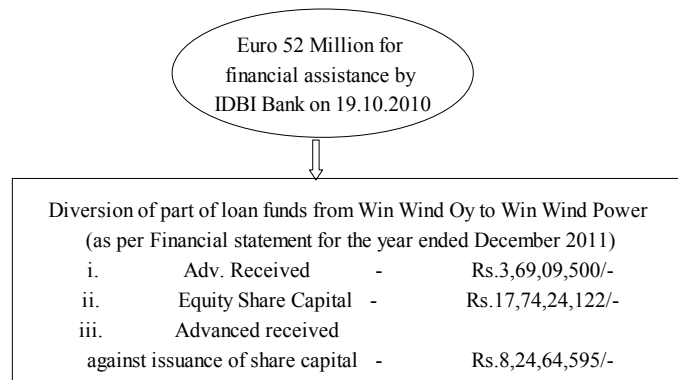


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28. In the present case, let us consider whether any material evidences are available in the complaint against the petitioner for considering the present Revision Case. In the matter of ECIR No. 10 of 2018, the complaint was filed under Section 44 and 45 of PMLA. The brief summary of result of investigation under PMLA in para 11.1 , 11.2 and 11.3 reads as under:

“11.1 The amounts of said two loans sanctioned by IDBI Chennai & disbursed by IDBI Dubai Branch to M/s Win Wind Oy, Kellaranta, 13 FI-02150, Espoo, Finland and to M/s Axcel Sunshine Limited, Portcullis Trust Net Chambers, P.O. Box 3444, Road Town, Tortola, British Virgin Islands; the utilization and transactions of the loan amounts are illustrated as given in the following flow charts:

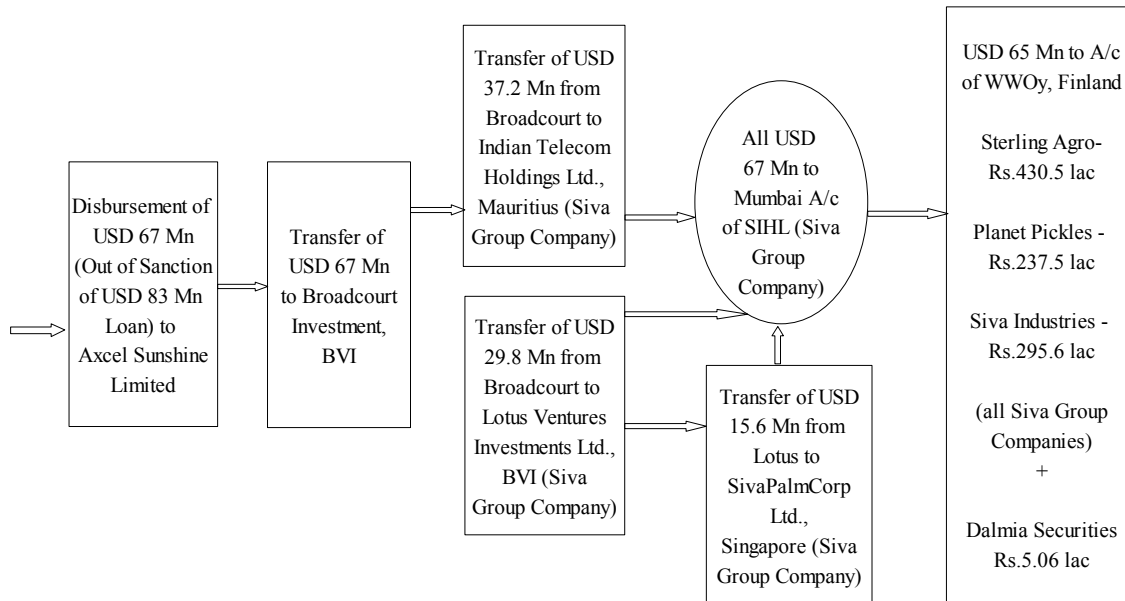
I. First Loan of Euro 52 Mn to M/s. Win Wind Oy, Finland.





II. Second Loan of USD 67 Mn to M/s Axce Sunshine Ltd., BV

Islands:



11.2 It was seen in the above Flowchart-II that the disbursement of first installment of USD 67 mn (out of USD 83 mn loan sanctioned to ASL) was transferred to 'Broadcourt Investment Limited, BVI (M/s BI) in its IDBI, Dubai bank account no. 9001103000001601 with narration "DISB MTL OF AXCEL SUNSHINE". KYC and other documents submitted during the account opening of M/s BI at IDBI, Dubai were obtained from IDBI bank vide letter dated 07-01-2021 and it is found that at the time of the said



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account opening and receipt 'transfer of USD 67 mn in it, Mr Chinnakannan Sivasankaran was shareholder (of 66%) and director of 'Broadcourt Investment Limited' which was also corroborated with the statements of Mr. C. Sivasankaran recorded on 31.12.2020. It is also observed that subsequently all the shares of Mr Chinnakannan Sivasankaran were transferred to his wife Ms S Jayalakshmi on 03.05.2014.

11.3 Further, it is found that Siva Industries and Holdings Limited (SIHL) is a closely held Indian company whose ultimate beneficiaries were Ms.S' Jayalakshmi (the then wife of Shri Chinnakannan Sivasankaran alias C. Sivasankaran) and other family members of C. Sivasankaran. It is pertinent to mention here that Shri C Sivasankaran was the major shareholder & beneficiary of SIHL till 19.03.2007 when all his shares were transferred to his wife Ms. S Jayalakshmi.

Further, during investigation it is found that Shri C. Sivasankaran was directly deriving benefits from the companies 'Chennai Property and Investment Ltd' (sister concern of SIHL) and 'AIWO Ltd' (almost 100% subsidiary of SIHL) related to SIHL of Siva Group as inter alia his expenses are being billed to these entities



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by *The Leela Hotel, Chennai.*”

29. In the context of the above facts stated in the complaint, Paragraph No.13.16 is relevant, which reads as under:

“13.16. Ms.S.Jayalakshmi, the then wife of C.Sivasankaran, Aged 55 years, the Shareholder & ultimate beneficiary of M/s Siva Industries and Holdings Limited, Chennai (SIHL); the Shareholder & ultimate beneficiary of M/s Sterling Future and Holidays Limited, Chennai (SFHL); the Shareholder & ultimate beneficiary of M/s Chennai Properties and Investments Limited, Chennai (CPIL).

13.16.1 Ms.S.Jayalakshmi was the wife of Mr. C.Sivasankaran. As per RoC documents she was having approx. 86% shareholding of M/s SIHL ie. she was the ultimate beneficiary of M/s SIHL which was being managed by her husband as shadow director. Further, it was seen that Mr.C.Sivasankaran also gifted his shares related to M/s BI to Ms.S.Jayalakshmi. Since, M/s SIHL and its subsidiaries are closely held companies controlled by her husband and family, it is found that these corporate bodies are merely cloaks and the benefits are derived by M/s.



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SIHL out of the proceeds of crime viz. the loans borrowed by M/s. WWO and M/s. ASL and as such the corporate veil is required to be ignored. On piercing the corporate veil of M/s. SIHL and its subsidiaries it is evident that the same is controlled by her husband and family and as such Mrs. Jayalakshmi with intent to camouflage the illegal activity of her husband in defrauding public sector financial institutions by availing loan by using subsidiaries and shell entity, had acted upon recovery of gift of shares executed by her husband pertaining to M/s. SIHL and its subsidiaries and thereby knowingly assisted her husband in the process of money laundering including its possession, use and projected it as untainted property and has been guilty of offence of money laundering as defined under Section 2(1)(p) r/w Section 3 of the PMLA, 2002, punishable under Section 4 of the said Act”

30. In the context of material evidences available in the complaint, the Trial Court in Paragraph No.10 has observed that whether the consent of the petitioner/A-16 as a major shareholder was obtained by the Board of Directors in any special resolution passed by SIHL to borrow money from the IDBI Bank or to offer collateral security for the loan as required under Section 180(1)(c) and 180(2) of Companies Act, 2013, are to be proved in



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the trial.

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31. In this context, proviso clause of Section 70 of PMLA contemplates that *"Provided that nothing contained in this sub section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contraventions"*

32. Pertinently, Section 70 of PMLA deals about Offences by Companies. Sub Section (1) to Section 70 of PMLA enumerates *"Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly"*. Therefore, it is immaterial whether a person is holding a



particular post in a company or assisted for commission of an offence directly or indirectly in his/her capacity as a share holder. Section 70 of PMLA has to be read harmoniously in the context of Section 3 of PMLA. Section 3 of PMLA contemplates "*Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party...*", therefore, the very purpose of Section 70 of PMLA is not to exclude any person in connection with a company, whether he/she is a Director, Shareholder or Executive etc.

33. Section 70 of PMLA cannot be read in isolation in view of the spirit of Section 3 of PMLA. Section 3 of PMLA, if to be implemented effectively, then Section 70 of PMLA, as enumerated under the Act, is to be scrupulously followed. Therefore, a general principle that shareholder is not liable for prosecution under general penal law cannot have any implication with reference to a shareholder against whom a prosecution is launched under PMLA. In the present case, the petitioner admittedly was holding 86% shares of the company. Her then husband is also an accused. Under Section 70 of PMLA, it is not only the person who, at the time of contravention, was incharge of the company but every person who was responsible to the company for the conduct of the business of the company, as well as the



company shall be deemed to be guilty of the contravention and are liable to be proceeded against and punished accordingly.

34. To safeguard the interest of the shareholders, proviso clause has been provided under Section 70 of the PMLA. The burden of proof under proviso to Section 70 of PMLA lies on the shareholder in the present case. The proviso clause stipulates that a person proves that contravention took place without his knowledge, then he / she is not liable for punishment. However, the burden of proof lies on the person who is prosecuted.

35. Section 24 of PMLA denotes *Burden of Proof*. It states that “*In any proceeding relating to proceeds of crime under this Act,--*

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.”



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36. Therefore, it is for the affected persons to prove that the money laundering has been made without the knowledge of such person seeking exoneration and not merely on the ground that such person is a shareholder of the company. Whether the person is a Director, Shareholder or holding an Executive post in a company, but if the material evidences are available to implicate any person who is connected with the company, then it constitutes an offence under Section 3 of PMLA and under proviso clause to Section 70 of PMLA and it is for such person to establish that he/she had no knowledge about such money laundering during the course of trial.

37. In view of the fact that the complaint contains material evidences for prosecution, the petitioner has to prove her innocence by undergoing the trial. Therefore, we could able to arrive at an irresistible conclusion that the case on hand is not fit to grant discharge from proceedings under PMLA.

38. We do not find any infirmity in respect of the findings made in the



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order impugned. However, the Trial Court shall proceed with the trial uninfluenced by the observations, if any made, in the present order relating to certain facts.

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

(S.M.S.J.,)

(V.S.G.J.,)

28.08.2024

Index : Yes/No

Internet: Yes/No

Speaking order/Non-Speaking order

Neutral Citation : Yes/No

(sha)

To

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

2. Deputy Director,
Directorate of Enforcement, Chennai Zone-I,
5th Floor, BSNL Administrative Building,
Kushkumar Road, Nungambakkam,
Chennai – 600 034.

3. The Public Prosecutor, High Court, Madras.



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Crl.R.C.No.82 of 2024

S.M.SUBRAMANIAM, J.

and

V.SIVAGNANAM, J.

(sha)

Pre-Delivery Order in
Crl.R.C.No.82 of 2024

28.08.2024