IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.228 of 2019

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1. Bharat Yadav Son of Parmeshwar Yadav, Resident of Jamalpur Dih, Near Avantika Cinema Jamalpur, P.S.-Jamalpur, District-Munger.
2. Smt. Satyabati Devi W/o Bharat Yadav, Resident of Jamalpur Dih, Near Avantika Cinema Jamalpur, P.S.-Jamalpur, District-Munger.
3. Anil Kumar Son of Parmeshwar Yadav, Resident of Jamalpur Dih, Near Avantika Cinema Jamalpur, P.S.-Jamalpur, District-Munger.

... ... Appellant/s

Versus

Deputy Director, Directorate of Enforcement, Government of India Ist Floor, Chandpur Place, Bank Road West Gandhi Maidan Patna-800001.

... ... Respondent/s

Appearance :

For the Appellant/s : Mr.Ansul, Adv
For the Respondent/s : Mr. S.D. Sanjay, Addl. S.G & Mr. Kumar Priya Ranjan CGC

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
Date : 14-02-2020

Heard learned counsel for the parties.

2. This miscellaneous appeal has been filed under Section 42 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the PMLA') for setting aside the order dated 03.04.2019 passed by Appellate Tribunal for PMLA, New Delhi, by which appeal preferred by the appellants against the order dated 30.05.2018 passed by the adjudicating authority has been kept in abeyance till disposal of criminal case instituted for the offences punishable under Sections 3/4 of PMLA pending before the PMLA Court, Patna and interim protection

dated 28.07.2018, granted by the appellate tribunal has been vacated.

3. Briefly stated, the facts of the case is that Superintendent of Police, Economic Offences Wing, Patna, vide letter no. 389/C dated 04.11.2013 reported 27 cases registered against Bharat Yadav (appellant no. 1). The letter further revealed that Bharat Yadav (appellant no. 1), was a habitual offender indulging in offences of robbery, dacoity, extortion and indulging in offences under the Arms Act since 1988. He has acquired properties in his own name as well as in the name of his family members from the proceeds of above-mentioned crime and invested said proceeds of crimes in various movable and immovable properties in an attempt to project them as untainted. Such investment represent the process of integration of the proceeds of the crime with the main stream economy.

4. On the basis of said letter ECIR No. PTZO/07/2014 dated 07.01.2014 was registered against the appellants and thereafter Deputy Director, E.D., Patna, passed provisional attachment order no. 1/2018 dated 01.01.2018 under Section 5(1) of the PMLA, by which movable and immovable properties and other investment amounting to Rs. 4,23,61,990/- belonging to appellants were provisionally attached on the ground that

appellants are in possession of proceeds of crime generated from criminal activity from said crimes which are likely to be concealed and transferred to frustrate the proceeding relating to its confiscation.

5. Out of 27 cases reported two cases i.e. FIR No. 121 of 2010 dated 20.10.2010 registered at Jamalpur P.S for offences under Sections 302 of IPC and FIR No. 227 of 2010 dated 28.05.2010 registered at Kotwali (Munger) PS for offences under Sections 120B, 414, 420, 467 and 471 of the IPC, were found to be the scheduled offences under the PMLA against which chargesheets were filed against appellant no. 1.

6. The Deputy Director has passed the order of provisional attachments taking into account the letter of Superintendent of Police, Economic Offences Unit, Patna, and other materials and information collected/received by him during investigation and after passing the order of provisional attachment filed complaint before the adjudicating authority for confirmation of order of provisional attachment.

7. The Adjudicating Authority has held that he has gone through the original complaint, provisional attachment order and relied upon documents carefully and *prima facie* has reasons to believe that appellants have committed an offence of money

laundering under Section 3 of PMLA and they are in possession of proceeds of crime.

8. The adjudicating authority on analysis of documents relating to acquisition of properties both movable as well as immovable, statement of bank accounts, LIC policies, Income Tax returns, liquor shops operated by Bharat Yadav and statements recorded under Section 50 of PML Act found that properties acquired by appellants do not match with income shown in their Income Tax return.

9. Appellant no.1, Bharat Yadav, has acquired various immovable and movable properties after 1.7.2005 from his criminal activities in his name and in the name of his family members valued at Rs.4,23,61,990/-. Bharat Yadav has acquired 10 immovable properties in his name valued at Rs.2,16,18,059/- whereas four properties in name of his wife appellant no.2 valued at Rs.1,64,75,500/-. During scrutiny of sale deed, it was found that cash was directly utilized for purchase of immovable properties and all these 14 immovable properties in the name of appellant nos.1 and 2 were acquired by cash payment. Cash so utilized for the acquisition for immovable properties were proceeds of crime in the hands of appellant no.1 generated by Bharat Yadav from criminal activities.

10. Appellants have altogether 16 bank accounts and 8 bank accounts have zero balance whereas other 8 accounts have total balance of Rs.13,59,4403/- and they have got 6 LIC policies for which premium of Rs.29,08,988/- was paid. There total movable and immovable properties are valued at Rs.4,23,61,990/- which is far excess to their known source of income.

11. On the basis of income tax return the total income of appellant no.1 comes to Rs.21,87,410/-, income of M/s. Jai Ma Kali Construction comes to Rs.16,71,914/-, income of M/s. Rani Construction comes to Rs.5824/- and income from M/s. Khushboo Construction comes to Rs.1,625/-, as such, total income comes to Rs.38,66,773/- whereas, income of appellant no.2, wife of appellant no.1 comes to Rs.49,60,718/- and income of appellant no.3, brother of appellant no.1 comes to Rs.12,11,750/-, whereas valuation of properties in their possession is far more than said income. Huge deposits were found to be made in their bank account and total cash deposit made by appellants were found to be Rs.16,66,48,823/- which is far in excess of their income declared in their income tax return.

12. Appellant no.1 also has business of trading in liquor with licences in the name of his wife and brother who are

appellant nos.2 and 3 and as such appellant no.1 has invested his illegal money into liquor trading in the name of his wife, brother and another employee to legalize his tainted money generated from proceed of crime. Appellant no.1 also runs a benami liquor shop in the name of his employee to legalise his proceeds of crime.

13. The adjudicating authority has concluded in para 13 of his order confirming attachment of properties and allowing the complaint filed by the authorized officer which reads as follows;-

> "13. On a thorough perusal of the PAO, complaint, relied upon documents, the investigations conducted by the ED and the statements recorded u/s 50 of the PMLA and on careful consideration of the arguments advanced on behalf of the Complainant and Defendants undersigned comes to the prima facie conclusion that the Defendants have committed the Scheduled Offence, generated proceeds of crime and laundered them. No doubt the properties attached are proceeds of crime or value thereof and are involved in money laundering. Undersigned therefore orders confirmation of the above Provisional Attachment Order. This order shall continue during the pendency of the proceedings relating to any offence under this Act before court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India as the case may be and become final after an order of confiscation is passed under sub-

section (5) to sub-section(7) of section 8 or section 58 B or sub-section 2A or section 60.

14. It has been submitted on behalf of appellants that Section 5(1) of PMLA indicates that an order of provisional attachment can be passed only where the concerned officer has reasons to believe on the basis of material in his possession that:-

(a) any person is in possession of proceeds of crime and such proceeds are likely to be concealed, transferred or dealt with in any manner which would result in frustrating any proceeding relating to confiscation of such proceeds of crime. The expression proceeds of crime is defined under clause (u) of Section 2(1) of PMLA, which reads as under:-

> “(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.”

15. It is clear from the language of Section 2(u) of PMLA that the expression proceeds of crime refers to a property which is derived or obtained by any person as a result of criminal activity, as such in order to pass an order of provisional attachment/confirmation of attachment it is necessary for the competent authority to have reasons to believe that the

properties liable to be attached were derived or obtained from proceeds of crime.

16. It has been submitted on behalf of appellant that there is no material whatsoever on the basis of which the competent authority/adjudicating authority could have reasons to believe that movable and immovable properties purchased by the appellants were derived or obtained from proceeds of crime generated from criminal activity relating to schedule offence. Appellant No. 1 Bharat Yadav, was charged for the offence punishable under Sections 302 bearing FIR No. 121 of 2010 dated 20.10.2010 registered at Jamalpur P.S and FIR No. 227 of 2010 dated 28.05.2010 registered at Kotwali (Munger) PS for offences under Section 120B, 414, 420, 467 and 471 of the IPC, which are schedule offences and in both of the cases appellant no. 1 has been acquitted of charge and there is no material available on record that the above two criminal cases generated any pecuniary benefits to the appellant no. 1, which can be deemed to be proceeds of crime and liable for confiscation.

17. No nexus has been established that the amount from which the movable and immovable properties were purchased were proceeds of crime arising from any criminal activity. Authorities had no reason to believe that the properties liable for

attachment are proceeds of crime and in order to pass an order of provisional attachment or confirmation of such attachment it was necessary for the authorities to have reasons to believe that the property liable to be attached was derived or obtained from proceeds of crime from criminal activity.

18. The 'expression reason to believe' must be founded on the basis of material placed before the concerned authority and the belief must be in good faith and it cannot be a pretence. Such belief should not be based on mere suspicion but must be founded upon materials available on record. There should be a close nexus between the material placed before the authorities and formation of his belief and should not be construed as 'reasons to suspect'. The expression 'reasons to believe' has been defined under 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."

19. Out of 27 cases reported against appellant 25 cases were instituted between the year 1988 and 1999 i.e. prior to coming of the PMLA Act, as such no cognizance of said cases ought to have been taken by the authorities, while passing the order of provisional attachment or its confirmation. However,

the authorities, have taken into account all 27 cases registered against appellant no. 1 Bharat Yadav, alleging therein that from proceeds of crime of said criminal activities immovable and movable assets have been acquired as such the order passed by authorities, are flawed from its inception as provisions of Act cannot be given retrospective effect.

20. It was further submitted that the appellants family was having retail licence liquor business from 2002 to 2016 and were also involved in construction and maintenance contract of Indian Railways from year 2002 and used to purchase railway scrap through Indian Railways and sold it which was being carried mostly in cash through three business firms of appellant's family and acquisition of immovable movable properties were made from these legitimate sources of income and not from the proceeds of crime. There is no nexus that the acquisition of movable and immovable properties were derived from the proceeds of crime. Deposits lying in the bank account were derived from family income, agriculture and business activities. Liquor business is retail business for which appellants had valid licence since 2002 and in said business lot of cash is received, as such, they were required to handle huge amount of cash but details could not be provided as the books of accounts

and ledgers were submitted to Bihar State Beverage Corporation Limited. Premium of LIC was paid by securing loan and was paid prior to commencement of PMLA. Loan amount deposited in bank account has also been held to be proceeds of crime.

21. Appellants have discharged their initial burden as contemplated under Section 24 of the Act by disclosing the source of legitimate income from which attached properties were acquired and onus thereafter shifted on E.D. to establish that proceeds were generated from criminal activities.

22. Per contra, counsel for the respondents submitted that perusal of letter dated 4.11.2013 forwarded by the Superintendent of Police, EOU, Bihar , Patna revealed that Bharat Yadav appellant no.1 is a notorious criminal and is involved in many criminal offences which are also scheduled offences under PML Act and has acquired property in his own name as well as in the name of his wife, Satyabati Devi, appellant no.2 and in the name of his younger brother appellant no.3, Amit Kumar, from the proceeds of crime by investing the proceed of crime in various movable and immovable properties in an attempt to project it as untainted which is an offeence under Section 3 of the Act.

23. The income of appellants are far more excess from the income as shown in their income tax return and illegal cash has been layered through various bank account and finally integrated into main stream of economy by acquisition of movable and immovable assets

which is a clear instance of money laundering. Huge amount of cash has been deposited in the bank accounts which does not match with their income tax return.

24. Bharat Yadav has acquired benami liquor shops which shows his conscious involvement in money laundering for concealment and transfer of proceeds of crime to project the same as untainted.

25. The predicate offence and the offence of money laundering are two distinct and separate set of offences. The offence of money laundering is independent of schedule offences. As per section 24 of PML Act, the burden of proof that proceeds are legitimate is on the accused.

26. It is the date of laundering which would be relevant and not the date of schedule offence. The laundering as used in Section 3 comprises of involvement in any process or activity by which the illicit money is being projected as untainted.

27. Date of occurrence of scheduled offence is not relevant, rather, date on which laundering of money is committed is the relevant date. Even if money was acquired prior to amending Act but accused has committed offence under Section 3 of act subsequent to coming of the Act he can be proceeded for offence of money laundering i.e. his involvement in projecting illicit money to be untainted.

28. After Amendment of the Act, money laundery is a

stand alone offence. Even a person acquitted of a scheduled offence can be prosecuted under Section ¾ of PML Act.

29. Aggrieved by the order of competent authority/adjudicating authority, appellant preferred an appeal before the appellate tribunal under Section 26 of the PMLA, which reads as follows:-

> **"26. Appeals to Appellate Tribunal.-**
> (1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.
>
> (2) Any reporting entity aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal. (3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:
>
> Provided that the Appellate Tribunal may after giving an opportunity of being heard entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.
>
> **(4) On receipt of an appeal under sub-section (1), or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against. (emphasis is mine)**
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> (5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.
>
> **(6) The appeal filed before the Appellate Tribunal**

under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal."

(emphasis is mine)

30. The appellate tribunal by order dated 25.07.2018, issued notice in appeal as well as stay application and directed no coercive action to be taken by the respondent till further orders. The respondents appeared before the appellate tribunal, however, the appellate tribunal by impugned order dated 03.04.2019 vacated the stay order and kept the appeal pending till disposal of the criminal case instituted for offence punishable under Sections 3/4 of the PMLA pending before the PMLA Court, Patna as Special Court had taken cognizance of offence under Section ¾ PML Act against appellants.

31. The appellate court has referred to Section-44 and 43 of the PMLA and has given a finding that "it is indisputable that the court of Additional District and Sessions Judge, Special Court, Munger and the CJM, Munger while acquitting appellant no. 1 Bharat Yadav in said two offences have not at all examined Section 4 of PMLA along with the schedule offence as mandated under Section 44 of PMLA and upheld by the Hon'ble Supreme Court, hence, it cannot be said that the acquittal has attained finality".

32. The appellate court has held in para 8 and 9 of its order, which reads as follows:-

> "8. It is pertinent to note that Section 8 deals with adjudication by the adjudicating authority which as per section 8(3) authorizes, the adjudicating authority to confirm the attachment of the property if it is involved in money laundering. Hence, while the attachment powers are with the adjudicating authority to the power to confiscate, release or restore to a claimant of the said property lies specifically with the Special Courts. This Tribunal has not been assigned any specific powers under PMLA, 2002 with relation to confiscation, release or restoration of the property attached. Since the Special Court has initiated the proceedings in the present case and taken cognizance of the same, it is my considered view that the Special Court has to decide the case including the offence of money laundering as discussed above, which in any case only the Special Court can decide and not the Appellate Tribunal. The scheme of things as it exists under the PML Act shows that it is the same property which can be provisionally attached, thereafter this attachment can be confirmed by the adjudicating authority, that the order with regard to the same property would become final after an order of confiscation is passed by the Special Court (Section 8(3) (b), or released or restored as per section 8(6) or Section 8(8) second proviso as the case may be.
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> 9. In the background, it would be appropriate to keep this appeal in abeyance until the Special Court who has already taken cognizance finally disposed of the case. The interim orders are also vacated. Both the parties are directed to inform this tribunal as and when the final order is pronounced by the Special Court".

33. The order passed by the appellate tribunal is misconceived as under Section-26 of the PML Act , the tribunal has been empowered to hear appeals against the order of the adjudicating authority filed by aggrieved party. The tribunal after hearing the parties, can confirm, modify or set aside the

order appealled against. The appellate tribunal has to examine the legality, validity and propriety of the order passed by the adjudicating authority and either can confirm, modify or set aside the order under Appeal. Final order is to be passed within six months from the date of filing of appeal.

34. Attachment proceeding and criminal proceedings are two parallel and independent proceedings and are not dependent upon each other. Properties which are found liable for attachment after final adjudication can be confiscated after conviction of accused under Section ¾ of PML Act.

35. Against the order passed by the appellate tribunal the aggrieved party under Section-42 of the PMLA has further right of appeal before the High Court, as such the order passed by the appellate tribunal by which instead of deciding the appeal and pass a final order, keeping the appeal pending till disposal of criminal prosecution lodged for offences punishable under Sections 3/4 of the PMLA pending before the PMLA Court, Patna is not sustainable and liable to be set aside.

36. As a result, the order dated 03.04.2019 passed by Appellate Tribunal for PMLA, New Delhi, is set aside and the appellate tribunal is directed to decide the pending appeal of appellant within three months from the date of

receipt/production of a copy of the order passed by this Court.

37. The miscellaneous appeal is accordingly disposed of.

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20.03.2020
Transmission Date	NA