

25.07.2024

1. Ld. SPP Mr. Abhijit Bhadra and Mr. Bhaskar Prosad Banerjee representing for the Complainant / Enforcement Directorate (ED for short) are present.
2. Today is fixed for hearing in the matter of taking cognizance on the supplementary complaint filed by the ED on 05.07.2024 against accused, Mrs. Nalini Chidambaram.
3. Written notes of submissions are filed by the Ld. SPPs Mr. Bhadra and Mr. Banerjee respectively.
4. Heard the Ld. SPPs at length.
5. Perused the prosecution complaint, written notes of submissions and the materials on record.
6. On the previous day, i.e., on 19.07.2024, this Court formulated two questions for consideration as follows:
  - i. Whether the supplementary complaint filed on 05.07.2024, i.e. after 1st July, 2024, is supposed to be dealt with for cognizance under the relevant provisions of the Cr.P.C or BNSS?
  - ii. Whether consultation fee accepted by Advocate/Tax Consultant from his/her client, accused of defrauding public by collective investment scheme (CIS), can be treated as PoC for non issuance of Tax invoice/bill?
7. It is submitted by the Ld. Spl. Prosecutor that under Section 44(1)(d)(ii) of the PML Act, 2002, the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.
8. Further, taking me through the provisions of Section 531(2)(a) of BNSS, 2023, it is submitted that there is a non obstante clause which provides: "If, immediately before the date on which this Sanhita comes into force, there is any appeal, application, trial, inquiry or investigation pending, then, such appeal, application, trial, inquiry or investigation shall be disposed, continued, held or made, as the case may be, in accordance with the provisions of the Code of Criminal Procedure, 1973, as enforced immediately before such commencement (herein after referred to as the said Code), as if this Sanhita had not come into force."
9. So, Mr. Banerjee contended that from bare reading of the provisions of Section 531(2)(a) of the BNSS, 2023 it is absolutely clear and explicit that all the pending matters prior to coming into force of BNSS 2023, the proceedings shall continue to be governed by the old Code, i.e. the Cr.P.C. Reliance has been placed in a recent decision of the Hon'ble Rajasthan High Court passed in *Krishna Joshi Vs. State of Rajasthan through DGP, S.B. Criminal Misc (Pet.) No. 4285/3024 on 09.07.2024* in order to buttress his contention.
10. I have heard the submissions on the question no. 1 (supra) and perused the provisions of Section 44 of the PML Act, 2002 as wells as the provisions of Section 531(2)(a) of BNSS, 2023 and the proposition of law as emerges in the cited decision of the Hon'ble Rajasthan High Court, I am convinced and satisfied that since the present proceeding was started prior to 01.07.2023, and the present supplementary complaint is the part of the ongoing proceeding which has already been started under the old Code, the provisions of the BNSS will not apply. Thus, the first question is answered accordingly.
11. Next, coming to the 2nd question which is the crux of the matter before me, I have heard the Ld. SPPs at length and also perused the materials on record including their written notes of submissions.

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12. It is submitted by Mr. Bhadra and Mr. Banerjee that during the investigation it was revealed that Mrs. Nalini Chidambaram received a total amount of Rs. 1.349 Cr. between 11.06.2010 to 17.06.2012 from Sri Sudipta Sen through his companies. It is further submitted that no bill or invoice was raised by said Mrs. Chidambaram against such receipt of payment. Further, it is submitted that during investigation, in bid to ascertain the role of Mrs. Chidambaram, several summons / directives were issued upon her requiring her to furnish necessary facts and information. On 03.02.2016, a directive was issued, and in response to which Mr. N.R.R. Arun Natarajan, Advocate and authorized representative of Smt. Nalini Chidambaram sent a fax on 11.12.2016 and appeared on her behalf on 19.02.2016. His statement was recorded under Section 50 of the PMLA, 2002 as authorized representative who stated that no formal agreement was ever made between Smt. Nalini Chidambaram and Sri Sudipta Sen or his entities; no service was rendered by Smt. Nalini Chidambaram to Sri Sudipta Sen and his entities; her interaction with Sudipta Sen was only through Mrs. Manoranjana Sinh and it was related to the TV business of Manoranjana. Mr. Natarajan further submitted that Sudipta Sen paid Rs. 1 Cr. through 10 cheques of Rs. 10 lakh each after deducting TDS of Rs. 10 lakh. Further, in response to summons dated 04.03.2016 u/s 50 of PMLA, Mr. Natarajan appeared on her behalf on 01.04.2016 and submitted the Income Tax return of Smt. Nalini Chidambaram for FY 2009-10 to 2012-13, certified copy of ledgers of 2010-11 and 2011-12 maintained by her. In her written reply, she stated that she was acting as Counsel for Mrs. Manoranjana Sinh and as per the MOU and agreement entered between Mrs. Manoranjana Sinh and M/s Bengal Media Pvt. Ltd. and the fees of the petitioner were paid by M/s Saradha Realty India Ltd. on behalf of Mrs. Manoranjana Sinh. The Ld. SPP submits that accused, Smt. Nalini Chidambaram could not produce any supporting documents that she received payments from Saradha Realty India Ltd. in lieu of agreement entered between Mrs. Manoranjana Sinh and M/s Bengal Media Pvt. Ltd. Furthermore, the case of the prosecution is that neither any payment terms were mentioned in the said agreement in question nor any payment invoices upon Saradha Realty India Pvt. Ltd. on behalf of Manoranjana Sinh mentioned details of her legal services provided to Mrs. Sinh. She did not issue any acknowledgment of payment to either Manoranjana or Saradha specifying that the payment is due/has been received on account of Manoranjana Sinh.
13. It is further submitted that in response to summons dated 17.08.2016 u/s 50 PMLA Smt. Nalini Chidambaram requested through a letter not to insist upon for her personal appearance citing Section 160 Cr.P.C.
14. In response to summons dated 07.09.2016 requiring her personal appearance, she moved the Hon'ble Madras High Court challenging the summons by filing Writ Petition No. 32848 and 32849 of 2016 and the petitions were dismissed by the Hon'ble Single Bench vide order dated 24.04.2018. Then Smt. Chidambaram filed appeal before the Hon'ble Division Bench of the Hon'ble Madras High Court challenging the order dated 24.04.2018 and granted interim stay on summons pending the writ appeal. Thereafter, on 10.07.2018, the writ appeals were dismissed which led Smt. Chidambaram to file SLP (C) No. 19275-19276 of 2018 before the Hon'ble Supreme Court of India challenging the order dated 10.07.2018 of the Hon'ble Madras High Court. On 03.08.2018, the Hon'ble Supreme Court of India ordered that the interim order that was passed by the High Court during pendency of the appeal shall continue. It is submitted that the matter is yet sub-judice before the Hon'ble Supreme Court of India. It is contended that the opportunities were granted to Smt. Chidambaram to discharge her burden of proof u/s 24 of the PMLA, 2002 but however, she evaded her personal appearance to avoid her examination u/s 50 of PML Act, 2002.
15. Furthermore, it is submitted that Sri Mahadevan Krishna Iyer, the consultant hired by Smt. Nalini Chidambaram to look into the activities of Sharadha Group was

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interrogated u/s 50 of the PML Act and the summary of his submission is: First, on 12.12.2010 he met Mrs. Nalini in her office at Nungumbakkam where he was also introduced to Manoranjana Sinh. In the discussion, he informed that Realty transaction did not come under the purview of SEBI per say. A report was prepared on that matter and handed over the Mrs. Nalini; Secondly, on 14.12.2010 a meeting was held at Taj Bengal, Kolkata where Mr. Sudipta Sen, Mrs. Manoranjana Sinh, Mrs. Nalini Chidambaram and certain officials of Saradha along with Mr. Mahadevan participated, and in that meeting, broadly the case was discussed. Mr. Mahadevan explained that there might be problem with SEBI, inasmuch as Saradha seemed to be a Collective Investment Scheme (CIS). He was asked to draft a letter to the SEBI Regional Office regarding seeking time for submitting reply. The same was drafted and forwarded vide email to Mrs. Nalini and Mrs. Manoranjana Sinh and other persons representing Saradha. The draft letter was finalized at the office of Mrs. Nalini Chidambaram on 18.12.2010; Thirdly, on 28.12.2010, Mr. Mahadevan further submitted a comprehensive opinion report where it was inter alia stated that Saradha Group was operating a CIS but without registration from the SEBI and had breached various laws of companies Act, RBI Act, Money Circulation Act etc. It was also suggested in that report that the Saradha Group should opt for the exit clause, go for a consent order from the SEBI and return the money; Fourthly, in December, 2010, Sudipta Sen conveyed through Mrs. Nalini Chidambaram that a channel of talks has been opened with Sri Pranab Mukherjee, Hon'ble FM to direct SEBI to go slow in the matter. On the basis of that Mrs. Chidambaram asked Mr. Mahadevan to prepare a letter to the Chairman, SEBI, and to look into the matter of SEBI. He prepared the same and submitted it to Mrs. Nalini Chidambaram; Fifthly, on 15.01.2011 and 16.01.2011, Mr. Mahadevan attended a meeting at Taj Bengal Kolkata where Mr. Sudipta Sen, Mrs. Manoranjana Sinh, Mrs. Nalini Chidambaram, Mr. Badrinarayan, Mr. Anantharaman and other officials of Saradha had participated. They were not satisfied with report of Mahadevana and a second opinion from Mr. Badrinarayan was sought; Sixth, on 24.01.2011, the report was submitted by Badrinarayan indicating various irregularities in the account of Saradha Group of companies. On 30.01.2011, the report of Mr. Mahadevan and Mr. Badrinarayan was discussed again and Mr. Anantharaman agreed to the observations of them (Mr. Mahadevan and Mr. Badrinarayan); Seventh, Mr. Mahadevan further submitted that somewhere in 2015 when he submitted the comprehensive opinion report and other correspondence to the CBI, Mrs. Nalini Chidambaram called him up and expressed her displeasure that why he had written in his emails to Sudipta Sen / Saradha officials that "As advised by madam". It is vehemently contended by Ld. SPP that Mr. Mahadevan did make all correspondence with Saradha and Sudipta Sen only on the direction of Mrs. Nalini Chidambaram. Mrs. Manoranjana Sinh was concerned about that the SEBI action against Saradha will impact the Saradha investment in her *media company* which Sudipta Sen had promised.

16. It is further submitted that email conversation between Mrs. Nalini Chidambaram and Manoranjana Sinh and Sudipta Sen also submitted by Manoranjana Sinh vide her statement dated 06.05.2014 and 13.11.2014.
17. Further, it is submitted that Naresh Balodia, Advocate of Saradha Group in his statement dated 31.08.2022 U/S. 50, stated that in various meeting held on SEBI related matter, Smt. Nalini Chidambaram used to participate along with him, Sudipta Sen and other staff of Saradha and those meetings were organized mostly in Taj Bengal, Kolkata and in Chennai at Smt. Chidambaram's chamber. All those expenses for those meetings like accommodation of Smt. Chidambaram and other participating members at Taj Bengal, Kolkata and their flight expenses were borne by said Sri Sudipta Sen and Saradha Group of companies.

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18. It is further submitted that the Bank A/c. No. xxxxxx6956 of Smt. Nalini Chidambaram maintained at Central Bank of India on which payment were received from Saradha Group of companies were compared with ledger maintained by Smt. Nalini Chidambaram, a copy of which she had submitted in response to summons.
19. It is further contended that during investigation it was learnt that between 11.06.2010 to 17.06.2012, a total of Rs. 1,32,75,000/- was paid by Saradha Group to Nalini Chidambaram and there is no agreement entered between Saradha / Sudipta Sen and Nalini Chidambaram which would oblige him to pay that amount. The defence of Mrs. Chidambaram that he received money towards legal consultation is not backed up by any evidence.
20. It is vehemently submitted that on analysis of email exchange between Mrs. Nalini and Mr. Sudipta Sen revealed nexus between them to thwart SEBI enquiry. My attention has been drawn to the summery of the email dated 29.09.2011 of Smt. Manoranjana Sinh, the email dated 02.10.2011 of Smt. Nalini Chidambaram, and it has been contended that from those emails it is evident that Smt. Nalini Chidambaram continued to accept payment from Saradha Group despite explicit knowledge of activity of Sudipta Sen.
21. Thus, the hearing concluded.
22. Now, I shall proceed to apply my judicial mind into the facts and situation emerging from the materials on record for the purpose of finding out whether a prima facie case exists or not for stepping into the next stage, i.e., issuance of process.
23. In the language of the Hon'ble Apex Court employed in a decision dates back 1951 in *R.R Chari Vs. State of Uttar Pradesh* reported in *AIR 1951 SC 207* :

" Taking cognizance does not involve any formal action or indeed action of any kind but occurs as soon as a Magistrate as such applied his mind to the suspected commission of offence".
24. The litmus test of taking cognizance, whether it be relating to an offence on a complaint, or on a police report, or upon information of a person other than police officer, is making a thorough assessment of the allegations by coming into grip with the facts presented and bringing into focus the law on the subject and applying the facts to the law and thereafter, arriving at a conclusion by a process of reasoning and evidencing that all relevant facts have been taken note and properly analyzed in the light of law applicable. While exercising discretion, with the intelligible differentia and by weighing the cause in judicial case having regard to the facts and circumstances peculiar to each single case, Courts must carefully decide and cautiously examine as to whether the complaint filed is an outcome of personal vendetta or outburst of animosity, enmity or originated from evil impact of frickle mind so as to wreak vengeance against the opponent, else, malicious prosecutions would be rampant putting at peril the valuable rights and liberties of citizens through Courts themselves. Therefore, while taking cognizance the Court has to apply his judicial mind on the facts and evidence placed before it, and such exercise should not be an arbitrary, capricious, whimsical, fanciful and casual because just and right decision can only prevent the harassment of the innocent person in the one hand, and on the other hand, it will check the frivolous litigation involving personal vendetta and political rivalry being flowed into the court to overburden it at cost of valuable judicial hour. The Court, while taking cognizance, is not supposed act like a post office but to delve into the facts and materials placed before it, and then to apply its judicial mind.
25. Now, let me move on to the proposed offence of the supplementary complaint filed against accused, Mrs. Nalini Chidambaram. So, first, I shall deal with what the offence of money laundering really mean. 'Money Laundering' involves the following process or activities :

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- i. Conversion or transfer of property, knowing that such property is derived from criminal activity or from an act of participation in such activity, for the purpose concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such activity to evade the legal consequences of his action;
  - ii. Concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived on criminal activity or from an act of participation in such activity;
  - iii. Acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from criminal activity or from an act of participation in such activity.
26. To say it more precisely, as per S.3 of the PML Act, 2002 as amended, a person is said to be guilty of money laundering if they are involved in any of the following activities with proceeds of crime:
- a) Concealment;
  - b) Possession;
  - c) Acquisition;
  - d) Use;
  - e) Projecting as untainted property; and
  - f) Claiming as untainted property.
27. To my understanding, no money or property by itself is tainted but if the money or property is derived from any illicit source or activities with such animus or *mens rea* which constitute an offence under any of the listed offences of the schedules of the Act, 2002, the same will attract the offence of money laundering. For example, - a criminal lawyer defending an accused in a case for kidnapping for ransom, receives his fee from the accused which he (accused) had derived in committing the offence, is tainted money so long it is in his possession, but when the same money is received by the lawyer as his fees, it is no longer tainted because any of the activities relatable to the schedule offence cannot be attributed to the lawyer defending him before the court of law.
28. Similarly, in the case at hand, it appears that Mrs. Chidambaram, a senior advocate and tax consultant provided legal consultation to her client, Sudipta Sen or his Companies and Mrs. Manoranjana Sinh and received fees to the tune of Rs. 1.349 Cr. from time to time during 11.06.2010 to 17.06.2012. Admittedly, she received money being credited to her Bank A/c. after deducting tax at source (TDS). It is also admitted fact that she received money not exceeding 10 lakh at a time. Whether she is liable for service tax or not is a matter to be investigated into by other agency, and not by the ED. Whether issuance of no tax invoice or bill is violation of any law relating service tax is a matter to be investigated into by other authority or agency.
29. Now, let me turn back to the main points which the prosecution urged before this court to impress upon me about existence of prima facie the element of the offence of money laundering against Mrs. Chidambaram:
- First, Smt. Nalini Chidambaram could not produce any supporting documents that she received payments from Saradha Realty India Ltd. in lieu of agreement entered between Mrs. Manoranjana Sinh and M/s Bengal Media Pvt. Ltd. and neither any payment terms were mentioned in the said agreement in question nor any payment invoices upon Saradha Realty India Pvt. Ltd. on behalf of Manoranjana Sinh mentioning details of her legal services provided to Mrs. Sinh. She did not issue any acknowledgment of payment to either Manoranjana or Saradha specifying that the payment is due/has been received on account of Manoranjana Sinh.
- Secondly, the matter was referred to Mr. Mahadevan for his opinion, and he opined that Realty transaction did not come under the purview of SEBI per

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say. Mr. Mahadevan further submitted in his statement that somewhere in 2015 when he submitted the comprehensive opinion report and other correspondence to the CBI, Mrs. Nalini Chidambaram called him up and expressed her displeasure that why he had written in his emails to Sudipta Sen / Saradha officials that "As advised by madam,...".

Thirdly, in December, 2010, Sudipta Sen conveyed through Mrs. Nalini Chidambaram that a channel of talks has been opened with Sri Pranab Mukherjee, Hon'ble FM to direct SEBI to go slow in the matter.

Fourthly, meetings were organized mostly in Taj Bengal, Kolkata and in Chennai at Smt. Chidambaram's chamber. All those expenses for those meetings like accommodation of Smt. Chidambaram and other participating members at Taj Bengal in Kolkata and their flight expenses were borne by said Sri Sudipta Sen and Saradha Group of companies.

Fifthly, email exchange between Mrs. Nalini and Mr. Sudipta Sen revealed nexus between them to thwart SEBI enquiry. The email dated 29.09.2011 of Smt. Manoranjana Sinh, the email dated 02.10.2011 of Smt. Nalini Chidambaram show that Smt. Nalini Chidambaram continued to accept payment from Saradha Group despite explicit knowledge of activity of Sudipta Sen.

30. On analysing above facts and materials, and applying my judicial mind into those facts and materials under the lens of legal parameters that required for the purpose of reaching to the conclusion about the existence of prima facie case, I find that in a collective investment scheme or ponzi scam of Rs. 1983,02,37,713.00/- (About 2000 Cr.) an amount of Rs. 1.349 Cr. is so minuscule that same cannot, under any stretch of imagination, be said to have nexus with the activity of concealment or disguising the illicit source of the same. So far as the acquisition or possession is concerned, the lawyer's fee from such tainted persons are not uncommon, inasmuch as, the clients approaches the lawyers when he / she faces such serious legal issues. A lawyer, many times, send his/her client(s) to other lawyer or friends or officers or professionals for further assistance when he/she finds that those other lawyers or officers or professionals are having expertise in that particular field. There is nothing wrong in it. In the present case, Mrs. Chidambaram guided his client to take assistance of other professionals who were having better skill and knowledge to provide him /her (Mr. Sudipta Sen or his companies or Mnoranjana Sinh) proper advice. When a lawyer is invited to any place as a part of professional relationship, the clients pay the fees of air ticket, hotel charges, etc., which is also not unusual to sense anything foul. The rest of the matter which is left is that the then Hon'ble FM, Mr. Pranab Mukherjee was approached for directing the SEBI to go slow, is not at all supported by any legally admissible evidence.

31. Thus, in the conspectus of my above discussion, I hold that no prima faice case for the offence under Section 3 punishable under Section 4 of the PML Act, 2002 is made out against accused, Mrs. Nalini Chidambaram. Consequently, the supplementary complaint dated, 5/07/2024 stands dismissed.

Judge,  
Special (CBI) Court No. 1,  
Calcutta  
J.O. Code No. WB 00744

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