IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.4446 of 2018

Arising Out of PS. Case No.-2 Year-2016 Thana- GOVERNMENT OFFICIAL COMP. District- Patna

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Md. Naushad @ Nasia Son of late Md. Tauheed Resident of Village- Mirzapur, Bardah, P.S. Muffasil, District- Munger.

... ... Appellant/s

Versus

1. The State Of Bihar.
2. The Assistant Director, Directorate of Enforcement, Government of India, Ist Floor, Chandpura Palace, Bank Road, West Gandhi Maidan, Patna-800001.

... ... Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Yogesh Chandra Verma, Sr. Adv. Mr. Kamal Kishore Jha, Adv.
For the U.O.I.	:	Mr. S.D. Sanjay, Add. S.G. Mr. Anshuman Singh, CGC Mrs. Priya Gupta, Adv. Mr. Mohit Agarwal, Adv.
For the State	:	Mr. Shyed Ashfaque Ahmad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT
Date : 17-04-2019

1. During course of hearing over prayer for bail after admission of the appeal, the learned counsel for the appellant as well as learned Additional Solicitor General submitted that appeal be decided on its merit in the background of period of custody in consonance with the nature of the sentence whereupon, vide order dated 20.02.2019 it was directed so.

2. Sole Appellant Md. Naushad @ Nasia having been found guilty for an offence punishable under Section 4 of the Prevention of Money-Laundering Act, sentenced to undergo R.I. for five years as well as to pay fine appertaining to rupees five lacs in default thereof, to undergo R.I. for one year, additionally, side by side the property bearing holding no.15 having over an area of 8 kattha 15 Dhur lying at village-Bardah, P.S.-Muffasil, District-Munger be confiscated in favour of Central Government as provided under Section 8(5) of the Prevention of Money-Laundering Act vide judgment of conviction and order of sentence dated 18.10.2018 passed by Special Judge, PMLA (Sessions Judge), Patna in Special Trial (PMLA) 2 of 2016 arising out of Complaint Case no.2/2016.

3. U.K. Gautam (PW.7), Assistant Director, Directorate of Enforcement, Government of India so authorized under Section 45(1) of the PMLA Act followed with Notification No.S.O.1274(E) dated 13.09.2005, Notification No.f.N6/14/2008-ES dated 11.11.2014 acknowledging his status filed complaint petition on 30.06.2016 disclosing therein that appellant being an accused of so many criminal cases duly identified as scheduled offences in terms of PMLA Act as well as being habitual offender, acquired so many properties out of the ill-gotten money the proceed of the crime including scheduled offence (detailed). Furthermore, it has also been disclosed that on query made from the Income Tax Department, it has been reported that the accused is not at all an assessee. Accordingly, cognizance was taken, trial commenced and concluded in a manner as indicated above, hence this appeal.

4. Defence case as is evident from mode of cross-examination as well as statement recorded under Section 313 of the Cr.P.C. is that of complete denial. It has further been submitted that appellant /accused has been victimized at the end of his enemies who firstly got the cases instituted against him after taking the police officials, in their collusion and then, succeeded in manoeuvering the situation by way of institution of instant case. Furthermore, it has also been pleaded that neither appellant/accused is habitual offender relating to scheduled offence nor property has been acquired from the proceed of the crime rather he got the property from known sources for which he has due explanation, sources and in order to justify the some, seven DWs have been examined apart from placement of several documents.

5. Prosecution, in order to substantiate its case has examined altogether nine PWs who are, PW.1-Ajay Kumar, PW.2-Shashibhushan Paswan, PW.3-Ram Sewak Yadav, PW.4-Kunal Sharma, PW.5-Bhuneshwar Yadav, PW.6-Girja Prasad Rajak, PW.7-Umesh Kumar Gautam, PW.8-Rajendra Bhagat, PW.9-Bhai Bharat Kumar as well as has exhibited following documents:-

Ext.1-Carbon copy of summon to Bibi Shaista.

Ext.2- Punchnama.

Ext.3 to 3/7-Eight (8) signatures of S.B. Paswan on statement (Question & Answer) recorded U/s 50 of P.M.L. Act.

Ext.4 to 4/7- Eight(8) signatures Ramsewak Yadav on statement (Question & Answer).

Ext.5- Statement (Question & Answer) recorded U/s 50 of P.M.L.Act.

Ext.6-Signature of Pravin Vashisht on Letter No.95/G dated 14.03.13.

Ext.7 to 7/2- 3 Signatures with seal (Stamp) of Post on attested copies of Register-2.

Ext.8 -Complaint petition along with signature of Sri U.K. Gautam.

Ext.9-Signature of U.K. Gautam ECIR No.PTZ/08/2013.

Ext.10 to 10/7-Signature of U.K. Gautam on statement (Question & Answer) recorded U/s 50 of P.M.L. Act.

Ext.11-Copy of provisional Attachment Order No.03/16.

Ext.12- Original Complaint No.583/16.

Ext.13-Copy of Order dated 30.06.2017 of O.C. No.583/16.

Ext.14-Valuation Report (photocopy) dated 12.02.13.

Ext.15-C.C. of F.I.R. of Kotwali P.S. (Munger) Case No.275/06.

Ext.15A-C.C. of Chargesheet of Kotwali P.S. (Munger) Case No.275/06.

Ext.16-C.C. of FIR of Mufassil P.S. (Munger) Case No.138/08.

Ext.16A-C.C. of Chargesheet of Mufassil P.S. (Munger) Case No.138/08.

Ext.17-C.C. of F.I.R. of Mufassil (Munger) P.S. Case No.167/13.

Ext.17A-C.C. of Chargesheet of Mufassil (Munger) P.S. Case No.167/13.

Ext.18-C.C. of F.I.R. of Nayaram Nagar P.S. (Munger) Case No.153/09.

Ext.18A-C.C. of Nayaram Nagar P.S. (Munger) Case No.153/09.

Ext.19-C.C. of Final Form of Mufassil P.S. Case No.153/15.

Ext.20-C.C. of Final Report of Crime Branch, New Delhi (F.I.R. No.116/15).

Ext.21-C.C. of FIR of Mufassil P.S. (Munger) Case No.295/09.

6. In likewise manner seven DWs have been examined on behalf of appellant who are DW.1-Md. Jubair, DW.2-Murshid Khatoon, DW.3-Md. Jabir, DW.4-Md. Naushad, DW.5-Sahnaz, DW.6-Bibi Sahista Praveen, DW.7-Md. Mahtab Alam. Side by side also exhibited following documents:-

Ext.A-Adhar Card of Sahnaj.

Ext.B-Sale Deed No.529 Dated 20.02.2007 (with signature of Bibi Shaista).

Ext.C-Sale Deed No.134 of 1973.

Ext.D-Sale Deed No.134 of 1974.

Ext.E-Sale Deed No.3846 of 1986.

7. Three fold arguments have been raised on behalf of learned counsel for the appellant in order to assail the judgment impugned. The first and foremost ground happens to be, mere institution of case irrespective of being scheduled offence as categorized under the PMLA will not give terrine to the prosecution unless and until culminated in conviction. That being so, neither an accused could be identified as habitual offender nor the institution thereof, will attract any kind of derision relating to his interest.

8. The second limb of submission is with regard to activity to be taken up at the end of the prosecution in accordance with PMLA. It happens to be an obligation over the prosecution to give conclusive evidence regarding acquisition of property from the proceeds of the scheduled offence, then and then, only, the presumption, though rebuttable would be, side by side consideration of material having at the end of appellant in rebuttal. Non-payment of Income tax, would be an offence under the Income-tax Act and for that, the Income-tax Department is the competent authority to take proper recourse but the same would not be the winch of the instant litigation. Because of the fact that prosecution failed to prove it a case of money laundering in terms Section 3 of the PMLA so, the order impugned would not survive.

9. It has further been submitted that from perusal of the judgment, it is evident that majority of plea of the prosecution has been rejected by the learned lower court and for the remaining, though the finding of the lower court gone adverse to the appellant, which in the facts and circumstances of the case, could survive as, the basic ingredient attracting the same is found out of reach of the prosecution as well as an incident of secession whereupon, the ultimate conclusion did not justify the finding, hence, is fit to be set aside.

10. The learned Additional Solicitor General while supporting the finding recorded by the learned lower court has submitted that after going through the judgment impugned, it is evident that learned lower court has meticulously examined the oral as well as documentary evidence inconsonance with the evidence having adduced on behalf of appellant in rebuttal and last, after analytical scrutiny thereof, found the case duly proved as the appellant failed to discharge the obligation with regard to the property in question whereupon, the judgment of conviction and sentence as well as confiscation of the property purchased from ill-gotten money has rightly been passed. Therefore, did not require interference.

11. Before delving over factual aspect, certain provisions having pivotal role in deciding the instant appeal is to be seen, which are being referred below. Section 2 deals with the definition clause and in the present context, the following are relevant one:-

> (a) Section 2 **(**p)"money- laundering" has the meaning assigned to it in section 3;
>
> 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; [or where such property is taken or held outside the country, then the property equivalent in value held within the country];
>
> 2(v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
>
> Explanation.-For the removal of doubts, it is hereby clarified that the term "property" includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;
>
> 2(y)"scheduled offence" means-(i)the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or
>
> (iii) the offences specified under Part C of the Schedule;
>
> (z) "Special Court" means a Court of Session designated as Special Court under sub-section (1) of section 43;
>
> (za) "transfer " includes sale, purchase, mortgage, pledge, gift, loan or any other form of transfer of right, title, possession or lien;
>
> **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 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.
>
> **4.Punishment for money-Laundering.-**Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:
>
> Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of

this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted.

17. Search and seizure. —(1) Where [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,

(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 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:

Provided that no search shall be conducted unless, in relation to the scheduled 5offence, 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.

[(l-A)] Where it is not practicable to seize such record or propert y, 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 sub-section (1) may seize such property.

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, 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.

(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (lA) 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 (lA), before the Adjudicating Authority.

22. Presumption as to records or property in certain cases.—

(l) Where any records or property are or is found in the possession or control of any person in the course of a surveyor a search, or where any record or property is produced by any person or has been resumed or seized from the custody or control of any person or has been frozen under this Act or under any other law for the time being in force it shall be presumed that-

(i) such records or property belong or belongs to such person;

(ii) the contents of such records are true; and

(iii) the signature and every other part of such records which purport to be in the handwriting of any particular person or which may reasonably be assumed to have been signed by, or to be in the handwriting of, any particular person, are in that person's handwriting, and in the case of a record, stamped, executed or attested, that it was executed or attested by the person by whom it purports to have been so stamped, executed or attested.

(2) Where any records have been received from any place outside India, duly authenticated by such authority or person and in such manner as may be prescribed, in the course of proceedings under this Act, the Special Court, the Appellate Tribunal or the Adjudicating Authority, as the case may be, shall—

(a) presume, that the signature and every other part of such record, which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting; and in the case of a record executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

24. Burden of Proof.-In any proceeding relating to proceeds of crime under this Act,-

(a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b)in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.]

43. Special Courts.-(1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts or such area or areas or for such case or class or group of cases as may be specified in the notification.

Explanation.- In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.

(2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

44. Offences triable by Special Courts.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:
Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or]
(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take 3[cognizance of offence under Section 3, without the accused being committed to it for trial].
(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.
(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), as it applies to a trial before a Court of Session.]
(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under Section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under Section 43.
46. Application of Code of Criminal Procedure, 1973 to proceedings before Special Court.—(1) Save as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) (including the provisions as to bails or bonds), shall apply to the proceedings before a Special Court and for the purposes of the said provisions, the Special Court shall be deemed to be a Court of Session and the persons conducting the prosecution before the Special Court, shall be deemed to be a Public Prosecutor:
Provided that the Central Government may also appoint for any case or class or group of cases a Special Public Prosecutor.

(2) A person shall not be qualified to be appointed as a Public Prosecutor or a Special Public Prosecutor under this section unless he has been in practice as an advocate for not less than seven years, under the Union or a State, requiring special knowledge of law.

(3) Every person appointed as a Public Prosecutor or a Special Public Prosecutor under this section shall be deemed to be a Public Prosecutor within the meaning of clause (u) of Section 2 of the Code of Criminal Procedure, 1973 (2 of 1974) and the provisions of that Code shall have effect accordingly.

12. Before coming to record the finding with regard to legality of the judgment impugned, first of all object of the Act has to be seen as the subsequent consideration has to be in the aforesaid backdrop as elaborately dealt in **J. Sekar vs. Union of India** reported in **2018 Cr.L.J. 1720:**

"7. Before proceeding to note the submissions of counsel for the parties, it is necessary to understand the background to the enactment of the PMLA. The Statement of Objects and Reasons (SOR) of the PMLA (which was passed as an Act of Parliament and notified on 17th January 2003 and came into force on 1st July 2005) acknowledged that there was an urgent need for a comprehensive legislation to prevent money-laundering and connected activities, confiscation of proceeds of crime and setting up of agencies and mechanisms for coordinating measures to combat money-laundering. The SOR also acknowledged the initiatives taken by the international community to counter the threat posed by money-laundering to financial systems as well as to the territorial integrity and sovereignty of nations. This included the United Nations' Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party. The said Convention calls for the prevention of laundering of the proceeds of drug crime and other connected activities and confiscation of proceeds derived from such offences.

8. The SOR further noted that the Basel Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist law enforcement agencies in tackling the problem of money- laundering. It also considered the recommendations of the Financial Action Task Force established at the 1989 G7 summit held in Paris from 14th to 16th July 1989 which inter alia recommended that a comprehensive legislation be enacted to combat money-laundering.

9. The SOR also noted that initially a Bill was introduced in the Lok Sabha on 4th August 1988 as the Prevention of Money-laundering Bill (PMLB) which came to be referred to the Standing Committee on Finance, which in turn gave its report on 4th March 1989 to the Lok Sabha. Those recommendations were accepted by the Central Government and thereafter the PMLB, with its changes, was passed by both the Houses of Parliament. It received the assent of the President on 17th January 2003.

10. Since its coming into force on 1st July 2005, the PMLA has undergone amendments in 2005, 2009 and 2012. The Finance Act (FA) 2015, the FA 2016 and the Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act 2015 (the Black Money Act) have made further changes to the PMLA."

13. Furthermore, as the concept of basic law contemplating upon the principle of evidence act is found trembling on account of introduction of Section 24 whereunder, mere assertion of prosecution with regard to property being proceed of scheduled offence casts an obligation over opposite party to explain, otherwise, not only confiscation by the court in terms of Section 8(5) of the Act is permissible side by side liable to be convicted and sentenced as per section 4 of the Act and the obligation so thrust upon opposite party under Section 24 is to be seen in the background of presumption having under Section 22 of the Act relating thereto.

14. Apart from constitution of the special court, there also happens to be presence of another forum but only with regard to confiscation of propriety a proceed of the schedule offence the adjudicating authority (A.A.) Be it a judicial proceeding or proceeding before adjudicating authority the sole motto happens to be to confiscate the property by way of identifying the same to be proceed of the ill-gotten money not of scheduled offence in order to snatch out the proceed from the possession of the offenders, and acquisition through aforesaid means has been found punishable, being in contravention of law, under Section 4 of the Act.

15. Stooping furthermore, over the issue when Section 8 has properly been analyzed, it is evident that irrespective of intermediary activity having at the end of A.A., it is the finding of the Court relating to prosecution under Section 4 of the Act, which commands the ultimate and sub-section 6 of Section 8 of the Act, so delvers.

16. Proceeding ahead, the proper forum to proceed and adjudicate coupled with requirement thereof, has to be seen. As per Section 43 of the Act, there is constitution of special court properly identifiable to be the court of Sessions having entrusted with the power of cognizance under Section 44(b) of the Act and as per sub-section (d) of section 44 the procedure so prescribed for the court of Sessions under the Cr.P.C. is to be followed. Sub-section 2 Section 43 not only empowers the special Court to proceed with the prosecution under P.M.L.A. rather indicates the trial of scheduled offence, conjointly. The situation is found furthermore clarified after going through Section 44 whereunder (1)(a), (1)(c), (1)(d), whereunder, the lower court, where the matter relating to scheduled offence remains still pending, has to commit the case, so that trial be taken up by the Special Court and, the procedure to be followed during course thereof has also been properly laid down.

17. After going through the judgment along with L.C. record, it is evident that the learned lower court had not considered those aspects, more particularly with regard to non following of the mandate of law, more particularly Section 43(2) of the Act.

18. After going through the relevant provisions as discussed herein above, it is manifest that the trial of scheduled offence, having against the accused has to be conducted by the same court. It has got a purpose. Unless and until, there happens to be proper finding relating thereto, that means to say, the conviction or acquittal has bearing over the fate of whole exercise relating to confiscation, the aim and object of the Act, whereupon, the Act did not allow to run in isonatran the trial**.**

19. Accordingly, the judgment impugned is set aside. Appeal is allowed. Matter is remitted back to the learned lower court to proceed afresh in light of observation made herein above.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

AFR/NAFR	AFR
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