

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.01.2021

PRONOUNCED ON : 25.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

and

THE HONOURABLE MR. JUSTICE V. SIVAGNAMAM

CrI.R.C. No.393 of 2020 & CrI.M.P. No.2934 of 2020

The Assistant Director
Directorate of Enforcement
Government of India
Ministry of Finance
Department of Revenue
Chennai 600 006

Petitioner

vs.

- 1 Justin Devadoss @ David
- 2 Bella Justin
- 3 JBJ City Developers Ltd.
No.1741, I Floor, 18th Main Road
Anna Nagar
Chennai 600 040
- 4 Samuel Sunder Singh George Knudson
Director
JBJ City Developers Ltd.
No.21, Thiruvalluvar Street III Lane
Adambakkam
Chennai 600 088

Respondents

Criminal Revision Petition filed under Sections 397 and 401 Cr.P.C. seeking to set aside the order dated 19.12.2018 made in the memo in S.R.No.7464 of 2018 in C.C. No.57 of 2016 on the file of the IX Additional Special Court for CBI Cases.

For petitioner Mr. V. Parivallal
Special Public Prosecutor

For RR 1, 2 & 3 M/s. D. Dayalan

For R4 No appearance

ORDER

P.N. PRAKASH, J.

On a complaint lodged by Selvaraj and his wife Rani, the Economic Offences Wing of the State police registered a case in Cr. No. 9 of 2009 on 16.12.2009 under Section 420 IPC against JBJ City Developers and its Proprietor Justin Devadoss.

2 Likewise, on a complaint lodged by one Ragothaman, the Economic Offences Wing of the State police registered another case in Cr.No.1 of 2010 on 25.01.2010 under Sections 341, 352, 420 and 506(I) IPC and Section 5 of the TNPID Act against JBJ City Developers Ltd. and its Managing Director Justin Devadoss.

3 The allegation in Cr.No.9 of 2009 is that JBJ City Developers Ltd. promised to allot two plots in a layout titled “Little Singapore” near Koyambedu and collected a sum of Rs.20 lakhs from the *de facto* complainants, but, eventually, cheated them.

4 The allegation in Cr. No.1 of 2010 is that JBJ City Developers had collected deposits from the *de facto* complainant to the tune of Rs.1 lakh with the assurance that it will get doubled in six months. It is, however, alleged that the accused cheated the *de facto* complainant.

5 Since Section 420 IPC, which figures in both the FIRs, is a 'schedule offence' within the meaning of Section 2(y) of the Prevention of Money-Laundering Act, 2002 (for brevity “the PML Act”), the Enforcement Directorate *suo motu*, registered a case in ECIR No.10 of 2011 on 20.01.2011 and took up investigation of the case under the PML Act in order to find out if the accused in the FIRs had indulged in money laundering.

6 After completing the investigation, the Enforcement Directorate filed a complaint in C.C. No.57 of 2016 against Justin Devadoss (A.1), Bella Justin (A.2), JBJ City Developers Ltd. (A.3) and Samuel Sunder Singh George

Knudson (A.4) for the offences under Sections 3 and 4 of the PML Act and the case is now pending trial on the file of the IX Additional Special Court for CBI Cases, Chennai.

7 On appearance of the accused, the copies of the relied upon documents were furnished to them and trial began with the examination of the prosecution witnesses.

8 On 20.01.2011, when the Special Public Prosecutor was examining the Assistant Director of Enforcement in-chief, he sought to mark the record relating to ECIR No.10 of 2011 dated 20.01.2011 as a prosecution exhibit, which was objected to by the defence on the ground that the said document was not the original but a photocopy and insisted on marking of the original.

9 At that juncture, the learned Special Public Prosecutor filed a memo to dispense with the filing of the original on the ground that the same is with the Adjudicating Authority, New Delhi and prayed for dispensing with the filing of the same. The memo reads as under :

**“DISPENSE WITH MEMO FILED ON BEHALF OF THE
COMPLAINANT**

It is humbly submitted that with great respect that this Hon’ble Court was pleased to permit the complainant to proceed with the trial by accepting the true and certified copy of the ECIR No.10/CEZO/PMLA/2011 dated 20.01.2011 at this stage and the complainant department is undertake to file petition to send for the original ECIR from the adjudicating authority, New Delhi under Section 300 of the CRP in order to conduct trial for prospective and regarding the same the complainant enforcement department is taking steps to produce the original ECIR No.10/CEZO/PMLA/2011 which is pending the adjudicating authority enforcement directorate New Delhi and undertake to produce the said ECIR during the end of the trial and hence at these extent this Hon’ble Court may be pleased to permit the complainant department to proceed with the trial by filing the other documents.

Hence, with great respect, this Hon’ble Court may be pleased to record the submission made in this memo and pleased to dispense the complainant department from producing the original ECIR No.10/CEZO/PMLA/2011 dated 20.01.2011 at this stage and to permit PW1 to adduce further evidence and to mark the relevant documents stated in the complaint and pleased to thus render justice."

सत्यमेव जयते

10 The said memo was taken on file as S.R. No.7464 of 2018 in C.C.No.57 of 2016 and the trial Court, by order dated 19.12.2018, negated the prayer of the Enforcement Directorate, aggrieved by which, the Enforcement Directorate has preferred the instant criminal revision.

11 This Court carefully perused the records, including the impugned order passed by the trial Court and is indeed bemused to note the undue importance that has been given to the ECIR document of the Enforcement Directorate. The trial Court, in the impugned order, has observed as under:

“8. When the provisions of Cr.P.C. for all purposes is applicable to the proceedings before the Special Court, Section 173(5), 190, Section 207 Cr.P.C. will certainly come into place as and when either the final report or a complaint is filed before the Court. It is significant to note that the case of the complainant Enforcement Directorate starts from the ECIR Report/listed document No.II. Listed document No.1 is in respect of the scheduled offence. Therefore, the complainant/Enforcement Directorate should produce the original ECIR before this Court in order to prove the offences as against the accused.”

12 To appreciate what an ECIR form is, it may be necessary to extract it verbatim.

“ENFORCEMENT CASE INFORMATION REPORT (ECIR)

<i>1. ECIR No.</i>	<i>Year</i>	<i>Zone</i>	<i>Sub-Zone</i>	<i>Date</i>
10	2011	Chennai	-	25.1.2011

2. *Nature of the scheduled offence* :

<i>Scheduled Act(s)</i>	<i>Section of the Act(s)</i>	<i>Agency investigating scheduled offence</i>
IPC	Sec.420 of IPC	The Tamil Nadu State Police Department, Economic Offences Wing-II, H.Qrs., Anna Nagar, Chennai 600 040

3.Source from which information/material received	The Tamil Nadu State Police Department, Economic Offences Wing-II, H.Qrs., Anna Nagar, Chennai 600 040
4.Place(s) of occurrence	Chennai

5.Details of known/suspected accused with full particulars:
(attach separate sheet, if necessary)

1.Shri Justin Devadas @ David, Proprietor of M/s.JBJ City Developers and Managing Director of M/s.JBJ City Developers Limited, No.1741, 1st Floor, 18th Main Road, Anna Nagar, Chennai 600 040; and

2.Others

6.Details of property initially suspected to be proceeds of crime:
(attach separate sheet, if necessary)

a) Movable : (has to be ascertained)

b) Immovable : (has to be ascertained)

7.Material relating to commission of offence and reason to believe that an offence of money laundering has been committed and assessment thereof :
(attach separate sheet, if necessary)

A complaint has been filed by one Shri.A.Selvaraj and his wife Smt.P.Rani, before the Tamil Nadu State Police, Economic Offences Wing, Anna Nagar, Chennai, to the effect that he had paid two amounts of Rs.10 lakhs, each, totalling to Rs.20 lakhs to M/s.JBJ City Developers, through its agent Ms.C.M.Parimalam, who was also working with them in Neyveli; that the said M/s.JBJ City Developers had informed them that they were to develop plots by name 'Little Singapore' near Koyambedu and had promised them to get two plots registered in their names and that after a year would return the money; that upon belief they had paid two amounts of Rs.10 lakhs each, on 13.11.2008 and 21.11.2008; that M/s.JBJ City Developers did not register any ground, whatsoever, in their names and that the SBI cheque they were issued with also bounced back when deposited in the bank. The said Shri.A.Selvaraj and P.Rani, inter alia, prayed for appropriate action against the said Shri.Justin Devadass @ David while recovering their cheated amount.

Further, another complaint has been filed by one Shri.T.Ragotthaman to the effect that based on an advertisement that the amount invested in M/s.JBJ City Developers would get doubled in 6 months, the complainant had invested an amount of Rs.1 lakh on 9.9.2008 into M/s.JBJ City Developers, vide Receipt No.002825; that a post dated cheque No.420560 was also received by him from Shri Justin Devadas @ David of M/s JBJ City Developers; that he was also advised by the said Shri Justin Devadas @ David not to present the said cheque but to get cash from his office and that

subsequently when he went to the office of M/s. JBJ City Developers to get the due amount in cash he was manhandled by the said Shri Justin Devadas @ David and his henchmen, and furthermore threatened with his life. The said Shri. T. Ragotthaman, inter alia , prayed for appropriate action against the said Shri Justin Devadas @ David while recovering his cheated amount.

Based on the above said complaint filed by the said Shri. A. Selvaraj and his wife Smt. P. Rani, FIR No.09/2009 dated 16.12.2009 was registered u/s 420 of IPC against the said Shri. Justin Devadas @ David, Proprietor of M/s. JBJ City Developers, No.1741, I Floor, 18th Main Road, Anna Nagar, Chennai – 40 & others, in the Tamil Nadu State Police Department, EOW – II H.Q., Chennai 40. Further, based on the above said complaint filed by the said Shri. T. Ragotthaman, another FIR No.1 of 2010 dated 25.1.2010 was registered u/s 341,352,420, & 506(i) of IPC and 5 of TNPID Act, against the said Shri. Justin Devadas @ David, Managing Director of M/s. JBJ City Developers Ltd., No.1741, 1st Floor, 18th Main Road, Anna Nagar, Chennai 40, in the Tamil Nadu State Police Department, EOW-II, H.Q. Chennai – 40.

Copies of the above said FIRs No.09/2009 dated 16.12.2009 and 1/2010 dated 25.1.2010 were received from the Tamil Nadu Police, Economic Offences Wing, Anna Nagar, Chennai – 40, along with confession statements dated 23.01.2010 and 15.02.2010 given by the said Shri Justin Devadas @ David before the police officials.

On the basis of the aforesaid information/copies of the documents in possession of this Directorate, there appears to be a prima facie case relating to an offence of Money Laundering under Section 3 of the PMLA, 2002, which requires further investigation of the above named persons, in accordance with the provisions of the said Act and the rules framed therein.

Signature of the IO : Sd/-
Name of the IO : S. Kabeer Dass
Assistant Director, Chennai

Countersigned by DD : सत्यमेव जयते
Name : R. Mohandoss

8. Copy forwarded to :
(i) The Director, Directorate of Enforcement, New Delhi; and
(ii) The Additional Director, Directorate of Enforcement, New Delhi and in charge of the zone.

Signature of the I.O. : Sd/
Name of the I.O. : S. Kabeer Dass
Assistant Director, Chennai
Date : 25.01.2011”

13 The ECIR is an administrative form that is used by the Enforcement Directorate for commencing the investigation of a case. Be it noted that the ECIR form is not *in pari materia* with the form that is used by the police to register an FIR under Section 154 Cr.P.C. read with the Rules framed for that purpose by the State Government.

14 Police investigation under Chapter XII of Cr.P.C. would normally begin with the registration of an FIR. There are basically two sources of registration of an FIR, *viz.*, (i) based on the information given by a person of the commission of a cognizable offence and (ii) *suo motu* by the police, based on intelligence.

15 An FIR assumes great significance in offences relating to physical violence like murder, rape, *etc.*, because, the contents of the FIR will throw light on certain important aspects like time and date as to when the complaint (not to be confused with a complaint under Section 2(d), Cr.P.C.) was given. The complaint, which forms the basis of registration of the FIR is required to be sent along with the FIR, to the jurisdictional Magistrate expeditiously, in order to keep him informed of the commencement of investigation under Section 157

Cr.P.C. The complaint given by the complainant can be used to either corroborate or contradict him whilst he is in the witness box during trial.

16 *Suo motu* FIRs are normally registered by the police in white-collar offences where the date and timings in the FIR have least significance. The Enforcement Directorate is not conducting an investigation under Chapter XII of the Cr.P.C., but, on the strength of the powers of search, seizure, recording of statements and arrest, conferred on them by various provisions of the PML Act.

17 An investigation under the PML Act gets triggered against a person only if he is found to have been involved in a 'schedule offence'. Thus, when the police register a case against a person for a 'schedule offence' and when the Enforcement Directorate comes to know of it, they can commence investigation under the PML Act by formally recording in the ECIR form about the nature of the 'schedule offence', as disclosed in the FIR registered by the police. A person cannot be convicted or acquitted based on the entries in the ECIR form, because, an offence under the PML Act has to be proved by examining witnesses and proving documents in order to establish that the accused had involved himself in a criminal activity, acquired assets and had

projected the proceeds of the crime as untainted property. In this scheme of things, the ECIR document really has no significance.

18 *Ergo*, when the learned Special Public Prosecutor wanted to mark the copy of the ECIR form, the trial Court could have relied upon the judgment of the Supreme Court in **Bipin Shantilal Panchal vs. State of Gujarat and another**¹ and marked the document, subject, of course, to recording the objections raised by the defence, instead of disallowing the Special Public Prosecutor to mark it and thereby, bringing the trial to a grinding halt. Such indiscretions by trial Judges, notwithstanding the training given to them in the Tamil Nadu State Judicial Academy, contributes to the delay in the disposal of cases.

19 This Court is also surprised to note that in the memo filed before the trial Court, the Special Public Prosecutor has referred to Section 300 C.R.P. When this Court asked the Special Public Prosecutor as to what he means by referring to “C.R.P.”, he stated that “C.R.P.” refers to Civil Rules of Practice. On a perusal of the Civil Rules of Practice, we did not find any rule beyond Rule 213. If C.R.P. is construed as Cr.P.C., then, Section 300 which deals with

1(2001) 3 SCC 1

“Persons once convicted or acquitted not to be tried of same offence”, has no relevance at all.

20 The Special Public Prosecutor placed strong reliance on Section 294 Cr.P.C. to justify his request to the trial Court for marking an office copy of the ECIR form. We are afraid that Section 294 Cr.P.C. also will not have application, inasmuch as, it relates to dispensing with the formal proof of a document when the same is not disputed by the other side.

21 The Special Public Prosecutor could have obtained the original of the ECIR form from the Adjudicating Authority in New Delhi either by sending a letter to him or filing a petition under Section 91 Cr.P.C. Instead of guiding the Court properly, he has relied upon “a non-existent provision', viz. Section 300 C.R.P.”

22 In the worst scenario, where, the ECIR form itself is not marked during trial, that by itself, will not vitiate the trial, for the simple reason that, the objective satisfaction arrived at and recorded in the ECIR form by the Enforcement Officer that an investigation under the PML Act has to be commenced based on the knowledge acquired by him that the police have

registered a case for a 'schedule offence', can, by no stretch of imagination, either lead to the proof of guilt or otherwise of the person prosecuted under the PML Act. Conviction or acquittal of an accused under the PML Act, can be based only on substantive evidence and not on the mere objective satisfaction arrived at and recorded by the Enforcement Officer in the ECIR form. In criminal trials, the final report (charge sheet) filed by the police is not marked as a prosecution exhibit, because, it is only the final opinion of the Investigation Officer based on the materials collected by him. Likewise, an ECIR form is only an opinion of the Enforcement Officer based on the case registered for a 'schedule offence' that an investigation under the PML Act should be commenced. The melancholic part in our criminal justice system is that, we often find one blind leading another and the two finally ending up in a *cul-de-sac*. We desist from saying anything more.

23 Before bringing the curtains down, the following passage from the book “Judges” by David Pannick with reference to the American justice system is worth quoting.

“Inarticulate advocates, bigoted jurymen, careerist prosecutors and incompetent judges have been seen to inhabit a legal system that leaves much to be desired by way of efficiency and fairness.”

We fervently hope and trust that our criminal justice system is saved from the aforesaid perils that are said to plague the American system.

24 In view of the above discussion, the impugned order dated 19.12.2018 is set aside and the trial Court is directed to permit the prosecution to mark the copy of the ECIR form recording the objections of the defence as laid down by the Supreme Court in **Bipin Shantilal Panchal** (*supra*) and take a final decision with regard to that while delivering the judgment in the main case.

In the result, this criminal revision is allowed. Connected Crl.M.P. stands closed.

(P.N.P., J.) (V.S.G., J.)

25.01.2021

cad

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To:

- 1 The Assistant Director
Directorate of Enforcement
Government of India, Ministry of Finance
Department of Revenue, Chennai 600 006
- 2 The IX Additional Special Judge for CBI Cases
Chennai
- 3 The Public Prosecutor
Madras High Court
Chennai – 600 104



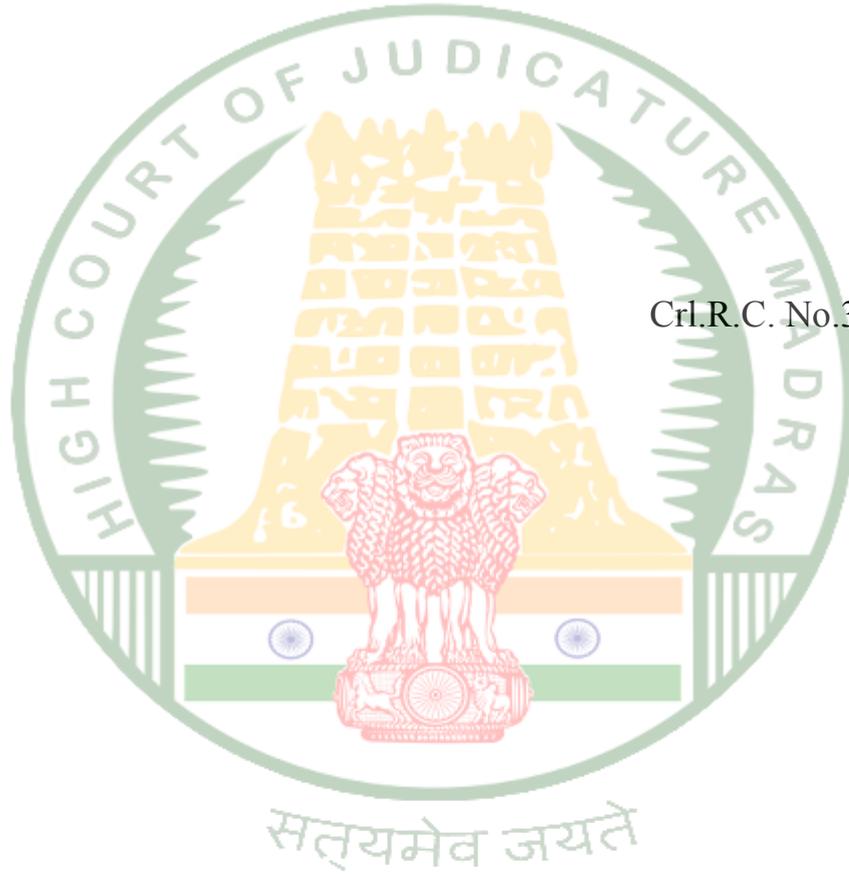
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P.N. PRAKASH, J.

and

V. SIVAGNAM, J.

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