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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ **CRL.A. 801/2018 & CRL.MA. 29080/2018**

UNION OF INDIA ..... Appellant

Through Ms. Mallika Hiremath, Advocate and Mr. Amit Mahajan, CGSC.

versus

MRIDULA KAPUR ..... Respondent

Through Mr. Vivek Kohli, Mr. Nalin Talwar, Mr. Sunil Tyagi, Ms. Prerna Kohli, Ms. Yeshi Rinchhen, Mr. Mudit Gupta and Ms. Agashi Verma, Advs.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **11.12.2019**

VIBHU BAKHRU, J

1. This is an appeal preferred by the Enforcement Directorate under Section 42 of the Prevention of Money Laundering Act, 2002 (hereafter 'PMLA') impugning an order dated 13.04.2018 passed by the Appellate Tribunal (hereafter 'The Tribunal'). By the impugned order, the Tribunal had allowed the appeal preferred by the respondent and had quashed the Provisional Attachment order dated 04.11.2016, as well as the order dated 17.03.2017, confirming the order dated 04.11.2016.

2. By the said order dated 04.11.2016, certain immoveable properties of the respondent (appellant before the Tribunal) had been provisionally attached. The said order was confirmed by the Adjudicating Authority by an order dated 17.03.2017.

3. The order of Provisional Attachment is premised on a case instituted against the respondent and her husband (Major General Anand Kumar Kapur) under Section 13(1)(e) of the Prevention of Corruption Act, 1988. A chargesheet (chargesheet no. 3 dated 26.10.2009) has been filed under Section 173 of the Cr.P.C by ACU-II Central Bureau of Investigation (CBI), alleging that the petitioner's husband had amassed assets, disproportionate to his known sources of income and the petitioner (respondent herein) had abetted the offence.

4. The facts as stated in the chargesheet disclose that Major General Anand Kumar (husband of the respondent) was commissioned in the Indian Army on 14.11.1971. On 10.10.2007, various searches were conducted and the check period for Major General Anand Kumar was taken from 14.11.1971 to 10.10.2007. As per the chargesheet, prior to the check period, General Anand Kumar was in possession of assets, both movable and immovable, to the extent of ₹41,700/- and at the end of the check period – that is, as on 10.10.2007 – he was in possession of assets, both movable and immovable, in his own name or in the name of his wife (the respondent), to the tune of ₹5,51,92,598/-. It was alleged that Major General Anand Kumar had acquired assets worth ₹3,37,02,592/-, which was disproportionate to his known sources of income. The respondent had abetted her husband

in the commission of the crime regarding acquisition of disproportionate assets.

5. The chargesheet was filed before the Court of Ld. Special Judge-03 (PC Act)(CBI), Patiala House Courts and the Court took cognizance of the same. A charge under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption of Act, 1988 (PC Act) was framed against the accused Major General Anand Kumar Kapur. A charge was framed against the respondent under Section 109 of the IPC read with Section 13(2) read with Section 13(1)(e) of the PC Act.

6. By the judgment dated 27.09.2016, the Learned Special Judge held that the accused Major General Anand Kumar was unable to satisfactorily account for the assets to the extent of ₹2,22,04,290/-. Accordingly, Major General Kapur was convicted under Section 13(1)(e) read with Section 13(2) of the PC Act. Insofar as the respondent was concerned, the Court held that there was no evidence that the respondent had abetted her husband Anand Kumar in amassing the said properties and accordingly, acquitted her of the charges.

7. On 29.09.2016, the Special Judge, by an order on sentence, sentenced Anand Kumar to rigorous imprisonment for one year and a fine of ₹ 50,000/- and in default of payment of fine, to undergo simple imprisonment for a period of six months. The Court also directed that the disproportionate assets, to the tune of ₹ 2,22,04,290/-, be

confiscated.

8. On 04.11.2016, the Deputy Director, Directorate of Enforcement, Ministry of Finance, while exercising his powers under Section 5(1) of the Prevention of Money Laundering Act, 2002 (PMLA), passed a provisional order of attachment whereby he attached thirteen properties of Major General Anand Kumar Kapur and the respondent, on the ground that such properties had been acquired by utilizing money which were proceeds of crime. It is to be noted that the list of thirteen properties also contained the following three properties which were in the sole name of the respondent:

S. No.	Particulars	Value
1.	Office Space bearing No. 408A, Vatika Towers, Gurgaon	9,32,125/-
2.	Plot No. 264, Sector-52, Gurgaon.	13,46,294/-
3.	Cottage No. 10, Devine Golf, Village Sadhora, Mashobra, Shimla, Himachal Pradesh.	38,81,357/-

9. On 30.11.2016, the Deputy Directorate of Enforcement, New Delhi filed a complaint against the respondent and Sh. Anand Kumar under Section 5(5) of the PMLA. On 17.03.2017, the Adjudicating Authority, Enforcement Directorate confirmed the provisional order of 04.11.2017 on the ground that the attached properties were "proceeds of crime".

10. Thereafter, the respondent filed an appeal before the Tribunal, *inter alia*, seeking to challenge the provisional attachment order dated

04.11.2016 and the order dated 17.03.2017 passed by the Adjudicating Authority, whereby the order dated 04.11.2016 was confirmed.

11. On 13.04.2018, the Tribunal passed the impugned order allowing the appeal preferred by the appellant (respondent herein). The Tribunal held that since the respondent had been acquitted by the CBI Court, the properties of the respondent could not be treated as 'proceeds of crime'. In the said circumstances, the Tribunal directed that the three properties, which did not form part of the confiscated properties, be released from the said attachment.

12. Thereafter, the Union of India has filed the present petition, *inter alia*, challenging the order dated 13.04.2018. The petitioner contends that that the properties, as released by the order dated 13.04.2018 (hereafter 'the concerned properties), constitute the value of the proceeds of crime as defined under Section 2(1)(u) of the PMLA. The appellant further contends that the Tribunal failed to appreciate that it was not necessary that a person be accused of a scheduled crime, for attachment of the proceeds of crime, which are in his/ her possession.

13. There is considerable merit in the appellant's contention that it is not necessary that proceeds of crime in the hands of a person can be attached, notwithstanding that the person is not accused of any scheduled crime or the offence of money laundering. Plainly, if an asset which is derived by any person from a criminal activity is entrusted to another person, who is neither complicit in the criminal

activity and is oblivious of the means by which the asset was acquired; he would neither be charged of committing a scheduled offence nor the offence of money laundering. Notwithstanding the above, the asset in his possession would be liable to be attached and confiscated in terms of the provisions of PMLA.

14. However, the said issue does not arise in the controversy involved in the present case; because, the three immovable properties of the respondent sought to be attached are not proceeds of crime. This is obvious, since on a bare perusal of the allegations against the respondent's husband and on a plain examination of the findings on the basis of which respondent's husband was being convicted of the offence under Section 13(1)(e) of the PC Act. The allegation against the respondent's husband was that he had amassed assets disproportionate to his sources of income. It was found that as on 10.10.2007 (end of the check period), the respondent's husband (Major Gen. Anand Kumar Kapoor) was in possession of assets to the extent of ₹5,51,92,598/-. These included both movable and immovable assets, either in his own name or in the name of the respondent. Three immovable properties of the respondent which are sought to be attached by the appellant were part of the immovable assets taken into account while calculating the assets held by the respondent's husband as on 10.10.2007. The Trial Court had found that a total income of ₹4,10,35,864/- had been earned during the check period and an expenditure of ₹1,26,52,600/- was incurred during the said period. After accounting for the same, as well as the assets available at the

beginning of the check period, the Trial Court concluded that the assets to the extent of ₹2,22,04,290/- were disproportionate to the known sources of the income of respondent's husband. Thus, clearly the remaining assets were acquired from legitimate and known sources of income and therefore, cannot be considered as proceeds of crime.

15. Assets, to the extent of ₹2,22,04,290/-, have been directed to be confiscated and thus, there is no scope for the present proceedings on the basis that any of the remaining assets constitute proceeds of crime. It is relevant to note that no particular assets held by respondent or her husband were identified as an asset derived from any criminal activity. The nature of the charge did not warrant any such inquiry and the extent of disproportionate assets had been determined on the basis of the value of assets at the end of the check period less the value that could be accounted from the known sources of income. In view of the above, the contention that three immovable assets held by the respondent are proceeds of crime, is fundamentally flawed.

16. In view of the above, this Court finds no merit in the present appeal and the same is dismissed.

17. The pending application is disposed of.

VIBHU BAKHRU, J

DECEMBER 11, 2019
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