

GAHC010167492024



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

Case No. : W.P.(Crl.)/26/2024

PRIYANSHU BOIRAGI
S/O SHRI JATINDRA NATH BOIRAGI
R/O HOUSE NO. 16, PRASANTI PATH,
SURVEY, BELTOLA- BASISTHA ROAD, GUWAHATI-781028, DIST. KAMRUP
(M), ASSAM

VERSUS

THE DIRECTORATE OF ENFORCEMENT AND 6 ORS
PRAVARTAN BHAWAN,
APJ ABDUL KALAM ROAD,
NEW DELHI-110011, REPRESENTED BY ITS DIRECTOR.

2:THE DIRECTOR

THE DIRECTORATE OF ENFORCEMENT
PRAVARTAN BHAWAN
APJ ABDUL KALAM ROAD
NEW DELHI-110011

3:THE DEPUTY DIRECTOR

GUWAHATI ZONAL OFFICE-I

DIRECTORATE OF ENFORCEMENT
MAINAAK TOWER
G.S. ROAD
GUWAHATI-781005

4:THE ASSISTANT DIRECTOR

GUWAHATI ZONAL OFFICE-I

DIRECTORATE OF ENFORCEMENT
MAINAAK TOWER
6TH FLOOR

CHRISTIAN BASTI
G.S. ROAD
GUWAHATI-781005

5:THE STATE OF ASSAM
REPRESENTED BY THE SUPERINTENDENT OF POLICE
CM'S SPECIAL VIGILANCE CELL
RUPNAGAR
GUWAHATI-32.

6:THE MANAGER

CANARA BANK

DISPUR BRANCH DISPUR

GUWAHATI-6.

7:THE MANAGER

HDFC BANK
GANESHGURI BRANCH
GANESHGURI

DISPUR
GUWAHATI-6

Advocate for the Petitioner : MR Z KAMAR, MR. A N I HUSSAIN,MR. R DUBEY,MS. A B KAYASTHA,MS N B KAYASTHA

Advocate for the Respondent : GA, ASSAM, SC, D o Enforcement

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

Date : 17.09.2024

Heard Mr. Z.Kamar, learned Senior Counsel assisted by Mr. R.Dubey,

learned counsel for the petitioner. Also heard Mr. R.K.D.Choudhury, learned Standing Counsel, Enforcement Directorate and Mr. R.Dhar, learned Government Advocate, Assam.

2. The petitioner has preferred an application under Article 226 of the Constitution of India for issuance of writ in the nature of Certiorari, Mandamus or any other appropriate writs, directions or orders of like nature in connection with the impugned provisional attachment order no. 07/2024 dated 02/08/2024 issued u/s 5 (1) of the Prevention of Money Laundering Act, 2002, (herein after referred to as 'PMLA').

3. The petitioner is a businessman by profession and is engaged in the business of printing and publishing since 2002. For his business convenience, the petitioner has been operating and running three firms 1. M/s Purbashree Printing House, 2. M/s Purbashree Printers and 3. M/s Purbashree Associates as the sole proprietor. Later on, the petitioner also diversified his business into construction and health care sectors.

4. The petitioner has filed the present writ petition being aggrieved by the provisional attachment of his bank accounts, fixed deposit, PPF etc. linked with the bank accounts of the petitioner, his wife, his minor son and his aforesaid firms. The petitioner is also challenging the letter dated 10/03/2021 issued by the Assistant Director, Directorate of Enforcement, Guwahati by which the Sub-Registrar, Mehrauli, New Delhi have been directed to restrain the transfer of immovable properties of the petitioner.

5. Learned senior counsel representing the petitioner has argued that the impugned order of provisional attachment has been issued based on perverse findings in as much as, there is no justification for the reason to believe arrived

at by the Deputy Director in his order of provisional attachment dated 02/08/2024.

6. By referring to the section 5 of PMLA Act, learned Senior Counsel has pointed out that the conditions precedent for exercise of the power under the said Act are not attracted in the instant case in as much as the CA report which is the documents of the prosecution being part of the final charge sheet clearly states that there is no illegal money transaction, no illegal gratification, no money laundering from the petitioner's banks account to other co-accused persons. Moreover, the trial of the alleged offence was stayed by this court in connection with criminal petition no. 858/2023 and all these aspects have not at all been considered, while passing the impugned order of provisional attachment.

7. It is also the submission of the learned senior counsel that the letter dated 10/03/2021 issued by the Assistant Director, ED is without jurisdictions and has lost its force and therefore, the same being arbitrary and illegal, cannot be implemented to stay the registration of the sale deed of the petitioner's property.

8. It is further submitted that the officials of the Enforcement Directorate searched the house of the petitioner but did not find any incriminating materials. The petitioner is apprehending arrest by the authorities and therefore, praying for the direction upon the Directorate of Enforcement Authorities restraining them from taking any coercive measures including arrest against the petitioner. The petitioner further prays for not to initiate further proceedings u/s 8 of PMLA Act till disposal of the present writ petition.

9. In support of his submission, learned Senior Counsel for the petitioner has

placed reliance on the following case laws:

- a. Anil Kumar Agarwal –vs- Enforcement Directorate (WP (CrI.) No. 9/2024)
- b. Satish Motilal Bidri –vs- Union of India & Ors.(WP (CrI.)No. 406/2024)

10. *Per contra*, learned standing counsel, ED submits that the petitioner being the proprietor of M/s Purbashree Printing House got an order for printing and has received an amount of Rs. 118.55 crore as per his bank statement for executing the printing contract during the financial year 2013-14, 2014-15 and 2015-16 from Assam Building and Other Construction Workers Welfare Board (ABOCWWB), Guwahati, to supply various types of material such as booklets, leaflets, folders and different types of forms and registers against which the petitioner had supplied to ABOCWWB office and Sarva Sikhsha Abhigyan, Assam to distribute among the school going children directly.

11. It is further alleged that the enquiry had revealed that the misappropriation and criminal conspiracy was done by the then Labour Commissioner- cum-Member Secretary of ABOCWWB, Guwahati and on the basis of the findings of the enquiry, the FIR was lodged vide vigilance PS case no. 09/2017 u/s 120B/406/409/468/471/420 IPC read with section 13 (2) of PC Act, 1988.

12. The whole part of criminal conspiracy and the forgery happened regarding the multicore printing contract awarded by the ABOCWWB, Guwahati, in the financial years of 2013-14, 2014-15, 2015-16. During investigation, it is found that as per Rules of ABOCWWB, though it is required for preparation of the annual budget and submission to the government for sanction but no annual budget had been prepared by the Board for the period 2013-14 to 2015-16 and not submitted to the government for sanction. On perusal of the resolution of

the Board meeting held in the year 2013, it was found that though Board took resolution for preparation and acceptance of Budget for every year but no Annual Budget was prepared by the Board during the aforesaid period and not sent to the government for approval.

13. It was also alleged that as the part of the conspiracy for misappropriating government funds, the then Labour Commissioner along with the then Administrative officers of the Board staged a fake tendering process and in pursuance thereof, work order for printing of booklets, leaflets etc. amounting to Rs. 118 crores was awarded to M/s Purbashree Printing House at highly exorbitant rates by violating the rules and procedures and thereby causing huge loss to the Board and illegal gain to the present petitioner.

14. The total value of contract paid by ABOCWWB to M/s Purbashree Printing House during the period 13/01/2014 to 22/12/2015 is approximately to the tune of Rs. 118,54,84,866/- which is the total proceed of crimes in this case, since the entire payment was made through fraudulent allotment of tender.

15. The further allegation is that the total amount of payments worth Rs. 63,09,79,782/- to 15 non-existing firms/ companies for the purpose of showing the same as his expenses related with the printing orders/ contracts obtained from the ABOCWWB, Guwahati which allowed him to route the money through Delhi based firms and pay back to the government officers for their unlawful favour in awarding him the multicore contracts.

16. According to learned standing counsel ED, it is evident that the petitioner has routed the money received as tender contract from ABOCWWB through Delhi, Haryana based non existing firms/ companies and in furtherance to that illegally enriched himself. Further, to laundering the proceeds of crime so

generated, the petitioner acquired moveable, immoveable properties and made other investments. Hence, it is clear that the aforesaid amount is nothing but proceeds of crime which was obtained directly/ indirectly by the petitioner as a result of criminal activity relating to a scheduled offence in terms of the provisions of Section 2 (1) (u) of PMLA, 2002. Hence, learned standing counsel ED prays for dismissal of the prayer of the petitioner.

17. It is also the submission of the learned standing counsel, ED that the writ petition is not maintainable as the petitioner has an alternative remedy before the adjudicating authority under Section 8 of the PMLA Act. The respondents further alleged that petitioner do have an appropriate remedy before the adjudicating authority under the provisions of the PMLA and that the writ petition is not a proper remedy.

Learned Standing Counsel, ED has referred the following case laws:

- a. (2010) O Supreme (SC) 314 (Rajkumar Shivhare –vs- Assistant Director of Enforcement & anr.)
- b. WP (C) No.81/2019 (Umsaw Khwan, village Darbar & 3 Ors. Vs- Enforcement Directorate & 5 Ors.)
- c. (2022) SCC Online SC 929 (Vijay Madanlal Choudhury & Ors. Vs- Union Of India & Ors.).

18. As referred in the case of Satish Bidri (supra), PMLA was enacted as a preventive and punitive measure to combat the evil of money laundering. Removal of tainted money or those derived from selected crimes is understood as an effective mode of combating serious offences. Sections 3 and 4 of PMLA make money laundering an offence punishable with imprisonment which may extend upto 7 years apart from fine. The word 'money laundering' is explained

to be an attempt to indulge or assist or be a part of any process or activity connected with the proceeds of crime. Section 5 of the PMLA authorizes the Director or other persons mentioned therein to provisionally attach the property which are proceeds of crime in the possession of a person or which are likely to be concealed, transferred or dealt with, in a manner that may frustrate the proceedings relating to confiscation of such proceeds of crime.

19. Two primary safeguards are provided in Section 5 of PMLA to protect a person from unreasonable or illegal attachments and they are (i) reasons to be recorded in writing, and (ii) a period of validity for the order of provisional attachment. There is yet another safeguard provided in the statute in the form of a separate independent authority for considering the validity of the order of provisional attachment. As per section 5(5) of the PMLA, an officer who issues the provisional order of attachment shall within 30 days from the attachment, file a complaint before the Adjudicating Authority under Section 6 and the said Authority, which is an independent body, is entitled to consider whether all or any other property as referred to, are involved in money laundering. A further challenge is also provided, enabling the aggrieved to approach the Appellate Tribunal constituted under Section 26 of the PMLA and a further appeal to the High Court is also provided under Section 42. Thus, the statute has created a code in itself in respect of provisional attachment orders which can generally redress the grievances of those aggrieved. Normally when such a scheme is provided as an efficacious alternative remedy, it is not proper for this Court to interfere under Article 226 of the Constitution of India. In this context, reference to the judgment of the Court in *Santiago Martin and Another v. Union of India and Others* (2023 (5) KLT 388) would be relevant.

20. A reading of the impugned order of provisional attachment dated

02/08/2024 indicates term deposits/ fixed deposits in the bank accounts in Canara bank, Dispur Branch in the name of the present petitioner amounting to Rs. 20,60,10,258.54/-; Fixed deposits in the bank accounts in HDFC bank, Ganeshguri Branch in the name of petitioner, Pavi Engineering and current savings accounts of Heal point diagnostics and M/s Clinic LLP, Purbashree Associates, present petitioner, Pavi Engineering, Madhurima Gogoi Boiragi and Ridant Boiragi, amounting to Rs. 34,03,48,237,53/-.

21. It was alleged that analysis of bank statements of the present petitioner reveals that the above are 'proceeds of crime' from the amounts received under fraudulent contracts. They have been transferred across various accounts and invested mostly as fixed deposits showing as genuine transactions. Analysis also reveals that huge transfer from his accounts to the bank accounts of M/s Pavi Engineering, another concern controlled by the petitioner and thus accounts under the name of M/s Pavi Engineering also possess the 'proceeds of crime' of this case.

22. The power of attachment of property is provided as per section 5 of PMLA. For the purpose of reference, the said provision is extracted as below:

“5. Attachment of property involved in money-laundering.- (1) Where the Director, or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe, the reason for such belief to be recorded in writing, on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to

confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed."

23. The term 'proceeds of crime' is defined in section 2(1)(u) of the PMLA as follows: "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Explanation: "For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence."

24. On a reading of the above provisions, it can be assimilated that there are three types of proceeds of crime and they are: (i). property derived or obtained from a criminal activity, (ii) value of any such property and, (iii) if the property is taken or held outside India, then a property equivalent in value held within India.

25. Section 5 of PMLA authorizes attachment of proceeds of crime. The definition of the term 'proceeds of crime' explicitly states that when the proceeds of a crime is a property, such property must have been obtained or derived as a result of any criminal activity relating to a scheduled offence. No doubt, even if the property was obtained indirectly, it can still be regarded as proceeds of crime. Assuming that a property derived out of a criminal activity

mentioned is not available, still, attachment can be effected to the extent of the value of such property. The term 'value' in section 2(1) (u) can only mean the monetary worth of the property that was derived from the criminal activity. If the attachment is to be effected to the extent of the monetary worth of a property which was not derived out of the criminal activity, then PMLA mandates that the property derived out of such criminal activity be taken out of India or is held outside the country. In other words, the only power to proceed against a property of equivalent value, which has no link with the predicate offence is, when the property was taken out or held out of India.

26. In this context, it is appropriate to refer to the decision in ***Seema Garg v. Deputy Director, Directorate of Enforcement*** (2020 SCC Online P&H 738), wherein the High Court of Punjab and Haryana elaborately considered the concept of proceeds of crime and held that property purchased prior to the commission of scheduled offence, does not fall within the ambit of the first limb of the definition of proceeds of crime, though it certainly falls within the purview and ambit of the third limb of the definition. The Andhra Pradesh High Court has also observed along with the same lines in *Satyam Computer Services Limited v. Directorate of Enforcement, Government of India* (2018 SCC Online Hyd 787) wherein it was observed that PMLA being a statute which deals with substantive rights, cannot have a retrospective effect.

27. In the decision in ***Vijay Madanlal Choudhary and Others v. Union of India*** and Others [2022 SCC Online SC 929], it has been held that "The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. Be it noted that the attachment must be only in respect of property which appears to be proceeds of crime and not all

the properties belonging to the concerned person who would eventually face the action of confiscation of proceeds of crime, including prosecution for offence of money-laundering. As mentioned earlier, the relevant date for initiating action under the 2022 Act - be it of attachment and confiscation or prosecution, is linked to the inclusion of the offence as scheduled offence and of carrying on the process or activity in connection with the proceeds of crime after such date. The pivot moves around the date of carrying on the process and activity connected with the proceeds of crime; and not the date on which the property has been derived or obtained by the person concerned as a result of any criminal activity relating to or relatable to the scheduled offence."

28. Apart from the above, in ***Pavana Dibbur vs. Directorate of Enforcement*** (2023 SCC online SC 1586), it has been observed as follows: "Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, exfacie cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition. This is not a case where any material is placed on record to show that the sale consideration was paid from a particular bank account of the appellant. Therefore, it is not possible to record a finding at this stage that the second property was not acquired by using the proceeds of crime. "

29. Regarding the notice dated 10.03.2021, it reveals that during the course of investigation, the following properties appear to have been acquired by the petitioner from 'proceeds of crime'-

a) Flat No.C-45, Neeti Bagh, New Delhi, Entire First Floor (registered vide deed no. IN-DL931278893293800 dt. 08.09.2016) in the name of Shri Prinyangshu Boiragi, S/o Shri Jatindra Nath Boiragi.

b) Flat No.E-122-A, Greater Kailash, Part-II, New Delhi, Entire First Floor (registered vide deed no. IN-DL36073971434562M dt. 21.11.2014) in the name of Shri Prinyangshu Boiragi, S/o Shri Jatindra Nath Boiragi.

30. Situated thus, it appears that the irregularities done during the financial year 2013-14, 2014-15 and 2015-16, due to fake and fraudulent contracts as aforesaid awarded to the present petitioner. The petitioner has also challenged the notice dated 10.03.2021 regarding immovable properties in his name at Delhi which appear to be acquired during and after the contract period which comes under the purview of 'proceeds of crime.' As it appears that relating to the provisional attachment, the petitioner has an effective alternative remedy provided by the statute which was not availed by the petitioner.

31. In the result, the provisional attachment order dated 02.08.2024 in relation to the amount in the bank accounts as aforesaid and the notice dated 10.03.2021 are not interfered with and the petitioner is at liberty to pursue his alternative remedies.

32. The writ petition is disposed of accordingly.

JUDGE

Comparing Assistant