2022 LiveLaw (SC) 688

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION
DINESH MAHESHWARI; J., KRISHNA MURARI; J.
August 16, 2022.
CRIMINAL APPEAL NO. 1254 OF 2022 (Arising out of S.L.P.(Crl.) No. 4258 of 2021)
PARVATHI KOLLUR & ANR. Vs. STATE BY DIRECTORATE OF ENFORCEMENT

Prevention of Money-Laundering Act, 2002; Section 3 - Accused no.1 acquitted of scheduled offence - Prosecution of Wife and son of the accused under PMLA Act - The view as taken by the Trial Court in this matter had been a justified view of the matter and the High Court was not right in setting aside the discharge order despite the fact that the accused No. 1 had already been acquitted in relation to the scheduled offence and the present appellants were not accused of any scheduled offence. *Referred to Vijay Madanlal Choudhary vs Union of India 2022 LiveLaw (SC) 633*

(Arising out of impugned final judgment and order dated 17-12-2020 in CRLRP No. 590/2019 passed by the High Court of Karnataka at Bengaluru)

For Petitioner(s) Mr. Manoj Pandey, Adv. Mr. Saurabh Trivedi, AOR

For Respondent(s) Mr. Tushar Mehta LD SG Mr. S.V. Raju, LD ASG Mr. M.K.Maroria, AOR Mr. Kanu Agarwal, Adv. Mr. Zoheb Hussain, Adv. Mr. Annam Venkatesh, Adv.

O R D E R

Leave granted.

The appellants herein have questioned the judgment and order dated 17.12.2020 as passed by the High Court of Karnataka at Bengaluru in Criminal Revision Petition No. 590 of 2019 whereby, the High Court allowed the revision petition filed by the respondent and set aside the discharge order passed by the IIIrd Additional District and Sessions Judge, D.K., Mangaluru (Karnataka) for the offence under Section 3 of the Prevention of Money-Laundering Act, 2002(hereinafter referred to as 'the Act of 2002').

The appellants herein are wife and son of the accused No. 1 against whom the allegations had been that during his tenure as Deputy Revenue Officer, he amassed assets disproportionate to his known source of income to an extent of Rs.42,25,859/-. For this, the Lokayukta Police registered a case under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the Act of 1988'). During the pendency of trial, the Directorate of Enforcement registered a case against the accused No. 1 and the appellants under the Act of 2002 and filed a complaint on 08.06.2016 before the Special Court for trial of the offence under Section 3 thereof.

In the meantime, the Special Judge (Lokayukta) acquitted the accused No. 1 of the offences aforesaid under the Act of 1988 while observing that the evidence produced by the prosecution was insufficient to hold him guilty. Then, the accused No. 1 as also the present appellants moved an application under Section 277 of the Code of Criminal Procedure, 1973 seeking discharge in the case pertaining to the Act of 2002. Before the said application was considered and decided, the accused No. 1 expired on 08.05.2018.

Thereafter, the Trial Court, by its judgment and order dated 04.01.2019, allowed the application and discharged the appellants from the offences pertaining to the Act of 2002 while observing that occurrence of a scheduled offences was the basic condition for giving rise to "proceeds of crime"; and commission of scheduled offence was a pre-condition for proceeding under the Act of 2002.

Aggrieved by the said discharge order, the Directorate preferred a revision petition before the High Court. The High Court proceeded to set aside the discharge order while observing that the allegations made in the complaint and the material produced, prima facie, made out sufficient ground for proceeding against the appellants for offences under the Act of 2002.

Learned counsel for the appellants has contended that the issue as involved in this matter is no more *res integra,* particularly for the view taken by a 3-Judge Bench of this Court in the case of ***Vijay Madanlal Choudhary & Ors. vs.*** **Union Of India & Ors.** decided on 27.07.2022 where, the consequence of failure of prosecution for the scheduled offence has been clearly provided in the following terms:

"187. …….(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of moneylaundering against him or any one claiming such property being the property linked to stated scheduled offence through him."

Learned ASG appearing for the respondent, in all fairness, does not dispute the above position of law declared by this Court.

The result of the discussion aforesaid is that the view as taken by the Trial Court in this matter had been a justified view of the matter and the High Court was not right in setting aside the discharge order despite the fact that the accused No. 1 had already been acquitted in relation to the scheduled offence and the present appellants were not accused of any scheduled offence.

In view of the above, this appeal succeeds and is allowed. The impugned judgment and order dated 17.12.2020 is set aside and the order dated 04.01.2019 as passed by the Trial Court, allowing discharge application of the appellants, is restored.

All pending applications stand disposed of.