

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

Present :- Shri. N. Seshadrinathan, Judge for PMLA Cases
Thursday, the 5th day of September, 2024 / 14th Bhadra, 1946

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

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

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

Crl.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

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

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 (In all CMPs):-

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

By Sri. Jiji.S., Special Public Prosecutor, E.D

These petitions having been heard on 12.08.2024 and the court on this day
passed the following :-

COMMON ORDER

These petitions are filed u/s.227 Cr.P.C. claiming discharge by accused
Nos.2, 3, 5, 6 and 7 respectively.

2. Petition averments in brief may be noticed:- CMP 2896/2022 is filed by the 2nd accused in the above Sessions Case. She is the wife of 1st accused. The charges levelled against the petitioner are u/s.2(1)(p) r/w. Section 3 of PMLA, 2002. The prosecution allegation is that the petitioner is directly involved in the offence of money laundering and knowingly is a party in possessing, acquisition and use of proceeds of crime and projecting the properties generated out of the proceeds of crime involved in the criminal offence allegedly done by K.S. Sabu, who is the 1st accused, as claiming the same as untainted properties and thus involving offences of money laundering under the PMLA. It is contended that there are no sufficient materials to proceed with the case and the 2nd accused is claiming discharge.

3. CMP 2897/2022 is filed by the sister in-law of the 1st accused and wife of the 6th accused. The charges levelled against the 3rd accused and the prosecution allegations are one and the same. Here also it is contended that accused No.3 is rendering all assistance to conceal the proceeds of the crime done at the instance of the 1st accused in order to make it appear that they are untainted properties. She is also claiming discharge.

4. CMP 2898/2022 is filed by the 5th accused, who is an ex-service man aged 85 years. The charges levelled against him are same as above. The 5th accused is the father in-law of the 1st accused and here also the prosecution allegations

are one and the same and it is contended that he is also rendering assistance to the 1st accused to conceal the proceeds of the crime done by the 1st accused.

5. CMP 2899/2022 is filed by the 6th accused who is none other than the brother of the 1st accused and here also charges and the prosecution allegations against him are one and the same as above.

6. CMP 2900/2022 is filed by the 7th accused, who is said to be a friend of 6th accused and the prosecution allegations against him and the charges levelled against him are one the same and it is contended that 7th accused is also rendering assistance to the 1st accused to conceal the proceeds of the crime.

7. All the petitions are filed claiming discharge on the following and common grounds. The petitioners are innocent and they are law abiding citizens. There is no specific allegation against any of the petitioners in the complaint. Other than a vague allegation that the properties owned by the petitioners are nothing but the proceeds of the crime done by the 1st accused. The petitioners have no knowledge of the alleged illegal activities as contended. No documents are produced along with the complaint to show the involvement of the petitioners with the alleged crime. Mere fact that some of the petitioners are relatives of the 1st accused shall not form the basis to book the case against the petitioners.

8. In *State of Karnataka v. Muniswamy* (AIR1977 SC 1489), it was clearly held that the order of framing a charge affects a person's liberty substantially and

therefore it is the duty of the court to consider judicially whether the material warrants the framing of the charge.

9. The very purpose of the stage of discharge before a criminal court is to see if there is a prima facie case against a person based on the materials that are produced by the prosecution [P. Vijayan v. State of Kerala reported in 2010 KHC 4058.

10. In Nagaraj K.M. v. State of Kerala reported in 2021 (1) KHC 965 the Hon'ble High Court held that the Judge has to exercise his judicial mind to the fact of the case in order to determine whether a case for trial has been made out by the prosecution. In the instant case, the prosecution failed to substantiate the case and hence the petitioners are entitled to get discharge.

11. All these petitions were disposed of my learned predecessor by way of a common order dated 05.08.2023 and aggrieved by the said order, petitioners/accused filed separate Criminal Revisions Petitions before the High Court and the High Court in turn allowed the Criminal Revision Petitions by setting aside the order passed by my learned predecessor vide order dated 05.08.2023 and directed this court to consider the petitions afresh in the light of the discussion made in the order.

12. The point to be considered here is whether the petitioners are entitled to get discharge?

13. For the purpose of adjudication of these petitions both sides were heard.

14. The point:- The petitioners claim rest on the ground that prosecution failed to produce sufficient documents so as to prima facie show the involvement of the petitioners to the crime nor they substantiated the fact that the petitioners herein rendered assistance to the 1st accused to conceal the proceeds of the crime allegedly committed by the 1st accused. Therefore, the petitioners are claiming discharge.

15. My learned predecessor placing reliance upon *Vijay Madanlal Chaudhary and others vs. Union of India* (2022 SCC Online SC 929) to drive home the point that whether the protection given to the accused, who is being prosecuted for an 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. My learned predecessor further held that the 5th accused Sivadasan Pillai seems to have given a statement that Santhamma, his wife, transferred the property by virtue of a registered document to Smt. Lekha, who is the 2nd accused, who is the wife of the 1st accused. He further stated that few fixed deposit receipts are owned by Lekha, 4th accused Sreedharan Nair and few fixed deposits are jointly owned by 1st accused and the 2nd accused. Accused No.6 gave statement to the effect that he is working as Supervisor in Attingal Tourist Home owned by 8th accused and he carried 3.75 Lakhs in order to purchase

hotel items for the Attingal Tourist Home. Similarly, each accused had given statements that will suit their defence. My learned predecessor observed that the evidence on record are insufficient to arrive at 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. At the same time, my learned predecessor observed that the materials placed would at least raise grave suspicion as to the 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. So, my learned predecessor made it clear that the question whether the statements shall attract the bar u/s.25 of the Evidence Act is to be left open for appropriate decision at the time of evidence. In that view of the matter, my learned predecessor hold that this is a case where trial is inevitable.

16. The learned counsel for the petitioners vehemently argued that this is a case where the 8th accused was discharged. According to the learned counsel, prosecution is under the bounden obligation to prove knowledge and in the instant case, there are no materials to hold that the petitioners were aware of the deposits made by the 1st accused. Going by the prosecution case, the 1st accused deposited money in the name of the remaining accused who are his near

relatives. According to the learned counsel, even if such contention advanced by the prosecution is accepted as gospel truth, still going by the wordings employed in Section 3 of the PMLA, the prosecution has to prove clear knowledge. So, the learned counsel concluded his argument and contended that the burden of proof is upon the prosecution to convince this court prima facie that the petitioners were aware of the deposits made by the 1st accused in their names.

17. Under normal circumstance, a person cannot deposit money in the name of others, though they are close relatives without providing the essential or skeleton details as to the depositor. No bank or financial institutions can receive deposits in the name of strangers and hence the depositor has to furnish necessary data as to his name, address, identity and such other details while making deposits. What I would like to emphasise here is that while making deposits, the depositor has to furnish his identity by producing necessary identity card and hence under normal circumstance the 1st accused cannot deposit money in the name of remaining accused without their knowledge, consent or assistance.

18. The Hon'ble High Court placed reliance upon *Ramesh Chandra Mehta v. State of West Bengal* (1968 KHC 263 = AIR 1970 SC 940) and held that "a Customs officer is not a police officer for the purpose of Section 25 of the

Evidence Act on the reason that though he may have the power to detain, arrest and obtain a search warrant, to produce the person arrested before a Magistrate and to obtain an order for remand or to keep him in custody with the view to collect evidence under the Act, may not get a deemed status of a police officer.” Again, the Hon’ble High Court placed reliance upon *Gopi v. state of Kerala* (2024 (1) KHC 223) to drive home the point that the legal position that “the statement recorded by an officer, who is empowered to investigate the crime under Section 50 (1) or 50 (8) of Wildlife Protection Act, 1972 will not stand hit by the embargo under Section 25 of the Evidence Act, but the statement so recorded would stand a weak piece of evidence and can be used for corroboration on the reason that the forest officer cannot be termed as a police officer as he was not conferred with all powers of a police officer. The very same rationale can be applied in the presence case as the officers empowered under Section 50 (2) and 50 (3) of the Act are not police officers as they are not empowered with all powers of a police officer. Necessarily, the embargo under Section 25 of the Evidence Act cannot be extended to a Director, Additional Director, Joint Director, Deputy Director or Assistant Director under the Prevention of Money Laundering Act, 2002.”

19. The Hon’ble High Court reiterated that “the authority and the rationale applied by the Constitution Bench in *Ramesh Mehta’s* case (*supra*) is squarely

applicable to the officers made mentioned under Section 50 (2) of the Prevention of Money Laundering Act, 2002. Necessarily, the statement recorded either confession or a mere statement would acquire the character of “evidence” and will not stand hit by the embargo under Section 25 of the Evidence Act, hence admissible”

20. The Hon’ble High Court then stated that there is yet another question that came up at this stage as to whether confession recorded by the officer empowered under Section 50 (2) of the Act can be taken as a confession given voluntarily by the accused in view of the legal position settled by the Apex Court in Pawan Kumar Chourasia v. State of Bihar (2023 KHC 6253) wherein it was held that “implicit faith” with the person who whom confession statement was given is a factor to be taken into consideration while dealing with the evidentiary value of extra-judicial confession. It is submitted that going by the above said decision, the evidentiary value of the statement recorded would be very less and may not be sufficient to bring home the guilt of the accused, even if it is proved as such. But the wording and language employed under Section 50 (2) and 50 (3) of the Prevention of Money Laundering Act, 2002 and the mandate imposed that all the persons so summoned shall be bound to state the truth upon any subject in which they are examined or make statement or produce such document would acquire the character of an “admission” made before a

judicial proceeding going by the mandate under Section 50(94) of the Act. It cannot be treated as mere confession, but would fall under the ambit of 'admission' before a deemed judicial authority. Such statement given, tendered and recorded would acquire the character of an 'admission', but with the statutory compulsion which is unknown to law in the realm of admission. The cardinal ingredient which would constitute an "admission" that it should be voluntary is really lacking. But if it is before a court or a deemed judicial authority, the question whether it is under compulsion or not would pale into insignificance." Therefore, the Hon'ble High Court made it clear that this court has to consider these aspects for the subjective satisfaction whether the case is to be proceeded with and in that view of the matter, the common order passed by my learned predecessor was set aside and the matter was remanded to this court for fresh consideration.

21. In the light of the specific observations made by the Hon'ble High Court which is supported by authorities it is manifestly clear that the statements recorded by an officer, who is empowered to investigate the crime, will not stand hit by the embargo under Section 25 of the Evidence Act. At the same time, the statements so recorded would only be treated as a weak piece of evidence and can be used for corroboration. So in the instant case, the officers empowered under Section 50(2) and 50(3) of PMLA are not police officers and

they are empowered with all powers of police officers. So, the embargo under Section 25 of the Evidence Act cannot be extended to a Director, Additional Director etc. under the Prevention of Money Laundering Act, 2002 as laid down in Ramesh Chandra Mehta's case. As stated earlier, the statement so recorded though admissible is a weak piece of evidence.

22. As rightly argued by the learned counsel for the petitioners/accused, other than the statements, there is no material whatsoever to show the involvement or assistance rendered by the petitioners/accused to the 1st accused, and as there is absolutely no material either in the complaint or in the documents, the mere statements given under Section 50(2) and 50(3) of the Prevention of Money Laundering Act, 2002 cannot be used as a tool against the petitioners and the statements by itself cannot be allowed to militate against the petitioners to their peril. It is further made clear that the statements so given shall not form the basis or foundation to conduct trial and it appears that conducting trial with the mere statements will turned to be a futile exercise besides loss of judicial time. In these circumstances, this court is of the view that the statements cannot be used to compel the petitioners to face trial. In the absence of other materials against the petitioners/accused it is further made clear that there is nothing to show that the petitioners/accused possessed the proceeds of the crime allegedly committed by the 1st accused. That be so, the petitioners/accused Nos.2, 3, 5, 6 and 7 are

justified in filing these petitions seeking discharge. In view of the above discussion, the petitions are to be allowed and I do so.

**In the result, CMP 2896/2022, CMP 2897/2022, CMP 2898/2022
CMP 2899/2022 & CMP 2900/2022 are allowed.**

Dictated to the Confidential Asst., transcribed and typewritten by her, corrected and pronounced by me in open court on this the 5th day of September, 2024.

Sd/-
N. Seshadrinathan
Judge
Special Court for PMLA Cases

APPENDIX:-NIL

Sd/-
Judge
Special Court for PMLA Cases

// True Copy //

Id/-
Judge
Special Court for PMLA Cases

Typed by : akr
Comp.by : jcs

Common Order
in
CrI.M.P Nos. 2896/2022,
2897/2022, 2898/2022, 2899/2022 &
2900/2022
in
S.C No. 329/2017
Dated 05/09/2024