IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
Appellate Side

Present:
The Hon'ble Justice Arijit Banerjee
And
The Hon'ble Justice Jay Sengupta

FMAT 36 of 2021
With
CAN 1 of 2021
Nillesh Parrekh
Versus
Assistant Director, Enforcement Directorate, Kolkata & Ors

For the Petitioners : Mr. Ranjan Deb
Mr. Shyamal Sarkar
Mr. Rajesh Gupta
Mr. Meghajit Mukherjee
Ms. Priyanka Sharma

For the Respondent : Mr. Bhaskar Prosad Banerjee

Lastly heard on : 24.03.2021

Judgment on : 10.06.2021

Jay Sengupta, J

1. This appeal is directed against an order dated January 1, 2021 passed by the learned Appellate Tribunal, Prevention of Money Laundering Act, 2002 in Appeal No. FPA-PMLA-3332/KOL/2019, thereby, *inter alia*, holding that the appeal preferred by the Enforcement Directorate, Kolkata, through the Assistant Director, purportedly under section 26 of the Prevention of Money Laundering Act, 2002 (the "PML Act", for short) was maintainable.

2. By an order dated 9th October, 2019, the learned Adjudicating Authority, among other things, held that the defendants therein did not commit the scheduled offences or generate proceeds of crime and hence, the complaint filed against them was dismissed and the provisional attachment order was also not confirmed. Being aggrieved by the order passed by the learned Adjudicating Authority under Section 8 of the PML Act, the Enforcement Directorate, Kolkata filed an appeal through the Assistant Director. The present appellant contended that the Enforcement Directorate was not competent to file such appeal. By an order dated 18th August, 2020, a Division Bench of this Court in an appeal being FMAT 343 of 2020 preferred by the present respondent no. 2, *inter alia,* held that the maintainability point shall be formally raised by the appellant by filing a supplementary affidavit before the Tribunal by 7th September, 2020 and serving copies thereof on the respondents and the Tribunal shall decide the point of maintainability as a preliminary issue. Accordingly, a supplementary affidavit was filed. After hearing the parties, the learned Tribunal passed the impugned order.

3. Mr Deb, learned senior counsel appearing on behalf of the appellant, submitted as follows. Section 26 of the PML Act provides that the Director or any person aggrieved by an order made by the learned Adjudicating Authority under the Act, might prefer an appeal to the Learned Appellate Tribunal. But, Section 48 of the PML Act specified the authorities under the Act and the Enforcement Directorate was not mentioned therein as an authority. The only authority which could file an appeal under Section 26 of the Act was a Director. In fact, the term "person" mentioned in Section 26 is defined in Section 2(s) of the said Act and it does not include the authorities of the Directorate. Therefore, the appeal preferred by the Enforcement Directorate through the Assistant Director was not maintainable. While deciding the issue, the Tribunal erroneously relied on the case of Amarjit Singh alias Billa, 2009 SCC Online Del 995. It failed to consider that in that case the appeal was filed under Section 54 of the Foreign Exchange Regulation Act, 1973, which was not in pari materia with Section 26 of the PML Act. Moreover, in Amarjit Singh (supra), the appeal was filed by the Union of India through the Director of Enforcement. The Union of India was sui juris and section 79 of the Code of Civil Procedure provided for initiation of litigation by the Central government in that matter. The learned Tribunal further erred in placing reliance on the decision of the Hon'ble Apex Court in the case of Sugandhi (Dead) by LRs, (2020) 10 SCC 706, in as much as the observations made therein were because the defendant wanted to file some documents which were left out in the written statement. This was not the case here. Reliance was placed on a decision of the Hon'ble Supreme Court

passed in the case of Opto Circuit India Limited vs. Axis Bank and Ors., reported in 2021 SCC Online SC 55. There it was held that if a statute provided for a thing to be done in a particular manner then it had to be done in that manner alone and in no other manner. Within the scheme of Section 26 of the PML Act, only the Director was empowered to file an appeal and by necessary implication any other authority would be barred. Reliance was also placed on a decision of the Hon'ble Supreme Court in Northern Plastics Ltd vs Hindustan Photo Films Mfg Co Ltd & Ors, (1997) 4 SCC 452.

4. Mr Banerjee, learned counsel appearing on behalf of the Enforcement Directorate, submitted as follows. The case at hand related to a defalcation of Rs. 2672 Crores and apparently involved 25 banks of which five were private ones. The Enforcement Directorate is a specialised financial investigating agency under the Department of Revenue, which enforces the provisions of PML Act. The term "Assistant Director" is defined in Section 2(c) of the said Act. It was duly authorised to act under the PML Act. According to Section 26 (1) of the said Act, the Director or any other person aggrieved by an order is entitled to file an appeal before the learned Tribunal. A harmonious construction was given in order to sub-serve the object of the said Act which was a penal statute and provided for imprisonment of the accused. The adjudication regarding properties involved in proceeds of crime had a different forum, but the said forums were only assisting preservation of proceeds of crime. The said provisions have to be read with Section 48 that specifies the authorities under the said Act. In

terms of Section 68, when the proceedings initiated by the Enforcement Directorate were in consonance with the objects of the said Act, the same could not be called into question on account of some technicalities. Moreover, Section 71 gives an overriding power and declares that the provisions of this Act shall have force notwithstanding anything inconsistent therewith contained in any other law for the time being in force. The Director was undoubtedly the head of the Enforcement Directorate. Therefore, the Director was the authorised officer under the said Act. But, the Assistant Director was also one of the authorities under the said Act. When an order of the learned Adjudicating Authority prejudicially affected the objects of the said Act, it was also the Enforcement Directorate, which was competent and authorised to challenge the said adjudication order before the learned Tribunal. The Assistant Director was acting on behalf of the Government and these officers were the links with the Government and not its delegates. On this, reliance was placed on A. Sanjeevi Naidu and Ors. Vs. State of Madras and Anr, (1970) 1 SCC 443.

5. We heard the learned counsels appearing on behalf of the parties and perused the memorandum of appeal, the impugned judgment and order and the other orders referred to as also the notes of arguments submitted by the parties.

6. The prime contention of the appellant is that in view of Section 26(1) of the PML Act, the Director of the Enforcement Directorate and not the

Enforcement Directorate itself, through its Assistant Director, was entitled to file an Appeal before the learned Tribunal. According to the appellant, the Directorate did not come within the sweep of the word 'person' as defined in section 2(s) of the said Act and as such, it could not file an appeal as an 'aggrieved person'.

7. Section 26(1) of the PML Act provides as follows:

"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".

8. Therefore, even as per Section 26(1) of the said Act, not only the Director but also an aggrieved person may file such an appeal. Thus, it gives a rather expansive definition of an 'appellant'.

9. First, let us explore whether the Enforcement Directorate per se has a right to file an appeal under section 26 of the PML Act even without making use of the expression 'an aggrieved person'.

10. The Enforcement Directorate happens to be the specialised financial Investigating Agency under the Department of Revenue, which is entrusted to enforce the provisions of the PML Act. As such, it will be utterly fallacious to suppose that only the Director would be aggrieved by an order of exoneration and not the Directorate itself. Then, it will be like missing the

woods for the trees. Perhaps the Enforcement Directorate, which is an arm of the State, would be more aggrieved with such an order and thus, be endowed with a better locus than the Director himself for filing the appeal in question.

11. Section 26 is a provision enabling certain entities to file an appeal. In this, so far the Directorate is concerned, the Legislature thought it prudent to specify the Head of the Directorate i.e., the Director as the authority to initiate an appeal. This, however, cannot preclude the Enforcement Directorate itself from preferring an appeal if it decides to do so for some reason. In doing so, the Directorate may fairly be represented by any of its authorities, especially the ones who have been specifically mentioned in section 48 of the Act.

12. Had the appeal been filed by the Assistant Director in his own name instead of by the Director, then a question could have at all arisen about proper adherence to the provisions of section 26 of the Act in filing an appeal. But, when the Directorate itself files the same, whether through the Assistant Director or any other authority as mentioned in the Act itself, it is a substantial compliance of the said provision.

13. Moreover, section 68 of the PML Act espouses a spirit of pragmatism and shuns thwarting actions taken under the said Act merely on the excuse of technicalities.

14. It is germane to notice that although section 42 of the PML Act provides for an appeal by an aggrieved person, appeals galore are filed by the Directorate, even through the Assistant Director, and these are not shut out by Courts on the anvil of section 2 (s) of the Act.

15. Therefore, now we need to delve into the issue of whether the Enforcement Directorate could also invoke the locus of an 'aggrieved person' in filing an appeal under section 26 of the PML Act.

16. Section 2(s) of the PMLA Act, defining the word 'person', albeit by enumerating what it would include, does not render it implausible that it may include the Directorate or any of its authorities within its ambit. It is an inclusive definition and not an exhaustive one.

17. In S K Gupta & Anr vs K P Jain & Anr, (1979) 3 SCC 54, a Three Judges' Bench of the Hon'ble Apex Court, laid down as follows-

"24. The noticeable feature of this definition is that it is inclusive definition and where in a definition clause the word 'include' is used it is so done in order to enlarge the meaning of the words or phrases occurring in the body of the statute and when it is so used, these words or phrases must be construed as comprehending not only such things which they signify according to their natural import, but also those things which the interpretation clause declares that they shall include (see Dilworth v. Commissioner of Stamps)…"

18. The ratio laid down in S K Gupta (supra) was subsequently followed by a Division Bench of the Hon'ble Supreme Court in Ramanlal Bhailal Patel & Ors vs State of Gujarat, (2008) 5 SCC 449 and it was held as under-

"23. The word 'person' is defined in the Act, but it is an inclusive definition, that is 'a person includes a joint family'. Where the definition is an inclusive definition, the use of the words 'includes' indicates an intention to enlarge the meaning of the word used in the statute…"

19. It is true that in the instant case, there is no interpretation clause present to qualify the inclusive definition. However, section 48 of the PML Act, as referred to above, squarely brings an aggrieved entity like the Enforcement Directorate within the ambit of a 'person' as described in section 2 (s) of the Act.

20. Therefore, on both the counts, the Enforcement Directorate should be competent to file an appeal under section 26 of the PML Act.

21. Now, so far as the decision in Opto Circuit India Limited (supra) is concerned, the facts are totally distinguishable from those of the present case. It only pertained to freezing of bank accounts. In any event, the broad ratio that if a statute prescribed doing of a thing in a particular manner,

then it has to be done only in that manner, has not been departed from in this case.

22. The decision in Northern Plastics Limited (supra) is also based on completely different facts. Section 129 A of the Customs Act provided for an appeal against an adjudication order of the Collector of Customs, to be filed by an 'aggrieved person' and not by the departmental authorities themselves. However, there was a safeguard provided to the Revenue in challenging an erroneous order of adjudication before the CEGAT under Section 129-D of the Said Act. It was in this context that the ratio was laid down there. It was, *inter alia*, held that the first respondent/Union of India did not have any locus standi to file such appeal. Therefore, this decision has no manner of application on the question of an appeal under the PML Act.

23. It is, thus, quite indubitably evident from the foregoing discussions that there is no bar on the Enforcement Directorate to file an appeal under section 26 of the PML Act, through the Assistant Director, before the learned Appellate Tribunal.

24. In view of the above, the appeal is dismissed. The interim order granted earlier stands vacated.

25. However, there shall not be any order as to costs.

26. Urgent photostat certified copies of this judgment may be delivered to the learned Advocates for the parties, if applied for, upon compliance of all formalities.

(Jay Sengupta, J)

I agree

(Arijit Banerjee, J)

After delivery of the judgment, Learned Counsel for the appellant prays for a stay of the judgment and order. The prayer is considered and is rejected.

(Jay Sengupta, J)

I agree

(Arijit Banerjee, J)