IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.34694 of 2016

1.S.Ramesh Pothy
2.S.Pothiraj
3.S.Murugesh
4.S.Mahesh
5.S.Ashok
6.Ashwanthpothy
7.M/s Pothy Private Ltd.
No.15, Nagaswara Rao Road
Panagal Park, T.Nagar
Chennai 600 017. ..Petitioners

Vs

1.The Adjudicating Authority
Room No.25, 4th floor
Jeevan Deep Building
Parliament Street
New Delhi 110 001.

2.Deputy Director
Directorate of Enforcement
Government of India
Shastri Bhavan
Chennai 600 006. ..Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus to quash the order of provisional attachment passed by the 2nd respondent in reference No.19/16 dated 02.09.2016 u/s 5(1) of the PMLA Act and consequently direct release of the property of the petitioners measuring 12,945 sq.ft in S.Nos.557/1A1A, 557/1A1B, 557/1B, 557/1A2, 557/1A3, 557/2, 557/3A, 557/3B, 557/3C, 557/4, 557/5, 557/6A, 557/6B, 557/7A, 557/8 and 558/7 bearing Door Nos.101A, 101B, 101C, 101E, 101B/2, 101C/2, 102/A of Melandai Vaadai, Kamaraj Street, 3rd Division, Kancheepuram Town, Kancheepuram District.

For petitioners Mr.B.Kumar
Senior Counsel
for Mr.P.Solomon Francis

For R2 Mr.Rajnish Pathiyil

RESERVED ON	PRONOUNCED ON
14.12.2016	20.12.2016

ORDER

This petition has been filed to quash the order of provisional attachment passed by the 2nd respondent in reference No.19/16 dated 02.09.2016 u/s 5(1) of the Prevention of Money-Laundering Act, 2002 [hereinafter would be referred to as "the PMLA"] and consequently, direct release of the petitioners' property at Melandai Vaadai, Kamaraj Street, 3rd Division, Kancheepuram Town, Kancheepuram District.

2. For the sake of convenience, the petitioners will be referred to as the POTHYS and the others by their name.

3. One Sridhar, who is said to be a local don, has to his credit, about 25 criminal cases spread over several Police Stations for offences ranging from murder to criminal intimidation covered by the Penal Code, which would make even Macaulay turn in his grave. He is now an outlaw and is said to be hiding in the Middle East, presumably in Dubai and attempts are being made by the police to have him brought to India to face the music. There is no scintilla of a doubt that the offence alleged against him would fall within the definition of "scheduled offence" defined under Section 2(y) r/w the Schedule to the PMLA. The police placed the necessary materials before the Deputy Director of Directorate of Enforcement for taking appropriate action under the PMLA. The Enforcement Directorate registered a case in ECIR No.CEZO/03/2016 on 09.03.2016 for offences under the PMLA. The Deputy Director issued summons to Sridhar, his wife Kumari, his younger brother Senthil, his daughter Dhanalakshmi and Ramesh Pothy, calling upon them to attend the enquiry. Sridhar and Kumari did not appear, but others appeared and gave their statements before the Deputy Director. The Deputy Director obtained information from the various Registrars of Assurance relating to the property holdings of Sridhar and his family. During enquiry, it came to light that the POTHYS had purchased immovable properties from Kumari in the year 2010 and from Dhanalakshmi in February 2016, vide Doc.No.3308 of 2010 and Doc.No.1184 of 2016, respectively. A major portion of the sale consideration has been paid by the POTHYS directly into the Bank account of Kumari. It also came to light during investigation that Kumari was a house wife and had declared her income to the Income Tax authorities which was not commensurate to the value of the properties held by her. It also appears that Sridhar is not even an Income Tax assessee. Thus, the Deputy Director had sufficient reasons to believe that the properties sold by Kumari and Dhanalakshmi were fruits of the poisonous tree acquired with the proceeds of crime committed by Sridhar. Consequently, the Deputy Director, by order dated 02.09.2016, provisionally attached

the properties purchased by the POTHYS totally valued at Rs.6.47 crores in terms of Section 5(1) of the PMLA for a period of 180 days, challenging which, the POTHYS are before this Court.

4. Heard Mr.B.Kumar, learned Senior Counsel for the POTHYS and Mr.Rajnish Pathiyil, learned counsel for the second respondent.

5. At the outset, Mr.B.Kumar, learned Senior Counsel submitted that the POTHYS already had a property adjacent to the properties purchased by them from Kumari and Dhanalakshmi and that they had made the purchase only for the purpose of acquiring free ingress and egress from the main road to the property which they already owned. He also contended that the petitioners are bona fide purchasers for a valuable consideration and therefore, the property acquired by them cannot be proceeded against by the authorities under the PMLA. He further submitted that there is a jurisdictional error in the provisional order of attachment inasmuch as there is no material worth its salt for the Deputy Director to even initiate proceedings u/s 5(i) of the PMLA. In other words, he contended that the property in the hands of the POTHYS is not proceeds of crime as defined u/s 2(u) of the PMLA.

6. Per contra, Mr.Rajnish Pathiyil, learned counsel rebutted the submission.

7. This Court gave its anxious consideration to the rival submissions.

8. It may not be necessary to recount the history of PMLA nor is it necessary to expound on its objects and reasons. Suffice it to say that PMLA is intended to economically suffocate crimsters. Action u/s 5 and other provisions of the PMLA for confiscation of properties is an action in rem and not action in personam.

9. In my opinion, PMLA seeks to fell two mangoes in one stone, viz., (1) to send a stern message to offenders that they cannot enjoy the fruits of their labour; and (2) to dissuade innocent purchasers from entering into any deal for purchase of properties from shady characters. In the long run, people will not only scrutinise the legal title documents of a property, but would also take efforts to find out if their vendor is a person above reproach.

10. The definition of the expression "proceeds of crime" in Section 2(u) and the expression "offence of money-laundering" in Section 3 are worth quoting:

> "2(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of

criminal activity relating to a scheduled offence or the value of any such property."

3. "Offence of money-laundering.- Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering."

11. In Section 2(u), the words "any property and any person" are used. The Section does not say that at the relevant point of time, the property in question must be in the hands of the alleged offender. This can be elucidated with an example. A professional assassin would quote a price for an elimination from his hirer. The price will mostly be in terms of "money". He would successfully complete his assignment and take his price in money. That is one proceeds of crime. The money will not be in the same avatar indefinitely. It would be converted to an immovable property either in the name of the offender or in the name of anyone else. Now, the character of proceeds of crime has changed from "money" to "immovable property". When the same immovable property is sold, it cannot lose the characteristics of a proceeds of crime, though the purchaser may claim that he had legally purchased it through lawful sources. Of course, it is open for the purchaser to take a plea of lawful acquisition before the adjudicating authority and it is now too preposterous to hazard a guess on the outcome of such a plea.

12. Mr.B.Kumar, learned Senior Counsel's contention that there are no materials before the Deputy Director for passing the impugned order, cannot be countenanced. Section 5(1) of the PMLA reads as follows:

"5. Attachment of property involved in money-laundering.-

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that - ..."

13. The expression "reason to believe" used in Section 5 of the PMLA has not been defined therein. Hence, it may be profitable to look into the expression "reason to believe" in Section 26 of the Indian Penal Code, which reads as follows:

"26. "Reason to believe".- A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise."

14. Section 5 has employed the expression "reason" and not "reasons", which means that even if there is one cause which is sufficient for the Deputy Director to believe that a particular property is proceeds of a crime, action u/s 5(1) can be initiated. This Court cannot step into the shoes of the Deputy Director and appraise the material that formed the basis for initiating action u/s 5, since this Court is not sitting in appeal over the order.

15. In this case, before taking action u/s 5, the Deputy Director has conducted a thorough enquiry by issuing summons to Sridhar, his wife Kumari, his younger brother Senthil, his daughter Dhanalakshmi and Ramesh Pothi. She has obtained the income tax particulars of Sridhar, his wife Kumari, his younger brother Senthil, his daughter Dhanalakshmi and Ramesh Pothi, and also the land particulars. She has also recorded the statement of the POTHYS. Only thereafter, she has initiated the proceedings u/s 5 and therefore, this Court cannot say that there are no sufficient materials for her to proceed u/s 5.

16. Mr.B.Kumar, learned Senior Counsel submitted that the POTHYS have received a show cause notice u/s 8 of the PMLA asking them to appear before the Chairman, Adjudicating Authority, the first respondent herein, in person or through an Advocate on 09.11.2016 at 11.00 a.m. and that the said notice is also bad in law inasmuch as there is no material in the show cause notice to show that the same has been issued after application of mind. He further contended that the Appellate Tribunal should be manned by a Bench of two members as required u/s 27 of the PMLA, whereas, the show cause notice has been issued by the Chairman, Adjudicating Authority, and therefore, the same is vitiated.

17. I am unable to accept this submission because Section 27 applies to the Appellate Tribunal and not to the Adjudicating Authority. Here, after the Deputy Director has initiated proceedings u/s 5 and attached the property for 180 days, she has lodged a complaint with the Adjudicating Authority, based on which, the Adjudicating Authority has stated that he has reason to believe that the property in question is a property derived or obtained as a result of criminal activities. Along with the show cause notice, a copy of the complaint and the documents appended thereto have also been furnished to the POTHYS. Now, it is for the POTHYS to appear before the Adjudicating Authority and place their defence. The contention of Mr.B.Kumar, learned Senior Counsel that the Appellate Tribunal must be manned by a Bench of two members is a clear misreading of the provision. To appreciate his contention, it may be relevant to quote Section 27(2)(b) of the PMLA:

"27. Composition, etc., of Appellate Tribunal.-
(2) Subject to the provisions of this Act,-

(a) .....

(b) a Bench may be constituted by the Chairperson with one or two Members as the Chairperson may deem fit."

18. Relying upon Section 27(2)(b), Mr.B.Kumar submitted that the Appellate Tribunal must be manned by the Chairperson with one member. As stated above, the construction of the said provision does not support Mr.B.Kumar's interpretation. The preposition "with" connects the expression "Bench "with" one or two members" and does not connect the word "Chairperson". This is evident from sub Section 4 of Section 27 which reads as follows:

"27(4) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit."

19. Though the proceedings under challenge is not that of the Appellate Tribunal, yet, I am constrained to answer this argument, as it was fervently raised by Mr.B.Kumar, learned Senior Counsel.

In the result, this petition is devoid of merits and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Adjudicating Authority
Room No.25, 4th floor
Jeevan Deep Building
Parliament Street
New Delhi 110 001.

2.The Deputy Director
Directorate of Enforcement
Government of India
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Chennai 600 006.

+1cc to M/s. P. Solomon Francis, Advocate, S.R.No.74113
+1cc to M/s. Rajnish Pathiyil, Advocate, S.R.No.74260

W.P.No.34694 of 2016

MP(CO)
EU 09.1.17