

Ingenuine Documents Submitted By Clients For Form 15CB, CA Cannot Be Prosecuted Under PMLA: Madras High Court

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

P.N. PRAKASH; J., G. CHANDRASEKHARAN; J.

Criminal Revision Case No.1354 of 2022 and Crl.M.P.No.14792 of 2022; 23.11.2022

Murali Krishna Chakrala versus Deputy Director, Directorate of Enforcement

For Petitioner: Mr.Nithyaesh Natraj, and Mr.Vaibhav R. Venkatesh assisted by Mr.S.Ravi for M/s.Sri Law Associates

For Respondent: Mr.N.RameshSpecial Public Prosecutor [ED]

ORDER

P.N. PRAKASH, J.

This revision has been filed challenging the proceedings dated 26.08.2022 made in Crl.M.P.No.2864 of 2022 in Spl.C.C.No.07 of 2021 on the file of XII Additional Special Court for CBI cases at Chennai.

2. The facts that are required for deciding this criminal revision are as under :

2.1. One Mani Anbazhagan opened a bank account in the name of some persons in Indian Bank, Thousand Lights Branch and presented some import documents to the Branch Manager, requesting him to transfer foreign exchange to certain entities abroad. The Branch Manager smelt a rat and sent those import documents to the Principal Commissioner of Customs for verification. The Principal Commissioner of Customs verified those import documents, including the documents of B.K.Electro Tool Products and found that most of them were forged ones. Immediately, the Principal Commissioner of Customs alerted the Branch Manager of Thousand Lights and also informed the Enforcement Directorate about this transaction. The Branch Manager, Thousand Lights Branch reported this matter to his higher ups.

2.2. On a complaint given by the Deputy Manager, Indian Bank, Thousand Lights Branch, the CCB-I, Chennai, registered a case in Crime No.63 of 2017 on 06.03.2017 for the offences under Sections 465, 467, 468, 471 and 420 IPC against Kannan (A1), Rasool Khan (A2), Eliyaspeer Mohamed (A3), Syed Haroon (A4), H.Basha (A5), R.Imanuel (A6) and others.

2.3. Since the FIR discloses the commission of a scheduled offence under the Prevention of Money-Laundering Act, 2002, the Enforcement Directorate registered a case in ECIR No.5 of 2017 on 01.04.2017 and took up investigation of the case.

2.4. The CCB-I, Chennai, arrested Kannan (A1) in Crime No.63 of 2017 and he was remanded in judicial custody. The officers of the Enforcement Directorate interrogated Kannan (A1) in the prison and obtained more information from him about the transactions. As the Enforcement Directorate started expanding the investigation, more and more skeletons started coming out of the cupboard.

2.5. Suffice it to say that in this case, we are concerned only with the monies sent abroad by one entity viz., B.K.Electro Tool Products. Initial investigation by the Enforcement Directorate qua B.K.Electro Tool Products revealed that this entity was started in the name of Kannan, who was merely a name lender and had no means to do any business. However, current accounts were opened in the name of B.K.Electro Tool Products in seven banks, but, in all the applications submitted to the bank, the photograph of Kannan

was not affixed, but that of one S.R.Kavin Sidhaarth @ R.Senthil Kumar. When Kannan was confronted with this, he stated that he does not know the person in the photograph and therefore, the Enforcement Directorate went about tracing the person whose photographs were affixed in the account opening forms. This led the Enforcement Directorate to Kavin Sidhaarth @ Senthil Kumar, who was masquerading as Kannan and accordingly, Kavin Sidhaarth @ Senthil Kumar (A1) was arrested by the Enforcement Directorate. This further led the Enforcement Directorate to other accused viz., Kannan (A2), Thamim Ansari (A3), Mani Anbazhagan (A4) and Murali Krishna (A5).

2.6. The Enforcement Directorate completed the investigation *qua* B.K.Electro Tool Products and filed a complaint in Spl.C.C.No.7 of 2021 in the Special Court for PMLA Cases (XII CBI Court), Chennai, against the aforesaid five persons. The allegations in the complaint are to the effect that these persons have opened fictitious bank accounts, submitted forged Bills of Entry, parked huge amounts in those bank accounts and had them transferred to various parties abroad through the bank, in order to make it a licit transaction for the alleged purpose of import.

2.7. Initial investigation revealed that a sum of Rs.8 crores was sent out of India through seven banks to fictitious entities abroad. However, the Enforcement Directorate continued with the investigation of the case, though complaint was filed as stated above. During investigation, the Enforcement Directorate stumbled upon some Form 15CB that were issued by one Murali Krishna Chakrala, an Auditor. They zeroed in on him and during interrogation, he revealed startling facts that one of his clients Kiyam Mohammed had approached him for issuance of Form 15CB under Rule 37BB of the Income Tax Rules, 1962, and submitted documents in support of his request; accordingly, he (Murali Krishna Chakrala) perused those documents and issued certificates to the effect that it is not necessary to issue Form 15CB in respect of overseas payment of imports.

2.8. The five numbers of Form 15CB relating to B.K.Electro Tool Products were also uploaded in the website portal of Income Tax Department on 22.08.2016. The five numbers of Form 15CB issued by Murali Krishna Chakrala were presented to the Branch Manager, State Bank of Travancore, Mount Road Branch, for transferring a sum of Rs.3.45 crores to various entities in Honk Kong.

2.9. Based on the lead provided by Murali Krishna Chakrala, the Enforcement Directorate zeroed in on Kiyam Mohammed and apprehended him. Kiyam Mohammed revealed the involvement of Abdul Haleem in these activities and accordingly, Abdul Haleem was nabbed.

2.10. After completing this part of the investigation, the Enforcement Directorate filed a supplementary complaint in Spl.C.C.No.7 of 2021, by virtue of which, Murali Krishna Chakrala, Kiyam Mohammed and Abdul Haleem were arrayed as A6, A7 and A8 respectively.

2.11. Murali Krishna Chakrala approached this Court in CrI.O.P.No.9047 of 2022 for quashing the prosecution in Spl.C.C.No.7 of 2021. However, the said petition has been dismissed as withdrawn on 21.04.2022, with liberty to raise all the points before the trial Court.

2.12. Thereafter, Murali Krishna Chakrala filed a discharge petition in CrI.M.P.No.2684 of 2022 in Spl.C.C.No.7 of 2021, which has been dismissed by the trial Court on 26.08.2022, aggrieved by which, the present revision petition has been filed.

3. Heard Mr.Nithyaesh Natraj, learned counsel, representing Mr.S.Ravi, learned counsel for Murali Krishna Chakrala [petitioner herein] and Mr.N.Ramesh, learned Special Public Prosecutor for the Enforcement Directorate.

4. The Enforcement Directorate has filed a detailed counter affidavit dated 09.11.2022 justifying the prosecution of Murali Krishna Chakrala and contending that there are *prima facie* materials against him for the trial to proceed further. The essence of the counter affidavit has been set out in paragraph Nos.4 and 5, which read as under:

"4. It is submitted that the averments contained in the criminal revision petition are not true and denied in toto. It is further submitted that the petitioner as a practising Chartered Accountant, free to practise his profession and render professional services in the matter of filing VAT return to the business entity in the name and style of M/s.Copy Care, which is owned by A-7. Whereas, the Petitioner/A-6, in this case travelled beyond the professional scope, ethics and value and in the process issued the Form - 15CB in the name of M/s.B.K.Electro Tool Products, using the PAN number of A-2 and photo identity of A-1 and ultimately facilitated the money mule, to operate the account in the name of M/s.B.K.Electro Tool Products through seven AD Banks to send foreign exchange to the extent of USD 8,237,007.95 equivalent to INR 59,47,03,760.46, without disclosing the identity of the beneficial owner and end-use. The Petitioner/A-6 is deeply involved in the scam and it is no way connected within the scope of professional services as a chartered accountant and therefore the criminal revision petition is liable to be dismissed as devoid of merit.

5. I submit that the Petitioner/A-6 made an admission that he issued certificate in Form 15CB in favour of the M/s.B.K.Electro Tool Products at the request of A-7. The Petitioner/A-6 made further admission that the certificate in Form- 15CB is one of the supporting documents to make foreign outward remittance. The above submission of the Petitioner/A-6 crystallise that he never interacted or looked into financial state of affairs of either A2 or A1 whose PAN number and Photograph were being used in operating the account of M/s.B.K.Electro Tool Product. The only excuse sought by the Petitioner/A-6 that there was a bonafide belief on his part with A-7 that made him to sign the Form 15CB showing the photograph of A1 and PAN number of A2 as an owner of M/s.B.K.Electro Tool Products. Whereas, A-7 was examined u/s.50 of PMLA, 2002, on 12.01.2022, A-7 neither identified the Petitioner/A-6 nor A-1 or A-2, with reference to photograph, in reply to question no.8. The combined reading of submission of the Petitioner/A-6 and the statement given by A7 before the IO is contradictory with one another. The truth can be unravelled only at the time of trial and it is premature at this point of time. Further, the foreign outward remittances are made through the seven AD banks and not only with one bank as projected by the petitioner/A-6."

5. Mr.Nithyaesh Natraj, learned counsel, took us through the statement of Murali Krishna Chakrala that was given by him under Section 50 of the PML Act as well the averments in the complaint and submitted that if not for Murali Krishna Chakrala, the involvement of Kiyam Mohammed (A7) and Abdul Haleem (A8) would have never come to light and that Murali Krishna Chakrala had, in the course of his professional duties, given five numbers of Form 15CB, after scrutinizing the documents that were presented to him by Kiyam Mohammed (A7). Murali Krishna Chakrala did not have any reason to suspect the genuineness of the import documents. Therefore, it is seen that the petitioner has neither directly or indirectly participated in the generation of proceeds of crime in any manner whatsoever.

6. Mr.Nithyaesh Natraj, learned counsel, further contended that Form 15CB for making overseas payment towards import is not required even under the law and that is why, except the State Bank of Travancore, all the other nationalised banks had transferred the funds based on the import documents without insisting upon a Form 15CB from a Chartered Accountant. Had Murali Krishna Chakrala been a part of the conspiracy, he

would not have gullibly uploaded the certificates into the Income Tax Department portal on the same day.

7. Mr.Nithyaesh Natraj, learned counsel, took us through the statement of Murali Krishna Chakrala that was given to the Enforcement Directorate, which is in question and answer form and the relevant portion therefrom is extracted *ad verbum* :

Q.No.6	You have shown the five certificates in Form-15CB issued in favour of M/s.B.K. Electro Tool Products, having office address at New No.18/1, Balaya Avenue, Luz, Mylapore, Chennai 600 004 and I have put my signature in all the Form-15 CB as an acknowledgment of having seen. Please provide the contact no. of person who approached to issue these certificates?
A.No.6	Mr. Kiyam Mohammed, who is having office at Chepauk. He is my client in the matter of filing VAT returns for approximately 10 months in 2013 for his entity M/s. Copy Care with a distinct VAT registration number TIN 33890662791 and with CST registration no.962289 dated 11.12.2012. He is available in the mobile number 98411 03340, 95 51 602393, 97102 41733, 99624 98086
Q.No.7	How much fee/service charge that the client has paid you for the issue of the said five certificates mentioned above and what is the mode of payment?
A.No.7	Approximately Rs.800/- to Rs.1,000/- per certificate the client has paid me for the issue of certificate in CASH.
Q.No.8	What kind of record or register you maintain for issue of certificate in Form-15CB?
A.No.8	I have not maintained any record or register.
Q.No.9	You are shown the copy of the Enforcement Case Information Report (ECIR) No.ECIR/CEZO/05/2017 dated 01.04.2017. Out of 8 business entities, shown as suspected persons at Column No.5 of the ECIR, how many suspected persons/business entities, you have issued the certificate in Form 15 CB?
A.No.9	I have seen the copy of the No. ECIR/CEZO/05/2017 dated 01.04.2017 and put my signature as a token of having seen the document. After going through the names appearing in the column No.5, I could remember that I issued the certificate in Form 15CB to M/s. Metal Tradus and M/s. Horizon Trading, apart from M/s. B.K. Electro Tools Products at the request of Mr. Kiyam Mohammed whose details is given in reply to Question No.6.
Q.No.10	You are shown the copy of the Enforcement Case Information Report (ECIR) No.ECIR/CEZO/13/2017 dated 29.09.2017. Out of 57 business entities, shown as suspected persons, at Column No.5 of the ECIR, how many suspected persons/business entities, you have issued the certificate in Form 15CB?

A.No.10	I have seen the copy of the No.ECIR/CEZO/13/2017 dated 29.09.2017 and put my signature as a token of having seen the document. After going through the names appearing in the column No.5, I could remember that I issued the certificate in Form 15CB to M/s.Geo Visits Tours & Travels, M/s. Neo Space Trading, M/s. Premier Solutions at the request of Mr. Kiyam Mohammed whose details is given in reply to Question No.6.
Q.No.11	Do you have any documents in the matter of identifying Mr.Kiyam Mohammed ?
A.No.11	Yes, I have the following documents for the purpose of identifying Mr.Kiyam Mohammed.

8. The allegations against Murali Krishna Chakrala in the impugned complaint have been set out in paragraphs 81 and 143 which read as under:

"81. That Mr. Murali Krishna Chakrala/A-6, participated in the enquiry in response to the summon and a statement u/s 50 of PMLA, 2002 was on 11.01.2022 wherein, Mr. Murali Krishna Chakrala/A-6 stated clearly that he issued 5 certificates in Form 15CB in favour of M/s. B.K. Electro Tool Products at the request of one Mr. S. Kiyam Mohammed/A-7. Further, A-6 also stated that he issued certificates in Form-15CB in favour of M/s. Metal Tradus, M/s. Horizon Trading, M/s. Geo Visits Tours & Travels, M/s. Neo Space Trading and M/s. Premier Solutions at the request of same Thiru. S. Kiyam Mohammed/A-7. The A-6 also produced the photograph, VAT registration details and IEC Application of Thiru S. Kiyam Mohammed/A-7. After completion of enquiry, the A-6 also volunteered in identification of Mr. S. Kiyam Mohammed/A-7 in the business place on the next day i.e., 12.01.2022. The original statement dated 11.01.2022 given by Mr. Murali Krishna Chakrala/A-6 is filed as Document No.77. Thiru. Murali Krishna Chakrala/A-6 also by writing a letter dated 12.01.2022 to the Deputy Director, Directorate of Enforcement, identified Thiru S. Kiyam Mohammed/A-7 with reference to photograph and other business details. The letter dated 12.01.2022 addressed by A-6 to the Deputy Director, Directorate of Enforcement is filed as Document No.78.

143. Role of Thiru. Murali Krishna Chakrala/A-6:

- a. He issued five certificates in Form 15CB in favour of M/s. B.K. Electro Tool Products without looking into financial and business background of A-1 and A-2 and without any interaction with both of them.
- b. He issued five certificates in Form 15-CB in favour of M/s. B.K. Electro Tool Products linked to the PAN number of A-2 and in the process, allowed A-1 to use the same in the State Bank of Travancore (now merged with SBI, Anna Salai Branch) that facilitated to make fraudulent foreign outward remittance.
- c. He issued five certificates in Form-15CB in favour of M/s. B.K. Electro Tool Products and handed over the same to A-7, without ascertaining the relation between A-7 with A-1 and A-2.
- d. He also issued certificate in Form 15CB in favour of M/s. Metal Tradus and handed over the same to A-7."

9. The submission of Mr.Nithyaesh Natraj, learned counsel, that mere issuance of five numbers of Form 15CB at the request of Kiyam Mohammed [A7], would not, by itself, bring Murali Krishna Chakrala into the net of conspiracy to indulge in money laundering, merits acceptance. It is clear that he had merely received Rs.1,000/- for a certificate without anything more. That apart, he had helped the Enforcement Directorate to identify

Kiyam Mohammed [A7], who was the mastermind of the whole operation and therefore, Murali Krishna Chakrala would be the best witness for linking A1 to A5 with A7 and A8.

10. As regards the requirements for submission of Form 15CB, we find from the records that only the State Bank of Travancore had insisted upon the said certificates and not the other six banks through which, foreign remittances were made by Kiyam Mohammed [A7] and Abdul Haleem [A8]. The complaint and the accompanying background show that Abdul Haleem [A8] had operated the bank accounts and Kiyam Mohammed [A7] had facilitated the opening of the bank account and preparation of various documents by availing the services of various persons including Murali Krishna Chakrala, an Auditor, for the limited purpose of obtaining Form 15CB for transferring monies from State Bank of Travancore, Mount Road Branch. A reading of paragraph Nos.81 and 143 of the impugned complaint, which have been extracted *supra*, shows that Murali Krishna Chakrala had issued five numbers of Form 15CB in favour of B.K.Electro Tool Products, which were handed over by him to his client Kiyam Mohammed [A7] for which, a sum of Rs.1,000/- per certificate was given to him as remuneration.

11. Even on a demurrer, on a perusal of Form 15CB, we find that a Chartered Accountant is required to only examine the nature of the remittance and nothing more. The Chartered Accountant is not required to go into the genuineness or otherwise of the documents submitted by his clients. This could be compared with the legal opinion that are normally given by panel lawyers of banks, after scrutinizing title documents without going into their genuinity. A Panel Advocate, who has no means to go into the genuinity of title deeds and who gives an opinion based on such title deeds, cannot be prosecuted along with the principal offender. Applying the same anomaly, we find that the prosecution of Murali Krishna Chakrala, in the facts and circumstances of the case at hand, cannot be sustained.

12. In the result, this Criminal Revision is allowed and the order dated 26.08.2022 passed in CrI.M.P.No.2864 of 2022 in Spl.C.C.No.07 of 2021 on the file of XII Additional Special Court for CBI cases at Chennai, is set aside and the petitioner is discharged from the prosecution. However, we make it clear that, it is open to the prosecution to enlist Murali Krishna Chakrala as a prosecution witness, if they so desire. Consequently, connected miscellaneous petition is closed.

13. Murali Krishna Chakrala has also filed an affidavit dated 14.10.2022, wherein he has given the following undertaking:

"3. The petitioner undertakes to depose as a witness for the prosecution in Spl.C.C.No.07 of 2021 and further undertakes he will cooperate with the prosecution in all manners as possible.

4. The petitioner also undertakes that he will not turn hostile during the entire prosecution.

5. The petitioner abide by the present undertaking affidavit & further undertakes that he shall act in compliance of the same throughout the pendency of Spl.C.C.No.07 of 2021."

The affidavit is recorded.