

THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE K.HARIPAL

THURSDAY, THE 5TH DAY OF MAY 2022 / 15TH VAISAKHA, 1944

WP(C) NO. 13990 OF 2021

PETITIONER:

N.JAYAMURUGAN,
S/O. S.NAGALINGAM,
OLD NO. 47, NEW NO. 99,
CANAL BANK ROAD,
C.I.T. NAGAR,
NANDANAM, CHENNAI 600 035,
TAMIL NADU.

BY ADVS.S.SREEKUMAR (SR.)
BIJU VARGHESE ABRAHAM
K.M.ANEESH
N.R.R. ARUN NATARAJAN
SHASHANK DEVAN

RESPONDENTS:

- 1 THE ADJUDICATING AUTHORITY,
(UNDER PREVENTION OF MONEY LAUNDERING ACT),
REP BY THE CHAIRMAN,
4TH FLOOR, JEEVAN DEEP BUILDING,
PARLIAMENT STREET,
NEW DELHI 110 001.
- 2 THE DEPUTY DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
COCHIN ZONAL OFFICE,
"KANOOS CASTLE",
A.K. SHESHADRI ROAD
(MULLASSERY CANAL ROAD - WEST),
COCHIN 682 011.
- 3 THE ASSISTANT DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
COCHIN ZONAL OFFICE,
KANOOS CASTLE"
A.K. SHESHADRI ROAD,
(MULLASSERY CANAL ROAD - WEST),
COCHIN 682 011.

BY ADVS.SRI.P.VIJAYAKUMAR, ASG OF INDIA
SRI.SUVIN R.MENON, CGC

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON
11.02.2022, THE COURT ON 05.05.2022 DELIVERED THE FOLLOWING:

JUDGMENT

This is a writ petition filed under Article 226 of the Constitution seeking the following reliefs:-

- “a) Declare that the Respondents 2 and 3 herein have no jurisdiction to initiate proceedings as against the Petitioner under the provisions of Prevention of Money Laundering Act since the petitioner cannot be held to be in possession of any proceeds of crime within the meaning of Section 2(u) of the Prevention of Money Laundering Act, 2002 after the petitioner has been discharged in respect of alleged offences under Section 4(d) and 4(f) of the Lotteries Regulation Act and Rule 4(5) of the Lotteries Regulation Rules, by order dated 20.01.2018 by the Chief Judicial Magistrate, Ernakulam in C.C. No. 218/2015 and the same was confirmed by the order dated 26.02.2020 in R.P. No. 26 of 2018 and R.P.No. 27 of 2018 passed by the VI Additional Sessions Judge, Ernakulam and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.
- b) to issue a writ of prohibition or any other writ, order or Direction prohibiting the Respondents 2 and 3 from summoning/taking any proceedings against the Petitioner under Section 50 (2) and (3) of the Prevention of Money Laundering Act, 2002 and by issuing any other summons under Section 50(2) and (3) of the Prevention of Money Laundering Act, 2002 and attach the properties of the Petitioner/his relatives or companies floated by the Petitioner under Section 5 of the Prevention of Money Laundering Act,

2002 and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.

- c) to issue a writ of certiorari, calling for the records of the 3rd respondent in ECIR/4/KCZO/2014 (AZ), dated 09.02.2017, in so far as the petitioner is concerned and also calling for the records of the 2nd respondent in the Provisional Attachment Order No. 2/2017 in ECIR/4/KCZO/2014(AZ), dated 09.02.2017 issued under Section 5(1) of the Prevention of Money Laundering Act, 2002 and the consequential original complaint in O.C. No. 695/2017 filed by the second respondent before the 1st respondent under Section 5(5) of PMLA and quash the same as without jurisdiction and ultra vires Section 5 of the Prevention of Money Laundering Act, 2002 and consequently forbear the 1st respondent from proceeding with the adjudication proceedings under section 8 of PMLA in O.C. No. 695/2017 and pass such orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice.”

2. Petitioner is the fifth accused in C.C. No. 218/2015 pending before the Chief Judicial Magistrate's Court, Ernakulam which arose from the final report filed by the CBI alleging offences under Sections 120B and 420 of the Indian Penal Code, Sections 4(d), 4(f) and 9 read with 7(3) of the Lotteries (Regulation) Act, 1998, for short 'LR Act' and Rules 3(5) and 4(5) of the Lotteries (Regulation) Rules, 2010, for

short 'LR Rules'. The petitioner is the partner of M/s. M.J. Associates, Palakkad. At the instance of the State of Kerala, 32 crimes were registered against accused persons including the petitioner in different police stations. Later, investigation of all the crimes were handed over to the CBI at the instance of the State. After investigation, the CBI referred 23 crimes, a compiled final report was laid in seven crimes from which C.C. No. 218/2015 arose. Investigation is yet to conclude in the remaining two crimes.

3. According to the petitioner, on 06.08.1999 by an agreement, the Government of Sikkim had appointed M/s. Martin Lottery Agencies Limited, re-named as M/s. Future Gaming Hotels and Services India Private Limited, presently known as M/s. Future Gaming Solutions India Private Limited, as the distributor to market and sell lottery tickets organized, conducted or promoted by the Government of Sikkim. The agreement was periodically extended till 17.10.2014. The Sikkim Government is the organizing State as provided under Rule 2(f) of the LR Rules and M/s. Future

Gaming Solutions India Private Limited falls under the definition of distributor or selling agent under the Rules. M/s. Megha Distributor was registered as a promoter under the Kerala Tax on Paper Lotteries Rules, 2005 and they were liable to pay tax on lotteries in the State of Kerala as per Kerala Tax on Paper Lotteries Act. M/s. Megha Distributor was the Kerala stockist of Sikkim lotteries. The petitioner entered into a partnership agreement on 14.12.2017 with Mr. Martin and formed a partnership firm by name M/s. M.J. Associates. An agreement was entered into between M/s. Megha Distributor and M/s. M.J. Associates by which M/s. M.J. Associates was appointed as the sole stockist of the lottery tickets in Kerala. M/s. M.J. Associates was only purchasing lottery tickets from M/s. Megha Distributor which was the registered promoter and they in-turn were selling lottery tickets through 73 stockists in Kerala. The flow chart in the writ petition indicates that the Sikkim Government, the organising State had appointed M/s. Martin Lottery Agencies as the distributor who in-turn entered into an agreement with M/s. Megha Distributor, the promoter

in Kerala; between M/s. Megha Distributor and M/s. M.J.Associates, an agreement was executed on 15.12.2007 by which M/s. M.J. Associates was appointed as the sole stockist in Kerala. The latter was only purchasing lottery tickets from M/s. Megha Distributor and was selling the tickets through 73 stockists who distributed lotteries through sub stockists and then given to road side vendors and retail shops. While so, some dispute arose between the partners of M/s. M.J. Associates and the petitioner, thereafter, he had not involved in any sale of Sikkim lotteries in Kerala. From 14.06.2010 to 31.08.2010 the sale of lottery tickets in Kerala was done directly by M/s.Megha Distributor and legal proceedings were initiated by the petitioner against Mr. Martin, M/s.Future Gaming Solutions India Private Limited and M/s. Megha Distributor. Alleging that there is conspiracy among the petitioner and other accused persons and thereby defalcated large sum of money, the said final report was laid in which charge No. 1 is a general charge setting out criminal conspiracy between the petitioner and M/s. Martin Lottery Agencies

Limited. According to him, no allegation of cheating punishable under Section 420 of the IPC has been made against the petitioner. The other specific charge against the petitioner is in charge No. 8 where he had allegedly committed offence punishable under Section 120B of the IPC besides under Sections 4(d) and 4(f), 9 read with 7(3) of the LR Act and Rules 3(5) and 4(5) of the LR Rules.

4. According to the petitioner, he had no role in the alleged violation of the LR Act and Rules. Thus, the Government of Sikkim refused to give consent under Section 6 of the Delhi Special Police Establishment Act to investigate any case against him.

5. On the basis of the final report filed before the Chief Judicial Magistrate, Ernakulam respondents have initiated the following proceedings/orders against the petitioner:-

- “a) ECIR.No.KCZO/4/2014 dated 19.08.2014 issued by the third respondent.
- b) Provisional Attachment Order No. 2/2017 in ECIR/4/KCZO/2014(AZ) dated 09.02.2017 issued by the second respondent.
- c) O.C. No. 695/2017 dated 23.02.2017 filed by the second

respondent pending on the file of the 1st respondent.”

6. Now his properties have been provisionally attached by the respondents, challenging the same, he had approached the Madras High Court with W.P. No. 5160/2017. On 23.02.2017, the 2nd respondent filed Ext.P4 complaint in O.C. No. 695/2017 under Section 5(5) of the Prevention of Money-Laundering Act, for short ‘PML Act’ before the adjudicating authority. However, Ext.P5 certificate issued by the Directorate of Sikkim Lotteries indicates that the performance of M/s. Future Gaming Hotels and Services India Private Limited as the sole distributor, was satisfactory and no amount is due to the Government upto 12.07.2015. In the writ petitions filed before the Madras High Court, the petitioner could obtain interim orders. Thereafter, petitioner moved an application for discharge before the Chief Judicial Magistrate’s Court, Ernakulam. By Ext. P8 order dated 20.01.2018, the court ruled that offence under Section 4(d) and 4(f) of the LR Act and Rule 4(5) of LR Rules are not attracted and he is liable to face trial only for offence under Section 9 read with 7(3) of the LR Act

and Rule 3(5) of the LR Rules and Section 120B of the IPC. At this juncture, he has been served with summons under Section 50(2) and (3) of the PML Act. Challenging the same, he filed W.P. No. 13589/2018 before the Madras High Court and by Ext.P9 order dated 07.06.2018, the Madras High Court directed the respondents to defer the hearing in the matter. Meanwhile, revision was filed against Ext.P8 order before the Sessions Court, Ernakulam. By Ext.P10 order dated 26.02.2020, the revision filed by the petitioner was dismissed by the Additional Sessions Court and the revision filed by the CBI was allowed in part by modifying the order of the Chief Judicial Magistrate. Even though the petitioner had moved W.P. No. 41924/2016 before the Madras High Court, it was dismissed by Ext. P12 order dated 08.02.2021, in the light of the order passed by the Division Bench in Ext.P11 order. Challenging the correctness of Ext.P10 order, petitioner moved CrI.M.C. No. 5809/2020 before this Court which was dismissed by Ext.P13 order. However, he moved an SLP before the Hon'ble Supreme Court and by order dated 29.06.2021, the

Apex Court stayed the further proceedings in the case pending before the Chief Judicial Magistrate's Court. Pursuant to Ext. P15 order, petitioner sought adjournment of the proceedings in OC No. 695/2017 pending before the first respondent. By Ext. P17, the first respondent has informed that there is no stay of proceedings initiated by the respondents under the PML Act and there is no impediment in continuing the proceedings before the adjudicating authority.

7. According to the petitioner, by the order of discharge passed by the Chief Judicial Magistrate, proceeds of crime stand totally eliminated. The Chief Judicial Magistrate has clearly found that offence under Sections 4(d) and 4(f) of the LR Act and Rule 3(5) of the LR Rules are not maintainable. That means, the petitioner is not in possession of any proceeds of the crime within the meaning of Section 2(u) of the PML Act. Therefore, it is idle for the respondents to proceed with the adjudicatory process and orders of attachment of properties which have no connection whatsoever with the alleged commission of crime. Hence, he has approached this Court

with the aforestated reliefs.

8. The learned Central Government Counsel appearing on behalf of respondents 2 and 3 filed a statement seeking to dismiss the writ petition. According to him, seeking almost the very same relief, the petitioner had approached the Hon'ble High Court of Madras in W.P. No. 41924/2016; by Ext.P11 judgment the court found that the writ petitions are not maintainable, since the petitioner has efficacious alternative remedy before the statutory authority. The Court further found that the High Court of Madras is not inclined to entertain the writ petition on the ground of jurisdiction also. The petitioner has challenged the provisional order of attachment issued under Section 5(1) of the PML Act. The Director or Deputy Director is empowered to issue provisional attachment orders for a period of 180 days pending adjudication before the adjudicating authority. Section 8(1) of the PML Act enables the adjudicating authority to decide the question. Aggrieved person can prefer appeal before the Appellate Tribunal under Section 26 of the PML Act; again Section 42 of the PML Act

provides for preferring appeal to the High Court. In the circumstances, such a writ petition is not maintainable at all.

9. The petitioner filed a reply affidavit reiterating the contentions and also producing Exts. P19 and P20 documents. At the time when the matter came up for admission, before admitting the writ petition, this Court stayed the adjudication, pending disposal of the writ petition, allowing the attachment to continue.

10. I heard Sri. S. Sreekumar, learned Senior Counsel assisted by Adv. Sri. N.R.R. Arun Natarajan for the petitioner and Sri. Suvin R. Menon, the learned Central Government Counsel very elaborately. The learned counsel reiterated the contentions. The learned counsel on both sides filed respective argument notes also.

11. The learned Senior Counsel pointed out that the petitioner was only a stockist under M/s. Megha Distributor and the fifth accused in the crime. He had no occasion to transact with the Sikkim Government. The partnership firm in which he was a partner had done the business of stocking

tickets only for less than three years, from 31.12.2007 to 13.06.2010; thereafter, disputes arose between himself and the other partner and thereafter, they parted company. The lottery was organized on the basis of the agreement executed between the first accused and the Sikkim Government, the Sikkim Government has made it abundantly clear that they have not sustained any loss, so that offence under the LR Act or LR Rules will not lie against him. Moreover, offences under the LR Act are not scheduled offences. According to the learned counsel, Sections 120B and 420 of the IPC were incorporated in the statute only on 01.06.2009, so that the petitioner cannot be made liable for any predicate offence and assets proceeded against are not proceeds of the crime. Inviting my attention to Ext.P8 order, he pointed out that the Chief Judicial Magistrate has discharged him of offences under the LR Act and LR Rules, which means the allegation against him that his assets are proceeds of the crime is completely unfounded.

12. According to the learned counsel, even though the Madras High Court had dismissed the writ petition, it is evident

that it had no jurisdiction to deal with the matter. Once it is found that it had lacked territorial jurisdiction to entertain the writ petition, a finding rendered regarding the maintainability of the writ petition also vanishes. Referring to the decisions reported in **Arun Kumar Mishra v. Directorate of Enforcement [2015 SCC OnLine Del 8658]**, **Sushil Kumar Katiyar v. Union of India [2016 SCC OnLine All 2632]**, **Rajeev Chanana v. Deputy Director, Directorate of Enforcement [2014 SCC OnLine Del 4889]**, the learned counsel said that once the court found that there is no basis in the allegations touching the predicate offence, proceedings under the PML Act do not have independent existence.

13. On the other hand, the learned Central Government Counsel for the respondents stressed that in the light of the judgment rendered by the Division Bench of Madras High Court such a writ petition is barred by principles of issue estoppel and cause of action estoppel. According to him, the finding of the Madras High Court that in the light of the existence of efficacious alternative remedies available to the

petitioner under the PML Act, the petitioner cannot insist the High Court to conduct a roving enquiry. The decision of the Madras High Court has become final and the petitioner has not taken care to challenge its correctness before the Apex Court. According to him, the decisions relied on by the learned Senior Counsel for the petitioner are not applicable to the facts of the case. Moreover, the question whether offence under the PML Act will lie independently against the petitioner dehors predicate offence is a matter being considered by the Apex Court. There are contra views taken by other High Courts. The decision in **Arun Kumar Mishra**, quoted supra, stands stayed by the Apex Court. Therefore, he pressed for dismissing the writ petition. According to him, it has been filed on experimental basis, that the petitioner and his co-accused want to drag the proceedings one way or the other.

14. There is no dispute on the factual matrix. Petitioner is the fifth accused in C.C. No. 218/2015 on the file of the Chief Judicial Magistrate's Court, Ernakulam which is the culmination of investigation by the CBI in seven crimes;

offence under Sections 120B, 420 of the IPC besides under Sections 4(d), 4(f), 9 read with 7(3) of the LR Act and Rules 3(5) and 4(5) of the LR Rules are alleged against the petitioner and others. Charge Nos. 1 and 8 are alleged against the petitioner, the 5th accused. The relevant portion of charge No. 1 reads thus:-

“xxxxxx

Thus the accused persons A-1 to A-7 by way of non-remittance of sale proceeds to the Sikkim Government, non-remittance of unclaimed/undisbursed prize money back to the Sikkim Government, printing of Sikkim Lottery tickets from a non security press not empanelled by RBI/IBA, not returning the unsold tickets back to the Sikkim Government, not returning undisbursed prize amounts to the Sikkim Government and manipulation of data showing unsold prize winning tickets as sold and claiming the same from Sikkim Government, and cheating the Government of Sikkim by entering into an agreement containing covenants contrary to the LR Act and Rules and thus deceived the Sikkim Government in not receiving the full sale proceeds of the lottery tickets and A-1 by practically conducting the Sikkim Government Lotteries in the name of M/s.FGSIPL, committed the offence punishable U/s 120B, 420 IPC read with Section 4(d), 4(f), 7(3), 9 of the Lotteries (Regulation) Act, 1998 and 3(5), 4(5) of Lotteries(Regulation) Rules, 2010.”

15. Charge No. 1 is generally against all accused

persons, seven in number. As regards the petitioner, charge No. 8 reads thus:-

“CHARGE – 8

That A-5 Shri N. Jayamurugan, Partner of M/s. M.J. Associates, Palakkad during 2007 to 2010 in furtherance of the Criminal Conspiracy narrated in Charge No. 1, sold and distributed Sikkim Lottery tickets violating Section 4(d) of the Lotteries (Regulation) Act, 1998; Section 4(f) of the Lotteries (Regulation) Act, 1998 that the prize money unclaimed within such time as may be prescribed by the State Government or not otherwise distributed, shall become the property of that Government; during 1-4-2010 to 31.08.2010 Rule 3(5) of the Lotteries (Regulation) Rule, 2010 that the paper lottery tickets and the stationery on which the online lottery tickets are issued shall be printed by the organising state at a Government press or any other high security press included in the panel of Reserve Bank of India or The Indian Banks' Association, Mumbai; during 1.4.2010 to 31.08.2010 Section 4(5) of the Lotteries (Regulation) Rule that the distributors or selling agents shall return the unsold tickets to the Organising States with full accounts along with the challans of the money deposited in the Public Ledger Account or in the Consolidated Fund of the Organising State through the sale of tickets and thereby committed offence punishable Section 7(3) of Lotteries (Regulation) Act, 1998.”

16. The petitioner had moved C.M.P. No. 2201/2016 in C.C. No. 218/2015 under Section 239 of the Cr.P.C. seeking discharge. After hearing counsel on both sides and perusing the documents, by Ext.P8 order dated 20.01.2018, the learned

Chief Judicial Magistrate found that offence under Sections 4(d) and 4(f) of the LR Act and Rule 4(5) of the LR Rules will not lie against the petitioner. The court also made clear that the petitioner will have to face the ordeal of trial with respect to the remaining part of the charge. Challenging the correctness, legality and propriety of the order, the petitioner as well as the Union of India through the CBI, filed separate revision petitions before the Sessions Court. The learned Additional Sessions Judge dismissed CrI.R.P. No. 27/2018 filed by the petitioner and allowed in part CrI.R.P. No. 26/2018 filed by the CBI and modified the order to the extent that charge will have to be framed under Section 9 read with 7(3) of the LR Act and Rule 3(5) of LR Rules besides under Sections 120B and 420 of the IPC. The correctness of the decision of the Sessions Court was canvassed by the petitioner before this Court in CrI.M.C. No. 5809/2020; the learned Single Judge of this Court by Ext.P13 order dismissed the revision and upheld the views expressed by the learned Additional Sessions Judge. It is true that the petitioner had preferred Special Leave to Appeal (CrI.)

No. 3521/2021 against Ext.P13 order before the Hon'ble Supreme Court and obtained an interim stay of further proceedings of C.C.No.218/2015 pending before the Chief Judicial Magistrate. However, the learned Central Government Counsel has produced a copy of the order dated 08.11.2021 in Special Leave to Appeal (Crl.) No. 3521/2021 whereby the Special Leave stands dismissed. In other words, the finding of the learned Additional Sessions Judge holds the field.

17. It is also the common case that pursuant to the filing of Ext.P1 charge sheet before the Chief Judicial Magistrate by the CBI, Ext.P2 ECIR was launched against the petitioner and others where he is the fifth accused. Following the same, Ext.P3 order of attachment has been passed on 09.02.2017 whereunder numerous items of properties of the petitioner stands attached provisionally. Thereafter, original complaint has been preferred before the adjudicating authority under the PML Act, Ext.P4, seeking adjudication under Section 8 of the PML Act. While so, the fourth accused, John Kennedy approached the Madras High Court seeking to quash the

proceedings with W.P. Nos. 25177 and 25231 of 2019, following which petitioner filed W.P. No. 41924/2016 before the Madras High Court. By the detailed judgment, Ext.P11, the writ petition filed by the fourth accused was dismissed on the following lines:-

“25. On the whole, we are of the considered view that, first of all, the Writ Petitions are not maintainable before this Court, when there is an efficacious alternative remedy available for the petitioners to approach the concerned authority under the PMLA; secondly, only a small fraction of cause of action had arisen before this Court and the larger and substantial part of cause of action had arisen only in the State of Kerala, where the FIRs have been registered and the trial is pending before the Special Court at Kerala. Therefore, this Court is not the appropriate Court to entertain the present Writ Petitions. Hence, on these two grounds, the present Writ Petitions are liable to be dismissed.”

18. By separate order dated 08.02.2021, the writ petition filed by the petitioner was also dismissed as not maintainable. In the short order, the Division Bench of the Madras High Court held that 'in view of the order passed by a Division Bench in **John Kennedy and Others v. Joint Director** (Ext.P11), this writ petition is dismissed as not maintainable. Liberty is given to the petitioner to work out his remedy in the

manner known to law before the appropriate forum.' Thereafter, the petitioner approached this Court with the above stated Writ Petition.

19. I have already set out the major contentions urged by the learned counsel on both sides. The petitioner wanted to say that by virtue of the order of discharge passed by the Chief Judicial Magistrate, the substratum of the case has been lost and that he is not in possession of any proceeds of crime within the meaning of Section 2(u) of the PML Act. He wanted to make this Court believe that on account of the order of discharge, charge of generation of proceeds of crime is totally eliminated and he is not liable to be proceeded against.

20. But after having gone through the materials on record and the detailed and erudite arguments of learned counsel on both sides, I have no doubt in mind that the petitioner is not entitled to get any relief in his favour. Even though the learned Chief Judicial Magistrate granted only partial discharge of the charges levelled against the petitioner, he has stated that by virtue of the order, the substratum of

proceedings initiated by the respondents against him has been lost. There is no legal or factual basis in the contention.

21. As mentioned earlier, in Ext.P8 order, the learned Chief Judicial Magistrate had found that offence under Sections 4(d), 4(f) of the LR Act and Rule 4(5) of the LR Rules will not lie against him. It is made absolutely clear that the petitioner will have to face the ordeal of trial with respect to the remaining part of the charge. There are offences under Sections 120B, 420 of the IPC, Section 9 read with 7(3) of the LR Act and Rule 3(5) of the LR Rules remaining against the petitioner which has been made clear by the learned Additional Sessions Judge in revision. This order has been confirmed by this Court when a Crl.M.C. was moved by the petitioner challenging the correctness of the order of the Court in revision. The Special Leave to Appeal filed against that order stands dismissed.

22. It is true that offences under the Lottery (Regulation) Act or Lottery (Regulation) Rules are not predicate offences under the PML Act. Similarly, offences

under Sections 120B and 420 of the IPC were inserted by amendment dated 01.06.2009. It is also clear that the partnership firm in which the petitioner was a partner had been in the lottery business for the period from 31.12.2007 to 13.06.2010. That means, at the time when he had left the lottery business on 13.06.2010, offence under Sections 120B and 420 of the IPC were brought in as scheduled offences under the PML Act. During the period of business itself, before he had parted company with the first accused on 13.06.2010, those offences were brought into the purview of the PML Act by way of amendment. After the amendment, for more than one year, the petitioner was admittedly part of the partnership business which had run the lottery business. The specific case of the CBI is that the first accused Santiago Martin, the proprietor of Future Gaming Solutions India Private Limited had sold tickets to the third accused, M/s. Future Gaming Solutions India Private Limited (formerly Martin Lottery Agencies,) during the period from 31.12.2007 to 04.04.2010; M/s. Future Gaming Solutions India Private Limited owned by

the first accused in-turn sold tickets to M/s. Megha Distributor who in-turn sold tickets to M/s. M.J. Associates in which petitioner and the said Martin were partners and M/s. M.J. Associates had sold tickets to 73 stockists in Kerala. During the period of 2009, the above firms had allegedly received Rs. 1,723 crores as sale proceeds in respect of sale of Sikkim lottery, but the Government of Sikkim was paid only Rs. 59 crores. Similarly, it is alleged that during the period from 19.10.2009 to 31.03.2010, they had received Rs.1,801 crores by sale proceeds of lotteries, but the Sikkim Government was paid only Rs. 45 crores; from 01.04.2010 to 31.08.2010, an amount of Rs. 1,227 crores were obtained by sale of lotteries, but the Sikkim Government was paid only Rs. 38 crores. In other words, by sale proceeds, they obtained a total amount of Rs. 4752 crores, but paid only Rs.142 crores to the Sikkim Government and defalcated the balance amount. (see paragraph 11 of Ext.P10).

23. Highlighting Ext.P5 letter dated 19.10.2015, it was pointed out that no amount is due to the Sikkim Government

from the petitioner. This aspect has been considered by the learned Additional Sessions Judge as well as this Court in Ext.P13 order. In Ext.P10, the learned Additional Sessions Judge has noticed that the business was being done by the petitioner in the State of Kerala, that public money had gone into the hands of the petitioner, that cheating was ultimately done against the public who paid for the lottery tickets, that all these aspects are matters of evidence to be considered at the time of trial. The learned Single Judge of this Court has observed as follow:-

“15. I find it difficult to accept the contention. Other than the Government of Sikkim, the Government of Kerala and the accused, the major stakeholders are the public who have purchased the tickets under the belief that the lottery was being conducted strictly in accordance with the provisions of the Act and the Rules. By conducting the lottery in violation of the provisions, the public, who spent money for purchasing the lottery tickets, was deceived. Therefore, irrespective of the fact that the Government of Sikkim has no complaint, the offence under Section 420 is attracted. Moreover, if during the course of trial, it is found that the officials with the Government of Sikkim are also part of the conspiracy, the trial court can exercise its power under Section 319 to proceed against those persons also.”

24. Further, in Ext.P11, a Division Bench of the Madras High Court also noticed that there is clear allegation of conspiracy between the accused and unknown officials of the State of Sikkim, which had resulted in cheating the people of Kerala who had purchased lottery tickets in wholesale and the draws were manipulated. In the circumstance, a communication issued by the Director of Sikkim Lotteries that no amounts are due to the Sikkim Government, is of no consequence for the present proceedings.

25. As rightly pointed out by the learned Standing Counsel for the respondents, the decision in **Arun Kumar Mishra**, quoted supra, and other decisions relied on by the learned Senior Counsel for the petitioner are of no avail. In those decisions, the courts have quashed the proceedings in respect of all the predicate offences so that the position as to whether proceedings under the PML Act will stand alone was considered and upheld the contention of the petitioners that so long as the courts had found that predicate offences will not lie,

proceedings under the PML Act alone will not stand. According to the learned Standing Counsel, this matter has already been taken up with the Supreme Court and an order of stay has been granted. But according to the learned counsel for the petitioner, in the light of the decision of this Court in **Abdul Rahiman v. District Collector, Malappuram and Others [ILR 2009 (4) Kerala 513]** the fact that the Supreme Court has granted an order of stay cannot lose the binding precedent. All the same, it must be pointed out that the decisions in **Arun Kumar Mishra, Sushil Kumar Katiyar, Rajiv Chanana** etc., quoted supra, have turned on its own facts, which are quite distinguishable on facts.

26. Here the petitioner has been discharged by the learned Chief Judicial Magistrate only partially, in respect of offence under Sections 4(d), 4(f) of the LR Act and Rule 4(5) of the LR Rules alone. In other words, he will have to face trial in respect of the remaining offences.

27. The argument that there is alternative efficacious remedy available to the petitioner also is really formidable.

The Division Bench of the Madras High Court, after elaborate discussion and basing on authorities, found that a Writ Petition is not maintainable on that count. Paragraph 13 of Ext.P11 reads thus:

“13. It is trite law that when an alternative and appellate remedy is in- built in the statute, resorting to invoke the inherent and discretionary jurisdiction conferred upon this Court under Article 226 of The Constitution of India, is not proper. As mentioned above, there is an alternative remedy provided under Section 8 of the PMLA before the Adjudicating Authority. The writ petitioners ought to have approached the Adjudicating Authority and questioned the validity and/or correctness of the PAO passed by the respondent. Further, this Writ Court, under Article 226 of the Constitution of India, is not conducting any roving enquiry on the disputed questions of facts to render a finding as to whether the reasons assigned in the impugned PAO are valid or not. Therefore, we are of the opinion that when alternative remedy is available, the present Writ Petitions are not maintainable. The hastiness with which the petitioners have filed the present writ petitions before this Court, is not proper, when there is an alternative remedy provided under Section 8 of PMLA.”

28. It is the well settled proposition of law that when an alternative and equally efficacious remedy is open to a litigant, he should be requested to pursue that remedy and not to invoke the extraordinary jurisdiction of the High Court to issue a

prerogative writ. It is true that existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, as observed by the Hon'ble Supreme Court in **Rashid Ahmed v. The Municipal Board, Kairana** [AIR 1950 SC 163] “existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs” and where such a remedy exists, it will be a sound exercise of discretion to refuse interference in a Writ Petition unless there are good grounds therefore. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of imposed limitation, a rule of policy and a discretion rather than a rule of law and the court may, therefore, in exceptional cases, grant reliefs.

29. Further, as held by the Apex Court in **Harbanslal Sahnia and another v. Indian Oil Corporation Ltd. and others** [(2003) 2 SCC 107], the rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of alternative remedy, the High Court may

still exercise its jurisdiction in at least three contingencies: (i) where writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice, or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. This principle has been reiterated by the Supreme Court in **Assistant Commissioner of State Tax v. Commercial Steel Ltd. (MANU/SC/0801/2021)** where it has been held that the existence of an alternate remedy is not an absolute bar to the maintainability of a writ petition under Article 226 of the Constitution. But a writ petition can be entertained in exceptional circumstances where there is :

- i. a breach of fundamental rights;
- ii. a violation of the principles of natural justice;
- iii. an excess of jurisdiction; or
- iv. a challenge to the violation of the statute or delegated legislation.

Here, the petitioner does not claim any such exception. In fact, as noticed earlier, the Division Bench of the Madras High Court considered this matter in proper perspective and held that the

petitioner has an effective alternative remedy which ought to have been availed before rushing to the court with Writ Petition.

30. The PML Act is a self contained code. It provides sufficient safeguards preventing excessive acts from the side of the Director. If prima facie materials are made out, the appropriate authorities can be approached with a provisional order of attachment as provided under Section 5 of the PML Act followed by adjudication for confiscation of the proceeds of the crime. Section 8 provides for adjudication of complaint preferred under Section 5(5) or applications made under Section 17(4) or Section 18(10) of the PML Act. Section 26 provides for examining the legality and correctness of the order passed by the Adjudicating Authority. Section 42 of the PML Act ensures further appeal to the High Court. The petitioner has no case that procedural safeguards are violated and he is being proceeded against arbitrarily. Thus he has approached the Madras High Court at the threshold hastily, overlooking the procedures provided in the PML Act. When the Writ Petition

was dismissed finding that it is not maintainable, he has approached this Court a second time, almost on the same lines. He has neither resorted to the remedies available under the PML Act nor chose to approach the Apex Court, challenging the correctness of that decision.

31. There was a contention that the alleged proceeds of the crime are not from the offence under Section 120B or Section 420 of the IPC but from the offence alleged under the LR Act. But, as rightly submitted by the learned Standing Counsel, it is basically a question of fact, which cannot be decided by this Court.

32. It was also urged by the learned counsel that the PML Act was amended only from 01.06.2009 which does not have retrospective operation so that the very Ext.P2 ECIR is bad; when Ext.P2 goes, Exts.P3 and P4 are also bound to go. As stated earlier, whether the petitioner has been proceeded against under the Lotteries Act or whether the proceeds of the crime had generated from the offence under Section 120B or Section 420 of the IPC are questions of fact. Even though the

amendment does not have retrospective operation, at least till 13.06.2010 the petitioner had been part of the lottery business in his capacity as the partner of M/s.M.J. Associates from 31.12.2007 to 13.06.2010. There are reasons to believe that the petitioner had indulged in the acts of committing scheduled offences after the inclusion of these offences after the amendment on 01.06.2009. The specific case of the respondents is that all the accused persons are party to the conspiracy, offences under Sections 420 and 120B IPC are alleged against all. An offence under Section 120B IPC, in the nature of the allegations, is a continuing offence. Merely for the reason that he had withdrawn from the business on 13.06.2010, it cannot be thought that he is not in possession of the proceeds of crime which were committed during the period from 01.06.2009 to 13.06.2010. Moreover, the learned Additional Sessions Judge has found that he has to face trial for offences under Sections 120B and 420 IPC as well. Materials are wanting to say that the assets were acquired prior to 01.06.2009. The learned Standing Counsel asserted that

proceeds of the crime were derived from acts attracting offence under Sections 120B and 420 IPC. Once it is found that the assets were acquired after 01.06.2009. Similarly, the question as to when the offence was committed, etc. are matters which can be decided only at the time of taking evidence.

33. There is also force in the contention that when offence under Section 420 IPC is charged, it presupposes existence of property; without any property, such an offence will not lie. The proceeds of crime ought to have been attached by the respondents. The Additional Sessions Judge in revision found that the offence under Section 420 IPC is also attracted, which has been considered and confirmed by this Court in Ext.P13 order. That order stands confirmed by the Apex Court. Once this Court held that Section 420 IPC is attracted, now, in this Writ Petition, it cannot be said that that offence was committed only prior to the amendment.

34. To put it in other words, predicate offence under Sections 120B and 420 of the IPC continues even after withdrawal of the petitioner from business deals. Persons

cheated include general public. As far as act of cheating is concerned, there is no distinction between the general public and the Government.

35. Referring to the decisions reported in **Municipal Corporation of Greater Mumbai v. Pankaj Arora (Secretary) and Others [(2018) 3 SCC 699]**, **Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and others [(1998) 8 SCC 1]** etc, the learned counsel for the petitioner wanted to say that the judgment rendered by the Madras High Court in Ext.P11 cannot be given any importance so long as its own finding indicates that it does not have jurisdiction to go into the questions. As mentioned earlier, in Ext.P11 there is no finding that there is total lack of inherent jurisdiction. In paragraph 18, the Court has observed that there is only a small fraction of cause of action that had arisen within the jurisdiction of that Court, which is not sufficient to maintain the Writ Petitions; there is only a minuscule cause of action arose within that jurisdiction, but a larger and substantial part of cause of action had arisen within the State of Kerala where

most of the occurrence alleged to have been committed by the petitioner had taken place. Thus the court thought that it is not appropriate to entertain the Writ Petition. It is evident that all the properties which are the proceeds of crime situate within Tamil Nadu, within the territorial jurisdiction of the Madras High Court. But cause of action for the commission of crime which led to the filing of final report had arisen in State of Kerala. The Court was thus refusing to exercise its discretionary jurisdiction by invoking the doctrine of “forum conveniens”. Therefore, the decision in **Municipal Corporation of Greater Mumbai**, quoted supra, is not applicable to the facts of the case.

36. There is also considerable force in the submission that the petitioner has not approached this Court with clean hands. On initiation of proceedings under Exts.P2 to P4, he had hurriedly approached the Madras High Court and obtained interim orders in 2015. The Writ Petition was dismissed on 08.02.2021. Immediately thereafter he approached this Court without realising or conveniently ignoring the message given

by the Hon'ble Madras High Court. Even though it was made clear that he is bound to face trial in respect of the remaining offences, he has approached the court as though entire proceeds of the crime are wiped out by the order of discharge, which is unfounded. Even now he has not prepared to resort to the remedies available under the PML Act, which is not understandable. Entire materials indicate that it was an organised crime committed by the accused persons. It is intriguing to notice that, at first the 1st accused enters into an agreement with the Sikkim Government; then he himself acts as the distributor and nominates another as stockist; again a partnership is created himself acting as one of the partners. After large sum of money was siphoned off, when proceedings are initiated, challenges are being made in different High Courts. Resultantly, they could successfully stall the proceedings for over six years. Malpractices and fraud have been committed on a massive scale involving huge sum of money. There are reasons to believe that they have acted hand in glove with unknown employees of the Sikkim Government.

Even though it was necessary that the lottery should have been printed either in Government press or in presses recognised by Indian Bank Association, all lotteries were printed in some private press in Sivakasi in Tamil Nadu for sale by the 1st accused Santiago Martin and his aids. It may be true that the petitioner had been in the field only for three years, the respondents have reasons to believe that he was part of the larger conspiracy at least during the period between 31.12.2007 to 13.06.2010. By that time, the offences under Sections 120B and 420 IPC were incorporated in the schedule of offence. It appears that the petitioner wants to prolong the matter one way or the other. After failing to get any relief from the Madras High Court he has approached this Court raising almost same contentions, which are barred by principles of issue of estoppel and cause of action estoppel.

The petitioner is not entitled to get any relief from this Court. The Writ Petition is dismissed, with costs.

Sd/-
K.HARIPAL
JUDGE

APPENDIX

PETITIONER'S ANNEXURE

- EXHIBIT P1 TRUE COPY OF THE FINAL REPORT FILED BEFORE THE CHIEF JUDICIAL MAGISTRATE COURT, ERNAKULAM.
- EXHIBIT P2 TRUE COPY OF THE PROCEEDINGS ECIR/4/KCZO/2014 INITIATED BY THE 3RD RESPONDENT UNDER THE PREVENTION OF MONEY LAUNDERING ACT (PMLA) .
- EXHIBIT P3 TRUE COPY OF THE PROVISIONAL ATTACHMENT ORDER IN REF. 2-/ 2017 IN ECIR/4/KCZO/2014 (AZ) DATED 09.02.2017 ISSUED BY THE 2ND RESPONDENT .
- EXHIBIT P4 TRUE COPY COMPLAINT DATED 23.02.2017 IN O.C. NO. 695/2017 UNDER SECTION 5(5) OF PMLA FIELD BEFORE THE 1ST RESPONDENT.
- EXHIBIT P5 TRUE COPY OF THE LETTER DATED 19.10.2015 ISSUED BY THE DIRECTORATE OF SIKKIM STATE LOTTERIES.
- EXHIBIT P6 TRUE COPY ORDER DATED 07.05.2017 PASSED BY THE HONBLE HIGH COURT OF MADRAS IN W.M.P. NO. 12606 TO 12610 OF 2017 IN WP NOS 11599 AND 11600.
- EXHIBIT P7 TRUE COPY OF THE INTERIM ORDER DATED 01.08.2017 PASSED BY THE HONBLE HIGH COURT OF MADRAS IN WP NO. 19611 OF 2017.
- EXHIBIT P8 TRUE COPY OF THE ORDER DATED 20.01.2018 PASSED BY THE CHIEF JUDICIAL MAGISTRATE ERNAKULAM IN CMP NO. 2201/2016 IN CC NO. 218 OF 2015.
- EXHIBIT P9 TRUE COPY OF THE INTERIM ORDER DATED 07.06.2018 PASSED BY HON'BLE MADRAS HIGH COURT IN WP NO. 13589 OF 2018.
- EXHIBIT P10 TRUE COPY OF THE ORDER DATED 26.02.2020 PASSED BY THE VI ADDITIONAL DISTRICT AND SESSIONS COURT, ERNAKULAM IN CRL.R.P. NO. 26 & 27/2018.

EXHIBIT P11 TRUE COPY OF THE JUDGMENT DATED 17.12.2020
PASSED BY THE HON'BLE HIGH COURT OF MADRAS
IN WP NO. 25177 & 25231/2019.

EXHIBIT P12 TRUE COPY OF THE JUDGMENT DATED 08.02.2021
PASSED BY THE HONBLE HIGH COURT OF MADRAS
IN THE WRIT PETITION NO. 41924/2016.

EXHIBIT P13 TRUE COPY OF THE JUDGMENT DATED 23.02.2021
IN CRL. MC. NO. 5809/2020.

EXHIBIT P14 TRUE COPY OF THE ORDER DATED 17.06.2021
PASSED BY THE HONBLE HIGH COURT OF MADRAS
IN REVIEW APPLICATIONS NOS. 21 AND 22 OF
2021 IN THE MATTER OF JOHN KENNEDY AND
OTHERS Vs. JOINT DIRECTORATE, COCHIN

EXHIBIT P15 TRUE COPY OF THE ORDER DATED 29.06.2021
PASSED BY THE HONBLE SUPREME COURT OF INDIA
I SPECIAL LEAVE PETITION (CRIMINAL) NO.3521
OF 2021.

EXHIBIT P16 TRUE COPY OF THE EMAIL DATED 01.07.2021
ISSUED BY THE PETITIONERS COUNSEL
COMMUNICATING THE EXHIBIT P15 ORDER TO THE
1ST RESPONDENT.

EXHIBIT P17 TRUE COPY OF THE LETTER DATED 02.07.2021
ISSUED BY THE 2ND RESPONDENT ADDRESSED TO
THE 1ST RESPONDENT.

EXHIBIT P18 TRUE COPY OF THE SUMMONS DATED 03.09.2021
UNDER SECTION 50(2) AND (3) OF THE PMLA ACT
CALLING UPON THE PETITIONER TO APPEAR IN
PERSON BEFORE THE SECOND RESPONDENT.

EXHIBIT P19 TRUE COPY OF THE LETTER DATED 14.09.2021
ISSUED BY THE PETITIONER'S COUNSEL
ADDRESSED TO THE SECOND RESPONDENT

EXHIBIT P20 TRUE COPY OF THE SECOND SUMMONS IN REF. NO.
ECIR/KCZO/04/2014/DD(VM)/4521 DATED
24.09.2021 ISSUED BY THE SECOND RESPONDENT.