

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA & THE STATE OF ANDHRA PRADESH

* * * *

WRIT PETITION No.21598 of 2015

BETWEEN

M/s. Moonlife Team Works India Private Limited.

... PETITIONER

AND

The Government of India, Ministry of Finance, Department of Revenue, Rep.
by its Secretary, New Delhi and others.

...RESPONDENTS

DATE OF JUDGMENT PRONOUNCED: 29.07.2015

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE VILAS V. AFZULPURKAR

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| 1. | Whether Reporters of Local newspapers may be allowed to see the Judgments? | No |
| 2. | Whether the copies of judgment may be marked to Law Reporters/Journals? | No |
| 3. | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | No |

ORDER:

This writ petition questions the provisional attachment order of the

petitioner's property passed by the Joint Director, Directorate of Enforcement, Government of India, Hyderabad dated 09.04.2015 under Section 5(1) of the Prevention of Money Laundering Act, 2002 (for short 'the PML Act'). Consequently, the petitioner also questions the show cause notice dated 30.04.2015 issued by the adjudicating authority calling upon the petitioner to appear on 20.07.2015 and show cause why the provisional attachment order should not be confirmed.

2. Petitioner states that the fifth respondent registered Cr.No.258 of 2011 against the petitioner and two others and has also filed a charge sheet, which is now registered as C.C.No.847 of 2012 on the file of the Chief Metropolitan Magistrate, Nampally, Hyderabad under Sections 420 and 406 of the Indian Penal Code read with Sections 4 and 5 of the Prize, Chits and Money Circulation Scheme (Banning) Act, 1978. It is stated that the trial is almost complete except for the examination of the Investigating Officer. The affidavit refers to the gist of evidence lead and points out that the offence under Section 420 IPC, which is subject matter of CC.No.847 of 2012, is also a scheduled offence under the PML Act and the Director of Enforcement instituted its investigation by registering ECIR.No.HYZO/10/2014 dated 10.10.2014. The impugned order of provisional attachment came to be issued during the investigation on the allegation that the said properties are said to have acquired from the monies earned and laundered out of the proceeds of the crime and consequently, attached in terms of Section 5(1) (a) and (b) of the PML Act.

3. The primary ground on which the relief, as sought for, is claimed is that the trial in CC.No.847 of 2012 is almost at the conclusion stage and according to the petitioner, neither of P.Ws.1 to 23 have supported the prosecution. Petitioner, therefore, states that the very investigation under PML Act would amount to double jeopardy under Article 20(2) of the Constitution of India.

4. However, the challenge in this writ petition is to the provision attachment order and the consequential notice given by the adjudicating authority.

5. Learned counsel for the petitioner, therefore, urged the Court to grant stay of further proceedings in view of CC.No.847 of 2012 being likely to be disposed of very shortly. Learned counsel for the petitioner has relied upon the depositions of witnesses in the said CC.No.847 of 2012 to substantiate that the prosecution has failed to establish the commission of any offence by the petitioner and as such, the provisional attachment order impugned herein is wholly unjustified. Learned counsel also submits that no useful purpose would be served by participation of petitioner in the adjudication proceedings and the same can as well await the decision in CC.No.847 of 2012.

6. Learned standing counsel for respondents 1 to 3, who took notice, submitted that the satisfaction of the third respondent with reference to ingredients of Section 5(1) of the PML Act clearly authorises the officer to issue the provisional attachment order. However, such order does not prevent the person interested in the enjoyment of the said attached property of such enjoyment as is categorically provided under Section 5(4) of the PML Act.

Learned standing counsel, further, submits that adjudication envisaged under Section 8 of the PML Act by the adjudicating authority gives an opportunity to the petitioner to show cause as to why such attachment order is required to be vacated and does not deserve confirmation. Learned standing counsel submits that irrespective of the pendency or otherwise of the criminal case, respondents 1 to 3 were well within the provisions of the PML Act to pass the impugned order and the adjudicating authority, in fact, gave opportunity to the petitioner to show cause against such attachment. Learned standing counsel, therefore, submits that there is no reason much less any ground to issue the Mandamus as prayed for.

7. During the hearing, learned counsel for the petitioner relied upon a decision of the Madras High Court in **INDIAN BANK v. GOVERNMENT OF INDIA, MINISTRY OF FINANCE, DEPARTMENT OF REVENUE**^[1] where the provisional attachment was challenged by the petitioner bank. On the facts of that case, the Court came to the conclusion that the property attached cannot be said to be tainted with proceeds of crime and disposed of the writ petition after answering the other questions raised. Learned counsel also relied upon a decision of the Jharkhand High Court in **BINOD KUMAR SINHA v. STATE OF JHARKHAND**^[2]. The said decision does not deal with those questions but relates to a question as to whether the Special Court has power to try the scheduled offence under the PML Act simultaneously.

Hence, the said judgment is not relevant for the purpose of the present writ petition.

8. The affidavit filed by the petitioner and the contentions of the learned counsel for the petitioner are merely focused on the question that since the criminal case is almost complete and none of the prosecution witnesses having supported the prosecution, the issuance of the provisional attachment order, at this stage, is unjustified.

I do not find any justification for such claim inasmuch as it is the petitioner's perception that the criminal case is likely to end in his favour. What is the evidence lead and whether the prosecution has proved their case are all matters, which are yet to be considered by the competent Court trying the said CC.No.847 of 2012 and since the trial in the said case is not yet complete, the conclusions drawn by the petitioner on the merits of the prosecution are clearly premature.

9. So far as the provisions of the PML Act are concerned, Section 5(1) (a) and (b) clearly support the order of provisional attachment, which has been issued by the third respondent on his satisfaction that there

is reason to believe that the ingredients of clause (a) and (b) are satisfied. The provisional attachment order contains material on the basis of which such reason to belief is arrived at. In any case, however, the said order is not final and is subject to further order by the adjudicating authority under Section 8 of the PML Act. The adjudicating authority had already given show cause notice to the petitioner and would take appropriate decision as to whether the provisional attachment order deserves to be vacated or confirmed.

It cannot be said that the petitioner would be aggrieved even by the show cause notice issued by the adjudicating authority as the proceedings before the adjudicating authority are only at the stage of show cause notice.

10. The decision of the Madras High Court, referred to above, is based on that facts of that particular case where the High Court recorded the conclusion that the properties attached provisionally cannot be said to have been acquired from out of the proceeds of crime. In the present case, there are neither any averments nor any material in support of such conclusion and the only basis for presenting this writ petition is that the trial before the criminal Court is likely to be concluded shortly and as such, the impugned order is unwarranted and in any case, the adjudicating authority can as well await the decision of the criminal Court. In my view, the petitioner has to address these submissions and other submissions on merits in response to the show cause notice already issued by adjudicating authority. The invocation of extraordinary jurisdiction of this Court under Article 226 of the Constitution of India is, therefore, not warranted either on facts or in law.

Hence, the writ petition is dismissed. As a sequel, the miscellaneous applications, if any, shall stand closed. There shall be no order as to costs.

VILAS V. AFZULPURKAR, J

July 29, 2015
DSK

[\[1\]](#) 2012 LAWSUIT (MAD) 2181

[\[2\]](#) 2013 CRI.LJ 2230