* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment reserved on: 10.11.2025
Judgment delivered on: 21.11.2025

\+ MISC. APPEAL(PMLA) 8/2022

DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT .....PETITIONER

versus

AMLENDU PANDEY (D) THROUGH LR .....RESPONDENT

Memo of Appearance

For the Appellant: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani, Panel Counsel, Mr. Karthik Sabharwal and Mr. Akshay Belal, Advocates

For the Respondent: Mr. S.K. Das, Advocate

CORAM:
HON'BLE MR. JUSTICE VIVEK CHAUDHARY
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

1. *Directorate of Enforcement*[1], through its Deputy Director, has filed present appeal under Section 42 of *Prevention of Money Laundering Act, 2002*[2]. The prayer is to set aside order dated 21.05.2019 passed by learned Appellate Tribunal, PMLA.

2. Briefly stated, the case of the ED is to the effect that several premises of one Mr. Hassan Ali Khan and his associates were raided by Income Tax Department on 5th & 6th January, 2007. Such searches brought to fore various bank accounts opened by them outside India, particularly, in Switzerland and Singapore.

[1] ED
[2] PMLA

3. Having learnt the same, ED also carried out investigation under the provisions of PMLA, which revealed commission of offences punishable under Sections 467/420/471 of *Indian Penal Code, 1860* r/w Section 10(3) and 12(1) of *Indian Passports Act, 1967*. Since said offences were *scheduled offences* under PMLA, a criminal case[3] was registered by ED.

4. Mr. Hassan Ali Khan and one Mr. Kashinath Tapuriah were arrested in March, 2011.

5. A *prosecution complaint*[4] was also filed on 06.05.2011 by ED.

6. Several properties belonging to Mr. Hassan Ali Khan and his associates were attached and such attachment order was confirmed by the Adjudicating Authority.

7. Despite said prosecution, Mr. Hassan Ali Khan continued to indulge in money laundering activities and, therefore, various other premises of several persons were raided and searched.

8. One such search took place at the premises of respondent Mr. Amlendu Pandey (since deceased) on 09.02.2016. During such search conducted under Section 17 of PMLA, laptop, pen-drive, mobiles and cash amount of Rs. 26.30 lacs were recovered.

9. Since the documents recovered during such searches were voluminous in nature and seized electronic devices were to be scrutinized, Assistant Director, Enforcement Directorate moved an application under Section 17(4) of PMLA seeking their retention under Section 8(3) of PMLA.

10. Presently, we are concerned with the aforesaid search and seizure

[3] No. ECIR/02/MZO/2007
[4] Complaint No. 01/2011 before the learned Special PMLA Court, Mumbai

relating to respondent Mr. Amlendu Pandey.

11. On receipt of *show cause notice* from Adjudicating Authority, respondent responded and asserted that he had no association with his alleged associates and was never involved in any such activity of money laundering. He asserted that he and his brother owned one property and decided to sell the same and, therefore, entered into one *agreement-to-sell* on 09.10.2014 with one Mrs. Indu Devi. The sale consideration was Rs. 85 lacs. However, since buyer Mrs. Indu Devi failed to arrange for the same, said agreement was cancelled and the advance amount was forfeited.

12. According to him, as per subsequent verbal understanding, the aforesaid property fell to his exclusive share and Mrs. Indu Devi approached him again seeking extra time to arrange for the funds and since she was an old tenant, extension was granted, *albeit,* against enhanced sale consideration of Rs. 1,01,00,001/-.

13. Respondent also claimed before Adjudicating Authority that he was earning Rs. 3 lacs to Rs. 4 lacs annually from cultivation and from mango orchard and sough to justify cash, having received the same from the aforesaid sources. Thus, according to him, since cash came in his hands through legitimate means only, it could not have been attached. He also challenged seizure of his laptop and mobile sets for the reason that these did not contain any incriminating material.

14. His such contentions, however, did not find any favour and retention was confirmed by the concerned Adjudicating Authority on 28.06.2016.

15. Respondent challenged the same by filing an appeal[5] under Section 26 of PMLA.

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[5] FPA-PMLA-1431/MUM/2016

16. However, during the pendency of the aforesaid appeal before the learned Appellate Tribunal, Mr. Amlendu Pandey died on 25.05.2017 and his LR i.e. his daughter was impleaded in appeal proceedings on 19.12.2017.

17. Learned Appellate Tribunal, PMLA, *vide* judgment dated 21.05.2019, has allowed the appeal, with direction to de-freeze the abovesaid property of respondent.

18. Such order is under challenge before us.

19. A careful perusal of impugned order would indicate that the learned Appellate Tribunal, ostensibly, got swayed away by the fact that there was no "*prosecution complaint*" against respondent Mr. Amlendu Pandey. This was despite the fact that no such argument was even raised by the respondent in his appeal filed before the learned Appellate Tribunal.

20. Admittedly, during the pendency of said appeal before learned Appellate Tribunal, ED did file one supplementary complaint 17.07.2018 before the Sessions Court, Mumbai. It was, however, in continuation of previous ECIR filed on 06.05.2011.

21. In such supplementary complaint, it was mentioned that the statement of Mr. Amlendu Pandey had been recorded wherein he, *inter alia,* admitted that he had facilitated Mr. Hassan Ali Khan in obtaining passport on the basis of forged documents and also admitted that he had accompanied him to Singapore to open an account in Singapore. As per said complaint, respondent had even failed to substantiate his assertion about sale of property as he could not show any document in support thereof.

22. The question posed to the learned Appellate Tribunal was a limited

one. The tribunal was to, merely, adjudicate whether confirmation order passed by the Adjudicating Authority was sustainable or not.

23. In his appeal, Mr. Amlendu Pandey never took any plea that seizure could not have been made or retention could not have been confirmed as there was no complaint against him. His prime contentions, made in the appeal, were to the effect that the Adjudicating Authority had neither given any findings about the sources disclosed by him nor there was any live-link between seizure and the alleged ongoing investigation.

24. The adjudication order under Section 8 of PMLA can be passed when Adjudicating Authority receives a complaint under Section 5(5) or an application under Section 17(4) or an application under Section 18(10) of PMLA. On receipt of any such complaint or application, the Adjudicating Authority, after satisfying itself, is required to issue *show cause notice* to any such person and after receiving reply, if any, to such show cause notice and hearing all concerned and taking into account all the relevant material placed before it, the Adjudicating Authority is required to record findings to the effect whether the property in question is involved in money laundering or not. In case, its answer is in affirmative, it would result in confirmation of attachment made under Section 5 or under Section 17 or under Section 18 of PMLA, as the case may be.

25. Here, the request for retention had been made under Section 17(4) of PMLA and not under Section 5(5) of PMLA.

26. Though, in a way, the ultimate outcome might be attachment and seizure while taking any action under the aforesaid two provisions, there is a subtle difference between the two.

27. Section 5, which falls under Chapter-III of PMLA, kicks in when the

designated officer of ED has *reason to believe* that any person is *in possession of any proceeds of crime* and that such *proceeds are likely to be concealed, transferred or dealt with in a manner which may result in frustrating the proceedings relating to confiscation thereof*.

28. Section 17 of PMLA, whereas, falls under Chapter-V which relates to summon, search seizure etc. Scope of any search and seizure made under Section 17 of PMLA is much wider as it does not, merely, relate to possession of proceeds of crime but takes in its ambit *any person who has committed any act which constitutes money laundering or is in possession any records relating to money laundering or is in possession of any property related to crime*. While attachment under Section 5 of PMLA is made on account of urgency as there is also a likelihood of the proceeds being concealed or transferred, no such pre-condition, generally speaking, exists while conducting any search and seizure under Section 17 of PMLA.

29. Moreover, under Section 5 of PMLA, as per first proviso, no attachment can be done unless in relation to scheduled offence, *a report under Section 173 Cr.P.C.* has been forwarded to the concerned Court or Magistrate or a complaint has been filed.

30. Interestingly, in context of search conducted under Section 17 of PMLA, the requirement is of sending a report *under Section 157 Cr.P.C.*

31. Even such stipulation has now been done away with.[6]

32. Since the case in hand is prior to the aforesaid amendment, the true import and impact of relevant provision need to be understood.

33. The oral contention of the respondent, before the Appellate Tribunal,

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[6] Omission as per amendment carried out by *Finance (No. 2) Act, 2019* which came into effect on 01.08.2019.

was that no charge-sheet for commission of *scheduled offence* was pending against the deceased. He also argued that Mr. Amlendu Pandey had nothing to do with the other defendants and had not committed any offence, directly or indirectly. It was also submitted that once he had expired, all the proceedings against him stood abated. Thus, the prime argument was that since no prosecution complaint had ever been filed when he was alive, after his death, no complaint was maintainable.

34. As per Section 17 of PMLA, search can be conducted in the premises of "*any person*" who has committed any act which constitutes money-laundering or is in possession of proceeds of crime or is in possession of any records relating to money-laundering, or is in possession of any property related to crime and though as per proviso (since omitted), there was a pre-condition of there being a complaint or report but it was never the requirement of law that any such 'report' or 'complaint' should also be against the *'same very person'*.

35. Search in question is of 09.02.2016 and a complaint against the alleged co-accused/accomplices of respondent had already been filed before Special PMLA Court, Mumbai, way back on 06.05.2011. Learned Special Court had taken cognizance of the same as it had even issued process.

36. The contention of the respondent was, thus, completely fallacious and misplaced, being based on misreading of the aforesaid provision.

37. Section 17 of PMLA does not lay down that the search can be carried out in the premises of that person alone *qua* whom a complaint has been filed or report had been forwarded to the concerned Magisterial Court. The pre-condition is of '*prior institution of complaint or forwarding of a report under Section 157 Cr.P.C'*. There is no mandate that search should also be

of the person shown accused in such report or complaint.

38. A person may be in possession of *proceeds of crime* but still may not be accused of any scheduled offence or offence of money laundering. In a given situation, a person can be recipient of *proceeds of crime*, without having any criminal intent and, therefore, it is not necessary that any such person should be an accused in a prior complaint or report. Thus, search was permissible once the conditions specified under Section 17 of PMLA were satisfied.

39. Here, the search was conducted as the concerned officer of ED had 'reason to believe' that money laundering activities were still going on and ED, therefore, decided to conduct search to recover incriminating material. As per Section 17(1)(iii), the premises of any person, who is in possession of any records relating to money laundering, can also be searched.

40. Be that as it may, the search is of 09.02.2016 and it was consequent upon a 'complaint' already forwarded to the Court in the year 2011.

41. Since the precondition is clearly met, the impugned order is not sustainable.

42. Undoubtedly, since ED knew that the respondent had expired, such fact should have been clearly described in the supplementary complaint filed on 17.07.2018. However, fact remains that such subsequent filing of supplementary complaint has no relevance in the present context and would not, therefore, cause any adverse impact upon the search proceedings.

43. Learned counsel for respondent, during the course of arguments, acknowledged the aforesaid factual position and supplemented that since the other grounds taken by him were never considered by the learned Tribunal and he did not get any real opportunity to demonstrate that his

possession was legitimate and the cash amount has no nexus with any proceeds of crime, the respondent may be granted one chance to raise all such contentions before the learned Tribunal.

44. Learned counsel for ED has also no objection in this regard.

45. In view of the above, while setting aside the impugned order dated 21.05.2019, the matter stands remanded with request to the learned Appellate Tribunal to consider the appeal afresh and to decide the same in accordance with law, after giving due opportunity of hearing to both the sides.

46. Appeal stands disposed of in aforesaid terms.

(VIVEK CHAUDHARY)
JUDGE

(MANOJ JAIN)
JUDGE

NOVEMBER 21, 2025/*dr/js*