

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.09.2024

PRONOUNCED ON : 01.10.2024

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
and
THE HONOURABLE MR. JUSTICE V.SIVAGNAM

Crl.O.P.Nos.6925, 6926 & 6927 of 2022

and

Crl.M.P.Nos.3939, 3940 & 3941 of 2022

M/s.Sterling Futures and Holidays Ltd.,
Rep. by its Director Mr.P.Karunakaran,
New No.32, Old No.19, Cathedral Garden Road,
Nungambakkam,
Chennai – 600 034.

... Petitioner in Crl.O.P.No.6925/2022
/ Accused-25

M/s. SN India Pvt. Ltd.,
(Earlier known as M/s. Shanmuga Constructions and
Enterprises P.Ltd.),
Rep. by its Director Shri V.Balaji,
New No.23, Block No.107, Padmanabha Street,
T.Nagar,
Chennai – 600 017.

... Petitioner in Crl.O.P.No.6926/2022
/ Accused-21

M/s.Chennai Properties & Investments Ltd.,
Rep. by its Director Mr.E.Karunakaran,
Meena Kampala Arcade, 3rd Floor, A Block, B Wing,
113-114, Sir Theyagaraya Road, T.Nagar,
Chennai – 600 017.

... Petitioner in Crl.O.P.No.6927/2022
/Accused-22

Vs.

Directorate of Enforcement,
Chennai Zone-I,
Government of India,
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, C Block, Murugesan Naicker Office Complex,
No.84, Greams Road, Thousand Lights, Chennai – 600 006.
Rep. by its Deputy Director.

... Respondent in all the Crl.O.Ps.

PRAYER in Crl.O.P.No.6925/2022: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the Complaint in Spl.C.C.No.02 of 2021 on the file of the Learned IX Additional Special Judge for CBI Cases, City Civil Court, Chennai, dated 10.01.2021 and QUASH the same in so far as it relates to the Petitioner (A-25).

PRAYER in Crl.O.P.No.6926/2022: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for records relating to the complaint in Spl. CC No.02/2021 on the file of the Learned IX Additional Special judge for CBI Cases City Civil Court, Chennai dated 10.01.2021 and quash the same in so far as it relates to the petitioner (A-21).

PRAYER in CrI.O.P.No.6927/2022: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the Complaint in Spl.CC.No.02 of 2021 on the file of the Learned IX Additional Special Judge for CBI Cases at Chennai, dated 10.01.2021 and QUASH the same in so far as it relates to the Petitioner (A-22).

For Petitioners in
all the CrI.O.Ps. : Mr.Nithyash Natarajan for
M/s.Sri Law Associates

For Respondent : Mr.AR.L.Sundaresan,
Additional Soliciter General of India
assisted by
Mr.Cibi Vishnu,
Special Public Prosecutor for ED.

COMMON ORDER

(S.M.Subramaniam J.)

The Criminal Original Petitions have been instituted under Section 482 of Cr.P.C. to quash the complaint in Spl.CC.No.02 of 2021 on the file of the Learned IX Additional Special Judge for CBI Cases, City Civil Court, at Chennai, dated 10.01.2021. The petitioners in the Criminal Original Petition Nos.6925, 6926 & 6927 of 2022 are the Accused Nos. 25, 21 & 22 respectively.

FACTS OF THE CASE :

2. The IDBI Bank, DIFC Branch, Dubai, sanctioned first loan of 52 Million Euros (INR equivalent to 322.40 crores) to Accused-8, i.e., M/s.Win Wind Oy, Finland (hereinafter referred as WWOy). Accused-8 company is wholly subsidiary of Accused-7 i.e., M/s.Siva Industries & Holding Ltd. Accused-16 is Ms.S.Jayalakshmi, who owns 86% of the shareholding of Accused-7. Further Accused-16, Ms.S.Jailakshmi, owns 90.09% of the petitioner in Crl.O.P.No.6925/2022 /Accused-25 company, i.e., M/s.Sterling Futures & Holidays Ltd. Balance 9.91% of Petitioner in Crl.O.P.No.6925/2022/Accused-25 Company i.e., M/s.Sterling Futures & Holidays Ltd. is owned by Accused-1's father, Shri R.Chinnakannan (alias Vellal RCK). Accused-16 i.e., Ms.S.Jayalakshmi is the former wife of Accused-1, Mr.C.Sivasankaran.

3. The second loan of 67 Million US Dollars was sanctioned by IDBI to Accused-2 i.e., M/s. Axcel Sunshine Ltd's (British Virgin Islands) in Dubai Bank Account. The second loan of 67 Million US Dollars was placed, layered and integrated by a series of transactions through companies based in British Virgin Island, Mauritius, and Singapore before finally being credited

to the Bank Account of Accused-7 i.e., Siva Industries & Holdings Ltd. and Accused-7 used it to repay the first loan availed by its wholly owned subsidiary company i.e., WWOy (Accused-8). Pertinently comfort letter provided by Accused-7 i.e., Siva Industries & Holdings Ltd. to IDBI for the second loan sanctioned by IDBI to Accused-2 i.e., Axcel Sunshine Ltd's (British Virgin Islands).

4. Central Bureau of Investigation registers FIR No.9/2018, on 13.04.2018, under Sections 120B, 420 IPC & Section 13 of Prevention of Corruption Act, 2013, which is the scheduled offence under Prevention of Money Laundering Act, 2002 (hereinafter referred as PMLA). Since the scheduled offence is present in the FIR registered by CBI in FIR No.9 of 2018, the Enforcement Directorate recorded ECIR under PMLA on 01.05.2018. Consequently, the Provisional Attachment Order in PAO No.1/2019 was issued on 31.01.2019. The Provisional Attachment Order was confirmed by the adjudicating authority on 13.01.2020. The respondent filed a complaint on 10.01.2021 under PMLA. The said complaint, dated 10.01.2021, is sought to be assailed in the present Criminal Original Petitions.

ARGUMENTS ON BEHALF OF THE PETITIONERS:

5. The learned counsel for the petitioners, Mr.Nithyash Natarajan , would submit that the petitioners are the companies registered and therefore, vicarious liability cannot be fastened on the companies. A company, as an entity, cannot be held liable for the alleged offence, if any committed presumably, by some individuals, shareholders or others. Secondly, Mr.Nithyash would contend that the properties attached under PMLA had been purchased long before the alleged commission of the scheduled offence, between the years 2010 and 2017. The attached properties were purchased in the year 1975 and other properties were also purchased prior to the year 2010. Some properties were purchased in the year 2005 also. Therefore, the properties were not purchased from and out of the alleged proceeds of crime under PMLA. Thus, the Provisional Attachment Order itself is not in accordance with the provisions of PMLA. In this context, it is contended that Section 70 of PMLA cannot operate against the company with reference to the alleged offence, if any committed by shareholders or other persons under PMLA.

6. Mr.Nithyash Natarajan would draw the attention of this Court with reference to the definition of “Proceeds of Crime” under Section 2(1)(u) of PMLA which indicates that “*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]*”

7. In the present case, there is no such allegation that the properties purchased from and out of the proceeds of crime were taken or held outside the country. Thus, the respondent have not established any “proceeds of crime” warranting initiation of proceedings under PMLA. Once Section 2(1)(u) of PMLA is not satisfied, the respondent cannot sustain the alleged offence of money laundering under Section 3 of the PMLA. Thus, the entire proceedings have to be quashed.

8. The learned counsel for the petitioners would rely on the Judgement of the Hon'ble Supreme Court of India in the case of ***Pavana Dibbur Vs. Directorate of Enforcement***¹ wherein in paragraph no.17, the Hon'ble

1. Manu/SC/1271/2023

Supreme Court made the following observation:

“17. The first property, ex-facie, cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition.”

9. In the case of ***Seema Garg and Others Vs. The Deputy Director, Directorate of Enforcement²***, the High Court of Punjab and Haryana, in paragraph no.19(ii) held as follows:

“19 (ii). Property acquired prior to commission of scheduled offence i.e. criminal activity or introduction of PMLA cannot be attached unless property obtained or acquired from scheduled offence is held or taken outside the country.”

10. Relying on the above judgements, the learned counsel for the petitioners would submit that the present petitions have to be considered.

REPLY ON BEHALF OF THE RESPONDENTS:

11. The learned Additional Solicitor General of India, Mr.

2. Manu/PH/0204/2020

AR.L.Sundaresan, appearing on behalf of the respondent would strenuously oppose by stating that the offence of money laundering is prima facie identified by the Enforcement Directorate and ECIR was recorded based on the FIR No.8 of 2018 registered by CBI on 31.04.2018. The second loan of 67 Million US Dollars sanctioned by IDBI to Accused-2 i.e., Axcel Sunshine Ltd's (British Virgin Islands) Dubai Bank Account, was utilised by Accused-7 i.e., Siva Industries & Holdings Ltd., to repay the first loan availed by its wholly owned subsidiary company, Accused-8 i.e., WWOy. The money was transacted through various companies and laundering was identified by Enforcement Directorate. Thus, based on the scheduled offence registered by the CBI in FIR No.9 of 2018, ECIR was registered and accordingly, Provisional Attachment Order was made and it was confirmed by the adjudicating authority on 13.01.2020. Consequently, the respondent filed a complaint under PMLA on 11.01.2021 regarding the Provisional Attachment Order. Thus, the petitioners have to approach the Appellate Tribunal under Section 26 of PMLA. The Criminal Original Petitions, filed under Section 482, are not maintainable. Regarding the Provisional Attachment Order, the petitioners have to approach the Appellate Tribunal under Section 26 of PMLA. Thus, the present petitions are to be rejected.

12. The learned Additional Solicitor General would submit that with reference to the judgement of the Apex Court in *Pavana Dibbur's case* (supra), the facts are distinguishable. Thus, the said judgement is of no avail with reference to Sections 2(1)(u) and 3 of PMLA. The High Court of Punjab and Haryana clarified that the property acquired prior to the commission of scheduled offence i.e; criminal activity cannot be attached unless the property obtained or acquired from scheduled offence is held or taken outside the country. The context and the facts in both the cases would make it clear that the application with reference to the present case on hand is more specifically based on Sections 2(1)(u) and 3 of PMLA.

DISCUSSIONS:

13. Considering the arguments made on behalf of the parties to the lis on hand and considering Section 2(1)(u) of PMLA, it is amply clear that the value of any such property or the property equivalent in value held within the country or abroad is also to be construed as “proceeds of crime”. Therefore, the circumstances indicated under Section 2(1)(u) of PMLA are that any property derived by a person, in result of criminal activity relating to a

scheduled offence can be treated as proceeds of crime. The value of any such property or if such property is taken or held outside the country, then the property equivalent in value held within the country can be construed as proceeds of crime. Therefore, some properties, in result of criminal activity, is held outside the country, then the property equivalent in value held within the country can be attached by the Enforcement Directorate. The very object of the provision would be to protect the economic interest of the country. Therefore, the petitioners cannot take a ground that the property attached were purchased prior to the scheduled offence between the years 2010 and 2017. Even in respect of the properties purchased prior to the scheduled offence under PMLA , such properties can be attached if the criminal activity relating to scheduled offence is taken or held outside the country, then the property equivalent in value held within the country can be attached. The said properties attached within the country need not be the properties purchased from and out of the proceeds of crime or criminal activity. The very purpose of the provision is to ensure that the property acquired in result of criminal activity held outside India.

14.For more clarity, Section 70 Explanation (2), in the context of Sub section 2 removed the doubt that the company also can be prosecuted under

PMLA. Explanation (2) reads as under,

“For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.”

15. Explanation (2) to Section 70 of PMLA clarifies that a company may be prosecuted, notwithstanding, whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual. Therefore, it is expressly clarified under Section 70 of PMLA that a company may be prosecuted. Thus, the ground taken by the petitioners that the company cannot be held vicariously liable runs counter to Section 70 of PMLA and stands rejected.

16. In respect of the order of provisional attachment, if at all, the petitioners are aggrieved, they have to approach the Appellate Tribunal constituted under Section 26 of PMLA. The merits involved in the Provisional Attachment Order need not be adjudicated in the present petitions filed under Section 482 Cr.P.C. Regarding the relief sought for to

quash the complaint in Special CC. No.2 of 2021, this Court has no hesitation in arriving at a conclusion that the respondent have made out a prima facie case for prosecuting the individual persons and the companies under Section 70 of PMLA. Thus, the petitioners have to establish their defence on merits and based on documents and evidences available on record.

17. In view of the discussions made above, we hold that the present petitions are devoid of merits and are dismissed. However, the Trial Court shall proceed with the case uninfluenced by the observations, if any made on the facts of the case. No Costs. Consequently, connected miscellaneous petitions are closed.

(S.M.S.J.) **(V.S.G.J.)**

01.10.2024

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
(sha)

S.M.SUBRAMANIAM, J.

and

V.SIVAGNANAM, J.

(sha)

To

Directorate of Enforcement,
Chennai Zone-I,
Government of India,
Ministry of Finance, Department of Revenue,
2nd & 3rd Floor, C Block, Murugesan Naicker Office Complex,
No.84, Greams Road, Thousand Lights, Chennai – 600 006.
Rep. by its Deputy Director.

Pre-Delivery Order in
Crl.O.P.Nos.6925, 6926 & 6927 of 2022

01.10.2024