



(107)

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CWP-17388-2024 (O&M)

Date of decision:- 26.07.2024

M/s M3M India Pvt. Ltd. and another

...Petitioner(s)

Versus

Union of India and others

...Respondent(s)

CORAM: **HON'BLE MR. JUSTICE SHEEL NAGU, CHIEF JUSTICE**
HON'BLE MR. JUSTICE VIKAS SURI

Present:- Mr. Yatish Vahal, Authorized Representative of the petitioners.
 Mr. Zohib Hussain, Advocate,
 for respondent No. 2 – Directorate of Enforcement
 (through Video Conferencing).

* * * *

SHEEL NAGU, C.J. (ORAL)

1. Lawyers are abstaining from work today.
2. This petition has been filed under Article 226/227 of the
Constitution of India praying for the following reliefs:-

A. Read Down and/or Read Into the expression 'material in possession' and 'reason to believe', occurring in sub-section (1) Section 5 of the Prevention of Money Laundering Act, 2002 ('PMLA') in juxtaposition and conjunction with The Prevention of Money Laundering (The Manner Of Forwarding A Copy of The Order of Provisional Attachment of Property alongwith The Material In Respect of Survey To The Adjudicating Authority And Its Period Of Retention] Rules, 2005 ('Provisional Attachment Rules') and hold that:-

- i. 'Material' which forms the basis of 'reason to believe' ought to be based on admissible evidence to be led before the Hon'ble Court and not on inadmissible evidence;
- ii. 'Material' as contemplated under Section 5 of the Act ought to be of such a nature that enables the designated officer to form an opinion by recording reason to believe in writing that:-



- (a) any person is in possession of any proceeds of crime; and
- (b) 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 this Chapter,
- iii. The expression 'reason to believe' is not equivalent with the expression grave suspicion to believe and, therefore, the same ought to be of higher degree of satisfaction founded on evidence regarding the existence of a fact or the doing of an act;
- iv. Recording of 'reason to believe in writing' is a sine qua non and a legal necessity for the designated officer to 'provisionally attach' any property;
- v. Existence and validity of the 'reason to believe' forms the root of the power to 'provisionally attach a property and the subjective satisfaction of the designated officer ought to be founded and based upon fair and objective consideration of the 'material' which may be in the form of documents and oral statements;
- vi. The 'reason to believe' is subject to judicial review and the Court can well form a secondary opinion on the validity of the exercise undertaken for compliance of Section 5(1) of the Act when the provisional attachment was made;
- vii. The expression 'reason to believe' is not synonymous with the subjective satisfaction of the officer and must be held in good faith and cannot merely be a pretence;
- viii. The 'reason to believe' ought to have a rational connection or a relevant bearing to the formation of the belief and the same ought not to be extraneous or irrelevant to the purpose of Section 5(1) of the Act;
- ix. The existence and soundness of 'reason to believe' ought to be based upon the 'material' available with the authorized officer and scrutiny of such an action to attach a property, whether in accordance with law, is amenable to judicial review;
- x. The 'reason to believe' ought to be based on 'material in possession' which in turn refers to 'all' or 'entire' material in possession of the officer before arriving at the mandatory satisfaction to 'provisionally attach a property U/s 5(1) of the Act;



xi. The officer acting U/s 5(1) of the Act cannot ignore or not consider the 'material' which may have the effect of negating the existence of any of the contingencies referred to in Clause (a) & (b) of Section 5(1) and thus, dissuade him to 'provisionally attach a property and any non-consideration of such 'material' would negate the legislative intent which imposes stringent conditions for attachment and will be deleterious to the constitutional values of rule of law as also an affront to the constitutional as well as human right to property;

xii. A designated officer acting U/s 5(1) cannot selectively pick and choose 'material' to 'provisionally attach' a property and such power cannot be exercised as per the whims and fancies of the officer;

xiii. By ignoring 'all' or 'entire' material while provisionally attaching a property under Section 5(1) of the Act, the designated officer commits an error in law which goes to the root of the decision making process, and amounts to legal malice;

xiv. To strike down an arbitrary exercise of power vested with the officer to 'provisionally attach' a property by way of judicial review, is a necessary safeguard for enforcement of law and does not amount to interference with the inquiry/investigation relating to 'proceeds of crime':

B. Read Down and/or Read Into the expression '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' occurring in Clause (b) of Section 5(1) of the Act and hold that:-

i. The likelihood as envisaged and contemplated in Clause (b) of Section 5(1) of the Act ought to be based upon entirety of circumstances and not mere ipse dixit or arbitrary, whims and fancies of the officer;

ii. Without any cogent or convincing or admissible 'material' as regards the satisfaction contemplated in Clause (b) of Section 5(1) of the Act, resort to provisional attachment cannot be made.

C. Read Down and/or Read Into Second Proviso to Section 5(1) of the Act and hold that:-

i. The 'material in possession' forming the basis for 'reason to believe' as 'recorded in writing' ought to be distinct in nature, character and scope than those occurring in the main body of Section 5(1) of the Act;



ii. In the absence of separate 'material in his possession' and simultaneous 'recording of reason to believe in writing' justifying the invocation of the Second Proviso to Section 5(1) of the Act, the action taken to 'provisionally attach' a property would stand vitiated in law.

D. In consonance with the law laid down by a Division Bench of this Court in "Seema Garg Vs. Dy. Director, DoE 2020 SCC OnLine P&H 738" and approved vide "Order dated 30.4.2021 passed in Special Leave to Appeal (C) Nos. 14713-14715/2020" by the Hon'ble Supreme Court, Read Down and/or Read Into the expression 'proceeds of crime' as occurring in Section 5(1) of the Act and as defined U/s 2(1)(u) thereof and consequently hold that the power vested with the designated officer to 'provisionally attach' a property as envisaged under Section 5(1) of the Act cannot take into its ambit, scope and sweep any property 'equivalent in value'.

E. Quash the impugned Provisional Attachment Order No. 06/2024 (In ECIR/03/HIU/2019) dated 18.07.2024 issued by Respondent No. 2 in F. No. ECIR/03/HIU/2019 purported exercise of powers under Section 5(1) of the Prevention of Money Laundering Act, 2002 (Annexure P-12) and all consequential proceedings arising therefrom, as the entire exercise undertaken by Respondent No. 2 is actuated with malice both in fact as well as law;

F. Without prejudice to the rights and contentions of the petitioners and as offered by them "under protest" to the Respondent No. 2, this Court may direct the Respondents to substitute the provisionally attached property with that of any of the unencumbered marketable assets given in the chart in Para 3.22 of the petition, in the interest of justice;

G. As an interim/ad-interim measure, this Court may stay the operation of the impugned PAO and all proceedings relating to the impugned attachment.

3. The fundamental grievance raised by the authorized representative appearing on behalf of the petitioner-company is that due to provisional attachment which took place on 18.07.2024 several properties which were on the verge of being launched stood attached and cannot be proceeded ahead with. The petitioners have proposed to substitute the value of



some of the projects provisionally attached by furnishing finished/completed unencumbered project(s) to the extent of similar value.

4. The scheme of the Prevention of Money Laundering Act, 2002 (in short the 'PMLA'), as is evident from reading of the relevant Section(s) thereof and rules framed thereunder, do not contain any such enabling provision to satisfy the prayer made by the petitioners before the provisional attachment is confirmed under Section 8 of the PMLA. The provisional attachment which takes place under Section 5 is to be followed by filing Original Complaint by the Enforcement Directorate within a period of 30 days, whereafter the adjudicating authority affords opportunity to the suspected/accused person(s) and passes appropriate orders as regards confirming the provisional attachment or otherwise.

5. From the scheme of the PMLA, it is obvious that no such substitution of the provisionally attached property either in the shape of liquid asset or otherwise can take place. Such facility is only available to the extent permissible under the PMLA and the Rules framed thereunder after the provisional attachment is confirmed.

6. It is well known that the legality and validity of the PMLA has been upheld by Apex Court in the case of ***Vijay Madanlal Choudhary and others Vs Union of India and others***, 2022 SCC Online SC 929.

7. May be, the aspect which has been raised by the petitioners, may not have been considered in specific terms in the aforesaid judgement of Apex Court, but the same are deemed to be considered vide law laid down by Apex Court in ***T. Govindaraja Mudaliar Etc.Etc. Vs The State of Tamil Nadu and others*** (1973) 1 SCC 336, relevant para 10 is reproduced for ready reference and convenience:-

“10. The argument of the appellants is that prior to the decision in *Rustom Cavasjee Cooper case*, it was not possible to challenge Chapter IV-A of the Act as violation of Article 19(1)(f) owing to the decision of this Court that Article 19(1)(f) could not be



invoked when a case fell within Article 31 and that was the reason why this Court in all the previous decisions relating to the validity of Chapter IV-A proceeded on an examination of the argument whether there was infringement of Article 19(1)(g), and clause (f) of that article could not possibly be invoked. We are unable to hold that there is much substance in this argument. *Bhanji Munji case*, and other decisions which followed it were based mainly on an examination of the inter-relationship between Article 19(1)(f) and Article 31(2). There is no question of any acquisition or requisition in Chapter IV-A of the Act. The relevant decision for the purpose of these cases was only the one given in *Kochuni case*, after which no doubt was left that the authority of law seeking to deprive a person of his property otherwise than by way of acquisition or requisition was open to challenge on the ground that it constituted infringement of the fundamental rights guaranteed by Article 19(1)(f). It was, therefore, open to those effected by the provisions of Chapter IV-A to have agitated before this Court the question which is being raised now based on the guarantee embodied in Article 19(1)(f) which was never done. It is apparently too late in the day now to pursue this line of argument. In this connection we may refer to the observations of this Court in *Mohd. Ayub Khan v. Commissioner of Police, Madras* [AIR 1965 SC 1623 : (1965) 2 SCR 884 : (1965) 2 SCJ 706] according to which even if certain aspects of a question were not brought to the notice of the court it would decline to enter upon re-examination of the question since the decision had been followed in other cases. In *Smt Somavanti v. The State of Punjab* [AIR 1963 SC 151 : (1963) 2 SCR 774 : (1963) 2 SCJ 35] a contention was raised that in none of the decisions the argument advanced in that case that a law may be protected from an attack under Article 31(2) but it would be still open to challenge under Article 19(1)(f), had been examined or considered. Therefore, the decision of the Court was invited in the light of that argument. This contention, however, was repelled by the following observations at p. 794:

“The binding effect of a decision does not depend upon whether a particular argument was considered therein or not, provided that the point with reference to which an argument was subsequently advanced was actually decided.”

8. In view of the above settled position of law not only based on the decision of Apex Court in *Vijay Madanlal Choudhary and others* (supra), but also in view of the judgement of Apex Court in *T. Govindaraja Mudaliar* (supra), it is obvious that the judgement of Apex Court in *Vijay Madanlal Choudhary and others* (supra) having upheld the validity, legality and



constitutionality of the PMLA is deemed to have upheld the vires of all the provisions including the absence of mode of replacement of the property provisionally attached for a period of thirty days.

9. In view of the above, no case for interference is made out. The petition stands dismissed.

(SHEEL NAGU)
CHIEF JUSTICE

(VIKAS SURI)
JUDGE

26.07.2024
Amodh Sharma

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No