

AD-16
Ct No.09
26.06.2023
TN

WPA No. 14176 of 2023

Shri Snehasish Kar
Vs.
Union of India and others

Mr. Sabir Ahmed,
Mr. Amal Kumar Saha,
Mr. Iresh Paul,
Mr. Soumyadip Panda

.... for the petitioner

Mr. Pulokesh Bajpayee,
Ms. Tanusree Ghosh

.... for the Union of India

Learned counsel for the petitioner contends that although the petitioner's property was attached provisionally under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the PML Act") and the petitioner's appeal against the same was dismissed, since the investigation by the CBI was going on till then, subsequently a closure report has been submitted by the Investigating Officer, which was accepted by the Judge, Special Court, CBI. As such, in view of the principal scheduled offence having itself lost basis, there is no occasion for the attachment of the petitioner's property to continue.

Learned counsel, in this context, places reliance on the definition of "proceeds of crime" as stipulated

in Section 2(1)(u) of the PML Act as well as the provisions of Sections 3 and 5 thereof.

Learned counsel places reliance on the judgment of the Supreme Court in the case of *Vijay Madanlal Choudhary and Others vs. Union of India and Others* reported at 2022 SCC OnLine SC 929, as well as a coordinate Bench judgment of this court rendered in *C.R.R. No. 2752 of 2018 (M/s Nik Nish Retail Ltd. & Anr. vs. Assistant Director, Enforcement Directorate, Govt. of India & Ors.)* and a Division Bench judgment of the Telangana High Court reported at 2023 SCC OnLine TS 1098 (*Manturi Shashi Kumar and Another vs. Director, Directorate of Enforcement, Government of India and Others*) where, in all cases, it was reiterated that if the principal offence as contemplated under the PML Act is dropped or the concerned person is discharged with regard to such offence, the provisional order of attachment cannot continue.

Heard learned counsel for the parties.

It is evident from the Order No. 27 dated January 25, 2023 at page-116 of the writ petition that the Judge, Third Special (CBI Designated) Court, Bankshall Court, Calcutta, vide the said order, recorded that the closure report submitted by the

Investigating Officer was accepted and the case against the petitioner was accordingly closed.

Hence, it is seen that the concerned case against the petitioner, being RC-11/A/18, which was initiated under the Prevention of Corruption Act, 1988, which finds place in paragraph no. 8 of the Schedule to the PML Act, having been dropped, no further cause of action remains for continuing the attachment of the property which was initially alleged to be involved in money laundering.

Section 2(1)(u), in no uncertain terms, connects the proceeds of crime directly or indirectly to the concerned person, which proceeds are derived or obtained as a result of criminal activity related to a *scheduled offence* or the value of any such property.

In the present case, the scheduled offence itself has lost its steam in view of the discharge of the petitioner in RC-11/A/18 by the Special Court, CBI. As such, no further cause of action or occasion remains to continue the provisional attachment of the property on the ground of the offence of money laundering as mentioned in Section 3 of the PML Act, read in conjunction with Section 5 of the said Act, which provides for attachment of property involved in money laundering.

It may be made clear that the Enforcement Directorate, within the contemplation of the PML Act, has no additional power to investigate in the event the scheduled offence as enumerated in Section 2(1)(u) of the PML Act itself goes. Such being the case, the provisional order of attachment passed by the Adjudicating Authority under the PML Act in respect of the property of the petitioner cannot be sustained.

Accordingly, WPA No. 14176 of 2023 is allowed, thereby setting aside the provisional order of attachment dated April 15, 2020 and the order of the Adjudicating Authority dated June 07, 2021 affirming the same. Any consequential steps taken pursuant to the said impugned orders are also hereby set aside and stand reversed.

There will be no order as to costs.

Urgent photostat certified copies of this order, if applied for, be made available to the parties upon compliance with the requisite formalities.

(Sabyasachi Bhattacharyya, J.)