



IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDERS RESERVED ON : 15.12.2022

PRONOUNCING ORDERS ON : 19.12.2022

Coram:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND**

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

**W.P.No.28140 of 2022
and WMP No.27428 of 2022**

Southern Agrifurane Industries Private Ltd.,
Rep. by its Director
Josph Anand Muth @ MGM Anand
MGM Centre No.1, 9th street
Dr. Radhakrishnan Salai
Mylapore, Chennai – 600 004.

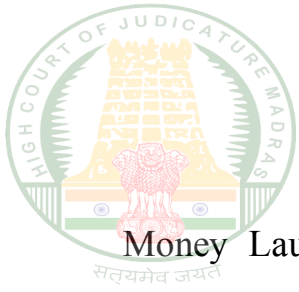
.. Petitioner

. Vs .

The Assistant Director
Directorate of Enforcement, Chennai Zone-II
Shastri Bhavan, 3rd Floor, 3rd Block, B-Wing
No. 26, Haddows Road
Chennai – 600 006.

... Respondent

Prayer: Writ Petition under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, forbearing the respondent from in any way proceeding further in ECIR/ CEZO- II/ 26/2022 under the provisions of Prevention of



Money Laundering Act, 2002 as it is without jurisdiction since the allegation of contravention of FEMA does not fall within the schedule to Prevention of Money Laundering Act 2002 and since even that alleged contravention is found against the respondent in the statutory proceedings under the FEMA Act, by Competent Authority.

For Petitioner : Mr.B.Kumar
Senior Counsel
for Mrs.T. Kokilavane

For Respondent : Mr.N.Ramesh
Special Public Prosecutor

ORDER

This Writ Petition has been filed for the issue of a Writ of Mandamus forbearing the respondent from proceeding further in ECIR/ CEZO- II/ 26/2022, on the ground that the respondent is acting beyond the jurisdiction conferred by the provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the PML Act').

2. The brief facts of the case is that a case under the Foreign Exchange Management Act [in short "FEMA"] was registered against the petitioner company on the allegation that they had sent foreign exchange abroad in violation of FEMA Rules and investigation was taken up by the Enforcement Directorate. The Enforcement Directorate passed provisional orders of seizure of certain movable and immovable



properties of the petitioner company, which were not confirmed by the Competent

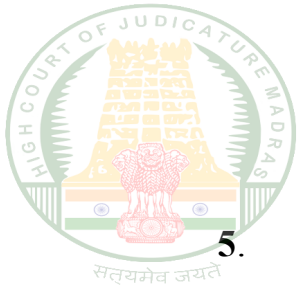
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Authority acting u/s.37-A of FEMA, by orders dated 13.04.2022 and 25.07.2022.

Challenging the orders of the Competent Authority, the Enforcement Directorate filed two writ petitions before this Court in W.P.Nos.13114 and 25098 of 2022 and this Court has granted interim stay of the orders dated 13.04.2022 and 25.07.2022 that was passed by the Competent Authority.

3. It appears that the petitioner company was having its account with Axis Bank and overseas remittances were made through Axis Bank, which is an authorised dealer under the FEMA. On a complaint given by Axis Bank, the Central Crime Branch registered a case in CCB-I P.S.Crime No.161 of 2022 on 08.08.2022 against the petitioner company for the offences u/s.417 and 420 IPC. Since the FIR disclosed the commission of an offence u/s.420 IPC, which is a scheduled offence under the Prevention of Money Laundering Act, the Enforcement Directorate registered a case in ECIR/CEZO-II/26/2022 and has issued summons to the petitioner company u/s.50 of the PMLA, aggrieved by which, the present writ petition has been filed.

4. Heard Mr.B.Kumar, learned Senior Counsel for the petitioner and Mr.N.Ramesh, learned Special Public Prosecutor for the respondent.



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5. The main contention that was raised by the learned Senior Counsel appearing on behalf of the petitioner company is that the respondent has started an investigation in order to find out if there is any contravention of FEMA in remitting the money outside India. Since provisions of FEMA have not been made a schedule offence, the respondent is indirectly conducting the investigation by taking advantage of the FIR registered in Crime No.161 of 2022, based on the complaint given by AXIS bank and a reading of the entire complaint will show that what has been alleged against the petitioner was only contravention of the provisions of FEMA and there is no IPC offence involved in this case. It was further contended that the FIR in Crime No.161 of 2022 has already been put to challenge in CrI.O.P.No.21536 of 2022 and the same has been entertained and an interim order has been passed on 07.09.2022, to the effect that no final report should be filed till the disposal of the Criminal Original Petition. The learned Senior Counsel further contended that the grievance of the AXIS bank is that the petitioner Company did not disclose to the bank that there is a FEMA case against them in the application for making foreign remittance and this issue was already dealt with by the Competent Authority under Section 37A (2) of the FEMA and the adjudicating authority came to a conclusion that no violation was committed by the petitioner Company and as a result, the seizure order passed by the Directorate of Enforcement was set aside through proceedings dated 25.07.2022. In view of the same, AXIS bank



cannot have any grievance against the petitioner and the complaint itself came to be given only to enable the respondent to get into this issue and the same is without jurisdiction.

6. The learned Senior Counsel submitted that even if the allegations made in the FIR registered in Crime No.161 of 2022, are taken as it is, there is no scope for generation of proceeds of crime and in the absence of the same, the respondent cannot start a prosecution even without satisfying the ingredients of Section 3 of PML Act. The learned Senior Counsel in order to substantiate his submissions, relied upon the judgment of this Court in ***R.K.M. Powergen Private Ltd., .Vs. The Assistant Director/Officer on Special Duty Directorate of Enforcement Government of India and Others*** reported in ***2022(3) MLJ (Crl) 225***.

7. Per contra, the learned Special Public Prosecutor appearing on behalf of the respondent submitted that the order passed by the adjudicating authority under Section 37A of FEMA has already been put to challenge by filing a Writ Petition and the said order has been stayed pending disposal of the Writ Petition. It was further submitted that as per the RBI regulations, the ODI forms up to the year 2016, mandated the disclosure of any investigation pending against Promoters/Directors and right from



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the year 2012 onwards, the petitioner Company was misleading the authorised dealer, as if, there was no enquiry or investigation and whereas the Promoter of the petitioner Company was facing investigation conducted by the Directorate of Enforcement from the year 2012 onwards. If the petitioner Company had stated the true facts, the authorised dealer would have done the due diligence before sending the valuable foreign exchange outside India in lieu of the money lying in the bank account of the petitioner. The learned Special Public Prosecutor further submitted that in the ongoing investigation, sufficient materials have been collected to establish that the so called investments by the Company outside India never took place and the money has been siphoned off. The learned Special Public Prosecutor submitted that till now, the Directorate of Enforcement was able to find out that the siphoning has taken place to the tune of Rs.216.40 Crores out of India at the cost of foreign exchange of the Country. The learned Special Public Prosecutor submitted that the investigation is at a crucial stage and Mr. M.G.M. Maran who is holding almost 91% of the shares in the petitioner Company is not cooperating for the investigation and this case involves serious cross-border money laundering. Hence, the learned Special Public Prosecutor concluded his arguments by submitting that the ongoing investigation cannot be interfered and that there are no merits in this Writ Petition.



8. We have carefully considered the submissions made on either side and the materials available on record.

9. AXIS bank has filed a complaint before the Central Crime Branch, Chennai, on 08.08.2022, against the petitioner Company and others and an FIR has been registered in Crime No.161 of 2022, for offence under Sections 417 and 420 of IPC. The main allegation that has been made in the complaint is that the AXIS bank was acting as the authorised dealer and was handling the remittances of the petitioner Company towards the Overseas Direct Investments. While making these remittances, the remitter is mandated to give the complete and correct declaration to enable the bank to examine the details and decide as to whether there is a need to approach the RBI for taking necessary approvals/clarifications or whether the remittances can be carried out under the automatic route as per the Reserve Bank of India guidelines. It is alleged that the petitioner Company right from the beginning was making declaration, as if, there is no investigation pending before any enforcement agency or regulatory body. The bank, only at a later point of time, came to know that a misdeclaration has been made by the petitioner Company and thereby, the bank was misled and was made to process the remittance under automatic route. An internal investigation was conducted and it came to light that assets worth Rs.293.91 Crores belonging to Mr. MGM Maran, which also



included his shareholding in the petitioner Company was seized for contravening the provisions of FEMA. Thereby, the petitioner Company, its Directors and its Promoters intentionally and dishonestly concealed the fact about the ongoing investigation by the Directorate of Enforcement and deceived the bank and made the bank process the ODI remittances under automatic route without referring the matter to RBI.

10. The AXIS bank was not a party before the adjudicating authority, who had cancelled the seizure order through proceedings dated 25.07.2022. We do not want to get into the legality or otherwise of the order passed by the adjudicating authority under Section 37A of FEMA since a Writ Petition has already been filed by the Directorate of Enforcement and the same is pending. The findings of the adjudicating authority will not stand in the way of AXIS bank prosecuting the criminal complaint since they have expressed a genuine grievance against the petitioner Company for misdeclaration as a result of which, ODI remittances running to several crores of rupees was done by the bank in the automatic route without drawing the attention of the RBI. This intentional concealment of material fact has given rise to the registration of FIR under Section 417 and Section 420 of IPC. According to the AXIS bank, the petitioner Company has cheated the bank and siphoned off nearly Rs.216.40 Crores out of India and thereby, there was a wrongful gain for the petitioner Company.



11. On the basis of the above FIR, the respondent has opened an ECIR and an investigation has been initiated under the provisions of PML Act. Admittedly, the offence under Section 420 of IPC is a schedule offence. The petitioner Company by making a false declaration has induced the authorised dealer to deliver valuable foreign exchange and such remittances in the hands of the wholly owned subsidiaries of the petitioner Company, situated outside India, would constitute proceeds of crime. According to the respondent, the Directors and the Promoters of the petitioner Company have wrongfully gained by siphoning off huge amounts of money and valuable foreign exchange has been lost by our Country.

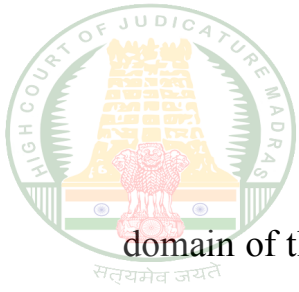
12. The Apex Court in *Vijay Madanlal Choudhary and Others .Vs. Union of India and Others* reported in *2022 SCC OnLine SC 929* has held that ECIR is an internal departmental document which cannot be equated with an FIR and it only paves way for commencing an investigation under the PML Act. To start such an investigation, what is required is that there must be a predicate offence which must be a schedule offence as specified in the schedule to the PML Act. That apart, it is enough if there is a prima facie material to show that the schedule offence has generated proceeds of crime. Both these requirements are satisfied in the present case and we are not in agreement with the submission of the learned Senior Counsel to the effect that the respondent lacks



jurisdiction to investigate the case under the PML Act. The judgment that was cited by

the learned Senior Counsel appearing for the petitioner Company will not apply to the facts of the present case since that was a case where the offences involved was found not falling under the schedule to the PML Act. In the instant case, we are satisfied that the predicate offence under Section 420 IPC has been prima facie made out.

13. Various contentions were raised on either side on the merits of the case and by pointing out to various provisions under FEMA and relevant regulations. We do not want to deal with any issue touching upon the merits of the case by taking the role of the investigation agency. We have to satisfy ourselves as to whether the respondent is acting within the four corners of PML Act and not misusing the powers of investigation. If we are convinced that the investigation taken up by the respondent is within their powers and there is no misuse of powers, we cannot act as a stumbling block in the further progress of the investigation conducted by the respondent. It is left open to the petitioner Company to submit their explanation to the respondent along with all supporting documents and we expect the respondent to proceed further with the investigation within the scope of PML Act. The Apex Court time and again has frowned upon interference into investigations conducted by the Investigation Agency since Courts are not expected to stall investigations, which falls within the exclusive



domain of the executive, unless such an investigation is found to be without jurisdiction or there is misuse of power of investigation or such an investigation is an abuse of process of law.

14. In view of the foregoing discussion, we do not find any ground to interfere with the investigation conducted by the respondent and in the result, this Writ Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(P.N.P.,J.)

(N.A.V.,J.)

19.12.2022

Internet : Yes/No

Index : Yes/No

Speaking order /Non-Speaking order

KP

To

1.The Assistant Director
Directorate of Enforcement, Chennai Zone-II
Shastri Bhavan, 3rd Floor, 3rd Block, B-Wing
No. 26, Haddows Road
Chennai – 600 006.

2.The Public Prosecutor
High Court, Madras.



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W.P.No.28140 of 2022

P.N.PRAKASH,J.

and

N. ANAND VENKATESH,J.

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**Order in
W.P.No.28140 of 2022
and WMP No.27428 of 2022**

19.12.2022