



W.P.No.26551 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 13.10.2022

CORAM

THE HONOURABLE Mr. JUSTICE P.N.PRAKASH  
AND  
THE HONOURABLE Mr. JUSTICE RMT.TEEKAA RAMAN

W.P.No.26551 of 2022

1.K.Subburaj  
2.N.K.Pothiraj  
3.S.Vimala  
4.S.Srividhya  
5.S.Sreepriya  
6.Lalitha

.. Petitioners

Vs.

1.Director of Enforcement  
Rep. by M.Raje Saker  
Deputy Director  
Directorate of Enforcement  
Chennai Zonal Office, Zone-II  
5<sup>th</sup> Floor, B-Wing, Shastri Bhawan  
Haddows Road, Chennai 600 006

2.Hon. Adjudicating Authority (PMLA)  
Room No.26, 4<sup>th</sup> Floor  
Jeevan Deep Building Parliament Street  
New Delhi 110 001

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari, to call for the records of the 2<sup>nd</sup> respondent dated 22.08.2022 in reference Original Complaint (OC).1626/2022, confirming the order of the 1<sup>st</sup> respondent passed in PAO No.01/2022 dated 01.02.2022 in ECIR/CEZO-II/04/2019 u/s. 5 of the Prevention of Money-Laundering Act, 2002 and quash the same.

For Petitioner : Mr.V.Ramesh  
for Mr.T.Thiyagarajan  
For Respondents : Mr.N.Ramesh  
Special Public Prosecutor  
(Enforcement Directorate)

### **ORDER**

[Made by P.N.PRAKASH, J.]

Seeking quashment of the order dated 22.08.2022 passed by the 2<sup>nd</sup> respondent in Original Complaint (OC).1626/2022, confirming the order dated 01.02.2022 passed by the 1<sup>st</sup> respondent in PAO No.01/2022 in ECIR/CEZO-II/04/2019, this writ petition has been filed.

2. The minimum facts that are required for deciding this writ petition are as under :

2.1. The CBI, Banking Security and Fraud Cell, Bangalore, registered



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a case in FIR No.20 dated 16.10.2018 for the offences under Sections 406, 420, 468, 471 read with 120-B IPC against Cethar Ltd. and others, based on the complaint given by the Deputy General Manager, Indian Bank, Trichy Zone.

2.2. Since the FIR registered by the CBI disclosed the commission of a scheduled offence under the Prevention of Money-Laundering Act, 2002, (in short “PML Act”), the Enforcement Directorate registered a case in ECIR No.CEZO-II/04/2019 dated 07.08.2019 and took up investigation.

2.3. After collecting materials, the Deputy Director of Enforcement, passed a provisional order of attachment dated 01.02.2022 under Section 5(1) of PMLA Act, provisionally attaching certain properties of all the six persons, who are the petitioners in this writ petition.

2.4. As mandated by Section 5(5) of PML Act, the Deputy Director filed a complaint in O.C.No.1626/2022 before the Adjudicating Authority under the PML Act. The Adjudicating Authority issued a show cause notice



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to the petitioners on 08.03.2022 and after getting the response from them, has passed final orders on 22.08.2022, confirming the provisional order of attachment, challenging which, this writ petition has been filed.

3. The order of adjudication clearly states as under :

*“An appeal against this order lies to the Hon'ble Appellate Tribunal, PMLA, New Delhi under Section 26 of the PMLA Act. The Appeal may be filed within a period of 45 days from the date of receipt of the order OR within the time limit as applicable, to be ordered by the Hon'ble Supreme Court with respect to the orders dated 23.03.2020, 08.03.2021, 27.04.2021, 23.09.2021 & 10.01.2022 in connection with cognizance for extension of limitation.”*

4. When we brought this to the notice of Mr.V.Ramesh, learned counsel for the petitioner, he stated that when there is a jurisdictional error, the order of the Adjudicating Authority and hence, it may not be necessary for the petitioners to approach the Appellate Tribunal and instead, they could approach this Court under Article 226 of the Constitution of India. In support of this contention, Mr.V.Ramesh placed strong reliance on the judgment of the Supreme Court in ***Vijay Madanlal Choudhary and others***



**vs. Union of India and others [2022 SCC OnLine SC 929]:**

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*“57. It has also been argued that Section 50 infringes upon the right to liberty of a person summoned under the Act and violates the right against self-incrimination. The non-compliance with Section 53 is penalized through Section 63 of the PMLA. The learned counsel has adopted the arguments made by other learned counsel in reference to Tofan Singh vs. State of Tamil Nadu (2020 SCC OnLine SC 882). It is argued that the use of the term “any person” without exclusion of the accused under Section 50 is in violation of the due process. No safeguards provided under the Cr.P.C. and the 1872 Act are extended to person proceeded for PMLA offence. It is stated that the stage at which a person is guaranteed the constitutional right under Article 20(3), cannot be made malleable through legislation. It is stated that even though the PMLA is a complaint-based procedure, by way of Section 50, one cannot ignore the pre-complaint stage. As such, Section 50 must be rendered unconstitutional. Further, it is argued that the ED practice is a perverse incentive structure for constitutional infringement where an accused is trapped and sweeping interrogations are conducted aimed at justifying the summons issued. In respect of Section 44(1)(d), it is stated that the right to a fair trial is taken away and this provision irreversibly prejudices the accused in the trial adjudicating the predicate offence.”*

5. Mr.V.Ramesh contended that the provisional order of attachment which was passed on 01.02.2022 can remain in force only for a period of 180 days and in this case, the said period expired on 30.07.2022 and therefore, the order passed by the Adjudicating Authority on 22.08.2022



confirming the provisional order of attachment is *non est* in law.

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6. *Per contra*, Mr.N.Ramesh, learned Special Public Prosecutor for the Enforcement Directorate drew our attention to the preamble portion of the impugned order, wherein, it is stated as follows :

*".... It may be mentioned here that the statutory limitation period for passing of order under Section 8(3) has expired in this case on 30.07.2022, in view of the order dated 10.01.2022 of the Hon'ble Supreme Court of India read with orders dated 23.03.2020, 08.03.2021, 27.04.2021, 23.09.2022 & 10.01.2022 of the Hon'ble Supreme Court of India, this order is being passed within the extended time limitation period."*

He contended that in the light of the order of the Supreme Court extending the period of limitation in the COVID-19 pandemic period, the period of limitation fixed in Section 5(1) of PML Act, got automatically extended.

7. In reply, Mr.V.Ramesh contended that the Adjudicating Authority cannot take shelter under the orders of the Supreme Court and violate the mandate of Section 5(1) of PML Act.

8. We gave our anxious consideration to the rival contentions. Had there been no Presiding Officer for the Appellate Tribunal, we would have



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entertained this petition. Now that a Presiding Officer has been appointed to the Appellate Tribunal, the petitioners can approach the said Tribunal and urge all these points. In fact, under Section 42 of PML Act, a further appeal from the order of the Appellate Tribunal has been provided to the High Court, which is entertained as a Civil Miscellaneous Appeal (CMA).

In such perspective of the matter, we do not want to arrogate to ourselves the powers of the Appellate Tribunal by entertaining this writ petition. Hence, this petition is dismissed with liberty to the petitioners to approach the Appellate Tribunal constituted under Section 26 of PML Act. No costs.

(P.N.P.,J.) (T K R, J.)  
13.10.2022  
(2/4)

gya

To  
1.The Deputy Director  
O/o.The Joint Director  
Directorate of Enforcement  
Chennai Zonal Office-I  
2<sup>nd</sup> and 3<sup>rd</sup> Floor, Murugesu Naicker Complex  
No.84, Greaves Road, Chennai 600 006



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2. The Public Prosecutor  
High Court, Madras

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P.N.PRAKASH, J.  
AND  
RMT.TEEKAA RAMAN, J.  
gva

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