

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 27.04.2019

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

C.M.A No. 2351, 2352, 2354 & 2355 of 2019
&
C.M.P.Nos.10615, 10635, 10622, 10634, 10625, 10636, 10637, 10640
of 2019

Directorate of Enforcement,
through Deputy Director,
2nd & 3rd Floor, Murugesu Naicker Complex,
No.84, Greaves Road, Thousand Lights,
Chennai - 06.

... Appellant in all the CMAs

-Vs-

G.Srinivasa Raju,
Managing Director,
Sujana Group of Companies.

...Respondent in CMA No.2351 of 2019

Y.S.Chowdary,
Member of Parliament-Rajya Sabha.

...Respondent in CMA No.2352 of 2019

Apser Hussain

...Respondent in CMA No.2354 of 2019

Jawahar Babu

...Respondent in CMA No.2355 of 2019

Civil Miscellaneous Appeals filed under Section 42 of the Prevention of Money Laundering Act, 2002 against the common order made in FPA-PMLA-3007/CHN/2019, FPA-PMLA-3008/CHN/2010, FPA-PMLA-3009/CHN/2019 dated 15.04.2019 on the file of the Appellate Tribunal for SAFEMA, FEMA, NDPS, PMLA and PBFT Act at New Delhi.

For appellant : Mr.G.Rajagopalan,
Additional Solicitor General
assisted by
Ms.G.Hema
Special Public Prosecutor
(in all the cases)

For respondent : Mr.Neeraj Malhotra,
Senior Counsel
for Mrs.R.Hemalatha
(in CMA No.2351 of 2019)
for Mr.S.Rajasekhar
(in CMA No.2352 of 2019)
for Mr.Paramatma Singh
(in CMA No.2354 of 2019)
for Mr.Mayank Jain
(in CMA No.2355 of 2019)

COMMON JUDGMENT

[Judgement of this Court was delivered by T.S.SIVAGNANAM.,J]

These appeals filed by the Directorate of Enforcement, under Section 42 of the Prevention of Money Laundering Act, 2002 (herein after 'PML Act') is directed against the common order made in FPA-PMLA-3007/CHN/2019, FPA-PMLA-3008/CHN/2010, FPA-PMLA-3009/CHN/2019 dated 15.04.2019 on the file of the Appellate Tribunal, the PML Act, 2002 at New Delhi.

2. At the outset, we wish to point out that these appeals filed by the Directorate of Enforcement is against an order dated 15.04.2019 which is an interim order passed by the Tribunal. The question would be as to whether these appeals are maintainable before this Court under Section 42 of the PML Act, 2002 which states that any person aggrieved by any decision or order of Appellate Tribunal may file an appeal before the High Court within 60 days from the decision of the order of the Appellate Tribunal to him on any question of law or fact arising out of such order.

3. Prima facie we are of the opinion that the impugned order passed by the Appellate Tribunal dated 15.04.2019 cannot be taken to a "decision" or "order" as the Tribunal has not adjudicated on the issues canvassed before it but has listed the appeal for hearing on 29.04.2019 and in the meantime directed the Adjudicating Authority to adjourn proceedings before him after 29.04.2019.

4. Mr.G.Rajagopalan, learned Additional Solicitor General instructed by Ms.G.Hema, learned Special Public Prosecutor submitted that the reason for preferring this appeal is on account of the proceedings getting time barred when the appeal is to be heard and decided by the Appellate Tribunal. It is submitted that if for any reason, the Court is of the view that the appeal under Section 42 of PML Act, is not maintainable, it can always convert the appeal as writ petition and be heard and the matter need not be decided on technicalities. It is true

that the Court could have been justified in converting the case into a writ petition.

5. Nevertheless, since, the scope of the appeal is very narrow, we have kept aside this issue relating to maintainability and proceed to pass appropriate orders in the appeal. In these appeals, the Directorate of Enforcement has raised the following Substantial Questions of Law.

"1.Is not the Hon'ble Appellate Tribunal admitted the Appeals challenging the validity of the Show Cause Notice issued by the Adjudicating Authority is not against Section 26(1) of the PMLA, 2002?

2.Is not the Hon'ble Appellate Tribunal failing to examine the proceeds of crime as defined under Section 2(1)(u) of the Act?

3.Is not the creature of the Statute, it cannot go beyond the Statute of Section 26 of PMLA, 2002?

4.Is not Hon'ble Appellate Tribunal has exceeded the provisions of Section 26 of PMLA, 2002 by admitting the Appeal even when the proceedings under Section 8 are being conducted by the Hon'ble Adjudicating Authority?

5.Is not the Hon'ble Appellate Tribunal failed to take note of the fact that no Order has been passed by the Hon'ble Adjudicating Authority under Section 8 of the Act?

6.Whether the Hon'ble Appellate Tribunal was right in restraining the Hon'ble Adjudicating Authority from conducting the proceedings under Section 8 of the Act?

7.Whether the Hon'ble Appellate Tribunal examined the term "Order" under Rule 2(1)(g) of the Prevention of Money Laundering (Appeal) Rules 2005?

8.Whether the Hon'ble Appellate Tribunal by ordering the Hon'ble Adjudicating Authority to refrain from conducting the proceedings under Section 8, exceeded in its jurisdiction?

9.Whether the Hon'ble Appellate Tribunal examined the section 8(1) of the PMLA that the Reasons of Believe has to be recorded by the Hon'ble Adjudicating Authority, but the same need not be communicated to the defendants therein?

10.Is not the Hon'ble Appellate Tribunal is refraining the Hon'ble Adjudicating Authority from conducting

their proceedings under Section 8, which would affect the limitation of 180 days under the Act?"

6. The contention of the appellant is that appeal is not maintainable under Section 26 of the PML Act as issuance of show cause notice is not an order appealable under Section 26(1) of the PML Act.

7. Mr. Neeraj Malhotra, learned Senior Counsel assisted by Mrs. R. Hemalatha, learned Senior Standing Counsel, S. Rajasekar, Paramatma Singh, Mayank Jain, learned counsels for the respondent has drawn our attention to the scheme of the PML Act and the various provisions namely Sections 5(1), 8(1), 17(1), 17(4) and 20(1) of the PML Act and submitted that even for retention of property under Section 17(4) reasons have to be recorded in writing. Thus, it is the submission that the notice issued under Section 8(1) of the PML Act has been issued without application of mind and without forming reasons to believe. Further by referring to paragraph 16 of the application filed before the Adjudicating Authority, it is submitted that the application is to retain the records and vehicles/property seized for the purpose of identifying the proceeds of crime involved in 3 FIRs and for such purpose, an application for retention is not maintainable.

8. With regard to the plea raised by the learned Additional Solicitor General that the Directorate of Enforcement will canvas all issues before the Appellate Tribunal and they need to be protected with regard to the limitation, Mr. Neeraj Malhotra, learned counsel for the respondents submits that respondents will not raise any objection in this regard as it is the respondents who preferred the appeal before the Tribunal. The learned Additional Solicitor General in reply to it, would submit that the concession of the respondents is of no relevance because as per the statutory scheme, action has to be initiated and concluded within strict time lines.

9. In the light of the above, we are of the view that the substantial questions of law raised before us are not required to be answered as the scope of this appeal is very narrow in the sense the appellant seeks for appropriate protection from being non-suited on the ground of limitation, in the event, the proceedings are delayed before the Appellate Tribunal.

10. For the above reasons, the appeal stands disposed of leaving the Substantial Questions of Law open, with an observation that the period from the date on which the appeal was filed by the respondent before the Appellate Tribunal till a decision is taken by the Appellate Tribunal and the order is communicated to the petitioner, shall be excluded for the purposes of computation of limitation under the provisions of the PML Act, 2002.

11. It is made clear that we have not decided the issue as to whether the appeal filed by the respondents under Section 26 of the PML Act is maintainable before the Appellate Tribunal and this issue is left open to be agitated by the parties before the Appellate Tribunal in the hearing slated to held on 29.04.2019.

12. In the result the Civil Miscellaneous Appeals are disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

//True Copy//

Sub Assistant Registrar

mrn

To

The Appellate Tribunal for SAFEMA, FEMA, NDPS,
PMLA & PBFT Act at New Delhi.

+1cc to M/s.G.Hema, Spl.PP, S.R.No.41375

+4ccs to M/s.R.Hemalatha, Advocate, S.R.Nos.41050 to 41053

C.M.A No. 2351, 2352, 2354 & 2355 of 2019

&
C.M.P.No.10615, 10635, 10622, 10634,
10625, 10636, 10637, 10640 of 2019

RSK (CO)

RRS (27/04/2019)

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