



Crl.A.(MD)No.530 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
04.03.2024	22.03.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

Crl.A.(MD)No.530 of 2017

The Deputy Director,
Directorate of Enforcement,
Ministry of Finance,
Department of Revenue,
Government of India,
Sastri Bhavan,
3rd Floor, 3rd Block,
No.26, Haddows Road, Chennai – 600 006.
File No.ECIR/23/CEZO/PMLA/2011 (ACS)

... Appellant/Complainant

vs.

1.G.Varadharajan
2.S.Murugesan
3.S.Karthika
4.S.Shanmugam

... Respondents / Accused

PRAYER : Criminal Appeal filed under Section 378 of Cr.P.C., to call for the entire records relating to the judgment made in C.C.No.4 of 2016, dated

1/18



CrI.A.(MD)No.530 of 2017

13.12.2017, on the file of the II Additional District Court for CBI Cases, Madurai, and to set aside the same and allow the appeal.

For Appellant	: Mr.R.Vijayarajan Standing Counsel for Directorate of Enforcement
For R1	: Mr.S.Mahendrapathy
For R2	: No Appearance
For R3 and R4	: Mr.Rupert J.Barnabas for Mr.N.Tamilmani

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

Appeal against the dismissal of the complaint preferred by the Deputy Director of Enforcement Directorate, Chennai. The complaint against the respondents initiated under Section 45 (1) of the Prevention of Money-Laundering Act, 2002 [hereinafter referred to as " the PMLA"] for the offence of money-laundering as defined under Section 3 of the said Act, which is punishable under Section 4 of the Act, ended in acquittal, hence, this appeal.



Crl.A.(MD)No.530 of 2017

WEB COPY

2. Facts leading to the appeal is capsulated as under:-

2.1. During the years 2007 - 2008, the first respondent G.Varadarajan [A1] was the Sub-Postmaster at Vedasandhur Post Office, Dindigul Division. At that time, one Thimmaraya Perumal [A2] was the Postal Assistant. The second respondent Murugesan [A3] was the Postal Assistant. The third respondent S.Karthika [A5] was the Mahila Pradhan Khestriya Bachat Yojna Agent [in short "MPKBY"]. The fourth respondent S.Shanmugam is the father of the third respondent.

2.2. Based on source information, a case was registered by the CBI, ACB, Chennai, on 24.02.2009 regarding falsification of accounts, forgery and cheating to a tune of about Rs.1.27 Crores, from the Post Office Savings Scheme Account by misusing the password and manipulating the data. On completion of investigation, final report was filed by D.S.P., CBI-SPE: ACB, Chennai, against Thimarayaperumal, Varadarajan, Murugesan and Karthika, for the offences punishable under Section 120-B read with Sections 420, 467, 468, 471, 477-A I.P.C. and Section 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988. The case was taken cognizance in C.C.No.6 of 2010 on the file of II



Crl.A.(MD)No.530 of 2017

WEB COPY

Additional District Court for CBI Cases, Madurai. Pending trial, Thimaraya Perumal died on 03.10.2010. Hence, the charge against him got abated.

2.3. Meanwhile, the offences for which the above case was tried being offences mentioned in the Schedule to the PMLA and the properties derived or obtained from the above said offence being the proceeds of crime as per Section 2 (u) of the PMLA. The Enforcement Directorate having information that using the proceeds in the above crime, the third accused through the fourth accused had attempted to be converted the tainted property into untainted property, the Enforcement Directorate registered ECIR.No.23 of 2011 and proceeded with investigation. After recording the statement of witnesses, the appellant laid complaint against the respondents 1 to 4 for offences under Sections 3, 4 and 8(5) of the PMLA.

2.4. Simultaneously, the Enforcement Directorate also initiated adjudicating proceedings against third and fourth respondents for attachment of the property purchased from the proceeds of the crime, which is the subject matter of the predicated offence pending in C.C.No.6 of 2010. The adjudicating authority, vide order dated 26.02.2013, confirmed the provisional attachment of the property made by the complainant, vide provisional Attachment Order No.11



Crl.A.(MD)No.530 of 2017

of 2012, dated 05.10.2012, on condition that the same shall continue during the pendency of the proceedings relating to any offence under this Act before the Court or under corresponding law of any other country, before the competent Court of criminal jurisdiction outside India, as the case may be, and shall become final after the order of confiscation is passed under sub-section (5) or sub-section (7) or section (8) or section 58-B or sub-section (2A) of Section 60 by the Adjudicating Authority.

2.5. The appellant's complaint initiated under the PMLA was taken on file in C.C.No.4 of 2016 by the II Additional District Court for CBI Cases, Madurai. Charges under Section 3 r/w 4 of PMLA was framed against respondents 1 to 4 and were tried. On behalf of the complainant/appellant, three witnesses, and 32 documents as exhibits, were relied. For the respondents, one witness and 17 exhibits were relied. The trial Court after considering the materials placed before it, acquitted all the accused, and also ordered to release the attachment over the property.

2.6. The primary reasons for acquittal which found in the impugned judgment dated 13.12.2017, can be put in a nutshell as below:-

(i) The FIR copy of the predicate offence marked as Ex.P2 is not the



Crl.A.(MD)No.530 of 2017

original, but an attested copy without date.

(ii) The original statements of the accused persons alleged to have been recorded not placed before the Court. The photocopy/carbon copy of the their statements are not reliable.

(iii) Further, the statement of the accused being in the nature of compulsory testimony, same is prohibited under Article 20 (3) of the Indian Constitution. Hence, same to be rejected.

(iv) The computer printouts of the Bank Statements not been duly certified as per Section 65B of the Indian Evidence Act.

(v) The predicate offence registered by CBI is still pending. Before the final verdict in the predicate offence, launching of criminal prosecution for money laundering will not arise as the same is premature. Court cannot pre-determine that the accused had committed a criminal act resulting in acquiring proceeds of crime and in furtherance of the said crime, the third accused had purchased property in the name of her father, the fourth accused, before the conclusion of trial.

(vi) The learned trial Judge, put a hypothetical question to himself that if the accused get acquitted in the predicate offence, then, the prosecution



Crl.A.(MD)No.530 of 2017

under the provisions of the PMLA will become non-est. While under the statute, when the provisions are available for seizure and forfeiture of property acquired through wrongful gain, the premature prosecution under the PMLA is not sustainable. Further, it has also held that the prosecution case has been disproved through the defence evidence.

3. The grounds of appeal:-

(i) The appellant had extensively listed reasons why the order of the trial Court is not sustainable in the eye of law. Citing decisions of the High Courts and the Hon'ble Supreme Court, besides the provisions of the law, the learned counsel appearing for the appellant submitted that the proceedings under the PMLA is independent of the proceedings under the schedule offence. The statements recorded under Section 50(2) and (3) of the PMLA is not recorded by Police, but by the Revenue Officials. Hence, it is admissible in evidence. Those statements are not hit by Article 20(3) of the Indian Constitution as per the decision of the Hon'ble Supreme Court in **State of Bombay vs. Kathi Kalu Oghad and others** reported in **AIR 1961 SC 1808**. The Hon'ble Supreme Court in **Rohit Tandon vs. Enforcement Directorate** reported in **(2018) 11 SCC 46** in



Crl.A.(MD)No.530 of 2017

WEB COPY

respect of the PMLA, had held that statement recorded under Section 50 of the PMLA is admissible in evidence. The trial Court's refusal to rely upon Ex.P2 the Photocopy of the F.I.R. registered in the predicate offence is totally perverse. PMLA is an independent composite Act both procedural and substantive. Proceedings under the PMLA need not wait for the outcome of the trial in the predicate offence. Computer printout received from the authorities by the investigating agency through email been duly certified by the person who received at the Office of the Enforcement Directorate. The person, who had taken the printout from his computer, had given certificate under Section 65B of the Indian Evidence Act.

(ii) Therefore, the reason given by the trial Court to reject the statement of accounts is wrong. The statement of account would clearly show that Post Office money been illegally withdrawn by opening accounts in the name of the known persons of A3 and withdrawn for purchase of the properties, which are attached. Without considering the clinching evidences, which incriminating the accused persons, the trial Court has taken a convenient route of rejecting the evidence of sterling quality on flimsy reasons.



Crl.A.(MD)No.530 of 2017

WEB COPY

4. Per contra, the learned counsel appearing for the respondents/accused made an emphatic submissions that a premature prosecution, based on the assumption and presumption been rightly rejected by the trial Court, since the evidence relied by the prosecution were not only inadequate, but also inadmissible. The valid reasons given by the trial Court for acquitting all the accused is not one among many possible view, but the only possible view. In the instant case, the respondents had marshalled evidence to show the properties were acquired through other known sources. While so, when no other alternate reasonable possible view could be imagined, the trial Court judgment ought to be confirmed.

5. The learned counsel appearing for the respondents further stated that, it is not only the lapse of the prosecution, which has been pointed in the judgment, but also the positive evidence lead through witnesses and document, to show the legal source for purchase of the property, had earned the acquittal for the accused. The property, which has now been attached were purchased from and out of the earnings of the third and fourth respondents. The defence documents clearly show



Crl.A.(MD)No.530 of 2017

that the fourth respondent and his wife, who are the parents of the third respondent, were gainfully employed as Headmaster and Headmistress respectively. On superannuation, they got the retirement benefits and from out of the retirement benefits, they purchased the attached property.

6. The PMLA, which is primarily after the proceeds of crime, the said Statute will not apply to the facts of the present case, when the respondents were able to demonstrate that the property, which is alleged to have been purchased by proceeds of crime was not so, but was purchased from the retirement benefits and savings of the respondents. Considering the evidence relied by the respondents which positively shows that they had enough source to purchase the property, the finding that the properties were purchased from their own legal proceeds has to be accepted.

7. Heard the learned counsel on either side and perused the records.

8. This Court is conscious of the fact that an appeal against acquittal cannot be interfered unless and until the reasoning given by the trial Court suffers serious legal infirmity or factual error. If the views expressed are reasonably possible,

10/18



Crl.A.(MD)No.530 of 2017

WEB COPY

even if another view is possible, the appellate Court need not interfere. It is well settled principle of law that an order of acquittal should not be disturbed, unless it is perverse or bereft of reasoning or contrary to the evidence on record. Even, if an alternate view is probable/possible, the view of the trial Court, which has acquitted, cannot be substituted by this Court with the alternate possible view to reverse the order of acquittal.

9. In the earlier part of this judgment, this Court has put in bullet points, the grounds on which, the trial Court found the complaint not sustainable. No doubt, the trial Court ought not to have rejected the statements recorded by the Revenue Officials inadmissible or disbelieved the registration of the schedule offence, since he has doubt about the authenticity of the F.I.R. copy [Ex.P2]. The schedule offence initiated by the CBI has been tried by the very same Judge, who tried the PMLA case. Therefore, if at all he had any doubt about the genuineness of the F.I.R., marked as Ex.P2, he could have called for the records instead of disbelieving the registration of a case under the I.P.C. and the Prevention of Corruption Act, which is included in the schedule of the PMLA. Further, while the catena of judgments rendered by the Hon'ble Supreme Court would say that



Crl.A.(MD)No.530 of 2017

WEB COPY

summoning a witness or an accused to give statement before a non-police officer will not attract Section 25 of the Indian Evidence Act to deem it as inadmissible document. The trial Court ought not to have held that the statements of the witnesses, who later turned to be accused, have to be discarded for being compulsory testimony. Even, if there is such plea, it has to be tested in the manner known to law and without even testing the same, ignoring it in toto, is contrary to the provision of law as well as the pronouncement of the Hon'ble Supreme Court rendered in **State of Bombay vs. Kathi Kalu Oghad** reported in **AIR 1961 SC 1808**.

10. In this regard, it is also profitable to refer the judgment of the Hon'ble Supreme Court rendered in **Vijay Madanlal Choudhary and others vs. Union of India and others** reported in **2022 SCC OnLine 929 : 2022 LiveLaw (SC) 633**, which is a *locus classicus* in respect of the PMLA. In this judgment, a separate chapter for Section 50 of the PMLA been allotted by the learned Judges and after referring line of judgments, including the judgment rendered in **Kathi Kalu Oghad's case** [cited supra] upto **Tofan Singh vs. State of Tamil Nadu [2020 SCC OnLine SC 882]**, the Hon'ble Supreme Court has held that the statements recorded by authorities under the PMLA, of persons involved in the

12/18



Crl.A.(MD)No.530 of 2017

commission of the offence of money-laundering or the witnesses for the purposes of inquiry/investigation, cannot be hit by the vice of Article 20(3) of the Constitution or for that matter, Article 21 being procedure established by law. In a given case, whether the protection given to the accused who is being prosecuted for the offence of money-laundering, or Section 25 of the Evidence Act is available or not, may have to be considered on **case-to-case basis being rule of evidence.** [Emphasis supplied]

11. In spite of these two errors, on facts as well as on law mentioned supra, this Court does not find any perversity or illegality to interfere with the finding of the Court below for the following reasons:-

(i) PMLA is an independent *sui generis* Act. Except registration of case for an offence, which is enumerated in the schedule to PMLA, there need not be any further reference or dependency on the schedule offence case for the PMLA case to proceed. This legal position has also been clarified by the Hon'ble Supreme Court in **Vijay Madanlal Choudhary's case** [cited supra]. However, the outcome of the schedule offence may have some bearing in the PMLA case, because if the accused in the schedule offence gets acquitted/discharged/or case against him is quashed by the Court of competent jurisdiction, then, there can be



Crl.A.(MD)No.530 of 2017

WEB COPY

no offence of money-laundering against that person.

(ii) When the Statute is very clear that PMLA is an independent *sui generis* Act, the complainant / Prosecuting Agency is bound to prove the case independently. They cannot presume that since a schedule offence been registered, the accused might have derived proceeds of the crime. These two factors are to be proved by the complainant under the PMLA independently. Furthermore, they should also prove the fact that from the proceeds of the said crime, the accused in the PMLA case, had procured, possessed or enjoying property and that property is made to believe as untainted property.

12. In this case, unfortunately, the complainant had proceeded on a presumption that the crime investigated by CBI had generated proceeds of crime and further leading to acquisition of property. Without placing material evidence, either about the crime or about the proceeds from that crime, the complainant cannot succeed. That is the reason why, the trial Court has specifically pointed out that without proving the fundamental fact, which is necessary to invoke the provisions of the PMLA, the complainant cannot succeed. This Court totally agrees with this view. This Court also bound to point out that the trial Court has



Crl.A.(MD)No.530 of 2017

gone further to say that the trial in the schedule offence is pending and if it is proved that by fraud, misappropriation and falsification of account, the accused have gained wrongfully, the Prevention of Corruption Act provides for forfeiture of that property acquired through wrongful gain and therefore, the State is not without any remedy, but can proceed under those provisions for forfeiture of the property.

13. From the records and information collected from the e-Courts web site, this Court takes judicial notice of the fact that the predicate offence tried in C.C.No.6 of 2010 against the appellants 1 to 3 has ended in conviction, vide judgment dated 15.03.2019.

14. The complainant herein, who is the appellant, having failed to marshal evidence in connection with the proceeds of crime is bound to fail. Reliance on any data containing statement of account [Ex.P30] without proper affidavit under Section 65-B of the Indian Evidence Act also makes the case of the appellant/complainant become weak.



Crl.A.(MD)No.530 of 2017

WEB COPY

15. We find from the judgment of the trial Court, in the predicate offence that the prosecution agency namely, the CBI in C.C.No.6 of 2010, had taken all pains to establish the fact of manipulating the computer data by the accused persons in furtherance of the conspiracy hatched between them. This element of evidence is conspicuously absent in the case launched by the Directorate of Enforcement under the PMLA.

16. We also find that the appellant / complainant had not made any attempt to invoke Section 44(1) of the PMLA as explained under the Statute. Since the predicate offence has also been pending in the same Court, the appellant / complainant ought to have asked for simultaneous trial in both the cases to avoid conflicting verdict and to avoid omission in marshalling evidence. For the reasons best known, they had allowed the PMLA case to proceed first and while doing so, also failed to place all the material documents though available to substantiate the fundamental requirement to proceed under the PMLA.

17. For the above said reasons, this Court is of the view that the criminal



Crl.A.(MD)No.530 of 2017

WEB COPY

appeal is liable to be dismissed without any interference of the finding of the trial Court. Accordingly, this Criminal Appeal is dismissed.

Index : Yes
NCC : Yes
To

[G.J., J.] & [C.K., J.]
22.03.2024

- 1.The II Additional District Judge for CBI Cases,
Madurai.
- 2.The Section Officer,
Criminal Records,
Madurai Bench of Madras High Court,
Madurai.



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CrI.A.(MD)No.530 of 2017

DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.

smn2

PRE-DELIVERY JUDGMENT MADE IN
CrI.A.(MD)No.530 of 2017

22.03.2024