

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.24856 of 2016 and CRL.M.P.Nos.11992 & 14057 of 2016

1 L.Sivaramakrishnan
2 S.Ratha

Petitioners

vs.

The Deputy Director
The Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
2nd & 3rd Floor, Murugesan Naicker Complex
Greens Road, Thousand Lights
Chennai 600 006

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.71 of 2016 in ECIR No.10 of 2015 on the file of the Principal Sessions Judge (Special Court under PML Act, 2002), Chennai and quash the same

For petitioners Mr.B.Kumar
Senior Counsel for
Mr.S.Ramachandran

For respondent Mr.R.Sankaranarayanan
Additional Solicitor General
assisted by Ms.G.Hema
Special Public Prosecutor for ED

ORDER

P.N.PRAKASH, J.

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.71 of 2016 on the file of the Principal Sessions Court, Chennai.

2 Undisputed facts:

2.1 First Leasing Company of India Limited (in short “FLCI”) was a company incorporated under the Companies Act, 1956 and was into the business of giving industrial finance. Of course, it is under liquidation now.

2.2 The Chairman of FLCI was one A.C.Muthiah, a leading industrialist, who has major stakes in SPIC and other established industrial houses. One Farouk Irani is said to have joined FLCI in 1973 and became its Managing Director in 1982. One Dilliraj was the Vice President of FLCI during 2006 - 2007. One Sivaramakrishnan was the Chief Financial Officer of FLCI from 2008 to 2014.

2.3 Things were going fine for FLCI until the State Bank of India (SBI) sanctioned a working capital credit limit of Rs.20 crores on 08.02.2005, followed by the IDBI Bank, which also gave a working capital facility for Rs.18 crores by a sanction letter dated 17.08.2005. These banks extended financial assistance to FLCI from time to time.

2.4 While so, the SBI formed a consortium of banks that had lent monies to FLCI. Sometime in the year 2007, the Reserve Bank of India (RBI) conducted inspection of FLCI and observed serious irregularities and diversion of funds to 15 satellite companies. When this news became public, things started hotting up for FLCI and they were not able to repay

their lenders, resulting in their account becoming 'Non Performing Asset' (NPA) in the year 2013.

2.5 Farouk Irani is said to have resigned from the post of Managing Director on 23.10.2013 and A.C.Muthiah is said to have resigned from the post of Chairman on 01.11.2013.

2.6 As the investigation into the financial health of FLCI was being probed by the Chartered Accountants of the consortium banks, lot of skeletons started coming from and out of the cupboard, which resulted in the Deputy General Manager, IDBI Bank, preferring a complaint to the CBI, pursuant to which, the CBI registered an FIR in Crime No.6 of 2015 on 21.09.2015 for the offences under Sections 120-B read with 420, 467, 468, 471 and 477-A IPC against A.C.Muthiah (A1), Farouk Irani (A2), Dilli Raj (A3), Sivaramakrishnan (A4), FLCI (A5), Sarathy & Balu, Chartered Accountants (A6) and M.K.Dandekar & Co., Chartered Accountants (A7) and investigation was taken up by the Bank Security and Fraud Cell of the CBI.

2.7 The complaint of the IDBI Bank showed that they had lent

Rs.300 crores to FLCI, by way of working capital limit and the outstanding to them with interest as on 02.09.2014 was Rs.273,99,90,071/-.

2.8 Since the FIR disclosed the commission of a schedule offence under the Prevention of Money Laundering Act, 2002 (in short “the PML Act”), viz., Section 420 IPC, the Enforcement Directorate registered a case in ECIR No.10 of 2015 on 20.11.2015 against the aforesaid persons.

2.9 Likewise, on a complaint lodged by the SBI, the CBI registered a fresh FIR in Crime No.RC-02(E) of 2016 on 08.01.2016 for the offences under Sections 120-B read with 409, 420, 467, 468, 471 and 477-A IPC against the aforesaid persons in respect of fraud that was allegedly committed by them *qua* SBI.

2.10 During the course of the investigation in ECIR No.10 of 2015 registered pursuant to the complaint given by IDBI Bank, the Enforcement Directorate arrested some of the accused, but, consciously did not go anywhere near A.C.Muthiah for the reasons best known to them.

2.11 After completing the investigation, the Enforcement Directorate filed three separate complaints in the Special Court for PMLA Cases, Chennai, which are as under:

- i. C.C.No.63 of 2016 in ECIR.No.10 of 2015 against Farouk Irani (A1) and his wife Sherna F Irani (A2), for quashing which, they have filed Crl.O.P.No.26586 of 2016 and Crl.O.P.No.23917 of 2018, respectively;
- ii. C.C.No.71 of 2016 in ECIR.No.10 of 2015 against Sivaramakrishnan (A1) and his wife Ratha (A2), for quashing which, they have filed Crl.O.P.No.24856 of 2016 and
- iii. C.C.No.70 of 2016 in ECIR.No.10 of 2015 against Dilliraj (A1) and his wife Kotieswari (A2), for quashing which, they have filed Crl.O.P.No.24888 of 2016.

2.12 Though the aforesaid facts are common to all the cases, in this order, this Court is confining itself to Crl.O.P.Nos.24856 of 2016 that was filed by Sivaramakrishnan (A1) and Ratha (A2) under Section 482 Cr.P.C. for quashing the prosecution in C.C.No.71 of 2016.

3 Heard Mr.B.Kumar, learned Senior Counsel representing

Mr.S.Ramachandran, learned counsel on record for Sivaramakrishnan and Ratha and Mr.R.Sankaranarayanan, learned Additional Solicitor General assisted by Ms.G.Hema, learned Special Public Prosecutor appearing for the Enforcement Directorate.

4 Admittedly, Sivaramakrishnan (A1) joined as Accountant in the Accounts Department of FLCI in the year 1997 and at the time of leaving the company in the year 2014, he was the Chief Financial Officer.

5 The CBI investigation in Crime No.RC-02(E)/2016 registered on the complaint of the State Bank of India (SBI) has resulted in the filing of a charge sheet in C.C.No.8 of 2017 in the Court of the Additional Chief Metropolitan Magistrate for the offences under Sections 120-B read with 201, 409, 420, 468, 471 and 477-A IPC against 26 accused, of which, Sivaramakrishnan has been shown as A9.

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6 However, in the charge sheet, the CBI has very clearly stated that the loan amounts obtained from the banks were diverted for the benefits of A.C.Muthiah (A1), Farouk M Irani (A2), Ashwin C.Muthiah (A13), Darnolly Investments Ltd. (A14), Ranford Investments Ltd. (A15), Sicagen India Ltd. (A10), ACM Educational Foundation (A17), ACM Medical Foundation (A18), MAC Public Charitable Trust (A19), South India House Estates Properties Ltd. (A20), South India Travels Pvt. Ltd. (A21), Sherna F Irani (A24), Farah Bakshay (A25) and Lia Gagrati (A26). Thus, the proceeds of the crime have gone into the kitty of the aforesaid persons. Sivaramakrishnan is not a beneficiary of the proceeds of the crime. When that being so, the statement of Mr.B.Kumar, learned Senior Counsel appearing for the petitioners that the act of the Enforcement Directorate in prosecuting Sivaramakrishnan and his wife, leaving out A.C.Muthiah and his family members, does show that they are adopting a pick and choose attitude, merits serious consideration. However, this Court can only raise its eyebrows and stop with that and cannot quash the prosecution against Sivaramakrishnan, on the ground of discrimination under Article 14 of the Constitution of India.

7 This Court has to see whether the materials disclosed in the complaint against Sivaramakrishnan and his wife are sufficient enough to mulct them with criminal liability under the PML Act. This Court is aware that the findings of the CBI in the final report are not binding on the Enforcement Directorate and that, the Enforcement Directorate has to independently place materials to show that *via* the alleged criminal activity, Sivaramakrishnan has acquired some proceeds of crime and has projected them as untainted money.

8 In the complaint, the Enforcement Directorate has stated how Sivaramakrishnan, as Accountant, had made false entries in the account books and had inflated the financial status of the company and had induced the banks to give loans to FLCI. There is absolutely no mention in the complaint that he had acquired any proceeds of crime by that activity, apart from his salary and bonus. It is true that the said criminal activity had resulted in proceeds of crime, coming into the kitty of FLCI and going into the accounts of shell companies and into the accounts of Farouq Irani and

his family and not to the family of the employees of FLCI like Sivaramakrishnan. Though the complaint in C.C.No.71 of 2016 runs to 53 pages, this Court was able to read it and distil the essence of the allegations against Sivaramakrishnan and his wife Ratha. In fact, in paragraph 4.31 of the impugned complaint, the Enforcement Directorate has stated as under :

“From the forgoing discussions, it is evident that the Salaries, Performance Bonus and other perquisites (estimated to the tune of Rs.70,11,620) as received by Shri L.Sivaramakrishnan, as a top official in FLCI, in various capacities during his tenure from 1993 to 2014 were out of bank borrowings fraudulently obtained by FLCI, which are nothing but proceeds of crime. Therefore, it stands to reason that the nature of transaction related to the acquisition of movable properties in the form of Fixed Deposits available in the names of Shri L.Sivaramakrishnan and his family members, is of money laundering, which is very well within the ambit of Section 23 of the Act.” (emphasis supplied)

Thus, the proceeds of crime has been quantified as Rs.70,11,620/- and that it has come to Sivaramakrishnan by way of salaries, performance bonus and other perquisites. However, the cause of action for the offence of money laundering arose only after the loans were sanctioned by the SBI on 08.02.2005 and the IDBI Bank on 17.08.2005 and not before that.

Thereafter, the prosecution cannot be heard to say that from 1993 onwards Sivaramakrishnan has been engaging himself in money laundering.

9 It is not the case of the Enforcement Directorate that Sivaramakrishnan's only duty in FLCI was to engage in criminal activities for which, he was paid a salary. If that had been the case of the Enforcement Directorate or the CBI, then, one can say that the monthly salary earned by him was proceeds of crime. For example, if a company engages a master forger on a monthly salary to forge documents and help the company to earn profits, then, the salaries paid to the master forger will undoubtedly come within the ambit of the proceeds of crime and he can be prosecuted under the PML Act. It is not the prosecution case that FLCI's only job was to engage in criminal activities. In fact, as stated above, Sivaramakrishnan joined FLCI in the year 1997; the subject loan of Rs.20 crores was given by the SBI on 08.02.2005; similarly, the IDBI Bank sanctioned the loan of Rs.18 crores only on 17.08.2005; only thereafter, the diversion of funds had taken place into the shell companies of FLCI and the proceeds of crime generated.

10 Mr.Sankaranarayanan, learned Additional Solicitor General attempted to defend the prosecution by contending that the loans obtained from the banks were paid as salary to Sivaramakrishnan and since Sivaramakrishnan is alleged to have been a party to the conspiracy for fudging the records, his salary should be treated as proceeds of crime. In our opinion, this is indeed far-fetched. The complaint is no doubt replete with the misdemeanours of Sivaramakrishnan in manufacturing the accounts of FLCI. But, he is facing the music for that in the CBI prosecution before the Additional Chief Metropolitan Magistrate, Chennai, in C.C.No.8 of 2017. The immovable property that is said to have been purchased by Sivaramakrishnan, viz., a vacant house site measuring 1,500 sq.ft. in Muthukalipatti village, for a sale consideration of Rs.90,000/- in the year 2009, from the amounts saved from his monthly salaries, has been shown as the asset acquired by him from the proceeds of crime. This, in our opinion, is a little preposterous, because, in 2005, his was income was Rs.3,13,950/-

and every year, it has slowly increased *vide* paragraph 4.25 of the complaint. To say that with this income, he could not have purchased a house site for Rs.90,000/- defies logic.

11 Mr.Sankaranarayanan contended that, in his confession statement, Sivaramakrishnan has stated that he has purchased the said property for Rs.5,75,000/-, but, had registered it for Rs.90,000/- in the year 2009. If this averment in the confession statement is accepted, it can only show that he had undervalued the document and it cannot lead to the inference that he had purchased the property with the proceeds of crime. When the complaint itself, in paragraph 4.6.9 says that, FLCI had diverted the monies obtained from the banks to 15 satellite companies, it is preposterous to say that the salaries and bonus paid to Sivaramakrishnan were proceeds of crime. There is no shred of material to show that Sivaramakrishnan was a recipient of any amount, except the salary, bonus and other emoluments, which were paid to him, in the course of his employment as Accountant in FLCI.

12 That apart, the prosecution of his wife Radha, in whose name, there are some fixed deposit amounts on the premise that she is holding the proceeds of crime, in our opinion, is also misconceived. The total amount of fixed deposits along with interest is shown as Rs.51,77,682/-, whereas, the total salary received by Sivaramakrishnan from 2005 to 2014 is shown as Rs.70,07,620/-. Therefore, the amounts deposited by him had obviously earned interest in fixed deposit and the total amount is not exceeding Rs.70 lakhs.

13 What is surprising is, in the predicate offence in Crime No. RC-02(E) of 2016 that was registered by the C.B.I. based on the complaint given by the State Bank of India, the C.B.I. completed the investigation and filed charge sheet in C.C. No.8 of 2017 in the Court of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, wherein, they have stated as follows:

“M/s. FLCIL and (sic had) diverted the said loan amount for purposes other than for which it was sanctioned, i.e., for the benefits of

Shri A.C. Muthiah (A-1), Shri Farouk M. Irani (A-2), Shri. Ashwin C. Muthiah (A-13), M/s. Darnolly Investments Ltd. (A-14), M/s. Ranford Investments Ltd. (A-15), M/s. Sicagen India Ltd.(A-16), M/s. ACM Educational Foundation (A-17), M/s. ACM Medical foundation (A-18), M/s. MAC Public Charitable Trust (A-19), M/s. South India House Estates Properties Ltd. (A-20), M/s.South India Travels Pvt. Ltd. (A-21), Smt. Sherna F. Irani (A-24), Smt. Farah Bakshay (A-25), Smt. Lia Gagrati (A-26)....”

Likewise, in the FIR in Cr.No.6 of 2015 that was registered by the CBI based on the complaint given by the IDBI Bank, investigation was completed and charge sheet has been filed in C.C. No.7756 of 2018 in the Court of the Additional Chief Metropolitan Magistrate, Egmore, Chennai against A.C.Muthiah and others for the offences under Sections 120-B read with Sections 201,409,420,468,471 and 477-A IPC. In that charge sheet also, with regard to diversification of funds, it is stated as follows in paragraphs 42 and 43:

“42. That as per the Section 205 of the Companies Act, 1956 which states that “No dividend shall be declared or paid except out of profits”. That Shri. A.C. Muthiah (A-1), the then Chairman and Shri Farouk Irani (A-2), the then Managing Director of M/s. FLCIL, being aware that the company was running in loss, approved and signed bogus annual statements showing the company as a profit making concern and thereafter, against the said false profits declared and earned wrongful dividends. The amount of wrongful dividend earned by Shri.A.C. Muthiah (A-1), Shri Farouk Irani (A-2), Ashwin C. Muthiah (A-13) and various companies promoted by Shri. Ashwin C. Muthiah (A-13) and Shri.A.C. Muthiah (A-1), namely M/s. Darnolly

Investments Ltd. (A-14), M/s. Ranford Investments Ltd. (A-15), M/s. Sicagen India Ltd. (A-16), M/s ACM Educational Foundation (A-17), M/s. ACM Medical Foundation (A-18), M/s. South India House Estates Properties Ltd. (A-19) and M/s. South India Travels Pvt. Ltd. (A-20) against the false profits of M/s. FLCIL (A-5) during the FYs 2003-2004 to 2011-12 is tabulated below:

Sl. No.	Name of the promoter shareholder of M/s. FLCIL	Total Dividends earned during FY 2003-04 to 2011-12
1	Shri A.C. Muthiah (A-1)	28,95,179.60
2	Shri. Ashwin C. Muthiah (A-13)	19,98,663.20
3	M/s. Darnolly Investments Ltd. (A-14)	12,30,669.20
4	M/s. Ranford Investments Ltd. (A-15)	64,66,275.20
5	M/s. Sicagen India Ltd. (A-16)	3,65,91,000.60
6	M/s. ACM Educational Foundation (A-17)	3,08,67,766.41
7	M/s. ACM Medical Foundation (A-18)	41,83,203.20
8	M/s. South India House Estates Properties Ltd. (A-19)	3,86,88,300.00
9	M/s. South India Travels Pvt. Ltd. (A-20)	63,185.60
10	Shri. Farouk M. Irani	14,64,474.40

43 That Shri A.C. Muthiah (A-1) and Shri Farouk Irani (A-2), while acting as Chairman and Managing Director of M/s.FLCIL respectively, by approving and signing bogus annual statements showing false profits and by declaring and earning wrongful gain by way of dividends against the false profits, have misappropriated the assets of the company entrusted to them amounting to criminal breach of trust of the shareholders of the company.”

Even the C.B.I. has not found that Sivaramakrishnan benefitted financially from the criminal activity of fudging records. Of course, these findings of the C.B.I. are not binding on the Enforcement Directorate, but, this Court cannot turn a Nelson's eye to this, especially in the light of the fact the

Enforcement Directorate themselves have filed a separate complaint in C.C.No.63 of 2016 against Farouk Irani and Sherna F. Irani for diverting the loan amounts into their personal accounts and into the account of their family Trust and for projecting them as untainted money. It may be pertinent to state here that we have dismissed the quash applications of Farouk Irani and Sherna F. Irani in Crl.O.P.Nos.26586 of 2016 and 23917 of 2018, respectively, today, *vide* separate order.

14 In view of the above discussion, we are unable to persuade ourselves to agree with the Enforcement Directorate that the salaries and perquisites that were paid to Sivaramakrishnan (A.1) while he was in employment with FLCI would amount to proceeds of crime and any property purchased with that would stand tainted. Albeit the presumption under Section 24 of the PML Act, on facts, we hold that the impugned prosecution of Sivaramakrishnan (A.1) and his wife Ratha (A.2) under the PML Act is misconceived and the same is accordingly quashed.

In the result, this Criminal Original Petition is allowed. Connected
Crl.M.Ps. are closed.

[P.N.P., J.] [V.S.G., J.]
04.02.2021

gya/cad

To

1. The Deputy Director
The Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
2nd & 3rd Floor, Murugesu Naicker Complex
No.84, Greaves Road, Thousand Lights
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2. The Principal Sessions Judge
(Special Judge for PMLA Cases)
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3. The Public Prosecutor
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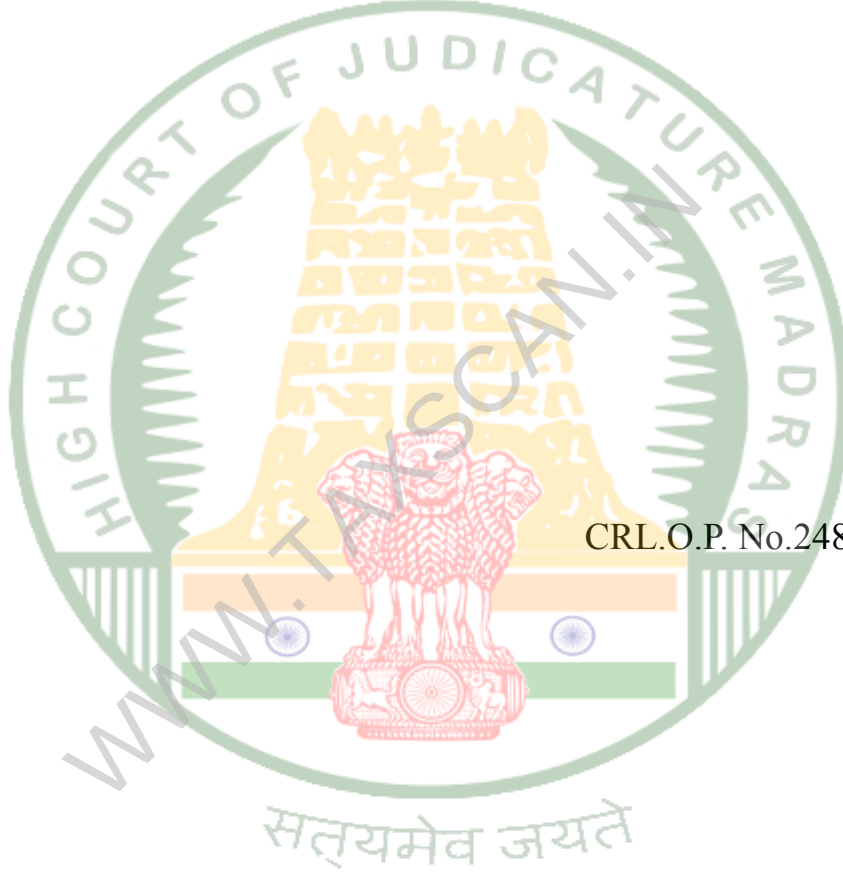
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