#13

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 13.10.2020

+ LPA 197/2020 & CM APPL.18192/2020 (Stay)

DIRECTORATE OF ENFORCEMENT ..... Appellant

versus

DHRUV TEWARI ..... Respondent

Advocates who appeared in this case:

For the Petitioner	:	Mr.Amit Mahajan CGSC with Ms Mallika Hiremath, Advocate
For the Respondent	:	Mr. Madhav Khurana, Advocate

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE TALWANT SINGH

JUDGMENT

SIDDHARTH MRIDUL, J. *(Open Court – via Video Conferencing)*

1. The present Letters Patent Appeal assails the order dated 22.07.2020 passed by the learned Single Judge in W.P.(C) 3401/2020, whereby the following order was passed:

"By the instant petition, the petitioner has prayed for setting aside of the provisional attachment order No. 02/2020 dated 18.02.2020 arising out of ECIR No. 02/DLZO/2016 qua the following properties / funds belonging to him viz.:

i. Account No. 6011211374 maintained with Kotak Mahindra Bank, Kasturba Gandhi Marg Branch.
ii. Account No. 913010012836868 maintained with Axis Bank, Defence Colony Branch.
iii. Account No. 54410558950 maintained with Standard Chartered Bank, New Friends Colony Branch.
iv. Account No. 107001000597 maintained with ICICI Bank.
v. Kotak Mahindra Mutual Fund Account Nos. 694001 & 954376.

The relief prayed proceeds on the premise that the petitioner was a young boy and a student of Purdue University, Indiana, United States of America and, was in no manner connected with the commission of the scheduled offence or in possession of proceeds of crime and therefore, the attachment of his properties was illegal.

It emerges from the record that during the period 2012-2013, CBI registered RCs *inter alia* on the petitioner's late father, grandfather and late uncle for the alleged commission of various offences under the Indian Penal Code, 1860 and the Prevention of Corruption Act, 1988 during the period 2005-2011. Undisputedly, the petitioner was a minor at that time and was not named in any of the RCs. On 20.06.2013, ECIR No. 10/DLZO/2013 was registered by the respondent no.1 – Directorate of Enforcement against the petitioner's later father, grandfather, grandmother and late uncle for the alleged commission of the offences under Sections 3 & 4 of PMLA on the basis of RC.BD1/2012/E/0003 registered by the CBI. The petitioner at that time is stated to be about 16 years of age and not named in the ECIR. He gained admission to Purdue University, Indiana, United States of America on 13.04.2016 in Mechanical Engineering on 13.04.2016. On 20.07.2016 another ECIR No. 02/DLZO/2016 was registered against the petitioner's late father, grandfather and late uncle for the alleged commission of offences under Sections 3 & 4 of PMLA on the basis of the remaining CBI RCs. The petitioner's uncle and the father are stated to have died on 24.10.2018 and 25.10.2019, respectively.

The petitioner asserts that the attachment of any of his properties is perverse and bad in law inasmuch as he was not involved in the commission of any offence nor in the receipt of any proceeds of crime. The respondent no.1 on its part has however taken the plea that the amounts lying in any of the accounts of the petitioner were actually the proceeds of the crime inasmuch as the petitioner was a minor when the monies came to be credited to his accounts especially, in view of the fact that such amounts were transferred to his accounts by his late father only.

The rival pleas are to be gone into by the adjudicating officer in the first instance and therefore, this court refrains to look into any such controversy at this stage.

During the course of hearing, Mr. Khurana, ld. counsel for the petitioner strenuously contends that the petitioner was a minor at the time of his admission for his studies of Mechanical Engineering in Purdue University, Indiana and now aged about 21 years only and in the last leg of his studies, which are going to conclude in May, 2021 and therefore, assuming, any of the funds coming/lying in his accounts were proceeds of crime, the interest & the welfare of the petitioner child should not be allowed to be jeopardised especially, in the prevailing conditions on account of COVID-19 pandemic. Mr. Khurana thus comes forward to state that if as an interim arrangement a sum of Rs.30 lacs is released to the petitioner, it would enable him to complete his studies.

Taking note of the totality of facts and circumstances, especially the prevailing situation arising on account of Covid-19 pandemic all over the world, why should not a student – an Indian, be provided with some relief to tide over the difficult situation, when all the avenues available to him are stated to have been completely closed by the subject attachment orders, one wonders. Though, Mr. Mahajan, ld. CGSC submits that the petitioner would have the sufficient means otherwise for his subsistence and the education inasmuch as large amounts of funds had flown out of the country which are yet to be accounted for, the Court considers that such inferences are not required to be drawn in the present proceedings inasmuch as, Mr.Khurana presses the petition only for a limited purpose, keeping the rival pleas of the parties open for consideration by concerned authority/court.

In view of the foregoing, without getting into the merits of the respective pleas of the parties, the writ petition and the pending application are disposed of with a direction to the respondent no.1 – Directorate of Enforcement to release a sum of Rs.30 lacs to the petitioner from any of the amounts of the petitioner lying attached under the impugned attachment order or any other attachment order issued by it, subject to the petitioner furnishing an undertaking besides the surety of his mother to the effect that in the event of the amounts so released are found to be a part of the proceeds of crime, they or any of them shall pay back the amounts released within 08 weeks of the final adjudication on the subject by the court. Such undertakings by way of affidavits shall be furnished by the petitioner and his mother to the satisfaction of the Adjudicating Authority. The amounts should be so released within 05 days of the submission of such undertakings.

> The undertakings so furnished under the direction of the Court shall be treated as an Undertaking to this court to be strictly complied with.
>
> Writ and the application stand disposed of accordingly".

2. In terms of the directions passed by this Court vide order 17.08.2020, the Adjudicating Authority, under the provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred to as "PMLA Act"), has finally adjudicated the provisional attachment orders No.02/2020 dated 18.02.2020 and 06/2020 dated 30.06.2020, vide their orders dated 21.09.2020 and 25.09.2020, respectively.

3. It is an admitted position that the said orders dated 21.09.2020 and 25.09.2020 respectively, rendered by the Adjudicating Authority are appealable orders, in terms of the mandate of the provision Section 26 of PMLA Act.

4. The learned counsel appearing on behalf of Mr. Dhruv Tiwari, the original petitioner states that they reserve the right to assail the correctness of the said orders passed by the Adjudicating Authority before the Appellate Authority, in accordance with law.

5. In view of the foregoing, the order dated 22.07.2020 impugned in the present appeal has been admittedly rendered *otiose*.

6. The appeal is accordingly allowed and disposed of, whilst reserving liberty to the respondent to initiate appropriate proceedings, in accordance with law, if so advised.

SIDDHARTH MRIDUL
(JUDGE)

TALWANT SINGH
(JUDGE)

October 13, 2020
dn/as

Click here to check corrigendum, if any