

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.06.2016

Delivered on : 05.07.2016

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANANARAYANAN

WP.No.16166/2016 & WMP.No.13951/2016

R.Ravi ... Petitioner

Versus

- 1 The Deputy Director
Union of India,
Director of Enforcement
Government of India
Chennai.
- 2 The Chairperson
Adjudicating Authority under
The Prevention of Money Laundering Act
New Delhi. ... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the entire records on the file of the 1st respondent in Original Complaint No.552 of 2016 in Provisional Attachment No.3/2016 in ECIR No.CEZO/3/2013 [APS] dated 17.02.2016 and quash the same.

For Petitioner : Mr.K.Sridhar

For Respondents: M/s.G.Hema
Central Government Standing
Counsel

WEB COPY

ORDER

By consent, the writ petition is taken up for final disposal.

2 The petitioner in the affidavit filed in support of this writ petition, avers as follows:-

[a] The 1st respondent had registered ECIR No.CEZO/3/2013 [APS] under the Prevention of Money Laundering Act, 2002 [Central Act 15 of 2013 - in short "PMLA"] against the petitioner and his four minor children, namely, Harshavardhan, aged about 13 years, Dharanidharan, aged about 17 years, Kushal, aged about 11 years and Harish, aged about 7 years, for the alleged offences of Money Laundering and it based on the First Information Report registered in Crime No.573/2013 on 21.03.2013 by R-7 K.K.Nagar Police Station, Chennai City, for the commission of the offences u/s.341, 147, 148, 427, 302 506[i] IPC read with 120[b] and 109 IPC. The registration of the First Information Report pertains to alleged offence of murder of one Kathiravan and his brother by eight assailants.

[b] The name of the petitioner did not find place in the FIR and in connection with the said crime on 30.03.2013, one Venkatesan and Johnson had surrendered and they have alleged to have given confession statements based on which, FIR was altered. The police effected seizure of Rs.74,47,700/- at about 11.30 a.m. On 30.03.2013 from the house of one Prabhakaran under the cover of Mahazar. In pursuant to the Alteration Report, sections 212 and 213 IPC were added. Even as per the alleged confession statements, the role of the petitioner have not been stated and so also in the Seizure Mahazar, as to the alleged recovery of Rs.74,47,700/- which forms the basis of the proceedings under PMLA. One of the wives of the petitioner, viz., Tmt.Banumathi, was said to have been arrested on 30.03.2013 and she is also said to have given a confession statement and it also does not find place in the report submitted for alteration of FIR.

[c] The 1st respondent, based on the above said FIR, initiated an enquiry and according to the petitioner, in an illegal manner, without any basis whatsoever, had registered ECIR against the petitioner and his four minor children stated above, under the provisions of PMLA. Though it has been alleged that the petitioner is a notorious criminal and a habitual offender and through criminal activities, amassed wealth and a reference has also been made to 21 cases registered against him, in most of the cases, after full-fledged trial, had ended in acquittal and no further challenge has been made against the orders of acquittal passed by the concerned Trial Courts. Similarly, five Preventive Detention Orders passed against the petitioner, were also quashed by this Court. Insofar as the ill-gotten money amassed through illegal activities which resulted in purchase of 8 items of properties, the purchases were effected between 01.07.2005 and 21.11.2011 and it has nothing to do with case in Crime No.573/2013 registered by R-7, K.K.Nagar Police Station, Chennai City. The 1st respondent

despite the above un-controverted fact, had provisionally attached the properties standing in the names of the petitioner and his four minor children and according to the petitioner, there is no nexus between 21 cases and 8 properties sought to be attached and the criminal cases were between the years 1992 and 1997 and 2002 and the properties in question were acquired between 2005 and 2011 and there were no cases pending against the petitioner.

[d] The petitioner is an Income Tax Assessee right from the year 1998 and the properties mentioned in Items No.1, 6, 7 and 8,

referred to in the complaint filed under PMLA, were purchased from and out of the self earning and borrowings and the said particulars are also clearly reflected in the Income Tax Returns filed by the petitioner, so also the transaction value. As regards the value of the properties, the market value on the date of the complaint was taken into consideration and naturally in respect of the immovable properties, the value is bound to increase over a period of time.

[e] The petitioner, initially started his career as a Cable TV Operator and thereafter, migrated to Real Estate and Construction business and carrying on business under the name and style "Ravi Builders". The petitioner's another wife, namely, Tmt.Meena, is an independent Income Tax Assessee and also the Proprietrix of M/s.Meena Enterprises and the properties indicated in Items No.2, 3 and 4 of the complaint were purchased from and out of the funds of Tmt.Meena for the benefit of the minor children, namely, Harshavardhan, Dharanidharan and Kushal in their names and the petitioner did not contribute any money for the purchase of the above said items of properties.

[f] The 2nd respondent had issued a notice u/s.8[1] of PMLA, calling upon the defendants to submit their reply within 30 days and according to the petitioner, no such notice was sent by the 2nd respondent to the petitioner. Only an intimation was sent by the 1st respondent and notices were sent to the names of the minor children. The petitioner, on receipt of the same, had engaged his counsel, who appeared before the 2nd respondent on 22.04.2016 and filed a Memo stating that section 8[1] Notice has not been served on the petitioner and a submission was also made that the other defendants are minor children and as such, the complaint is defective. However, the 2nd respondent, overlooking the said submission, served the statutory notice on his counsel with a further direction, calling upon the defendants therein to file reply statements by 06.06.2016.

[g] It is the specific stand of the petitioner that the respondents have failed to appreciate that in the absence of notice u/s.8[1] of PMLA being served on the petitioner, the adjudication proceedings, cannot be proceeded and further that the complaint filed against the minor defendants 2 to 5 is clearly barred by law and inasmuch as no proceedings can be launched against the minors who are considered as juveniles. Since the complaint itself is defective in the eye of law, no further proceedings could take place and therefore, prays for quashment of the entire records relating to the Original Complaint No.552/2016 in the Provisional Attachment Order No.3/2016 in ECIR No.EZO/3/2013 [APS] dated 17.02.2016.

3 Mr.K.Sridhar, learned counsel for the petitioner has drawn the attention of this Court to section 8[1] of PMLA and would vehemently contend that as per section 8[1], notice is to be served in time of not less than 30 days on such person, calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which, he has acquired the property attached under section 5[1] or, seized or frozen under sections 17 or 18 and furnish other particulars and also to show cause as to why all or any of such properties should not be declared to be the properties involved in money laundering and confiscated by the Central Government and admittedly, the notice mandated under the said provision has not been served on the petitioner and only when his counsel entered appearance, he was directed to take notice and to file the reply statements in the said proceedings by 06.06.2016, which is unknown to law.

3A It is the further submission of the learned counsel for the petitioner, while drawing the attention of this Court to the Original complaint No.552/2016 in Provisional Attachment Order No.3/2016 in ECIR CEZO/3/2013 [APS] dated 17.02.2016, that the complainant is the Deputy Director attached to Directorate of Enforcement, Chennai-6 and the defendants are the petitioner herein and his four minor children and admittedly, even in the cause title, it has not been shown that the defendants 2 to 5 are minors except indicating that they are sons of the petitioner and he is the guardian for them. It is the further submission of the learned counsel for the petitioner that even for the sake of arguments notices were served on 22.04.2016, it cannot be served on them directly for the reasons that they are minors and it should be served on the next friend and natural guardian and the said procedure has not been followed and as such proceedings on the defendants 2 to 5, are per se illegal. Learned counsel for the petitioner also made a legal plea that when a statute prescribes a thing to be done in a particular way and manner, it should be done only in that manner and admittedly, per se violating the mandate caste upon section 8[1] of PMLA, the respondents are proceeding further and therefore, prays for quashment of the entire proceedings.

4 Per contra, M/s.S.G.Hema, learned Central Government Standing Counsel appearing for the respondents, had drawn the attention of this Court to the Counter Affidavit sworn to by the Assistant Director, Thiru.J.X.Terrance Rodrigo, Directorate of Enforcement, Chennai-6, wherein it has been averred among other things, that the investigation revealed that a sum of Rs.7,47,700/- seized by the police authorities from the house of the deceased Kathiravan, was given by the petitioner herein to the family members of the deceased Kathiravan on 23.03.2013 by one of his wives, Tmt.Banumathi, to screen/conceal the evidence of the involvement of the petitioner in the murder. The family members of the deceased Kathiravan were also threatened with dire consequences. The petitioner was also arrested and the jurisdictional police, after completion of investigation, has also filed the final report before the jurisdictional Magistrate Court, on 10.01.2014, charging the petitioner and others for the commission of the offences punishable u/s.120[b], 147, 148, 341, 427, 302 read with 34 and 201, 212, 214 and 506[ii] IPC. In the light of the facts and circumstances, the said amount was provisionally attached vide Provisional Attachment Order [PAO] No.11/2014 dated 28.07.2014, as it relates to proceeds of the crime involved in the offence of money laundering and the complaint dated 14.08.2014 was also filed before the Adjudicating Authority under PMLA and it was confirmed by the said authority vide order dated 28.10.2014 in OC.No.345/2014. Learned Standing counsel for the respondents would further contend that the petitioner had purchased several immovable properties in his name and in the names of his dependent family members and also constructed few luxury apartments and bungalows with swimming pool worth several crores and on perusal of the Income Tax Returns submitted by the petitioner, he has declared a very meager income and the above said purchase of the immovable properties is highly disproportionate to the income earned as per his returns. Insofar as non-service of notice is concerned, in paragraphs 10, 12 and 13 of the counter affidavit, it is stated that the Show Cause Notice u/s.8[1] of PMLA was dispatched to the petitioner and to his minor sons vide speed post Nos.726 to 730 on 18.02.2016 and therefore, the procedural formalities were fully complied with and therefore, the petitioner cannot make any complaint.

5 This Court, while entertaining the writ petition, had taken note of the submission of the learned counsel for the petitioner as to the non-service of the notice u/s.8[1] of PMLA and directed the matter to be called on 24.06.2016 for production of acknowledgments and on that day, the learned counsel for the respondents prayed for further time for production of the same and also to file an additional counter affidavit and accordingly, the matter was directed to be called

on 27.06.2016 and an additional counter affidavit on behalf of the 1st respondent was filed on 27.06.2016 and in paragraphs 4 and 5 of the additional counter, it is averred that the Provisional Attachment Order in PAO No.3/2016 dated 17.02.2016, was served on the petitioner and four others by speed post vide Dispatch Nos.726 to 730 dated 18.02.2016 and the same was delivered by the postal authorities and the Show Cause Notices u/s.8[1] of PMLA were sent to the petitioner and four others vide respondents Department Office Dispatch Nos.962 to 966 dated 14.03.2016 and the same were dispatched by the postal authorities vide receipts dated 14.03.2016 and it was delivered on them on 22.03.2016 vide Delivery Report dated 22.03.2016 and the copies of the Postal Delivery Receipts and Reports were also furnished in the typed set of documents. Since the learned counsel made the complaint as to the non-service of the Show Cause Notices, once again the Show Cause Notices to the petitioner and to the minor sons were sent by Speed Post on 26.04.2016 and were delivered on 27.04.2016 by the Postal Authorities. The next date of hearing was fixed on 28.06.2016. It is the submission of the learned Standing Counsel for the respondents while drawing the attention of this Court to the additional counter affidavit and to the typed set of documents, that since the procedural formalities mandated u/s.8[1] of PMLA have been scrupulously and fully complied with, the petitioner cannot make any complaint of the same and prays for the dismissal of the writ petition with exemplary cost.

6 This Court paid its best attention to the rival submissions and also perused the materials placed before it in the form of typed set of documents.

7 It is relevant to extract section 8[1] of PMLA:-

"8.Adjudication:-

[1]On receipt of a complaint under sub-section [5] of section 5, or applications made under sub-section [4] of section 17 or under sub-section [10] of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section [1] of section 5, or seized [or frozen], under section 17 or section 18, the evidence on which he relies an other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government.

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person ;

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property."

8 In section 8[1] of PMLA, it has been stated that on receipt of a complaint,, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or in the commission of the crime The word "any person" came up for consideration in Tara Chand and others Vs. Gram Panchayat Jhupa Khurd and others reported in Manu/SC/0935/2012 : 2012 [13] SCC 269 and it is relevant to extract paragraph 18 of the said judgment:-

"18.The word "any person"has to be understood in the context that was intended by the legislature with respect to the Tenancy Act, keeping in mind the purpose for which the statute was enacted. The provisions of the Act, thus, have to be construed to achieve the purpose of its enactment. The Court has to adopt a constructive approach not contrary to attempted objective of the enactment. The Court must examine and give meaning to the said words, in view of the statute of which it is a part considering the context and the subject of the said statute.."

9 Since PMLA or the Rules and Regulations framed therein, have not given any definition as to the meaning of the word "any person" and in the light of the above cited decision, this Court is of the view that "any person" includes minors also, properly represented by next friend and natural guardian or in their absence, are acting adverse to the interest of the minor, by a Court appointed guardian.

10 A perusal of the counter affidavit sworn to on behalf of the respondents would disclose as if the Show Cause Notices u/s.8[1] of PMLA were dispatched to the petitioner and his minor sons on 18.02.2016. However, this Court has pointed out that the averments to that effect in paragraphs 10, 12 and 13 may not be correct and thereafter, realising the said mistake, the respondents has filed the additional counter affidavit dated 23.06.2016, stating that section 8[1] Notices were sent on 18.02.2016 and were delivered on 22.03.2016 and as per the directions of the Adjudicating Authority, once again the

Show Cause Notices were served to the sons of the petitioner by Speed Post on 26.04.2016 and were delivered on 27.04.2016. In the typed set of documents filed on behalf of the respondents, the notices were dispatched on 14.03.2016 and as per the Detailed Track Events, the same were delivered on 22.03.2016. In page No.17 of the typed set of papers, a copy of the Show Cause Notice u/s.8[1] of PMLA dated 02.03.2016 is enclosed and according to the learned counsel for the petitioner, it was dispatched on 26.04.2016 to the minor sons of the petitioner and as per the Detailed Track Events, the said Notices were delivered on 27.04.2016 and it was a due and proper compliance.

11 The present writ petition is filed by the petitioner alone and not by his four minor sons represented by the next friend and natural guardian. A perusal of the additional counter affidavit coupled with the typed set of documents filed on behalf the respondents would disclose that section 8[1] notices were dispatched to the petitioner as well as to his minor sons on 14.03.2016 and were delivered on 22.03.2016 and once again, notices under the said provision were dispatched to the minor sons of the petitioner alone on 22.04.2016 and were served on 27.04.2016. Though it is contended by the learned counsel for the petitioner that no notice u/s.8 [1] of PMLA was served on the petitioner, the Dispatch Register maintained by the 1st respondent coupled with the Detailed Track Events filed in the typed set of documents would disclose that the petitioner was served with the Show Cause Notices u/s.8[1] of PMLA.

12 Incidentally, the question arises for consideration is as to whether the services of the Show Cause Notices u/s.8[1] of PMLA on the minor sons of the petitioner, were proper or not?

13 It is not in serious dispute that the four sons of the petitioner, namely, Harshavardhan, Dharanidharan, Kushal and Harish are minor children and the Cause Title of the Original complaint No.552/2016 dated 24.02.2016 filed by the 1st respondent before the 2nd respondent would also fortify the same. In the Cause Title, the defendants 2 to 5 / minor children were not shown as minors, but it would indicate that they are the sons of the petitioner and in the bracket, it is stated as "guardian". Therefore, this Court has to come to the conclusion that the defendants 2 to 5 are minors.

14 Section 11 of PMLA speaks about the power regarding summons, production of documents and evidence etc., and it is relevant to extract the same:-

"11.Power regarding Summons, production of documents and evidence etc.,:-

[1] The Adjudicating Authority shall, for the purposes of this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 [5 of 1908] while trying a suit in respect of the following matters, namely-

[a] discovery and inspection ;
[b] enforcing the attendance of any person, including any officer of a banking company or a financial institution or a company and examining him on oath ;

[c] compelling the production of records

[d] receiving evidence on affidavits ;

[e] issuing commissions for examination of witnesses and documents ; and

[f] any other matter which may be prescribed.

[2] All the persons so summoned shall be bound to attend in person or through authorised agents, as the Adjudicating Authority may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.

[3] Every proceeding under this section shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code [45 of 1860]."

15 In exercise of powers u/s.6[15] of PMLA, the Adjudicating Authority [Procedure] Regulations, 2013, came to be framed. Chapter IV of Regulation No.13 speaks about the issuance of summons and notices and it is relevant to extract the same:-

"13.Issue of summons and notices:-

[1] Every summon or notice shall be issued in Form 3 or Form 4 or Form 5 or Form 6, as the case may be, signed by the Registrar or Administrative Officer.

[2] Every summon and notice shall be served in the same manner as provided in Order V of Schedule I of the Civil Procedure Code, 1908 [5 of 1908] and the provisions of that Order shall apply, mutatis, mutandis, to the proceedings before the Adjudicating Authority:

Provided that there shall be no requirement

of an application as provided under sub-rule [1] of rule 9-A of the Order V of Schedule I of the Civil Procedure Code, 1908 [5 of 1908] for the purpose of service of summon or notice, as the case may be,

Provided further that there shall be no requirement of an order of the Adjudicating Authority as provided under rule 20 of the Order V of Schedule I of the Civil Procedure Code, 1908 [5 of 1908] for effecting substituted service.

[3] Notwithstanding anything in sub-regulation [2], a summon or notice may be communicated through electronic mode as provided in section 13 of the Information Technology Act, 2000 [21 of 2000] and transmission of such communication shall be regarded as valid service."

16 As per Regulation No.13, in the Adjudicating Authority [Procedure] Regulations, 2013, Order V of Schedule I of the Code of Civil Procedure, 1908, shall apply mutatis, mutandis to the proceedings before the Adjudicating Authority and subject to the exception as to the non-requirement of application provided under Rule 9A[1] as well as Rule 20 of Order V. Therefore, Order V of the Code of Civil Procedure, 1908 is having application as to the services of summons and notices except Rule 9-A[1] and Rule 20 CPC. Even as per the complaint of the 1st respondent, the four children of the petitioner are minors and if at all the notices to be served, it can be served only on the next friend and natural guardian. In the considered opinion of the Court, in the Cause Title of the complaint also, the array of parties insofar as the minor children of the petitioner, viz., the defendants 2 to 5, have not been properly shown or indicated. Order XXXII CPC speaks about the suit by or against minors or persons of unsound mind. Sub-rule [1] of Order XXXII says that minor to sue by next friend and Sub-rule [2] says where suit is to be initiated without next friend, plaint to be taken off, the file.

17 In the judgment reported in AIR 1968 SC 954 [Ramchandra Vs. Man Singh], it is held that the said provision is based on the principle that since an infant or a lunatic is of immature intelligence and understanding, no act which is prejudicial to his interests may bind him. In the judgment reported in AIR 1990 Kerala 92 [DB] [M.Mathai Vs. The General Manager, KSRTC], it is held that Order XXXII CPC reflects the principles of natural justice to the equity and good conscience, in as much they allow the litigation to be prosecuted or defended on behalf of the persons under a disability.

18 In Rup Chand Vs. Dasoda reported in 1908 Indian Law Reporter 3 Allahabad 55, it is observed that the object of having the next friend or guardian ad-litem was considered and further observed that "as a minor is deemed incapable of prosecuting or defending the suit himself, it is necessary that his interest in the suit should be watched by an adult person and such person is, in the case of a minor plaintiff, called his "next friend" and in the case of a minor defendant, is "guardian ad-litem" or "guardian for the suit".

19 In G.L.Kapoor Vs. Ramesh Chander reported in AIR 1973 Delhi 129, filing of proceeding without the next friend is only an irregularity and as per the decision of this Court in [Thinamappa Vs. Hanusva] reported in AIR 1959 Madras 157 , it can be waived by the conduct of the defendant and since it is only an irregularity, normally time is granted to enable the minor/plaintiff to be represented by the next friend.

20 It is useful to refer to Appendix A Pleadings, as title of suits and it says that in description of properties in particular cases, in case of minor "A.B., a minor (add description and residence), by C.D. [or by the Court of Wards], his next friend".

21 A careful perusal and scrutiny of PMLA, Rules and Regulations, framed thereunder, do not prohibit the application of the Code of Civil Procedure to the proceedings except certain exceptions. As per the own admission of the 1st respondent - complainant, the defendants 2 to 5 in the Original Complaint No.552/2016, are minors and the Cause Title insofar as they are concerned, is not in proper form.

22 This Court, vide order dated 23.06.2016, has asked the learned Standing Counsel appearing for the respondents for production of acknowledgments and according to the counter affidavit and the additional counter affidavit, notices were sent by speed post and to evidence the service of the same, the Detailed Track Events have been furnished. However, acknowledgment cards have not been produced. Therefore, this Court is unable to arrive at any definite conclusion as to whether notices addressed to the minor defendants were received by whom. It is also not clear from the counter affidavit as well as the additional counter affidavit sworn to on behalf of the 1st respondent.

23 Be that as it may, the four sons of the petitioner did not join with the petitioner challenging the legality of the procedure adopted by the 1st respondent as to their array as parties in the complaint and to the services of notices. Therefore, this Court is not in a position to grant the relief to them.

24 Insofar as the petitioner is concerned, this Court is of the opinion that the notice u/s.8[1] of PMLA has been properly served on him and his counsel had also entered appearance. The petitioner had also canvassed merits of the complaint. However, this Court is not inclined to go into the same for the reason that it is for the Adjudicating Authority to adjudicate the same and if the petitioner suffers any adverse order, he may file an appeal to the Appellate Tribunal constituted under section 26 of PMLA and if he is not able to get any relief there also, he can invoke section 42 of PMLA to file an appeal on any question of law.

25 Therefore, this Court, in the light of the facts and circumstances and reasons assigned, is of the considered view that this writ petition lacks merit. Hence, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

- 1 The Deputy Director
Union of India,
Director of Enforcement
Government of India
Chennai.
- 2 The Chairperson
Adjudicating Authority under
The Prevention of Money Laundering Act
New Delhi.

+1cc to M/S.K.Sridhar Associates, Sr.37717
+1cc to G.Hema, Advocate sr.37572

Order in
WP.No.16166/2016

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srg 06/07/2016