



W.P.No.28153 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.09.2024

CORAM :

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE DR.JUSTICE A.D.MARIA CLETE

W.P.No.28153 of 2023

M.N.Naveenraaj
Partner-M.N.Jewel Park
No.23, Arni Road
Velapadi, Vellore
Tamil Nadu 632 001

.. Petitioner

v.

1. Assistant Director
Office of Joint Director
Directorate of Enforcement
No.2, 5th and 6th Floor
BSNL Administrative Building
Kushkumar Road, Nungambakkam
Chennai 600 034

2. The Branch Head
ICICI Bank
Vellore Branch, Vellore

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of a Writ of Certiorari, to call for the records and quash
the impugned order in File No.ECR/CEZO-1/62/2022 dated 06.07.2023



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passed by the 1st respondent under Section 17(1-A) of the Prevention of Money Laundering Act, 2002.

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For Petitioner :: Mr.A.Ramesh
Senior Counsel for
Ms.M.Karpagam

For Respondents :: Mr.N.Ramesh
Special Public Prosecutor for R1
R2 - Not ready in notice

ORDER

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

The order of freezing issued under Section 17(1-A) of the Prevention of Money-laundering Act, 2002 (for short “the PMLA”) dated 06.07.2023 is sought to be assailed in the present writ proceedings instituted under Article 226 of the Constitution of India.

2. The provisional freezing order has been challenged mainly on the ground that the writ petitioner is neither an accused in the predicate/scheduled offence nor implicated in the Prevention of Money-laundering proceedings.



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3. The learned Senior Counsel Mr.A.Ramesh would reiterate that the petitioner is unconnected with the offence of money laundering under Section 3 of the PMLA. Therefore, the freezing order *per se* is running counter to the proceedings under Section 17(1-A) of the PMLA.

4. During the pendency of the present writ petition, the impugned provisional freezing order dated 06.07.2023 was considered by the Adjudicating Authority and an order dated 20.12.2023 was passed in O.A.No.945 of 2023 confirming the impugned freezing order dated 06.07.2023. Admittedly, an appeal would lie against the order of the Adjudicating Authority under Section 26 of the PMLA.

5. The learned Senior Counsel Mr.A.Ramesh would submit that the interim order passed by this Court in the present writ petition had not been complied with and a complaint was made and thereafter the Adjudicating Authority issued a Corrigendum in proceedings dated 28.12.2023 implementing the interim order dated 17.11.2023 passed in W.P.No.28153 of 2023.



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6. Let us consider the scope of Section 17 of the PMLA. Section 17 provides for search and seizure. Sub-section (1) of Section 17 contemplates that where the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section, on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person (i) has committed any act which constitutes money-laundering, or (ii) is in possession of any proceeds of crime involved in money-laundering, or (iii) is in possession of any record relating to money-laundering, or (iv) is in possession of any property related to crime, then, subject to the rules made in this behalf, he may authorise any officer subordinate to him to seize any record or property found as a result of such search. Sub-section (1-A) of Section 17 contemplates that where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.

7. Pertinently, sub-section (4) of Section 17, inserted by Act 2 of 2023



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with effect from 15.2.2013, stipulates that the authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1-A) shall, within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1-A), before the Adjudicating Authority.

8. The scheme of the PMLA, more specifically, Section 17 in entirety, has to be interpreted holistically to understand the nature of proceedings issued under Section 17(1-A) and the approval granted by the Adjudicating Authority to the freezing order passed by the authority under Section 17(4) of the PMLA.

9. Since sub-section (1) of Section 17 of the PMLA contemplates the authorised authority to record in writing the reason to believe for conducting the search and seizure, the question arises, whether the reason to be recorded in writing must be in the file to be maintained by the Enforcement



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Directorate or to be communicated immediately to the person affected. In our considered opinion, it is a provisional order of freezing passed pursuant to the search and seizure. Thus reasons to believe recorded prior to passing of freezing order need not be communicated immediately to the affected person. The reasons to believe is the subjective satisfaction of the authority conducting search and seizure and such reasons must be recorded before conducting the search and seizure.

10. Sub-section (2) of Section 17 stipulates that the authority, who has been authorised under sub-section (1), shall immediately, after search and seizure or upon issuance of a freezing order, forward a copy of the reasons so recorded along with material in his possession referred to in that sub-section, to the Adjudicating Authority in a sealed envelope in the manner as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period as may be prescribed. Sub-section (2) in unequivocal terms reiterates that the reasons so recorded along with the material in possession referred to in that sub-section must be kept in a sealed cover in the manner prescribed. Therefore, it is clear that the



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reasons to believe and the reasons recorded thereon by the authority at the initial stage must be kept in a sealed envelope as prescribed under sub-section (2) of Section 17. Thereafter sub-section (4) reiterates that the authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1-A) shall within a period of thirty days from such seizure or freezing, as the case may be, file an application requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1-A) before the Adjudicating Authority.

11. Checks and balances have been well enumerated under Section 17 for search and seizure. Thereafter, the Adjudicating Authority has to consider the issues under Section 8 of the PMLA. When the matter is placed before the Adjudicating Authority after completion of procedures contemplated under Section 17, the affected person will be provided with an opportunity to know about the reasons recorded as well as the materials available on record for passing the freezing order. Once the affected person participates in the adjudicatory proceedings under Section 8 before the



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Adjudicating Authority and in the event of confirming the freezing order passed under Section 17, then an appeal would lie under Section 26 of the PMLA. Therefore, the procedures in entirety would reveal that the affected person has been given an opportunity to defend his case with reference to the reasons recorded for conducting the search and seizure under Section 17. It may not be possible for the authority to immediately provide the reasons to the affected person as it will cause prejudice to the investigation and the process of collecting materials regarding the offence of money laundering. The PMLA contemplates an opportunity to be provided after completion of the procedures contemplated under Section 17 by the competent authority. Under Section 8, the affected person gets an opportunity to defend his case. If any person is aggrieved from and out of an order passed by the Adjudicating Authority under Section 8, then he may approach the Appellate Tribunal constituted under Section 26 of the PMLA. The Appellate Tribunal constituted under Section 26 is chaired by a retired High Court Judge. Therefore, the remedy under Section 26 of the PMLA is efficacious and the petitioner may raise all the grounds before the Appellate Tribunal with reference to the final orders passed by the Adjudicating Authority under



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Section 8 of the PMLA.

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12. Admittedly, in the case on hand, the order of freezing passed in proceedings dated 06.07.2023 lost its significance in view of the order by the Adjudicating Authority under Section 8 in O.A.No.945 of 2023 dated 28.12.2023. However, the learned Senior Counsel Mr.A.Ramesh would submit that the petitioner is not an accused in the predicate offence nor implicated in the Prevention of Money-laundering proceedings. Therefore, there is no reason whatsoever for the Enforcement Directorate to freeze the account of the petitioner.

13. In this context, it is relevant to consider the scope of Section 3 of the PMLA regarding the offence of money laundering. Explanation (i) to Section 3 has been inserted by the Finance (No.2) Act, 2019 with effect from 01.08.2019 for the removal of doubts, wherein it is clarified that a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following



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processes or activities connected with the proceeds of crime, namely, (a) concealment; or (b) possession; or (c) acquisition; or (d) use; or (e) projecting as untainted property; or (f) claiming as untainted property, in any manner whatsoever. Accordingly, the mere possession or acquisition or use of proceeds of crime would be sufficient to attract the provisions of Section 3 of the PMLA. Therefore, the ground that the petitioner is not an accused in the predicate/scheduled offence is untenable and even any person, who is not an accused in the predicate offence may be implicated in the Prevention of Money-laundering proceedings, if any one of the ingredients is attracted.

14. In view of the above facts and circumstances, by granting liberty to the petitioner to raise all the grounds in the appeal before the Appellate Tribunal, the writ petition stands disposed of. Consequently, W.M.P.Nos.27674 to 27676 of 2023 are closed. No order as to costs.

Index : yes

Neutral citation : yes/no

ss

To

(S.M.S.,J.)

(A.D.M.C.,J.)

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Office of Joint Director
Directorate of Enforcement
No.2, 5th and 6th Floor
BSNL Administrative Building
Kushkumar Road, Nungambakkam
Chennai 600 034

2. The Special Public Prosecutor (ED)
High Court, Madras



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S.M.SUBRAMANIAM,J.

AND

A.D.MARIA CLETE,J.

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