

**IN THE SPECIAL COURT FOR PMLA CASES /
SPECIAL COURT(SPE/CBI)-II / NIA CASES /
IV ADDITIONAL DISTRICT & SESSIONS COURT, ERNAKULAM**

Present :- Shri. Kamanees K., Judge for PMLA Cases
Saturday, the 05th day of August, 2022 / 14th Sravana, 1945

Crl.M.P Nos. 2896/2022, 2897/2022, 2898/2022,
2899/2022, 2900/2022 & 2901/2022

in

S.C No. 329/2017

Crl.M.P No. 2896/2022

Petitioner / Accused No. 2:-

Lekha.S.S.,
W/o. Sri. K.S.Sabu,
Sivasannidhi Kizhuvillam P.O,
Nemam, Attingal,
Thiruvananthapuram - 695304.

By Adv. Sri. John.S.Ralph

Respondent / Complainant :-

Govt. of India
Represented by Asst. Director, Director of Enforcement, Kochi.

By Sri. K.V.Sabu, Special Prosecutor, E.D

Crl.M.P No. 2897/2022

Petitioner / Accused No. 3:-

Sunitha.K.S, W/o. Harikumar.K.S.,
Geethanjali, Edakode,
Korani.P.O., Thiruvananthapuram - 695104.

By Adv. Sri. John.S.Ralph

Respondent / Complainant :-

Govt. of India

Represented by Asst. Director, Director of Enforcement, Kochi.

By Sri. K.V.Sabu, Special Prosecutor, E.D

CrI.M.P No. 2898/2022**Petitioner / Accused No. 5:-**

J. Sivadasan Pillai, Aged 85 years,
S/o. Janardhanan Pillai,
Guruvayoorappan Villa, Kizhuvilam P.O.,
Mamom, Attingal, Thiruvananthapuram - 695304.

By Adv. Sri. John.S.Ralph

Respondent/Complainant :-

Govt. of India

Represented by Asst. Director, Director of Enforcement, Kochi.

By Sri. K.V.Sabu, Special Prosecutor, E.D

CrI.M.P No. 2899/2022**Petitioner / Accused No. 6 :-**

Harikumar.K.S., S/o. K Sreedharan Nair,
Geethanjali, Edakode, Korani.P.O., 695104.

By Adv. Sri. John.S.Ralph

Respondent / Complainant :-

Govt. of India

Represented by Asst. Director, Director of Enforcement, Kochi.

By Sri. K.V.Sabu, Special Prosecutor, E.D

CrI.M.P No. 2900/2022**Petitioner / Accused No.7 :-**

Suresh Kumar.T.S, S/o. Late Thankappan Nair,
Chandrakantham, NSS College Road,
Neeraman Kara, Thiruvananthapuram – 40.

By Adv. Sri. Deepak B.

Respondent / Complainant :-

Govt. of India
Represented by Asst. Director, Director of Enforcement, Kochi.

By Sri. K.V.Sabu, Special Prosecutor, E.D

CrI.M.P No. 2901/2022**Petitioner / Accused No. 8:-**

S.Mangalan, Aged 66 years,
S/o. Sadasivan, Kaippally Saroja Mandiram,
Kadakavoor P.O, Attingal, Thiruvananthaouram - 695306

By Adv. Sri. Deepak B.

Respondent / Complainant :-

Govt. of India
Represented by Asst. Director, Director of Enforcement, Kochi.

By Sri. K.V.Sabu, Special Prosecutor, E.D

These petitions having been heard on 29/07/2023 and the court on this day passed the following :-

COMMON ORDER

1) All these petitions do pray for discharge of the respective accused, filed under section 227 Cr.PC.

2) The proceedings are based on a complaint filed by the Assistant Director, Directorate of Enforcement alleging offences under section 3 r/w 4 of the Prevention of Money Laundering Act, 2002 (PMLA) after taking cognizance of the complaint and issuing summons to the accused persons. Orders are also canvassed to confiscate the properties involved in the Money Laundering in terms of sub section (5) of section 8 of the PMLA. The CBI, Cochin informed about the corruption practices of the accused No.1 who collected bribes for issuing star hotel licences. On a surprise check conducted at the office of the Assistant Director, India tourism, Cochin on 01.10.2011, huge amounts of cash were recovered and seized from the table drawer and subsequently, the temporary residence of the accused No.1 at Ernakulam was searched whereupon Rs.3,55,230/- was seized. He had amassed wealth disproportionate to his known source of income. Subsequently, a case was registered, and a chargesheet was filed against the accused No.1 alleging offences under section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act. The other accused persons are immediate relatives of the accused No.1 and his wife including father of the A1, father-in-law of A1 and other accused persons are very near friends/relatives of the A1. The proceeds of the crime have been kept in the name of these persons. Facts have been mentioned in the complaint to show that the accused Nos. 1 to 8 have dealt with the proceeds of the crime

and are liable to be punished under section 3 r/w 4 of the PMLA. Those properties have to be confiscated and hence the complaint.

3) All these petitions are discharge applications filed respectively by the accused No.2(CrI.MP No. 2896/22), the accused No.3 (CrI.MP No. 2897/22), the accused No.5 (CrI.MP No. 2898/22), the accused No.6 (CrI.MP No. 2899/22), the accused No.7 (CrI.MP No. 2900/22) and the accused No.8 (CrI.MP No. 2901/22).

4) CrI.MP No. 2896/2022 states that the petitioner (A2), who is the wife of A1, was not aware of the allegations until the registration of the crime and there is no specific allegation against the petitioner. She has no knowledge about the illicit activities. The properties are not proceeds of the crime. The near relation cannot be a reason to presume like that. The whole story raises a cloud of doubt. The prosecution relies on inadmissible documents and hearsay statements. She is unaware of the above transactions mentioned in the complaint. Framing a charge involves a persons' liberty substantially as stated in **State of Karnataka v. Muniswamy (AIR 1977 SC 1489)**. The court has to apply its judicial mind to find whether there is any material. There should be a prima facie case revealed as held in **P.Vijayan vs. State of Kerala (2010 KHC 4058)**. The Judge is not a mere post office to frame the charge at the behest of the prosecution as held in **Nagaraj K.M. vs. State of Kerala (2021 (1) KHC 965)**. The Judge has to sift and weigh the evidence in order to find out whether there is sufficient ground for proceeding.

5) In CrI.M.P. No. 2897/2022, the petitioner (A3) who is sister-in-law of the A1 and the wife of A6 states that she is innocent of the allegations. The same allegations as in CrI.M.P No. 2896/2022 appear in this case also.

6) In CrI.M.P No. 2898/2022, the petitioner is the 5th accused who is the father-in-law of the A1. No document has been produced in all the cases to show that the petitioner is in any way involved in the alleged crime. The prosecution does not have any material to substantiate the same.

7) In CrI.M.P No. 2899/2022, the petitioner is the 6th accused who is the brother of the accused No.1. Same allegations as seen in the earlier petitions have been raised here also.

8) In CrI.M.P No.2900/2022, the petitioner (A7) is stated to be the friend of one Harikumar who is the A6. He is not a party in concealing the proceeds of the crime. A6 is the brother of A1 and hence he was brought. He has also taken the same contentions discussed supra.

9) In CrI.M.P No.2901/2022, the petition has been put in by the accused No.8 who is stated to be the owner of the Attingal Tourist Home, Attingal in which the brother of A1, the accused No.1, does work for gain. He has also raised the same allegations. Simply because he happened to provide employment for A6, the brother of A1, he cannot be unnecessarily brought in as an accused here.

10) In all the objections filed, almost common stand has been taken by the Enforcement Directorate. The respective Petitioners have been very close to the accused No.1 in the way stated in the petition. The petitioner in

CrI.MP No. 2896/2022 is the wife of A1 and actively associated with A1 for concealing the proceeds which were acquired by A1 misusing his official position and as such she is liable under section 2(1)(q) r/w section 3 of PMLA. There are specific allegations against the petitioner that she had concealed the proceeds of crime committed by A1, especially after the arrest of A1. The petitioner Lekha had given 3 statements before the Directorate of Revenue Intelligence (DRI) under section 50(2) and 3 of PMLA. She admitted that she had deposited Rs.19,30,000/- at Edakkod Service Corporation Bank, Rs.1.80 lakhs at Kizhuvalam Post office, 9.79 lakhs before Corporation bank and 4.9 lakhs before the Union Bank of India. She also deposited Rs.10,94,400/- before the Muthoot Finance. She claims that the said money was given to her by her late mother. She had not produced any documents. She is therefore liable to be prosecuted. The above statements adduced have been supported by documents. Proceeds of crime which he acquired from hoteliers as evidence from documents 465 and 466 produced by the CBI and also the certified copy has been produced by this complainant. There is prima facie case against A2 and she has to face the trial for proper adjudication of the crime.

11) In CrI.MP No. 2897/2022, the petitioner, the sister-in-law of the accused Had given a statement. This is admissible under the Evidence Act and she deposed that she had a debt certificate of Muthoot Finance, Attingal for Rs.1.80 lakhs (2 in number). Also there are two debt certificates for Rs.1.50 lakhs each which was transferred by the wife and children of A1. After the arrest of A1, her father gave Rs.4 lakhs in cash to Sabu. Then it was learned

that the debt certificate for Rs.6.60 lakhs was transferred in her name. She admitted to have withdrawn Rs.43,000/- from that account on 17.07.2014 for meeting the college expenses of A1's daughter. She also stated that Rs.4,06,800/- was credited in her IDBI account by the closure of debt certificate from the Muthoot Finance and the certificate was transferred in her name by A2 after the arrest of A1. The same are supported by documents and the amounts are proceeds of the crime as evident from documents 465 and 466 produced by the CBI.

12) Objection to the CrI.MP No.2998/2022 is to the effect that this petitioner had given statement before the Directorate of Revenue Intelligence on 30.03.2015 u/Section 50 (2) and (3) of the PMLA Act 2002 and stated that the property has been transferred to Mrs. Lekha, 2nd accused by document No.2474/2011 for Rs.10,94,400/-. This amount was acquired from criminal proceedings of 1st accused and the petitioner concealed the same. Regarding the source of FD. No.383/9-10 and 384/9-10 in the name of this petitioner and the 2nd accused for Rs.4 lakhs each, no explanations are given. An amount of Rs.6,88,000/- was deposited on 22.07.2008 by the 2nd accused in the joint account of 2nd accused and her mother Santhamma. After the death of Santhamma, the amount was deposited in Edakkad Service Co-operative Bank on 30.07.2009 in the joint account of her and this petitioner. This statement reveals that the petitioner had assisted the accused No.1 for concealing the crime proceeds. The prima facie case has been revealed from the accused No.5 (petitioner). For these reasons, the petition has to be dismissed.

13) In CrI.MP 2899/2022, the objections state that this petitioner had given 2 statements before the Directorate of Revenue Intelligence on 23.03.2015 u/Sec. 50 (2) and 3 of PMLA Act 2002. He does not have any legitimate source of substantial income. He is a party in concealing the proceeds of crime. The statement given by A6 is supported by various other documents. The document has been received from the possession of A1 evidencing concealment of Rs.3,75,000/-.

14) In CrI.MP 2900/2022, objections have been filed by the respondent stating that the accused had given 4 statements before the Directorate of Revenue Intelligence on 18.03.2015, 23.04.2015 and 29.6.2015 u/Sec. 50 (2) and 3 of PMLA Act 2002. He stated that he gave Rs.22 lakhs to the accused in which 2 lakhs was withdrawn by a Federal Bank cheque. However, no document has been given to substantiate the said document which was given to the accused NO.1 Mr. Sabu. He does not have any legitimate source of income. He is known as a party in concealing the proceeds of crime and hence he is liable to be prosecuted under Section 2 (1) r/w. Section 3 of PMLA Act.

15) In CrI.MP 2901/2022, the objection states that he had been assisting the accused No.1 in concealing the proceeds of bribe to the tune of Rs.3,75,000/-. He is knowingly a party in concealing the proceeds of crime. The documents produced by him reveal that he had assisted the 1st accused for concealing the crime proceeds and he has to face the trial.

16) In CrI.MP 2896/2022, the objection states that the accused No.2 (petitioner) had given 3 statements before the Directorate of Revenue Intelligence on 11.03.2015, 19.03.2015 and 30.03.2015 u/Sec. 50 (2) and 3 of PMLA Act. She admitted that she had deposited Rs.19,30,000/- at Edakkod Service Corporation Bank, Rs.1.80 lakhs deposited at Kizhuvalam Post office, Rs.9.79 lakhs before the Corporation bank Attingal and Rs.4.9 lakhs was deposited before the Union Bank of India. There is also an amount of Rs.10,94,400/- before the Muthoot Finance. Even though she has stated that all the money had been given by her late mother, no documents have been produced to substantiate the same. The money was tainted and she had been dishonestly concealing the proceeds of crime.

17) The following common points arise in all the cases :

1. Whether there exists sufficient ground to proceed against the accused persons for the offences alleged, so that a charge be framed and respective accused be ordered to go in for trial ?
2. If not, What offences are made out Prima facie against the respective accused persons?

18) There are records produced and with the nature of evidence submitted, the Enforcement Directorate more or less relies on statements of the respective accused persons recorded under Section 50 (2) and (3) of PMLA Act, 2002. Almost in all discharge applications referred above, the contention is that there are no clear records or documents produced along with the complaint to show that the respective accused persons are in some way or

other way connected with the crime. According to the petitions put in by the accused persons A2 to A7, who are near relatives of A1, the principal contention is that no sufficient documents have been produced and the evidence proposed to be adduced is rather than inadmissible in evidence. The admissibility or otherwise of the statements recorded under Section 50 (2) of the PMLA Act shall have to be analysed now.

19) Apart from the documents stating the respective transactions, the main piece of evidence before the court is the statements recorded under Section 50 (2) and (3) of the PMLA Act. There is no case that a prosecuting agency did not qualify to be the authority constituted under Chapter 8 of the PMLA Act. Therefore, they had been duly competent to record the statements under Section 50 (2) and (3) of the PML Act.

20) Coming to the admissibility of these statements, especially being self incriminatory in nature, the law had been canvassed in **Vijay Madanlal Chaudhary and others vs. Union of India** (2022 SCC online SC 929) wherein it had been held as follows :

449. In other words, there is stark distinction between the scheme of the NDPS Act dealt with by this Court in Tofan Singh and that in the provisions of the 2002 Act under consideration. Thus, it must follow that the authorities under the 2002 Act are not Police Officers. Ex-consequenti, the statements recorded by authorities under the 2002 Act, of persons involved in the commission of the offence of money-laundering or the witnesses for the purposes of inquiry/investigation,

cannot be hit by the vice of Article 20(3) of the Constitution or for that matter, Article 21 being procedure established by law. In a given case, whether the protection given to the accused who is being prosecuted for the offence of money-laundering, of Section 25 of the Evidence Act is available or not, may have to be considered on case-to-case basis being rule of evidence.”

21) What remains is whether these statements shall be hit under Section 25 of the Indian Evidence Act. This aspect has been left open to be decided on a case-to-case basis as per *V.M. Chaudary*. Prima facie, these documents did not reveal much about the actual commission of the offences as such. Detailed statements have been given by Sri. Sabu K.S., accused No.1, touching the properties found with his near relatives.

22) Sivadasan Pillai - accused No.5 seems to have given a statement that Santhamma, his wife, transferred the property by document No. 2474/11 to Lekha, accused No 2 and wife of A1 Sabu. According to him, the FD receipt Nos.383/9-10 and FD Nos.384/9-10 are actually belonging to Lekha, wife of Accused No.1, and A2. Accused No.4 Sri. Sreedharan Nair. K.- father of A1, deposed that FD 447 for Rs.1.50 lakh, FD No.522 for 3 lakhs are in joint with Sabu in Edacode Service Co-operative Bank and debenture certificate No.134/2093 is jointly with Lekha, they did not belong to him and his name was included so that higher rate interest be available. Harikumar-A6, states that he was working as supervisor in Attingal Tourist Home belonging to A8. He stated that 3.75 lakhs was brought to Ernakulam for

purchase of hotel items for Attingal Tourist Home. He is the brother of Accused No.1. According to him, Rs.20,000/- was taken to him and the rest was given to his brother. He again stated that he placed the money in Sabu's wall almirah and told A8 about the same. The audited accounts of Attingal Tourist Home did not show this amount, according to the prosecution. Accused No.7, who is a friend of Harikumar states that he had paid Rs.24 lakhs to Sabu as Sabu's father promised to sell the property to him. But there are no records to show that. His statement also shows that Harikumar asked him to make a commercial building by arranging a bank loan and share profits therefrom. However, he did not submit any plan and estimate. He did not remember the correct dates. He gave Rs 22 lakhs to Sabu and 2 lakhs to Harikumar. There is withdrawal from his Federal Bank account for paying the amounts. According to him, Sabu paid him 6 lakhs on 25.08.2012 and it was used for maintenance of the house. Sunitha- A3, (Harikumar's wife) states that Rs.1.80 lakhs each in the form of debt certificates of Muthoot Finance had been transferred to her along with 2 other certificates for Rs.1.50 lakhs. The transfer was done by accused No.2 and her children. There was a withdrawal of Rs.43,000/- on 17.07.2014 from her account to pay college fees of Sabu's daughter. She states that Rs.1,47,050/- was withdrawn on 04.09.2015 for purchasing a bike for her husband Harikumar. Debt certificate Nos.134/17 and 134/18 were transferred in her name by the 2nd accused.

23) There is not much evidence before this court to come to an abrupt conclusion that any part of the statements given by accused Nos.2 to 7 would

amount to confession as such at this stage. Rather, The materials placed would at least raise grave suspicion as to existence of facts constituting money laundering suggesting that they directly or indirectly attempted to indulge or knowingly assisted or knowingly were a parties to activities connected with proceeds of crime, by way of concealment / possession / acquisition / use/ projecting as untainted property / claiming as untainted property.

24) However, it is only to be made clear that the question whether the statements shall attract the bar under section 25 of the Indian Evidence Act has to be left open for appropriate decision at the time of eventual appreciation of evidence.

25) These are the conclusions possible to A2 (CrI.MP 2896/22), A3 (CrI.MP 2897/22), A6 (CrI.MP 2899/22), A5 (CrI.MP 2898/22) and A7 (CrI.MP 2900/22).

26) However, the accused No.8 Mangalan stands on a different footing. His contention is that he has been alleged to be a party in concealing proceeds of a crime and projecting as untainted property. According to him, he does have no knowledge of the illicit activities that are alleged to have happened in the alleged crime. According to him, the only allegation is that accused No.6 had been working as a Manager in a bar hotel namely Attingal Tourist Home owned by him. There are no documents produced to show that the petitioner is in any way involved in any alleged crime. He cannot be made an accused and his nexus with the crime has not even been explained.

27) Per contra, in the objection of the Enforcement Directorate, it is stated that he had been instrumental in concealing the proceeds of Rs.3,25,000/- acquired by A1 and recovered from his house. As such he is liable under Section 2 (1) (q) r/w. Section 3 of the PML Act. It is revealed that this accused did not give any statement to the authority and instead what he has given is only an affidavit signed before a notary. In it, he states that he had entrusted Rs.3,75,000/- to accused Harikumar for purchase of electric goods to one of his hotel projects. He also states that this amount was taken from the received money of Rs.5 lakhs he withdrew from his personal account. He speaks about an information given by Harikumar that Harikumar had kept the amount in the residence of his brother A1. Harikumar returned Rs.20,000/- in October 2011 and Rs.2,75,000/- in August 2015. An amount of Rs. 80,000/- is still due.

28) The offences alleged against the accused No.8 are under Section 2 (1) (p) r/w. Section 3 of the PML Act. Section 3 of the PML Act reads as follows :

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

[Explanation.—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:—

(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;

29) In order to prove the offence of money laundering, there should be proof that the person directly or indirectly attempted to indulge or knowingly associated or knowingly was a party in concealment, possession, acquisition or projecting as untainted money or claiming or untainted property.

30) The allegation raised by the Enforcement Directorate is to the effect that the accused No.8 had knowingly been a party or knowingly assisted in concealment or projecting as untainted property. Even if the statement in the form of the affidavit is taken in its face value, what is revealed is that he had given some amount to his employee and his employee informed him that the amount was kept in his brother's house. He does not in any way admit that he was knowledgeable that the said money will be used for projecting the

property as untainted before the authority. There should be other evidence to show that the accused No.8 had been knowledgeable about the design to forge explanations for possession of the tainted money. In as much as it is so, accused No.8 cannot be booked for the offence prima facie with the evidence tainted.

31) At the same time, the evidence adduced prima facie would cause grave suspicion at least against the other accused persons who have filed discharge applications. Highlighting this standard of proof for Prima facie case or existence of grave suspicion, the accused persons relied on **State of Karnataka vs. Muniswamy (AIR 1977 SC 1489)**, **P. Vijayan vs. State of Kerala (AIR 2010 SCC 663)**, and **Nagaraj K.M. vs. State of Kerala (2021 (1) KHC 965)**.

32) Reliance may also be had to **M.E. Shivalingamurthy vs. Central Bureau of Investigation, Bengaluru (2020) 2 SCC 768**, wherein the following principles were discerned by the Hon'ble apex Court :

1. *If two views are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the Accused.*
2. *The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.*
3. *The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence*

would consist of the statements recorded by the police or the documents produced before the Court.

- 4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the Accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, "cannot show that the Accused committed offence, then, there will be no sufficient ground for proceeding with the trial".*
- 5. It is open to the Accused to explain away the materials giving rise to the grave suspicion.*
- 6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basic infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.*
- 7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.*
- 8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the Accused.*

33) Therefore to conclude, this court finds that the Directorate of Enforcement is not in a position to bring in a prima facie case/grave suspicion in case of accused No.8 who has filed CrI.MP 2901/2022. As against the petitioners in CrI. MP 2896/22, 2897/22, 2898/22, 2899/22 and 2900/2022,

there are sufficient materials to raise prima facie proof or at least grave suspicion necessary to proceed with. Points No.1 and 2 are found accordingly.

In the result, CrI. MP 2901/2022 is allowed. Accused No.8 is discharged of the offences under Section 2 (1) (p) r/w. Section 3 of PML Act. The other CrI. MP Nos.2896/22, 2897/22, 2898/22, 2899/22 and 2900/2022 are dismissed.

Dictated to the Confidential Assistant, transcribed and typewritten by her, corrected and pronounced by me in open court on this the 5th day of August, 2023.

Sd/-
Kamanees K.
Judge
Special Court for PMLA Cases

APPENDIX:-NIL

Id/-
Judge
Special Court for PMLA Cases

// True Copy //

Judge
Special Court for PMLA Cases

Typed by : jcs
Comp.by : skp

Common Order
in
CrI.M.P Nos. 2896/2022,
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in
S.C No. 329/2017
Dated 05/08/2023