



2024:KER:53873

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 9TH DAY OF JULY 2024 / 18TH ASHADHA, 1946

CRL.MC NO. 5127 OF 2024

CRIME NO.38/2019 OF TOWN EAST POLICE STATION, THRISSUR

PETITIONER/COMPLAINANT:

SOUTH INDIAN BANK LTD.
HAVING ITS REGISTERED OFFICE AT SIB HOUSE, TB ROAD,
THRISSUR- REPRESENTED BY ITS CHIEF MANAGER JILU HANAH
EAPEN, PIN - 690 001

BY
SRI. JOSEPH KODIANTHARA (SR)
ADV G.CHITRA

RESPONDENTS/DEFACTO COMPLAINANT AND ACCUSED:

- 1 DIRECTORATE OF ENFORCEMENT
REPRESENTED BY DEPUTY DIRECTOR OF ENFORCEMENT, MINISTRY
OF FINANCE, COCHIN ZONAL OFFICE, KANOOS CASTLE, A.K.
SESHADRI ROAD, (MULLASSERY CANAL ROAD WEST), COCHIN,
PIN - 682 011
- 2 ATLAS JEWELLERY PVT LTD
XI/305 H, OPP. CIAL, VAPPALASSERY NEDUMBASSERY, KOCHI
REPRESENTED BY ITS DIRECTOR SMT. INDIRA RAMACHANDRAN,
PIN - 682 025
- 3 INDIRA RAMACHANDRAN
W/O LATE M M RAMACHANDRAN MATHUKKARA MOOTHEDATH HOUSE
RAGAMALIKAPURAM, THRISSUR, PIN - 680 004
- 4 M/S ATLAS JEWELLERY INDIA LTD
OFFICE NO. JA-710, 7TH FLOOR, DLF TOWER A , PLOT 10
JASOLA DISTRICT, NEW DELHI REPRESENTED BY MANAGING
DIRECTOR, PIN - 110 025

BY ADV.
SRI.JAYASHANKAR.V.NAIR, STANDING COUNSEL

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON
09.07.2024, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:



“C.R.”

BECHU KURIAN THOMAS, J

.....
CrI.M.C.No.5127 of 2024
.....

Dated this the 9th day of July, 2024

ORDER

Petitioner, though a de facto complainant, has approached this Court under section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') seeking to quash the proceedings initiated by the Enforcement Directorate (for short 'ED') under the Prevention of Money Laundering Act, 2002.

2. Petitioner is a scheduled bank, which had initiated FIR.No.38/2019 of Crime Branch, Thrissur, alleging offences including Sections 420 and 471 of the Indian Penal Code 1868 against respondents 2 to 4 and others. The aforesaid offences are scheduled offences under the Prevention of Money Laundering Act, 2002 (for short PML Act). While the crime was being investigated by the Crime Branch, pursuant to the FIR, the Enforcement Directorate stepped in and commenced their investigation after registering ECIR No.KCZO/05/2019. In the meantime, the Crime Branch completed the investigation and filed a final report referring the case as a civil matter. The said report was accepted by the Chief Judicial Magistrate, Thrissur as



RC.No.73/2023 on 05.01.2024. Thus the predicate offence has ended in a closure of the investigation as no crime was committed by the accused.

3. The properties which are the subject matter of mortgage with the petitioner, continue to be under attachment as per the provisions of the PML Act, and hence they claim sufficient locus standi to seek the reliefs. In view of the acceptance of the final report by the learned Magistrate, petitioner contends that the Enforcement Directorate cannot continue with the proceedings and thus the petitioner, though a de facto complainant in the predicate offence, seeks to quash the proceedings.

4. I have heard Sri. Joseph Kodianthara, learned Senior Counsel instructed by Adv. G. Chithra, learned counsel for the petitioner as well as Sri. Jayanshankar V. Nair, learned Standing Counsel for the 1st respondent. Considering the nature of the contentions urged and the order that is proposed to be issued, notices to respondents 2 to 4 are dispensed with.

5. In **Vijay Madanlal Choudhary and Others v. Union of India and Others** (2022 SCC online SC 929), it has been observed that *"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*



anyone claiming such property being the property linked to stated scheduled offence through him". Thus, if the investigation into the predicate offence has ended in a refer charge, no offence under the PML Act will arise.

6. Concededly, the crime registered against respondent Nos.3 to 5 has resulted in a final report referring the case as civil in nature. The final report has been accepted by the Chief Judicial Magistrate on 05.01.2024 as per Annexure A5, which is also not disputed. In view of the above, the predicate offence does not survive any more. Since the predicate offence is not in existence, the ED cannot continue its investigation on the proceeds of crime emanating out of the predicate offence. Consequently, the ED ought to have immediately closed the case. Having not done so, petitioner is justified in approaching this Court.

7. The contention of ED that an ECIR cannot be challenged in a proceeding under section 482 Cr.P.C, though impressive at first blush, on a deeper scrutiny, is legally untenable. Though the decisions in **N. Dhanraj Kochar and Others v. Director, Directorate of Enforcement and Others** [2022 SCC Online (Mad) 8794, **Jitendra Nath Patnaik v. Enforcement Directorate Bhubaneswar** in CrI.M.C No. 2891/2023 [2023 SCC Online Ori 7026], and that of **Pawan Insa v. Director, Directorate of Enforcement** [2024 SCC Online P&H 5461]



were cited in support of the aforesaid contention, I respectfully disagree with the said proposition for reasons narrated hereafter.

8. Section 482 Cr.P.C saves the inherent power of the High Court. The said provision clothes this Court with the power to make such orders as may be necessary to give effect to any order under the Cr.P.C to prevent abuse of the process of any Court or to even secure the ends of justice. A reading of section 482 Cr.P.C itself is sufficient to comprehend the profound extent and scope of the power vested upon this Court. Any order passed under the provisions of the Cr.P.C can be given its full effect by issuing appropriate orders under section 482 Cr.P.C. The scope of the power under section 482 Cr.P.C is not limited or constricted by the character or nature of the order under challenge. Even an administrative order can be quashed in exercise of the power under section 482 Cr.P.C, if it is required to give effect to an order issued under the Cr.P.C or if it is necessary to secure the ends of justice. Further, as long as the power exists, the nomenclature under which the petition is filed is not relevant, unless a special procedure is mandatorily prescribed. As observed by the Supreme Court in the decision in **M/s Pepsi Foods Ltd and another v. Special Judicial Magistrate and Others** [(1998) 5 SCC 749] the power conferred on the High Court under Art.226 and 227 of the Constitution and under S.482 of the Cr.P.C have no limits and the only restriction is that, more the power more care



and caution ought to be exercised while invoking such powers.

9. In **R. P. Kapur v. State of Punjab** [AIR 1960 SC 866], the Supreme Court summarised some categories of cases where inherent power can, and should be exercised to quash the proceedings as (i) where it manifestly appears that there is a legal bar against the institution or continuance; (ii) where the allegations in the first information report or complaint taken at its face value and accepted in their entirety do not constitute the offence alleged; and (iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge. In the above category of cases, the inherent power under section 482 Cr.P.C can be exercised to quash the proceedings.

10. Even though the ECIR registered by the enforcement directorate is an internal and administrative document, since an investigation by the ED is impossible without the existence of a predicate offence, it is essential that the ECIR be closed by the ED on its own volition soon after the predicate offence is quashed or the accused is acquitted or discharged. When the ED refuses to close the ECIR, an aggrieved person is certainly entitled to knock at the doors of this Court either under Article 226 of the Constitution of India or under section 482 Cr.P.C.

11. The final report in the predicate offence did not reveal the



commission of any criminal offence. The order of the learned Chief Judicial Magistrate, Thrissur accepting the final report as RC.No. 73/2023 on 05.01.2024 is an order issued under the Cr.P.C. To give full effect to such an order, this Court can exercise its inherent powers to quash a proceeding, including an administrative document like the ECIR, when it continues to exist, without legal authority.

12. I am also fortified in the above view by the decision of the Supreme Court in CrI.Appeal Nos. 391-392/2018 where the ECIR was quashed due to the acquittal of the accused in the predicate offence. Further, a learned Single Judge of this Court [Raja Vijayaraghavan. V (J.)] had also quashed the ECIR in **Nandakumar V.P v. Deputy Director, Directorate of Enforcement** [2023 (6) KHC 1].

Accordingly, ECIR/KCZO/05/2019 registered by the first respondent and all proceedings pursuant thereto are hereby quashed.

CrI.M.C is allowed as above.

Sd/-

**BECHU KURIAN THOMAS
JUDGE**



APPENDIX OF CRL.MC 5127/2024

PETITIONER'S ANNEXURES

- Annexure A1** **A TRUE COPY OF THE CRIMINAL COMPLAINT FILED BY THE PETITIONER BEFORE THE SHO TOWN EAST POLICE STATION, THRISSUR DATED 24.03.2017**
- Annexure A2** **A TRUE COPY OF FIR CRIME NO. 38/2019 DATED 05.02.2019 ALONG WITH TYPED COPY**
- Annexure A3** **A TRUE COPY OF ECIR /KCZO/05/2019 DATED 14.08.2019**
- Annexure A4** **A TRUE COPY OF THE FINAL REPORT/ REFER REPORT IN CB CRIME NO. 38/CB/TSR/2019 DATED 05.09.2023**
- Annexure A5** **A TRUE COPY OF THE ORDER IN RC 73/2023 DATED 05.01.2024 PASSED BY THE CHIEF JUDICIAL MAGISTRATE, THRISSUR**