28.06.2022
sayandeep
Sl. No. 01
Ct. No. 05

W.P.A. 10984 of 2022

Suman Chattopadhyay and Others

Versus

Directorate of Enforcement,

Government of India and Others.

Mr. Ratnanko Banerji,

Mr. Jishnu Chowdhury,

Mr. Deepon Sarkar,

Mr. I. Hassan,

Mr. Sanket Sarawgi,

Mr. Arjun Mookherjee,

Mr. Subhojit Ghosh.

.........for the petitioners.

Mr. Arijit Chakrabarti

.........for the respondents.

1. The petitioners seek quashing of a provisional order of attachment passed by the Enforcement Directorate (ED) dated 29.03.2022. The petitioners have thereafter been served with a show-cause notice dated 03.06.2022. By the impugned provisional order of attachment, the immovable properties featuring in Schedule-II of the order as well as the movable properties consisting of five

bank accounts belonging to the 1st petitioner and his wife (2nd petitioner) and one Ekdin Media Private Limited have been provisionally attached.

2. The case sought to be made out by the petitioner is that the impugned order is a consequence of the proceedings initiated by the ED against I-Core referred to as the I-Core Group case and that the petitioners are only ancillary parties without any connection to the alleged charges against I-Core. Learned counsel appearing for the petitioners points to the gaps in the impugned order and submits that the requirements of Section 5(1) of The Prevention of Money Laundering Act, 2002 (PMLA) have not been satisfied. Counsel submits that the acquisition of the immovable properties mentioned in Schedule-II of the order were acquired much prior to the initiation of proceedings against I-Core which started in 2017. It is also submitted that no case has been made out for attachment of the petitioners' bank accounts.

3. Learned counsel appearing for the Directorate of Enforcement submits that the 1st petitioner, as the promoter of one Disha Productions and Media Private Ltd. (DPMPL), had received funds from the I-Core Group as also from the Saradha Group and entered into an investment agreement with I-Core

in 2009. It is submitted that the petitioners entered into the agreement with I-Core for the purpose of siphoning off funds from the I-Core Group Companies to DPMPL and that the 1st petitioner, being a reputed Bengali journalist, became the face of I-Core. Counsel opposes the grant of relief as prayed for.

4. The impugned order of provisional attachment dated 29.03.2022 is directed against four immovable properties and five bank accounts of the petitioners. The immovable properties can be divided into i) Flat Nos. 9M and 11H both of Merlin Residency, 26, Prince Anwar Shah Road, Kolkata; ii) Flat Nos. 9F and 9G of Merlin Residency of the same address; and iii) A two-storied house in Santiniketan. The grouping of the properties follows the sequence of the impugned order.

5. With regard to Flat Nos. 9M and 11H, the facts as mentioned are that the petitioner no. 1 received funds from the I-Core Group and entered into an agreement with I-Core on 29.07.2009. DPMPL and ‘Ekdin’ (run by DPMPL) were in a poor financial condition and defaulted on the loan taken from UCO Bank. The petitioners mortgaged Flat No. 9M at this time. I-Core undertook to pay all the financial obligations for running DPMPL on condition that DPMPL transferred 50% of its shares

to the promoters of I-Core which did not take place. I-Core also did not receive any benefit from the investment made in DPMPL. The conclusion arrived at is that:-

"It appears that the said agreement was made to siphon off funds from the I Core Group companies to M/s DPMPL and Sh. Suman Chattopadhyay in lieu of gaining faith of public by the association of I Core Group with Sh. Suman Chattopadhyay, renowned journalist of Bengali Media.

……………………….

So, the funds received by Sh. Suman Chattopadhyay from M/s I Core E Services Ltd. in M/s DPML and in the name of his salary are part of proceeds of crime enjoyed by Sh. Suman Chattopadhyay by his association with ICORE Group".

6. For Flat No. 11 H, the fact narrated is that the petitioners paid one Edmond Finvest Pvt. Ltd. a sum of Rs. 1.30 crores against an unsecured loan of Rs. 1.75 crores. Out of this loan amount Rs. 1.55 crores was used by the 2nd petitioner to purchase Flat No. 11 H in 2018. The conclusion of the ED is that :

"*Thus, the said flat no. 11H, Windsor, Merlin Residency, 26, Prince Anwar Shah Road, Kolkata – 700033, has been purchased in the name of Smt. Kasturi Chattopadhyay by indirect payment out of the proceeds of crime*".

7. Similarly, with regard to Flat Nos. 9F and 9G the factual narration is that the 2nd petitioner was a Director in DPMPL and Ekdin Media Pvt. Ltd. along with the petitioner no. 1 but did not take part in any financial decisions. After DPMPL was sold out, Ekdin Media was the only company of the first two petitioners. Flat No. 9M was sold for Rs. 1.20 crores in October, 2020 and the said funds were used to make payments to Edmond Finvest against the loan taken by the 2nd petitioner from Edmond. Flat No. 11 H was purchased in May, 2018 for an amount of Rs. 1.55 crores. Flat Nos. 9F and 9G, being used as one unit, were purchased by the 1st petitioner in the name of his wife and daughter. There is no specific finding arrived at in respect of Flat Nos. 9F and 9G.

8. With regard to the Santiniketan property, it is recorded that the property was purchased in August, 2016 from one Prabir Chowdhury for Rs. 30 lacs from the sale proceeds of another flat at Sonar Tori Complex in Santiniketan. The earlier Flat was purchased for Rs. 30 lacs and the present flat which was bought in 2016 is now being occasionally used by the family. This is the conclusion from the narration of facts :

> *"AND WHEREAS, in lieu of the proceeds of crime acquired by Sh. Suman Chattopadhyay and his*

company M/s DPMPL by his association with ICORE Group, so far, the assets of Sh. Suman Chattopadhyay and Smt. Kasturi Chattopadhyay, as mentioned in the schedule-I & II below, have been identified as liable to be attached".

9. The general conclusion in respect of the immovable properties is that proceeds of crime have been siphoned off from the I-Core Group to the 1st petitioner and DPMPL for over a decade and has been concealed/changed in form. The order records that *"…now it is barely possible to track down the trail of the whole POC from the complex web of account transactions".*

10. There are no independent factual findings for the five bank accounts which have been provisionally attached.

11. The narration of facts and the conclusions arrived at with regard to the 'proceeds of crime' acquired by the petitioners show a singular absence of a causal connection between the two. The findings under each head of immovable property (except Flat Nos. 9F and 9G where there is no finding) is that the petitioners acquired 'proceeds of crime' from their association with I-Core Group. The order also records that the 'proceeds of crime' have been identified and are therefore liable to be attached. The finding is also that the petitioners

have acquired property by indirect payment out of the 'proceeds of crime'.

12. Section 2(1)(u) of the PMLA defines *"Proceeds of Crime"* as *any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.* The explanation to the definition classifies that 'proceeds of crime' would include property not only derived from the scheduled offence, but any property which may indirectly or directly be derived as a result of any criminal activity relatable to the scheduled offence.

13. Under section 5(1), a person must be in possession of any 'proceeds of crime', which is likely to be concealed, transferred or dealt with in a manner which may result in frustrating any proceedings relating to confiscation of such 'proceeds of crime'. The provisional attachment of property being 'proceeds of crime' has also to fulfill the requirement under 5(1) of the designated officer having reasons to believe that the person is actually in possession of any 'proceeds of crime' and may conceal or transfer such property and recording the reasons in writing. If 5(1) is read with 2(1)(u), the

designated authority must also record in writing the reasons for believing that the property in possession of a person fulfills the criteria of the definition of ‘proceeds of crime’. Hence the reasons to believe reduced to writing must also indicate that the property in possession of the person has been derived from direct or indirect means as a result of criminal activity relatable to a scheduled offence where the property held remains within the country

14. The chain of “reasons to believe” expressed in writing must hence indicate in specific terms that

a) the authority is the designated authority under 5(1);

b) that the Officer/authority has reasons to believe the existence of certain facts under 5(1)(a) and (b);

c) such reasons are recorded in writing;

d) the person proceeded against is in possession of any ‘proceeds of crime’

e) the ‘proceeds of crime’/ the property in question is derived directly or indirectly by the person as a result of criminal activity relating to a scheduled offence;

f) the property is likely to be concealed or transferred or dealt with in a manner which may frustrate the proceedings relating to confiscation of the property, subject to the property being 'proceeds of crime'.

15. Notably, both the requirements of "reason to believe" in respect of the person in possession of 'proceeds of crime' and the likelihood of the 'proceeds of crime' being transferred are required to be fulfilled independent of and in conjunction since 5(1)(a) and (b) are non-disjunctive. The requirement is also of the writing of reasons making out a case, in fact and evidence, that there is a real likelihood of the person who is in possession of the 'proceeds of crime' taking steps to frustrate the proceedings by dealing with the property or transferring the same. This is further reinforced by the 2nd proviso to 5(1)(b) which requires that any property of any person may be attached under section 5 if the designated officer has reason to believe and records the same in writing on the basis of the materials in his possession that the property involved in money laundering needs to be immediately attached.

16. The impugned order in the present case falls short on several counts including those stated above. Besides the lack of a factual nexus between the acquisition of the immovable property and the

identification of the property as 'proceeds of crime', there is also no reference to the property being derived from any direct or indirect criminal activity relating to a scheduled offence. There is also a stark absence of the basis of any apprehension of risk that the property may be wasted or dealt with in a manner so as to render the "proceedings" under 5(1)(b) infructuous. The general conclusion in paragraph 11 of the impugned order is that the petitioners will frustrate further proceedings.

17. This conclusion by no means fulfills the mandate of 5(1)(b) and the 2nd proviso thereunder. The impugned order does not state with factual precision or otherwise that the petitioners are attempting to or have attempted to transfer the alleged 'proceeds of crime' outside the reach of the ED. The tenuous link between the factual narration and the findings would further be evident from paragraph 10 of the impugned order which contains an admission of sorts;

"*AND WHEREAS, upon careful examination of the material/evidences placed before me, as discussed in paras supra, I have reasons to believe that the proceeds of crime in the form of immovable properties and balance lying the bank accounts, as detailed in para 10 above, if not attached immediately under Section 5(1) of Chapter III of the PMLA 2002, non-attachment of the* *same is likely to frustrate further proceedings under this Act*".

18. If there is a complex web at all, the trail of money / 'proceeds of crime' must keenly be re-traced to the source with specific instances of the money transferred and concealed in successive stages of the transactions. There is no indication of any such money-trail and least of all a believable culpability of the petitioners in that complex web of transactions. The proceedings started with I-Core which remained the primary target. The petitioners are but ancillary to the investigation and are at the periphery of the web, if at all. The unbroken link from I-Core money → petitioners' → acquisition of properties → criminal activity → 'proceeds of crime' → danger of transfer has not been established.

19. The factual narration containing random statements of facts cannot satisfy the requirement of reasons to believe being recorded in writing. Although, *Opto Circuit India Limited vs Axis Bank; (2021) 6 SCC 707* deals with a case under section 17 of the PMLA, with regard to freezing of property the Supreme Court places emphasis on the safeguards built into the PMLA for protecting the rights of persons who are at the receving end of the proceedings. *Tofan Singh vs State of Tamil Nadu;*

(2021) 4 SCC 1 also dwelt on the significance of the "reason to believe" requirement before conducting any search and seizure by the authority. The Supreme Court relied on *A.S. Krishnan vs State of Kerala; (2004) 11 SCC 576* and placed the expression "reason to believe" between 'suspicion or doubt' and 'knowledge' in the hierarchy of the possibilities of the state of mind. "Reason to believe" was explained when a person has 'sufficient cause to believe that thing but not otherwise'.

20. Having regard to all the facets of the impugned order of attachment which have been challenged in this writ petition, this Court is accordingly of the considered view that the impugned order of attachment fails to fulfill the requirements of the relevant provision of the PMLA and should hence be quashed.

21. WPA 10984 of 2022 is disposed of in terms of the above.

Urgent Photostat certified copies of this order, if applied for, be supplied to the respective parties upon fulfillment of requisite formalities.

(**Moushumi Bhattacharya, J.**)