IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.O.P.No.7733 of 2019

R.Subramanian .....Petitioner

Vs.

1.The Deputy Director
Directorate of Enforcement
Chennai Zonal Office
3rd Floor C Block
Murugesa Naicker Complex
84 Greams Road
Chennai 600 006.

2.The Assistant Director
Office of the Directorate of Enforcement
Chennai Zonal Office
3rd Floor C Block
Murugesa Naicker Complex
84 Greams Road
Chennai 600 006. ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records and quash the PAO No.11/2018 dated 31.12.2018 passed by the 1st respondent in ECIR/CEZO/8/2014 on the file of 2nd respondent.

For Petitioner	:	Mr.R.Subramanian (Party in person)
For Respondents	:	Mr.AR.L.Sunderesan Additional Solicitor General of India Assisted by Mr.N.Ramesh for R1 and R2 Special Public Prosecutor for ED

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

Under assail in the present Criminal Original Petition is the Provisional Attachment Order dated 13.12.2018 issued by the Competent Authority of Directorate of Enforcement.

2. The petitioner, appearing in person, is an accused in a money laundering case. Admittedly, ECIR/CEZO/8/2014 was registered by the Directorate of Enforcement and launched an investigation under the provisions of Prevention of Money Laundering Act, 2002 (hereinafter referred as 'PMLA' for brevity). The scheduled offence was registered by the Central Bureau of Investigation (CBI) (BS&FC), Bangalore, in FIR No.18 of 2013 dated 26.07.2013, alleging an offence under Section 420 of Indian Penal Code (IPC). On completion of investigation, a complaint under Section 45 of PMLA, read with Sections 3 and 4 has been filed before the Court concerned.

3. The petitioner challenged the Provisional Attachment Order No.11 of 2018 dated 31.12.2018 issued by the Deputy Director, Directorate of Enforcement, under Section 5(1) of the PMLA. The petitioner states that the authority issued the impugned provisional attachment order has no jurisdiction and the properties provisionally attached cannot be construed as proceeds of crime within the meaning of Section 2(1)(u) of PMLA. The subject properties under provisional attachment were either purchased by the petitioner or were ancestral properties of the petitioner, which were in his possession even prior to the registration of a criminal case by the Central Bureau of Investigation (CBI) at Bangalore. Thus, recording of Enforcement Case Information Report (ECIR) under the provisions of the PMLA itself is untenable.

4. In support of the above grounds, the petitioner in person relied on the judgment of the Hon'ble Supreme Court of India in the case of ***Vijay Madanlal Choudhary and Others Vs. Union of India and Others***[1]**.** The petitioner further relied on the case of ***Pavana Dibbur vs. Directorate of Enforcement***[2]**.**

5. The petitioner states that the properties purchased prior to investigation of PMLA proceedings cannot be subjected to provisional attachment under

1. 2022 SCC Online SC 929
2. 2023 SCC Online SC 1586

Section 5(1) of PMLA. Thus, the provisional attachment order is infirm.

6. Mr.AR.L.Sunderesan, learned Additional Solicitor General of India appearing on behalf of the respondents would oppose by stating that provisional attachment order was passed by the Deputy Director, Directorate of Enforcement in proceedings dated 31.12.2018. Subsequently, a complaint was filed before the Adjudicating Authority under Section 8 of PMLA. Thus, the impugned provisional attachment order lost its relevance and would not provide cause at present to the petitioner to maintain the present criminal original petition. The period of 180 days contemplated for provisional attachment order had been lapsed. However, the provisional attachment order was passed in consonance with the provisions of Section 2(1)(u) and Section 5(1) of PMLA and there is no infirmity as such.

7. We have considered the rival submissions made between the parties to the *lis* on hand.

8. Section 2(1)(u) of the Prevention of Money Laundering Act, 2002 defines "proceeds of crime" as *"any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled*

offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad".

9. The definition of "Proceeds of Crime" is wide enough to cover various facts and circumstances relating to offence of money laundering. The value of the properties is considered as proceeds of crime and further it says that property equal in value held within the country or abroad also constitute proceeds of crime.

10. With reference to Section 2(1)(u) of PMLA, "Proceeds of Crime", the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary's*** case cited *supra* held as follows;

> "**298.** It was also urged before us that the attachment of property must be equivalent in value of the proceeds of crime only if the proceeds of crime are situated outside India. This argument, in our opinion, is tenuous. For, the definition of "proceeds of crime" is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of any such property. If the property is taken or held outside the country, even in such a case, the property equivalent in

value held within the country or abroad can be proceeded with. The definition of "property" as in Section 2(1)(v) is equally wide enough to encompass the value of the property of proceeds of crime. Such interpretation would further the legislative intent in recovery of the proceeds of crime and vesting it in the Central Government for effective prevention of money-laundering."

11. The Hon'ble Apex Court ruled that the definition of proceeds of crime is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a schedule offence, but also of the value of any such property.

12. The definition of "property" under Section 2(1)(v) is equally wide encompass the value of the property of proceeds of crime. The wider implications as interpreted by the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary's*** case cited *supra* would be sufficient to form an opinion that the properties purchased prior to the commencement of alleged offence and value of the proceeds of crime can be subjected to attachment as it constitute proceeds of crime within the definition of Section 2(1)(u) of PMLA.

13. In the present case, the impugned provisional attachment order has

been stayed by this Court and therefore, the period of 180 days as contemplated does not apply to the present case. However, the fact remains that a complaint has already been filed under the provisions of PMLA. Therefore, the provisional attachment order impugned lost its relevance and thus, no further adjudication needs to be undertaken. The petitioner is at liberty to approach the Competent Forum constituted under PMLA in the manner known to law.

14. The petitioner, appearing in person, would submit that he is in the process of contesting the complaint filed before the Adjudicating Authority. Accordingly, the Adjudicating Authority shall proceed with the case in accordance with law by following the procedures as contemplated under PMLA and uninfluenced by the observations made in this order regarding the facts of the case.

15. Considering the facts and circumstances, we hold that the petitioner has not established any grounds for the purpose of considering the relief as such sought for in the present criminal original petition.

16. Accordingly, the Criminal Original Petition in Crl.O.P.No.7733 of 2019 stands dismissed.

[S.M.S., J.] **[M.J.R., J.]**

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Speaking
msv/Jeni

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