

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2021

PRONOUNCED ON : 04.02.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

AND

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.O.P. No.21530 of 2017 and Crl.M.P. Nos.12662 & 12663 of 2017

1 R. Viswanathan

2 S. Kavitha

Petitioners

vs.

The Assistant Director
Directorate of Enforcement
Government of India
Ministry of Finance, Department of Revenue
II and III Floor, "C" Block
Murugesan Naicker Office Complex
84, Greaves Road
Thousand Lights
Chennai 600 006

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records in C.C. No.10 of 2017 on the file of the Principal Sessions Court (Special Court for PMLA Cases), Chennai, constituted under Section 43 of the Prevention of Money-Laundering Act, 2002.

For petitioners Mr. B. Kumar, Senior Counsel
for Mr. B. Satish Sundar

For respondent Mr. Rajnish Pathiyil
Special Public Prosecutor
for Enforcement Directorate

ORDER

P.N. PRAKASH, J.

This criminal original petition has been preferred seeking quashment of the proceedings in C.C. No.10 of 2017 on the file of the Principal Sessions Court (Special Court for PMLA Cases), Chennai.

2 The incontrovertible facts are as under:

2.1 Viswanathan (1st petitioner/A.1) was into the business of imports and exports in the name and style of “Mercantile India”. Between 1999-2002, Viswanathan (A.1) exported stainless steel utensils to Sri Lanka and between 2000-2001, he purchased 8 residential flats in Chennai.

2.2 The Directorate of Revenue Intelligence began an investigation of the exports made by Viswanathan (A.1) and found that he was not entitled to Duty Entitlement Pass Book (DEPB) Scheme credit facility and therefore, issued a show cause notice dated 07.02.2003 under the Customs Act to

Viswanathan (A.1) and eventually, the Commissioner of Customs passed an adjudication order dated 28.06.2004 denying DEPB credit facility to Viswanathan (A.1) and ordered recovery of the same, besides levying fine and penalty on him.

2.3 However, the CESTAT, Chennai, by order dated 12.06.2007, allowed the appeal preferred by Viswanathan (A.1) by holding that the exports made by him cannot be termed to be fraudulent, as a sequel of which, demands were dropped. The Department did not agitate the matter further.

2.4 While that being so, Viswanathan (A.1) had a quarrel with one Govindarajan and one Panneerselvam, on account of which, the said Panneerselvam lodged a complaint to the police alleging that Viswanathan (A.1) is a Sri Lankan national and was holding a fake Indian passport.

2.5 On the basis of the said complaint, the police registered a case in Thirumangalam P.S. Cr.No.123 of 2008 on 23.02.2008 for the offences under Sections 12(1)(b) of the Passports Act, 1967, Section 14 of the Foreigners Act, 1946 and Section 420 IPC. Viswanathan (A.1) was arrested by the police and

was later released on bail. The investigation in Cr.No.123 of 2008 is still pending and the police have not filed charge sheet against Viswanathan (A.1).

2.6 While so, Directorate of Enforcement registered a case in ECIR No.5 of 2014 on 11.08.2014 under the Prevention of Money Laundering Act, 2002 (for brevity “the PML Act”) on the premise that the FIR in Cr.No.123 of 2008 disclosed an offence under Section 420 IPC, which is a schedule offence under the PML Act.

2.7 After completing the investigation, the Directorate of Enforcement filed a complaint in C.C. No.10 of 2017 in the Principal Sessions Court, (Special Court for PML Act Cases), Chennai, for offences under Section 3 read with Section 4 of the PML Act against Viswanathan (A.1) and his wife Kavitha (A.2), for quashing which, Viswanathan (A.1) and Kavitha (A.2) have filed the present criminal original petition invoking Section 482 Cr.P.C.

3 Mr. B. Kumar, learned Senior Counsel representing Mr. B. Satish Sundar, learned counsel on record appearing for the petitioners, submitted that even if the averments in the FIR to the effect that Viswanathan (A.1) had obtained an Indian passport by suppressing the fact that he is a Sri Lankan

national, is true, the said offence was committed much before the coming into force of the PML Act and *ergo*, the prosecution stands vitiated.

4 We are unable to concur with the above submission in view of the authoritative pronouncement of the Supreme Court in **Biswanath Bhattacharya vs. Union of India and others**¹. That apart, the explanation that has been added to Section 3 of the PML Act *vide* Act 23 of 2019 sets to rest the argument that the predicate offence should have been committed only after the coming into force of the PML Act.

5 However, now, the question that emerges for the consideration of this Court is whether Viswanathan (A.1) is an Indian citizen or a Sri Lankan citizen. This issue is still hanging fire, inasmuch as, the case in Thirumangalam P.S. Cr.No.123 of 2008 has not culminated so far.

6 As regards the question as to whether a particular person is an Indian citizen or not, the same has to be determined only by the Central Government under the Citizenship Act. It is common knowledge that during the Sri Lankan ethnic war in 1980s, Tamilians in thousands crossed the Palk

1(2014) 4 SCC 392

Strait, entered Tamil Nadu as refugees and they were absorbed into the Tamil society. The children born to them have synthesised with the society. The policy of the Government of India changed only after the assassination of Rajiv Gandhi in the year 1991.

7 In this case, Viswanathan (A.1) had not committed an offence under the Customs Act, since he was not prosecuted under Section 135 of the Customs Act at all. Adjudication proceedings were initiated against him for the exports made by him during 1999-2002 and that has also attained finality in the order dated 12.06.2007 passed by the CESTAT, Chennai, holding that the exports made by him were not illegal.

8 From a reading of Section 2(u) of the PML Act which defines the expression “proceeds of crime”, it is limpid that the profit derived or obtained must be a result of a criminal activity which relates to a schedule offence. Even if we take the allegations in the FIR in Cr.No.123 of 2008 as gospel truth and that Viswanathan (A.1) had committed a criminal activity of obtaining an Indian passport and has thereby committed an offence under Section 420 IPC, there is no scope for him to obtain or derive any property as a result of the said criminal activity. To put it more plainly, Viswanathan (A.1) represented to the

passport authorities that he is an Indian citizen and obtained passport suppressing the fact that he is a Sri Lankan citizen. This, by itself, has not generated any property at all for his case to fall within the net of Section 2(u) of the PML Act. To say that had he disclosed to the Government of India at the time of export that he was a Sri Lankan citizen, then, he would not have been given the DEPB credit facility, *etc.*, is an argument predicated on speculation. To cap it all, as stated above, the Directorate of Revenue Intelligence had found only irregularities in the exports and had not launched a criminal prosecution against the petitioners. Even the adjudication order that was passed by the Commissioner of Customs has been set aside in appeal by the CESTAT.

9 Now, let us take a hypothetical case. An illegal immigrant from Bangladesh enters Kolkata; obtains Aadhaar card and ration card from the authorities concerned by projecting himself as a local Muslim; carries on a lawful business and earns by working hard; pays income tax, GST, *etc.* and buys properties. Can the properties purchased by him be categorised as proceeds of crime on the ground that subsequently, an FIR is registered against him under Section 420 IPC, provisions of the Passports Act and Foreigners Act on the ground that he is not an Indian citizen? The answer to this question is an emphatic 'No', for, there should be a nexus between the criminal activity and

the property acquired therefrom. In the absence of this nexus, the provisions of the PML Act cannot be invoked.

10 That apart, in this case, Kavitha, the second petitioner herein and the wife of Viswanathan (A.1) is an Indian national and the complaint does not say what is the proceeds of crime earned by her or secreted by her on account of the alleged criminal activity of her husband Viswanathan (A.1). Thus, the inclusion of Kavitha (A.2) as second accused in the complaint is manifestly illegal.

11 Mr.Rajnish Pathiyil took great pains to take this Court through the various United Nations charters and debates in the Parliament to show as to how the present complaint is maintainable. Reference to the aforesaid can be of assistance in clearing up any ambiguity with regard to interpretation of the statutory provisions and not otherwise. When the alleged criminal activity of Viswanathan (A.1) of getting an Indian passport by suppressing his citizenship, has, by itself, not laid any golden eggs to be construed as proceeds of crime, the discussion on international conventions is unnecessary.

In the result, the proceedings in C.C. No.10 of 2017 on the file of the Principal Sessions Court (Special Court for PMLA Cases), Chennai, is quashed and as a sequel, this criminal original petition stands allowed. Connected Crl.M.Ps. stand closed.

[P.N.P., J.]

[V.S.G., J.]

04.02.2021

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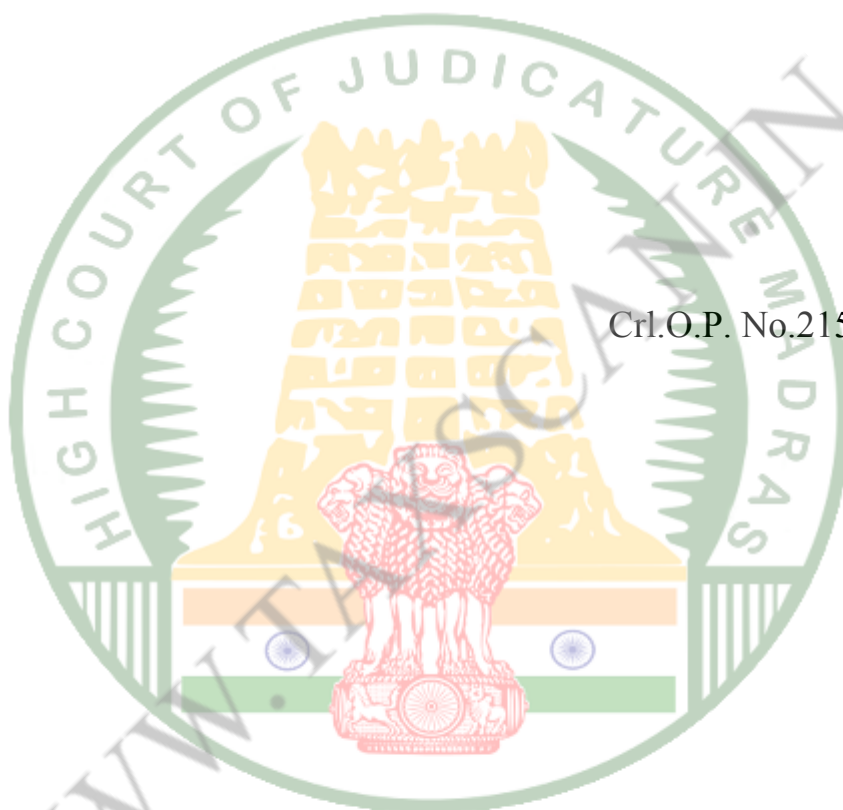
To:

1 The Assistant Director
Directorate of Enforcement
Government of India
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Chennai 600 006

2 The Principal Sessions Judge
(Special Judge for PMLA Cases)
Chennai

3 The Public Prosecutor
High Court of Madras
Chennai 600 104

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