



Crl.O.P.(MD)Nos.13240 and 13241 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
29.02.2024	19.03.2024

CORAM:

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

Crl.O.P.(MD)Nos.13240 and 13241 of 2017
and
Crl.M.P.(MD)Nos.8959 and 8961 of 2017

Crl.O.P.(MD)No.13240 of 2017:-

K.Prakash

... Petitioner / Accused No.6

vs.

The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
No.6, (Old No.42), Beasant Road,
Chokkikulam,
Madurai – 625 002.

... Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the impugned complaint of the respondent, dated 28.04.2017, which was taken on file as C.C.No.9 of 2017, on the file of the II



Crl.O.P.(MD)Nos.13240 and 13241 of 2017

Additional District Court for CBI Cases, Madurai, and the notice dated 29.08.2017, issued therein to the petitioner/A6 and quash the same insofar as the petitioner/A6 is concerned.

For Petitioner : Mr.P.T.Ramesh Raja

For Respondent : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.R.Vijayarajan
Special Public Prosecutor

Crl.O.P.(MD)No.13241 of 2017:-

1.S.Gowthaman

2.S.Mahendran

3.M/s.Sangam Organics and Chemicals,
(Rep. by its Managing Director,
S.Gowthaman) – the 1st petitioner,
Sooriyur Village, Mandiyur Salai,
Pudukkottai Road,
Mathur Post,
Trichy – 620 001.

4.G.Renuka

5.M.Hema

... Petitioners / A1 to A5

vs.



CrI.O.P.(MD)Nos.13240 and 13241 of 2017

WEB COPY
The Deputy Director,
Directorate of Enforcement,
Government of India,
Ministry of Finance,
Department of Revenue,
No.6, (Old No.42), Beasant Road,
Chokkikulam,
Madurai – 625 002.

... Respondent / Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the impugned complaint of the respondent, dated 28.04.2017, which was taken on file as C.C.No.9 of 2017, on the file of the II Additional District Court for CBI Cases, Madurai, and the notice dated 29.08.2017, issued therein to the petitioners and quash the same insofar as the petitioners//A1 to A5 are concerned.

For Petitioners : Mr.R.Anand
for Mr.R.Ponkarthikeyan

For Respondent : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.R.Vijayarajan
Special Public Prosecutor

COMMON ORDER

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

These two petitions are filed to quash the criminal complaint under Section 45(1) of the Prevention of Money-Laundering Act, 2002 [in short, "the PMLA"]

3/20



CrI.O.P.(MD)Nos.13240 and 13241 of 2017

for the offences punishable under Sections 3, 4 and 8 (5) of the Act initiated against them, which was taken cognizance in C.C.No.9 of 2017, on the file of II Additional District Judge for CBI cases, Madurai. The complainant is the Deputy Director, Enforcement Directorate, Madurai.

2. The facts leading to the impugned complaint by the Directorate of Enforcement under the PMLA, is as under:-

2.1. S.Gowthaman and his brother S.Mahendran started a limited company by name, M/s.Sangam Organics and Chemicals Limited on 31.03.1995. For the working capital of the said Company, they availed loan around Rs.10 Crores from Vijaya Bank, Trichy. For the purpose of availing loan, they submitted inflated balance sheet of their Company, prepared with the assistance of their Chartered Accountant by name, Ganesh and some officers of the Bank. When they failed to repay the loan, their Company was declared as NPA. As on 24.07.2007, the Company owe to Vijaya Bank, a sum of Rs.10.55 Crores.

2.2. Based on the complaint given by the Vigilance Officer, Vijaya Bank, the Superintendent of Police, CBI (BS & FC), Bangalore, registered case in



CrI.O.P.(MD)Nos.13240 and 13241 of 2017

Crime No.6 of 2007 against Gowthaman, his brother Mahendran and few other bank officials (public servants) for offences under Section 120 (b) read with Sections 420, 467, 468 and 471 I.P.C. and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act. On completion of investigation, final report filed against Gowthaman (A1), Mahendran (A2), M/s.Sangam Organics and Chemicals Limited (A4) and one R.Ganesh, a Chartered Accountant, who aided A1 and A2 to inflate the balance sheet.

2.3. Meanwhile, the Enforcement Directorate, on information about the registration of the predicate offence by CBI, which falls under the schedule of the PMLA, took up investigation in E.C.I.R.No.2 of 2011, dated 18.07.2011 and commenced the investigation under the PMLA. After enquiry, under the PMLA, being satisfied that the accused 1 and 2, who are the Directors of 3rd accused Company, cheated Vijaya Bank to a tune of Rs.10.55 Crores and with the money cheated, which is the proceeds of their crime, they purchased properties in their name and in the name of A4 and A5, who are the wife's of A1 and A2, respectively.



Crl.O.P.(MD)Nos.13240 and 13241 of 2017

WEB COPY

2.4. A4 and A5 in order to complete the process of laundering of the tainted money, they transferred a part of the properties purchased from the proceeds of crime to A6, who lend his name to create sale deeds in his name executed by A4 and A5.

2.5. Narrating the roles of each accused in the crime of acquiring the tainted money and in the process of projecting it as untainted property, the complaint laid and taken cognizance by the Principal District Court, Madurai, in C.C.No.9 of 2017. Later, the same was transferred to II Additional District Court for CBI cases, Madurai and same was intimated to all the accused through notice dated 29.08.2017. Soon after receipt of the notice from the II Additional District Court for CBI cases, Madurai, A1 to A5 have filed the quash petition in Crl.O.P. (MD)No.13241 of 2017 and the 6th accused has filed Crl.O.P.(MD)No.13240 of 2017.

2.6. In these two petitions, the complaint against them is impugned, and sought to be quashed on several grounds. One of them is that, the predicate offence initiated by CBI is still pending on the file of Chief Judicial Magistrate, Trichy, in C.C.No.1 of 2009, therefore, the complaint by Directorate of Enforcement under the PMLA, does not have any legs to stand, when there is no



CrI.O.P.(MD)Nos.13240 and 13241 of 2017

WEB COPY

material to show the money used for investing in the property have the trapping of proceeds of crime. A1, A2, A4 and A5 had their own source of income to purchase the properties shown in the complaint. A4 and A5 sold a part of their property to A6 to clear their debts and A6 had purchased it without any knowledge or culpability. It is premature to hold the money used for purchase of properties were proceeds of crime. The ingredients, which are required to satisfy the meaning of 'proceeds of crime' is totally absent. Just because, case under Sections 420, 467 and 471 I.P.C. read with Section 120-B I.P.C., is taken cognizance by a Court, *ipso facto* the Directorate of Enforcement cannot initiate proceeding under the PMLA. The outcome of the predicate offence is necessary to ascertain whether there is any proceeds of crime and even thereafter, there must be material to indicate the said proceeds of crime derived from the predicate offence been processed for converting the tainted properties into untainted properties, "holding proceeds of crime" is not a presumptive fact. Firstly, there must be a crime proved. Then, it must also be proved that the crime has yielded some proceeds. Thirdly, the persons accused indulgence in the process of converting the tainted money into untainted money.



Crl.O.P.(MD)Nos.13240 and 13241 of 2017

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2.7. The said ground which was earlier available for any person, who were accused of offence under the PMLA, no more available after the authoritative pronouncement of the Hon'ble Supreme Court in **Vijay Madanlal Choudhary and others vs. Union of India and others [2022 LiveLaw (SC) 633 : 2022 SCC OnLine SC 929, dated 27.07.2022]**. The learned counsels for the petitioners being well abreast of the judgment of Hon'ble Supreme Court, which has tested all the contentious provisions of the PMLA threadbare and answered almost all the points raised in these two petitions and also in view of the subsequent development that the predicate offence against A1, A2 and their Company A3 (Petitioners in Crl.O.P.(MD)No.13241 of 2017) ended in conviction. The learned Chief Judicial Magistrate, Trichy, in C.C.No.1 of 2009, had convicted them for charges under Sections 420, 467 and 471 I.P.C. read with Section 120-B of I.P.C. which ended in conviction, submitted their arguments differently, as under:-

(i) The petitioners 1 to 3 in Crl.O.P.(MD)No.13241 of 2017 had preferred appeal against the conviction and same is pending. If their appeal is allowed and their conviction is set aside, nothing will survive in the prosecution under the PMLA, as per clause v(d) of Paragraph 187 of the said judgment.



Crl.O.P.(MD)Nos.13240 and 13241 of 2017

WEB COPY

(ii) Further, the learned counsel for A1 to A5, the petitioners in Crl.O.P. (MD)No.13241 of 2017 contended that the properties sold to A6 were purchased from the own source of A4 and A6 and from the loan availed from Muthood Finance. Their was loan payable to 6th accused, which A1 and A2 borrowed to clear the Vijaya Bank Debt. Hence, there is nothing to suspect the said transaction.

(iii) On behalf of the 6th accused Prakash, who is the petitioner in Crl.O.P. (MD)No.13240 of 2017, it is submitted that the complaint as against him cannot sustain since, the sequence of events as found in the complaint would clearly show that A1 and A2 for their Company (A3) had availed loan from Vijaya Bank in the year 2003. The loan account was classified as NPA on 31.03.2005. The complaint against them for cheating, forgery and conspiracy lodged on 24.07.2007. In the I.P.C. offence case instituted by C.B.I., the petitioner in Crl.O.P.(MD)No.13240 of 2017 is not an accused. Material evidence were shown to the Directorate of Enforcement during investigation, to prove that on 16.02.2008 in the A3 loan account, Rs.10 Lakhs paid and that was from the money borrowed from A6. Since A1 and A2 were not able to repay the loan received from A6, they sold the property held in their wife's name (A4 and A5) on



CrI.O.P.(MD)Nos.13240 and 13241 of 2017

18.11.2008 and 19.11.2008 respectively, towards adjustment of the loan. While all these events took place much earlier to 01.06.2009, the day on which Part - A, Paragraph - 1 pertaining to I.P.C. offences were brought into force, prosecuting him is unconstitutional.

(iv) Further, under Section 44 of the PMLA, offences punishable under Section 4 of the Act and any scheduled offence connected to the offence under that Section shall be triable by the Special Court constituted for that area in which the offence has been committed. The scheduled offence tried before the Chief Judicial Magistrate, Trichy, whereas the case under the PMLA, is now transferred to Special Court for CBI cases, Madurai. Prosecution in two different Courts, has caused prejudice to A6.

3. Per contra, the learned Additional Solicitor General, on behalf of the respondents submitted that the issues raised in these two petitions are no more *res integra* in view of the judgment rendered in **Vijay Madanlal Choudhary case** [cited supra]. Referring the identical arguments placed on behalf of the private parties and the response by the State in that case, the learned Additional Solicitor General of India submitted that, in the instant petitions, the trial in the predicate

10/20



Crl.O.P.(MD)Nos.13240 and 13241 of 2017

offence ended in conviction. Therefore, the observations in paragraph 187 (v)(d) in **Vijay Madanlal Choudhary case** [cited supra] is of no assistance to the petitioners' case, but in fact, the same is against the petitioners.

4. The trial in C.C.No.9 of 2017 transferred from Principal Sessions Court to the Special Court for CBI, in view of the notification issued by the Union of India and the proceedings of the High Court Madras designating the CBI Court at Madurai as Special Court for PMLA cases. The offence of money laundering is a process or activity, which spans over period of time. It does not stop with the commission of offence, which generates proceeds of crime. If it is so, there are provisions under respective statutes for seizure and forfeiture of the crime proceeds. In fact, the offence of money laundering commences after the proceeds of crime, move towards placement, layering and integration for the purpose of making a tainted property as untainted property. Whosoever, directly or indirectly indulge in the process or activity to convert tainted property into untainted property and deal with that property shall be guilty of offence under the Act. Explanation (ii) to Section 3 of the Act in unambiguous term says, it continues as long as the enjoyment of proceeds of crime directly or indirectly by concealment,



CrI.O.P.(MD)Nos.13240 and 13241 of 2017

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possession or acquisition or use or projecting it as untainted property or claim it as an untainted property in any manner whatsoever.

5. For the Court to decide whether the plea of the petitioners sustainable, it is suffice to refer Section 3 of the PMLA, which defines offence of money laundering and the explanation inserted later by way of clarification and the relevant portion of the Hon'ble Supreme Court in **Vijay Madanlal Choudhary case** [cited supra], which has tested the constitutional validity of the PMLA and interpreted the provisions of that Act.

6. "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 proceedings of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money laundering.

12/20



CrI.O.P.(MD)Nos.13240 and 13241 of 2017

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

43. *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*



CrI.O.P.(MD)Nos.13240 and 13241 of 2017

WEB COPY

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

8. With the above clarification to the legal position, the Hon'ble Supreme Court, while concluding , had again reiterated by way of summarizing the seminal points as under:-

"187 (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



Crl.O.P.(MD)Nos.13240 and 13241 of 2017

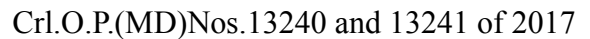
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purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance 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 on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. 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-



9. It is an admitted fact that the trial in the predicate offence (scheduled offence) had concluded. The trial Court has convicting three of the accused in this case. Their appeal is pending. The Hon'ble Supreme Court has held that the accused in the PMLA case need not necessarily be an accused in the schedule offence case. It is the proceeds of crime, which must be common to both cases and not the offenders. The predicate offence might have committed prior to the PMLA Act came into force or after the act introduced. Since money laundering is a process involving many stages like:- (a) Placement (which is to move the funds from direct association of the crime); (b) Layering (which is disguising the trail to foil pursuit); and (c) Integration (which is making the money available to the criminal from what seem to be legitimate sources), the prosecution under PMLA can be initiated at any time.

10. Section 3 and the Explanation (ii) to Section 3 of the PMLA is interpreted by the Hon'ble Supreme Court as, 'money laundering as defined under



CrI.O.P.(MD)Nos.13240 and 13241 of 2017

Section 3 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 or 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. So it include 'every' process or activity indulged into by anyone.'

11. In view of the pronouncement of the Hon'ble Supreme Court extracted above, this Court is of the view that the petitions to quash does not carry any merit to sustain.

12. In the result, these Criminal Original Petitions are dismissed. Consequently, the Miscellaneous Petitions also stand dismissed.

Index : Yes
NCC : Yes
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[G.J., J.] & [C.K., J.]
19.03.2024



Crl.O.P.(MD)Nos.13240 and 13241 of 2017

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To

- 1.The II Additional District Judge for CBI Cases,
Madurai.
- 2.The Deputy Director,
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Crl.O.P.(MD)Nos.13240 and 13241 of 2017

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PRE-DELIVERY COMMON ORDER MADE IN
Crl.O.P.(MD)Nos.13240 and 13241 of 2017

19.03.2024

20/20