IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.11.2024

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE M.JOTHIRAMAN

Criminal O.P.No.29018 of 2018

M/s.Custodial Services India Pvt Ltd.,
Rep.by its directors A.Srimathi and
Rajendra Kumar, Basement Flat
Atkinson Palace, Old No.4, New No.2
Jothi Venkatachalam Salai (Atkinson
Road, Vepery), Chennai. ... Petitioner

Vs.

State represented by Assistant Director
Directorate of Enforcement, Government of India
Ministry of Finance, Department of Revenue, 2nd and
3rd Floor, No.84, Murugesa Naicker Office Complex
Greams Road, Chennai in ECIR No.CEZO/04/2017. .... Respondent

Prayer: Criminal Original Petition under Section 482 of Cr.P.C., to call for the records in C.C.No.4 of 2018 on the file of the Principal Sessions Judge, Chennai.

For Petitioner	:	Ms.G.Rajathi
For Respondent	:	Mr.N.Ramesh Special Public Prosector for E.D.

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O R D E R

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

The petition on hand has been instituted under Section 482 of Cr.P.C., to quash the complaint filed by the Enforcement Directorate (hereinafter referred to as 'ED') under Section 45(1) read with Sections 3,4 and 8(5) of the Prevention of Money Laundering Act (hereinafter referred to as 'PMLA').

2. Based on the complaint of Bank of Baroda, Corporate and Financial Services Branch, Chennai, the Central Bureau of Investigation (CBI), (BS&FC), Bangalore has registered a criminal prosecution of cheating and criminal misconduct against (i) Shri R.Subramanian, Managing Director, M/s.Subhiksha Trading Services Ltd., (ii) Shri K.P.Vairavan, then Assistant General Manager of Bank of Baroda (Corporate and Financial Services) Branch and (iii) M/s.Subiksha Trading Services Ltd., vide FIR No.18/2013 dated 26.03.2013.

3. After investigation, the CBI had filed charge sheet in R.C.4(E)/2013-CBI/BS&FC/BLR dated 26.07.2013 in C.C.No.9635 of 2014 dated 13.08.2018 against R.Subramanian, Subhiksha Trading Services Ltd., for having caused a loss of Rs.77.39 Crores to Bank of Baroda, invoking Section 120B read with Section 420 IPC.

4. The offences under Sections 120B and 420 of IPC are scheduled offences defined under Section 2(1)(y) of PMLA. Based on the informations / documents, the ED found a prima facie case for an offence of money laundering as defined under Section 3 of PMLA and punishable under Section 4 of PMLA, and launched further investigation. On completion of investigation, a complaint was filed under Section 45 of PMLA against the accused persons including the petitioner / company which is accused No.7.

5. Learned counsel for the petitioner would mainly contend that the properties listed out in the complaint attached from the petitioner would not fall under the definition of 'proceeds of crime' within the meaning of Section 2(1)(u) of PMLA. The properties not connected with the alleged 'proceeds of crime' would not constitute any basis for filing a complaint under PMLA and therefore the complaint itself is liable to be set aside. In the absence of 'proceeds of crime', the provisions of PMLA cannot be invoked and therefore, the very initiation of proceedings under PMLA are untenable. It is further contended that loans were taken from Bank of Baroda in the years 2007 and 2008 and during the relevant point of time, Section 420 IPC was not the scheduled offence and therefore retrospective application of provisions in this regard is also a ground to set aside the complaint.

6. The learned Special Public Prosecutor would oppose the above grounds raised on behalf of the petitioner by stating that regarding the application of scheduled offences more specifically Section 420 IPC has been settled in ***Vijay Madanlal Choudhary and Others -vs- Union of India*** *reported in* ***2022 SCC Online SC 929.*** The Supreme Court in Para 270 of its judgment held as follows :

> *"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, 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 the Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

7. In Para 467 of the said judgment, the Apex Court held as under:

" 467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:—
(i) The question as to whether some of the amendments to the Prevention of Money-laundering Act, 2002 could not have been enacted by the Parliament by way of a Finance Act has not been examined in this judgment. The same is left open for being examined along with or after the decision of the Larger Bench (seven Judges) of this Court in the case of Rojer Mathew .
(ii) The expression "proceedings" occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court.
(iii) The expression "investigation" in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act.
(iv) The Explanation inserted to Clause (u) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicating tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.

(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.

(d) The offence under Section 3 of the 2002 Act is dependent onscheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of moneylaundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

(vi) Section 5 of the 2002 Act is constitutionally valid. It provides for a balancing arrangement to secure the interests of the person as also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. The procedural safeguards as delineated by us hereinabove are effective measures to protect the interests of person concerned.

(vii) The challenge to the validity of sub-section (4) of Section 8 of the 2002 Act is also rejected subject to Section 8 being invoked and operated in accordance with the meaning assigned to it herein above.

(viii) The challenge to deletion of proviso to sub-section (1) of Section 17 of the 2002 Act stands rejected. There are stringent safeguards provided in Section 17 and Rules framed thereunder. Moreover, the pre-condition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment. The Central Government

may take necessary corrective steps to obviate confusion caused in that regard.
(ix) The challenge to deletion of proviso to sub-section (1) of Section 18 of the 2002 Act also stands rejected. There are similar safeguards provided in Section 18. We hold that the amended provision does not suffer from the vice of arbitrariness.
(x) The challenge to the constitutional validity of Section 19 of the 2002 Act is also rejected. There are stringent safeguards provided in Section 19. The provision does not suffer from the vice of arbitrariness.
(xi) Section 24 of the 2002 Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.
(xii)(a) The proviso in Clause (a) of sub-section (1) of Section 44 of the 2002 Act is to be regarded as directory in nature and this provision is also read down to mean that the Special Court may exercise judicial discretion on case-to-case basis.
(b) We do not find merit in the challenge to Section 44 being arbitrary or unconstitutional. However, the eventualities referred to in this section shall be dealt with by the Court concerned and by the Authority concerned in accordance with the interpretation given in this judgment.
(xiii)(a) The reasons which weighed with this Court in Nikesh Tarachand Shah for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.
(b) We are unable to agree with the observations in Nikesh Tarachand Shah distinguishing the enunciation of the Constitution Bench decision in Kartar Singh ; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, including about it posing serious threat to the sovereignty and integrity of the country.
(c) The provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.
(d) As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.

(xiv) The beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the 2002 Act.

(xv)(a) The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.

(b) The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India.

(xvi) Section 63 of the 2002 Act providing for punishment regarding false information or failure to give information does not suffer from any vice of arbitrariness.

(xvii) The inclusion or exclusion of any particular offence in the Schedule to the 2002 Act is a matter of legislative policy; and the nature or class of any predicate offence has no bearing on the validity of the Schedule or any prescription thereunder.

(xviii)(a) In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime.

(b) Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest.

(c) However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering.

(xix) Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.

(xx) The petitioners are justified in expressing serious concern bordering on causing injustice owing to the vacancies in the Appellate Tribunal. We deem it necessary to impress upon the executive to take

corrective measures in this regard expeditiously.
(xxi) The argument about proportionality of punishment with reference to the nature of scheduled offence is wholly unfounded and stands rejected.

8. In the present case, the 'proceeds of crime' were traced and stated in the complaint against the petitioner as under:

" 9. As per the provisions of Section 2(1)(u) of PMLA, "Proceeds of crime" means any property derived or obtained, directly, of indirectly, by any person as a result of criminal activity relating to scheduled offence or the value of any such property. In the instant case, the default loan amount of Rs.75 Crores, which amounts to "Proceeds of Crime" were purposely integrated/mingled with the other amounts of M/s STSL and the proceeds of crime are not clearly distinguishable. In absence of disclosure of properties acquired by Shri R. Subramanium either in his name or in the name of the group companies of STSL, it is relevant that any such movable or immovable property available either with M/s STSL andR. Subramanian, which are equivalent to the proceeds of crime amounting to Rs.75 Crores, would constitute proceeds of crime. Accordingly in the instant case, in terms of Section 2(1)(u) of PMLA, the properties held in the name of M/s STSL and their Managing Director, Shri R. Subramanian as well as in the name of his group of companies would constitute the "Proceeds of Crime"."

9. In respect of Mr.R.Subramanian, who is the Managing Director of

M/s.Subhiksha Trading Services Limited who is also an accused in the present PMLA proceedings, the complaint reveals the following facts.

> " *18. The investigation under PMLA also revealed that R.Subramanian has defaulted around Rs.890 crores (approx. Including interest) from consortium of bankers and the cases are pending before the DRAT, Chennai as per the letter dated 20.3.2018 of DRT-1, Chennai which includes the amount involved in the Bank of Baroda fraud case o Rs.77 crores.*
>
> *19. R.Subramanian is habitual in looting public funds and prolonged the same by way of litigation. The Enforcement directorate is making utmost efforts to ascertain the whereabouts of the Proceeds of Crime which involved in money laundering acquired/possessed concealed/used by the Subramanian and his family members, associates etc. As per the provisions of section 23 of PMLA, the above bank default cases/amounts of DRT-II, Chennai including the Bank of Baroda fraud case (Rs.77 crores) and the depositors case (Rs.150 crores) by EOW, Chennai are inter-connected transactions."*

10. Regarding the petitioner company's involvement, the following paragraphs in the complaint are relevant.

> " *26.3. As per the Articles of Memorandum and Memorandusuual*

Association of the company M/s.Custodial Services India Private Limited, the founder Director/initial share-holder of the company M/s. Custodial Services Limited are 1.R.Subramanian 2. R.Mangalam. As per the company master data of ROC records Smt. Sreemathi, No.G-3b, Ganga Nagar, 3rd Floor, Natwest Vijay, No. 98. BVelacherry Tambaram High Road, Pallikaranai, Chennai-100 and Shri. Rajendra Kumar, Plot No.179, Lalitha Nagar, Hyderabad are the present Directors of M/s. Custodial Services India (P) Ltd., Chennai. Since the said property was mortgaged to the said company M/s. Custodial Services India (P) Ltd., Chennai, the directors were called for enquiry.

26.4. Smt.Sreemathy, Director, M/s. Custodial Services India (P) Ltd., Chennai in his statement dated 15.03.18 under section 50(2) & (3) of the PMLA inter-alia stated that she was an employee of M/s. Subhiksha Trading Services Limited.; that R.Subrmanian M.D. of the company made her nominee director in 15 companies belonging to him; that she had signed the papers simply on his insistence; that she did not have any details any properties/mortgage agreement/sale-agreement and Power of Attorney in the names of 15 companies/firms wherein she is one of the directors; that she is submitting the details of 15 companies/firms wherein M/s.Custodial Services India Limited is one of them; that all the companies/firms belong to R.Subramanian and that he only knew all the details of properties in the name of the said firms/companies litigation."

11. Regarding the Schedule of properties, Para 26.8 of the complaint reads as under:

Schedule of Properties

S.No.	***Details of the Property***	***Area in Sq.ft***	***UDS***	***Floor***	***Document No. (Mortgage Deed) There is no sale deed***	***As per the Encumberance Certificate, the document of the flats are in the name of***	***Present Guideline value***	***Presently possessed by whom***
1	A Basement Floor Commercial Flat	3772	3772/ 100000	Basement Floor	559/1997	M/s.Custodial Services India (P) Ltd., Chennai	2.64 Crores	R.SUBRAMANIAN AND M/s.Custodial Services India (Pvt) Ltd., Chennai.
2.	A Second Floor-2F1 Residential Flat-1	1062	1062/ 100000	Second Floor	561/1997	M/s.Custodial Services India (P) Ltd., Chennai	74,34,000	
3.	A Second Floor 2B Residential Flat	2200	2200	Second Floor	560/1997	M/s.Custodial Services India (P) Ltd., Chennai	1.54 Crores	
						Total	**4.92 Crores**	

31.3. M/s.Custodial Services India Private Limited (A7) and one of its Directors Smt.A.Srimathi (A-6) knowingly assisted Shri R.Subramanian, Managing Director of M/s Subhiksha Trading Services Limited in laundering the crime proceeds into their company as discussed in Para 26.8. Therefore, M/s.Custodial Services India Limited (A-7), its Directors Smt.A.Srimathi (A-6) *have involved herself in the possession of proceeds of crime and projecting the properties as untainted properties have been guilty of offence of Money Laundering by virtue of Section 2(1) (p) read with Section 3 of PMLA and is liable to be punished under Section 4 of PMLA. "*

12. The above details in the complaint would be sufficient to form an opinion that a prima facie case has been made out by the ED warranting trial at the hands of the Court holding jurisdiction. With reference to the grounds raised, the legal position has already been settled that the definition of Section 3 clearly says, 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. Explanation to Section 3 was inserted by the Finance Act 2 of 2019 with effect from 01.08.2019, which would clarify that mere possession or acquisition or claiming as untainted property would be sufficient to constitute an offence punishable under Section 3 of the PMLA.

13. The presence of 'proceeds of crime' as stated in the complaint would

be sufficient, in our considered opinion, for allowing the Trial Court to continue the trial by following the due procedure as contemplated. The grounds raised on merits by the petitioner in the present petition deserves no consideration since such grounds are to be tried with reference to the materials available on record and produced before the trial Court during the course of trial. However, we make it clear that the trial Court, while proceeding with the trial, has to consider the materials available on record independently and uninfluenced by the findings recorded by this Court in this petition relating to facts.

14. With the above observations, this Criminal Original Petition stands dismissed. Consequently, connected miscellaneous petition is closed.

(S.M.S.,J.) (M.J.R.,J.)
14.11.2024

NCS : Yes
Index : Yes

KST

To

The Assistant Director
Directorate of Enforcement,
Government of India
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Department of Revenue,
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