

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.01.2021

PRONOUNCED ON : 04.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
AND
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P. No.24888 of 2016 and Crl.M.P. Nos.12030 and 14058 of 2016

1 S. Dilliraj

2 D. Kotieswari

Petitioners

Vs.

The Deputy Director
The Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
2nd & 3rd Floor, Murugesu Naicker Complex
No.84, Greaves Road
Thousand Lights
Chennai 600 006

Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the proceedings in C.C.No.70 of 2016 in ECIR No.10/2015 on the file of the Principal Sessions Court (Special Court for PMLA Cases).

For petitioners Mr. B. Kumar
Senior Counsel
for Mr. T.R. Ravi

For respondent Mr. R. Sankaranarayanan
Additional Solicitor General
assisted by Ms.G.Hema
Special Public Prosecutor for E.D.

ORDER

P.N.PRAKASH, J.

This criminal original petition has been filed to quash the proceedings in C.C.No.70 of 2016 on the file of the Principal Sessions Court, Chennai.

2 Undisputed facts:

2.1 First Leasing Company of India Limited (in short “FLCI”) was a company incorporated under the Companies Act, 1956 and was into the business of giving industrial finance. Of course, it is under liquidation now.

2.2 The Chairman of FLCI was one A.C.Muthiah, a leading industrialist, who has major stakes in SPIC and other established industrial

houses. One Farouk Irani is said to have joined FLCI in 1973 and became its Managing Director in 1982. One Dilliraj was the Vice President of FLCI during 2006 - 2007. One Sivaramakrishnan was the Chief Financial Officer of FLCI from 2008 to 2014.

2.3 Things were going fine for FLCI until the State Bank of India (SBI) sanctioned a working capital credit limit of Rs.20 crores on 08.02.2005, followed by the IDBI Bank, which also gave a working capital facility for Rs.18 crores by a sanction letter dated 17.08.2005. These banks extended financial assistance to FLCI from time to time.

2.4 While so, the SBI formed a consortium of banks that had lent monies to FLCI. Sometime in the year 2007, the Reserve Bank of India (RBI) conducted inspection of FLCI and observed serious irregularities and diversion of funds to 15 satellite companies. When this news became public, things started hotting up for FLCI and they were not able to repay their lenders, resulting in their account becoming 'Non Performing Asset' (NPA) in the year 2013.

2.5 Farouk Irani is said to have resigned from the post of Managing Director on 23.10.2013 and A.C.Muthiah is said to have resigned from the post of Chairman on 01.11.2013.

2.6 As the investigation into the financial health of FLCI was being probed by the Chartered Accountants of the consortium banks, lot of skeletons started coming from and out of the cupboard, which resulted in the Deputy General Manager, IDBI Bank, preferring a complaint to the CBI, pursuant to which, the CBI registered an FIR in Crime No.6 of 2015 on 21.09.2015 for the offences under Sections 120-B read with 420, 467, 468, 471 and 477-A IPC against A.C.Muthiah (A1), Farouk Irani (A2), Dilli Raj (A3), Sivaramakrishnan (A4), FLCI (A5), Sarathy & Balu, Chartered Accountants (A6) and M.K.Dandekar & Co., Chartered Accountants (A7) and investigation was taken up by the Bank Security and Fraud Cell of the CBI.

2.7 The complaint of the IDBI Bank showed that they had lent Rs.300 crores to FLCI, by way of working capital limit and the outstanding to them with interest as on 02.09.2014 was Rs.273,99,90,071/-.

2.8 Since the FIR disclosed the commission of a schedule offence under the Prevention of Money Laundering Act, 2002 (in short “the PML Act”) viz., Section 420 IPC, the Enforcement Directorate

registered a case in ECIR No.10 of 2015 on 20.11.2015 against the aforesaid persons.

2.9 Likewise, on a complaint lodged by the SBI, the CBI registered a fresh FIR in Crime No.RC-02(E) of 2016 on 08.01.2016 for the offences under Sections 120-B read with 409, 420, 467, 468, 471 and 477-A IPC against the aforesaid persons in respect of fraud that was allegedly committed by them *qua* SBI.

2.10 During the course of the investigation in ECIR No.10 of 2015 registered pursuant to the complaint given by IDBI Bank, the Enforcement Directorate arrested some of the accused, but, consciously did not go anywhere near A.C.Muthiah for the reasons best known to them.

2.11 After completing the investigation, the Enforcement Directorate filed three separate complaints (however with the same ECIR number) in the Special Court for PMLA Cases, Chennai, which are as under:

- i. C.C.No.63 of 2016 in ECIR.No.10 of 2015 against Farouk Irani (A1) and his wife Sherna F Irani (A2), for quashing which, they have filed Crl.O.P.No.26586 of 2016 and Crl.O.P.No.23917 of 2018, respectively;
- ii. C.C.No.71 of 2016 in ECIR.No.10 of 2015 against Sivaramakrishnan (A1) and his wife Ratha (A2), for quashing which, they have filed Crl.O.P.No.24856 of 2016 and

iii. C.C.No.70 of 2016 in ECIR.No.10 of 2015 against Dilliraj (A1) and his wife Kotieswari (A2), for quashing which, they have filed Crl.O.P.No.24888 of 2016.

2.12 Though the aforesaid facts are common to all the cases, in this order, this Court is confining itself to Crl.O.P.Nos.24888 of 2016 filed by Dilliraj (A.1) and Kotieswari (A.2) invoking Section 482 Cr.P.C. for quashing the prosecution in C.C.No.70 of 2016.

3 Heard Mr.B. Kumar, learned Senior Counsel representing Mr.T.R. Ravi, learned counsel on record for the petitioners and Mr.R.Sankaranarayanan, learned Additional Solicitor General assisted by Ms.G.Hema, learned Special Public Prosecutor appearing for the Enforcement Directorate.

4 The CBI investigation in Crime No.RC-02(E)/2016 registered on the complaint of the State Bank of India (SBI) has resulted in the filing of a charge sheet in C.C.No.8 of 2017 in the Court of the Additional Chief Metropolitan Magistrate for the offences under Sections 120-B read with 201, 409, 420, 468, 471 and 477-A IPC against 26 accused, of which, Dilliraj has been shown as A.8.

5 However, in the charge sheet, the CBI has very clearly stated that the loan amounts obtained from the banks were diverted for the benefits of A.C.Muthiah (A.1), Farouk M Irani (A.2), Ashwin C.Muthiah (A.13), Darnolly Investments Ltd. (A.14), Ranford Investments Ltd. (A.15), Sicagen India Ltd. (A.10), ACM Educational Foundation (A.17), ACM Medical Foundation (A.18), MAC Public Charitable Trust (A.19), South India House Estates Properties Ltd. (A.20), South India Travels Pvt. Ltd. (A.21), Sherna F Irani (A.24), Farah Bakshay (A.25) and Lia Gagrath (A.26). Thus, the proceeds of the crime have gone into the kitty of the aforesaid persons and Dilliraj is not a beneficiary of the proceeds of the crime. When that being so, the statement of Mr.B.Kumar, learned Senior Counsel appearing for the petitioners that the act of the Enforcement Directorate in prosecuting Dilliraj and his wife, leaving out A.C.Muthiah and his family members, does show that they are adopting a pick and choose attitude, merits serious consideration. However, this Court can only raise its eyebrows and stop with that and cannot quash the prosecution against Dilliraj, on the ground of discrimination under Article 14 of the Constitution of India.

6 Though the impugned complaint in C.C. No.70 of 2016 filed by the Enforcement Directorate against Dilliraj (A.1) and his wife Kotieswari (A.2) runs to 62 pages, this Court was able to pore over it and distill the essence of the allegations against the accused herein.

7 The sum and substance of the allegations in the complaint is that FLCI was sanctioned a sum of Rs.20 crores on 08.02.2005 by the SBI followed by the IDBI Bank which sanctioned a loan of Rs.18 crores on 17.08.2005. Thereafter, banks were giving additional loans to FLCI based on fudged records.

8 Even according to the ECIR registered by the Enforcement Directorate, FLCI was making due repayment of the credit facilities extended to them by the banks till 13.09.2013. It may be apposite to extract the relevant paragraph from the ECIR:

“8. FLCIL was making the due repayment of the facilities in terms of Working Capital Agreements referred above, till 13.09.2013. RBI inspected FLCIL under the provisions of RBI Act and found that the books of accounts of FLCIL have serious irregularities in the business operation of FLCIL and the books of accounts did not reflect the true and fair view of the state of affairs of the company.”

(emphasis supplied)

9 As regards the allegations against Dilliraj (A.1) and his wife Kotieswari (A.2), it is stated that Dilliraj (A.1) was the Vice President of FLCI from 1996 – 2007 and that he was paid salaries, incentives and perquisites from the amounts that were borrowed by FLCI from the banks based on fudged records. In this context, it may be useful to extract the relevant paragraph from the impugned complaint filed by the Enforcement Directorate in C.C. No.70 of 2016 to appreciate the nature of the allegations against Dilliraj (A.1).

“From the foregoing discussions, it is evident that the salaries, performance bonus and other perquisites (estimated to the tune of Rs.1,08,23,890) as received by Shri S. Dilliraj, as a top official in FLCIL, in various capacities during his tenure from 1996-2007 were out of bank borrowings fraudulently obtained by FLCIL, which are nothing but proceeds of crime. Accordingly, it is found that the above said property is involved in money laundering and being projected as untainted one by Shri. S. Dilliraj and his wife Smt. D. Kotieswari.”

10 Concededly, Dilliraj (A.1) left the services of FLCI way back in the year 2007 and the salaries drawn by him from 1996 to 2007 can, by no stretch of imagination, be construed as proceeds of crime. Even in the complaint, it is stated that the working capital loan amounts that were given by various banks based on the hyped up financial statements of the company were diverted to 15 shell companies floated by FLCI and into the

kitty of Farouk Irani and his family members. Thus, when the proceeds of crime had gone into the hands of fictitious companies that were floated for this purpose, there cannot be further flow of the proceeds of crime into the account of Dilliraj (A.1) as salaries and perquisites. Though it is true that Dilliraj (A.1) is facing the music in the prosecutions that have been launched by the CBI against FLCI, A.C. Muthiah, Farouk Irani and others for the predicate offences of making the banks believe their records and sanction the loans, the present prosecution of Dilliraj (A.1) for money laundering, in the opinion of this Court, is misconceived. It is not the case of the C.B.I. or the Enforcement Directorate that FLCI was throughout engaged in criminal activities nor is it their case that Dilliraj (A.1) was engaged by FLCI only to fabricate records for their business purpose. For instance, if FLCI had engaged a master forger only for the purpose of forging records for their business purposes, the salary paid to the said master forger would undoubtedly be construed as proceeds of crime and if the master forger projects his salary as untainted money, he can be prosecuted under the PML Act. But, that is not the allegation against Dilliraj (A.1) in the complaint.

11 What is surprising is, in the predicate offence in Crime No.RC-02(E) of 2016 that was registered by the C.B.I. based on the complaint given by the State Bank of India, the C.B.I. completed the investigation and filed charge sheet in C.C. No.8 of 2017 in the Court of the Additional Chief Metropolitan Magistrate, Egmore, Chennai, wherein, they have stated as follows:

“M/s. FLCIL and (sic had) diverted the said loan amount for purposes other than for which it was sanctioned, i.e., for the benefits of Shri A.C. Muthiah (A-1), Shri Farouk M. Irani (A-2), Shri. Ashwin C. Muthiah (A-13), M/s. Darnolly Investments Ltd. (A-14), M/s. Ranford Investments Ltd. (A-15), M/s. Sicagen India Ltd.(A-16), M/s. ACM Educational Foundation (A-17), M/s. ACM Medical foundation (A-18), M/s. MAC Public Charitable Trust (A-19), M/s. South India House Estates Properties Ltd. (A-20), M/s.South India Travels Pvt. Ltd. (A-21), Smt. Sherna F. Irani (A-24), Smt. Farah Bakshay (A-25), Smt. Lia Gagrati (A.26)....”

Likewise, in the FIR in Cr.No.6 of 2015 that was registered by the CBI based on the complaint given by the IDBI Bank, investigation was completed and charge sheet has been filed in C.C. No.7756 of 2018 in the Court of the Additional Chief Metropolitan Magistrate, Egmore, Chennai against A.C. Muthiah and others for the offences under Sections 120-B read with Sections 201,409,420,468,471 and 477-A IPC. In that charge sheet also, with regard to diversification of funds, it is stated as follows in

paragraphs 42 and 43:

“42. That as per the Section 205 of the Companies Act, 1956 which states that “No dividend shall be declared or paid except out of profits”. That Shri. A.C. Muthiah (A-1), the then Chairman and Shri Farouk Irani (A-2), the then Managing Director of M/s. FLCIL, being aware that the company was running in loss, approved and signed bogus annual statements showing the company as a profit making concern and thereafter, against the said false profits declared and earned wrongful dividends. The amount of wrongful dividend earned by Shri.A.C. Muthiah (A-1), Shri Farouk Irani (A.-2), Ashwin C. Muthiah (A-13) and various companies promoted by Shri. Ashwin C. Muthiah (A-13) and Shri.A.C. Muthiah (A-1), namely M/s. Darnolly Investments Ltd. (A-14), M/s. Ranford Investments Ltd. (A-15), M/s. Sicagen India Ltd. (A-16), M/s ACM Educational Foundation (A-17), M/s. ACM Medical Foundation (A-18), M/s. South India House Estates Properties Ltd. (A-19) and M/s. South India Travels Pvt. Ltd. (A-20) against the false profits of M/s. FLCIL (A-5) during the FYs 2003-2004 to 2011-12 is tabulated below:

Sl.No.	Name of the promoter shareholder of M/s. FLCIL	Total Dividends earned during FY 2003-04 to 2011-12
1	Shri A.C. Muthiah (A-1)	28,95,179.60
2	Shri. Ashwin C. Muthiah (A-13)	19,98,663.20
3	M/s. Darnolly Investments Ltd. (A-14)	12,30,669.20
4	M/s. Ranford Investments Ltd. (A-15)	64,66,275.20
5	M/s. Sicagen India Ltd. (A-16)	3,65,91,000.60
6	M/s. ACM Educational Foundation (A-17)	3,08,67,766.41
7	M/s. ACM Medical Foundation (A-18)	41,83,203.20
8	M/s.South India House Estates Properties Ltd. (A-19)	3,86,88,300.00
9	M/s. South India Travels Pvt. Ltd. (A.20)	63,185.60
10	Shri. Farouk M. Irani	14,64,474.40

43. That Shri A.C. Muthaih (A-1) and Shri Farouk Irani (A-2), while acting as Chairman and Managing Director of M/s.FLCIL respectively, by

approving and signing bogus annual statements showing false profits and by declaring and earning wrongful gain by way of dividends against the false profits, have misappropriated the assets of the company entrusted to them amounting to criminal breach of trust of the shareholders of the company.”

Even the C.B.I. has not found that Dilliraj benefitted financially from the criminal activity of fudging records. Of course, these findings of the C.B.I. are not binding on the Enforcement Directorate, but, this Court cannot turn a Nelson's eye to this, especially in the light of the fact the Enforcement Directorate themselves have filed a separate complaint in C.C.No.63 of 2016 against Farouk Irani and Sherna F. Irani for diverting the loan amounts into their personal accounts and into the account of their family Trust and for projecting them as untainted money. It may be pertinent to state here that we have dismissed the quash applications of Farouk Irani and Sherna F. Irani in CrI.O.P.Nos.26586 of 2016 and 23917 of 2018, respectively, today, *vide* separate order.

12 In view of the above discussion, we are unable to persuade ourselves to agree with the Enforcement Directorate that the salaries and perquisites that were paid to Dilliraj (A.1) while he was in employment with FLCI would amount to proceeds of crime and any property purchased

with that would stand tainted. Albeit the presumption under Section 24 of the PML Act, on facts, we hold that the impugned prosecution of Dilliraj (A.1) and his wife Kotieswari (A.2) under the PML Act is misconceived and the same is accordingly quashed.

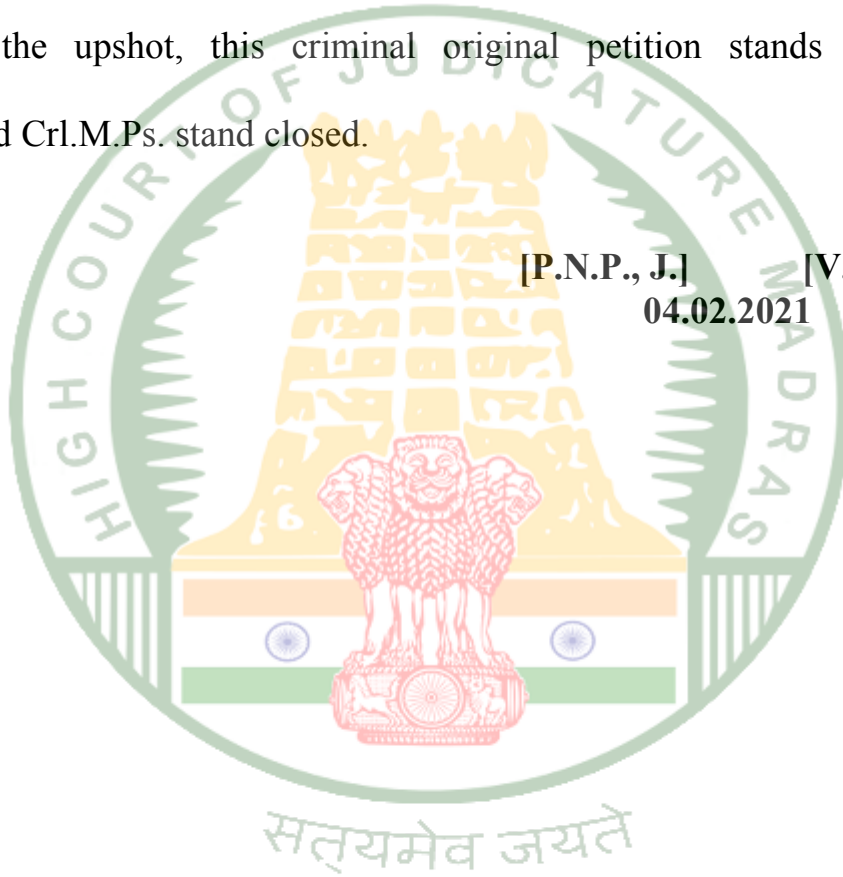
In the upshot, this criminal original petition stands allowed.
Connected Crl.M.Ps. stand closed.

[P.N.P., J.]

[V.S.G., J.]

04.02.2021

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P.N. PRAKASH, J.

and

V. SIVAGNANAM, J.

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To

1 The Deputy Director
The Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
2nd & 3rd Floor, Murugesu Naicker Complex
No.84, Greaves Road, Thousand Lights
Chennai 600 006

2 The Principal Sessions Judge
(Special Judge for PMLA Cases)
Chennai

CrI.O.P. No.24888 of 2016

3 The Public Prosecutor
High Court, Madras

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