IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 21705 of 2014 (O & M)
Reserved on 23.04.2015
Date of decision: 19.05.2015

Sudeep Kaur Sawhney ...Petitioner(s)

Versus

Union of India and others ...Respondent(s)

CORAM: HON'BLE MR. JUSTICE S.J. VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE G.S.SANDHAWALIA

Present: Mr. Jagmohan Bansal , Advocate,
for the petitioner.

Mr. D.D. Sharma, Advocate,
and Mr. Suresh Batra, Advocate,
for the respondents.

1. To be referred to the Reporters or not? Yes
2. Whether the judgment should be reported in the Digest?

G.S. SANDHAWALIA, J.

1. In the present writ petition, the petitioner seeks a writ in the nature of mandamus directing the respondents to de-freeze the bank account of the petitioner which has allegedly been done under the provisions of The Prevention of Money Laundering Act, 2002 (in short "PMLA'). It is pertinent to mention that the petitioner in the writ petition has referred to and claimed reliefs only with regard to a saving account bearing No. 1956915673 maintained with the Central Bank of India, Sector 18-C, Chandigarh-respondent no. 3. It has accordingly been pleaded that the respondent namely the Directorate of Enforcement-respondent no. 2 (known as the Directorate) has disallowed the withdrawals.

2. As we mentioned above, in the writ petition, reliefs were sought of de-freezing only in respect of the petitioner's saving account

No.1956915673. The respondents have de-frozen this account. This petitioner's grievance in this Writ Petition, therefore, does not survive. The Writ Petition can be disposed of on this ground alone.

3. Mr. Bansal, however, made an oral application for reliefs in addition to those sought in the writ petition. He sought the de-freezing of various other accounts and fixed deposit receipts of the petitioner. There are, however, no prayers in respect of the reliefs sought across the bar *viz.* de-freezing of the fixed deposits and other accounts of the petitioner. More important there are no pleadings in support of the oral application. Even the evidence in respect thereof was only tendered across the bar. Further, still there was not even an application for amending the writ petition. We do not refuse to entertain the oral application for reliefs other than those that form the subject matter of the petition on a mere technicality. The nature of the reliefs sought would require detailed investigation of facts many of which are disputed. To allow such an oral application would be undesirable especially in view of the nature of this case. It would also be unfair to the respondents. They must have an opportunity of dealing with the application and the documents on affidavit.

4. As Mr. Bansal pressed the application strongly, we will refer to the oral application and the facts only to substantiate the above and without expressing a final opinion on the merits in respect thereof.

5. Mr. Bansal suggested that the reliefs can be considered on the basis of the pleadings in the Writ Petition as they are.

6. The first question that arises, therefore, is whether any challenge has been raised in the writ petition with respect to the freezing of the petitioner's account and the FDRs apart from the petitioner's saving

account No.1956915673. The question must be answered in the negative. The only prayer in the petition reads as under:

> "i) issue Writ of Mandamus directing the Respondents to de-freeze the bank account of the Petitioner;"

Firstly, the FDRs are not even mentioned in the prayer. The bank account is referred to in the singular, not in the plural. The paragraph-2 of the petition reads as under:-

> "2. That the Petitioner is having regular income from rent and tailoring. The Petitioner is maintaining a saving account bearing number 1956915673 with the Central Bank of India, Chandigarh. The Petitioner is regularly making the transactions from the said account. The Respondent No.3, on the basis of a letter issued by Directorate of Enforcement i.e. Respondent No.2 has disallowed withdrawls (*sic*) to the Petitioner. Therefore, the Petitioner is filing present Civil Writ Petition seeking directions to the Respondents to allow withdrawls (*sic*) and defreeze the bank account of the Petitioner."

A plain reading of paragraph-2 makes it clear that the grievance is only in respect of the said saving account No.1956915673. The expression "said account", obviously, refers to that account and to no other account. It is clear, therefore, that the words "the bank account of the Petitioner" in prayer (i) of the petition refer to the said bank account referred to in paragraph-2 of the petition and to no other bank account. At the cost of repetition, the FDRs are not referred to anywhere in the petition. Even thereafter it is only one bank account which is referred to in the submissions. Various other facts have been referred to in the petition. That, however, makes no difference. The subject matter of the petition is only the said account.

7. This contention was specifically raised by the respondents. It was pointed out to Mr. Bansal more than once. The petitioner did not seek an opportunity to amend the pleadings. Nor did she seek to withdraw the petition with liberty to file a fresh petition. The said account having been de-frozen, the petitioner's grievance does not survive. The Writ Petition is

liable, therefore, to be disposed of for this reason alone. As we mentioned earlier, Mr. Bansal, however, sought reliefs of de-freezing the other accounts and FDRs of the petitioner although the reliefs were not sought in respect thereof. He, however, insisted that we ought to consider the application even with respect to such assets.

8. We will refer to a few facts only to indicate the issues involved and the complexity in the matter. The same, in our opinion, would warrant a consideration of the submissions and an application for reliefs to be made by a proper pleading and not orally across the bar. It is essential for this matter that all the facts in relation to the application are introduced in pleadings and not orally across the bar.

9. The pleaded case of the petitioner is that an FIR bearing no. 4 dated 22.07.2009 was registered under Sections 419, 420, 467, 468, 471 and 120-B IPC at P.S. Vigilance, Chandigarh against 4 accused regarding the transfer of shop-cum-flat no. 8, Sector 20-C, Chandigarh in favour of one O.P. Mittal, who was the tenant. In the investigation, a report dated 26.10.2009 had also been filed against her husband namely Sh. Gurvinder Singh Sawhney. It was alleged that on the basis of the said FIR and police report, the respondent-Directorate initiated an investigation bearing No. ECIR/CDS0/05/2013 under PMLA. Summons were issued under Section 50 of the PMLA to the husband of the petitioner for appearance on 28.08.2014 (Annexure P-3). No proceedings were pending in any Court of Law and no adjudication was pending before any agency against the petitioner but the respondent-Directorate has disallowed the withdrawal which was intimated by the bank on 12.09.2014 (Annexure P-4). The petitioner had not even been supplied copy of the attachment order. A

request was made on 27.09.2014 (Annexure P-5) to the Deputy Director of the Directorate to defreeze the account but no action had been taken. Accordingly, the petition came to be filed before this Court in October, 2014.

10. In the written statement filed on 12.12.2014 by the Deputy Director of the Directorate, reference was made to FIR No. 4 and it was submitted that a property of one Tara Singh, NRI had been sought to be sold in favour of the tenant Sh. O.P. Mittal and information was received from the Chandigarh police which had filed a charge sheet on 20.10.2009 against Harnek Singh, Gurvinder Singh Sawhney and Jaswant Singh. A supplementary charge sheet had been filed against Sant Ram and Narinder Kumar Verma, officials of the Estate Office. It was further pleaded that a charge had also been framed against the said persons and the matter was pending before the Court of the Sessions Judge, Chandigarh. The charges against the accused pertain to the shop-cum-flat occupied by O.P. Mittal (deceased) and Jaswant Singh was the brother of the complainant. A compromise allegedly dated 28.02.2006 had been executed on behalf of Tara Singh whereby, sum of Rs.50,000/- had been received without any authority and Harnek Singh, who is the clerk of the husband of the petitioner had deposited a sum of Rs.1,350/- in the Estate Office on account of dues of the property but claimed Rs.2,11,350/- from Tara Singh by forging the challan receipt dated 10.04.2007. A further compromise dated 17.01.2009 without any authority had been entered into by Harnek Singh in conspiracy with the husband of the petitioner and the tenant for Rs.34,50,000/- regarding the sale of the said SCF and the said amount had been received by the cheque dated 16.01.2009. A no objection certificate

had been issued by the officials of the Estate Office without considering the general power of attorney submitted by Harnek Singh, who was allegedly not having authority to sell the property and the husband of the petitioner had received the amount from Harnek Singh through cheques. The property had further been sold in favour of the tenant on the basis of the said power of attorney. In such circumstances, summons were issued to the husband of the petitioner under the provisions of Section 50 and record was called for to trace "the proceeds of the crime" under the provisions of the PMLA. The son of the tenant had also been summoned but the husband of the petitioner was not cooperating. The details were obtained from the concerned authorities including the charge sheet from the Courts and the record of the Estate Officer was scrutinized and the said ECIR was registered. It was noticed that Harnek Singh, who was working as a Clerk with the husband of the petitioner had received a sum of Rs.34.50 lacs from the tenant and out of that sum, Rs.34.46 lacs had been received by the husband of the petitioner through two blank cheques on 22.01.2009 and 28.01.2009 and in such circumstances, summons had been issued to him but he was not appearing and seeking adjournments which were also granted to him.

11. For the interest of the revenue, the bank accounts were ordered to be frozen which were operating in Central Bank of India, Sector 18-C, Chandigarh and investigation was going on. Keeping in view the non-cooperative attitude of Sh. G.S. Sawhney, the bank was requested that all accounts be frozen. The information was taken from the respondent-bank which revealed that following accounts were with the bank:-

S. No.	*SB A/c or FDR A/c No.*	*Name of the A/c holder*	*Balance amount as on 15.09.2014 (in Rs.)*
1	1956922067	Sh. G.S. Sawhney and Smt. S.K. Sawhney, Joint account	1,61,380/-
2	1956915673	Smt. S.K. Sawhney	2,074/-
3	3354264288	Smt. S.K. Sawhney	2,05,000/-
4	3316177356	Smt. S.K. Sawhney	2,00,000/-
5	3311224847	Smt. S.K. Sawhney	6,00,000/-
6	3293632921	Smt. S.K. Sawhney	8,40,000/-
7	3104406865	Smt. S.K. Sawhney	7,68,399/-
8	3104406491	Smt. S.K. Sawhney	7,68,399/-

12. It was mentioned that the statements of other co-accused were recorded, however, since only a nominal amount of Rs.2,074/- was lying in the concerned bank in account no. 1956915673 which is the subject matter of the present writ petition the same was defreezed by the Directorate vide letter dated 04.12.2014 (Annexure R-10). However, the other FDRs of the petitioner and the saving bank account of her husband had not been de-freezed for the sake of the revenue as the matter was subject of investigation and the documents in support of the investment made by the wife had not been furnished.

13. The petitioner thereafter filed an affidavit and also sought to explain the source of funds which were lying in the FDRs. The show cause notice dated 09.01.2015 (Annexure P-7) was placed on record whereby, the Directorate had issued final opportunity to them to submit the documents. Letter dated 14.01.2015 (Annexure P-8) whereby freezing order under Section 17(1A) passed by the Deputy Director was also placed on record vide which the accounts mentioned above were frozen except the account in question.

14. Thereafter, the latest status of the investigation report dated 12.02.2015 conducted was also placed on record through the Assistant Director. It was mentioned in the report that the husband of the petitioner was not cooperating and there were 4 other bank accounts in the name of the

petitioner which were not disclosed by them earlier and details had been sought. The petitioner's husband was not giving the details of the receipt of the payment of Rs.75 lacs and that he had submitted his reply and on 04.02.2015 and given proof of purchase of flat at Jal Vayu Vihar, Mohali and two documents signed by one Mrs. Manpreet Kaur Chadha and Inderjeet Kaur Narula without mentioning the address of the signatory and without supplying the copy of the income tax returns. The flat at Jal Vayu Vihar, Mohali had been sold and the copy of the sale deed had not been submitted. A reference was made to one deal struck for Rs.75 lacs and as per the conversation recorded with Sh. Mukesh Mittal, Advocate, who had asked the husband of the petitioner to hand over two cheques of ₹35 lacs and ₹40 lacs to one Sh. Narinder, who was the aide of said Sh. Mukesh Mittal. The allegation that the amount of money received from O.P. Mittal had been returned in the presence of persons on 15.07.2009 was denied while placing reliance upon the statement of the son of the deceased-tenant. Accordingly, it is submitted that the investigation was continuing and that the petitioner was required to prove that the money lying in her bank account was not sale proceeds of a crime under Section 24 of the PMLA.

15. Subsequently, vide another additional reply dated 17.03.2015, it was mentioned that 6 premises had been searched on 13.01.2015 resulting in seizure of highly incriminating documents and the bank locker had also been found in the name of the petitioner. The intimation about the search and seizure had been sent to the adjudicating authority under PMLA within the stipulated period and show cause notice had been issued to the petitioner and 42 other connected persons to appear on 23.04.2015 which had been duly served upon the petitioner on 08.03.2015.

16. Counsel for the petitioner has very vehemently submitted that the order freezing of the bank account under Section 17(1A) of the PMLA is by an unauthorized officer since it was not issued by the Deputy Director or the Director and there were no reasons to believe that the petitioner was in possession of any proceeds of crime or involved in money laundering which was the mandatory requirement. The copy of the letter dated 15.09.2014 (Annexure R-7) had not been supplied to the petitioner, reference of which is made to in letter dated 12.09.2014 (Annexure P-4) under Section 17(1A) of the PMLA and neither any application had been filed before the adjudicating authority within 30 days as prescribed under Section 17(4) of the Act. Accordingly, it was contended that the subsequent freezing of accounts on 14.01.2015 (Annexure P-8) by the authorized officer namely the Deputy Director would not cure the illegality committed and, therefore, the freezing order was liable to be set aside. Reference is also made to Section 20 of the PMLA to submit that beyond a period of 180 days, the amount could not be frozen.

17. Counsel for the respondent-Directorate, on the other hand, submitted that the statutory order of freezing of accounts was only passed on 14.01.2015 after information had been received from the bank and the matter had been brought to the notice of the adjudicating authority on 11.02.2015 well within the prescribed period of 30 days. The show cause notice had been issued by the adjudicating authority on 23.02.2015 and it was open to the petitioner to submit his grievances before the adjudicating authority who was to finally decide whether to confirm the final attachment of the property and continue with the same. It was further submitted that the order passed by the adjudicating authority could be challenged in appeal

and, therefore, this Court would not exercise its discretion at this point of time. It was further argued that reasons had been duly recorded before the competent authority had passed the order dated 14.01.2015 and the original record was produced for perusal.

18. The second issue which arises for consideration on Mr. Bansal's oral application is whether the concerned accounts were frozen vide order dated 12.09.2014 (Annexure P-4) or 15.09.2014 (Annexure R-7) or 04.12.2014 (Annexure R-10) or by the order dated 14.01.2015 (Annexure P-8) and whether it was done by the competent authority namely the Deputy Director or the Director and whether there were any reasons recorded by the authorities while issuing the order of freezing of accounts.

The third question which also arises on Mr. Bansal's oral application is whether the appropriate proceedings had been initiated under Section 17(4) of the PMLA before the adjudicating authority within the prescribed period who would then decide on the factum whether the attachment is to continue or not.

19. It is important to note that since all relevant documents were not appended with the replies, photocopies of Annexures R-3 to R-12 have been taken on record vide order dated 23.04.2015.

20. The perusal of the Annexures taken on record would thus go on to show that the first notice was issued to the husband of the petitioner on 11.07.2013 (Annexure R-3) followed by notice dated 28.08.2014 (Annexure P-3 = Annexure R-4). In the said Annexure, all the passports, copies of income tax returns, details of investments of bank accounts were sought for and a date was fixed on 10.09.2014. The husband of the petitioner sought an adjournment by way of application (Annexure R-5) on the ground that he

was out of station from 09.09.2014 to 16.09.2014 and the proceedings were adjourned to 26.09.2014. In the meantime on 12.09.2014 (Annexure R-6), the Assistant Director of the Directorate wrote to the respondent-bank regarding the bank account of the husband of the petitioner pertaining to Account No. 1370 and other relevant information which was sought under Section 54 of the PMLA. The contents of the letter to the bank reads thus:-

> *"Sub: Statement of S.B. A/c No. 1370 (Shri Gurwinder Singh Sawhney). -reg.-*
>
> *An investigation is being carried out under the provisions of the Prevention of Money Laundering Act, 2002 (15 of 2003). In this connection, you are requested to provide the statement of Bank Account No. 1370 from the date of opening to till date. The said account is holding by Shri Gurwinder Singh Sawhney residing at H.No. 2168, Sector 38/C, Chandigarh. Apart from that, provide any other relevant information pertaining to the said person with your bank.*
>
> *The said information is sought under the provision of section 54 of the Prevention of Money Laundering Act – 2002. The same may be treated as urgent and furnished within a week."*

21. Thereafter, letter dated 15.09.2014 (Annexure R-7) was addressed to the bank wherein, apart from account no. 1370 equivalent to new A/c. No. 1956922067, information of the joint account of the couple was also asked for by the Assistant Director. A condition was also put that no withdrawals or debits be allowed from the account/FDRs, lockers, if any without clearance from the Directorate. The relevant portion of Annexure R-7 reads as under:-

> *"Sub: Investigation under PMLA-2002 against Shri G.S. Sawhney, Harnek Singh and Others-reg.-*

*In connection with investigations being conducted under the provisions of the Prevention of Money Laundering Act, 2002 (15 of 2003) by this Directorate in the subject case, it is required that the following documents/information in respect of the under noted accounts being maintained in your bank may please be provide on top priority basis, latest **by 19.09.2014 positively:***

S. No.	***Name of the Account Holder***	***Account Number***
1	Mr. Gurwinder Singh Sawhney & Mrs. Sudeep Kaur Sawhney	1956922067
2	Shri G.S. Sawhney	1370

02. Please furnish certified copies of Account opening forms together with the documents tendered while opening the account. Transcript/statement of each of the above mentioned accounts from 01.07.2005 to till date. All bank account's statement should be certified by the authorized person and a soft copy of the same may also be provided. Similarly information/documents in respect of any other account(s) of/connected with the subject persons, being maintained in your bank, be also provided. Kindly inform/share all suspicious transactions with your bank by the above suspected persons.

03. Detail of all FDRs, Locker/s etc. held by the above mentioned persons may please be provided.

*04. Since, the amount/balances as may be available in each of the above mentioned accounts are liable for attachment/confiscation under PMLA Act, 2002. It is requested that **no withdrawals/debits be allowed from the aforementioned accounts/FDRs/Lockers, if any, without clearance from this Directorate.***

05. The same may be treated as most urgent and kindly provide the same by 19.09.2014."

22. Thereafter, the bank on 19.09.2014 (Annexure R-8), in reference to the earlier letter of the Directorate submitted details of eight accounts/FDRs which have been noticed above. The bank, however, also wrote that the accounts have been frozen as per the instructions.

23. It is also apparent that vide request dated 27.09.2014 (Annexure P-5 = Annexure R-9), the petitioner had represented to the Deputy Director for defreezing all the accounts taking the plea that she was an income tax assessee and filing returns. Vide the letter dated 04.12.2014 (Annexure R-10) the account which pertains to the present writ petition was de-freezed and the petitioner was allowed to operate the accounts whereas the freezing continued pertaining to the other accounts mentioned. The operative part of the letter issued by the Assistant Director dated 04.12.2014 reads as under:-

> *"Please refer to this office letter of even no. 2497, dated 15.09.2014 on the subject case and your reply vide letter No. BR/18C CHD/2013-14, dated 19.09.2014. Following Bank A/cs and FDRs A/c have opened and operated by Shri G.S. Sawhney and his wife and Smt. S.K. Sawhney with your Branch and on the directions of this Directorate, the same have been freezed on 15.09.2014.*
>
> *xxx xxx table deleted xxx xxx*
>
> *02. Investigation is under process. Shri G.S. Sawhney and his wife Smt. S.K. Sawhney have been asked to submit the source of investments made by them in these accounts. Documents in support of her investment have not been furnished by Sh. G.S. Sawhney so far. A nominal balance i.e. Rs. 2,074/- only is lying with the A/c No. 1956915673 of Smt. S.K. Sawhney and there is no reason to be continued with freezing this*

account. It is further requested you to continue freeze all above FDRs and Saving Bank account of Sh. G.S. Sawhney (A/c No. 1956922067).”

24. The factual matrix thus being clear, the arguments raised can accordingly be dealt with.

25. The challenge in the petition is only to the freezing of Account No. 1956915673 and it is relevant to mention that not a whisper was made in the writ petition that apart from this account, the petitioner had other accounts with the bank including one joint account mentioned in the table set out above in which a sum of ₹1,61,380/- was there alongwith her husband. Similarly, six FDRs in which various amounts varying from a sum of ₹2,00,000/- to more than ₹8,00,000/- had been lying with the bank had never been mentioned and neither any averment had been made that the said amounts which are more than ₹32 lacs were lying deposited with the bank. The petitioner though aware of such a huge amount lying with the bank in various FDRs and accounts made no averment regarding the said accounts and referred only to and sought reliefs only in respect of one account. In the absence of any specific pleadings, we are not inclined to go into the said issues on the basis of the oral submissions as the Directorate has been precluded from giving a reply to the same. It is also apparent that the writ petition regarding the Account No. 1956915673 has already become infructuous in view of the letter dated 04.12.2014 and the petitioner chose not to amend her writ petition regarding the other accounts and raise the issues which now she is seeking to do orally.

26. Secondly, there is no dispute regarding the fact that on 25.03.2013, the ECIR No. 5 has been lodged by the enforcement agencies, which is subject matter of challenge by other noticees in a connected bunch

of matters pending before this Court and has been appended as Annexure P-37 in CWP No. 3317 of 2015, Karam Singh vs. Union of India. That in pursuance of the said investigation, the husband of the petitioner was called under Section 50(2) and (3) of the PMLA and his statement has been recorded by the authorities on various dates i.e. 28.11.2014, 02.12.2014 and 03.12.2014. In pursuance of the said investigation, the record was called for from the bank. The perusal of the letter dated 12.09.2014 would only go on to show that it was a communication by the bank whereby, reference is to one letter of the Directorate bearing No. ECIR/CDS0/05/2013/2497 dated 15.09.2014 (Annexure R-7). Obviously there is a mistake regarding the date as it could not have been written on 12.09.2014 and it was only on the receipt of the letter dated 15.09.2014, the bank wrote to the petitioner informing the action of the Directorate and mentioned that the accounts and the FDRs could not be operated without clearances from the Directorate. The relevant portion of the letter dated 15.09.2014 has already been reproduced above. The respondents rightly contend that the reasons were recorded much later by the Deputy Director as noticed and thereafter only on 14.01.2015, the formal order of freezing the accounts was issued and no fault thus, can be found if the bank had misread the letters issued by the Assistant Director or the said Officer had been under a misconception that the accounts had been frozen. It was then rightly submitted that it is settled principle that an action by an officer not authorized to pass an order cannot be held to be an order passed with jurisdiction and, therefore, the earlier orders dated 15.09.2014 and 04.12.2014 or the communication of the bank dated 12.09.2014 (Annexure P-4) cannot be said to be statutory freezing orders. Accordingly once the statutory order thus was only passed on

14.01.2015 (Annexure P-8) and once the reasons have been recorded, no fault can be found in the action of the Directorate and the rival contentions can be raised at the hearing of properly instituted proceedings.

27. The matter was processed by the authority as per the detailed reasons recorded, which go on to show that there is a clear cut reasoning given that apart from the amount of "₹35 lacs" which has changed hands, another deal of "₹40 lacs" was made of this property which was paid in cash. Whether the same had been returned or not and how many people were involved in the said case and in similar cases of cheating has still to be gone into. In the reasons recorded, details of 12 companies have been mentioned which are allegedly controlled by Sh. Mukesh Mittal and his associates and on the basis of the said investigation, the Deputy Director concluded that there were reasons to believe that various persons were indulging in the act of money laundering and granted permission to search the premises of the petitioner's husband apart from 4 other persons mentioned. Thereafter, on account of the search conducted on 13.01.2015 and seizure of the documents which included blank, signed/unsigned cheques of accounts of various companies an opinion was recorded by the competent authority i.e. the Deputy Director that there was sufficient reason to believe that prima facie, "it is a unique case of money laundering". Thus, it is apparent that proper reasons have been recorded by the authorities while issuing the statutory order dated 14.01.2015 (Annexure P-8) wherein, the details of all the accounts have been mentioned and reference has been made to Section 17(1A) of the PMLA for the first time.

28. Admittedly, the said order has been served on the petitioner also and there is no dispute that the Deputy Director has the power to order

freezing of the properties under Section 17(1)(i)(ii) where it is not practical to seize the same or where he has reason to believe and such belief is to be recorded in writing that the person has committed any act of money laundering or is in possession of "any proceeds of crime involved in money laundering". The said power emanates from the provisions of Section 17, which reads thus:-

> *"**17. Search and seizure**.—(1) Where 1 [the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—*
>
> *(i) has committed any act which constitutes money-laundering, or*
>
> *(ii) is in possession of any proceeds of crime involved in money laundering, or*
>
> *(iii) is in possession of any records relating to money-laundering, 2 [or]*
>
> *3 [(iv) is in possession of any property related to crime] then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to—*
>
> *(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;*
>
> *(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;*
>
> *(c) seize any record or property found as a result of such search;*
>
> *(d) place marks of identification on such record or 4 [property, if required or] make or cause to be made extracts or copies therefrom;*

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

5 [Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the Central Government, by notification, for this purpose.]

1 [(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60, it becomes practical to seize a frozen property, the officer authorised under subsection (1) may seize such *property.]*

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure 2 [or upon issuance of a freezing order] forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorisation referred to in sub-section (1) shall be required for search under this sub-section.

3[(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.]"

29. We are well aware that the power of freezing is a draconian power and safe guards have to be kept in mind to check its abuse and limit its exercise. However, a balance has to be maintained between the right of the citizen and the right of the investigating agency which cannot be restricted as it is the duty of the said agency to unearth and find out the modus operandi resorted to by the noticees and the beneficiaries of the

proceeds of the crime. This exercise is thus to be adjudicated upon by the adjudicating authority before whom the complaint has thus to be filed expeditiously within a period of 30 days of the freezing under Section 17(4) of the PMLA and which has been done in the present case. It is trite law that the right of investigation cannot as such be trampled upon by this Court and the purpose of freezing cannot be ignored regarding the interest of the revenue also so that the proceeds of crime are not frittered away. The parties have to be given a reasonable level playing field. This cannot be achieved by permitting oral applications thus depriving the respondents an opportunity of meeting the petitioner's case in a reasonable manner.

30. Lastly, question arises whether this Court is to scrutinize the source of the funds and whether the action of the authorities is justified. Admittedly, under 17(4) of the PMLA, an application has been filed on 11.02.2015 (Annexure R-11) for retention of the records and the property seized by the Deputy Director in which details have been given of 108 bank accounts and various immovable properties owned in Himachal Pardesh owned by Shri Mukesh Mittal and his associates. The said adjudicating authority has issued notice dated 23.02.2015 (Annexure R-12 colly) to the petitioner as to why the said documents seized or frozen should not be retained as involved in money laundering and required for the purpose of investigation. A similar notice had also been issued to the husband of the petitioner to put in appearance apart from 43 other defendants. Normally and in the first instance, it is for the adjudicating authority to decide whether the order of freezing is to continue or not under Section 8(3) and in such circumstances, it would not be within the ambit of this Court to get into the disputed questions as to where the money lying in the fixed deposits bank

accounts has come from.

31. There is an alternative and efficacious remedy available before the Authorities and in the absence of pleadings and keeping in view the settled principle that under Article 226 of the Constitution of India, we do not intend going into the questions of fact which in all probability are disputed. The argument raised that the money lying in the accounts are from justified sources of income thus cannot be gone into by this Court at this stage. However, it is made clear that anything said herein is only for the purpose of deciding the present writ petition and will not affect the petitioner's case before the authorities or in any other proceedings.

32. The writ petition is liable to be dismissed and no interference called for. Ordered accordingly.

(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE

(G.S. SANDHAWALIA)
JUDGE

19.05.2015
shivani/parkash