

IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
(Appellate Side)

Reserved on: 17.11.2022
Pronounced on: 12.12.2022

MAT 1222 of 2022
With
CAN 1 of 2022

Directorate of Enforcement & Ors.

...Appellants

-Vs-

The Union of India and Ors.

...Respondents

Present:-

Mr. Phiroze Edulji,
Ms. Anamika Pandey,
Ms. Amrita Pandey, Advocates

... for the appellants

Mr. S.K. Tiwari, Advocate

...for the Union of India

Mr. Sudip Deb,
Mr. Riju Ghosh,
Mr. Sunitava Chakraborty,
Mr. Aranyak Saha,
Ms. Sayanika De, Advocates

...for the respondent nos. 3 & 4

Coram: THE HON'BLE JUSTICE PRAKASH SHRIVASTAVA,
CHIEF JUSTICE

THE HON'BLE JUSTICE RAJARSHI BHARADWAJ,
JUDGE

Prakash Shrivastava, CJ:

1. This intra-court appeal is at the instance of the Enforcement Directorate challenging the order of the learned Single Judge dated 27th of June, 2022 whereby WPA 9699 of 2022 filed by the respondent nos. 3 and 4 herein (writ petitioners) has been allowed and the provisional attachment order dated 30th of September, 2021 has been set aside with all consequential benefits.

2. The respondent nos. 3 and 4 had filed the writ petition with the plea that respondent no. 3 is one of the directors of M/s. HAP Garments Private Limited and M/S. K.P. Garments Private Limited and the respondent no. 4 is a silent director of M/s. K.P. Garments Private Limited. The appellant no. 1, Directorate of Enforcement, had registered an Enforcement Case Information Report (ECIR) being ECIR No. ECIR/06/KLZO/2021 dated 17th of February, 2019 against the respondent nos. 3 and 4 and their companies on the basis of the First Information Report (FIR) registered by Central Bureau of Investigation (CBI) against them. The provisional attachment order dated 30th of September, 2021 was passed under the provisions of The Prevention of Money-Laundering Act, 2002 (for short, 'PMLA'). The show-cause notice dated 18th of November, 2021 was issued to the respondent nos. 3 and 4, who had submitted their reply on 3rd of January, 2022. The respondent nos. 3 and 4 took the plea in the petition that 180 days mandatory period for confirmation of the provisional attachment order had expired on 31st of March, 2022 and before that, the competent authority had failed to pass any formal order of confirmation or extension of validity of the provisional attachment order dated 30th of September, 2021, therefore, the authority had become *functus officio*. In the writ petition filed on 26th of May, 2022, a prayer was made to set aside the provisional order of attachment and the original complaint being OC No. 1550 of 2021 and ECIR being ECIR/06/KLZO/2020.

3. The respondent nos. 3 and 4 have succeeded before the learned Single Judge.

4. Submission of learned counsel for the appellants is that the appellants were not permitted to file the affidavit-in-opposition before the learned Single Judge and the writ petition was decided on the first date itself. He further submits that by virtue of the order passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No. 3/2020 extending the period of limitation, the 180 days period prescribed under Section 5 of the PMLA also got extended. He has also submitted that learned Single Judge has set aside not only the order under Section 5 of the PMLA but also the consequential proceedings including the proceedings under Section 8 of the PMLA which are independent proceedings.

5. Learned counsel for the respondent nos. 3 and 4 opposing the appeal has submitted that opportunity of hearing was given before the learned Single Judge and that the writ petition was not decided on the first date. He further submits that the order of the Hon'ble Supreme Court passed in SMW (C) No. 3 of 2020 extending the period of limitation will not apply to the proceedings under Section 5 of the PMLA. He has also supported the order of the learned Single Judge granting consequential relief.

6. Learned counsel for the respondent nos. 1 and 2, Union of India, has supported the contention of the learned counsel for the appellants.

7. We have heard the learned counsels for the parties and perused the record.

8. The first question which arises for consideration is as to whether the period of validity of 180 days prescribed for the provisional attachment order under Section 5(1) of the PMLA will get

extended by virtue of the orders passed by the Hon'ble Supreme Court in SMW (C) No. 3 of 2020. (In Re: Cognizance for Extension of Limitation).

9. Section 5 of the PMLA deals with the attachment of property involved in money laundering. Section 5(1) of the PMLA provides for passing the provisional order of attachment for the specified period of 180 days and reads as under:

“(1) Where the Director or any other officer not below the rank of Deputy Director authorized by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that –

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under Section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorized to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately

under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.”

10. In terms of sub-section (3) of Section 5 of the PMLA, the provisional order of attachment passed under sub-section (1) ceases to have effect after 180 days or on passing the order under Section 8(3) of the PMLA, whichever is earlier. Sub-section (3) of Section 5 reads as under:

“(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 (3) of Section 8, whichever is earlier”

11. In the present case, undisputedly the order of provisional attachment under Section 5(1) of the PMLA was passed on 30th of September, 2021. 180 days period from the date of order was over on 31st of March, 2022. Before the expiry of 180 days, no order was made under Section 8(3) of the PMLA. Hence, on these undisputed facts, the provisional order of attachment had expired on 31st of March, 2022.

12. By virtue of the orders passed by the Hon’ble Supreme Court from time to time in SMW (C) No. 3 of 2020, the period of limitation has been extended for instituting certain proceedings on account of COVID-19 pandemic by excluding the period from 15th of March, 2020 to 28th of February, 2022 and further granting the limitation of 90 days from 1st of March, 2022. Hon’ble Supreme Court initially had passed the order dated 23rd of March, 2020 passed in

SMW (C) No. 3 of 2020 reported in **(2020) 19 SCC 10** to the following effect:

“This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/ applications/ suits/ appeals/ all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March, 2020 till further order/s to be passed by this Court in present proceedings.”

13. A perusal of the above order reveals that the period of limitation was extended on account of the difficulties faced in filing petitions, applications, suits, appeals and all other proceedings during the pandemic. By the order dated 8th of March, 2021, the period was extended by the Hon’ble Supreme Court by observing as under:

“2.....

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29A of The Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

14. By the order dated 10th of January, 2022, the earlier order dated 23rd of March, 2020 was restored and it was directed that the period from 15th of March, 2020 to 28th of February, 2022 shall stand excluded for the purpose of limitation. The said order dated 10th of

January, 2022 reported in **(2022) 3 SCC 117** takes note of the object of the initial order as under:

“1. In March 2020, this Court took suo motu cognizance of the difficulties that might be faced by the litigants in filing petitions/applications/suits/appeals/all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the Covid-19 Pandemic.”

15. Learned counsel for the appellants has placed reliance upon paragraph 5 of the order reported in **(2022) 3 SCC 117** which reads as under:

“5. Taking into consideration the arguments advanced by the learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of MA No. 21 of 2022 with the following directions:

5.1. The order dated 23-3-2020 is restored and in continuation of the subsequent orders dated 8-3-2021, 27-4-2021 and 23-9-2021, it is directed that the period from 15-3-2020 till 28-2-2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

5.2. Consequently, the balance period of limitation remaining as on 3-10-2021, if any, shall become available with effect from 1-3-2022.

5.3. In cases where the limitation would have expired during the period between 15-3-2020 till 28-2-2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1-3-2022. In the event the actual balance period of limitation remaining, with effect from 1-3-2022 is greater than 90 days, that longer period shall apply.

5.4. It is further clarified that the period from 15-3-2020 till 28-2-2022 shall also stand excluded in computing the periods prescribed under Sections 23(4) and 29-A of the Arbitration and Conciliation Act, 1996, Section 12-A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of

the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

16. Learned Single Judge has duly taken note of the aforesaid orders and has rightly found that the period of limitation was extended for instituting a suit, filing a claim/counter-claim or an application in furtherance of the remedy provided under the statute.

17. Hon’ble Supreme Court in the matter of **S. Kasi vs. State through The Inspector of Police Samaynallur Police Station, Madurai District** reported in **2022 SCC OnLine SC 529** while considering the issue of applicability of the above orders passed in SMW (C) 3 of 2020 on the limitation prescribed for filing a charge-sheet by police under Section 167(2) of Cr.P.C. has found that the benefit of extending limitation provided in the Suo Motu Writ Petition is not applicable in such proceedings. Hon’ble Supreme Court in the matter of **S. Kasi (supra)** has held that:

“17. The limitation for filing petitions/applications/suits/appeals/all other proceedings was extended to obviate lawyers/litigants to come physically to file such proceedings in respective Courts/Tribunals. The order was passed to protect the litigants/lawyers whose petitions/applications/suits/appeals /all other proceedings would become time barred they being not able to physically come to file such proceedings. The order was for the benefit of the litigants who have to take remedy in law as per the applicable statute for a right. The law of limitation bars the remedy but not the right. When this Court passed the above order for extending the limitation for filing petitions/applications/suits/appeals/all other proceedings, the order was for the benefit of those who have to take remedy, whose remedy may be barred by time because they were unable to come physically to file such proceedings. The order dated 23.03.2020 cannot be read to mean that it ever intended to extend the period of

filing charge sheet by police as contemplated under Section 167(2) of the Code of Criminal Procedure. The Investigating Officer could have submitted/filed the charge sheet before the (Incharge) Magistrate. Therefore, even during the lockdown and as has been done in so many cases the charge-sheet could have been filed/submitted before the Magistrate (Incharge) and the Investigating Officer was not precluded from filing/submitting the charge-sheet even within the stipulated period before the Magistrate (Incharge).

18. If the interpretation by learned Single Judge in the impugned judgment is taken to its logical end, due to difficulties and due to present pandemic, Police may also not produce an accused within 24 hours before the Magistrate's Court as contemplated by Section 57 of the Code of Criminal Procedure, 1973. As noted above, the provision of Section 57 as well as Section 167 are supplementary to each other and are the provisions which recognises the Right of Personal Liberty of a person as enshrined in the Constitution of India. The order of this Court dated 23.03.2020 never meant to curtail any provision of Code of Criminal Procedure or any other statute which was enacted to protect the Personal Liberty of a person. The right of prosecution to file a charge sheet even after a period of 60 days/90 days is not barred. The prosecution can very well file a charge sheet after 60 days/90 days but without filing a charge sheet they cannot detain an accused beyond a said period when the accused prays to the court to set him at liberty due to non-filing of the charge sheet within the period prescribed. The right of prosecution to carry on investigation and submit a charge sheet is not akin to right of liberty of a person enshrined under Article 21 and reflected in other statutes including Section 167, Cr.P.C. Following observations of Madras High Court in the impugned judgment are clearly contrary to the order dated 23.03.2020 of this Court:—

“...The Supreme Court order eclipses all provisions prescribing period of limitation until further orders. Undoubtedly, it eclipses the time prescribed under Section 167(2) of the Code of Criminal Procedure also...”

18. Hon'ble Supreme Court in the above judgment has clearly noted in suo motu petition that the order was passed for extending the limitation for filing petitions/applications/suits/appeals and all other

proceedings and the order was for the benefit of those who wanted to take remedy, whose remedy were barred by time because they were unable to come physically to file such proceedings. Hon'ble Supreme Court has clearly laid down that the order passed in Suo Motu petition dated 23rd of March, 2020 never meant to curtail any provisions of the Cr.P.C. or any other statute which was enacted to protect personal liberty of a person.

19. Considering the provisions contained under Section 5(1) and 5(3) of the PMLA in the light of the above pronouncement, it is found that Section 5(1) does not relate to filing of any pleading but relates to the period of validity of the order of attachment. By virtue of Section 5(3) of the PMLA, the order of attachment under Section 5(1) ceases to have effect on expiry of the prescribed period. Thus, for such a provision, the order of the Hon'ble Supreme Court passed in SMW (C) No. 3 of 2020 extending the period for filing the pleading will not apply.

20. Learned counsel for the appellants has placed reliance upon the order of the Hon'ble Supreme Court dated 9th of May, 2022 passed in **SLP (C) No. 2522 of 2022** in the case of **Babasaheb Raosaheb Kobarne & Anr. vs. Pyrotek India Private Limited & Ors.** but that was a case relating to condonation of delay in filing the written statement, therefore, it was squarely covered by the order of the Hon'ble Supreme Court in SMW (C) No. 3 of 2020. He has also placed reliance upon the view of the learned Single Bench of this Court in the order dated 2nd of July, 2021 passed in **WPA 10728 of 2021** in the matter of **Rajendra Kumar Murarka vs. Mohsina Tabassum & Ors.**, but that order is an interlocutory order, therefore,

the view expressed therein is only tentative view. Against that order, MAT 627 of 2021 was preferred before the Division Bench and the Division Bench by order dated 22nd of September, 2021 had disposed of the appeal by taking note of the fact that the learned Single Judge would be deciding the petition after filing of affidavits and that any decision of the adjudicating authority would abide by the result of the writ petition. Hence, no benefit can be extended to the appellants on the basis of the said order. Learned counsel for the appellants has also placed reliance upon the order of the Division Bench dated 23rd of November, 2021 in **MAT 1168 of 2021** the matter of **Adjudicating Authority (PMLA) & Anr. vs. Sh. Gobinda Das & Ors.**, wherein the Division Bench took the view that the appellant is a litigant. The fact of the case reveals that in that case, the hearing was concluded by the adjudicating authority and final order was passed but no appeal was preferred. Against this order, **SLP (C) No. 921 of 2022** in the matter of **Gobinda Das & Ors. vs. Adjudicating Authority (PMLA) & Ors.** was preferred and Hon'ble Supreme Court had disposed of the Special Leave Petition by order dated 28th of February, 2022 by taking note of the fact that eventually, the final attachment order was passed on 9th of November, 2021 and that the observation relating to vacating of finding of the learned Single Judge that the appellant is a non-litigant had no bearing on the proceedings against final attachment. Hence, the said matter stands on altogether different footing.

21. Learned counsel for the appellants has also placed reliance upon the order of the learned Single Bench of the Delhi High Court dated 18th of May, 2022 passed in **W.P. (C)-IPD 4/2022 & Review Pet. 102 of 2011** in the matter of **Dr. Reddys Laboratories Limited**

vs. Controller General of Patents Designs and Trademarks and connected matters but that was a case relating to extension of limitation for filing the opposition to trademark application, hence, covered by the order of the Hon'ble Supreme Court passed in SMW (C) No. 3 of 2020. He has also placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of **Prakash Corporates vs. Dee Vee Projects Limited** reported in (2022) 5 SCC 112 but that was also a case relating to extension of period for filing the written statement, hence, covered by the order of the Hon'ble Supreme Court in SMW (C) No. 3 of 2020.

22. In view of the above analysis, we find that the learned Single Judge has not committed any error in reaching to the conclusion that the benefit of extended period of limitation by virtue of the orders passed by the Hon'ble Supreme Court from time to time in SMW (C) No. 3 of 2020 will not be available for extending the validity period of provisional attachment order under Section 5(1) of the PMLA. Hence, learned Single Judge has rightly set aside the provisional attachment order.

23. The next question raised by the learned counsel for the appellants is as to whether learned Single Judge is justified in granting all consequential benefits on setting aside the provisional attachment order as a result of which the proceedings under Section 8 of the Act have also been set aside.

24. Section 8 of the PMLA relates to the adjudication of complaint under Section 5 or applications under other provisions of the Act. Hon'ble Supreme Court in the matter of **Kaushalya Infrastructure Development Corporation Limited vs. Union of**

India and Another reported in **2022 SCC OnLine SC 531** has considered the scheme of Section 5 and 8 of the PMLA. In that case provisional attachment order under Section 5(1) of the PMLA was quashed by the High Court and the same issue relating to its impact on the proceedings under Section 8 of the PMLA had arisen and the Hon'ble Supreme Court held that :

“6. In other words, the fact that the petitioner has succeeded in persuading the High Court to quash the provisional attachment order passed by the appropriate authority under Section 5(1) of the Act, will in no way impact the adjudication process initiated before the adjudicating authority, which must proceed on its own merits in accordance with law.”

25. Hence, the issue stands concluded by the aforesaid judgment of the Hon'ble Supreme Court and therefore, setting aside of the order under Section 5(1) of the PMLA will not affect the adjudication proceedings under Section 8 of the PMLA.

26. Learned counsel for the appellants placing reliance upon the judgment of the Hon'ble Supreme Court in the matter of **State of Maharashtra and Others vs. Greatship (India) Limited** reported in **2022 SCC OnLine SC 1262** has also submitted that alternate remedy was available, therefore, writ petition was not maintainable but in the said judgment of the Hon'ble Supreme Court, the issue of maintainability of the writ petition arose as the petition was filed against the order of assessment. That apart, a perusal of the impugned order passed by the learned Single Judge does not indicate that the issue of availability of alternate remedy was raised.

27. So far as the submission of the learned counsel for the appellant that the learned Single Judge has passed the order in the first hearing itself without giving an opportunity to the appellants to file

the writ statement, learned counsel for the respondents has produced the proceedings dated 16th of June, 2022, 20th of June, 2022, 22nd of June, 2022 and 23rd of June, 2022 before the learned Single Judge in WPA 9699 of 2022 which reveal that the petition as heard by the learned Single Judge at least on four occasions in the presence of the learned counsel for the appellants. None of these proceedings contain any request on behalf of the learned counsel for the appellants to file affidavit-in-opposition. Learned Single Judge has heard the learned counsel for the appellants and thereafter, passed the impugned order. Hence, this Court does not find any substance in the argument of learned counsel for the appellants in this regard.

28. In the aforesaid circumstances, we are of the opinion that the learned Single Judge has committed no error in setting aside the provisional attachment order dated 30th of September, 2021 but has committed an error in allowing the petition with all consequential benefits, the effect of which is that the proceedings under Section 8 of the PMLA have also come to an end.

29. Hence, we set aside the order of the learned Single Judge granting all consequential relief and affirm the remaining order.

30. The appeal is accordingly disposed of.

(PRAKASH SHRIVASTAVA)
CHIEF JUSTICE

(RAJARSHI BHARADWAJ)
JUDGE

Kolkata
12.12.2022

PA(RB)

(A.F.R./N.A.F.R.)