

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.08.2021

Coram

The Honourable Mr. Justice **P.N.PRAKASH**
and

The Honourable Ms. Justice **R.N.MANJULA**

Crl.RC.No.448 of 2020
and Crl. M.P.No.7507 of 2021

The Assistant Director,
Directorate of Enforcement,
(Prevention of Money Laundering Act, 2002)
Government of India,
No.26, Haddows Road,
Chennai – 600006.

.. Petitioner

Vs.

Canara Bank,
Rep. by its Chief Manager,
Mr.B.Prabakar
Ambattur SME Branch,
Padi,
Chennai – 600050.

.. Respondent

Criminal Revision Petition filed under Section 397 r/w Section 401 of the Code of Criminal Procedure, 1973, to call for the records pertaining to the Order dated 12.03.2019 in Crl.M.P.No.21752 of 2018 in C.C.No.58 of 2016 pending on the file of the learned Principal Sessions Judge, Chennai and set aside the same.

For Petitioner : Mr.Rajnish Pathiyil

For Respondent : Mr.A.Ramesh
Senior Counsel
for Mr.A.Kaushik Narain Sharma

ORDER

[Order of the Court was made by ***P.N.PRAKASH, J.***]

This criminal revision petition has been filed to call for the records pertaining to the order dated 12.03.2019 in Crl.M.P.No.21752 of 2018 in C.C.No.58 of 2016 pending on the file of the Principal Sessions Court, Chennai and set aside the same.

2. Before advertng to the legal questions, it is necessary to state the admitted facts in this case.

2.1 One Balasubramanian was the Managing Director of Future Techniks Pvt. Ltd., (for brevity "Future Techniks") and his wife Chitra Balasubramanian was one of its Directors. Future Techniks was having an account with Canara Bank, Ambattur SME Branch, Padi, Chennai.

2.2 Future Techniks availed various loans, including overdraft facilities, from Canara Bank, where one Jagadeesha was the Chief Manager. Future Techniks represented that they are likely to get a contract from the Karnataka Government relating to 15,000 vending machines of sanitary napkins and 15,000 vending machines of condoms. One Sukash

Chandrasekar introduced himself as Jayakumar to Balasubramanian, claimed himself to be an IAS Officer in the Karnataka Government and assured that he would get the said contract for Future Techniks.

2.3 It appears that Jagadeesha, in collusion with Balasubramanian and Sukash Chandrasekar, had released a sum of Rs.19.70 crores between 08.02.2013 and 19.03.2013 and the loan amounts that were sanctioned from time to time were siphoned off to several companies. These loans, according to the prosecution, did not have the approval of the competent authorities and were sanctioned by Jagadeesha, Chief Manager, in collusion with the Directors of Future Technik.

2.4 The Circle Office of Canara Bank smelt a rat and on a complaint given by Nallasivam, Deputy General Manager, Canara Bank, the Central Crime Branch, Chennai, registered a case in Crime No.64 of 2013 on 19.03.2013 for the offences under Sections 406, 409 and 420 IPC against Jagadeesha, Balasubramanian and Chitra Balasubramanian. The Central Crime Branch also issued directions under Section 102 Cr.P.C for freezing the bank accounts of the beneficiary companies in order to secure the siphoned off amount, the details of which are as under:-

| S.No. | Bank Account/other Account details, where the proceeds of the crime are available | Name of the Account Holder | Amount Frozen (IN RS.) |
|--------------|--|---|-------------------------------|
| 1. | 1204470006749077 BULLGOLD INDIA INFOLINE LTD | M/s. Mangal Bullion Private Limited | 4,60,94,825.97 |
| 2. | 912020057509424 Axis Bank, Vile Parle East Branch, Mumbai | M/s. Mangal Royal Jewels | 48,000.00 |
| 3. | 192100050300905 TamilNad Mercantile Bank, Surat | Smt.Saroj Devi Jain | 3,09,869.57 |
| 4. | 5511238478 Kotak Mahindra Bank Mumbai Central, Mumbai | M/s. SriSri Mal Gems | 3,168.74 |
| 5. | 500011041643 ING Vysya Bank Nariman Point Branch Mumbai | M/s. Cheiro Trading | 5,490.00 |
| 6. | 692011001093 ING Vysya Bank Cuffe Parade Branch Mumbai | M/s. Madam Impex Private Limited. | 18,451.00 |
| 7. | 0932000100338401 Karnataka Bank Kandivali Branch Mumbai | M/s. Yash Vikram Developers | 10,58,611.16 |
| 8. | 500011045581 ING Vysya Bank Nariman Point Branch Mumbai | M/s. Pulkit Impex Private Limited | 31,619.00 |
| 9. | 913020011430431 Axis Bank, New Marine Lines, Mumbai | M/s. Nita Enterprises | 86,000.00 |
| 10. | 500011044050 ING Vysya Bank, Nariman Point Branch, Mumbai | M/s. Pensiv Real Estate | 1,31,658.25 |
| 11. | 500011038954 ING Vysya Bank, Nariman Point Branch, Mumbai | M/s. Shri Ganesh Spinners Private Limited | 88,00,000.00 |
| 12. | 124502000001427 Indian Overseas Bank, ISKCON Branch, Juhu, Mumbai | UBQOOL Future Tech Pvt. Ltd | 1,94,731.85 |
| 13. | 124501000015931 Indian Overseas Bank ISKCON Branch, Juhu, Mumbai | Shri Choudhary Ambika Prasad Das | 87,325.19 |

| S.No. | Bank Account/other Account details, where the proceeds of the crime are available | Name of the Account Holder | Amount Frozen (IN RS.) |
|---------------------------------|--|-----------------------------------|-------------------------------|
| 14. | 913020000996070 Axis Bank, Pali Hill Bandra Branch, Mumbai | M/s. Rolex Trading Company | 2,71,00,000.00 |
| 15. | 911020057764051 Axis Bank, Bhayander West, Mumbai | M/s. Deepak Trading Company | 10,11,750.12 |
| 16. | 911020014523132 Textile Market Branch Axis Bank, Surat | M/s. Bhagyashri Gems | 53,605.37 |
| 17. | 200998881036 Indus Ind Bank Opera House Branch, Mumbai | M/s. Zeal Enterprises | 19,312.78 |
| 18. | 200998953825 Indus Ind Bank Surat Branch | M/s. Aastha Gems | 1,10,22,878.94 |
| 19. | 91202008827115 Axis Bank, SV Road Branch, Mumbai | M/s. Galaxy Trading Company | 3,56,00,000.00 |
| 20. | 911010053307695 Axis Bank, Bangalore Main Branch, Bengaluru | Shri Sukash Chandrasekar | 4,84,000.00 |
| Total Amount (In Rupees) | | | 13,21,61,297.94 |

2.5 Contemporaneously, the Enforcement Directorate registered a case in ECIR.No.01 of 2013 on 26.03.2013 under the Prevention of Money-Laundering Act (for brevity "the PMLA") and took up investigation of the case.

2.6 On 18.09.2013, the Enforcement Directorate passed an order of provisional attachment under Section 5(1) of the PMLA of the amounts lying in the 20 accounts that have been set out above. Thus, the total

amount that was provisionally attached by the Enforcement Directorate was Rs.13,21,61,297/-. As regards the balance amount, it was found that Sukash Chandrasekar had purchased 9 luxury cars, 80 high brand watches, 1 i-pad, 2 diamond jeweleries. These items were also seized in a joint operation by the Central Crime Branch, Chennai and Delhi Police and were shown as case properties in CCB Crime No.64 of 2013.

2.7 While so, pursuant to the order dated 12.03.2014 passed by this Court in Crl.O.P.No.2900 of 2013, the case in CCB Crime No.64 of 2013 was transferred to the file of the Central Bureau of Investigation and the case was re-registered as Crime No.RC 6(E) of 2014 by the CBI, Bangalore on 30.05.2014.

2.8 In the interregnum, The provisional order of attachment was confirmed by the Adjudicating Authority under Section 5(5) of the PMLA on 10.03.2014. The CBI completed the investigation in Crime No. RC 6(E) of 2014 and has filed a charge sheet in the Special Court for CBI cases, Chennai in C.C.No.3 of 2015 for the offences under Section 120-B r/w Section 419 and Section 420 IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act against Balasubramanian (A1), Jagadeesha

(A2), Sukash Chandrasekar (A3), Ajith Sohanlal Jain (A4) and Future Techniks (A5). It appears that the trial Court has given a tender of pardon to Ajith Sohanlal Jain (A4) on 04.11.2020 and he has been taken as a prosecution witness.

2.9 The Enforcement Directorate also completed the investigation in ECIR.No.1 of 2013 and filed a complaint in C.C.No.58 of 2016 for the offences under Section 3 r/w Section 4 of the PMLA in the Court of the Principal Judge, Chennai, against 15 accused including Balasubramanian, Sukash Chandasekar, Jagadeesha, Ajith Sohanlal. The other accused in the said complaint are those persons in whose names, the moneys were parked in the various bank accounts that were the subject matter of the attachment proceedings under the PMLA.

2.10 Canara Bank which had granted the loan to Future Techniks, filed a petition in Crl.M.P.No.21812 of 2016 in C.C.No.58 of 2016 before the Principal Sessions Court (Special Court), Chennai, under the PMLA, for de-freezing the amounts and returning them to the bank, on the ground that the monies were given as a loan to Future Techniks and therefore, it rightly belonged to them. This petition was dismissed by the said Special Court for

PMLA Cases on 28.03.2017, aggrieved by which, Canara Bank filed a revision petition in Crl.RC.No.830 of 2017, in which, this Court, by order dated 12.09.2018, set aside the order passed by the trial Court, but, remanded the matter back to the trial Court for fresh disposal in accordance with law by taking note of the inclusion of Section 8(8) to the PMLA by Central Act 20 of 2015 with effect from 14.05.2015.

2.11 Therefore, Canara Bank once again filed a fresh application in Crl.M.P.No.21752 of 2018 before the Special Court for PMLA cases for de-freezing the bank accounts and returning the same to the bank. This petition was allowed by the Special Court for PMLA Cases on 12.03.2019, aggrieved by which, the Enforcement Directorate has filed the present Civil Revision Petition.

3. Heard Mr.Rajnish Pathiyil, learned Special Public Prosecutor for the Enforcement Directorate and Mr.A.Ramesh, learned Senior Counsel representing Mr. A. Kaushik Narain Sharma, learned counsel on record for Canara Bank.

4. The commission of an offence mentioned in the schedule to the PMLA can trigger an investigation by the Enforcement Directorate under the said Act. In this case, the offences registered by the CCB in Crime

No.64 of 2013, are indubitably offences mentioned in the schedule to the PMLA. Therefore, the Enforcement Directorate was justified in registering a case in ECIR.No.1 of 2016. The Central Crime Branch also swung into action by issuing directions under Section 102 Cr.P.C., for freezing the bank accounts so that the bank's money was safeguarded. The Enforcement Directorate also exercised powers under Section 5 of the PMLA to provisionally attach the amounts that were frozen by the banks on the directions of the Central Crime Branch issued under Section 102 Cr.P.C. The scheme envisaged in Chapter III of the PMLA is to safeguard the proceeds of a crime and the ultimate power to confiscate the amounts so attached is left to the Special Court that is trying the accused for the substantive offence under Section 3 r/w Section 4 of the PMLA.

5. In this case, as stated above, the Enforcement Directorate has filed a complaint in C.C.No.58 of 2016 before the Special Court for PMLA cases, Chennai, and non-bailable warrants are pending against 4 accused, viz., A3, A10, A14 and A15 for the last 70 hearings. Canara Bank's claim for possession of the moneys that were attached is predicated on Section 8(7) of PMLA which reads as follows:-

"8. Adjudication:

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of Section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it." (emphasis supplied)

6. As stated above, for the last 70 hearings, the prosecution in C.C.No.58 of 2016 has been pending without any progress and on this ground, Canara Bank was justified in seeking possession of the attached amounts that were lying in various bank accounts idly.

7. However, Mr.Rajnish Pathiyil, learned Special Public Prosecutor submitted that the second proviso to Section 8(8) of the PMLA r/w Rule 3A of the Prevention of Money-Laundering (Restoration of Property) Rules 2016, are the legally inhibiting factors that come in the way of Canara Bank seeking possession of the attached money.

8. To appreciate the aforesaid contention, it is relevant to extract Section 8(8) of the PMLA and Rule 3A of the said Rules:

“8. Adjudication:

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.”

“3-A. Manner of restoration of property during trial. - (1) The Special Court, after framing of the charge under Section 4 of the Act, on the basis of an application moved for restoration of a property attached under sub-section (1) of section 5, or;

seized or frozen under section 17 or section 18 of the Act prior to confiscation, if it thinks fit, may, for the purposes of the second proviso to sub-section (8) of section 8 of the Act, cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where such property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.”

9. It may be pertinent to state here that the second proviso to Section 8(8) of the PMLA was included by Act 13 of 2018 with effect from 19.04.2018 and therefore, we doubt as to whether this amendment would ever apply to the claim of Canara Bank, as Canara Bank has been claiming this amount from 04.11.2016 when they filed Crl.M.P.No.21812 of 2016 in the Special Court for PMLA cases, Chennai, for the return of the attached moneys.

10. Be that as it may, a bare reading of Section 8(8) of the PMLA shows that it will come into play only after a Special Court has confiscated the attached amounts to the Central Government. The confiscation of the attached amounts by the Special Court would arise only after the conclusion

of the trial as could be seen from Section 8(5) of the PMLA. However, the newly inserted proviso to Section 8(8), *ibid.* appears to be beyond the scope of the main provision.

11. Mr.Rajnish Pathiyil contended that the said second proviso to Section 8(8), *ibid.* would not only apply to Section 8(8) *ibid.*, but also to Section 8(7), *ibid.* We are unable to countenance this submission for the following reasons. A proviso in one Sub-Section cannot be stretched to cover a totally different Sub-Section in the same principal Section, unless the words in the said proviso are explicit. We do not find anything in the second proviso of Section 8(8), *ibid.* to include it within the net of Section 8(7), *ibid.*, also.

12. Coming to Rule 3A of the Prevention of Money-Laundering (Restoration of Property) Rules 2016, this Rule is undoubtedly sequel to the inclusion of the second proviso to Section 8(8) of the PMLA. However, both the second proviso to Section 8(8) and Rule 3A use the expression "may" and not "shall". Where in a given case, the Special Court decides to proceed under the second proviso to Section 8(8), then Rule 3A prescribes a procedure for proceeding with the matter further and not otherwise.

13. We are fortified in our view by a Constitution Bench judgement of the Supreme Court in ***Ram Narain Sons Ltd. vs. Asst. Commissioner of Sales Tax and Others***¹, wherein, it has been held as under:

"10It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other....."

14. In view of the above discussion, we do not find any infirmity in the impugned order dated 12.03.2019 warranting interference.

15. At this juncture, it was brought to our notice by both sides that out of Rs.13.21 crores that was the subject matter of attachment under the PMLA, a sum of Rs.4.60 crores has been directed to be disbursed to Mangal Royal Jewels and Mangal Bullion Private Limited by a Division Bench of this Court in C.M.A.Nos.1581 and 1582 of 2017 by order dated 29.08.2019 that has been passed by a Division Bench. To be more precise, the operative portion of the said order is extracted hereunder:

"7. Having heard the submissions of the learned Additional Solicitor General and the learned counsel appearing for the respondents, we are of the view that the

¹ AIR 1955 SC 765

submission made with respect to the statement made by Mr.Sukash Chandra Shekar pertains to only a sum of Rs.46,69,000. Similarly in respect of the other amount of Rs.51,25,000, there is a RTGS transaction. Thus, the appellate tribunal's findings in this regard cannot be found fault with. The appellate tribunal has rendered the above decision by considering the materials available on record. However, we find that a specific averment has been raised by the appellate in the complaint that the total amount of Rs.4,60,94,825.97 is also the proceeds of the crime. The final adjudication in this matter is to be done by the trial court which is ceased of the matter. To resolve this, we would only direct the respondents to either furnish a bank guarantee or immovable property security for the remaining amount subject to the final decision by the trial court in this regard. We feel that it would take care of the interests of both the appellant as well as the respondents. Since we have dealt with the matter on merits, we are not inclined to go into the maintainability of the appeals which we would like to deal with in the appropriate case, if so arises.

8. In the result, the order passed by the appellate tribunal stands modified. The respondents in both the appeals shall furnish either bank guarantee or immovable property security to the satisfaction of the adjudicating authority forthwith for a sum of Rs.3,63,00,825.97. In other respects, the order passed by the appellate tribunal stand confirmed. The

*Civil Miscellaneous Appeals are disposed of accordingly.
Consequently, the connected CMPs are closed.*

*The Registry is directed to post this matter on
14.10.2019 for reporting compliance."*

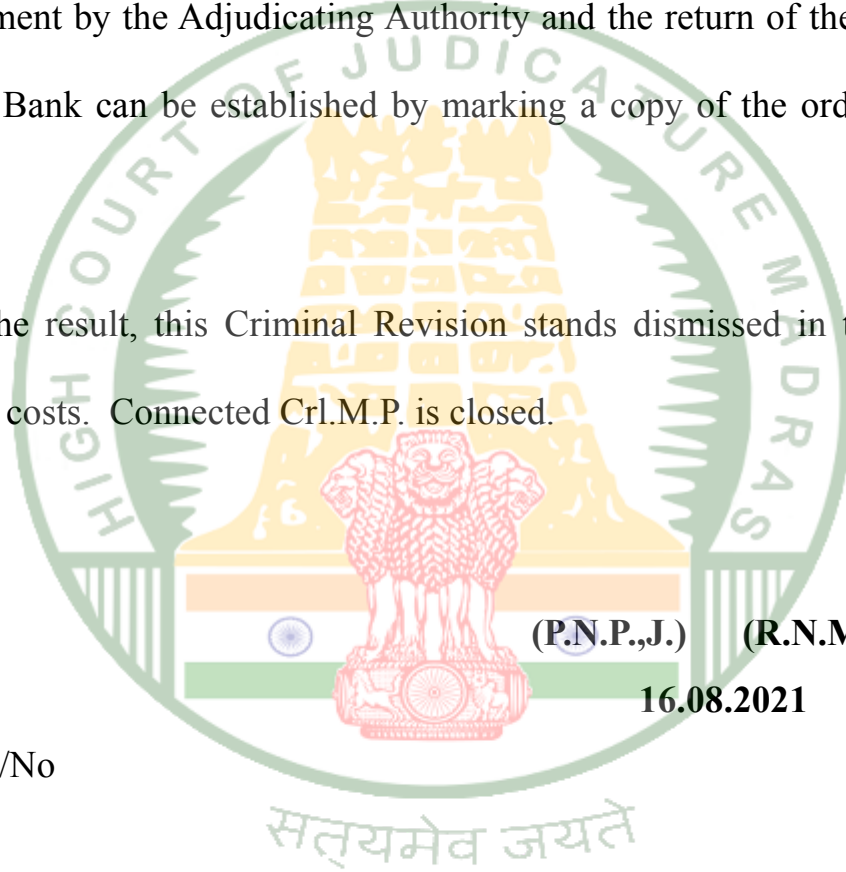
16. It is gainsaid that it is public money which, as narrated *supra*, had transcended into the hands of the accused and the respondent bank is justified in laying its claim for restoration of the property, more so, as a public sector bank. *A fortiori*, it would be purposeless to retain the property till the conclusion of the trial, which we find from a reading of the amendment, cannot be the intended purpose.

17. Therefore, Canara Bank will be entitled only to the balance amount that is now available. Canara Bank will not only be entitled to the principal amount but also the interest accrued thereon.

18. Mr.Rajnish Pathiyil, learned Special Public Prosecutor expressed an apprehension that if these amounts are returned to Canara Bank, they may not be available to be marked in the trial in C.C.No.58 of 2016.

19. In this case, the money that were attached are not counterfeit currency notes or phenolphthalein applied currency notes to be marked as material objects during trial. The proof of the fact that these amounts were provisionally attached by the Enforcement Directorate, the confirmation of the attachment by the Adjudicating Authority and the return of the amounts to Canara Bank can be established by marking a copy of the order of this Court.

In the result, this Criminal Revision stands dismissed in the above terms. No costs. Connected Crl.M.P. is closed.



Index: Yes/No

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P.N.PRAKASH, J.
and
R.N.MANJULA, J.

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To

- 1.The Assistant Director,
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