

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17-06-2021

Coram :

THE HONOURABLE MR. JUSTICE R. SUBBIAH

and

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Review Application No. 21 of 2021 in W.P.No.25231 of 2019

and

Review Application No.22 of 2021 in W.P.No.25177 of 2019

1. M/s.Martin Property Developers Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

2. M/s.Martin Builders Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

3. M/s.Charles Modular Homes Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

4. M/s.Martin Reality Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

5. M/s.Charles Housing Pvt. Ltd.,
Rep. by its Authorised Signatory,

54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

6. M/s.Martin Homes Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

7. M/s.Martin Housing Developers Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029.

8. M/s.Martin Plaza Pvt. Ltd.,
Rep. by its Authorised Signatory,
54, Mettupalayam Road,
G.N.Mill P.O., Coimbatore-641 029

.. Review Applicants in Rev.A.No.21 of 2021

1. A.John Kennedy

2. M/s.Charles Promoters Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.

3. M/s.Daison Construction India Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.

4. M/s.Martin Dwellers Pvt. Ltd.,
Represented by its Director,
G.N.Mill Post, Coimbatore-641 029.

5. M/s.Martin Hi-Tech Constructions Pvt. Ltd.,
Represented by its Director,

54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.

6. M/s.Martin Real Estate Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.

7. M/s.Martin Realcon Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.

8. M/s.Martin Township Developers Pvt. Ltd.,
Represented by its Director,
54, Mettupalayam Road,
G.N.Mill Post, Coimbatore-641 029.

.. Review Applicants in Rev.A.No.22 of 2021 \

Versus

Joint Director
Directorate of Enforcement
Cochin Zonal Office
Kanoos Castle
Mullassery Canal Road West
Cochin-11.

.. Respondent in both Review Applications

Review Application No.21 of 2021 filed under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code (CPC) against the order dated 17.12.2020 passed in W.P.No.25231 of 2019 on the file of this Court.

Review Application No.22 of 2021 filed under Order 47 Rule 1 read with Section 114 of the Civil Procedure Code (CPC) against the order dated 17.12.2020 passed in W.P.No.25177 of 2019 on the file of this Court.

For Review Applicant in Rev.A.No.21 of 2021:
Mr.B.Kumar, Senior Counsel for M/s.R.Murali

For Review Applicant in Rev.A.No.22 of 2021 :

Mr.E.Om Prakash, Senior Counsel for M/s.V.Venkatasamy

For Respondent in both the Review Applications:

Mr.R.Sankara Narayanan,
Addl. Solicitor General of India
assisted by Mr.N.Ramesh, Spl.P.P.

COMMON ORDER

(The Common Order of the Court was made by R.Subbiah, J)

These Review Applications have been filed seeking to review the common order dated 17.12.2020 made in the Writ Petitions in WP Nos. 25177 and 25231 of 2019. The said writ petitions were filed praying to question the validity and/or legality of the registration of Enforcement Case Information Report (ECIR) in proceedings in ECIR.No.KCZO/4/2014, dated 19.08.2014 and consequential Provisional Attachment Order No.02-/2019 (for short, "the PAO") issued in ECIR/04/KCZO/2014/1137, dated 22.07.2019 under Section 5(1) of the Prevention of Money Laundering Act (for short, "PMLA") on the file of the respondent and quash the same.

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2. After elaborate order, this Court dismissed the writ petitions mainly on two grounds namely (i) the review applicants have an effective alternative remedy under Section 8 of The Prevention of Money Laundering

Act and (ii) the High Court of Madras has no territorial jurisdiction, though a minuscule cause of action has arisen within the jurisdiction of this Court and that the Special Court at Kerala is seized of the matter. Therefore, it was held that the Writ Petitions filed before this Court are not maintainable.

3. Now, Mr.Om Prakash, learned Senior Counsel appearing for the review Applicant No. 22 of 2021 submitted that the above reasons of this Court are error apparent on the records. The provisions of the PMLA would show that two different clauses are contemplated under the Scheme of the Act, first one is with regard to the criminal prosecution under Section 3 of the PMLA. Second is with reference to the attachment and confiscation of the property identified under the proceeds of the crime. According to the learned Senior counsel, the procedure(s) in respect of both the processes are apparently different except to the fact that on the decision of conviction by the Special Court, the power of confiscation of the attached property is also provided for.

4. It is further submitted by the learned Senior Counsel that PMLA clearly demarcates the jurisdiction of the Court in respect of both the

processes. So far as offence of money laundering is concerned, the prosecution is only before the Special Court by filing of a complaint. In the event of conviction, the party has a remedy of appeal provided in terms of Code of Criminal Procedure and also to the High Court as could be seen under Section 44 and 47 of PMLA. So far as the attachment of the property is concerned, Section 5 provides provisional order of attachment. Section 16 enables carrying out survey and arriving at a conclusion as regards money laundering. Section 17 provides for search and seizure. Section 18 provides for search on person. According to the learned Senior counsel for the petitioners, the actions to be initiated in terms of Sections 5 or 16 to 18 of the PMLA are confined with the jurisdiction only on the concerned authority where the property is situated. Therefore, the respondent has no jurisdiction to issue Provisional Order of attachment at all since the persons against whom it is issued are residing and/or having registered office at Tamil Nadu and the properties covered under the provisional order of attachment are also situated within the State of Tamil Nadu. Similarly, in all the three instances the filing of original complaint before the Adjudicating Authority under Section 8 of the PMLA is also uniformly provided. As against the decision of the Adjudicating Authority under

Section 8, an appeal remedy is provided to the Appellate Tribunal under Section 26 of the PMLA and a further right of appeal is provided before the concerned High Court under Section 42 of PMLA Act. Interestingly, in this case, the provision to Section 42 of the PMLA clearly states that the High Court having territorial jurisdiction on the property or the place of residence or business of the concerned person alone will determine the jurisdiction of the High Court. Thus, a clear demarcation of jurisdiction is made in respect of criminal proceedings for trying the offence of money laundering and in respect of attachment and confiscation in the nature of civil proceedings vesting the power on different High Courts. Therefore the findings of this Court with regard to territorial jurisdiction is an error apparent on the face of record.

5. The learned Senior Counsel further submitted that the jurisdiction of this Court is also demonstrated by the fact that against the confirmation order of the first provisional order, the Review Applicants filed an appeal before the Appellate Authority under Section 26 of PMLA on the ground that there is a delay in forwarding the copy of the order to the adjudicating authority and it vitiates the order of attachment. The Appellate Court,

accepting the submissions of the Review Applicants, allowed the appeal. Aggrieved against the order, the department filed an appeal under Section 42 of PMLA only before this Court which would show that this Court alone has got the jurisdiction to entertain the writ petition. Hence, the observations made in para No.19 of the order that the jurisdiction vests with the High Court of Kerala is contrary to the stand taken by the respondent in Civil Miscellaneous Appeal filed before this Court.

6. As next fold of submission, the learned Senior counsel for the Review Applicant submitted that this Court dismissed the writ petitions also on the ground that there is an alternative remedy of appeal, which is also an error apparent on the face of record. According to the learned Senior Counsel, Section 8 of PMLA provides for filing of original complaint by the Enforcement Directorate/respondent seeking confirmation of the Provisional Order of Attachment. As such the adjudication provided under Section 8 of PMLA does not provide for examining the legality or impropriety of ECIR or provisional Order of Attachment issued to the Review Applicants. In fact, there is no remedy provided under Section 8 except to the extent pointed above and as provided under sub-sections (2)

and (3) of Section 8 of PMLA. Further, the provisions of the statute do not provide any remedy or adjudication to an aggrieved person to challenge the ECIR. Therefore, there is no alternative remedy at all available to assail the ECIR and the only remedy available is to file the writ petition before this Court.

7. It is further submitted that offence under the PMLA will be triable by the Special Court constituted under PMLA for violation of Section 3 investigated by Enforcement Directorate. It is completely different from the scheduled offence contained under the PMLA such as Section 420 and 120-B of IPC. This Court, in para No.19 of the order under review observed that CBI has filed a final report before the Chief Judicial Magistrate, Ernakulam, Kerala, therefore offence has to be tried only by the Special Court at Kerala. It is pertinent to note that both the parties to the writ petition have not raised a plea about the complaint pending before the Special Court, Kerala under PMLA. Therefore, the observations made in the order under review affects the rights of the petitioners, who have challenged the jurisdiction of the Special Court, Kerala constituted under PMLA, before the Kerala High Court in Criminal Revision Petition Nos. 17

and 33 of 2021, which are pending till date. The Review Applicants have demonstrated that the observations made by this Court in the order passed in the Writ Petitions are error apparent on the face of the record. Therefore, the order passed by this Court is required to be reviewed and the Review Applications have to be allowed.

8. Mr.B.Kumar, learned Senior counsel appearing for the Review Applicant in Review Application No. 21 of 2020 submitted that in para No.19 of the order passed in the writ petitions, this Court has observed that the investigation was done by CBI and final report has been filed before the Chief Judicial Magistrate, Ernakulam at Kerala. It is no doubt CBI investigated the scheduled offence under Sections 420 and 120-B of IPC and the contravention of Lotteries (Regulation) Act. But this observation is not relevant in this case. In Para No.19, this Court also observed that "Therefore the complaint complaining alleged commission of offences under PMLA has to be tried only before the Special Court at Kerala." However, the complaint under PMLA before the Special Court at Kerala and complaint by CBI before the Chief Judicial Magistrate, Ernakulam are entirely different. The complaint filed under PMLA before the Special

Court was not produced before this Court because no argument was addressed by either parties touching upon the same. Therefore, the observations made by this Court in para No.19 to the effect that "the offence under PMLA has to be tried by the Special Court, Kerala" is based on no evidence and arguments. Therefore, the said finding has to be deleted. Thus, the learned Senior counsel sought for reviewing the order passed by this Court in the writ petition.

9. Countering the submissions of the learned Senior counsel appearing for the Review Applications, Mr.R.Sankara Narayanan, learned Additional Solicitor General appearing for the respondent-Enforcement Directorate would submit that the writ petitions were filed challenging the provisional order of attachment (POA) as well as ECIR. Therefore, the question of deleting the findings of this Court in para No.19 does not arise. This Court has considered all the aspects and rendered findings. Absolutely there is no error apparent on the order passed in the writ petitions. The ECIR cannot be challenged before this Court and it has to be challenged only before the High Court of Kerala.

10. According to the learned Additional Solicitor General, Section 3 of the Act deals with offences under PMLA. It is an independent offence and this has to be tried before the Special Court within whose jurisdiction the offence is committed. Section 8 of the Act provides that on conclusion of trial of the offences under this Act, if the Court finds that the offences have been committed, it can order confiscation of assets. Section 8 (3) deals with the cases where the Adjudicating Authority decides that any property is involved in money laundering, he shall by an order in writing confirm the order of the Adjudicating authority made under Section 51 (1) of PMLA. All these aspects have been considered by this Court in the order under review. The Review Applications are nothing but an attempt to re-argue the case and prayed for dismissal of the Review Applications.

11. Heard the submissions of the learned counsel for both sides in detail and perused the materials available on record.

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12. At the outset, it has to be observed that the scope of the Review petition is very limited. The learned Additional Solicitor General appearing for the respondent-Enforcement Directorate submitted that under the guise

of Review, the review applicants are only trying to re-argue the case. Therefore, we are not traversing into the submissions made by the parties.

13. For the purpose of reviewing the matter, the matter has to fall within Order 47 of CPC. In the guise of seeking review, it cannot be re-argued. This Court has dismissed the writ petition on the ground that there is alternative remedy and there is no jurisdiction vested with this Court. If at all the petitioners are aggrieved, an appeal has to be filed against the order passed in the writ petition even if the review applicants feel that the conclusion is erroneous in nature. The Review Applications are nothing but an attempt to re-argue the case, which cannot be permitted.

14. With regard to the appeal in CMA filed by the Department before this Court, it is submitted that Section 42 of the PMLA deal with the appeals to the High Court. It is reiterated that Appeal under Section 42 has its beginning with a provisional order of attachment under Section 5. A confirmation or rejection of the same is provided under Section 42 against which an appeal remedy is provided before the Appellate Authority under Section 26. An order passed by the Appellate Authority is appealable under

Section 42 of the Act before the concerned High Court. The High Court is designed under the explanation to Section 42, which means, the place where the aggrieved party ordinarily resides or carries on business or personally works for gain. The criteria is not the place where the properties are situated and the jurisdiction is person centric and not property centric. If the appeal is filed by the Central Government, then the jurisdiction will be where the respondent resides or carries on business. Thus, Section 42 is purely person centric whereas a writ petition challenging an order passed under Section 5 of PMLA is based on cause of action and not where the person resides. Therefore, the appeal filed under Section 42 of the PMLA will be filed before this Court and this Court has jurisdiction. Such provision cannot be applied for challenging the provisional order of attachment or ECIR in this case. Therefore, we are not inclined to accept the submission made by the Review Applicants.

15. The scope of review application is limited and it cannot be entertained only if there is an error apparent on the face of the record. In this context, we gain strength from the decision of the Honourable Supreme Court in the case of **Kamlesh Verma vs. Mayawati and others**, reported

in (2013) 8 SCC 320, wherein the Supreme Court, after examining various judgments, has laid down the circumstances, as to when the Court can review its own judgments. The relevant portion of the judgment is extracted as under:

"12.This Court has repeatedly held in various Judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only there is an error apparent on the face of record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....."

... ..

"19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XL VII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the Judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned Judgment in the guise that an alternative view is possible under the review jurisdiction.

16. In the light of the above, we refuse to review the order dated 17.12.2020 made in WP Nos. 25177 and 25231 of 2019. Accordingly, the Review Applications are dismissed. No costs.

(R.P.S.J.) (R.P.A..J)

17-06-2021

Index: Yes/no
Speaking Order: Yes

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To

Joint Director
Directorate of Enforcement
Cochin Zonal Office
Kanoos Castle
Mullassery Canal Road West
Cochin-11.

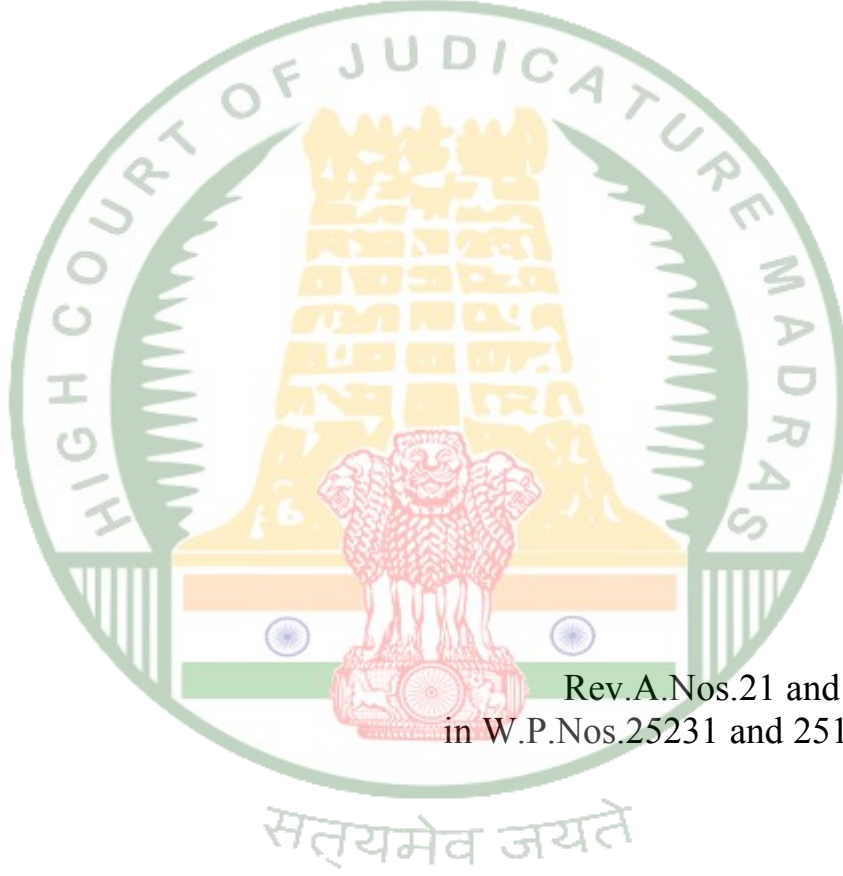


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R.SUBBIAH, J
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