

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09-07-2015

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

WRIT PETITION Nos.20639 and 20640 of 2015
and
M.P.Nos.1, 1, 2 and 2 of 2015

Dr.P.Vijayan

.. Petitioner in
WP 20639/2015

V.Anitha

.. Petitioner in
WP 20640/2015

vs

1.Adjudicating Authority
Under the Prevention of Money
Laundering Act, 2002,
Rep. By its Registrar
Room No.26, 4th Floor
Jeevan Deep Building
Parliament Street, New Delhi 1

2.The Joint Director
Directorate of Enforcement
Chennai Zonal Office
3rd Floor, C-Block
Murugesu Naicker Complex
No.84, Greaves Road
Thousand Lights, Chennai 6.

3.ICICI Bank Limited
Represented by its Branch
Manager
Besant Nagar Branch
Chennai 19.

.. Respondents in
both writ petitions

Writ petitions filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorarified mandamus calling for the records of the respondents relating to the order of the first respondent in O.C.No.425/2015 dated 26.5.2015, and quashing the same and consequently, forbearing the respondents from seizing and taking away any of the properties of the petitioner subject matter of the impugned order of the first respondent dated 26.5.2015,

For Petitioners : Mr.K.Doraisamy
Senior Counsel
for M/s.Muthumani Doraisami

For Respondents : Mr.M.Dhandapani for RR1 & 2
Mr.K.Moorthy for R3

COMMON ORDER

By consent, both these writ petitions are taken up for final disposal.

2.The petitioner in W.P.No.20639 of 2015, is a Public Servant and the petitioner in W.P.No.20640 of 2015, is his wife and according to him, his wife is a Woman Entrepreneur acting as Managing Director of Gowin Diary Products Private Limited and Proprietrix of Sri Krishna Shelters, a company doing real estate and construction business.

3.A perusal of the affidavits, filed in support of these writ petitions, would disclose the following facts:-

3(i) The Superintendent of Police, Special Police Establishment (SPE), Central Bureau of Investigation, Anti Corruption Branch, (CBI - ACB), Nungambakkam, Chennai, has registered a case in Crime No.RC MA1 2011 A 0003 against the petitioners, for the alleged commission of offences under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988, and under Sections 109 IPC read with Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988, respectively. The case after investigation, has culminated in a charge sheet, which was taken on file and numbered as C.C.No.19 of 2014, and it is pending on the file of the Court of XIII Additional Special Judge for CBI Cases at Chennai and both the petitioners had also appeared before the said Court.

3(ii) In the above said case, both of them filed applications for discharge and the same was dismissed on 6.5.2015, and challenging the same, Crl.R.C.No.564 of 2015 has been filed before this Court and it is pending consideration and the presence of the petitioners/accused is also dispensed with for the present.

3(iii) The second respondent, in exercise of powers under Section 5 of the Prevention of Money-Laundering Act, 2002 - Central Act 15 of 2003 (in short, "PMLA"), has passed a Provisional Order of Attachment bearing

No.3/2015 dated 12.3.2015.

3(iv) Subsequently, the Adjudicating Authority, in exercise of powers conferred under Section 8 of PMLA, has issued a show cause notice dated 30.3.2015, calling upon the petitioners to show cause as to why the Provisional Order of Attachment in respect of the properties, should not be confirmed as it represents the proceeds of crime being value of properties involved in money laundering, and that the copy of the complaint, Annexure and relied upon documents are also enclosed along with the said notice.

3(iv) The petitioners filed W.P.No.8831/2015 challenging the Provisional Order of Attachment dated 12.3.2015, and notice was ordered and however, no interim order was granted.

3(v) Both the petitioners challenging the legality of the show cause notice dated 30.3.2015, filed W.P.Nos.15305 and 15306 of 2015 respectively, and this Court, taking note of the fact that during the course of hearing, the Adjudicating Authority, without granting time for adjournment, has reserved orders, the submission made by the learned Additional Solicitor General of India, that final order has been passed by the Adjudicating Authority on 26.5.2015, and also the submission of the learned Senior Counsel appearing for the petitioners, that they may be granted liberty to challenge the final order dated 26.5.2015, passed by the Adjudicating Authority, has closed the writ petition vide common order dated 28.5.2015, granting liberty to the petitioners to challenge the said order passed by the Adjudicating Authority, in the manner known to law.

4.The petitioners have filed these writ petitions challenging the order dated 26.5.2015, passed by the Adjudicating Authority under Section 8 of the PMLA.

5.Mr.K.Doraisamy, learned Senior Counsel appearing for the petitioners, has drawn the attention of this Court to the show cause notice dated 30.3.2015, and would submit that the show cause notice itself is not in consonance with Section 8(1) of PMLA and though the Counsel appeared and sought for adjournment, it was not granted by the Adjudicating Authority, even overlooking the fact that the complainant was also not present and therefore, in all fairness, the Adjudicating Authority ought to have granted adjournment so as to enable the petitioners to put forth their defence in a fair and proper manner.

<https://hcservices.ecourts.gov.in/hcservices/>

6.It is the further submission of the learned Senior Counsel appearing for the petitioners, that after the passing of the impugned

order, the second respondent has approached the ICICI Bank, Besant Nagar Branch, Chennai and seized a sum of Rs.50 lakhs, which are due and payable on maturity of Fixed Deposits, alleging that those are all proceeds of crime and also making attempt to take the jewels kept in two lockers and in that event, nothing will survive for adjudication and therefore, there is no point in preferring an appeal also and prays for appropriate orders.

7.Per contra, Mr.M.Dhandapani, learned Standing Counsel, who accepted notice on behalf of the respondents 1 and 2, would submit that as against the order passed by the Adjudicating Authority under Section 8 of PMLA, the petitioners are having an effective alternate remedy under Section 26 of PMLA and as per Section 26(3), the appeal has to be preferred within a period of 45 days from the date on which the copy of the order made by the Adjudicating Authority or Director is received and as per the proviso to the said Section, the Appellate Tribunal, after giving an opportunity of being heard, can entertain the appeal after the expiry of the said period of 45 days, if it is satisfied that there was sufficient cause for not filing it within that period.

8.In sum and substance, it is the submission of the learned Standing Counsel appearing for the respondents 1 and 2, that since the petitioners are having an effective alternate remedy, the writ petitions are not maintainable and prays for dismissal of the same.

9.The Court heard Mr.K.Moorthy, learned Counsel, who accepted notice on behalf of the third respondent, also.

10.This Court has carefully considered the rival submissions and also perused the materials placed before it.

11.Admittedly, the petitioners made a challenge to the Provisional Order of Attachment dated 12.3.2015, by filing W.P.No.8831/2015 and the same has been entertained and it is pending adjudication. The petitioners challenging the correctness of the notice issued by the Adjudicating Authority under Section 8(1) of PMLA, had filed W.P.Nos.15305 and 15306/2015 respectively, and the same were closed on 28.5.2015, granting liberty to the petitioners to work out their remedy in accordance with law. Therefore, the first and foremost point now urged by the learned Senior Counsel appearing for the petitioners, that the notice under Section 8(1) of PMLA is not in consonance with the provisions of PMLA, cannot be gone into by this Court at this stage, as the petitioners were granted liberty to approach the Appellate Authority.

12.Insofar as the other submission made by the learned Senior Counsel appearing for the petitioners, that the second respondent had also seized Rs.50 lakhs being proceeds of crime and is also attempting to open the two lockers and take away it's contents, the legality of the said act cannot be considered by this Court at this stage, in these writ petitions, for the reason that the petitioners are having an effective alternate remedy under Section 26 of PMLA.

13.No doubt, there is no provision for stay in respect of the appeals to be preferred under Section 26 of PMLA. However, it is settled position of law that the Appellate Authority being the creature of a Statute, is having inherent power, to grant interim orders pending disposal of the appeal, and in such a view of the matter, it is always open to the petitioners to move applications for stay.

14.In the light of the reasons assigned above, this Court is of the view that the writ petitions are not maintainable on the ground of availability of alternate remedy. However, the petitioners are at liberty to move the Appellate Authority under Section 26 of PMLA and if they are belatedly filing the appeals, they are also entitled to invoke proviso to Section 26(3) of PMLA. If the appeals are entertained, they are at liberty to move applications for stay and in that event, the Appellate Authority shall take into consideration the same and dispose of the same on merits and in accordance with law. The writ petitions are dismissed subject to the above observations. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

nsv

To:

1. The Registrar,
Adjudicating Authority
Under the Prevention of Money
Laundering Act, 2002,
Room No.26, 4th Floor
Jeevan Deep Building
Parliament Street, New Delhi 1

- 2.The Joint Director
Directorate of Enforcement
Chennai Zonal Office
3rd Floor, C-Block
Murugesu Naicker Complex
No.84, Greaves Road
Thousand Lights, Chennai 6.

3. The Branch Manager
ICICI Bank Limited
Besant Nagar Branch
Chennai 19.

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+ 2 ccS to Mr.Muthumani Doraisami, Advocate SR.No.34636, 34637

+ 2 ccs to Mr.K.Moorthy, Advocate SR.No.34658, 34659

W.P.No.20639 and
20640 of 2015

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