

HONOURABLE JUSTICE G. SRI DEVI

CRL. P.No.4130 of 2019

ORDER:

The petitioner, who is Accused No.12, in S.C.No.1 of 2019 on the file of the Principal Special Judge for C.B.I. Cases-cum-Special Court under the Prevention of Money Laundering Act, 2002 at Nampally, Hyderabad, filed this Criminal Petition under Section 482 Cr.P.C. to quash the proceedings against him in the above S.C, arising out of E.C.I.R.No.08/HZO/2011.

The facts which led to filing of the present Criminal Petition are that in compliance to the orders, dated 10.08.2011 passed by the High Court of Andhra Pradesh in W.P.No.29358 of 2010, the C.B.I., Hyderabad, registered a regular case vide RC-35-A-2011-0018, dated 17.08.2011 under Section 120-B read with Sections 420, 409, 420 and 477-A of I.P.C. and Section 13 (2) read with Section 13 (1) (c) and (d) of the Prevention of Corruption Act, 1988 against the petitioner and others. After completion of investigation, the C.B.I., Hyderabad, filed charge sheet for the aforesaid offences. On receipt of documents from C.B.I. like F.I.R., charge sheet etc., the respondent authorities made enquiries and having found that there is a *prima facie* case under the Prevention of Money Laundering Act, 2002 (for short "the P.M.L. Act") and as Section 120-B read with Section 420 of I.P.C. and Section 13 of the Prevention of Corruption Act are the

scheduled offences under P.M.L. Act, the respondent authorities have registered Enforcement Case Information Report (ECIR) No.08/HZO/2011, dated 30.08.2011 and took up the investigation. During the course of investigation, summons were issued under Section 50 of the P.M.L. Act to several persons and recorded their depositions, obtained financial accounts and bank statements of M/s. Stylish Holmes, Tirumala Ranga Rao, M/s. Southend Projects and Foundations Private Limited, N.Sunil Ressay and Koneru Rajendra Prasad and also from other persons, who were associated with the transactions and their voluntary statements. From the statements of the accused and the documents collected during the course of investigation under P.M.L. Act, according to the respondent authorities, it is well established that A-1 to A-13 have committed the offences under P.M.L. Act. As such, the respondent herein had filed a complaint under Section 200 of Cr.P.C. read with Section 45 (1), 3, 4 and 8 (5) of the Prevention of Money Laundering Act, 2002 (for short "the P.M.L. Act") punishable under Section 4 of the Act and Section 70 of the said Act, against the petitioner and others. The role of the petitioner as alleged in the complaint is that he is an N.R.I. and his father Koneru Rajendra Prasad was a Director of M/s. Emaar Hills Township Private Limited. He received an amount of USD 1,40,000 from one Challa Suresh and USD 2,50,000 from P.S.Parthasarathy, who have purchased villa plots in Emaar Hills Township Private Limited, as part of excess amount received

from villa plot buyers. Later, the petitioner returned the amount of USD 2,50,000 to P.S.Parthasarathi in the guise of investment colour to the amount received from him. However, USD 1,40,000 received from Challa Suresh was still lying with him. Hence, he is the recipient of part of proceeds of crime and still holding some of it knowingly. Thus, the petitioner knowingly received USD 3,90,000 and involved in the process of acquisition, possession of proceeds of crime and as such directly involved in the offence of Money Laundering in terms of Section 3 of the P.M.L. Act. The said complaint was taken cognizance as S.C.No.1 of 2019 and the petitioner herein is arrayed as accused No.12 in the above S.C. The present Criminal Petition is filed to quash the proceedings against the petitioner in the above S.C.

Heard Sri Mukul Rohatgi, learned Attorney General of India/ Senior Counsel, assisted by Sri Avinash Desai, learned Counsel appearing for the petitioner, Sri Namavarapu Rajeswara Rao, learned Assistant Solicitor General of India, for the respondent and perused the record.

It is submitted by the learned Senior Counsel for the petitioner that the C.B.I. filed a charge sheet dated 01.02.2012 against the petitioner and others, which was taken cognizance as C.C.No.6 of 2012 on the file of the Special Judge for CBI Cases, Hyderabad. The petitioner was arrayed as A-13 in the said C.C. and was charged

under section 120-B read with Sections 409 and 420 of I.P.C. He further submits that this Court *vide* order dated 05.01.2018 in Criminal Petition No.3935 of 2016, was pleased to quash the proceedings against the petitioner in C.C.No.6 of 2012. Against the orders passed in Criminal Petition No.3935 of 2016, a Special Leave Petition (SLP (Crl.) No.8186 of 2018) has been filed and same is pending before the Apex Court, but no stay has been granted. He also submits that the allegations against the petitioner are materially the same as in the C.B.I. charge sheet filed in C.C.No.6 of 2012. The allegations against the petitioner are that he received USD 1,40,000 from Challa Suresh and USD 2,50,000 from P.S.Parthasarathy, who have purchased villa plots as part of excess amount received. It is alleged that the petitioner knowingly received proceeds of crime and is still holding some of it. He further submits that the petitioner is a resident of Dubai since 1992 and is engaged in the business of real estate, trading and mining in the UAE and he has no business with any companies based in India or with M/s. Emaar PJSC, Dubai. The petitioner received the amounts from Parthasarathy and Challa Suresh for investment in the Dubai real estate market and thereafter returned the said amounts subsequently. The fact that the money was received for investment in the real estate market is clear from the statement of Challa Suresh under Section 50 of the P.M.L. Act. He further submits that the amount received from Parthasarathy was returned on 14.10.2011, which is evident from the documents

filed along with the complaint itself. He also submits that the amount from Challa Suresh was received on 12.04.2005 pursuant to an Investment Agreement dated 14.03.2015 and a copy of the agreement was submitted by the petitioner at the time of recording his statement under Section 50 of the P.M.L. Act, but the same was not made as part of the documents filed along with the complaint. The petitioner has subsequently refunded the amount to Challa Suresh, along with a profit on investment on 09.04.2015. He further submits that in order to sustain a charge under Section 3 of the P.M.L. Act, it is essential to establish that the petitioner had 'knowledge' of the proceeds of the Crime. The Apex Court explained the meaning of the word 'knowledge' in *Joti Prashad v. State of Haryana*¹; *Nikesh Tarachand Shah v. Union of India*² and in *Tech Mahindra Limited v. Joint Director, ED*³. He also submits that the allegations against the petitioner under the C.B.I. charge sheet also require the component of 'knowledge' for constitution of the offence. The genesis of the complaint filed under Section 45 of the P.M.L. Act is admittedly the charge sheet filed by C.B.I. as mentioned in the complaint itself. The allegations against the petitioner in the complaint filed under P.M.L Act are identical to the allegations against the petitioner made by C.B.I., in respect of the same incident. A comparative chart of the allegations in the

¹ 1993 Suppl.(3) SCC 497

² (2018) 11 SCC 1

³ Manu/AP/2921/2014

complaint made under P.M.L. Act and in the charge sheet filed by the C.B.I. has been filed by the petitioner. The complaint made under P.M.L. Act does not have any statement of fact which is different from that contained in the charge sheet filed by C.B.I. He further submits that this Court vide order, dated 05.01.2018 in Criminal Petition No.3935 of 2016, quashed the C.B.I. proceedings as against the petitioner and has recorded a specific finding that the allegations against the petitioner do not show that the petitioner had any knowledge of the nature of amount deposited in his account. The relevant findings are in paragraph No.15 (c) and 15 (i) of the said order. He also submits that in paragraph No.17 of the order, this Court specifically recorded a finding that the petitioner had no knowledge of the alleged offence. The order of this Court passed in Criminal Petition No.3935 of 2016, has been challenged before the Apex Court and no stay of any nature has been granted, as such the findings of this Court in Criminal Petition No.3935 of 2016 are still in force. In view of the fact that the allegations against the petitioner in the C.B.I. charge sheet and the allegations against the petitioner in the complaint made under P.M.L. Act are identical and the complaint under P.M.L. Act is ought to be quashed as this Court has clearly recorded a finding that the allegations do not show that the petitioner had any knowledge of the nature of amount deposited in his account. He also submits that the contention of the respondent that the offence under P.M.L. Act is a distinct offence from the

predicate offence does not support the case of the respondent in any manner. The contention that the offence under P.M.L. Act is an independent offence cannot take away from the fact that this Court vide order, dated 05.01.2018 in Criminal Petition No.3935 of 2016 has specifically recorded a finding that the allegations and material against the petitioner do not in any manner show his knowledge. The judgments relied upon by the respondent in *Neeharika Infrastructure Private Limited v. State of Maharashtra and others*⁴; *Gautam Kundu v. Directorate of Enforcement*⁵; *M/s. V.G.N.Developers v. The Deputy Director, Directorate of Enforcement*⁶; *Radha Mohan Lakhotia v. Deputy Director, P.M.L.A., Directorate of Enforcement, Ministry of Finance*⁷; *Sachin Narayan v. Income Tax Department and another*⁸ and *Babulal Verma v. Enforcement Directorate*⁹ are not applicable to the present case and are clearly distinguishable from the facts of the present case.

He further submits that since the allegations in the made in the complaint under P.M.L. Act are identical to the allegations in the C.B.I. charge sheet that has been quashed by this Court, the proceedings against the petitioner cannot be sustained and are liable to be quashed. The proceedings against the petitioner cannot be sustained in view of the categorical findings of this Court,

⁴ CrI.A.No.330 of 2021 (SC)

⁵ (2015) 15 SCC 1

⁶ (2019) SCC Online Mad. 13270

⁷ (2010) SCC Online Bom.116

⁸ (2019) SCC Online Kar. 1726

⁹ CrI.Appln.No.201 of 2021, Bombay HC

particularly in the light of the fact that no separate factual allegation or material has been filed along with the complaint, which is distinct from the C.B.I. charge sheet. He also submits that the respondent has deliberately suppressed the fact that the C.B.I. charge sheet has been quashed by this Court vide order, dated 05.01.2018 in Crl.P.No.3935 of 2016. In the complaint made under P.M.L.Act, the respondent has specifically stated that the case in C.C.No.6 of 2012 is pending before the trial Court. In its counter affidavit, the respondent does not deny having knowledge of the quashing of the C.B.I. charge sheet but attempts to justify the suppression by merely stating that the complaint was originally filed on 28.12.2017 and re-submitted on 12.04.2019 after making corrections. It is an admitted fact within the knowledge of the respondent that as on 12.04.2019 the C.B.I. charge sheet has been quashed by this Court and the respondent was duty bound to bring the said fact to the notice of the Special Judge. The respondent has withheld the above material fact from the Special Judge and has consequently misled the Special Judge to issue process against the petitioner vide order, dated 15.06.2019 in S.C.No.1 of 2019.

He also submits that the complaint made under P.M.L. Act, taken at its face value, shows that the petitioner had no knowledge of the money deposited in his account to be the proceeds of crime. Assuming the allegations in the complaint to be true, no offence

under the P.M.L. Act is made out against the petitioner. It is further submitted that there are no new factual allegations in the complaint made under P.M.L. Act that are different from the allegations in the C.B.I. charge sheet that has been quashed by this Court. In the complaint made under P.M.L. Act only a bare allegation is added that the petitioner is the recipient of proceeds of crime 'knowingly'. Mere usage of the word 'knowingly' is not sufficient to attribute knowledge to the petitioner in the absence of any statement or material in the complaint made under P.M.L. Act that shows as to how the petitioner is alleged to have knowledge of receipt of proceeds of crime. In the absence of such allegations and material attributing knowledge to the petitioner, the proceedings against the petitioner are liable to be quashed and the petitioner ought not to be forced to undergo the rigmarole of a long criminal trial.

He further submits that the complaint made under P.M.L. Act does not allege that the petitioner was directly involved in the sale/purchase of plots or that he had any knowledge whatsoever of the sale of plots to Challa Suresh and Parthasarthy. The petitioner is not alleged to be in any manner connected to the companies/entities that are alleged to have engaged in sale/purchase of plots leading to generation of proceeds of crime. It is not even alleged in the complaint that the petitioner had asked Challa Suresh or Parthasarathy to deposit the amounts in his account or that there

was any interaction of the petitioner with Challa Suresh and Parthasarathy suggesting that the amount is being deposited for sale/purchase of plots. The money received from Challa Suresh and Parthasarathy was in the normal course of business from their respective American Bank Accounts to the account of the petitioner in Dubai for the purpose of investment in the real estate market. The same has absolutely no connection to the sale/purchase of plots that is the subject matter of the P.M.L. Act complaint. Further, the money was duly returned by the petitioner to both Challa Suresh and Parthasarathy and no money is lying with the petitioner. It is evident that there is no basis in the complaint to allege that the money received by the petitioner is proceeds of crime and the petitioner has been roped in as an accused merely as he is the son of A-7 (Koneru Rajendraprasad). He also submits that as per the statement of Challa Suresh recorded under Section 50 of the P.M.L. Act and which is reproduced in paragraph No.18 of the complaint, it is clear that the amount of USD 1,40,000 was paid to the petitioner towards investment in the property market in Dubai and is in no manner related to the alleged proceeds of crime. Further, Challa Suresh, in his statement also specifically stated that he has been investing with the petitioner from earlier i.e., before any plot sought to be sold/purchased. The allegation in the complaint that the petitioner received USD 2,50,000 from Parthasarathy, but his statement has not been recorded by the respondent authorities. In

the complaint, it is also alleged that the deposits in the account of the petitioner were made at the instance of Koneru Rajendra Prasad (father of the petitioner) on the basis of the statement of Tummala Ranga Rao under Section 164 of Cr.P.C. in the C.B.I. case. It is submitted that even the aforesaid statements do not attribute any knowledge to the petitioner regarding the alleged proceeds of crime and cannot form the basis of proceeding against the petitioner for the offence of money laundering. Further, this Court, while quashing the C.B.I. proceedings against the petitioner, specifically dealt with the aforesaid allegations and statements made by Parthasarathy, Challa Suresh and Tummala Ranga Rao under section 164 of Cr.P.C., and gave a categorical finding that the same would not be sufficient to say that the petitioner was privy to any such transaction. Therefore, it is not open for the respondent to rely on 164 Cr.P.C. statements recorded by C.B.I. Further, the very fact that Challa Suresh and Parthasarathy, who are alleged to have paid proceeds of crime to the petitioner, have not been implicated as accused in the complaint shows that the petitioner has been wrongly implicated as an accused without any basis and for the sole reason that he is the son of accused No.7.

It is further submitted that the sole basis for the respondent authorities to raise allegations with respect to the aforesaid amount is the bank account statement of the petitioner shows receipt and

return of the amount. Mere entries in the bank statement can never show knowledge of the petitioner or establish the purpose for which the money was given to the petitioner. In view of the above, even from the allegations in the complaint, no knowledge can be attributed to the petitioner that the amounts received by him were proceeds of crime. There is no statement or material to show that the money received by the petitioner was tainted and it was proceeds of crime. Even if it is assumed that the money received by the petitioner was tainted, there is nothing in the complaint to show that the petitioner had knowledge that the money was proceeds of crime. Therefore, it cannot be said that the petitioner had knowledge that the said amount being proceeds of crime. It is also submitted that the complaint under P.M.L. Act is contrary to law and is liable to be quashed as it seeks to apply a criminal provision retrospectively. The E.C.I.R. in the present case was registered by the respondent on 30.08.2011 on the basis of the C.B.I. charge sheet, according to which Section 120-B read with Section 420 of I.P.C. are scheduled offences under the P.M.L. Act. However, the aforesaid offences were included as scheduled offences in Part-A of the Schedule only in 2009 through Act 21 of 2009. Even as per the P.M.L. complaint, the petitioner received amounts from Parthasarathy on 09.08.2007 and from Suresh on 12.04.2005 and, therefore, the offence is alleged to have been committed before 2009 at the time when Section 120-B read with Section 420 of I.P.C. and

Section 13 of the Prevention of Corruption Act, were not scheduled offences under the P.M.L. Act. In support of the said contention, he relied upon the judgment of the Delhi High Court in *Arun Kumar Mishra v. Directorate of Enforcement*¹⁰. The contention of the respondent that the question of retrospective application of the provisions of P.M.L. Act are pending adjudication before the Apex Court and the Apex Court had passed interim orders in favour of the respondent in S.L.P.(Cri) No.10018 of 2015 (Arun Kumar Mishra's case) does not in any manner impact the law declared by this Court and the Delhi High Court. It is submitted that the Apex Court vide order, dated 23.11.2015 in SLP (Cri) No.10018 of 2015 has directed the parties to maintain *status quo*. This Court in *M/s. Tata Coffee Limited v. Government of Andhra Pradesh*¹¹ held that mere granting of an interim stay order by the appellate Court would not wipe out the ratio/law declared by the High Court. Therefore, the alleged offence took place before 2009 at which time Section 120-B read with Section 420 of I.P.C. were not scheduled offences under the P.M.L. Act, the offences cannot be retrospectively applied to the petitioner. It is further submitted that the contention of the respondent that the offences under P.M.L. Act are continuing and hence ought to be applied retrospectively is entirely misinterpreted and contrary to the law declared by this Court in *Tech Mahindra v.*

¹⁰ Manu/DE/1095/2015¹¹ Manu/AP/1477/2013

*Joint Director, E.D.*¹². The aforesaid decision of this Court has become final as the Special Leave Petition (SLP(Crl) No.010250 of 2017) has been dismissed by the Apex Court, vide order dated 08.12.2017. In view of the judgment of the Apex Court in *S.Kasi v. State*¹³, the decision of the coordinate Bench of the High Court would be binding on another coordinate bench.

Reiterating the allegations made against the petitioner in the complaint made under P.M.L. Act, learned Assistant Solicitor General of India, appearing for the respondent would submit that the petitioner is guilty of the offence of money laundering. In view of amended Sections 8 (5) and 8 (6) of the P.M.L. Act, the confiscation of property and commission of offence of money laundering has to be decided by the trial Court and, therefore, filing of prosecution complaint before the Special Court is mandatory and the trial proceedings are standalone proceedings. It is further submitted that in his deposition given under Section 50 (2) and (3) of the P.M.L. Act, the petitioner had admitted that he has received USD 2,50,000 from Parthasarathi and USD 1,40,000 from Challa Suresh, towards real estate business investment in Dubai. It is further stated in his statement that he received the said amount from Parthasarathi during 2007 and later as per his request returned the same during the year 2011. It is also submitted that T.Ranga Rao, who is sole

¹² Manu/AP/2921/2014

¹³ 2020 SCC Online SC 529

selling agent of Villa plots in EHTPL, in his statement, stated that they have sold villa plot to Parthasarathy for an excess price of Rs.45,000/- per square yard, which is not reflected in the books of accounts of EHTPL. As per the instructions of Koneru Rajendra Prasad (A-7), foreign bank account of the petitioner was given to Parthasarathy and Challa Suresh and they were informed to deposit the excess amount into the account of the petitioner. Further, Challa Suresh, one of the buyers of a villa, in his statement, stated that he purchased villa plot @ Rs.5,000/- per square yard and Koneru Rajendra Prasad and T.Ranga Rao, asked for excess amount of Rs.5,000/- per square yards equivalent to Rs.72.50 lakhs. He knows Rajendra Prasad and he had already made some investment with the petitioner USD 1,40,000 and to meet demand in India, he asked his funds in Dubai, which were not returned till now. Thus, it is evident that the amount of USD 1,40,000 available with the petitioner was to be adjusted towards excess payment of villa plot purchased by Challa Suresh. He further submits that the petitioner had received the amount from Parthasarathy during the year 2007 and returned the same in the year 2011 i.e., after registration of case by C.B.I. Therefore, remittance of USD 3,90,000 into the account of the petitioner cannot be said to be without his knowledge, as such, the petitioner is arrayed as an accused in the prosecution complaint under P.M.L. Act. Further, the association of the petitioner with T.Ranga Rao of M/s. Stylish Homes Private Limited is well

established and accepted by the petitioner too. The provisions of P.M.L. Act are independent and having self-contained code, which has been strengthened by catena of decisions pronounced by various Courts of law. In support of his contentions, he relied on the following judgments:-

1. *Smt. Soodamani Dorai v. The Joint Director of Enforcement, Chennai and others*¹⁴
2. *J.Sekhar v. The Directorate of Enforcement*¹⁵
3. *Neeharika Infrastructure Private Limited v. State of Maharashtra and others (4 supra)*
4. *Gautam Kundu v. Directorate of Enforcement (5 supra)*
5. *M/s. V.G.N.Developers v. The Deputy Director, Directorate of Enforcement (6 supra)*
6. *Radha Mohan Lakhotia v. Deputy Director, P.M.L.A., Directorate of Enforcement, Ministry of Finance (7 supra)*
7. *Sachin Narayan v. Income Tax Department and another (8 supra)*
8. *Babulal Verma v. Enforcement Directorate (9 supra).*

This Court has given fastidious consideration to the points raised by both sides and verified the material documents in order to appreciate the contentions raised by both sides. In short, the following points are surfaced before this Court for consideration.

¹⁴ W.P.No.8383 of 2013 of Madras HC

¹⁵ CrI.O.P.Nos.24200 of 2017 of Madras HC

- 1) Whether there is material to constitute the offence amounting 'money laundering' under the PML Act against the Petitioner (Accused No. 12)?
- 2) Whether there is 'schedule offence' to be proceeded with against the Petitioner under the provisions of Prevention of Money Laundering Act in view of the Order of this Court in Crl. Petition 3935 of 2016 dated 05.01.2018?
- 3) Whether the amendment of PML Act in the year 2009 so far as 'schedule offences' is concerned, can be applied to an act committed prior to amendment?

Point Nos.1 & 2: The accusation made against the petitioner in the Complaint filed before the Special Court by the ED in S.C.No. 01 of 2019 is seen as below (Vide: Para L)

"L. Role of Sri Koneru Madhu (Accused No. 12) S/o Sri Koneru Rajendra Prasad in Money Laundering Offence:

i) He is an NRI and his father Sri Koneru Rajendra Prasad was a Director in EHTPL. He received an amount of USD 1, 40, 000 from Sri Challa Suresh and USD 2, 50, 000 from Sri PS Parthasarathy, who have purchased villa plots in EHTPL, as part of excess amount received from villa plot buyers.

ii) Later he returned the amount of USD 2, 50,000 to Sri PS Parthasarathy in the guise of investment colour to the amount received by him.

iii) However, USD 1, 40,000 received from Sri Challa Suresh is still lying with him

iv) Hence, he is the recipient of part of proceeds of crime and still holding some of it knowingly.

v) Thus, Sri Koneru Madhu knowingly received USD 3, 90, 000 and involved in the process of acquisition, possession of PoC thus directly involved in the offence of 'Money Launder' in terms of Sec. 3 of PMLA, 2002 for which Shri Koneru Madhu shall be guilty of offence of money laundering under sec. 3 and punishable under sec. 4 of the Act."

In the light of the above allegations, rather accusations made against the petitioner, the learned Senior Counsel, Sri Mukul Rohatgi, argued that necessary elements to attract the offence of money laundering are absent and, therefore, the Complaint is liable to be quashed. In the Complaint, as against the petitioner, the ED has alleged the offences under Section 3 punishable under Section 4 of the P.M.L.Act. For this purpose, a close look at the meaning and import of the expression 'money laundering' has to be referred.

According to Section 2 (p), 'money laundering' has the meaning assigned to it in section 3. Section 3 of the PML Act, 2002 reads as under:-

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]*¹⁶ it as untainted property shall be guilty of offence of money-laundering.

[Explanation¹⁷: 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: --

¹⁶ 1. Substituted by the Prevention of Money-laundering (Amendment) Act, 2012 (No. 2 of 2013) w.e.f. 15.02.2013 for the following: - "proceeds of crime and projecting."

¹⁷ 2. Inserted by Finance (no. 2) Act, 2019.

- (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.]

The term “proceeds of crime” has been defined in Section 2

(u) of P.M.L. Act, which reads as under: -

"2. (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 11[or where such property is taken or held outside the country, then the property equivalent in value held within the country 14[or abroad]];

(y) "scheduled offence" means--

(i) the offences specified under Part A of the Schedule; or

4[(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is 12 [one crore rupees] or more; or

(iii) the offences specified under Part C of the Schedule.]

offence are sought to be projected as untainted.

Part B of the Schedule provides that in Paragraph one, besides several offences under the Indian Penal Code, Sections 120-B, 419 and 420 are included vide Section 13 of the Prevention of Money

Laundering (amendment) Act, 2009 (since repealed by Repealing and Amending Act, 2019 (31 of 2019)).

It is apt to note that the Complaint of the ED in S.C.No.1 of 2019 impugned and is challenged under Section 482 of the Cr.P.C., simply adopts the Charge Sheet contents/accusations against the Accused No. 13 therein who is the Petitioner/Accused No. 12 in this Criminal Petition. There was a Charge Sheet and Supplementary Charge Sheet filed by the CBI. The offences cited against the Petitioner herein (A13 in that charge sheet) in that original Charge Sheet are Sections 120B, 420, 409 and 477-A IPC. Interestingly, the accusations made in that charge sheet against A-13 therein (petitioner herein) are replica of the allegations made in the impugned complaint filed before the Special Court by the ED under the PML Act. It is also important to note that in the Complaint itself the ED has asserted that a detailed reference is made to the Charge sheet filed by CBI at various places and at paragraph No. 10 a reference is made to the 'investigation under PMLA, 2002' as below:

"11. It is humbly submitted that on receiving documents from CBI like FIR, Charge Sheet etc., the Directorate of Enforcement, Hyderabad made enquiries and having found that there is a prima facie case under PMLA, 2002 and as Sec. 120B read with Sec. 420 of IPC and Sec. 13 of PC Act are the Scheduled offences under PMLA, 2002, Directorate of Enforcement has registered ENFORCEMENT CASE INFORMATION REPORT (ECIR) No. 08/HZO/2011

dt. 30.08.2011 (Annexure-A4) and took up the investigation.”

12. During the investigation summonses were issued under Section 50 of the Act to several persons and recorded their depositions, obtained Financial Accounts and Bank statements of M/s Stylish Holmes, Shri Tummala Ranga Rao, M/s Southend Projects & Foundations Pvt. Ltd. Sri N. Sunil Reddy, Sri Koneru Rajendra Prasad and also from other persons who were associated with the transactions and their voluntary statements ...”

It is therefore, as rightly contended by the Learned Senior Counsel for the Petitioner, other than the material collected by the CBI, the ED did not collect, nor did any further investigation to collect some more material to charge the petitioner with the offence under sec. 120B and Sec. 420 IPC. This Court in CrI.P.No 3935 of 2016, wherein the present petitioner was figured as Accused No. 13 made a clear observation vide Para 17 at page 40 as below:

“From the above, when it is not a case of the Petitioner-A13 was privy to any conspiracy with M/s Emmar Properties, Public Joint Stock Company (PJSC), Dubai, from the time of their entering the MOU, much less even party to agreement between M/s Emmar and its subsidiaries and M/s Stylish Homes and not even privy with Ranga Rao-Director of M/s Stylish Homes and nothing even of any material with substance to say any privy between A6-Rajendra Prasad and the Petitioner-A13, leave apart as discussed supra even any ting to infer between father and son of any knowledge of the son about his father was privy with

others in any offence and not prevented, that no way establish any criminal conspiracy to mulct the petitioner as A13 with other of them, even taken for arguments sake of his version of the amount remitted by Parthasarathy was a loan and the amount remitted by Suresh was investment in any business are untrue, that by itself but for one of several circumstances to infer no way suffice to charge him with accusation of criminal conspiracy...”

At paragraphs 18 and 19 of the Order, this Court made further observations that the offence of Criminal Conspiracy is not made out from the material provided by the CBI in their Charge Sheet. The relevant observations are extracted below for instant reference:

“18. Thus, there is nothing to implicate him with criminal conspiracy, if there is nothing to show any circumstances give rise to a conclusive or irresistible inference of an agreement between him and one or more other persons to commit an offence leave apart a few bits here and a few bits there on which the prosecution relies, if any, cannot be held to be adequate for connecting him with the commission of the crime of criminal conspiracy as held by the Apex court...

19. The respondent-CBI even alleged in the charge sheet that the petitioner-A13 is also a party to the so-called criminal conspiracy, but on the evaluation of the entire subject matter, there is nothing for what is discussed supra. The learned Special Judge also did not go through and evaluate the prosecution material covered by the final report in taking cognizance for respective offences against him as A-13.”

So far as the other offences of Criminal breach of trust and cheating (sections 409 and 420 IPC) is concerned, this Court has recorded the following observations:

“14. From reading of the material supra, there is thus no offence of criminal breach of trust and cheating much less with any proof of entrustment and any deception since inception of any contract between M/s Emaar and M/s Stylish Holmes in so far as against the petitioner-A13 separately concerned, but for subject to offence of criminal conspiracy made out if any with other accused under sections 120B & 107 (2) IPC r/w 10 Evidence Act to petitioner A13 as privy for their committing those offences alleged from any agreement or abetment/instigation from the allegations in the charge sheet that though rate of selling the villa plots was fixed by M/s Emaar at Rs. 5, 000/ per sq. yd. as per the instructions of Shri Koneru Rajendra Prasad -A6, Shri T. Ranga Rao-A14 as Director of M/s Stylish Holmes Real Estates Pvt. Ltd., sold the villa plots by collecting excess amounts from the buyers....”

Thus, this Court upheld the contentions of the Petitioner herein who is the Petitioner-A13 in Charge sheet filed by CBI that no offences are made out under sec. 120B, 409 and 420 IPC and quashed the charge sheet against him. This Court is called to examine the same facts which were considered by this Court in Crl P. No.3935 of 2016, in this case which are arisen out of the Complaint filed by the ED under PML Act. The contention of the learned Standing Counsel for the Respondent is that this case is independent and has no

relevance with the result of CrI.P.No. 3935 of 2016 is lacking force and logic because the ED can proceed only for those offences which are 'scheduled offences' under the IPC. This Court, on facts cannot take a different opinion from the one taken by another co-ordinate bench of this Court.

In *Arun Kumar Mishra vs. Directorate of Enforcement* (10 supra) the Delhi High Court considered the similar question. In that case, CBI closed the investigation on the ground that no material is available to charge the accused for the schedule offences. At paragraphs 27 and 28 of the report, the High Court dealt with this issue and held that the impugned ECIR filed by the ED shall be quashed.

Therefore, as rightly argued by the learned Senior Counsel for the Petitioner, it is redundant for this court to discuss the facts and law on the same points once again in this petition. Therefore, this Court finds reasons to accept the contentions of Sri Mukul Rohatgi, learned Senior Counsel for the Petitioner that according to the findings in CrI.P. No. 3995 of 2016, the scheduled offences are not made out and the Charge Sheet is quashed against the Petitioner and therefore, and in consequence thereof, there cannot exist any more scheduled offences for the purpose of prosecution under Sections 3 and 4 of PML Act, 2002 (as amended).

In view of the above discussion, I find that there is no material to proceed against the petitioner under Sections 3 and 4 of Prevention of Money Laundering Act, 2002 and that there are no 'schedule offences' committed by him to proceed under the provisions of PML Act in view of the Order of this Court in Crl.P. No. 3935 of 2016 dated 5.1.2018.

Point No. 3:- Whether the amendment of PML Act in the year 2009 so far as 'schedule offences' is concerned, can be applied to an act committed prior to amendment?

A plain reading of the definition of "money laundering" as indicated in Section 2 (p) would indicate, it has not undergone any change and it has the same meaning as assigned to it under Section 3. Whereas Section 2 (y) which defines "schedule offence" has undergone amendment namely, sub-clause (ii) was substituted by Act No.21 of 2009. For the words "thirty lakh rupees or more" was substituted by the words "one crore rupees or more".

It is the case of ED as set out in the impugned Complaint that the money was remitted to the account of the petitioner in Dubai, on 12.4.2005 and 9.8.2007 from Mr. Suresh and Mr. Parthasarathy respectively and therefore, the offence of money laundering, so far as the petitioner is concerned was committed prior to the year 2009. Sec. 120 B, sec. 409 and 420 I.P.C are made 'scheduled offences' for the purpose of Section 3, only from the year 2009. The question

whether for the acts amounting to offences punishable under sec. 120B, 409 and 420 I.P.C prior to 2009, the PML Act that was amended in 2009 can be applied. This question was dealt with by the Delhi High Court in *Arun Kumar Mishra vs. Directorate of Enforcement (10 supra)* in detail. It is held by the Ld. Single Judge of Delhi High Court that :-

“19. At the outset it may be mentioned that the ECIR discloses the commission of the alleged offences during the period from November 2005 to December 2006. Section 3 of the PMLA specifically mandates that the act of money laundering should be intentional, therefore, it has to be traced to the point of time when the actual transaction took place. The offence punishable under Section 120B IPC and Section 13 of the PC Act were inserted in the schedule of PMLA w.e.f. 01.06.2009 i.e. after the period in which the alleged offences have been committed.” (*Emphasis is mine*)

20. In ‘*Tech Mahindra’s case*’ (supra) it was observed as under: -

“70. It is settled principle of law that no person can be prosecuted on the allegation which occurred earlier by applying the provision of law which has come into force after the alleged incident. In other words, there can be no retrospective application of criminal liability for the incident occurred prior to introduction of such liability in the statute book.

71. Admittedly, prior to Amendment Act, 2009, none of the provisions which are now invoked by the Enforcement Directorate were on the statute book

except Section 467 IPC. Thus, the petitioner cannot be prosecuted by invoking those provisions.

21. It is settled principle of law that the provisions of law cannot be retrospectively applied, as Article 20(1) of the Constitution bars the *ex-post facto* penal laws and no person can be prosecuted for an alleged offence which occurred earlier, by applying the provisions of law which have come into force after the alleged offence."

Madras High Court in recent judgment *Smt.Soodamani Dorai vs. The Joint Director Of Enforcement (16 supra)* made reference to this aspect. It is stated:

"In respect of retrospective effect of the provisions of the Prevention of Money Laundering Act, 2002 is pending before the Hon'ble Supreme Court of India and the Hon'ble Division Bench of High Court of Delhi. However, the Hon'ble Supreme Court of India has granted interim order in favour of the Directorate of Enforcement on the said issue of irrespective effect of the Prevention of Money Laundering Act, 2002, in the case of Directorate of Enforcement vs. Obulapuram Mining Company Pvt. Ltd in SLP (Crl.) No.4466 of 2017 dated 22.3.2017 and in the case of Directorate of Enforcement vs. Arun Kumar Mishra in SLP (Crl.) Nos.10018 and 10019 of 2015 dated 11.1.2016 and in the case of Adjudicating Authority (PMLA) and others vs. Ajay Kumar Gupta and others in SLP (Crl.) Diary No.4968 of 2018 (arising out of impugned final judgment and order dated 13.7.2017 in Crl.OP Nos.10500 of 2017 and 10497 of 2017 passed by this Court and also the judgment of Hon'ble Division

Bench of High Court of Delhi in the case of Directorate of enforcement vs. Mahanivesh Oils and Foods Pvt Ltd (LPA No.144 of 2016) and C.M. No.8046 of 2016 dated 30.11.2016.”

In the case of *Prahlad Krishna vs. The State of Bombay*,¹⁸ the court observed that immunity is supposed to be provided to a person from being accused of the offence laid down under the present law which had been committed by him before such enactment. Clause 1 of Article 20 of the Constitution of India guarantees right against the operation of ex post facto laws. A seven Judges’ Bench of the Supreme Court in the case of *Jawala Ram vs. The State of Pepsu*¹⁹ made it clear that it is only in case of criminal laws that there lies a prohibition of the application of retrospective laws whereas civil liabilities have been given the authority to be imposed by retrospective effect. Therefore, laws which make an activity offensive which were initially innocent when the same was committed will not be declared as valid.

The above view is fortified from the spirit of Article 20 of the Constitution. In *Biswanath Bhattacharya vs. Union of India*²⁰, the Supreme Court, in paragraph 25, held as under:-

¹⁸AIR 1952 Bom 1 (DB)

¹⁹1962 SCR (2) 503 (CB)

²⁰(2014) 4 SCC 392

“25. Article 20 contains one of the most basic guarantees to the subjects of the Republic of India. The Article insofar as is relevant for our purpose stipulates two things:

(i) That no person shall be convicted of any offence except for violation of the law in force at the time of the commission of the act charged as an offence; and

(ii) That no person shall be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

It is a well-settled principle of constitutional law that sovereign legislative bodies can make laws with retrospective operation; and can make laws whose operation is dependent upon facts or events anterior to the making of the law. However, criminal law is excepted from such general rule, under another equally well-settled principle of constitutional law i.e. no ex post facto legislation is permissible with respect to criminal law. Article 20 contains such exception to the general authority of the sovereign legislature functioning under the Constitution to make retrospective or retroactive laws.” (*Emphasized by me*)

In view of the above position, it can be concluded that the amendment of P.M.L. Act in 2009 will not be applied to the offences committed prior to amendment, to initiate proceedings under the PML Act. It is not brought to the notice of this Court by the learned Standing Counsel for the Respondent that the Supreme Court or any other High Court have taken a different opinion about the position of law pronounced by the learned. Single Judge of the Delhi High Court in *Arun Kumar Mishra* case (10 supra). Inasmuch as the

reasoning given by the Ld. Judge of Delhi High Court in *Arun Kumar Mishra* (10 supra) is sound and acceptable, this Court also adopts the same view.

It is clear from the above discussion, that certain High Courts have already taken a view that the amendment to PML Act in 2009 has no retrospective effect. Those decisions are challenged by the ED before the Supreme Court and an interim order has been passed by the Supreme Court in favour of the ED. According to Article 20 of the Constitution of India, as observed by the Supreme Court referred to above, the general power of legislature to make law with retrospective effect is not available in case of criminal law. These conflicting views are yet to be finally decided by the Apex Court.

The argument advanced by the learned Senior Counsel for the Petitioner that there is no commission of 'schedule offence' by the petitioner to proceed under Sections 3 and 4 of P.M.L. Act and the Complaint filed by the Respondent against the petitioner, being Accused No. 12 does not indicate any material to prosecute him for the offences under the Prevention of Money Laundering Act, 2002 (as amended) is accepted. But whether the amendment in 2009 would make the acts committed in the period earlier to amendment falls within the purview of the PML Act or not cannot be answered because the question is pending for final decision before the Apex Court.

The learned Assistant Solicitor General for the Respondent contends that invocation of powers under sec. 482 Cr.P.C by this Court is highly unwarranted. The power vested in this Court by Sec. 482 Cr.P.C is to prevent abuse of process of criminal law. Where it appears from the record that there is no reason and material to charge the petitioner for the offences under the PML Act, the Complaint is evidently vexatious. The principles relating to exercise of jurisdiction under Section 482 of the Code of Criminal Procedure to quash complaints and criminal proceedings have been stated and reiterated by Supreme Court in several decisions. In *Indian Oil Corporation. vs. NEPC India Ltd. and others*,²¹ the Court laid down the following principles, among others in this regard:

“(i) A complaint can be quashed where the allegations made in the complaint, even if they are taken at their face value and accepted in their entirety, do not prima facie constitute any offence or make out the case alleged against the accused.

For this purpose, the complaint has to be examined as a whole, but without examining the merits of the allegations. Neither a detailed inquiry nor a meticulous analysis of the material nor an assessment of the reliability or genuineness of the allegations in the complaint, is warranted while examining prayer for quashing of a complaint.

(ii) A complaint may also be quashed where it is a clear abuse of the process of the court, as when the criminal proceeding is found to have been initiated

²¹(2006) 6 SCC 736

with mala fides/malice for wreaking vengeance or to cause harm, or where the allegations are absurd and inherently improbable.

(iii) The power to quash shall not, however, be used to stifle or scuttle a legitimate prosecution. The power should be used sparingly and with abundant caution.

(iv) The complaint is not required to verbatim reproduce the legal ingredients of the offence alleged. If the necessary factual foundation is laid in the complaint, merely on the ground that a few ingredients have not been stated in detail, the proceedings should not be quashed. Quashing of the complaint is warranted only where the complaint is so bereft of even the basic facts which are absolutely necessary for making out the offence."

The Supreme Court in *Anand Kumar Mohatta and another vs. State (Govt., of NCT of Delhi), Department of Home and another*,²² has held that the High Court should quash the proceedings if it comes to the conclusion that allowing the proceedings to continue, would be an abuse of the process of the Court and that the ends of justice require that the proceedings be required to be quashed.

In view of the judgments referred to above and for the aforesaid reasons, this Court is of the opinion that the proceedings against the petitioner in S.C.No.1 of 2019 on the file of the Principal Special Judge for C.B.I. Cases-cum-Special Court under the

²² AIR 2019 SC 210

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Prevention of Money Laundering Act, 2002 at Nampally, Hyderabad, are liable to be quashed.

Accordingly, the Criminal Petition is allowed and the proceedings against the petitioner in S.C.No.1 of 2019 on the file of the Principal Special Judge for C.B.I. Cases-cum-Special Court under the Prevention of Money Laundering Act, 2002 at Nampally, Hyderabad, are hereby quashed.

As a sequel thereto, Miscellaneous Petitions, if any, pending in this Criminal Petition, shall stand closed.

JUSTICE G. SRI DEVI

02.06.2021
Gsn/gkv