

Meena

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 365 OF 2019

WITH

STM NO. 3995 OF 2019(F)

WITH

STM NO.2509 OF 2019(F)

WRIT PETITION NO. 365 OF 2019

CHETAN DESAI

...Petitioner

VS

ENFORCEMENT

DIRECTORATE, THR. THE

...Respondents

DIRECTOR AND ANR.,

Mr. Parag Rao, Advocate for the petitioner.

Mr. Nikhil Vaze and Mr. L. Fernandes, Advocate for the respondent No.2.

Mr. A.D. Bhobe, Advocate for the Respondent.

WITH

STAMP (MAIN) NO. 3995 OF 2019(F)

DIRECTORATE OF ENFORCEMENT,

...Petitioner

THR. ITS DEPUTY DIRECTOR,

HARSHAL METE

...Respondents

VS

DAYANAND NARVEKAR

Mr. Nikhil Vaze, Advocate for the Appellant/ Applicant.

Mr. A.D. Bhobe, Advocate for the Respondent.

**WITH
STAMP (MAIN) NO. 2509 OF 2019 (F)**

THE DEPUTY DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
NEW DLEHI

...Appellant

V/s.

VINOD PHADKE AND ANR.

...Respondents

Mr. Nikhil Vaze, Advocate *for the Appellant/ Applicant.*

**CORAM: MANISH PITALE AND
R.N. LADDHA, JJ.**

DATE: 4th February, 2022

ORAL ORDER : (Per Manish Pitale,J.)

1. By this order one Writ Petition and two appeals shall stand disposed of.

2. The Writ Petition has been filed by the petitioner, *inter alia*, seeking quashing of an order dated 13/09/2018, passed by the Adjudicating Authority under Section 8 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA Act'), whereby provisional attachment of the property of the petitioner under Section 5 of the PMLA Act, has been confirmed.

3. The appeals have been filed by the Directorate of Enforcement, challenging orders dated 20/09/2019, passed by the Appellate Tribunal under the PMLA Act, whereby appeals of the respondents

stood allowed and it was held that the orders confirming the attachment of properties of the respondents lapsed due to the operation of the provisions of the PMLA Act. The appeals were filed by the respondents before the Appellate Tribunal challenging the orders of attachment on merits, while the question of lapsing of the order came up for consideration during hearing of the appeals before the Tribunal.

4. In the present case, the petitioner in the Writ Petition and the respondents in the two appeals, alongwith others, are facing proceedings under the provisions of the PMLA Act. They are said to be office bearers of the Goa Cricket Association. The record shows that orders of provisional attachment of properties of the said individuals were passed under Section 5 of the PMLA Act. As per the scheme of the said Act, such provisional attachment would remain in operation for a period of 180 days or till it stands confirmed by order under Section 8 of the Adjudicating Authority, whichever is earlier.

5. In the present case, there is no dispute about the fact that the Adjudicating Authority passed the order confirming the attachment of properties of the aforesaid individuals on 13/09/2018. Section 8(3) of the PMLA Act, as it stood at the relevant time, specifically provided

that such order confirming attachment of properties would continue during the period of investigation, not exceeding 90 days. It is also an admitted position that in the present case, the complaint itself, as contemplated under Section 44 of the PMLA Act, came to be filed on 03/05/2019, which was well beyond the period of 90 days specified under Section 8 (3) of the PMLA Act.

6. The respondents in the aforesaid two appeals approached the Appellate Tribunal under Section 26 of the PMLA Act to challenge the order of attachment under Section 8 (3) of the PMLA Act. By orders dated 20/09/2019, the Tribunal allowed the appeals. The Directorate of Enforcement has filed these two appeals challenging the orders passed by the Appellate Tribunal.

7. Insofar as the Writ Petition is concerned, the grounds raised in the Writ Petition challenging the order of the Adjudicating Authority dated 13/09/2018, whereby the attachment of property of the petitioner was confirmed, were based on the assertion that the offences in question were not scheduled offences under the PMLA Act. But during the pendency of the petition, the appeals filed by the other two individuals challenging similar orders of attachment before the Appellate Tribunal stood allowed on the aforementioned ground.

Hence, the petitioner before this Court is also pressing the very same ground regarding lapsing of order of attachment of property under Section 8 (3) of the PMLA Act.

8. Mr. P. Rao, learned Counsel has appeared in the Writ Petition. Mr. Vaze, learned Counsel appeared in the appeals filed by the Directorate of Enforcement while Mr. A.D. Bhobe, learned Counsel has appeared for the respondent in the Appeal bearing Stm. No. 3995 of 2019.

9. Mr. P. Rao, learned Counsel appearing for the petitioner invited attention of this Court to the scheme under the PMLA Act, particularly Sections 3, 5 and 8 of the said Act. It was submitted that since the facts were not in dispute that the order was passed by the Adjudicating Authority on 13/09/2018, confirming the provisional order of attachment, but the complaint for prosecution was itself filed on 03/05/2019, much beyond the mandatory period of 90 days specified in Section 8(3) of the PMLA Act, the impugned order of attachment of the property must be held to have lapsed, with the operation of the statutory provision.

10. Mr. Bhobe, learned Counsel appearing for the respondents in the aforesaid appeal took a similar stand and supported the order passed

by the Appellate Tribunal in the aforesaid appeal, whereby it was held that the order confirming the attachment of the property under Section 8 (3) of PMLA Act had lapsed in the face of the admitted facts.

11. Mr. Vaze, learned Counsel appearing for the appellant - Directorate of Enforcement in the appeals and the respondents in the Writ Petition, submitted that the order passed by the Adjudicating Authority dated 13/09/2018, could not be said to have lapsed under Section 8 (3) of the PMLA Act, for the reason that one of the aforesaid individuals i.e. Mr. Vinod Phadke had approached the Delhi High Court challenging the proceedings on the ground that the alleged offences in question had been committed prior to enactment of the PMLA Act. In the said Writ Petition, bearing Writ Petition No.8356 of 2018, on 10/08/2018, the Delhi High Court had issued notice and passed an interim order, which reads as follows:

“4. In the meantime, the proceedings before the Adjudicating Authority may continue. However, orders, if any, shall not be implemented. It is clarified that the provisional attachment shall continue to be operative.”

12. It was then submitted that the aforesaid Writ Petition ultimately stood disposed of as withdrawn on 05/02/2019. On this basis, it was

contended that since, during the pendency of the aforesaid Writ Petition, the above quoted interim order was operating, the period of 90 days specified under Section 8(3) of the PMLA Act, in the facts and circumstances of the present case stood extended and the time limit would not inure to the benefit of the respondents in the appeals and petitioner in the Writ Petition before this Court, to claim that the order confirming attachment of the property had lapsed. On this basis it is contended that the Appellate Tribunal had erred in allowing the appeals filed by the respondents.

13. We have carefully considered the scheme contemplated under the PMLA Act. It is evident from the operation of Sections 5 and 8 of the PMLA Act that under Section 8(3), as it stood at the relevant time, the order passed by the Adjudicating Authority confirming the attachment of the properties would remain in operation during the period of investigation, not exceeding 90 days.

14. It is admitted position that in the present case, not even the complaint contemplated under Section 44 of the PMLA Act was instituted by the concerned Authority within the period of 90 days and eventually it came to be filed on 03/05/2019. Merely because the Delhi High Court had passed the above quoted interim order in Writ

Petition filed by Mr. Vinod Phadke, the respondent in Appeal bearing No. 2509 of 2019, it would not *ipso facto* mean that the period specified under Section 8 (3) of the PMLA Act stood extended. Nothing prevented the concerned Authority from filing the complaint and investigating into the matter. The purport of the interim order passed by the Delhi High Court was properly appreciated and understood by the Appellate Tribunal while holding that the orders confirming the attachment of properties stood lapsed.

15. It is also worth noting that a subsequent amendment was brought into the PMLA Act in the year 2019, whereby explanation was added to Section 8 (3) of the said Act. This further assists this Court in appreciating the contentions raised by the rival parties. The explanation appended to Section 8(3) by way of amendment of 2019 specifically states that for the purposes of computing the period relevant to Section 8(3) of the PMLA Act, the period during which investigation is stayed by any Court shall be excluded. Although the said explanation is not relevant in the facts and circumstances of the present case since the amendment came in the year 2019, it does show that even post amendment the period specified under Section 8 (3) would stand extended only if there is stay to the investigation by any Court. In the present case, a perusal of the above quoted interim order

of the Delhi High Court would show that there was, in fact, no stay of the investigation. This is another reason why the contention raised on behalf of the appellant – Directorate of Enforcement cannot be accepted.

16. Although the Writ Petition before this Court raises many other grounds of challenge, we are restricting the consideration of challenge only on the aforesaid ground of lapsing of attachment order in view of Section 8(3) of the PMLA Act.

17. In view of the above, the Writ Petition is partly allowed in terms of prayer clause 'B'. For the same reasons, the appeals filed by the Appellant - Directorate of Enforcement, are dismissed. Pending applications, if any, stand disposed of. Needless to say, this Court has not commented upon other grounds raised in the Writ Petition or those that may be available to the parties.

R.N. LADDHA, J.

MANISH PITALE, J.