**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

PMLA-APPL No. 4 of 2020

Date of decision : 23.11.2020

(Heard Through Video Conferencing)

Directorate of Enforcement, Chandigarh Zonal Office

.... *Appellant*

Versus

Om Parkash Chautala and another

... *Respondents*

**CORAM : HON'BLE MRS. JUSTICE DAYA CHAUDHARY
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present : Mr. Arvind Moudgil, Senior Counsel, Govt. of India with
Mr. Kritin Sharma, Advocate,
Mr. Karan Sethi, Advocate and
Mr. Devinder Pal, Advocate for the appellant.

Mr. Ashok Aggarwal, Senior Advocate with
Mr. Mukul Aggarwal, Advocate and
Mr. Gaurav Mohunta, Advocate for the respondents.

* * *

DAYA CHAUDHARY, J.

Appellant – Directorate of Enforcement, Chandigarh Zonal Office through its Deputy Director has filed the present appeal being aggrieved by the impugned order dated 18.11.2020 (Annexure A-1) passed by the Appellate Tribunal, Prevention of Money Laundering Act at New Delhi, whereby the applications moved by the respondents for seeking interim restoration of the attached property for using the same for the purpose of marriage, to be held on 27.11.2020 and 30.11.2020, have been allowed with the direction to hand over the possession of the attached property to the appellant on or before 07.12.2020.

Respondents are facing proceedings under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as “PMLA”). Appellant issued Provisional Attachment Order (PAO) No. 02/2019 and filed Original Complaint (OC) before the Adjudicating Authority for confirmation, which was confirmed vide order 25.09.2019. Said order dated 25.09.2019 was challenged before the Appellate Tribunal by respondent No.2 (Abhay Singh Chautala) as *Pairokar* (exponent/proponent). Thereafter, an application was moved by respondent No.2 for impleading him as Intervenor as appellant No.2, which was allowed vide order dated 22.10.2020.

Respondents No.1 and 2 filed two separate applications for seeking interim restoration of the attached property, which were allowed vide order dated 22.10.2020, directing the appellant to de-seal the attached property within a period of two weeks and to hand over the possession to the Intervenor (respondent No.2) for the purpose of marriage with certain conditions. It was also directed that the possession of the property be handed over by 07.12.2020 as said property was to be used for the purpose of marriage to be held on 27.11.2020 and 30.11.2020.

Said order dated 22.10.2020, passed by the Appellate Tribunal was challenged by the appellant before this Court by way of filing appeal, which was allowed vide order dated 17.11.2020 and order passed by the Appellate Tribunal was set aside. The case was remanded to the Appellate Tribunal for fresh decision in accordance with law and on appreciation of provisions of PMLA and the Prevention of Money-laundering (Taking Possession of Attached or Frozen Properties Confirmed by the Adjudicating Authority) Rules, 2013 (hereinafter referred to as – “Rules 2013”). Both the parties were directed to appear before the Appellate Tribunal on 18.11.2020.

In pursuance of order dated 17.11.2020 passed by this Court, the Appellate Tribunal passed impugned order dated 18.11.2020, whereby again the directions were issued to appellant to de-seal the attached property on 23.11.2020 and to hand over the possession of the same to the Intervenor-respondent No.2 for the purpose of marriage. Said order dated 18.11.2020 was subject to the direction to the respondents to hand over the possession of the attached property to the appellant after the marriage which was stated to be scheduled on 27.11.2020 and 30.11.2020.

The impugned order dated 18.11.2020 passed by the Appellate Tribunal is subject matter of challenge in the present appeal.

Both the learned counsel for the parties have agreed to argue the main case by considering the short date of the marriage. Moreover, an advance copy of the appeal has already been supplied to learned counsel for the respondents-caveators. Accordingly, with the consent of both the parties, the main appeal has been heard.

Mr. Arvind Moudgil, learned counsel for the appellant submits that the impugned order passed by the Appellate Tribunal is totally non-speaking and same has been passed without giving any specific finding and without giving any sufficient opportunity even to produce the relevant record. The findings recorded by the Appellate Tribunal are not only perverse but against the record as well. The impugned order is also violative of statutory provisions as contained in PMLA and Rules 2013 as there is no provision for de-sealing the property temporarily or interim release of property during pendency of the proceedings. Learned counsel also submits that the applications moved by the respondents have been allowed contrary to the provisions of Section 3 and Section 8(4) of PMLA as in absence of any opportunity granted for hearing, the appellant could not rebut the contentions raised by the counsel for the respondents. Even the relevant provisions of law have not been rightly appreciated. Wrong findings have been recorded that respondent No.2 was not aware about the proceedings and no notice was ever issued to him, whereas in total 17 notices were sent and 10 replies were also filed by him. The finding that he was not aware about the proceedings pending before the E.D. is totally wrong and contrary to the facts/record. Learned counsel also submits that in the impugned order only the relevant provisions of PMLA and Rules 2013 have been mentioned but the same have not been discussed/appreciated at all. It is also the argument of learned counsel for the appellant that while passing the impugned order, the statutory provisions of law have not been taken into consideration.

Learned counsel also submits that a wrong finding has been recorded that share of the respondents was not determined, whereas in the Original Complaint as well as in the provisional attachment order, the shares have been determined. In case such applications are allowed, it would be a wrong precedent as such order is neither permissible nor justified in law as has been held in various judgments of this Court as well as judgments passed by Hon'ble the Apex Court.

Learned counsel for the appellant has relied upon Andhra Pradesh High Court's judgment of case titled ***B. Rama Raju & Ors. Vs. Union of India (UOI), Ministry of Finance, Department of Revenue and Ors. Writ petition No. 10765 of 2010 decided on 04.03.2011***, Delhi High Court's judgment of cases titled ***The Deputy Director, Directorate of***

Enforcement Delhi Vs. Axis Bank & Ors. Crl. A. 143/2018 & Crl.M.A. 2262/2018 decided on 02.04.2019, ***J. Sekar Vs. Union of India W. P. (C) 5320/2017 decided on 22.01.2018*** and ***P. Chidambaram Vs. Directorate of Enforcement BAIL APPLN.2718/2019 decided on 15.11.2019***, in support of his arguments.

Learned Senior counsel for the respondents have opposed the submissions made by learned counsel for the appellant. He further submits that the impugned order is well reasoned and has been passed by giving a categoric finding in view of direction/observation made by this Court vide order dated 17.11.2020. Learned Senior counsel also submits that the learned Tribunal has jurisdiction to pass any interim order and there is no specific bar. The Tribunal has power to grant interim relief in case the same is warranted keeping in view the facts and circumstances of the case. Section 5 of PMLA does not control the power of the Tribunal. Notices should have been issued to all the owners of the properties but in the present case no notice was ever issued. Learned Senior counsel also submits that the provisions of Section 8 of PMLA and proviso thereof are applicable in the present case. He also submits that Rule 5 (5) of the Rules 2013 provides for manner of taking possession of immovable property under joint ownership.

Learned Senior Counsel also submits that the value of the property in dispute as estimated by E.D. is ₹1,99,86,300/- and the respondents had also offered to pay said amount to E.D. but their request was not accepted. He has also relied upon Andhra Pradesh High Court's judgment in ***B. Rama Raju's*** case (supra), Delhi High Court's judgment in ***Axis Bank's*** case (supra), Madras High Court's judgment in case ***Dr. V. M.***

Ganesh Vs. The Registrar, Appellate Tribunal, Prevention of Money Laundering, Department of Revenue and others CMA No.1451 of 2015 M.P. No.1 of 2015 decided on 29.04.2019 and order dated 23.12.2019 passed by the Appellate Tribunal for SAFEMA, NDPS FEMA, NDPS, PMLA & PBPT Act, at New Delhi in case ***MP-PMLA-6767/CHD/2019 (U.H.)*** titled as ***Om Parkash Chautala Vs. The Joint Director, Directorate of Enforcement, Chandigarh***, in support of his arguments.

Heard arguments of learned counsel for the parties. We have also perused the provisional attachment order, both the orders passed by the Appellate Tribunal *i.e.* order dated 22.10.2020 as well as the impugned order dated 18.11.2020 (Annexure A-1) and the order of remand passed by this Court dated 17.11.2020.

The issue for determination by this Court is :

> *"Whether the property attached under Section 5 of PMLA and as confirmed under Section 8 of PMLA can be de-sealed/released on interim basis by the Appellate Tribunal during pendency of the proceedings?"*

Sections 3 (with explanation), 5 and 8 of PMLA are relevant to decide the present controversy, which are reproduced as under:-

> "**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.
>
> [Explanation .– For the removal of doubts, it is hereby clarified that, –
>
> (i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is

actually involved in one or more of the following processes or activities connected with proceeds of crime, namely :–

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.]

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 –

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed :

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 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 that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.]

[Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.]

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the 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 order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under [sub-section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.– For the purposes of this sub-section, "person interested", in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

8. Adjudication.– (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an [offence under section 3 or is in possession of proceeds of crime], it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized [or frozen] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government :

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person :

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after –

(a) considering the reply, if any, to the notice issued under subsection (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or [record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall –

(a) continue during [investigation for a period not exceeding [three hundred and sixty-five days] or] the pendency of the proceedings relating to any [offence under this Act before a 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]

[(b) become final after an order of confiscation is passed under sub- section (5) or sub-section (7) of section 8 or section 58-B or sub-section (2-A) of section 60 by the [Special Court]]

[*Explanation*. – For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which investigation is stayed by any Court under any law for the time being in force shall be excluded.]

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the [possession of the property attached under section 5 or frozen under sub-section (l-A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (lA) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.]

[(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded , the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under subsection (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money laundering after having regard to the material placed before it.]

[(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the special court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.]

[Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.]"

A perusal of Section 3 of PMLA as well as explanation thereof shows that in case any person, directly or indirectly, has enjoyed the proceeds of crime by way of concealment or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner, said person is prohibited from enjoying the proceeds of the crime. As per the provisions of Section 5 of PMLA, the Director or any other officer not below the rank of Deputy Director, so authorised by him, is competent to provisionally attach the property. Thereafter, he shall take the possession of that property so attached under Section 5 of PMLA.

After passing the order of provisional attachment under Section 5 of the PMLA, the order of confirmation was to be passed by the Adjudicating Authority in view of provision of Section 8 of the PMLA. Thereafter, the possession of the property was to be taken by the Director or any officer authorised by him. On conclusion of trial for said offence, in case the Special Court finds that the offence of money laundering has been committed and such property is involved in money laundering or has been used in commission of offence of money laundering, it shall stand confiscated to the Central Government. In case it is found that the offence of money laundering has not been committed, then the property so confiscated is to be released.

On perusal of the relevant record, it is apparent that the stand of respondent No.2 is contrary to the record while saying that no notice was ever issued to him, whereas respondent No.2 was issued as many as 17 notices in total *w.e.f.* 29.11.2011 to 14.02.2020 and he also filed as many as 10 replies to the notices. He was also issued summons, which are annexed as Annexures A-4 to A-29. It shows that respondent No.2 was well aware about the pendency of proceedings but still he did not opt to file any appeal before the Tribunal. The arguments raised by learned Senior counsel is also contrary to the record that there was no partition of the property, whereas in the affidavit dated 17.01.2005 filed by respondent No.1 before the Returning Officer during Assembly Election held in the year 2005, he himself had declared his share as 50% in the residential house constructed over the land bearing Khewat No.97/98/99 and 104 in village Teja Khera, Tehsil Dabwali, Distt. Sirsa, which has been provisionally attached vide order dated 13.04.2019 which was subsequently confirmed on 25.04.2019 by the Adjudicating Authority.

Moreover, there is no provision in PMLA as well as Rules 2013 which allows de-sealing/release of the attached property temporarily for the use of the accused persons. As per the order passed by this Court, both the parties were directed to appear before the Appellate Tribunal on 18.11.2020. The case was fixed only for appearance of the parties. The case should have been adjourned for any other date for arguments and for production of record but the impugned order was passed on that very day without going through the record and without giving opportunity of hearing to the parties as well.

Learned counsel for the appellant as well as respondents have relied upon Andhra Pradesh High Court's judgment in ***B. Rama Raju's*** case (supra). This judgment is not going to help the respondents. Rather the judgment is in favour of the appellant. In said case, the vires under Section 2(1)(u) were challenged. It was held that provisions of Section 8 (4) are neither arbitrary nor disproportionate to the object sought to be achieved by the provisions of PMLA. It was also held that provisions of Section 8(4) are reasonable and unimpeachable and the challenge to Section 8 of PMLA must therefore fail.

The order passed by the Appellate Tribunal has been relied upon by learned counsel for the respondents, which is not binding upon this Court as the order passed by the Appellate Tribunal is under challenge before this Court. Accordingly, the same is misconceived. The other judgments relied upon by learned counsel for the respondents are also not relevant in the present context. On the asking of the Court, learned Senior counsel for the respondents could not quote/cite even a single judgment which is relevant in the present context.

The argument of learned Senior counsel for the respondents that the Appellate Tribunal was competent to pass any order under Section 26(4) of PMLA is not even convincing. No doubt under Section 26(4) of PMLA, Appellate Tribunal has power to pass such orders as it thinks fit, confirming, modifying or setting aside the order appealed against, but before passing such order, both the parties to the appeal are required to be given an opportunity of hearing. However, in the present case, no such opportunity was granted and even the relevant record of the case could not be perused.

Learned counsel for the respondents has also relied upon Rule 5(5) of Rules 2013 in support of his arguments. He submits that the amount so offered but was not accepted and the same is contrary to the said provision. However, it is apparent from the language of the Rule itself that the word *'may'* is there. Meaning thereby, it is not mandatory and the same is to be decided by the Adjudicating Authority. In spite of specific direction given by this Court in the earlier petition, still the impugned order has been passed without fully complying with the observations made by this Court. The order so passed in the interim application appears to be passed in the main case. Not only the merits of the main case have been discussed but the observations made about the main case should have been avoided. The parties were directed to be present before the Tribunal on 18.11.2020 and the order was passed on that very day without giving any opportunity to the appellant for producing the relevant record. The observations made by the Appellate Tribunal in the impugned order may effect the outcome of the main case, which is still pending for 28.01.2021.

On perusal of impugned order it is also apparent that only the provisions of PMLA and Rules 2013 have been mentioned/reproduced but there is no appreciation of the same. Meaning thereby, the impugned order dated 18.11.2020 is contrary to the provisions of PMLA and Rules 2013 as well as the observations made by this Court in the earlier writ petition. In spite of specific directions issued by this Court still stereotype order has been passed. Meaning thereby there is no compliance of the order passed by this Court. No reason, whatsoever, with regard to non-compliance of the specific provisions of the statute by the Enforcement Directorate has been made in the impugned order. There is no finding as to how, when and where there has been non-compliance or violation of the statutory procedural and mandatory provisions of law.

Accordingly, it can safely be said that the impugned order is not only bad in law but contrary to the provisions of PMLA and Rules 2013. The Appellate Tribunal has not applied its judicious mind while passing the impugned order. Thus, the appeal filed by the appellant is allowed and the impugned order dated 18.11.2020 (Annexure A-1) passed by the Appellate Tribunal, being contrary, to the provisions of PMLA and Rules 2013 is set aside.

(DAYA CHAUDHARY)
JUDGE

Dated : 23.11.2020
sunil yadav

(MEENAKSHI I. MEHTA)
JUDGE

Whether speaking/reasoned : Yes / No
Whether reportable : Yes / No