BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 11.09.2024

PRONOUNCED ON : 22.10.2024

CORAM

THE HON'BLE MR.JUSTICE **C.V.KARTHIKEYAN**
AND
THE HON'BLE MR.JUSTICE **J.SATHYA NARAYANA PRASAD**

CRL.O.P.(MD)No.6302 of 2024
and
Crl.M.P.(MD)Nos.4760 and 4761 of 2024

M.Thenmozhi ... Petitioner

Vs.

The Deputy Director,
Directorate of Enforcement,
Government of India,
No.6, Besant Road,
Madurai. ...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records relating to the case in C.C.No.02 of 2022 on the file of the II Additional District Judge, Special

Court for CBI cases, Madurai and to quash the same in respect of the petitioner/Accused No.6.

For Petitioner : Mr.S.G.L.Rishwanth

For Respondent : Mr.R.Gowri Shankar
Special Public Prosecutor

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ORDER

(Order of this Court was made by **C.V.KARTHIKEYAN, J.***)*

This Criminal Original Petition has been filed under Section 482 Cr.P.C. by A6 in C.C.No.02 of 2022, now pending before the II Additional District Court/Special Court for CBI Cases, Madurai, seeking to call for the records relating to the said Calender Case and quash the same, insofar as this petitioner /A6 is concerned.

2. In the petition, it had been stated that the respondent/Deputy Director, Directorate of Enforcement, Madurai had registered a case in File No.ECIR/MDSZO/02/2017 on 03.03.2017 for the alleged offences

punishable under Section 3 of Prevention of Money-Laundering Act, 2022 (hereinafter referred to as 'PMLA'), based on FIR in RC/MA1/2016/A/0043 on the file of CBI (ACB), Chennai, against A1/husband of this petitioner/A6 and others.

3. It is the case of the prosecution that this petitioner had assisted A1 by giving her consent to be a partner in a unregistered partnership firm M/s.Hill Island Resorts which was used for acquisition of proceeds of crime. It is the further allegation that this petitioner had not brought in any capital, but had only lent her name for purchasing immovable properties by using part of the proceeds of crime illegally made by A1. It had been stated that this petitioner had thereafter, projected the same as untainted by transferring the properties in favour of her daughter, K.P.Sindhu Bairavi. It is thus stated that this petitioner had assisted A1 in acquiring assets connected with the proceeds of crime and projecting the same as untainted property and therefore, had committed offence of money-laundering as defined under Section 3 of PMLA and punishable under Section 4 of PMLA.

4. It had been further stated that the respondent had conducted an investigation, recorded statements, collected documents and filed a charge sheet against this petitioner and 9 others on 12.01.2022 for offence punishable under Section 3 of PMLA. This charge sheet was taken cognizance by the II Additional District Court, Special Court for CBI cases, Madurai as C.C.No.2 of 2022.

5. In the grounds seeking to quash the Calendar Case so far as this petitioner is concerned, it had been stated that the case against her son and daughter had been quashed by this Court in Crl.O.P(MD)No.7829 of 2022 by order dated 11.08.2022. It had been stated that this petitioner is also on the same footing as her son and daughter and therefore, the case against her must also be quashed. It had been further stated that the respondent had produced the Partnership Deed as Document No.186 and according to the said document, the partners of M/s.Hill Island Resorts are A4 and A3. The document relied on by the respondent as Document No.8 which relates to M/s.Hill Island Homes, is a forged document and relates to different entity and not at all connected to this case. It had also been stated that loans which had been issued to six individuals, had been issued only

after examining their financial status. It was not issued to M/s.Hill Island Resorts.

6. With respect to the properties in the name of the petitioner, it had been stated that there are 5 properties which have been categorised as item Nos.14, 15, 16 and 17 which had been purchased in the years 2013 and 2014 and item No.22 which had been purchased in the year 2019. It had been contended that the offence in C.C.No.8 of 2018 was said to have been committed in the year 2015 and the FIR was registered in the year 2016. It had therefore been stated that the properties in item Nos.14, 15, 16 and 17 are not connected with the case in C.C.No.8 of 2018. It had been stated that the property in item No.22 had been purchased after completion of investigation and therefore, cannot be considered as a product of the proceeds of crime. It had been further stated that the property in item No.22 was purchased on 23.12.2019 from the savings of the petitioner and she had withdrawn a sum of Rs.1,00,000/- (Rupees One Lakh only) from her Savings Bank Account in Indian Bank, Bye-pass Road Branch at Madurai, in Savings Bank Account No.445719916 on 21.12.2019, for the purchase of the property.

7. It had also been further stated that the other allegations with respect to loans sanctioned by A1 in C.C.No.6 of 2018, it had been stated that the seller of the land, Arun Vikram, had not been examined by the respondent. From him, land had been purchased and 6 demand drafts for a sum of Rs.29,00,000/- (Rupees Twenty Nine Lakhs only) had been issued to him. It had been stated that 2nd installment of the loan was for construction till basement level and the amount had been disbursed to the six (6) borrowers. It had been stated that all the documents had been filed in C.C.No.6 of 2018. It had been stated that all the six (6) borrowers had completed constructions till basement level. It had been further stated that the Writ Petition in W.P.(MD)No.23124 of 2019 filed by A1 had also been allowed and it had been observed that A1 had not caused any loss to the Bank and the order of dismissal had been set aside. It had been stated that there is no offence had been made out so far as the petitioner/A6 is concerned. It had, therefore, been stated that C.C.No.2 of 2022 must be quashed so far as this petitioner/A6 is concerned.

8. A counter affidavit had been filed by the respondent denying each one of the statements made. It had been stated that A1, husband of this

petitioner, was Branch Manager at Kodaikanal Branch of Indian Bank, and had fraudulently sanctioned six (6) housing loans totalling a sum of Rs.59.06 lakhs. A part of the said amount was used to purchase a large area of land in the name of a fictitious firm in which this petitioner, her father and her son were partners. It was stated that the land was subsequently divided into plots and registered in the names of various persons including this petitioner. It had been further stated that this petitioner had subsequently transferred her land as a gift to her daughter, K.P.Sindhu Bairavi. It had also been stated that her son and daughter of this petitioner had been discharged only on the ground that they had given an undertaking that they would not claim the land.

9. It had been further stated that A1 had invested the illegal gain made by him, by purchasing properties in his name and in the name of this petitioner in places around Madurai. They had also purchased a large tract of land at Viralipatty in the name of this petitioner. They had also developed a real estate project in the name of "Pappammal–Kuruvammal City" near Madurai. It had been stated that this petitioner did not have independent source of income either before her marriage or after her

marriage. It had been stated that merely because this Court had quashed the complaint against the son and daughter of this petitioner, it would not automatically mean that the case against this petitioner should also be quashed.

10. It had been further stated that she was involved in real estate business with her father, called KTM Promoters. In that firm, A1 had invested Rs.1.5 lakhs during 2013-2014. Her father had purchased lands in Kodaikanal in her name from Jeyapaul and Venkatesan. It had been stated that she had been confronted with the Partnership Deed and had admitted her signatures in the said Partnership Deed. It had, therefore, been stated that she was actually involved in money-laundering of the illegal gains of A1 and therefore, the case against her should proceed and the respondent must be given an opportunity to adduce evidence and substantiate the charges beyond doubt. It had, therefore, been contended that the Criminal Original Petition should be dismissed.

11. Heard arguments advanced by the learned counsels. We have perused the material records.

12. This petition has been filed by A6 in C.C.No.2 of 2022, now pending before II Additional District Court/Special Court for CBI Cases, Madurai. The complainant was the respondent herein. A1 is the husband of this petitioner. A8 and A9 are the daughter and son of this petitioner. A10 is the partnership firm M/s.Hill Island Resorts in which this petitioner was also a partner.

13. Perusal of the complaint filed under Sections 45(1) r/w.8(5) and 17(1) of PMLA for offence of Money-Laundering under Section 3 of PMLA and punishable under Section 4 of PMLA would reveal that this petitioner, A6 had admitted in her statement that her father, Murugesan was a retired Teacher, who did small time real estate business and she did not have any employment before or after her marriage with A1. She further stated that she was not involved in the real estate business of her father. The partners in the business were her father, herself and her son.

14. But however, large areas of lands had been purchased in Kodaikanal in the name of A9, M/s.Hill Island Resorts. Thereafter, the lands

had been sub-divided into plots. The plots were allotted to this petitioner. The petitioner, then transferred the same to A8, her daughter. It is complained that this transfer was to make the transactions legal. The source for such purchase of plots were by the tainted money misappropriated by A1. The transfer was to convert such tainted money into legal money. This, in effect, has been the crux of the case of the respondent.

15. This petitioner had contended that it is alleged that 5 properties had been purchased in her name. She had stated that 4 of the properties had been purchased before the FIR had been registered and one property had been purchased after investigation had been completed. The fact is that without any credible source of income, she had some how become the owner of 5 separate properties. The source of income will have to be explained by her.

16. It is the case of the respondent that the source is misappropriated money by A1 who took advantage of his position as Branch Manager of Kodaikanal Branch in Indian Bank. The properties had been purchased in Kodaikanal. The petitioner has no connection with

Kodaikanal, except that A1 was the Branch Manager in Kodaikanal Branch at Indian Bank.

17. The contention of the petitioner that four (4) of the properties had been purchased before registration of FIR, will have to be explained by her during the course of trial. She will certainly be given an opportunity to state the source of income. It is the contention that one of the properties had been purchased after the investigation had been completed. Again, she will be given an opportunity during the course of trial to explain the source of income.

18. So far as the provisions of PMLA are concerned, it is seen that the term 'proceeds of crime' had been defined in Section 2(1)(u) and the offence of 'money-laundering' had been defined under Section 3 and the punishment for money-laundering had been provided under Section 4. The aforementioned provisions are as follows :

> ***Section 2(1)(u)*** *“proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or*

where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

***Explanation**.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.*

***Section 3 Offence of money-laundering** - 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**.—For the removal of doubts, it is hereby clarified that,—*

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of

crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

Section 4. Punishment for money-laundering *- Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.*

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for *the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.*

19. The expression "money-laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly. It is not limited to the happening of the final act of integration of tainted property. This is amply clear from the original provision, which has been further clarified by the insertion of Explanation vide Finance (No.2) Act, 2019, Section 3, as amended.

20. The act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of proceeds of crime. It is also an independent activity, constituting offence of money-laundering. In other words, it is not open to read the different activities conjunctively because of the word 'and'. If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily frustrated by the

simple device of one person possessing proceeds of crime and his accomplice indulging in projecting or claiming it to be untainted property, so that, neither are covered under Section 3 of the 2002 Act.

21. Therefore, mere possession of proceeds of crime would be sufficient to invoke the provisions of PMLA. Using the proceeds of crime by itself is an offence. In the instant case, the petitioner is in possession of five (5) separate properties. She will have to explain the source from which she paid the consideration for such purchase.

22. Section 24 of PMLA denotes 'Burden of Proof'. There is an interest presumption that such proceeds of crime are involved in money laundering. In the instant case, possession and claiming title to five (5) separate properties is sufficient to draw a presumption against the petitioner. The burden is on the petitioner to prove otherwise.

23. The respondent has conducted investigation, and collected documents. There would be sufficient to proceed against the petitioner under PMLA. The burden of proof lies on the petitioner who has to prove

her innocence during the course of trial. Adjudication of those materials placed by the petitioner at this stage would be prejudicial to both the petitioner and the respondent.

24. In the instant case, the fact that there are five (5) properties in the name of the petitioner itself is sufficient to hold that she will have to answer the charges as laid by the respondent. She will have to explain the source for purchase of the properties. Merely stating that four of the properties had been purchased in the year 2013 and one propertys had been purchased in the year 2019 would not be a sufficient ground to presume that the petitioner had necessary sources of income for purchase of the properties.

25. It is the specific case of the respondent that the petitioner had assisted A1 in whitening and laundering the proceeds of crime which he had obtained by misappropriating the funds of the Bank. All these aspects can be examined only during the course of trial. The respondent must be given an opportunity to establish their case. They must be given an opportunity to tender evidence, both oral and documentary.

26. The allegations are extremely serious. She had admitted her signature in the Partnership Deed. She however, disclaims knowledge of transactions by the partnership firm. She had very cleverly moved away from the partnership. She had also transferred the properties in favour of her daughter. Therefore, she had taken every step to evade the process of law. We are not inclined to quash the case against the petitioner herein.

27. In the result, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petitions are closed.

[C.V.K., J.] & [J.S.N.P., J.]
22.10.2024

Internet :Yes/No
Index :Yes/No
NCC :Yes/No

RM

To

The II Additional District Judge,
Special Court for CBI cases,
Madurai.

C.V.KARTHIKEYAN, J.
AND
J.SATHYA NARAYANA PRASAD. J.

RM

Pre-delivery Order made in
CRL.O.P.(MD)No.6302 of 2024

22.10.2024