

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE DEVAN RAMACHANDRAN

TUESDAY, THE 12TH DAY OF SEPTEMBER 2023 / 21ST BHADRA, 1945

WP(C) NO. 15651 OF 2023

PETITIONER:

V.P.NANDAKUMAR
AGED 69 YEARS, PADMASAROJ',
VAZHAPPULLY HOUSE, VALAPPAD,
THRISSUR, PIN - 680567
BY ADVS.
D.KISHORE
MEERA GOPINATH
R.MURALEEKRISHNAN (MALAKKARA)

RESPONDENT:

THE ASSISTANT DIRECTOR
DIRECTORATE OF ENFORCEMENT,
COCHIN ZONAL OFFICE, KANOOS CASTLE,
A.K.SESHADRI ROAD, MULLASSERY CANAL
ROAD WEST, COCHIN, PIN - 682011
BY ADV.
SRI.JAISHANKAR V.NAIR [SC]

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 12.09.2023, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

C.R.

DEVAN RAMACHANDRAN, J.

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W.P.(C).No. 15651 of 2023

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Dated this the 12th day of September, 2023

JUDGMENT

The parties are *ad idem* that the Enforcement Case Information Report (hereinafter referred to as 'ECIR', for short) registered against the petitioner, has already been quashed by this Court in Crl.M.C.No.5167/2023.

2. The axiomatic question is whether Ext.P12 order assailed in this writ petition, issued under Section 17(1A) of the Prevention of Money Laundering Act, 2002 ('PMLA' for short), is now sustainable.

3. Sri.Mahesh Jethmalani - learned Senior counsel, instructed by Sri.D.Kishore, appearing for the petitioner, emphatically predicated that, with the foundational edified on the case - registered by the Enforcement Director ('ED' for short) under the provisions of the 'PMLA' - having been abrogated by this Court in Crl.M.C.No.5167/2023, Ext.P12 order has lost its legs to stand on; and cannot, therefore, be now supported or justified to continue. The learned Senior Counsel, therefore, prayed that Ext.P12 be set aside.

4. Sri.Jaishankar V. Nair - learned Standing Counsel for the

'ED', however, argued in support of Ext.P12, saying that said order was issued at a time when the petitioner was facing a criminal charge under Section 420 of the Indian Penal Code (IPC), registered by the jurisdictional Police Authorities. He argued that since Section 420 of the IPC is one among the scheduled offences under Section 2(1)(y) of the 'PMLA', and the 'ECIR' having been registered on 06.09.2022; it became imperative that the properties covered by Ext.P12 be protected from depletion or destruction. He explained that, therefore, Ext.P12 was issued under the provisions of Section 17(1A) of the 'PMLA' on 04.05.2023 (shown incorrectly in Ext.P12 as 04.05.2022); and vehemently asserted that it was within the jurisdiction of the competent Authority to have done so.

5. However, to a pointed question from this Court, Sri.Jaishankar V. Nair was unable to cogently justify how the proceedings under the 'PMLA' is still maintained against the petitioner, when the 'ECIR' itself has been quashed by this Court. His explanation was that, it has been well settled in law by the Hon'ble Supreme Court in **Vijay Madanlal Choudhary & others v. Union of India & others (2022 SCC OnLine SC 929)**, that the offence of money laundering is an independent offence relating to processes or activities connected with the proceeds of crime; and that, during the investigation conducted by the 'ED', it has

come into possession of vital information against the petitioner, which has now been handed over to the police for further investigation. He submitted that this course was adopted under Section 66 of the 'PMLA' and, therefore, that unless the police complete their investigation on such additional inputs, made available to them by the officials of the ED, Ext.P12 order cannot be vacated. He thus prayed that this writ petition be dismissed and that competent Authority of the 'ED' be permitted to await further information from the Kerala Police, after investigation into the additional information favoured to them by the former.

6. Though this Court finds in favour of the law as afore explained by Sri.Jaishankar V. Nair, the singular fact remains that any investigation against the petitioner under the 'PMLA' is possible only if it is edified on a crime registered. As matters now stand, the FIR registered by the jurisdictional police officers against the petitioner has been quashed by this Court; consequent to which, the 'ECIR' has also been quashed, as said above, through the judgment in CrI.M.C.No.5167/2023.

7. Of course, the 'ED' now asserts that, during their investigation, they have come to be in possession of certain other inputs, which would be sufficient to implicate the petitioner in various offences; and that they have handed over the same to the

Kerala Police for further investigation. However, Sri.Jaishankar V. Nair was candid enough to admit that his clients have neither received any information from the Kerala Police *qua* such investigation yet; nor are they aware of any new FIR having been registered.

8. Indubitably, therefore, when there is no FIR registered, hypostised on which an 'ECIR' is also not available, any further investigation against the petitioner under the 'PMLA' will have to cease.

9. In such perspective, the acme question is whether Ext.P12 order should be allowed to continue.

10. I am certain, without any doubt, that in view of quashing of the 'ECIR' and in the absence of any further FIR being registered against the petitioner, Ext.P12 cannot be allowed to hold the field, particularly when it causes sure prejudice to the person against which it is issued.

11. That being said, I notice from the judgment in Crl.M.C.No.5167/2023, that this Court has made it abundantly clear that *"in the event of the predicate offence getting revived, it would always be open for the ED to revive the proceedings under the Prevention of Money Laundering Act, 2002 as well."* Indubitably, this is the best protection that the 'ED' can have; and

apodictically, therefore, as and when any such revival is to take place in law, they will be at full liberty to issue orders akin to Ext.P12 under Section 17 (1A) of the PMLA, 2002; for which, none of my observations in this judgment would be a fetter.

With the afore clarification, I allow this writ petition and set aside Ext.P12.

As a necessary corollary to the afore declaration, the respondent will return all the original documents of the properties covered by Ext.P12 without any avoidable delay, but within three weeks from the date of receipt of a copy of this judgment.

**Sd/-
DEVAN RAMACHANDRAN
JUDGE**

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APPENDIX OF WP(C) 15651/2023

PETITIONER EXHIBITS

- Exhibit P1 TRUE COPY OF THE COMPLAINT DATED 11.05.2022 REGISTERED AS C.M.P. NO.4374/2022 BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE'S COURT, KODUNGALLUR
- Exhibit P2 TRUE COPY OF THE FIR NO.376/2022, DATED 24.05.2022 REGISTERED BEFORE VALAPPAD POLICE STATION
- Exhibit P2(a) ENGLISH TRANSLATION OF EXHIBIT P2
- Exhibit P3 TRUE COPY OF THE FINAL REPORT, DATED 19.01.2023 FILED BY THE INSPECTOR OF POLICE, VALAPPAD POLICE STATION
- Exhibit P3(a) ENGLISH TRANSLATION OF EXHIBIT P3
- Exhibit P4 TRUE COPY OF THE JUDGMENT DATED 08.01.2021 IN WP(C). NO.35024/2019
- Exhibit P5 TRUE COPY OF THE STATEMENT DATED 06.07.2022 FILED BY THE RESPONDENT HEREIN IN WP(C). NO.12387/2021
- Exhibit P6 TRUE COPY OF THE ADDITIONAL STATEMENT, DATED 25.11.2022 FILED BY COUNSEL FOR THE RESPONDENT HEREIN IN WP(C).NO.12387/2021
- Exhibit P7 TRUE COPY OF THE JUDGMENT DATED 14.02.2023 IN WP(C). NO.12387/2021
- Exhibit P8 TRUE COPY OF ONE SUCH SUMMONS ISSUED TO THE PETITIONER DATED 01.12.2022 BY THE OFFICE OF THE RESPONDENT DIRECTING TO APPEAR ON 05.12.2022
- Exhibit P9 TRUE COPY OF THE LETTER DATED 05.12.2022 (WITHOUT ITS ANNEXURES) SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT
- Exhibit P10 TRUE COPY OF THE LETTER DATED 07.12.2022 (WITHOUT ITS ANNEXURES) SUBMITTED BY THE PETITIONER BEFORE THE RESPONDENT
- Exhibit P11 TRUE COPY OF THE INSPECTION REPORT (WITHOUT ITS ANNEXURES), DATED NIL, ISSUED BY THE RBI
- Exhibit P12 TRUE COPY OF THE ORDER DATED 04.05.2023 (WRONGLY SHOWN AS 04.05.2022) ISSUED BY THE RESPONDENT
- Exhibit P13 TRUE COPY OF THE STATEMENT DATED 04.05.2023 ISSUED BY THE RESPONDENT TO THE PETITIONER
- Exhibit P14 TRUE COPY OF THE LETTER DATED 01.01.2015 ISSUED BY THE RBI TO THE PETITIONER
- Exhibit P15 TRUE COPY OF THE ORDER DATED 06.07.2022 IN CRL MC NO. 4436-2022

Exhibit P16 TRUE COPY OF THE ORDER DATED 15.03.2023
IN CRL. MA NO. 1 OF 2022 IN CRL MC NO.
4436 OF 2022.

Exhibit P17 TRUE COPY OF THE JUDGMENT DATED 18/8/2017
IN CRL.MC NO. 764 OF 2014

Exhibit P18 TRUE COPY OF THE JUDGMENT DATED
19/10/2017 IN CRL.MC NO. 733 OF 2014 OF
THIS COURT

Exhibit P19 TRUE COPY OF THE NOTICE VIDE NO. T-
3/52/KCZO2014/1815 ISSUED BY THE
RESPONDENT REQUIRING THE PETITIONER TO
FURNISH THE DETAILS GIVEN UNDER THE
SCHEDULE WITHIN 7 DAYS OF RECEIPT OF THE
SAID LETTER

Exhibit P20 TRUE COPY OF THE ECIR/KCZO/36/2022 ISSUED
BY THE RESPONDENT DATED 6/9/2022

Exhibit P21 TRUE COPY OF THE JUDGMENT DATED 15/6/2023
OF THIS HON'BLE COURT IN CRL.MC NO. 4436
OF 2022

Exhibit P22 TRUE COPY OF THE INTERIM ORDER DATED
12/7/2023 IN CRL MA NO. 1 OF 2023 IN
CRL.MC NO. 5167 OF 2023

Exhibit P23 TRUE COPY OF THE ORDER IN CRL.M.C NO.
5167 OF 2023 DATED 25.8.2023

RESPONDENT EXHIBITS

Exhibit R1(a) TRUE COPY OF THE P L ACCOUNT FOR THE YEAR
ENDED 31 03 2022