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W.P.Nos.26726 & 26727 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2023

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.Nos.26726 & 26727 of 2017

S.Rajkumar .. Petitioner in
W.P.No.26726 of 2017

S.Gracy .. Petitioner in
W.P.No.26727 of 2017

vs

1. The Deputy Director
Directorate of Enforcement
Chennai Zonal Office
No.84, Greaves Road
Chennai – 600 006.

2. The Chairperson / Adjudicating Authority
(PMLA)
4th Floor, Court Room-1, Room No.25
Jeevan Deep Building
Parliament Street
New Delhi – 110 001.

Respondents
in both W.Ps

Prayer in W.P.No.26726 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the Provisional Attachment Order, PAO No.7/2017 dated 28.03.2017 passed by the first respondent with the consequential confirmation of attachment order in OC.No.738/2017 dated 02.08.2017 passed by the second respondent and quash the same as without authority of law, contrary to the provisions of PMLA and violative principles of natural justice;



W.P.Nos.26726 & 26727 of 2017

Prayer in W.P.No.26727 of 2017: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records relating to the Provisional Attachment Order, PAO No.7/2017 dated 28.03.2017 passed by the first respondent with the consequential confirmation of attachment order in OC.No.738/2017 dated 02.08.2017 passed by the second respondent and quash the same as without authority of law, contrary to the provisions of PMLA and violative principles of natural justice and further direct the respondents to order release of the seized amount of Rs.6,25,500.00 to the petitioner.

For Petitioner in
both W.Ps : Mr.M.A.Mudimannan

For Respondents in
both W.Ps : Mr.P.Sidharthan
Special Public Prosecutor
for R1 and R2

COMMON ORDER

The writ petitions on hand has been instituted questioning the validity of the provisional attachment order and the consequential confirmation order passed by the competent authority.

2. The petitioner joined as a Clerk with the customs clearing agency, by name M/s.Premier Shipping Agencies in the year 2008. Based on some information that the customs officers posted at Air cargo Complex were indulging in wrong practice of passing orders favourable to the importers of unaccompanied baggage on getting illegal gratification,



the CBI officers made a surprise inspection on 23.11.2009 in the office of the Air Cargo Complex, Meenambakkam, Chennai.

3. The learned counsel for the petitioner states that the petitioner has been falsely implicated in the case as he was no way connected with the exercise of powers by the customs authorities in Air Cargo Complex. The CBI Officials filed the First Information Report on 23.11.2009 against nine customs officers and against Thiru G.Kumar, the petitioner, totalling to eleven persons. The CBI Officials seized the amount deposited in the bank as fixed deposit and the charge sheet was filed before the Special Court for CBI cases.

4. The learned Special Public Prosecutor appearing on behalf of the respondents brought to the notice of this Court that one criminal case relates to the order of conviction and the other cases registered are still pending. The learned counsel for the petitioner mainly contended that the rules of natural justice has been violated by the competent authorities under the Prevention of Money Laundering Act (for brevity, herein after referred to as “the PMLA”) while passing the order of provisional attachment and while issuing the confirmation order. The petitioner has



not been afforded with the opportunity to defend his case and thus, they have violated the provisions of the PMLA. In view of the fact that the rules of natural justice has been violated, these writ petitions are to be entertained and therefore, the orders are to be set aside.

5. The learned Special Public Prosecutor appearing on behalf of the respondents objected the said contention by stating that all such grounds ought to have been raised by the petitioner before the appellate authority by preferring an appeal. It is further contended that the adjudicating authority had passed the order confirming the provisional attachment order under Section 83 of the PMLA. Admittedly, the petitioner has not exhausted the efficacious alternate appellate remedy contemplated under the PMLA and therefore, the writ petitions are to be rejected.

6. With reference to the provisional attachment order, under Section 5(1) of the PMLA, the competent authorities are empowered to pass such provisional attachment order if the authorities have a reason to believe that any person is in a possession of any proceeds of crime and 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 the PMLA. Therefore, no prior notice and other opportunity is contemplated under Section 5(1) of the PMLA for the purpose of issuing the provisional attachment order. Thus, the contention of the petitioner that the rules of natural justice is to be followed deserves no merit consideration, as Section 5(1) of the PMLA does not contemplate any such opportunity to any person for the purpose of provisionally attaching the property involved in money laundering.

7. Section 8 of the PMLA denotes adjudication and the procedure to be followed for adjudication under the Act. The learned counsel for the petitioner reiterated that if the property is claimed by a person other than the person to whom 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. As far as Clause 8(2) is concerned, the authorities are bound to give an opportunity to such persons to prove that the property has not been involved in money laundering. Therefore, if at all any person possess certain information or materials to establish that the property has not been involved in money laundering, then they are at liberty to participate in the process of adjudication.



WEB COPY



W.P.Nos.26726 & 26727 of 2017

8. However, the authorities are of an opinion that no such enquiry is required in respect of the third parties. It is for them to take a decision to proceed with the adjudicatory process. It is for the person who is claiming the right over the property, has to establish that the property has not been involved in money laundering. In this regard, if any person is aggrieved, either they can approach the adjudicating authority or the appellate authority, as the case may be, under Section 26 of the PMLA. Therefore, the petitioner cannot claim that an opportunity must be afforded by the competent authority at the time of adjudication.

9. If at all the petitioner claims that the property has not been involved in money laundering, then, he is at liberty to approach the adjudicating authority or the appellate authority under Section 26 of the Act. Contrarily, the provisional attachment order or the confirmation order passed need not be interfered with by the Court on the basis that the person who wants to establish that the property has not been involved in money laundering must be issued with the notice at the time of adjudication.



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10. The term “if the property is claimed by the person, other than the person to whom the notice has been issued” denotes that any third person who is in possession and enjoyment of the property is of the opinion that the property in his possession has not been involved in money laundering, then he is at liberty to approach the adjudicating authority. In this regard, such a person cannot plead that the authorities have not issued any notice to him for the purpose of establishing his case. It is in the opinion of the person concerned and therefore, the chance has been given under the Act to establish his case.

11. Such an opportunity provided under the Act cannot be misconstrued for the purpose of claiming that the adjudicating authority should issue notice for such third parties for the purpose of completing the adjudicatory process. In the present case, if at all the petitioner possess any materials to establish that the property has not been involved in money laundering, then, he is at liberty to approach the appellate authority for the purpose of establishing his case. As far as the provisional attachment order dated 28.03.2017 is concerned, the authority under Section 5(1) of the PMLA has elaborately considered the facts and circumstances of the case and evidences available on record including the materials / documents.



The authorities, after elaborate discussion, made a finding that he has a reason to believe that the case under PMLA is established and therefore, invoked the powers under Section 5(1) of the PMLA and issued the order of provisional attachment. The language applied under the Act is “reason to believe”, therefore, it is sufficient if the authorities form an opinion that the materials available on record are sufficient for the purpose of proceeding against the persons.

12. In respect of the appellate remedy contemplated under the statutes and approaching the High Court under Article 226 before exhausting the remedy, this Court considered the principles in W.P.No.3144 of 2016 dated 15.04.2021. The relevant paragraphs of the said order are extracted hereunder:

“11. This Court is of the considered opinion that all such grounds raised on merits are to be adjudicated with reference to the documents and evidences to be produced and the scope of the writ petition under Article 226 of the Constitution of India cannot be expanded so as to exercise the powers of the appellate authority in the matter of examination or scrutiny of original documents and evidences produced by the respective parties. The very purpose of the statutory appeal is to scrutinize the orders passed by



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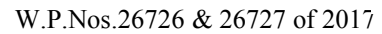


W.P.Nos.26726 & 26727 of 2017

the original authorities, and therefore, the legislative intention in this regard is to be scrupulously followed in the mater of adjudication of merits with reference to the documents and evidences.

12. In common parlance, Statutes contain appeal provisions. In some of the Statutes, there are two-tier appeal provisions in order to ensure that the facts, grounds, evidences are appreciated and the grievances are redressed in the manner known to law. Such appeal provisions are provided with the legislative intention to provide remedy to the aggrieved persons. The High Court, in normal circumstances, would not interfere nor dispense with the appellate remedy.

13. The High Court cannot adjudicate the facts and merits with reference to documents and evidences. Trial is not entertainable under Article 226 of the Constitution of India. All such procedural aspects are to be followed by complete adjudication/trial by the original authorities as well as by the appellate authorities under the provisions of the Statute and the powers under Article 226 of the Constitution of India is limited to find out whether the processes contemplated under the Statutes and the procedural aspects are followed by the competent authorities as well as the appellate authorities or not. The High Court, under Article 226 of the Constitution



14. This Court elaborately discussed the



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W.P.Nos.26726 & 26727 of 2017

*importance of exhausting the appellate remedy in the case of **M/s.Hyundai Motor India Limited v. The Deputy Commissioner of Income Tax, Chennai and another [W.P.No.22508 of 2017 dated 16.07.2018]**, from which, the following paragraphs are extracted :*

“19.Unnecessary or routine invasion into the statutory powers of the competent authorities under a statute should be restrained by the Constitutional Courts. Frequent or unnecessary invasions in the executive power will defeat the constitutional perspectives enshrined under the Constitution of India. Undoubtedly, the separation of powers under the Indian Constitution has been narrated and settled in umpteen number of judgments. Separation of powers demarcated in the Constitution of India is also to be considered, while exercising the powers of judicial review in the matter of dispensing with the appeal remedy provided for an aggrieved person under a statute. If the High Courts started interfering with such Appellate powers without any valid and substantiated reasons, then the very purpose and object of the statute and provision of appeal under the statute became an empty formality and the High Courts also should see that the provisions of appeal contemplated under the statutes are implemented in its real spirit and in accordance with the procedures contemplated under the rules constituted thereon. While entertaining a writ



petition as narrated by the Apex Court, the provision of efficacious alternative remedy under the statute also to be considered. If the writ petitions are entertained in a routine manner, by not allowing the competent Appellate authority to exercise their powers under the provisions of the statute, then this Court is of an opinion that the power of judicial review has not exercised in a proper manner. Thus, it is necessary for this Court to elaborate the legal principle settled in respect of the separation of powers under the Constitution of India.

1. Madras Bar Association vs. Union of India (UOI) (25.09.2014 - SC) : MANU/SC/0875/2014

If the historical background, the preamble, the entire scheme of the Constitution, relevant provisions thereof including Article 368 are kept in mind there can be no difficulty in discerning that the following can be regarded as the basic elements of the constitutional structure. (These cannot be catalogued but can only be illustrated):

- (1) The supremacy of the Constitution.*
- (2) Republican and Democratic form of government and sovereignty of the country.*
- (3) Secular and federal character of the Constitution.*
- (4) Demarcation of power between the Legislature, the executive and the judiciary.***
- (5) The dignity of the individual secured by the various*



freedoms and basic rights in Part III and the mandate to build a welfare State contained in Part IV.

(6) The unity and the integrity of the Nation.

2. Holiness Kesavananda Bharati Sripadagalvaru v. State of Kerala and Anr. [MANU/SC/0445/1973 : (1973) 4 SCC 225].

That separation of powers between the legislature, the executive and the judiciary is the basic structure of the Constitution is expressly stated by Sikri, C.J.

3. P. Kannadasan and Ors. v. State of T.N. and Ors. [MANU/SC/0650/1996 : (1996) 5 SCC 670] the Supreme Court noted that the Constitution of India recognised the doctrine of separation of powers between the three organs of the State, namely, the legislature, the executive and the judiciary. The Court said:

It must be remembered that our Constitution recognises and incorporates the doctrine of separation of powers between the three organs of the State, viz., the Legislature, the Executive and the Judiciary. Even though the Constitution has adopted the parliamentary form of government where the dividing line between the legislature and the executive becomes thin, the theory of separation of powers is still valid.

4. State of Tamil Nadu and Ors. vs. State of Kerala and Ors. (07.05.2014 - SC) : MANU/SC/0425/2014

121. On deep reflection of the above discussion, in our



opinion, the constitutional principles in the context of Indian Constitution relating to separation of powers between legislature, executive and judiciary may, in brief, be summarized thus:

(i) Even without express provision of the separation of powers, the doctrine of separation of powers is an entrenched principle in the Constitution of India.

The doctrine of separation of powers informs the Indian constitutional structure and it is an essential constituent of rule of law.

In other words, the doctrine of separation of power though not expressly engrafted in the Constitution, its sweep, operation and visibility are apparent from the scheme of Indian Constitution. Constitution has made demarcation, without drawing formal lines between the three organs legislature, executive and judiciary. In that sense, even in the absence of express provision for separation of power, the separation of power between legislature, executive and judiciary is not different from the constitutions of the countries which contain express provision for separation of powers.

(ii) Independence of courts from the executive and legislature is fundamental to the rule of law and one of the basic tenets of Indian Constitution.

Separation of judicial power is a significant constitutional principle under the Constitution of India.



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W.P.Nos.26726 & 26727 of 2017

(iii) Separation of powers between three organs-- legislature, executive and judiciary--is also nothing but a consequence of principles of equality enshrined in Article 14 of the Constitution of India. Accordingly, breach of separation of judicial power may amount to negation of equality Under Article 14. Stated thus, a legislation can be invalidated on the basis of breach of the separation of powers since such breach is negation of equality Under Article 14 of the Constitution.

(iv) The superior judiciary (High Courts and Supreme Court) is empowered by the Constitution to declare a law made by the legislature (Parliament and State legislatures) void if it is found to have transgressed the constitutional limitations or if it infringed the rights enshrined in Part III of the Constitution.

(v) The doctrine of separation of powers applies to the final judgments of the courts. Legislature cannot declare any decision of a court of law to be void or of no effect. It can, however, pass an amending Act to remedy the defects pointed out by a court of law or on coming to know of it aligned. In other words, a court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances.

(vi) If the legislature has the power over the subject-



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W.P.Nos.26726 & 26727 of 2017

matter and competence to make a validating law, it can at any time make such a validating law and make it retrospective. The validity of a validating law, therefore, depends upon whether the legislature possesses the competence which it claims over the subject-matter and whether in making the validation law it removes the defect which the courts had found in the existing law.”

20. *This Court is of a strong opinion that institutional respects are to be maintained by the constitutional Courts. Whenever there is a provision for an appeal under the statute, without exhausting the remedies available under the statute, no writ petition can be entertained in a routine manner. Only on exceptional circumstances, the remedy of appeal can be waived, if there is a gross injustice or if there is a violation of fundamental rights ensured under the Constitution of India. Otherwise, all the aggrieved persons from and out of the order passed by the original authority is bound to approach the Appellate Authority. The Constitutional Courts cannot make an appeal provision as an empty formality. Every Appellate Authority created under the statute to be trusted in normal circumstances unless there is a specific allegation, which is substantiated in a writ proceedings. Thus, the institutional functions and exhausting the appeal remedies by the aggrieved*



persons, are to be enforced in all circumstances and writ proceedings can be entertained only on exceptional circumstances. Rule is to prefer an appeal and entertaining a writ is only an exception. This being the legal principles to be followed, this Court cannot entertain the writ petitions in a routine manner by waiving the remedy of appeal provided under the statute.

21. Now, let us look into the legal principles settled by the Apex Court for exhausting the efficacious alternative remedy provided under the statute.

22. When an effective alternative remedy is available, a writ petition cannot be maintained

1. In City and Industrial Development Corporation v. DosuAardeshirBhiwandiwalla and Ors.

MANU/SC/8250/2008 : (2009) 1 SCC 168, this Court had observed that:

The Court while exercising its jurisdiction under Article 226 is duty-bound to consider whether:

(a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved;

(b) the petition reveals all material facts;

(c) the Petitioner has any alternative or effective remedy for the resolution of the dispute;

(d) person invoking the jurisdiction is guilty of unexplained delay and laches;



- (e) *ex facie* barred by any laws of limitation;
(f) grant of relief is against public policy or barred by any valid law; and host of other factors.

2. Kanaiyalal Lalchand Sachdev and Ors. vs. State of Maharashtra and Ors. (07.02.2011 - SC) : MANU/SC/0103/2011

It is well settled that ordinarily relief Under Articles 226/227 of the Constitution of India is not available if an efficacious alternative remedy is available to any aggrieved person. (See Sadhana Lodh v. National Insurance Co. Ltd.; Surya Dev Rai v. Ram Chander Rai and SBI v. Allied Chemical Laboratories.)

3. Commissioner of Income Tax and Ors. v. ChhabilDass Agarwal, MANU/SC/0802/2013 : 2014 (1) SCC 603, as follows:

Para 15. while it can be said that this Court has recognised some exceptions to the Rule of alternative remedy i.e. Where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titaghur Paper Mills case and other similar judgments that the High Court will not entertain a petition Under Article 226 of the



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W.P.Nos.26726 & 26727 of 2017

Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

4. Authorized Officer, State Bank of Travancore and Ors. vs. Mathew K.C. (30.01.2018 - SC) : MANU/SC/0054/2018

The petitioner argued that the SARFAESI Act is a complete code by itself, providing for expeditious recovery of dues arising out of loans granted by financial institutions, the remedy of appeal by the aggrieved under Section 17 before the Debt Recovery Tribunal, followed by a right to appeal before the Appellate Tribunal under Section 18. The High Court ought not to have entertained the writ petition in view of the adequate alternate statutory remedies available to the Respondent. The interim order was passed on the very first date, without an opportunity to the Appellant to file a reply. Reliance was placed on United Bank of India vs. Satyawati Tandon and others, 2010 (8) SCC 110, and General Manager, Sri Siddeshwara Cooperative Bank Limited and another vs. Iqbal and others, 2013 (10) SCC 83. The writ



WEB COPY



W.P.Nos.26726 & 26727 of 2017

do with the jurisdiction of the case, normally the High Court should not interfere if there is an adequate efficacious alternative remedy. If somebody approaches the High Court without availing the alternative remedy provided the High Court should ensure that he has made out a strong case or that there exist good grounds to invoke the extraordinary jurisdiction.

6. *K.S. Rashid and Sons v. Income Tax Investigation Commission and Ors., AIR (1954) SC 207; Sangram Singh v. Election Tribunal, Kotah and Ors., AIR (1955) SC 425; Union of India v. T.R. Varma, AIR (1957) SC 882; State of U.P. and Ors. v. Mohammad Nooh, AIR (1958) SC 86 and M/s K.S. Venkataraman and Co. (P) Ltd. v. State of Madras, AIR (1966) SC 1089.*

Constitution Benches of the Supreme Court held that Article 226 of the Constitution confers on all the High Courts a very wide power in the matter of issuing writs. However, the remedy of writ is an absolutely discretionary remedy and the High Court has always the discretion to refuse to grant any writ if it is satisfied that the aggrieved party can have an adequate or suitable relief elsewhere. The Court, in extraordinary circumstances, may exercise the power if it comes to the conclusion that there has been a breach of principles of natural justice or procedure



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W.P.Nos.26726 & 26727 of 2017

required for decision has not been adopted.

7. *First Income-Tax Officer, Salem v. M/s. Short Brothers (P) Ltd., [1966] 3 SCR 84 and State of U.P. and Ors. v. M/s. Indian Hume Pipe Co. Ltd., [1977] 2 SCC 724.*

There are two well recognized exceptions to the doctrine of exhaustion of statutory remedies. First is when the proceedings are taken before the forum under a provision of law which is ultra vires, it is open to a party aggrieved thereby to move the High Court for quashing the proceedings on the ground that they are incompetent without a party being obliged to wait until those proceedings run their full course. Secondly, the doctrine has no application when the impugned order has been made in violation of the principles of natural justice. We may add that where the proceedings itself are an abuse of process of law the High Court in an appropriate case can entertain a writ petition.” ”

13. In view of the principles considered in the aforesaid judgment, the petitioner is at liberty to prefer an appeal before the appellate authority under Section 26 of the PMLA. In the event of preferring an appeal, the same shall be considered on merits and in accordance with law.



W.P.Nos.26726 & 26727 of 2017

14. With these directions, these writ petitions stands dismissed.

There will be no order as to costs.

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Index : Yes/No

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Neutral Citation : Yes/No

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Chennai Zonal Office
No.84, Greaves Road
Chennai – 600 006.
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