

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.01.2021

Coram

The Hon'ble Mr. Justice P.N.PRAKASH
and
The Hon'ble Mr. Justice V.SIVAGNANAM

W.P.No.10524 of 2020
and W.M.P.Nos.12780 & 12782 of 2020

M/s.Ismail Kamal,
S/o.Mustafa kamal,
Residing at 2, Nadd Al Hammar,
Dubai, UAE.

... Petitioner

Vs.

1.Director of Enforcement,
Represented by its Deputy Director,
Chennai Zonal Office,
Government of India,
Department of Revenue,
2nd and 3rd Floors,
Murugesu Naicker Office Complex,
No.84, Greaves Road,
Chennai - 600 006.

2.The Adjudicating Authority, PMLA,
Room No.26, 4th Floor,
JeevanDheep Building,
Parliament Street,
New Delhi 110 001.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records in connection with PAO No.1/2020 ECIR No.CEZO-1/01/2018 dated 28.02.2020 issued by the 1st respondent under Section 5(1) of the Prevention of Money Laundering Act, 2002 and consequent actions of the 2nd respondent pursuant to the said PAO No.1/2020 dated 28.02.2020 and quash the same.

For Petitioner :Mr.B.Kumar, Senior Counsel
for Mr.S.Krishnakumar

For Respondents:Mr.Rajnish Pathiyil
Special Public Prosecutor (ED)

ORDER

[Order of the Court was made by P.N.PRAKASH, J.]

This petition has been filed seeking to call for the records in connection with PAO No.1/2020 ECIR No.CEZO-1/01/2018 dated 28.02.2020 issued by the 1st respondent under Section 5(1) of the Prevention of Money Laundering Act, 2002 (for brevity "the PML Act") and consequent actions of the 2nd respondent pursuant to the said PAO No.1/2020 dated 28.02.2020 and quash the same.

2. It is seen that the Enforcement Directorate has issued provisional attachment order under Section 5(1) of the PML Act on 28.02.2020 and the same can remain in force for a period of 180 days unless confirmed by the authorities. The period of 180 days expired on 28.08.2020. It is the grievance of the petitioner that, since the authorities have not passed the confirmation order before 28.08.2020, the attachment ceases and therefore, this writ petition should be allowed.

3. Mr.B.Kumar, learned Senior Counsel appearing for the petitioner reiterated the aforesaid submission.

4. However, Mr.Rajnish Pathiyil, learned Special Public Prosecutor (ED) submitted that in view of the order passed by the Supreme Court in suo motu writ petition in W.P.No.3 of 2020 on 23.03.2020 (COVID-19 pandemic), all periods of limitation stands extended and therefore, the aforesaid contention deserves to be rejected.

5. Mr.B.Kumar, learned Senior counsel sought to distinguish the order passed by the Supreme Court by stating that it would not apply to adjudication proceedings.

6. Be that as it may, Section 5 (3) of the PML Act reads as under:

"5. Attachment of property involved in money-laundering:.....

(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 (2) of section 8, whichever is earlier."

7. Whether Section 5(3) would apply to this case or not or whether the order of the Supreme Court in W.P.No.3 of 2020 would apply to adjudication proceedings, is once again a mixed question of law and fact to be determined by the Enforcement Directorate and not by this Court at this juncture. Only after the Enforcement Directorate takes a decision this way or the other, can there be a judicial review of it and not before that.

Hence, this writ petition is closed with liberty to the petitioner to work out his remedy in the manner known to law. No costs. Connected W.M.Ps. are closed and all interim orders passed by this Court stands vacated.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

nsd

To

1.The Deputy Director,
Chennai Zonal Office,
Government of India,
Department of Revenue,
2nd and 3rd Floors,
Murugesu Naicker Office Complex,
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2.The Adjudicating Authority, PMLA,
Room No.26, 4th Floor,
JeevanDheep Building,
Parliament Street,
New Delhi 110 001.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Krishna kumar, sr no.4133
+1cc to Mr.Rajnish pathiyil, sr no.4188

PP (CO)
RMP (22/02/2021)

W.P.No.10524 of 2020

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