

(2023) 11 ATPMLA CK 0004

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: FPA-PMLA-1663, 1669, 1670, 3201/CHN/2017, FPA-PMLA-1671/CHN/2017

L. Sivaramakrishnan

APPELLANT

Vs

Deputy Director, Directorate Of
Enforcement

RESPONDENT

Date of Decision: Nov. 21, 2023

Acts Referred:

- Indian Penal Code, 1860 - Section 120B, 420, 467, 471
- Code Of Criminal Procedure, 1973 - Section 482

Hon'ble Judges: G.C. Mishra, Member; Balesh Kumar, Member

Bench: Division Bench

Advocate: Naveen Malhotra, Ritvik Malhotra, Arjun Sawhney, Mansi Srivastava

Final Decision: Allowed

Judgement

FPA-PMLA-1663/CHN/2017

FPA-PMLA-1669/CHN/2017

FPA-PMLA-1670/CHN/2017

FPA-PMLA-1671/CHN/2017

1. This Order disposes of the Appeals No. FPA-PMLA-1663/CHN/2017, FPA-PMLA-1669/CHN/2017, FPA-PMLA-1670/CHN/2017 & FPA-PMLA-1671/CHN/2017 filed by Shri L. Sivaramakrishnan, Ms. S. Gomathi Sankar, Smt. S. Ratha and Ms. S. Gomathi Parravathy respectively. The Appeals were filed on 13.02.2017 against the impugned Order dated 29.12.2016 passed by the Ld. Adjudicating Authority, PMLA, confirming the Provisional Attachment Order No. 18/2016 dated 23.08.2016 issued by the Deputy Director, Enforcement Directorate, Chennai in ECIR No. ECIR/CEZO/10/2015 dated 20.11.2015.

2. The impugned Order dated 29.12.2016 confirmed the Provisional Attachment Order No. 18/2016 dated 23.08.2016, in the Original Complaint (O.C.) No. 633/2016 dated 07.09.2016. The provisional attachment of immovable property comprising of one vacant house-site valued at Rs. 15,00,000/- and movable property comprising of 18 term deposits of Rs. 51,77,682/- in State Bank of India, Indian Bank and Syndicate Bank branches in Chennai was made. The provisional attachment of the immovable and movable properties totally valued at Rs. 66,77,682/- (Rupees Sixty six lakhs Seventy seven thousands and Six hundred eighty two only) was confirmed in the impugned Adjudication Order 29.12.2016. The immovable property was acquired by Shri L. Sivaramakrishnan in his own name. The movable properties were in the name of Shri L.

Sivaramakrishnan (One term deposit of Rs. 48,000/-), Smt. S. Ratha, his wife (Thirteen term deposits of Rs. 36,13,798/-), Ms. S. Gomathi Parrvathi, his daughter (One term deposit of Rs. 5,90,884/-) and Ms. S. Gomathi Sankar, his another daughter (Three term deposits of Rs. 9,25,000/-).

3. The Provisional Attachment Order dated 23.08.2016 was issued on the basis of FIR Nos. 06/2015 dated 21.09.2015 and RC 02(E)/2016 dated 08.01.2016 filed by CBI, BS & FC, Bangalore. FIR No. 06/2015 was registered on the complaint of IDBI Bank, Chennai against M/s First Leasing Company of India Ltd. and its promoters, Directors and other key officials for having conspired to have siphoned off loans and advances from the Bank to the tune of Rs. 274 Crores. FIR No. RC 02(E)/2016 was registered on the complaint of State Bank of India, Chennai against M/s First Leasing Company of India Ltd. and its promoters, Directors and other key officials for having diverted Rs. 248 Crores fraudulently, out of the loans and advances granted to it. Offences under Sections 120-B, 420, 467 & 471 of the IPC were invoked as Scheduled Offences under PMLA to register ECIR No. 10/2015 by the Enforcement Directorate, Chennai. Accordingly, the PAO No. 18/2016 was issued on 23.08.2016 which was confirmed by the Ld. Adjudicating Authority on 29.12.2016.

4. During the course of the hearing on 30.11.2022, in the Appeals filed before this Tribunal, the Ld. Counsel for the appellants informed that the Division Bench of the Hon'ble High Court of Madras has quashed the proceedings on 04.02.2021 in Criminal Original Petition No. 24856 of 2016 in the cases of the two appellants namely Shri L. Sivaramakrishnan and Smt. S. Ratha. The Ld. Counsel for the respondent informed that SLPs have been preferred against the Order dated 04.02.2021 of the Hon'ble High Court of Madras vide SLP (S) No. 007021 & 007023/2021. It was submitted by the Ld. Counsel for the appellants that there is no stay granted by the Hon'ble Supreme Court. He further informed that on the basis of the Order passed by the Hon'ble High Court of Madras, the prosecution complaint filed against the appellants under The Prevention of Money- Laundering Act, 2002 has been quashed by the Principal Sessions Court at Chennai on 24.03.2021. An application for dropping of the proceedings in view of the aforementioned Orders, was filed and served on the respondents on 12.09.2023. Arguments were heard on 31.10.2023. Ld. Counsels for the respondent did not want to file the reply to the application and prayed for disposal of the appeals only after completion of proceedings before the Hon'ble Supreme Court. However, they admitted that there was no stay against the aforementioned Orders of the Hon'ble High Court of Madras and against the Order of the Principal Sessions Court at Chennai.

5. The Hon'ble High Court of Madras in its Order dated 04.02.2021 in Criminal Original Petition No. 24856 of 2016 filed by the two Appellants herein under Section 482 CRPC, quashed the proceedings in Criminal Complaint CC No.71 of 2016 in the ECIR No. 10/2015 filed before the Ld. Principal Sessions Court (Special Court for PMLA Cases). The Hon'ble High Court has observed that while Shri L. Sivaramakrishnan has been made as an accused (A9) by the CBI in its Charge Sheet filed in the proper Court for FIR No. RC- 02(E)/ 2016, they have very clearly stated that the loan amounts obtained from the Banks were diverted for the benefits of persons other than Shri L. Sivaramakrishnan. The Hon'ble High Court has observed that Shri L. Sivaramakrishnan is not a beneficiary of the proceeds of the crime. Even from the Charge Sheet filed by the CBI for the FIR No. 6/2015 before the proper Court, the Hon'ble High Court has found that though Shri L. Sivaramakrishnan is an accused (A6), he has not benefitted financially from the criminal activity of fudging records.

6. The Hon'ble High Court has noted from the aforementioned Criminal Complaint 71/2016 that though the proceeds of crime have been alleged to have come to Shri L.

Sivaramakrishnan by way of salaries, performance bonus and other perquisites, the cause of action has in fact arisen only after the loans were sanctioned by the SBI on 08.02.2005 and by the IDBI Bank on 17.08.2005 and not before that. Shri L. Sivaramakrishnan undertook employment with the arraigned company in 1993.

7. The Hon'ble High Court has observed the following in Paras 10, 11 & 12 of the Order:

"Mr. Sankaranarayanan, learned Additional Solicitor General attempted to defend the prosecution by contending that the loans obtained from the banks were paid as salary to Shri L. Sivaramakrishnan and since Shri L. Sivaramakrishnan is alleged to have been a party to the conspiracy for fudging the records, his salary should be treated as proceeds of crime. In our opinion, this is indeed far-fetched. The complaint is no doubt replete with the misdemeanours of Shri L. Sivaramakrishnan in manufacturing the accounts of FLCI. But he is facing the music for that in the CBI prosecution before the Additional Chief Metropolitan Magistrate, Chennai, in C.C. No. 8 of 2017. The immovable property that is said to have been purchased by Shri L. Sivaramakrishnan, viz., a vacant house-site measuring 1,500 sq.ft. in Muthukalipatti village, for a sale consideration of Rs.90,000/- in the year 2009, from the amounts saved from his monthly salaries, has been shown as the asset acquired by him from the proceeds of crime. This, in our opinion, is a little preposterous, because, in 2005, his income was Rs.3,13,950/- and every year, it has slowly increased vide paragraph 4.25 of the complaint. To say that with this income, he could not have purchased a house-site for Rs.90,000/- defies logic.

11. Mr. Sankaranarayanan contended that, in his confession statement, Shri L. Sivaramakrishnan has stated that he has purchased the said property for Rs. 5,75,000/-, but, had registered it for Rs. 90,000/- in the year 2009. If this averment in the confession statement is accepted, it can only show that he had undervalued the document and it cannot lead to the inference that he had purchased the property with the proceeds of crime. When the complaint itself, in the paragraph 4.6.9 says that, FLCI (M/s First Leasing Company of India Ltd.) had diverted the monies obtained from the banks to 15 satellite companies, it is preposterous to say that the salaries and bonus paid to Shri L. Sivaramakrishnan were proceeds of crime. There is no shred of material to show that Shri L. Sivaramakrishnan was a recipient of any amount, except the salary, bonus and other emoluments, which were paid to him, in the course of his employment as Accountant in FLCI.

12. That apart, the prosecution of his wife Smt. S. Ratha, in whose name, there are some fixed deposit amounts on the premise that she is holding the proceeds of crime, in our opinion, is also misconceived. The total amount of fixed deposit along with interest is shown as Rs. 51,77,682/-, whereas, the total salary received by Shri L. Sivaramakrishnan from 2005 to 2014 is shown as Rs.70,07,620/-. Therefore, the amounts deposited by him had obviously earned interest in fixed deposit and the total amount is not exceeding Rs.70 lakhs."

8. The Hon'ble High Court of Madras has concluded that the salaries and perquisites that were paid to Shri L. Sivaramakrishnan while he was in employment with the M/s First Leasing Company of India Ltd. was not proceeds of crime and hence, any property acquired therefrom would not be tainted. The Hon'ble High Court of Madras has quashed the prosecution of Shri L. Sivaramakrishnan and his wife Smt. S. Ratha, the two Appellants herein, under the Prevention of Money Laundering Act, 2002.

9. In view of the aforementioned Order of the Hon'ble High Court of Madras of quashing the Criminal Complaint No. 71/2016, the Ld. Principal Sessions Court at

Chennai vide its Order dated 24.03.2021 closed the cases against the two Appellants herein, namely Shri L. Sivaramakrishnan & Smt. S. Ratha.

10. In view of the findings of the Hon'ble High Court of Madras that the proceeds of crime have not flowed to Shri L. Sivaramakrishnan as salaries and perquisites that were paid to him in employment with M/s First Leasing Company of India Ltd. the attachment of the immovable property of value Rs. 15,00,000/- in his name cannot stand. The Hon'ble High Court of Madras has also held that the term deposits attached in the name of Smt. S. Ratha, his wife on the grounds that she is holding the proceeds of crime is also misconceived. The same logic applies to the term deposits in the names of Ms. S. Gomathi Sankar & Ms. S. Gomathi Parravathy. Hence, the attachment of the eighteen term deposits of value Rs. 51,77,682/- in the names of Shri L. Sivaramakrishnan, Smt. S. Ratha, Ms. S. Gomathi Sankar & Ms. S. Gomathi Parravathy cannot stand.

11. Therefore, the Provisional Attachment Order No. 18/2016 and the impugned Adjudication Order dated 29.12.2016 are set aside. Appeals No. 1663,1669,1670 & 1671/CHN/2017 and Application No. MP-PMLA-12979/CHN/2023(Misc.) are allowed. Other applications are also accordingly disposed of. Ld. Counsel for the respondent has informed that they have filed SLP(S) No. 007021 & 007023/2021 which are pending before the Hon'ble Supreme Court. In case, the Hon'ble Supreme Court passes a judgement in the said SLPs which have a bearing on these appeals, the respondent would be at liberty to take appropriate remedies, which may include a Review Petition before this Tribunal.

Appeals No. 1663,1669,1670 & 1671 /CHN/2017 are allowed.

The Registry is directed to send the copy of the Order to the parties.

The record be consigned to the record room after due compliance.