

GAHC030004462022



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : W.P.(Crl.)/2/2022

Zoramthari
Proprietor of M/S Thari Enterprises,
R/o H.No. KB 04/B,
H. Lalthanga Building, Lunglei Road, Bawngkawn, Aizawl, Mizoram - 796014

VERSUS

Directorate of Enforcement and 3 Ors.
Through Assistant Director,
Karishma Maddela,
Govt. of India, Ministry of Finance, Department of Revenue, 3rd Floor, Shakar
Bhawan, Basheerbagh, Hyderabad, PIN-500004 2:Union of India through its Secy.
Ministry of Finance
Deptt. of Revenue
3rd Floor
Jeevan Deep Building

Sansad Marg
New Delhi - 110001

3:HDFC Bank through Branch Manager
Bawngkawn Branch
Ground Floor
Near Traffic Point
Bawngkawn
Aizawl - 796014

4:ICICI Bank through Branch Manager
Aizawl Bawngkawn Branch
Bawngkawn Opposite CK Hyundai
Lunglei Road
Aizawl - 79601

Advocate for the Petitioner : Mr J C Lalnunsanga

Advocate for the Respondent : Mr H Zodinsanga

Linked Case : W.P.(Crl.)/3/2022

Sh. Lalrinhlua
Proprietor M/S LRH Enterprises

R/o H.No. KB 04/B

H. Lalthanga Building

Lunglei Road
Bawngkawn

Aizawl
Mizoram - 796014

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Through Asst. Director

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Bawngkawn

Opposite CK Hyundai
Lunglei Road
Aizawl - 796014

Advocate for the Petitioner : Mr J C Lalnunsanga
Advocate for the Respondent : Ms Zairemsangpuii
CGC for R1 and R2

Linked Case : I.A.(Crl.)/14/2023

Ms. Zoramthari Proprietor of M/s Thari Enterprise
R/o H.No. KB 04/B
H. Lalthanga Building
Lunglei Road
Bawngkawn
Aizawl
Mizoram - 796014

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Advocate for the Petitioner : Mr J C Lalnunsanga
Advocate for the Respondent : Ms Zairemsangpuii
CGC for R1-R2

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

JUDGEMENT & ORDER (CAV)

Date : 27.04.2023

This order will dispose of both the writ petitions, since common issues are involved. In W.P.(Crl.) No. 2/2022, we are concerned with the freezing of 4 Bank Accounts of the petitioner while in W.P.(Crl.) No. 3/2022, we are concerned with the freezing of 1 Bank Account of the petitioner.

2. Heard Mr. Varun Garg, learned counsel for the petitioners, Ms. Zairemsangpuii, learned CGC for respondent Nos. 1 & 2, Mr. H. Zodinsanga, learned counsel for respondent No. 3 HDFC Bank in W.P(Crl.) No. 2/2022 and Mr. Suraj Deka, learned counsel for respondent ICICI Bank in both the writ petitions.

3. The petitioners are aggrieved by the action of the respondent No. 1 in freezing and the continued freezing of their Bank Accounts in HDFC Bank and ICICI Bank, which according to them is in violation of the due process of law and the process mandated by the Prevention of Money Laundering Act, 2002

(Act of 2002).

4. The brief facts of the case is that on the basis of FIR No. 216/2021 dated 14.12.2021, the Enforcement Directorate (ED) on 16.12.2021 registered ECIR/HYZ0/36/2021 against one M/S Nayla Family Exports Private Limited & Others and initiated an investigation in relation to the illegal smuggling of human hair. Pursuant thereto, the ED conducted search on officers and residence of various persons in Hyderabad and Mizoram including the petitioners herein. During the search of the petitioner's residence, certain papers and records of the petitioner and her husband including original property papers, mobile phones, laptop along with Indian Currency of Rs. 26 Lakhs were seized. The ED also proceeded to issue Orders dated 09.02.2022 and 10.02.2022 under Section 17(1) of the Act of 2002 for freezing the Bank Accounts of various persons including that of the petitioners, which are maintained in various Banks as mentioned herein above.

5. Subsequently, on 07.03.2022, the ED proceeded to file Original Application (O.A) bearing No. 644/2022 under Section 17(4) of the Act of 2002 before the Adjudicating Authority constituted under the Act of 2002, requesting for retention of the property seized and continuation of the freezing of Bank Accounts. As per the O.A, it was stated that the ED had frozen a total number of 143 Bank Accounts and the details of which were mentioned in the O.A.

6. In the said O.A, the petitioner in W.P.(Crl.) 2/2022 was arrayed as defendant No. 3. While a few of her Bank Accounts were mentioned in the said list of 143 Bank Accounts including 1 Bank Account in HDFC Bank but however, 4 Bank Accounts of the petitioner, 2 Bank Accounts each in HDFC Bank and

ICICI Bank were not included in the list of 143 Bank Accounts in the O.A. The details of the Bank Accounts are as follows:-

Sl.No.	Bank	Name of the Account Holder	Account Number
1.	HDFC Bank	Zoramthari	50100028320820
2.	HDFC Bank	Zoramthari	31991870000061
3.	ICICI Bank	Zoramthari	425301000063
4.	ICICI Bank	Thari Enterprises	425305000151

7. Similarly, in respect of the petitioner in W.P(Crl.) No. 3/2022, he was arrayed as defendant No. 2 in the O.A. While his 2 (two) Bank Accounts in Mizoram Rural Bank was mentioned in the said list of 143 Bank Accounts but however, his Bank Account in ICICI Bank is not included in the 143 Bank Accounts in the O.A. The details of the said Bank Account is as below:-

Sl. No.	Bank Name	A/C Holder Name	A/C Number
1.	ICICI Bank	Lalrinhlua	425301000692

8. According to the petitioners, no Freezing Order in connection with the above 4+1 Bank Accounts were annexed with the O.A. Accordingly, there was no mention of the said 4+1 Bank Accounts being frozen by ED and importantly, no prayer was made by the ED seeking continuation of their freezing. However, the said 4 Bank Accounts have been frozen by the ED and continued to be frozen till date. The ED has however produced the freezing orders in their counter affidavit for the first time but the same was not filed along with the O.A

nor was it mention/included in the O.A.

9. Against the O.A, the petitioners filed their written objection by explaining with sufficient documents to show that business was being done lawfully and that they were not connected to any illegal smuggling or money laundering in any manner. However, the Adjudicating Authority passed the Confirmation Order dated 22.08.2022 allowing the O.A filed by the ED without considering the points raised by the petitioners. According to the petitioners, the statutory period of 180 days prescribed under the Act of 2002 within which time, a Confirmation Order is required to be passed by the Adjudicating Authority expired on 07.08.2022. Therefore, the Adjudicating Authority became *functus officio* on 07.08.2022 itself and could not have passed the Confirmation Order. The Confirmation Order is also in relation to the 143 Bank Accounts, the details of which have been mentioned in the O.A but it does not cover the 4+1 Bank Accounts of the petitioners since there is no mention about their Bank Accounts. However, despite this, they remain to be frozen and therefore, the petitioners are before this Court.

10. Mr. Varun Garg, learned counsel submits that neither any application under Section 17(4) of the Act of 2002 has been filed with the Adjudicating Authority nor any order has been passed by the Adjudicating Authority permitting the continuation of freezing of the 4+1 Bank Accounts of the petitioners. He submits that Section 17(4) of the Act of 2002 categorically provides that any authority seizing any record or freezing any property under Section 17(1A) shall within a period of 30 days from such seizure or freezing of the property, file an application before the Adjudicating Authority seeking continuation of the order or freezing. In case the ED is desirous of seeking continuation of the order or

freezing, an application is required to be filed under Section 17(4) of the Act of 2002 mentioning the details of all the accounts it desires for continuation of freezing. The ED is further required to explain in the O.A, the reason for believing as to why the property concerned is required to be frozen. The learned counsel submits that the 4+1 Bank Accounts of the petitioners are neither included in the list of 143 frozen Bank Accounts mentioned in the O.A nor mentioned in O.A in any other place or manner. But for the very first time, the ED in their counter affidavit has annexed the Freezing Order dated 10.02.2022 passed in relation to the 4+1 Bank Accounts of the petitioners. The learned counsel submits that the ED in their counter affidavit has not disputed the non-mentioning of the 4+1 Bank Accounts and their non-inclusion in the list of 143 Bank Accounts in the O.A for which, their continued freezing has been sought. The learned counsel submits that the only logical corollary which can be drawn from the same is that the ED do not desire to continue freezing of the said 4+1 Bank Accounts of the petitioners and therefore, intentionally did not include them in the O.A which was filed before the Adjudicating Authority.

11. The learned counsel submits that the Apex Court as well as other High Courts have categorically held that the procedure contemplated under the Act of 2002 in respect of investigations, seizures and the freezing of assets/property/Bank Accounts, should be strictly and scrupulously followed in the manner prescribed. In support of his submission, the learned counsel for the petitioners has relied upon the Apex Court decision rendered in *OPTO Circuit India Limited Vs. Axis Bank and Others*, reported in (2021) 6 SCC 707. He has also relied upon the case of *Directorate of Enforcement Vs. Abdullah Ali Balsharaf and Others*, reported in 2019 SCC Online Del 7942: (2019) 3 RCR (Cri) 566, which was a case before the High Court of Delhi.

12. The learned counsel further submits that the Apex Court in *Noor Aga Vs. State of Punjab & Another*, reported in (2008) 16 SCC 417 while considering the definition of 'reason to believe' as contained in Section 26 of the Indian Penal Code in the context of Section 42 & 43 of the ND&PS Act and also Section 110 of the Customs Act, 1962, which are provisions concerning power of entry, search, seizure and arrest and in which the requirement of having the reason to believe has been incorporated by the legislature, the procedures laid down being stringent in nature, must be strictly complied with. Therefore, an action may be taken by an officer only when there is reason to believe, especially in the context of the statute where stringent procedures are laid down. The Act of 2002 is also one such statute which provides for stringent procedures.

13. The learned counsel for the petitioners also relies upon the case of *Nazir Ahmad Vs. King-Emperor*, reported in *AIR 1936 P.C 253*, wherein it is provided that where a power is given to do a certain thing in a certain way, the thing must be done in that way or not at all. He therefore submits that the ingredient of Section 17 of the Act of 2002 has to be scrupulously complied with. He submits that in the present case as well, the continuous freezing of the 4+1 Bank Accounts of the petitioners without an order from the Adjudicating Authority is in violation of due process of law and the procedure mandated by the Act of 2002.

14. The learned counsel further submits that the Freezing Orders dated 09.02.2022 and 10.02.2022 expired by operation of law on 07.08.2022, i.e., on the expiry of the statutory period of 180 days from the date of the Freezing Orders. The said provision is contained in Section 20 of the Act of 2002. Section 20(3) of the Act of 2002 provides that on the expiry of the period specified in

sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period. Therefore, the Freezing Order would automatically lapse upon the expiry of 180 days and the property should be returned back to the person from whom it was seized or frozen. The same can continue to be retained or frozen only in a case where the Confirmation Order was passed by the Adjudicating Authority prior to the expiry of 180 days from the date of the Freezing Order. In the present case, the statutory period of 180 days expired on 07.08.2022 and therefore, the Adjudicating Authority had become *functus officio* on 07.08.2022 and could not have passed the Confirmation Order on 22.08.2022.

15. The learned counsel further submits that the stand of the ED that the period of limitation for passing the Confirmation Order got extended by virtue of the order passed by the Supreme Court of India in *Suo Moto W.P.(C) No. 3/2020* (In-re: Cognizance for Extension of Limitation) is totally misconceived and cannot be accepted. He submits that the benefit of the extension of the limitation period is only for those who want to take remedy and whose remedy was barred by time because they were unable to come physically to file such proceedings as may be required. The order of the Supreme Court of India is not meant to curtail any provisions of the Cr.PC or any other statute enacted to protect the personal liberty of a person. He submits that the non applicability of the extension of period of limitation in matters relating to ED has been clarified by a Division Bench of the High Court of Calcutta in the case of *Directorate of Enforcement and Others Vs. Union of India and Others*, reported in *2022 SCC Online Cal 3959* which was decided on 12.12.2022. Therefore, the stand of the

respondents claiming that they have the benefit of the extension of the period of limitation as permitted by the Supreme Court being misconceived should be rejected.

16. The learned counsel further submits that the petitioners did not have any alternative but to approach this Court through the instant writ petitions, in view of the fact that no order has been passed by the respondent authority against the 4+1 Bank Accounts of the petitioners. The said Bank Accounts were not mentioned in the O.A and also not mentioned in the Confirmation Order. Therefore, there is no reason for the petitioners to file an appeal before the appellate authority as provided under Section 26 of the Act of 2002. In any event, the petitioners cannot be debarred from approaching this Court under Article 226 of the Constitution of India when they are seeking the enforcement of their Fundamental Rights, alleging violation of the principles of natural justice and also alleging that the order or proceedings passed by the authority concerned is without jurisdiction. In support of his submission, the learned counsel relies upon the case of *Godrej Sara Lee Ltd. Vs. Excise & Taxation Officer-cum- Assessing Authority & Others*, reported in *2023 SCC Online 95*. The learned counsel lastly submits that the petitioners are not even named in the FIR and in the Enforcement Case Information Report (ECIR) and therefore, under the facts and circumstance, the learned counsel submits that Court may set aside and quash the action on the part of the respondents in freezing the 4+1 Bank Accounts of the petitioners.

17. Ms. Zairemsangpuii, learned CGC appearing for respondent Nos. 1 & 2 on the other hand submits that the writ petition is not maintainable as the petitioners have not exhausted the alternative remedy available as per Section

26 of the Act of 2002. She submits that the names of the petitioners may not have been mentioned in the FIR or in the ECIR but the fact remains that, on thorough investigation being conducted by the ED, it clearly revealed that the petitioners have been receiving huge amount of deposits in their Bank Accounts in connection with trading of human hairs being procured from Hyderabad and thereafter, being transported and exported through Kolkata and Champhai in Mizoram. The raid and search conducted on 9th and 10th February, 2022 clearly showed the involvement of the petitioners and therefore, their Bank Accounts were directed to be frozen as permissible under the relevant provisions of the Act of 2002. She submits that although the O.A and the Confirmation Order may not specifically indicate the Bank Account numbers of the petitioners but in view of the search operation and the raid conducted on 9th and 10th February, 2022, the Bank Account of the petitioners are only covered and therefore, the petitioners cannot have any legitimate grievance.

18. The learned CGC further submits that a report was submitted before the appellate authority within the prescribed period of 30 days as required under Section 17(4) of the Act of 2002. Thereafter, the Adjudicating Authority on 22.08.2022 passed the Confirmation Order. Although the statutory limitation period for passing an order under Section 8(3) of the Act of 2002 expired on 07.08.2022 but in view of the orders passed by the Supreme Court of India in *Suo Moto W.P(C) No.3/2020* extending the period of limitation, there is no delay in passing the Confirmation Order by the Adjudicating Authority. She thus submits that the writ petitions have no merit and they should be dismissed.

19. Mr. Zodinsanga and Mr. Suraj Deka, learned counsels appearing for the HDFC Bank and ICIC Bank respectively submit that the Banks have nothing to

say in the matter and whatever orders and directions are passed by this Court, the Banks are ready to comply with the same.

20. I have heard the submissions made by the learned counsels for the rival parties and I have perused the materials available on record.

21. The issue to be decided is as to whether freezing of the Bank Accounts of the petitioners are permissible although there is no mention about the same in the O.A and subsequently in the Confirmation Order as well. Prior to filing of the writ petition, it was not clear as to whether there was any specific order given to the Bank for freezing the Bank Accounts of the petitioners but after the filing of the counter affidavit by the respondent ED, it is seen that a communication for freezing the Bank Accounts of the petitioners was made. However, the fact remains that the O.A admittedly does not contain the Bank Accounts references and details of the petitioners as mentioned in paragraph Nos. 6 & 7 of this judgment. In order to appreciate, the provision enacted in this regard, Section 17(4) of the Act of 2002 may be abstracted below for ready perusal.

“(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.”

22. From the above abstract, it may be seen that the authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such

record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1A), before the Adjudicating Authority.

23. In terms of the said provision, the respondent authority concerned had made over the O.A to the Adjudicating Authority on 03.03.2022, i.e., within a period of 30 days. However, a perusal of the O.A enclosed to the show cause notice dated 30.03.2022 (Annexure-7) does not contain the Bank Account numbers of the petitioners, i.e., 4+1, although as many as 143 Bank Accounts have been specifically mentioned in the O.A. Similarly, in the Confirmation Order dated 22.08.2022 passed by the Adjudicating Authority, apart from the 143 Bank Account numbers mentioned in the order in specific terms, the Bank Account Nos. of the petitioners, i.e., 4+1 are nowhere mentioned. The contention of the respondent authorities concerned is that the search conducted on 9th & 10th February, 2022 will cover the Bank Account numbers of the petitioners enmass. If the same is understood to cover the Bank Accounts of all the persons which were seized on the given dates, there would not have been any requirement to specifically mention the 143 Bank Accounts in the O.A. In other words, the purpose of mentioning and specifically recording the particulars of the Bank Account numbers will be rendered redundant. Section 17 of the Act of 2022 provides for the power of the ED to make search and seizure. A perusal of the same would clearly show that the authority conducting the search and seizure is required to seize any record or property found as a result of such search, place marks of identification on such record or property if required or make or cause to be made extracts or copies therefrom, make a note or an inventory of such record or property etc. amongst others. Therefore, without giving any specific details such as the Bank Account numbers, the authority

seizing any record or property or freezing any record or property cannot submit an application under Section 17(4) of the Act of 2002 covering the search and seizure and freezing of Bank Accounts enmass. Therefore, the stand of the respondent authorities concerned that the O.A includes the prayer for retention of documents seized and freezed during the search and seizure conducted on 9th& 10th February, 2022 enmass is wholly misconceive and cannot be sustained.

24. The next issue to be decided is as to whether the Adjudicating Authority can consider the applications made to it and pass the Confirmation Order beyond the period of 180 days counted from the date when the documents have been seized or freezed. In order to appreciate the legislation in this regard, Section 20 of the Act of 2002 may be abstracted below:-

“20. Retention of property-

(1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the officer authorized by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.

(2) The officer authorized by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the

property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

(4) The Adjudicating Authority, before authorizing the retention or continuation of freezing of such property beyond the period specified in sub-section (1), shall satisfy himself that the property is prima facie involved in money-laundering and the property is required for the purposes of adjudication under section 8."

25. From the above abstract, it may be seen that where any property has been seized or frozen under Sections 17 or 18 of the Act of 2002 and the authority empowered has reason to believe that such property is required to be retained or frozen, the same shall be made retained or frozen for a period not exceeding 180 days from the date of seizure or freezing the property. Section 20(2) provides that the officer authorized immediately after passing the order of retention or continuation of freezing of property for the purpose of adjudication under Section 8, forward a copy of the order to the Adjudicating Authority in a sealed envelope in the manner prescribed and the Adjudicating Authority shall keep the order and material for such period as may be prescribed. Section 20(3) of the Act of 2002 further provides that on the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period.

26. In the present case, the O.A was submitted to the Adjudicating Authority on 03.03.2022 but the Confirmation Order was ultimately made on 22.08.2022, i.e., beyond 180 days as stipulated by the Act of 2002. In the Confirmation

Order, the Adjudicating Authority has also accepted that the statutory period for passing an order expired on 07.08.2022 but however, in view of the Apex Court's order in *Suo Moto W.P(C) No. 3/2020*, extending the limitation period, the Confirmation Order did not suffer from delay and has to be accepted as an order passed within the prescribed time. In this regard, it may be stated herein that a similar issue arose for consideration before the High Court of Calcutta in *MAT No. 1222 of 2022, Directorate of Enforcement and Others (supra)*. The matter was considered and decided by a Division Bench of the Calcutta High Court and the relevant portion of the judgment rendered on 12.12.2022 may be abstracted below:-

“8. The first question which arises for consideration is as to whether the period of validity of 180 days prescribed for the provisional attachment order under Section 5(1) of the PMLA will get extended by virtue of the orders passed by the Hon'ble Supreme Court in SMW (C) No. 3 of 2020. (In Re: Cognizance for Extension of Limitation).

17. Hon'ble Supreme Court in the matter of S. Kasi v. State through The Inspector of Police Samaynallur Police Station, Madurai District reported in 2022 SCC OnLine SC 529 while considering the issue of applicability of the above orders passed in SMW (C) 3 of 2020 on the limitation prescribed for filing a charge-sheet by police under Section 167(2) of Cr. P.C. has found that the benefit of extending limitation provided in the Suo Motu Writ Petition is not applicable in such proceedings. Hon'ble Supreme Court in the matter of S. Kasi (supra) has held that:

"17. The limitation for filing petitions /applications/suits/appeals/all other proceedings was extended to obviate lawyers/litigants to come physically to file such proceedings in respective Courts/Tribunals. The order was passed to protect the litigants/lawyers whose petitions/ applications/ suits/ appeals/ all other proceedings would become time barred they being not able to physically come to file such proceedings. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions /applications/suits/appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. The order dated 23.03.2020

cannot be read to mean that it ever intended to extend the period of filing charge sheet by police as contemplated under Section 167(2) of the Code of Criminal Procedure. The Investigating Officer could have submitted/filed the charge sheet before the (Incharge) Magistrate. Therefore, even during the lockdown and as has been done in so many cases the charge-sheet could have been filed/submitted before the Magistrate (Incharge) and the Investigating Officer was not precluded from filing/submitting the charge-sheet even within the stipulated period before the Magistrate (Incharge).

18. If the interpretation by learned Single Judge in the impugned judgment is taken to its logical end, due to difficulties, and due to present pandemic, Police may also not produce an accused within 24 hours before the Magistrate's Court as contemplated by Section 57 of the Criminal Procedure Code, 1973. As noted above, the provision of Section 57 as well as Section 167 are supplementary to each other and are the provisions which recognises the Right of Personal Liberty of a person as enshrined in the Constitution of India. The order of this Court dated 23.03.2020 never meant to curtail any provision of Code of Criminal Procedure or any other statute which was enacted to protect the Personal Liberty of a person. The right of prosecution to file a charge sheet even after a period of 60 days/90 days is not barred. The prosecution can very well file a charge sheet after 60 days/90 days but without filing a charge sheet they cannot detain an accused beyond a said period when the accused prays to the court to set him at liberty due to non-filing of the charge sheet within the period prescribed. The right of prosecution to carry on investigation and submit a charge sheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167, Cr. P.C. Following observations of Madras High Court in the impugned judgment are clearly contrary to the order dated 23.03.2020 of this Court:-

"...The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly, it eclipses the time prescribed under Section 167(2) of the Code of Criminal Procedure also..."

18. Hon'ble Supreme Court in the above judgment has clearly noted in suo motu petition that the order was passed for extending the limitation for filing petitions/applications/suits/appeals and all other proceedings and the order was for the benefit of those who wanted to take remedy, whose remedy were barred by time because they were unable to come physically to file such proceedings. Hon'ble Supreme Court has clearly laid down that the order passed in Suo Motu petition dated 23rd of March, 2020 never meant to curtail any provisions of the Cr. P.C. or any other statute which was enacted to protect personal liberty of a person.

19. Considering the provisions contained under Section 5(1) and 5 (3) of the PMLA in the light of the above pronouncement, it is found that Section 5(1) does not relate to filing of any pleading but relates to the period of validity of the order of attachment. By virtue of Section 5 (3) of the PMLA, the order of attachment under Section 5(1) ceases to have effect on expiry of the prescribed period. Thus, for such a provision, the order of the Hon'ble Supreme Court passed in SMW (C) No. 3 of 2020 extending the period for filing the pleading will not apply.

20.

21.

22. In view of the above analysis, we find that the learned Single Judge has not committed any error in reaching to the conclusion that the benefit of extended period of limitation by virtue of the orders passed by the Hon'ble Supreme court from time to time in SMW (C) No. 3 of 2020 will not be available for extending the validity period of provisional attachment order under Section 5(1) of the PMLA. Hence, learned Single Judge has rightly set aside the provisional attachment order."

27. From the above abstract, it may be seen that according to the Calcutta High Court, the extension for the period of limitation for filing petitions/applications/suits/appeals and all other proceedings was for the benefit of those who wanted to avail remedy and whose remedy was barred by time because they were unable to come physically and file such proceedings. This conclusion was based on the decision rendered by the Apex Court in *S. Kasi (supra)*. Therefore, the High Court was of the view that considering the provisions contained in Section 5(1) and 5(3) of the Act of 2002, Section 5(1) does not relate to filing of any pleadings but relates to the period of validity of the order of attachment. By virtue of Section 5(3) of the Act of 2002, the order of attachment under sub-section (1) ceases to have effect after the expiry of the prescribed period. Therefore, for such a provision, the order of the Supreme Court in the *Suo Moto W.P(C) No. 3/2020* extending the period of limitation

would not apply. The said ratio, in my considered view is squarely applicable to the present case and I am in respectful agreement to the decision of the Division Bench of the Calcutta High Court.

28. In view of the above finding and conclusion, the Confirmation Order dated 22.08.2022 in so far as the writ petitioners are concerned in the present case, are found to be not sustainable. According to the respondent authority concerned themselves, the limitation period for passing an Order of Confirmation expired on 07.08.2022 and therefore, without the benefit of the extension of limitation period as granted by the Supreme Court in *Suo Moto WP(C) No. 3/2020*, the limitation period has to be treated to have expired on that date.

29. The Apex Court in *OPTO Circuit India Limited (supra)* held that while dealing with a freezing order passed by the ED under Section 17(1A) of the Act of 2002, the authorities are bound to follow the procedure as laid down in the provisions strictly and not violate the same in any manner. The Apex Court in analyzing Section 17 of the Act of 2002 at paragraph Nos. 8, 9, 10 & 14 held as below:-

“8. A perusal of the above provision would indicate that the prerequisite is that the Director or such other authorized officer in order to exercise the power under Section 17 of the PMLA, should on the basis of information in his possession, have reason to believe that such person has committed acts relating to money-laundering and there is need to seize any record or property found in the search. Such belief of the officer should be recorded in writing. Sub-section (1-A) to Section 17 of the PMLA provides that the officer authorised under a sub-section (1) may make an order to freeze such record or property where it is not practicable to seize such record or property. Sub-section (2) provides that after search and seizure or upon issuance of a freezing order the authorised officer shall forward a copy of the reasons recorded along with material in his possession to the adjudicating authority in a sealed envelope. Sub-section (4) provides that the authority seizing or freezing any record or property under sub-

section (1) or (1-A) shall within a period of thirty days from such seizure or freezing, as the case may be, file an application before the adjudicating authority requesting for retention of such record or properties seized.

9. *For the purpose of clarity, it is emphasised that the freezing of the account will also require the same procedure since a bank account having alleged "proceeds of crime" would fall both under the ambit "property" and "records". In that regard, it would be appropriate to take note of Sections 2(1)(v) and 2(1)(w) of the PMLA which defines "property" and "records". The same read as follows:*

"2. (1)(v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;

2. (1)(w) "records" include the records maintained in the form of books or stored in a computer or such other form as may be prescribed;"

10. *The scheme of the PMLA is well intended. While it seeks to achieve the object of preventing money-laundering and bring to book the offenders, it also safeguards the rights of the persons who would be proceeded against under the Act by ensuring fairness in procedure. Hence a procedure, including timeline is provided so as to ensure that power is exercised for the purpose to which the officer is vested with such power and the adjudicating authority is also kept in the loop. In the instant case, the procedure contemplated under Section 17 of the PMLA to which reference is made above has not been followed by the officer authorised. Except issuing the impugned Communication dated 15-5-2020 to AML Officer to seek freezing, no other procedure contemplated in law is followed. In fact, the impugned communication does not even refer to the belief of the authorised officer even if the same was recorded separately. It only states that the officer is investigating the case and seeks for relevant documents, but in the tabular column abruptly states that the accounts have to be "debit frozen/ stop operations". It certainly is not the requirement that the communication addressed to the Bank itself should contain all the details. But what is necessary is an order in the file recording the belief as provided under Section 17(1) of the PMLA before the communication is issued and thereafter the requirement of Section 17(2) of the PMLA after the freezing is made is complied with. There is no other material placed before the Court to indicate compliance with Section 17 of the PMLA, more particularly recording the belief of commission of the act of money-laundering and placing it before the adjudicating authority or for filing application after securing the freezing of the account to be made. In that view, the freezing or the continuation thereof is without due compliance with the legal requirement and, therefore, not sustainable.*

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14. *This Court has time and again emphasised that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an election petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an election petition in Chandra Kishore Jha v. Mahavir Prasad and in the course of consideration observed as hereunder: (SCC p. 273, para 17)*

"17. ... It is a well-settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner."

Therefore, if the salutary principle is kept in perspective, in the instant case, though the authorised officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying with due process under law. We have found fault with the authorized officer and declared the action bad only insofar as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note of in appropriate proceedings if at all any issue is raised by the aggrieved party."

30. The decision of the Apex Court as abstracted above is squarely applicable to the present case and under the circumstance, I am of the considered view that there is merit in the writ petition. Accordingly, the writ petition is disposed of by setting aside the order, direction and also the Order of Confirmation for freezing the Bank Accounts of the petitioners in so far as their 4+1 Bank Accounts as mentioned in paragraph Nos. 6 & 7 are concerned. No cost.

JUDGE

Comparing Assistant