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W.A.Nos. 1054, 1007, 1047, 1049, 1050, 1051 & 1052 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2022

CORAM :

THE HONOURABLE MR. JUSTICE R. MAHADEVAN
and
THE HONOURABLE MR. JUSTICE J. SATHYA NARAYANA PRASAD

W.A.Nos.1054, 1007, 1047, 1049, 1050, 1051 & 1052 of 2022
and
C.M.P.Nos. 6399, 6627, 6616, 6617, 6619, 6398, 6604 & 6620 of 2022

N.Naveen Baalaji	..	Appellant in W.A.No.1054 of 2022
D.V.Balaji	..	Appellant in W.A.No.1007 of 2022
N.Sukanya	..	Appellant in W.A.No.1047 of 2022
M/s.Bonjour Bonheur Private Limited, Represented by its Managing Director, Mr.N.Naveeb Baalaji, No.119, Kosakadai Street, Pondicherry - 605 001.	..	Appellant in W.A.No.1049 of 2022
K.Nagarajan	..	Appellant in W.A.No.1050 of 2022 & W.A.No.1052 of 2022
N.Manjula	..	Appellant in W.A.No.1051 of 2022

Versus



W.A.Nos. 1054, 1007, 1047, 1049, 1050, 1051 & 1052 of 2022

1.The Deputy Commissioner of Income Tax (Benami Prohibition)

Room No.104, 1st Floor

Income Tax Investigation Wing Building

No.46, M.G.Road, Nungambakkam

Chennai – 600 034.

.. Respondent in
W.A.Nos.1054,
1047, 1049, 1050,
1051 & 1052 of 2022
and
1st respondent in
W.A.No.1007 of 2022

2.The Adjudicating Authority,

Under The Prohibition of Benami Property Transaction Act, 1988,

Room No.26, 4th Floor,

Jeevan Deep Building Parliament Street,

New Delhi - 110 001.

3.The Joint Commissioner of Income Tax (Benami Prohibition),

Approving Authority,

Room No.102, 1st Floor,

Income Tax Investigation Wing Building,

New No.46, M.G.Road, Nungambakkam,

Chennai - 600 034.

.. 2nd and 3rd Respondents
in W.A.No.1007 of 2022

Common Prayer in all W.As. : Writ Appeals filed under Clause 15 of the Letters Patent to set aside the common order dated 25.10.2021 passed in W.P.Nos.2813, 8352, 2817, 2820, 2814, 2815 & 2818 of 2020.

For Appellants : Mr.R.Sivaraman
in six W.A. Nos. 1054, 1047, 1049,
1050, 1051 & 1052 of 2022
Mr.N.V.Balaji
in W.A.No.1007 of 2022

For Respondents : Mrs. Sheela
Special Public Prosecutor (Income Tax)



W.A.Nos. 1054, 1007, 1047, 1049, 1050, 1051 & 1052 of 2022

COMMON JUDGMENT

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R. MAHADEVAN, J.

All these writ appeals are filed by the appellants, questioning the validity of the common order dated 25.10.2021 passed by the learned Judge in W.P.Nos. 2813, 8352, 2817, 2820, 2814, 2815 & 2818 of 2020.

2. The necessary facts leading to the filing of these appeals would run thus:

2.1.1. The appellants in W.A. Nos. 1054, 1047, 1049, 1050, 1051 & 1052 of 2022, are engaged in the jewellery business by running "Pondicherry Sri Lakshmi Jewellery" with various branches. In the year 2000, they started a Private Limited Company to render foreign exchange and travel related services in the name and style of M/s.Bonjour Bonheur Private Limited (in short, "the Company") and the main share holders were the family members. Thereafter, in the year 2009, the Company also ventured into the business of hotel and hospitality by promoting the resort in the name and style of "Ocean Spray", for which, the land belonging to one of the promoter Director viz., Mr.K.Nagarajan, was leased to the company and the constructions were made, after borrowing loans from banks and financial institutions.



2.1.2. While so, a search was conducted in the premises of the Pondicherry Sri Lakshmi Jewellery, consequent to the search in the case of Mrs.V.K.Sasikala. During the course of the same, various documents were impounded and sworn statements were recorded. Subsequently, the appellants received notices under Section 153C of the Income Tax Act, 1961 (in short, “the I.T. Act”) for reassessment.

2.1.3. Pending the reassessment proceedings, the appellants were issued with show cause notices under Section 24(1) of the Prohibition of Benami Property Transactions Act, 1988 (in short, “the Act”) on 01.11.2019 from the office of the first respondent, alleging that they are benamidars for the identified beneficial owner, Mrs.V.K.Sasikala with respect to their shares in the Company and they were called upon to reply on or before 18.11.2019 as to why they should not be held to be benamidars.

2.1.4. Upon receipt of the same, the appellants sent communications asking for the material documents and the sworn statements of Mr.Naveen Baalaji, Mrs.V.K.Sasikala, Mrs.Krishnapriya and Mr.Senthil reserving their right to cross examine the aforesaid persons. In response, the first respondent supplied only a part of the documents, through mails. Despite the repeated reminders, the sworn statement of Mrs.Krishna Priya and a part of sworn statement of Mrs.V.K.Sasikala were not provided to the appellants. That apart,



no opportunity was provided to cross examine the witnesses, whose statements have been relied upon by the first respondent for initiating the proceedings against the appellants.

2.1.5. In such circumstances, when the appellants were about to file their preliminary submissions based on the available materials, on 22.01.2020, the office of the first respondent refused to accept the same, stating that an order under section 24(4) of the Act has already been passed on 20.01.2020 confirming the provisional attachment of the property and the same was served on them only on 27.01.2020. Challenging the said order passed under section 24(4) of the Act, the appellants preferred WP.Nos.2813 to 2815, 2817, 2818 and 2820 of 2020.

2.2. According to the appellant in WA.No.1007 of 2022, pursuant to the search conducted in the group cases of Mrs.V.K.Sasikala, a search was conducted in his premises on 28.11.2017. During the course of the same, statements were recorded from various parties, based on which, notices under section 153C for the assessment years 2012-13 to 2018-19 were issued to the appellant. Subsequently, the first respondent issued a show cause notice under section 24(1) of the Act on 01.11.2019, alleging that he is a benamidar for the identified beneficial owner of the mall property located at Perambur. Upon receipt of the same, the appellant sent a reply on 25.11.2019 seeking copies of



sworn statements of the parties involved and the basis upon which the impugned proceedings were initiated against him, to which, the first respondent furnished only a part of the statements. Thereafter, without considering the contentions made by the appellant and without giving him a reasonable opportunity of being heard, the first respondent passed the order under section 24(4) of the Act on 28.01.2020, confirming the provisional attachment of the property till the passing of the order by the Adjudicating Authority under section 26(3) of the Act. Consequently, the first respondent made a reference to the second respondent under section 24(5) of the Act on the same day. Following the same, the second respondent issued a notice dated 12.02.2020 under section 26(1) of the Act seeking reasons as to why the appellant should not be held as the benamidar in the alleged transaction of sale leading to creation of benami property under the Act and posted the hearing on 26.03.2020. Due to lock down announced on account of the pandemic Covid-19, there was no hearing on 26.03.2020. Subsequently, another notice dated 19.05.2020 came to be issued calling upon the appellant to file a response on or before 09.06.2020. Feeling aggrieved, the appellant preferred WP.No.8352 of 2020.



2.3. All the writ petitions were taken up for common hearing and were ultimately, dismissed by the learned Judge, by a common order dated 25.10.2021. Therefore, the appellants are before this court with these appeals.

3.1. Mr.R.Sivaraman, learned counsel for the appellants in all the appeals, except W.A.No.1007 of 2022, submitted that the appellants were not at all involved in the alleged transaction, which the first respondent is treating as benami transaction. According to them, in the year 2016, as the business of the appellants was failing, they decided to dispose of the resort, settle all the dues and concentrate on the gold business alone. It is around this time, the appellants got introduced to Mr.S.Senthil, Advocate through one Mr.Kumar, who informed that he was negotiating on behalf of Mrs.V.K.Sasikala and the consideration was fixed at Rs.168 crores and it was decided that Shri Nagarajan would transfer the title of the property in the name of the company and on payment of entire consideration, the shares in the name of the shareholders including that of the appellant would be transferred to the concerned person. However, on 22.11.2016, Mr.Senthil, Advocate came along with his associates and instructed the appellants to sign a Memorandum of Understanding, by accepting a sum of Rs.148 crores in old denominations of Rs.500/- and Rs.1000/-. The MOU was incomplete as the name of the buyer



was left blank and the appellants were not permitted to read the MOU nor allowed to take a photo copy of the same. The net amount received was only Rs.135.25 crores (Rs.148 crores minus Rs.12 crores to Mr.Kumar for negotiating the deal minus Rs.75 lakhs for cash shortage) and the appellants were unable to utilise the old demonetized currency to the tune of Rs.37 crores. When they were about to return the unutilized sum, Mr.Kumar informed that the deal stands cancelled and sought to repay the balance amount at the earliest. It was informed that only on the payment of Rs.136 crores, the share certificates which were handed over at the time of signing MOUs will be returned. Even before the appellants could arrange for the said funds, the search operation took place, resulting in all the consequential proceedings. Thus, according to appellants, the entire transaction is commercial in nature, which was subsequently abandoned at the option of the buyer and at no point of time, the transaction could be called benami, as the ingredients of a benami transaction is absent in the said case.

3.2. The learned counsel for the appellants further contended that the respondent relied upon various documents and sworn statements to come to a conclusion that the appellants are the benamidars. The appellants sought those material evidence for defending their case and also requested for cross examination of the persons, whose statements have been relied upon for



initiating the impugned proceedings. Without furnishing the entire documents and sworn statements of the witnesses and without affording any opportunity to the appellants to cross examine the witnesses, the respondent has passed the order under section 24(4) of the Act, which is arbitrary, illegal and against the principles of natural justice. However, the learned Judge erred in holding that the process and procedure as envisaged for provisional attachment under section 24 is of a narrower compass, when compared with the process of adjudication to follow thereafter.

3.3. The learned counsel for the appellants also contended that as per section 24(4)(a)(ii) of the Act, the first respondent is also empowered to revoke the entire proceedings initiated under section 24 of the Act, if the appellants are able to satisfy that the transaction is not benami in nature. However, the first respondent has conducted the proceedings in an arbitrary manner, without following due process of law. The learned Judge also failed to take note of the same and erred in dismissing the writ petitions filed by the appellants. Therefore, the learned counsel sought to allow these writ appeals by setting aside the order of the learned Judge.

4. Mr.N.V.Balaji, learned counsel for the appellant in WA.No.1007 of 2022 submitted that there is no nexus between the material in the possession



of the first respondent and his purported belief that the appellant is a benamidar. The memorandum of understanding which forms the material for the first respondent to have a reason to believe that the appellant is a benamidar, was not in his possession. In such circumstances, the notice issued by the first respondent under section 24(1) of the Act is only on the basis of surmises and suspicion. The learned counsel further contended that the first respondent though vested with power to conduct necessary enquiry under section 23 before issuing notice under section 24, proceeded with issuance of notice in a preconceived manner, without conducting any enquiry and passed the order under section 24(4) of the Act, without providing any document or sworn statement of the witnesses nor provided any opportunity to the appellant to cross examine the witnesses, which is arbitrary, illegal and violative of the principles of natural justice. Pursuant to the said order, the first respondent also made reference to the second respondent, who in turn, sent notices to the appellant to file his reply. However, the learned Judge failed to appreciate the same and erred in dismissing the writ petition. Therefore, the learned counsel prayed to allow this writ appeal by quashing the order impugned herein as well as the entire proceedings initiated by the respondents.



5. On the contrary, the learned Special Public Prosecutor (Income-tax) appearing for the respondents, reiterating the contentions that were placed before the writ court, submitted that sufficient materials were gathered in the course of search of the premises, both that of the appellants as well as of Mrs.V.K.Sasikala and it is only thereafter, the first respondent has passed the impugned orders in terms of Section 24(4) of the Act. The appellants were heard prior to passing of the orders and their replies were considered. Thus, the first respondent was satisfied that there was *prima facie* material available to show that the appellants are benamidars. Adding further, the learned counsel submitted that it is not mandatory to conduct an enquiry before the issuance of show cause notice, when the materials are deemed sufficient and the IO having reasons to believe the same. The first respondent during the course of the proceedings, asked for certain documents, which were not furnished by the appellants. Therefore, the first respondent after proper application of mind and having 'reasons to believe', has passed the orders impugned in the writ petitions and therefore, the same were rightly upheld by the learned Judge in the writ proceedings. It is also submitted that the first respondent, who armed with the sufficient materials to proceed against the appellants, has initiated the impugned proceedings as per law, after providing the required documents to the appellants to file their submissions, in adherence



to the principles of natural justice; and as such, the order of the learned Judge directing the respondents to continue the proceedings, while dismissing the writ petitions, does not call for any interference by this court.

6. This court considered the submissions made by the learned counsel on either side and also perused the documents available on record.

7. At the outset, it is but necessary to refer to the provisions of law for effective adjudication. The Benami Transactions (Prohibition) Act, 1988, was enacted to prohibit benami transactions and the right to recover property held benami. The said Act makes it clear that all the properties held benami shall be subject to acquisition by such authority in such manner and after following such procedure as may be prescribed; and no amount shall be payable for the acquisition of any property held benami. It also provides a mechanism and procedure for confiscation of property held benami. Section 24 deals with notice and attachment of property involved in benami transaction, which reads as follows:

“24. Notice and attachment of property involved in benami transaction.-

(1) Where the Initiating Officer, on the basis of material in his possession, has reason to believe that any person is a benamidar in respect of a property, he may, after recording reasons in writing, issue a notice to the person to show cause within such time as may be specified in the notice why the property should not be treated as benami property.



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(2)Where a notice under sub-section(1) specifies any property as being held by a benamidar referred to in that sub-section, a copy of the notice shall also be issued to the beneficial owner if his identity is known.

(3)Where the Initiating Officer is of the opinion that the person in possession of the property held benami may alienate the property during the period specified in the notice, he may, with the previous approval of the Approving Authority, by order in writing, attach provisionally the property in the manner as may be prescribed, for a period not exceeding ninety days from the last day of the month in which the notice under sub-section (1) is issued.

(4)The Initiating Officer, after making such inquires and calling for such reports or evidence as he deems fit and taking into account all relevant materials, shall, within a period of ninety days from the last day of the month in which the notice under sub-section (1) is issued -

(a)where the provisional attachment has been made under sub-section (3)-

(i)pass an order continuing the provisional attachment of the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii)revoke the provisional attachment of the property with the prior approval of the Approving Authority;

(b)where provisional attachment has not been made under sub-section (3)-

(i)pass an order provisionally attaching the property with the prior approval of the Approving Authority, till the passing of the order by the Adjudicating Authority under sub-section (3) of section 26; or

(ii)decide not to attach the property as specified in the notice, with the prior approval of the Approving Authority.

[Explanation.- For the purposes of this section, in computing the period of limitation, the period during which the proceeding is stayed by an order or injunction of any Court shall be excluded:

Provided that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (4) available to the Initiating Officer for passing order of attachment is less than thirty days, such remaining period shall be deemed to be extended to thirty days:

Provided further that where immediately after the exclusion of the aforesaid period, the period of limitation referred to in sub-section (5) available to the Initiating Officer to refer the order of attachment to Adjudicating Authority is less than seven days, such remaining period shall be deemed to be extended to seven days.]

(5)Where the Initiating Officer passes an order continuing the provisional attachment of the property under sub-clause (i) of clause (a) of sub-section (4) or passes an order provisionally attaching the property under sub-clause (i) of clause (b) of that sub-section, he shall, within



fifteen days from the date of the attachment, draw up a statement of the case and refer it to the Adjudicating Authority."

A reading of the aforesaid provision would show that as per section 24(1), when the Initiating Officer based on the materials in his possession, has reason to believe that any person is a benamidar in respect of a property, he may after recording reasons in writing, issue a notice to the person to show cause as to why the property should not be treated as benami property. Sub section (3) to section 24 states that the Initiating Officer, who is of the opinion that the person in possession of the property held behami, may alienate the property during the period specified in the notice, may, with the previous approval of the Approving Authority, by order in writing, attach the property provisionally, for a period of 90 days from the last day of the month in which the notice under section 24(1) is issued. According to section 24(4)(a)(i), the Initiating Officer, after conducting enquiry and calling for reports / evidence and taking into account all the relevant materials, shall pass an order continuing the provisional attachment of the property till the passing of the order by the Adjudicating Authority under sub section (3) of section 26. Under section 24(4)(a)(ii), the Initiating Officer may revoke the provisional attachment of the property with the prior approval of the Approving Authority. Section 24(5) requires the Initiating Officer, who passes an order continuing the provisional attachment of the property under section 24(4)(a)(i), to draw



up a statement of the case and refer it to the Adjudicating Authority, within fifteen days from the date of the attachment.

8. As noticed earlier, the appellants in the writ proceedings, questioned the action of the first respondent under section 24(4)(a)(i) of the PBPT Act, in ordering continuance of the attachment made under section 24(3) till the final order under section 26(3) is passed by the Adjudicating Authority. Upon considering the rival submissions and the decisions relied on by the parties, the learned Judge has dismissed the writ petitions filed by the appellants, along with other connected cases, by the common order dated 25.10.2021 and the findings of the learned Judge are profitably extracted below:

“65.The nature of the transactions in question have to be established by the petitioner before the authorities upon the respondents discharging the initial burden cast upon them to furnish the primary evidences available with them to the effect that the property is benami in nature. This is a rebuttable presumption and the effectiveness of the rebuttal will depend on the evidences furnished by the noticees to the authorities.

66.In my considered view, therefore, the enquiry contemplated at the stage of initial investigation is only preliminary, based upon prima facie reasons and conclusions. A detailed verification of the evidences as regards whether the transactions were benami or otherwise can, and must only be undertaken in the course of adjudication and not at the stage of preliminary enquiry.

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68.The thrust of the petitioner's case is the alleged insufficiency of materials as well as the fact that the evidences gathered are unreliable. However, and at the risk of repetition, the enquiry conducted under section 24 is only a preliminary enquiry and the use of the phrase 'reason to believe' only indicates a prima facie satisfaction that all was not well as regards a particular transaction. In the present case, the trajectory of events as has been noticed by me in the preceding paragraphs of this order



do not lead to the conclusion that the respondents had no reasons at all to justify the invocation of section 24.

69. Yet another ground taken by the petitioners is as regards the denial of opportunity to cross examine the parties at the stage of investigation. As regards this, the respondents deny that such opportunity was sought for by all petitioners. In any event, they reiterate that opportunity for cross examination will be granted, as appropriate, in the course of adjudication proceedings.

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73. Thus, the process and procedure as envisaged for provisional attachment under section 24 is of a narrower compass when compared with the process of adjudication to follow thereafter. That apart, not all the petitioners before me appear to have sought an opportunity to cross examine witnesses. It would thus suffice to state that it is open to the petitioners to make such request for cross-examination once they have been supplied with the relied upon documents at the time of adjudication, and such request, if and when made, will be considered by the respondents in accordance with law.

74. The argument that it is only when full consideration is paid, that enquiry under PBPT Act may be commenced, is left open to be decided in the course of adjudication. On the aspect of demonetization, there is no question that currency notes of the value of Rs.500/- and Rs.1000/-, once demonetized, do not constitute legal tender and it is a plausible argument to state that 'consideration' must comprise of legal tender alone.

75. However, the mode of payment employed as between the parties and the actual amount transacted are pure questions of fact that are best left for verification and determination by the authorities concerned. This question is also left open for decision in the course of adjudication by the authorities.

76. The challenge to the impugned orders under section 24(4) fails and the respondents are directed to proceed in line with sections 25 and 26 forthwith. All writ petitions are dismissed. ...

77. The respondents will continue with adjudication under section 25 and complete proceedings in light with the mandate of that section. Notices under section 26 of the PBPT Act will be issued within a period of 30 days from date of issue of these orders accompanied with all material that the respondents rely on and proceedings under section 26 shall be conducted scrupulously in line with the mandate thereof.

78. The petitioners shall be afforded full opportunity to put forth all contentions before the adjudicating authority who shall take note of the same and pass speaking orders in accordance with law. ...”

9. As already stated, the grievance of the appellants is that the first



respondent did not furnish the entire documents relied on by them, nor provided any opportunity to the appellants to cross examine the persons whose statements have been referred to in the impugned proceedings and as such, the orders passed under section 24(4) of the Act, which were impugned in the writ petitions, are arbitrary, illegal and violative of the principles of natural justice. Whereas, it is the specific stand of the respondents that they have supplied the required documents to the appellants and that, there is no provision for providing an opportunity to cross examine the witnesses from whom they have collected the information regarding benami property, at the preliminary stage and therefore, the question of violation of the principles of natural justice does not arise herein.

10. Concededly, in the notices dated 01.11.2019 issued under section 24(1) of the Act, the first respondent has set out the reasons for forming an opinion that the appellants are benamidars in respect of the property in question; and they were called upon to show cause as to why the property should not be treated as benami property, on or before 18.11.2019. Despite the receipt of the same, the appellants failed to substantiate their stand by furnishing the necessary documents, but they complained that there is no fair play on the part of the respondent authorities, while passing order under



section 24(4) of the Act.

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11. As a matter of fact, it is to be pointed out that the applicability of the principles of natural justice and fair play, depends on the facts and circumstances of each case and is subjected to statutory provisions; and that, the proceedings under section 24 only require a recording of *prima facie* opinion as to the benami nature of the transaction. It is an admitted case that the appellants failed to furnish the necessary documents to substantiate their stand that the alleged transactions are not benami transactions. As such, the first respondent, after making enquiry and calling for reports or evidence and taking into account all the relevant materials, has, with the prior approval of the Approving Authority, passed the separate orders under section 24(4), continuing the provisional attachment of the property till the passing of the order by the Adjudicating Authority under section 26(3), which are purely provisional in nature. That apart, the provisions of law mandate the respondent authorities to furnish such documents, particulars or evidence and provide an opportunity of being heard to the appellants only at the stage of adjudication proceedings; and there is no provision under the Act to provide an opportunity to the appellants to cross examine the witnesses at the preliminary stage. In this connection, the findings of the first respondent in the order dated



20.01.2020 passed under section 24(4) of the Act, are quoted below for ready reference:

“Both benamidar and beneficial owner have requested for cross examination of the persons involved and the same is dealt with here. It is to be noted that the Initiating Officer under the Prohibition of Benami Property Transactions Act, 1988, has not been conferred upon any such authority to grant an opportunity for cross-examination of any person and the same have been intimated to both benamidar and beneficial owner.

This office has initiated the benami proceedings on the basis of sworn statements recorded by the quasi-judicial authorities (income tax authorities) and other evidences, which are treated as primary evidences. Further, there is no retraction possible for the deponent based on the theory of Estoppel, unless it is substantiated by any material evidence. There is no such material evidences placed on record by the benamidar and beneficial owner. It is pertinent to note that as the Initiating Officer was not the examination-in-chief for the sworn statements recorded under the Income-tax Act, the question of cross-examination does not arise. However, opportunities were given time and again, to furnish their material evidences which have not been utilised by them.

Further, the benamidar and Beneficial owner seeks cross-examination without mentioning the points on which the cross-examination was to be held, which is nothing but beating around the bush.

It is placed on record that the entire proceedings have been initiated based on the evidences collected and sufficient opportunities have been given to the Beneficial Owner and Benamidar to offer their objections on those evidences. In addition to the above, the current proceedings under the PBPT Act are time bound one. The peculiar situation is that the Beneficial Owner is in Central Prison, Bengaluru.”

12. At this juncture, it will be useful to refer to the following decisions, in which, it was categorically held that *“the exercise of cross-examination commences only after the proceedings for adjudication have commenced”*; and *“a writ petition should not be entertained against a mere show cause notice”*.

(i) The Hon'ble Supreme Court in ***K.L. Tripathi v. State Bank of India and Ors. [AIR 1984 SC 273]***, has observed as follows:

“42. It is true that all actions against a party which involve penal or adverse consequences must be in accordance with the principles of



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natural justice but whether any particular principle of natural justice would be applicable to a particular situation or the question whether there has been any infraction of the application of that principle, has to be judged, in the light of facts and circumstances of each particular case. The basic requirement is that there must be fair play in action and the decision must be arrived at in a just and objective manner with regard to the relevance of the materials and reasons. We must reiterate again that the rules of natural justice are flexible and cannot be put on any rigid formula. In order to sustain a complaint of violation of principles of natural justice on the ground of absence of opportunity of cross-examination, it has to be established that prejudice has been caused to the appellant by the procedure followed. See in this connection the observations of this Court in the case of Jankinath Sarangi v. State of Orissa. MANU/SC/0502/1969 : (1970) ILLJ 356 SC Hidayatullah, C J.", observed there at page 394 of the report "there is no doubt that if the principles of natural justice are violated and there is a gross case this Court would interfere by striking down the order of dismissal; but there are cases and cases. We have to look to what actual prejudice has been caused to a person by the supposed denial to him of a particular right." Judged by this principle, in the background of the facts and circumstances mentioned before, we are of the opinion that there has been no real prejudice caused by infraction of any particular rule of natural justice of which appellant before us complained in this case. See in this connection observations of this Court in the case of Union of India and Anr. v. P.K. Roy and Ors. MANU/SC/0049/1967 : (1970) ILLJ 633 SC where this Court reiterated that "the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula and its application depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and Ors. relevant circumstances disclosed in a particular case". See also in this connection the observations of Hidayatullah, C.J., in the case of Channabasappa Basappa Happali v. State of Mysore. MANU/SC/0476/1970 : [1971] 2 SCR 645 In our opinion, in the background of facts and circumstances of this case, the nature of investigation conducted in which the appellant was associated, there has been no infraction of that principle. In the premises, for the reasons aforesaid, there has been in the facts and circumstances of the case, no infraction of any principle of natural justice by the absence of a formal opportunity of cross-examination Neither cross-examination nor the opportunity to lead evidence by the delinquent is an integral part of all quasi judicial adjudications."

(ii) In an order dated 29.11.2010 passed in Special Appeal No.741 of



2010 (MANU/UP/2113/2010) in the case of **Commissioner of Central Excise**

v. Parmarth Iron Pvt Ltd, it was observed by the Allahabad High Court as follows:

“15. The question, however, before us is, does the Respondent have a right to call upon the Appellants to make available the witnesses for cross-examination even before they being examined or their statements relied upon by the Department in proceedings in adjudication....

Is, therefore, an Assessee entitled to cross examine the witnesses at the stage of filing a reply to the show cause notice? A show cause notice is issued on the basis of uncontested material available before the Assessing Authority, who based thereon, has arrived at a prima facie finding whether a show cause notice ought to be issued or not. The material, thus, which has to be considered is, untested and uncorroborated. A party is called upon to reply to the said show cause notice in order to enable the Revenue to know the stand of the Assessee, in the context of the material produced as to whether the proceedings should be further proceeded with. It is an opportunity to the party being proceeded against to disclose any material that the party may have to rebut the prima facie opinion. Even if, the Assessee fails to reply to the show cause notice, that does not amount to an 'admission' of the contents of the show cause notice in the absence of any statutory provision and it is always open to an Assessee to cross-examine the witnesses whose statements are relied upon or sought to be examined on behalf of the Revenue.

At the stage of show cause notice, there is no adjudication. It is only a step in the process of adjudication. The show cause notice by itself is not an order of assessment. The order of assessment will be passed only after considering the evidence and the material, which is placed before the quasi judicial authority/ Tribunal. Therefore, as the show cause notice is based on prima facie material and constitutes a prima facie opinion, that does not result into an order of adjudication. The question, therefore, of an Assessee being entitled to cross-examination, even before the adjudication has commenced, in our opinion, surely would not arise. It is only after the adjudication proceedings have commenced pursuant to the show cause notice and if the Revenue seeks to rely upon the statements or documents, then the principles of natural justice would require in the absence of any statutory provision, that the person whose statement was recorded is made available for cross-examination to test the veracity of the statement.

16. We, therefore, have no hesitation in holding, that there is no requirement in the Act or Rules, nor do the principles of natural justice and fair play require that the witnesses whose statements were recorded and relied upon to issue the show cause notice, are liable to be examined at that stage. If the Revenue choose not to examine any witnesses in adjudication, their statements cannot be considered as evidence. However,



if the Revenue choose to rely on the statements, then in that event, the persons whose statements are relied upon have to be made available for cross-examination for the evidence or statement to be considered.

17. We are, therefore, clearly of the opinion that there is no right, procedurally or substantively or in compliance with natural justice and fair play, to make available the witnesses whose statements were recorded for cross examination before the reply to the show cause notice is filed and before adjudication commences. The exercise of cross-examination commences only after the proceedings for adjudication have commenced.”

(iii) In **Century NF Castings v. Union of India [2011 SCC Online**

P&H 17614 : (2011) 269 ELT 221], it was held by the Punjab and Haryana

High Court as follows:

“6. We are unable to accept the submission. No doubt cross-examination is a valuable right, the effect of not permitting the cross examination depends upon the facts and circumstances of each case. At this interim stage when decision on merits is yet to be taken, we do not find any ground to adjudicate upon the question whether absence of cross examination will affect the case of the petitioner. Question can be examined at appropriate stage by the concerned authorities and by this court, if necessary.”

(iv) In **Arun Kumar Mishra v. Union of India [2014 SCC Online**

Del 493], it was held by the Delhi High Court as follows:

“13. We are unable to agree. The Adjudicating Authority is currently seized of and in seisin of the complaints. We, at this stage, do not know as to which way the order of the Adjudicating Authority will go. It cannot also be said at this stage whether the Adjudicating Authority even if deciding against the appellants will rely upon the material before it qua which the appellants claim a right of cross-examination. All this can be known only when the Adjudicating Authority passes an order and qua which if the appellants are aggrieved, the appellants shall have their statutory remedy. Any interference by us at this stage in the proceedings of which the Adjudicating Authority is seized is thus uncalled for and would result in a situation which the Supreme Court has warned the High Courts to avoid. Reference may also be made to Union of India v. Kunisetty Satyanarayana AIR 2007 SC 906 reiterating that the reason why ordinarily a writ petition should not be entertained against a mere show cause notice is that at that stage the writ petition may be held to be premature - a mere show cause notice does not give rise to any cause of



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action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so and it is quite possible that after considering the reply to the show cause notice or after holding an enquiry, the authority concerned may drop the proceedings. It was further held that a writ lies only when some right is infringed and a mere show cause notice does not infringe the right of any one and it is only when a final order adversely affecting the party is passed, that the said party can be said to be having any grievance. The Supreme Court held that the writ jurisdiction being discretionary, should not ordinarily be exercised by quashing a show cause notice.

(Emphasis supplied)

(v) An order dated 03.08.2017 passed by the learned Single Judge of the Madhya Pradesh High Court in WP.No.10280 of 2017 in the case of **Kailash Assudani v. CIT**, wherein, the challenge was to the order passed by the Initiating Officer under section 24(4) of the Prohibition of Benami Property Transaction Act, 1988 and the same was rejected. The relevant portion of the order, reads as follows:

“6....In my view, the principles of natural justice are codified in terms of sub section (6) of section 26 of the Act. The impugned order is subject to judicial review before the adjudicating authority. The order passed by the adjudicating authority can be assailed before the appellate tribunal constituted under section 31 of the Act. The order of the appellate tribunal can also be called in question by preferring appeal to the High Court within a period of 60 days. A microscopic reading of provisions make it clear that principles of natural justice are reduced in writing in the shape of amendment in the said Act. The amended provisions contains a complete code in itself.

7.In this backdrop, it is to be seen whether at this stage any interference is warranted by this court. In C.B.Gautam the order of compulsory purchase under section 269-UD(1) of Income Tax Act was served on the petitioner without issuing any show cause notice and without giving any opportunity to him. The Apex Court in teh aforesaid factual back drop interfered in the matter. In the said case, neither show cause notice was given nor reasons were assigned in the impugned compulsory purchase order. In the present case show cause notice has been issued, opportunity has been given to the petitioner. The order impugned is provisional/tentative in nature. It is subject to judicial review by



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adjudicating authority. If order of adjudicating authority goes against the petitioner, the further forums of judicial review of the said order is available to the petitioner before the appellate tribunal and then before this court. Hence, against the tentative/provisional order, no interference is warranted by this court at this stage. As per the scheme of the Act, the petitioner can raise all possible grounds before the adjudicating authority. The adjudicating authority is best suited and statutorily obliged to consider all relevant aspects. Thus, at this stage no case is made out for interference. Moreso, when adjudicating authority has already fixed the hearing on 23.08.2017. Resultantly, the petition is dismissed.”

(Emphasis supplied)

The aforesaid order got a stamp of approval by the Division Bench in WA.No.704 of 2017 decided on 16.08.2017 and the finding of the same would run thus:

“We do not find any merit in the present appeal. It is the Adjudicating Authority who is to decide the question of Benami nature of the property. The proceedings under section 24 of the Act contemplates the issuance of show cause notice as to why the property specified in the notice should not be treated as Benami property. However, the substantive order of treating the property has Benami is required to be passed by Adjudicating Authority under section 26 of the Act only. Therefore, the appellant is at liberty to take all such plea of law and facts as may be available to the appellant before the Adjudicating Authority. The Adjudicating Authority shall decide the Benami nature of the property in accordance with law.”

(Emphasis supplied)

13. In the given factual backdrop and applying the legal proposition as enunciated in the earlier paragraph, we are of the opinion that in the absence of any provision of law as well as the compelling circumstances warranting the respondent authorities to provide an opportunity of cross examination of witnesses, whose statements have been relied on by the respondent authorities, to the appellants at the stage of section 24 proceedings, the plea raised by the appellants in this regard, cannot be countenanced. Therefore, we do not find



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any error in the orders passed by the first respondent, as an interim measure, continuing the provisional attachment order of the property till the passing of the order under section 26(3) by the adjudicating authority. The learned Judge has also rightly affirmed the same and directed the respondent authorities to proceed further in accordance with law. Thus, the appellants have not made out any case to interfere with the order impugned herein as well as the orders impugned in the writ petition at this stage.

14. In fine, these writ appeals stand dismissed. The contentions raised on the side of the appellants on merits of the case, are left open for adjudication before the authority concerned. No costs. Consequently, connected miscellaneous petitions are closed.

[R.M.D.,J.] [J.S.N.P.,J.]
30.06.2022

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Internet: Yes/No



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R. MAHADEVAN, J.
and
J. SATHYA NARAYANA PRASAD, J.

dhk/rk

To

- 1.The Deputy Commissioner of Income Tax (Benami Prohibition)
Room No.104, 1st Floor
Income Tax Investigation Wing Building
No.46, M.G.Road, Nungambakkam
Chennai – 600 034.
- 2.The Adjudicating Authority,
Under The Prohibition of Benami Property Transaction Act, 1988,
Room No.26, 4th Floor,
Jeevan Deep Building Parliament Street,
New Delhi - 110 001.
- 3.The Joint Commissioner of Income Tax (Benami Prohibition),
Approving Authority,
Room No.102, 1st Floor,
Income Tax Investigation Wing Building,
New No.46, M.G.Road, Nungambakkam,
Chennai - 600 034.

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30.06.2022