

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 3566 OF 2015

Sudesh Madhukar Kulkarni ... Petitioner

V/s.

Union of India & others ... Respondents

Mr. A.I. Shah for the petitioner.

Mrs. Sangeeta Shinde, APP for the State.

Ms. Rebecca Gonsalves for respondent no.1.

**CORAM : NARESH H. PATIL AND  
PRAKASH D. NAIK, JJ.**

**29<sup>th</sup> August, 2016.**

**P.C.**

Rule. Rule made returnable forthwith. Heard finally by consent of parties.

2. The petitioner challenges orders dated 16<sup>th</sup> April, 2015 passed in Application No. MP-PMLA-1396/MUM/2015 and Application No. MP-PMLA-1395/MUM/2015. At the appellate stage the petitioner filed an application before Appellate Tribunal, Prevention of Money

Laundering Act at New Delhi for production of certain documents which was not allowed by the Tribunal. In its order dated 16<sup>th</sup> April, 2015 the Tribunal in paragraphs 2 and 3 on page-96 of the order observed as under:-

“ The allegation that earlier counsel did not produce the documents as the appeal was prepared in a hurry, is not 'sufficient cause' for production of these documents now in the appeal. While confirming the validity of the provisional attachment order passed by the respondent, the Adjudicating Authority by order dated 23<sup>rd</sup> April, 2015 in O.C. No.299/2014 has not considered these documents as they were not filed before the Adjudicating Authority. Why these documents could not be filed before the Adjudicating Authority despite the notice by the Adjudicating Authority under Section 8(1) of the PMLA and sufficient time granted by the Adjudicating Authority, has not been explained and nor has been even averred by the applicant.

In the circumstances the applicant has not even averred as to how the alleged documents which are sought to be produced could not be produced despite due diligence on the part of the applicant even before the Adjudicating Authority.”

3. The petitioner wanted to produce electricity bills, Aadhar card,

ration card, Election card, gas connection receipt, income-tax returns and copies of bank passbook. In normal circumstances, these documents could have been allowed to be produced on record. It is matter of record that before both the forums petitioner failed to produce the documents. Counsel appearing for petitioner submitted that those documents were handed over to lawyer which could not be produced. The Counsel submits that considering the nature of documents no prejudice would be caused, if they are allowed to be produced before the appellate authority for arriving at a just decision in the matter. These documents be permitted to be produced in the interest of justice.

3. We have heard learned Counsel appearing for the petitioner. The Counsel appearing for respondent placed reliance on the provisions of Section 11 of the Prevention of Money Laundering Act, 2002 which refers to power regarding summons, production of documents and evidence and provisions of Section 35 which prescribes procedure and powers of appellate Tribunal. Learned Counsel further placed reliance on the provisions of Order 41 Rule 27 of Civil Procedure Code. It is submitted that petitioner failed to satisfy the mandatory requirements of petition.

4. The plea is raised by the petitioner that some of the documents

were handed over to his lawyer. In the facts, we find that no prejudice would be caused to the respondents if these documents are placed on record but in case the petitioner is denied with an opportunity to produce these documents which mostly relate to official documents then some prejudice is likely to occur to the petitioners. Balance is required to be struck. Taking into consideration, the facts, provisions of Money Laundering Act and CPC we find that placing the documents on record would certainly help the Tribunal in appreciating the matter. In the facts, we are of the view that petitioner shall be permitted to produce the documents before the appellate authority. Production of these documents would facilitate the appellate authority to arrive at just and proper adjudication of the issues. We do not find that any prejudice would be caused to the other side. At the same time we are of the view that production shall be allowed to produce the documents, subject to payment of cost in favour of respondent no.1. We pass following order:

### **ORDER**

- i) The Writ Petition is allowed.
- ii) Impugned orders dated 16<sup>th</sup> April, 2015 in Application No. MP-PMLA-1396/MUM/2015 and Application No. MP-PMLA-1395/MUM/2015 are hereby

quashed and set aside subject to payment of cost of Rs.10,000/- in favour of respondent no.1 within two weeks.

iii) The Petitioners are permitted to produce documents i.e. Electricity Bills, Aadhar Card, Ration Card, Election Card, receipt showing gas connection, Income-tax return for the year 2005-06 and 2006-07 and the copies of bank pass book and make necessary amendments.

5. The Rule is made absolute in the above terms.

**(PRAKASH D. NAIK, J.)**

**(NARESH H. PATIL, J.)**

L.S. Panjwani, P.S.