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W.P.No.19077 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.No.19077 of 2022

and

W.M.P.No.18387 & 18389 of 2022

Shri.Gulab Punwani

... Petitioner

Vs.

1.The Assistant Director,
Directorate of Enforcement,
Government of India,
Delhi Zonal Office-II,
C-Wing, Pravartan Bhawan,
Dr.A.P.J.Abdul Kalam Road,
New Delhi – 110 011.

2.The Director,
Directorate of Enforcement,
Government of India,
Delhi Zonal Office-II,
C-Wing, Pravartan Bhawan,
Dr.A.P.J.Abdul Kalam Road,
New Delhi – 110 011.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,



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praying for the issuance of Writ of Certiorari, calling for the records in File No.T-2/ Misc./ 117/ DLZO-II/ 2019 on the files of respondent No.1 and quash the impugned order dated 29.04.2022.

For Petitioner : Mr. K.P.Ananthakrishnan
for M/s.Vivrti Law
For Respondents : Mr. Rajnish Pathiyil,
Special Public Prosecutor (ED)

ORDER

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

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Under assail in the present Writ Petition is the order passed by the Directorate of Enforcement Government of India under Section 17(1A) of the Prevention of Money Laundering Act, 2002 (herein after referred as PMLA).

I. BRIEF FACTS OF THE CASE:

2. Central Authority of India (MHA), Government of India, received a Letter of Request (LoR) dated 12.11.2018 from the Central Authority of Brazil (Office of the Prosecutor General of the State of Rio de Janeiro, through Federal Prosecutors) addressed to the Central Authority of India, seeking Legal Assistance in a criminal matter. The stated offences included that of breach of bank secrecy and the collection of financial information of accounts, which were used for money laundering in benefit of a transnational criminal organization, in addition to the freezing of corresponding assets and later repatriation, aiming at future confiscation of objects, products and instruments of crime related to corruption and money laundering, as well as the assurance of award of damages caused.

3. The said LoR was sent by the Central Authority of Brazil in pursuance of United Nations Convention against Corruption (UNCAC), adopted by the UN General Assembly on 31 October 2003, in force from 14 December 2005,



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where both India and Brazil are parties.

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4. The said LoR disclosed that the case where Brazilian authorities were involved in large scale corruption (bribes) committed by SERGIO CABRAL, the then Governor of the State of Rio de Janeiro (2007-2014) and for large scale transfers of monies services of an Uruguay based financial operator annely VINICIUS CLARET ("JUCA") and CLAUDIO BARBOZA ("TONY"), both of whom pleaded guilty; that more than 3,000 offshore companies were registered, whose accounts were existing in 53 countries, in transactions totalling to more than USD 1,632,000,000.00 (one billion, six hundred and thirty-two million dollars) and out of that US \$13,249,403.49 was transferred to India through the accounts of 47 Indian entities, details of which were provided by the Brazilian Authority and Brazilian Authorities have requested for details of the Indian entities to which the amounts have been transferred and further requested to freeze the said bank accounts.

5. The accounts of M/s. Royal Impex was also frozen according to the details provided by the LoR and the investigation that followed. The Petitioner herein is the sole proprietor of M/s. Royal Impex.



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6. On perusal of documents submitted by the Petitioner, it was revealed that as per the invoices, "*Glamour Commorio De Cabelos LTDA*", *Emporio Commorio De Cabelos LTDA*" & "*Angel Commorio De Cabelos LTDA*" were the consignees and the goods were shipped to Brazil. However, perusal of Foreign Inward Remittance Transaction advices/ certificates issued by Indian Bank, it was revealed that the huge amount of funds was remitted by third parties. As such, "*Jack Brown*", "*Revelta Srl*" Paraguay, "*Nedja Commercial Brokers Dwc LLC*", "*Argenta Holdings Venture Limited*" "*Toledot Ino*" had remitted funds into the bank account of M/s Royal Impex maintained with Indian Bank, out of these funds, USD 3,35,774 was received against the corruption money generated at Brazil. It is evident from the above facts that USD 3,35,774 was not generated from genuine transactions and that it was adjusted against the corruption money received from Brazil. The Respondent M/s Royal Impex failed to provide any proof regarding the payment received from third parties.

II. CONTENTIONS OF THE PETITIONER:

7.Mr.P.Ananthakrishnan, the learned counsel for the petitioner, would mainly raise three grounds to assail the impugned order dated 29.04.2022.



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(1) Firstly, under Section 56 of PMLA, there is no Government notification issued in respect of an agreement, if any, between the Indian Government and Brazilian Government. In the absence of any such Government notification, Section 56 of PMLA cannot be invoked against the petitioner.

(2) Secondly, under Section 58 of PMLA, an ECIR must be filed and in the present case, no ECIR has been filed. Thus, the Writ Petition is to be considered.

(3) Thirdly, the order of seizure/attachment has been made by the Assistant Director, the Enforcement Directorate, who is an incompetent authority. As per the petitioner, the competent authority would be the Deputy Director and on that ground also, the impugned order is liable to be set aside.

8. The learned counsel for the petitioner would rely on the order passed by Hon'ble Delhi High Court on 27.10.2021. We are unable to consider the findings in the said order passed by the Hon'ble Delhi High Court, in view of the fact that the impugned order in the present case has been issued on 29.04.2022 and the Hon'ble Delhi High Court order was passed on 27.10.2021, wherein the petitioner is not a party. Relying on the said judgment, it is contended that the original attachment order was set aside and thereafter a fresh attachment order has been passed against the petitioner, despite the fact that the



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petitioner was not a party in the Writ Petition disposed of by the Hon'ble Delhi High Court. The Hon'ble Delhi High Court set aside the order of attachment dated 14.07.2020.

III. REPLY BY THE RESPONDENTS:

9. Mr.Rajnish Pathiyil, the learned Special Public Prosecutor (ED), appearing on behalf of the respondent would strenuously oppose by stating that none of the ground raised by the petitioner are tenable in view of the provisions of PMLA.

10. As per Section 56 of PMLA, an agreement between the Indian Government and the Government of Brazil is in force, enforcing the provisions of PMLA. Therefore, exchange of information for prevention of any offence under PMLA or under the corresponding law in force in that Country or investigation of cases relating to any offence under the PMLA is permissible.

11. The reciprocatory agreement between the Indian government and the Brazil Government got the assent of the Indian Parliament. The said position has been clarified in Para No.8 of the counter that the incoming LOR, received in India, and the outgoing LOR, sent from India, the legal mandate is provided



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under Chapter IX (Sections 55 to 61) of the PMLA, 2002 (Reciprocal Arrangement for Assistance in certain matters and procedure for attachment and Confiscation of Property). Besides, in the present case the international commitment under United Nations Convention against Corruption (UNCAC) is also applicable, where both India and Brazil are parties. (UNCAC was adopted by the UN General Assembly on 31st October 2003, and inforce from 14.12.2005).

12.The corresponding law is defined under Section 2(1)(ia) as under,

(ia) “corresponding law” means any law of any foreign country corresponding to any of the provisions of this Act or dealing with offences in that country corresponding to any of the scheduled offences.

Furthermore, 'offence of cross border implications' is defined under Section 2(1)(ra), as under:

Section 2 (1) (ra) "offence of cross border implications", means-

(i) any conduct by a person at a place outside India which constitutes an offence at that place and which would have constituted an offence specified in Part A, Part B or Part C of the Schedule, had it been committed in India and if such person transfers in any manner the proceeds of such conduct or part thereof



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to India; or

(ii) any offence specified in Part A, Part B or Part C of the Schedule which has been committed in India and the proceeds of crime, or part thereof have been transferred to a place outside India or any attempt has been made to transfer the proceeds of crime, or part thereof from India to a place outside India.

Explanation.- Nothing contained in this clause shall adversely affect any investigation, enquiry, trial or proceeding before any authority in respect of the offences specified in Part A or Part B of the Schedule to the Act before the commencement of the Prevention of Money-laundering (Amendment) Act, 2009 (21 of 2009). ”

Therefore, the respondent have rightly acted on the LOR received from Brazil Government.

IV. DISCUSSIONS:

13. With reference to the 1st ground raised by the petitioner, Section 56(2) of PMLA states that, “*The Central Government may, by notification in the Official Gazette, direct that the application of this Chapter in relation to a contracting State with which reciprocal arrangements have been made, shall be subject to such conditions, exceptions or qualifications as are specified in the said notification.*”



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14. The petitioner relied on the said clause and would submit that it is mandatory for the Government of India to issue notification. But holistic reading of Section 56 of PMLA would reveal that an agreement with the Government of any Country outside India for enforcing the provisions of the PMLA would be sufficient. The language employed in Section 56(2) of PMLA is that the Central Government “may” and not “shall”. Therefore, the consequential Central Government notification is not mandatory even under Section 56(2) of PMLA.

15. That apart, Sub Section (2) of 56 further proceeds that the reciprocal agreement or arrangements have been made, subject to such conditions, exceptions or qualifications as may be specified in that notification. Therefore in the event of any conditions, exceptions or qualification, Central Government notification under Section 56(2) is required and in other cases, where exist reciprocal agreement between the Government of India and any other Country, it would be sufficient for the purpose of enforcing the provisions of PMLA. Thus, the ground raised on behalf of the petitioner is untenable and stands rejected.



16. With reference to the 2nd ground that ECIR has not been registered in the present case under Section 58 of PMLA, the respondent would rely on the legal principles settled by the Hon'ble Supreme Court of India in the case of ***Vijay Madanlal Choudhary and Others Vs. Union of India and Others***¹ and made a submission that the provisions entailed under PMLA do not mandate filing of ECIR before executing a letter of request from the contracting state. The relevant portion of the judgment reads as follows,

“177. It is urged that as the officers of the ED are not empowered to file a chargesheet and consequently, they cannot be regarded as police officer. After investigation, the ED officers can only file a complaint before the Special Court under Section 44(1)(b) of the PMLA. Further, it is stated that as per the definition of “complaint” under Section 2(d) of the Cr.P.C., a ‘police report’ cannot be regarded as a ‘complaint’, as they are both mutually exclusive terms. It is further submitted that a police officer cannot submit a complaint and an ED officer cannot file a chargesheet. Otherwise, Section 155(4) and Section 155(2) would be rendered otiose, as in a case falling under Section 155(4) of the Cr.P.C., if the police officer after investigation forms an opinion that

¹[2023 21 ITR-OL 1]



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only noncognizable case is made out, then in such a situation he is required to file a police report in view of provision of Section 155(4), but due to the operation of Section 2(d), the same will be treated as a complaint and the police officer would be treated as a complainant. Also, in a case where Magistrate orders the police officer to investigate a noncognizable offence under Section 155(2) of the Cr.P.C., then in view of operation of Section 155(3) of the Cr.P.C., the police officer would necessarily file a chargesheet. However, due to the operation of Section 2(d), the chargesheet will be treated as a complaint and he will be treated as a complainant. It is submitted that in case where a police officer investigates a non-cognizable offence, the Legislature has, by way of a deeming fiction, treated the chargesheet as a 'complaint', whereas no such fiction applies in the case of officer investigating a PMLA offence, as he can only file a complaint which does not require any fiction or deeming provision. Therefore, even in case of noncognizable offence, the police officer is only empowered to file a police report, whereas in case of the PMLA offence, the ED officers are only required to file a complaint which is not to be treated as a chargesheet, otherwise the Legislature would have provided for a reverse deeming fiction of treating the complaint as a



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chargesheet.

267. The Explanation as inserted in 2019, therefore, does not entail in expanding the purport of Section 3 as it stood prior to 2019, but is only clarificatory in nature. Inasmuch as Section 3 is widely worded with a view to not only investigate the offence of money-laundering but also to prevent and regulate that offence. This provision plainly indicates that any (every) process or activity connected with the proceeds of crime results in offence of money-laundering. Projecting or claiming the proceeds of crime as untainted property, in itself, is an attempt to indulge in or being involved in money-laundering, just as knowingly concealing, possessing, acquiring or using of proceeds of crime, directly or indirectly. This is reinforced by the statement presented along with the Finance Bill, 2019 before the Parliament on 18.7.2019 as noted above .

17. In paragraph No.457 of **Vijay Madanlal Choudhary's** case (*supra*), the Apex Court held that “There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any



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provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.”

V. PROCEEDINGS UNDER THE PMLA:

18. Upon receiving the LoR, the Enforcement Directorate had conducted searches U/s. 17(1) of the PMLA, 2002 and the bank accounts of the Petitioner was frozen U/s. 17(1A) of the PMLA, 2002. Funds to the tune of USD 3,35,774 was received by M/s Royal Impex and Shri Gulab Punwani is a sole proprietor of M/s Royal Impex since inception of the said firm, therefore concerned accounts were frozen.

19. Subsequently, the Assistant Director, Directorate of Enforcement, Delhi Zonal Office II, on 26.05.2022 filed an application before the Adjudicating Authority, PMLA U/s. 17(4) of the PMLA in O.A.No. 661 of 2022 for continuation of freezing of bank accounts frozen U/s. 17(1A) of the PMLA.



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20. M/s Royal Impex vide its letter dated 15.02.2022 submitted that it is a sole proprietorship concern and that it is completely managed by Shri Gulab Punwani, further, it is evident that M/s Royal Impex has received fund to the tune of USD 3,35,774/- out of the aforesaid, US \$13,249,403.49/- was transferred to India in respect of crime of corruption committed at Brazil. During the course of action under PMLA, amounts available in the account of M/s Royal Impex bearing A/c. No. 416584722, and account of Shri Gulab Punwani who is a sole proprietor of M/s Royal Impex bearing account No. 6831682031 were frozen

21. The Adjudicating Authority, PMLA was pleased to confirm O.A.No. 661 of 2022 vide its Order dated 21.10.2022 U/s. 8(1) of the PMLA. In the Order dated 21.10.2022, the Adjudicating Authority observed that O.A.No. 661 of 2022 did not affect the substantial right of the Respondent at that stage and that the freezing of accounts was of great importance for the effective investigation and adjudication of the offence under PMLA. Relevant portion of the Order dated 21.10.2022 is extracted hereunder:

**... xl) What is required to be seen at this juncture is interest of the investigation, where prima facie allegations exist regarding commission of the offence*



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of money laundering. The background stated in the OA sufficiently indicates that the proceeds of crime are involved. The investigation of money laundering is going on. There is justification for continuation of freezing of accounts mentioned in OA and in view of the discussion in the preceding paragraphs. Hence the Original Application for continuation of freezing of accounts mentioned in OA deserves to be allowed and is hereby allowed. The material shown in OA is sufficient to arrive at the satisfaction by this Authority that the continuation of freezing of accounts as mentioned in OA is required for the purpose of Adjudication under Section 8 of PMLA.

xli) The proceedings at present are in the form of OA, wherein continuation of freezing of accounts mentioned in OA are prayed by the Enforcement Directorate to be retained for the purpose of investigation and Adjudication. As of now there is nothing in this Application which affects substantial right of the Respondent, like confiscation of the property of the Respondent. The Application is simply for continuation of freezing of accounts mentioned in OA, so that the investigation for PMLA offence and Adjudication can be carried on without any obstruction..."



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22. An appeal against an Order U/s. 8(1) of the PMLA lies to the Appellate Tribunal, PMLA U/s. 26 of the PMLA and the same is to be filed within a period of 45 days from the date of receipt of the order. The Petitioner has also filed an appeal U/s. 26 of the PMLA in PMLA/FPA-PMLA No. 5322 of 2022 challenging the Order dated 21.10.2022 and that the same is pending before the Appellate Tribunal, PMLA.

VI. CONTRACTING STATE UNDER PMLA:

23. Chapter IX of the PMLA, titled 'Reciprocal Arrangements for Assistance in Certain Matters and Procedure of Attachment and Confiscation of property' deals with reciprocal arrangement with a contracting state. The term 'contracting state' is defined U/s. 55 (a). Section 55(a) of the PMLA is extracted hereunder:

"55 (a). contracting State means any country or place outside India in respect of which arrangements have been made by the Central Government with the Government of such country through a treaty or otherwise."

24. Every country with whom arrangements have been entered into by the Central Government, through treaty or otherwise, would be a contracting state.



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The two International Conventions / Treaties to which India is a party are:

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(a) United Nations Convention Against Corruption (Decree No. 5687/2006) also known as the Merida convention and

(b) United Nations Convention against Transnational Organized Crime (Decree No. 5015/2004), and protocols thereto, also known as the *Palermo convention*.

25. Further, the above-mentioned conventions are binding on India by effect of Article 253 of the Constitution of India. Article 253 of the Constitution of India is extracted hereunder:

"253. Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body."

26. The offence committed by the Petitioner hand in glove with several Indian and transnational entities is a classic case of money laundering which is



specifically dealt with in the *Merida Convention*. Relevant provision from the *Merida Convention* is extracted hereunder:

"...Article 14. Measures to prevent money-laundering

1. Each State Party shall:

(a) Institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money or value and, where appropriate, other bodies particularly susceptible to moneylaundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer and, where appropriate, beneficial owner identification, record-keeping and the reporting of suspicious transactions;

(b) Without prejudice to article 46 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels



within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters:

(a) To include on forms for the electronic transfer of funds and related messages accurate and meaningful information on the originator,

(b) To maintain such information throughout the payment chain; and

(c) To apply enhanced scrutiny to transfers of funds that do not contain complete information on the



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originator.

4. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

5. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering..."

VII. EFFECTS OF CORRUPTION IN THE ECONOMY OF A COUNTRY:

27. When corruption increases, businessmen are forced to provide an initial bribe before making any investment, and is made to think that corrupt officials may later demand a share of the investment's profits.

28. Businessmen often view corruption as a form of illegal tax due to the secrecy involved and the unpredictability of whether the bribe-taker will honour their part of the deal. This perception reduces their motivation to invest. This



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results in a significant reduction in investment and affects the economic growth of the nation in a serious way.

29. Corruption results in the diversion of benevolent funds that are spent for the purpose of economic and social upliftment of the country and thus slows down the socio-economic growth of the country.

30. When corruption takes the form of tax evasion or claiming improper tax exemptions, corruption brings about loss of tax revenue which further affects the economic growth of the country.

31. When Mahatma Gandhi said that *"The earth provides enough to satisfy every man's need but not every man's greed"*, what Gandhi meant was that the earth has enough resources and means to meet the basic requirements of a man but it can't serve the endless greed of man. A corrupt man after using the resources that is given to him by this earth also takes away those that are given to others.



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VIII. CONCLUSION:

32. All the three grounds raised by the petitioner fail and thus, we do not find any reason to interfere with the impugned order.

33. During the pendency of the Writ Petition, the Enforcement Directorate filed a complaint before the Adjudicating Authority in O.A.No.661 of 2022 and by order dated 21.10.2022, confirmation has been made. An order of confirmation is appealable order under Section 26 of the PMLA. Therefore, the petitioner is at liberty to approach the Appellate Tribunal under Section 26 of the PMLA 2002. In the event of preferring an appeal, the Appellate Tribunal has to decide the issues on merits, uninfluenced by the observations made by this Court, if any, relating to the facts of the case in the present order.

34. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are closed.

[S.M.S., J.]

[V.S.G., J.]

30.08.2024

Index: Yes/No

Speaking/Non-speaking order



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