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W.P.No.16467 of 2022

Writ Petition No.16467 of 2022

and

W.M.P.Nos.15748, 15749, 18071 and 23386 of 2022

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**P.N.PRAKASH.J.,**

**AND**

**N.ANAND VENKATESH.J.,**

**[Order of the Court was made by P.N.PRAKASH.J.,]**

The petitioner was a Cabinet Minister in the State of Tamil Nadu from May, 2001 to May 2006. The Directorate of Vigilance and Anti Corruption (DVAC) registered a case in Crime No.4 of 2006 for the offence u/s 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988 (for short, “**the PC Act**”) and after completing the investigation filed the charge sheet against the petitioner and 6 others for the offences u/s 13(2) r/w 13(1)(e) of the PC Act which is pending as Spl.S.C.No.8 of 2008 in the court of the Chief Judicial Magistrate and Special Judge, Tuticorin. Thereafter, it appears that further investigations were conducted by the DVAC and 2 supplementary charge sheets have been filed on 13.12.2010 and 18.07.2013 in this case. The trial court has framed charges against the petitioner for the offence u/s 13(2) r/w 13(1)(e) of the PC Act, the gravamen of which is that, for the period from 14.05.2001 to 31.03.2006, the petitioner was

1 of 9



W.P.No.16467 of 2022

found to be in possession of assets valued at Rs.2,07,96,384.04 paise as assets disproportionate to his known sources of income.

2. While that being so, the Enforcement Directorate registered a ECIR in ECIR No.CEZO/II/21/2020 dated 22.12.2020 on the ground that Section 13 of the PC Act is a scheduled offence under the Prevention of Money Laundering Act, 2002 (for short, “**the PMLA**”) and began investigation. Challenging the investigation, the petitioner filed the present writ petition in which, this court, by order dated 29.06.2022, granted an order of interim stay of all further proceedings by the Enforcement Directorate. In the mean while, the Enforcement Directorate has also issued orders of provisional attachment of some of the properties of the petitioner and the same was also confirmed by the adjudicating authority u/s 8 (3) of the PMLA.

3. While so, on 04.08.2022, this court vacated the order of interim stay that was earlier granted, aggrieved by which, the petitioner approached the Apex Court in Special Leave Petition (Crl.) No.9581 – 9582 of 2022, in which, the Apex Court , by order dated 19.10.2022, has revived the earlier interim order of



*W.P.No.16467 of 2022*

this court for a further period of two months with a further direction to this court to dispose of the case on merits as expeditiously as possible.

4. Accordingly, we began hearing this case on 07.12.2022 and continued to hear today. The Enforcement Directorate has also filed their counter to the submissions made by Mr.Siddharth Aggarwal, learned Senior Counsel, appearing on behalf of the learned counsel on record for the petitioner before us.

5. Mr.Siddharth Aggarwal, learned senior counsel has raised the following seminal legal submissions which are as under:-

(a) The petitioner is being prosecuted for the offence u/s 13(1)(e) of the PC Act for possessing a sum of Rs.2,07,96,384.04 paise for the check period from 14.05.2001 to 31.03.2006 disproportionate to his known sources of income. Section 13 of the PC Act was included as a scheduled offence in the PMLA only with effect from 01.06.2009. Therefore, the PMLA cannot be retrospectively applied;



WEB COPY



W.P.No.16467 of 2022

(b) Even if it were to be held that the same could be retrospectively applied by relying upon para 270 of the judgment of the Apex Court in **Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929**, wherein, it was held that the same should be applied on a case to case basis, the offence u/s 13(1)(e) of the PC Act would not by itself be capable of generating the proceeds of crime. In that event, according to the DVAC, the assets, which were found in possession of the petitioner for the check period from 14.05.2001 to 31.03.2006, have been crystallized as 34.98%. Therefore, there is no scope for generation of any further proceeds of crime u/s 13(1)(e) of the PC Act. Only on the failure of the petitioner to explain to the trial court on alleged excess of assets referred to above, the offence would get attracted. In other words, it was contended that criminal activity involved u/s 13(1)(e) of the PC Act is the inability to explain the pre-



WEB COPY



W.P.No.16467 of 2022

existing assets that were found in the hands of the accused. Therefore, the lack of explanation to account for the assets in the hands of the accused person by itself will not result in generation of crime proceeds'

(c) If the Enforcement Directorate is permitted to prosecute the petitioner for the offence under PMLA, it will amount to double jeopardy. The learned senior counsel submitted that since the judgment in **Nikesh Tarachand Shah v. Union of India, [(2018) 11 SCC 1]** had been overruled by judgment in **Vijay Madanlal Choudary**, it is enough if the accused, in any manner, is involved in the process or activity, connected with the proceeds of crime and there is no requirement that the same must be projected or claimed as untainted property. Hence, the learned senior counsel brought to the notice of this court Section 26 of the General Clauses Act, 1897 and submitted that, as on today, the same ingredients must be satisfied both for the offence



WEB COPY



*W.P.No.16467 of 2022*

under the PC Act and the offence under PMLA Act and it virtually leads to punishing twice for the same offence. In view of the same, the prosecution of the petitioner by the Enforcement Directorate is vitiated both on the principles of retrospectivity and double jeopardy; and

(d) The leaned counsel also brought to our notice the review petition that has been filed before the Apex Court for reviewing of the judgment of the Apex Court in **Vijay Madanlal Choundhary v. Union of India (2022 SCC OnLine SC 929)** and specifically drew our attention to the issue of retrospective application of the offence of the PMLA also being raised as a ground. That review petition has been entertained through an order dated 25.08.2022 and the Apex Court found that there are issues raised in the petition which prima facie require consideration of the court. Hence, it was



WEB COPY



*W.P.No.16467 of 2022*

contended by the learned senior counsel before us that the issue of retrospectivity is an issue which is directly involved in the present case and hence, the final judgment in the review petition would have bearing in this case too.

6. Since one of us [P.N.PRAKASH.J.,] is retiring shortly, we are unable to take up the final disposal of this case as directed by the Apex Court as the Additional Solicitor General has to be heard in detail on all the legal issues raised by the learned senior counsel appearing on behalf of the petitioner. That apart, the interim order of stay that has been granted by the Apex Court expires on 19.12.2022 and since we are satisfied that the petitioner has raised substantial legal issues which require a thorough consideration and determination and that the Enforcement Directorate has also provisionally attached some of the properties of the petitioner, we are inclined to continue the interim order of stay that was granted by this court earlier.

Accordingly, the interim order of stay granted by this court on 29.06.2022



W.P.No.16467 of 2022

shall continue until further orders.

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Post this matter on 30.01.2023.

[P.N.P., J]

[N.A.V.,J.]

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*W.P.No.16467 of 2022*

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**AND**  
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15..12..2022