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Crl RC(MD)No.662 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2024

CORAM:

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
AND
THE HONOURABLE MS.JUSTICE R.POORNIMA**

Crl RC(MD)No.662 of 2024
and
Crl MP(MD)No.6804 of 2024

1.K.C.Chandran

2.C.Chandra

3.M/s.Deepa Impex India Pvt Ltd.,
Rep.by K.C.Chandran /
the 1st petitioner herein,
No.70/67, Aspiran Garden Colony
2nd Street,
Kilpauk, Chennai – 600 010.

... Petitioners /
Accused Nos.1 to 3

VS.

Directorate of Enforcement,
Rep.by the Assistant Director,
(The Prevention of Money Laundering
Act, 2002),
Government of India,
3rd Floor, 'C' Block,
Murugesu Naicker Complex,
No.84, Greaves Road, Thousand Lights,
Chennai – 600 006.

... Respondent /
Complainant



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PRAYER : Criminal Revision Petition filed under Section 397 r/w. 401 of Criminal Procedure Code, to call for the records pertaining to the order dated 19.03.2024 made in Crl MP No.1371 of 2022 in C.C No.11 of 2018 on the file of the Special Court constituted under Section 43(1) of the Prevention of Money Laundering Act, 2002 (II Additional District Court (CBI Cases), Madurai and set aside the same.

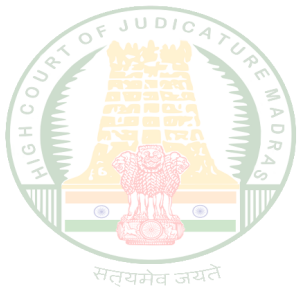
For Petitioners : Mr.A.Robinson
For Respondent : Mr.A.R.L.Sundaresan,
Additional Solicitor General of India
assisted by Mr.K.Govindarajan
Deputy Solicitor General of India

ORDER

(Order of the court was made by G.R.SWAMINATHAN, J.)

Heard both sides.

2.The Assistant Director, Directorate of Enforcement, Chennai registered ECIR No.12 of 2015 against the revision petitioners herein. Later, the said authority filed complaint under Section 44 of the Prevention of Money Laundering Act, 2002 on the file of the Special Court constituted under Section 43(1) of the Act against the revision petitioners herein for having committed the offence of money laundering. The Special Court took cognizance of the complaint in C.C No.11 of 2018.



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3.The case of the complainant is as follows :

M/s.Deepa Impex India Private Limited was granted lease to quarry minor minerals in Melur in the year 1989. K.C.Chandran and his wife C.Chandra are directors of the said company. They entered into criminal conspiracy and illegally quarried granite stones from the nearby lands and non-lease patta lands and transported more minerals than permit obtained quantity. The authorities of the Department of Geology and Mining conducted detailed survey and valued the illegally quarried mineral at Rs.436.88 crores. It was specifically determined that the accused have made unlawful gain to the tune of Rs.261.89 crores. Hence, Crime No.159 of 2012 was registered against the accused on the file of the Keelavalavu Police Station for the offences under Sections 447, 379, 120(B), 114, 109, 511, 420, 434, 465, 467, 468, 471, 304(ii) IPC and Section 4 of TNPPDL Act, 1992 and Section 6 r/w. 3(a) and 4(a) of the Explosive Substances Act. Investigation was conducted and final report was filed and the same was taken cognizance in C.C No.11 of 2018 on the file of the Judicial Magistrate, Melur. Totally eight persons including the revision petitioners herein had been arraigned as accused in the case. Based on the aforesaid scheduled offences, ECIR No.12 of 2015 was registered against the revision petitioners herein. The revision petitioners were summoned under Section 50 of the Prevention of Money Laundering Act, 2002 and examined.



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Investigation was conducted and information from various authorities was elicited. The investigation revealed that illegal quarrying had taken place right upto 2012 and that the petitioners herein had committed scheduled offences as defined under Section 2(1)(x) and (y) of the Prevention of Money Laundering Act, 2002. As per the valuation report of the Department of Geology and Mining, the proceeds of the crime had been determined as Rs.261.89 crores. Out of this unlawfully generated income, properties have been purchased. One such property is covered under Doc No.1526 of 2010 registered on the file of the SRO, Periamet. The revision petitioners have projected the said property as an untainted property. This property has been attached under Section 8(3) of the Act. The revision petitioners filed Crl MP No.1371 of 2022 under Section 227 of Cr.Pc for discharging them from this case. The discharge petition was dismissed vide order dated 19.03.2024. Challenging the same, this revision petition has been filed.

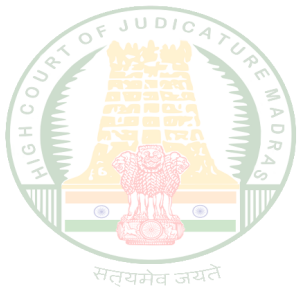
4.The learned counsel for the revision petitioners submitted that though license was obtained in 1989 for quarrying mines, the quarry itself was handed over to one P.R.Palanichamy in 1999 for a sum of Rs.60.00 lakhs and that the petitioners herein had thereafter nothing to do with any quarrying activity in Melur. As regards the purchase of the property bearing Dr.No.2, Aspiran Garden Colony, 2nd Street, Kilpauk, it



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was purchased in the name of the second petitioner and their son K.C.Karthick Madhav. The property belonged to M/s.TTG Industries Limited. Even according to the complainant, there was a sale agreement between the first petitioner and M/s.TTG Industries in the year 1992. The sale consideration was fixed at Rs.12,50,000/-. A sum of Rs.9.00 lakhs had been given as advance. Since the property was mortgaged in favour of a financial institution, the transaction could not be immediately finalised. The release from encumbrances took place in the year 2010. After paying the balance amount of Rs.3.50 lakhs, the sale deed was executed on 22.07.2010. The son of the petitioners 1 and 2 is having his own business and is an income tax assessee. The balance amount of Rs.3.50 lakhs was paid from his bank account to the vendor's bank account. Since the market value of the property during July 2010 was Rs.1,01,35,000/-, appropriate stamp duty was independently paid.

5.The learned counsel for the petitioners was at pains to submit that the property identified as purchased out of the proceeds of the crime was actually an untainted property. According to him, even going by the averments set out in the complaint, no offence is made out against the revision petitioners herein. He pressed for discharge of the revision petitioners from the case.

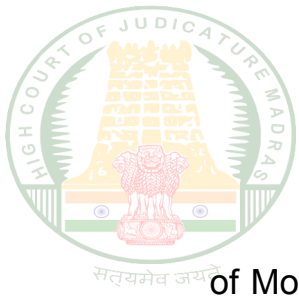


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6.The complainant has filed a detailed counter affidavit and the learned Additional Solicitor General of India took us through its contents. He submitted that at the stage of discharge, the defence of the revision petitioners cannot be considered. He pointed out that the petitioners herein as lease holders could not have entered into any transaction with Mr.P.R.Palanichamy for handing over the quarry. He added that the sale consideration set out in the sale deed dated 22.07.2010 does not reflect the actual market value. The guideline value during the relevant time was more than one crore. He strongly contended that the court below rightly dismissed the petition for discharge and that it does not call for interference. He pressed for dismissal of this criminal revision case.

7.We carefully considered the rival contentions and went through the materials on record. It is not in dispute that the petitioners stand accused in Crime No.159 of 2012 on the file of the Keelavalavu Police Station. Cognizance of this case was subsequently taken by the jurisdictional magistrate court. The offences alleged against the petitioners herein are under Sections 120B, 447, 379, 114, 109, 551, 43, 465, 467, 468, 471, 304(ii) & 420 of IPC r/w. Sections 3(a) & 4(a) of the Explosive Substances Act, 1908. Offences such as 420, 467, 471 of IPC and Sections 3(a) & 4(a) of the Explosive Substances Act, 1908 are scheduled offences within the meaning of Section 2(y) of the Prevention



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of Money Laundering Act, 2002. Therefore, no exception can be taken to the registration of ECIR No.12 of 2015 by the complainant. Investigation under the PMLA, 2002 revealed that the Department of Geology and Mining has undertaken what is known as “total station survey” and submitted evaluation report as regards the illicit mining. The revision petitioner's quarry in S.No.262/4, Keelavalavu Village was also inspected and several violations have been reported. According to the investigation, such illicit mining had generated proceeds of crime to the tune of Rs.261.89 crores. According to the complainant, from out of the said proceeds of crime, the property bearing Door No.2, Aspiran Garden Colony, 2nd Street, Kilpauk, Chennai was purchased under sale deed dated 22.07.2010 vide D.No.1526 of 2010 on the file of the SRO, Periamet. The said property was also attached and the same was also confirmed by the adjudicating authority.

8.The learned counsel for the petitioners contended that the transaction in respect of this property dates back to 1992 when the sale agreement was entered into between the first petitioner and M/s.T.T.G Industries Limited though the sale deed was executed only in the year 2010. This contention is bereft of merit. The offence of money laundering is a continuing offence. Explanation (ii) to Section 3 of the Act makes it clear that the process or activity connected with proceeds



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of crime is a continuing activity. Therefore, the fact that the sale agreement was entered into in the year 1992 may not be a defence. The learned Additional Solicitor General of India also pointed out that according to the prosecution, the illegal quarrying had continued right upto 2012. The contention of the learned counsel for the petitioners that the balance amount of Rs.3.50 lakhs was remitted from the bank account of the son of the petitioners 1 and 2, and had nothing to do with any of the offending activities, is no doubt attractive. But then, the court cannot consider the defence of the revision petitioners at the stage of discharge (***State of Rajasthan v. Ashok Kumar Kashyap, (2021) 11 SCC 191***).

9. There is yet another aspect. There are prima facie materials to show that illicit mining had taken place. The prosecution in respect of the scheduled offences is still pending. The evaluation report of the Department of Geology and Mining indicates that the proceeds of crime were valued at Rs.261.89 crores. It is not known as to what happened to the said amount. The learned counsel for the petitioners would claim that identification of the proceeds of the crime is sine qua non and in its absence, no complaint in respect of the offence of money laundering can lie. This argument has no merit. The learned Additional Solicitor General of India pointed out that Section 3 of the Prevention of Money



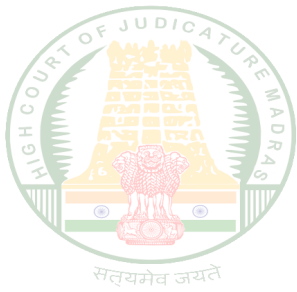
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Laundering Act which defines the offence of money laundering clarifies that a person shall be guilty of the offence of money laundering, if such person is involved in concealment of the proceeds of crime. When concealment of the proceeds of crime itself would constitute the offence of money laundering, it cannot be contended that unless the proceeds of crime are identified, the complaint will not lie. The Hon'ble Supreme Court in the decision reported in **(2023) 4 SCC 357 (Rana Ayyub v.**

Directorate of Enforcement) observed as follows :

“19. The word “*money-laundering*” is defined in Section 2(1)(p) of the Act to have the same meaning as assigned to it in Section 3. Section 3 of the Act makes a person guilty of the offence of money-laundering, if he : (i) directly or indirectly attempts to indulge; or (ii) knowingly assists or; (iii) knowingly is a party; or (iv) is actually involved in any process or activity. Such process or activity should be connected to “proceeds of crime” including its concealment or possession or acquisition or use. In addition, a person involved in such process or activity connected to proceeds of crime, should be projecting or claiming it as untainted property. The Explanation under Section 3 makes it clear that even if the involvement is in one or more of the following activities or processes, *namely* : (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting it as untainted property; or (vi) claiming it as untainted property, the offence of money-laundering will be made out.

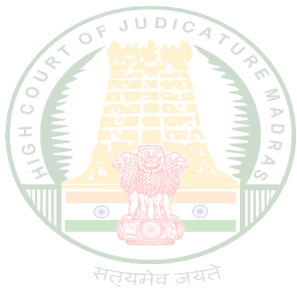


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20. Thus, Section 3 comprises of two essential limbs, *namely* : (i) involvement in any process or activity; and (ii) connection of such process or activity to the proceeds of crime. The expression “*proceeds of crime*” is defined in Section 2(1)(u) to mean 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 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.”

In the light of the aforesaid statutory definitions, one can safely hold that it is enough if the prosecution establishes that there was generation of proceeds of crime and the accused was involved in any process or activity in connection with the proceeds of crime. If by a Houdini trick, they vanish thereafter, the Enforcement Directorate need not establish the money trail. Since concealment of the proceeds of crime is an offence, the accused can be held guilty of the same. The Enforcement Directorate need not demonstrate where the money eventually went. The accused after engineering a disappearing act cannot be heard to contend that they must be exonerated because proceeds of crime has not been identified. If a rat has escaped into a hole, one can only point to the hole. The rat might even have exited through another end. The defence cannot argue that unless the rat is found, there cannot be a prosecution.



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10. According to the revision petitioners, the aforementioned house property purchased vide sale deed dated 22.07.2010 is an untainted property. The case of the complainant is that this property was purchased out of the proceeds of the crime. Section 24 of the Prevention of Money Laundering Act, 2002 is as follows :

“24. Burden of proof.—In any proceeding relating to proceeds of crime under this Act,—

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.”

Section 24(a) of the Act will apply if charges have been framed against the accused. Section 24(b) of the Act will apply in the case of any other person. While Section 24(a) of the Act is a mandatory presumption, Section 24(b) is a discretionary presumption. Taking into account the quantum of money involved and the nature of allegation, this is a case in which the presumption under Section 24(b) has to be necessarily invoked. It is for the petitioner herein to rebut the presumption. But that can be done only during trial. The court below had approached the issue from a correct perspective and rightly dismissed the discharge petition filed by the revision petitioners herein. The court below had



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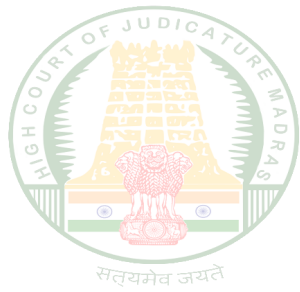
come to the conclusion that there is sufficient ground for proceeding against the petitioners herein. The court below has recorded convincing reasons for doing so. In exercise of revisional jurisdiction, interference with the said order is not warranted. This criminal revision petition is dismissed. No costs. Connected miscellaneous petition also stands dismissed. The court below shall not insist on the personal appearance of the petitioners unless necessary.

(G.R.S., J.) & (R.P., J.)
27.11.2024

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
SKM

To

Directorate of Enforcement,
Rep.by the Assistant Director,
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