IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.13670 of 2022

Soumendra Nandan Dasmohapatra & Anr.	....	***Petitioner(s)***
		Mr. S. Mohanty, Advocate

-versus-

Enforcement Directorate, Govt. of India, BBSR & Ors.	....	***Opposite Party(s)***
		Mr. B. Nayak, Standing Counsel for O.Ps.1 & 2

CORAM:
JUSTICE BISWANATH RATH

ORDER
11.07.2022

Order No.

05. **1.** This Writ Petition involves the following prayer :-

> "Under the aforesaid facts and circumstances of the case, it is, therefore, most humbly prayed that this Hon'ble Court may be graciously pleased to issue Rule-Nisi calling upon the Opp. Parties to show cause as to why a writ in the nature of certiorari and/or mandamus shall not be issued quashing the proceeding initiated pursuant to Annexure-2, 3 and 8 series and directing the Opp. Party No.1 & 2 to defreeze the above Bank account as mention in the Annexure-8, Series.
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> And if the Opp. Parties or any one of them fail to show cause or show insufficient cause, the said Rule may be made absolute;
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> And the Hon'ble Court may also pass any other appropriate order / orders in the facts and circumstances of the case;"

This Court here finds, the writ petition involves two fold prayer; one for quashing the proceeding pursuant to Annexures-2, 3 & 8 (series) and the second one for de-freezing the Bank account.

2. Sri Mohanty, learned counsel for the Petitioners taking this Court to different provisions in the Prevention of Money-Laundering Act, 2002 (hereinafter in short be reflected as "the Act, 2002") particularly to the Section 5, 8 & 17 therein attempted to bring home the allegation of non-compliance of requirements therein by the Director involved therein in issuing the impugned order at Annexure-8 at page 69 of the brief and the consequential notice to the Bank and accordingly sought for quashing of both while also making prayer for a direction to the Bank authority for at least release of some amount from the freezed account of the Petitioners for them and their families utilization for minimum sustenance. Sri Mohanty, learned counsel for the Petitioners also takes reliance of a judgment of the Hon'ble apex Court in the case of ***Opto Circuit India Ltd.*** *Vs.* ***Axis Bank and Ors.*** reported in AIR 2021 SC 753 to support his case.

3. Sri Nayak, learned counsel appearing for the contesting Opposite Party Nos.1 & 2 in his submission submitted that looking to the stage of the proceeding the writ petition seems to be premature and thus requested this Court for dismissing the writ petition.

4. From the nature of proceeding undertaken pursuant to Annexure-8 page 69 of the brief, this Court finds, this document is in shape of attachment of property of the Petitioners upon prima facie opinion of existence of offence under the provisions of the Act, 2002 and Annexures-2 & 3 are all consequential outcomes pursuant to development through Annexure-8.

5. For the respective parties arguing through the provisions at Section 5, 8, 17 & 20 of the Act, 2002, this Court takes into account the relevant provisions for this purpose, which reads as follows:-

> "**5. Attachment of property involved in money-laundering**.— [(1) Where the Director or any other officer not below the rank of Deputy Director authorised 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—
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> (a) any person is in possession of any proceeds of crime; and
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> (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:
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> 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 authorised 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 or complaint has been made or filed under the corresponding law of any other country:
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> Provided further that, notwithstanding anything contained in 1[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.]
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> (2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(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.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

8. Adjudication.—(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an 1 [offence under section 3 or is in possession of proceeds of crime], it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized 2 [or frozen] under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after—

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the

attachment of the property made under subsection (1) of section 5 or retention of property or [record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall—

(a) continue during the pendency of the proceedings relating to any [offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and]

[(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the 5 [Special Court];]

"**17. Search and seizure –** (1) Where [the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person –

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money – laundering, or

(iii) is in possession of any records relating to money-laundering, [or]

[*(iv)* is in possession of any property related to crime,] then, subject to the rules made in this behalf, he may authorize any officer subordinate to him to-

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;

(b) break open the lock of any door, box, locker, safe almirah or other receptacle for exercising the powers conferred by clause (*a*) where the keys thereof are not available;

(c) seize any record or property found as a result of such search;

(d) place marks of identification on such record or [property, if required or] make or cause to be made extracts or copies therefrom;

(e) make a note or an inventory of such record or property;

(f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

[Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person, authorized to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer authorized to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being head of the officer or Ministry or Department or Unit, as the case may be, or any other officer who may be authorized by the Central Government, by notification, for this purpose.]

[(1-A) Where it is not practicable to seize such record or property, the officer authorized under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of section 8 or section 58-B or sub-section (2-A) of section 60, it becomes practical to seize a frozen property, the officer authorized under subsection (1) may seize such property.]

(2) The authority, who has been authorized under sub-section (1) shall, immediately after search and seizure, [or upon issuance of a freezing order] forward a copy of the reasons so recorded alongwith material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorization referred to in sub-section (1) shall be required for search under this sub-section.

[(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1-A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1-A), before the Adjudicating Authority.]"

> **[20. Retention of Property.** – (1) Where any property has been seized under section 17 or section 18 or frozen under sub-section (1-A) of section 17 and the officer authorized by the Director in this behalf has , on the basis of material in his possession, reason to believe (the reason for such belief to be recorded by him in writing) that such property is required to be retained for the purpose of adjudication under section 8, such property may, if seized, be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day on which such property was seized or frozen, as the case may be.
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> (2) The officer authorized by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in sub-section (1), to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.
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> (3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property beyond the said period."

6. Reading the aforesaid provisions this Court finds, the Chapter-II therein deals with offence of Money Laundering. Section 5 coming under Chapter III provides power to the Director or any other Officer competent not below the rank of Deputy Director for the reasons recorded in working on the basis of material in his possession, varieties of acting including attachment of such property for a period not exceeding one hundred and eighty days from the date of order and in the manner prescribed. This, however, provided, no order of attachment shall be made unless in relation to schedule offence, unless a report has been forwarded to a Magistrate U/s.173 of the Cr.P.C or at least a complaint has been filed by person authorized to investigate the offence mentioned in that schedule before a Magistrate or Court for taking cognizance of schedule offence as the case may be. However second proviso gives further power to the Director or person authorized not withstanding anything contend that in 1st proviso may attach such property under this section if he 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.

7. Sub-section-2 therein provides power to such Officer making attachment who shall immediately after at least under Sub-section (1) forward a copy of order, alongwith the materials in his possession to the Adjudicating Authority in a sealed cover in the manner as may be prescribed.

8. Sub-section 5 therein provides the Director or other Officer provisionally attaches any property U/s.5 (1) shall within a period of thirty days from such attachment file a complaint stating the facts of such attachment before the Adjudicating Authority.

9. Section 8 deals with power of adjudication of complaint by the Adjudicating Authority, but however, providing opportunity to the person concerned U/s.8(2) of the Act, 2002 the Adjudicating Authority in consideration of reply of the person concerned to take a call on which of the property liable for final attachment. Similarly the provision taken note U/s.20 of the Act, 2002 provides, retention of property has to wait for expiry of period prescribed and if no final order of attachment is passed to get return of the property seized. As appears from Annexure-8 the proceeding is still in U/s.17(A) of the Act, 2002 stage and prayer so far it relates to take-out the proceeding U/s.17(A) of the Act, 2002 and the consequential freezing order of attachment to Annexure-8, for not passing of time fixed through the provision at Section 5 and 8 as well, cannot be considered at this stage of the matter. Surprisingly the Petitioners even not filed their objection to the notice vide Annexure-8. For leaving no scope for considering the validity of the notice vide Annexure-8 for its prematureness, this Court dealing with the ultimate prayer of the Petitioners for de-freezing the amount involving the notice under Annexures-2(series) & 3, since finds, the development through Annexures-2(series) & 3 since not arising out of the subject involving Section 17(1-A) of the Act, 2002, the notice at Annexure-8 (series) cannot be considered in the present proceeding.

10. Petitioners, if, have any cause of action involving Annexures-2 & 3 still surviving, they have the liberty to bring the same in appropriate proceedings.

11. The writ petition stands disposed of.

(Biswanath Rath)
Judge

Ayaskanta Jena