

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

Date of the Order: 13.03.2023

**(1) MP-PMLA-10800/CHN/2023 (Misc.)
MP-PMLA-10799/CHN/2023 (Misc.)
MP-PMLA-9792/CHN/2022 (Misc.)
MP-PMLA-3927/CHN/2017 (Exem.)
FPA-PMLA-2002/CHN/2017**

Shri Ashok Bajaj ... Appellant

Versus

The Deputy Director
Directorate of Enforcement, Chennai ... Respondent

**(2) MP-PMLA-9793/CHN/2022 (Misc.)
MP-PMLA-3946/CHN/2017 (Exem.)
FPA-PMLA-2038/CHN/2017**

M/s. Jam Surgical Company Pvt. Ltd. ... Appellant

Versus

The Deputy Director
Directorate of Enforcement, Chennai ... Respondent

Advocates/Authorized Representatives who appeared

For the Appellants : Shri Madhav Khurana, Advocate

For the Respondent : Sh. N.K. Matta, SPP

CORAM

SHRI G. C. MISHRA : MEMBER
SHRI BALES KUMAR : MEMBER

JUDGMENT

FPA-PMLA-2002/CHN/2017 & FPA-PMLA-2038/CHN/2017

The present appeals have been filed under Section 26 of Prevention of Money Laundering Act, 2002 (PMLA) against the common order dated 01.09.2017 passed by the Learned Adjudicating Authority in O.C. No. 729/2017 assailing the impugned order on the grounds mentioned in the Appeals with prayers to set aside the impugned order and to set aside

the Provisional Attachment Order (PAO) 06/2017 dated 24.03.2017 in file No. CEZO/4/2013 and also to pass such further/other relief in favour of the Appellant as may deem fit and proper.

Replies to the Appeals have been filed on the grounds stated therein with prayers to quash the Appeal and pass any further orders as may deem fit.

MP-PMLA-9792/CHN/2022 (Misc.) in FPA-PMLA-2002/CHN/2017 & MP-PMLA-9793/CHN/2022 (Misc.) in FPA-PMLA-2038/CHN/2017

During the pendency of the Appeals, the Appellants have filed applications *inter-alia* on the common grounds that the property admeasuring 1.08 acres of land situated at number 75, Pannangottur, village Chengalpet Taluk, Kanchipuram District comprised in Survey No. 119, Tamilnadu belongs to the Appellant Shri Ashok Bajaj and that vide order dated 18.02.2022, the Hon'ble High Court Judicature at Madras finding merits in the case of the Appellant Shri Ashok Bajaj, was pleased to declare that by no stretch of imagination can the property be proceeds of crime and therefore quashed the complaint qua the Appellant Shri Ashok Bajaj. Both the Appellants have made common prayer *inter-alia* to allow the Appeal and setting aside the impugned order, direction for release of the aforesaid property, direction to the Respondent to inform the Sub-Registrar, the Tehsildar that the property in question is no longer under attachment, for taking on record the copy of the judgment dated 18.02.2022 and for direction to the Respondent to send intimation to the Branch Manager Axis Bank, Corporate Banking Branch directing them to release all papers pertaining to the aforesaid property.

The Respondent has filed the replies, to both the applications, containing similar pleas and grounds therein and has prayed for rejection of the applications.

Both the applications and appeals are taken up together for hearing.

During the course of hearing on the merit of the applications the learned Counsel for the Appellants/Applicants argued not only for allowing the Appeals by setting aside the impugned order but also release of the property in question mainly on the ground that the Hon'ble High Court of Judicature at Madras, vide order dated 18.02.2022 in CRL. O.P.Nos. 22869 and 24151 of 2018 and connected CRL M. Ps. in the matter of C.S. Meenakshi & Ors. which includes the Appellant Shri Ashok Bajaj, has quashed the predicate offence holding that "*the prosecution of the petitioners in C.C. No. 12/2017 on the file of XIV Additional Court for CBI cases, Chennai, is clearly an abuse of process of law and ex-consequenti, the same is quashed*" (Para No. 15 of the Order).

It is argued by the Learned Counsel for the Appellants that after completion of investigation the Respondent filed the Complaint bearing C.C. No. 12/2017 under Sections 3 & 4 of PMLA in which the property (supra) has been shown as proceeds of crime from commission of offence under Section 420 of the IPC allegedly committed by Dr. C.S. Meenakshi and her husband Mr. C. Natesan and that the Appellant Shri Ashok Bajaj preferred a criminal petition bearing No. 24151 of 2018 before Hon'ble High Court of Judicature at Madras seeking quashing of the complaint and that vide the aforesaid common order the Hon'ble High Court quashed the complaint. The Learned Counsel for the Appellant referred to para nos. 3.9, 3.12, 3.13, 3.14, 12 to 15 of the order dated 18.02.2022 and submitted that the transactions between the parties in respect of the property in question is a civil transaction and that there is no involvement of any proceeds of crime and that since it is held by the Hon'ble Court that the dispute with regards to the dispute between Manikka Thyagarajan and Meenakshi can be resolved only by a Civil Court and not via a criminal prosecution by invoking Section 3 & 4 of the

PMLA and that till now there is no final report filed by the police in the case registered vide Royapettah P.S. C.r.No. 972/2012.

During the course of the hearing, the learned Counsel for the Appellants has also referred to the judgment passed by the Hon'ble Supreme Court in the matter of "*Vijay Madanlal Choudhary V/s. Union of India*".

It is further submitted by the Learned Counsel for the Appellants that the Learned Special Court has accepted the order passed by the Hon'ble High Court in the prosecution case filed by ED under PMLA, against the Appellant Shri Ashok Bajaj and that there is no prosecution case pending against Shri Ashok Bajaj and that no prosecution complaint has been filed against the other Appellant M/s. Jam Surgical Company Pvt. Ltd. and that in view of the specific order (supra) of Hon'ble High Court, Madras the confirmation order has to go.

On the other hand it is submitted by the Learned Counsel for the Respondent that it is a fact that the prosecution complaint has been quashed by the Hon'ble High Court of Madras in the aforesaid proceedings and the same is under challenge by way of S.L.P. before Hon'ble Supreme Court vide Diary No. 32996/2022 which came up for hearing on 27th February, 2023 but could not be taken up due to non-availability of Bench.

It is further submitted by the Learned Counsel for the Respondent that the application is not maintainable and that it is pleaded that the power of release of the property is with Special Court as per the provisions under Section 8(7) and that the involvement of the person in the activities inter-alia amounts to an offence of cross border implication which is a scheduled offence specified in part C of the PMLA, 2002 and that the properties which are subject matter in the present appeal may not be released till the pendency of the S.L.P before the Supreme Court.

During the course of hearing the Learned Counsel for the Respondent contended that the Appellant was to move the Special Court, not this Tribunal, as provided under Section 8(7) of the PMLA, 2002. He has also referred to Section 8(5) and (6) of PMLA, 2002 which provides the procedures to be followed on conclusion of Trial. He has relied on judgments of Hon'ble Supreme Court in the matter of P. Chidambaram v/s. Directorate of Enforcement (2019) 9 SCC 24 and the judgment passed by the Hon'ble Delhi High Court in the matter of Raman Sharma & Ors. v/s. Director, Directorate of Enforcement & Ors. in CRL. REV. P 1033/2019 and also the judgment passed by the Hon'ble Supreme Court in the case of Vijay Madanlal Choudhary & Ors. v/s. U.O.I, S.L.P. (CRL.) No. 4634/2014. He further argued that the application is not maintainable in this Tribunal and that only the Special Court is empowered to release the property in view of the provisions prescribed under Section 8(7) of the PMLA, 2002.

In reply, the Learned Counsel for the Appellants submitted that the prosecution complaint was quashed at the summon stage and submitted that there is no prosecution complaint/case pending against the Appellants under PMLA, 2002 and that this Tribunal is not powerless to release the property in question as the Hon'ble High Court, Madras (supra) has quashed the prosecution complaint filed by the Enforcement Directorate against the Appellant Shri Ashok Bajaj.

Heard both sides and perused the impugned orders, appeal memos, replies to the appeals and the present applications.

Brief Facts of the case:-

It is revealed from the impugned order that the Directorate of Enforcement, on the basis of complaint lodged before the Inspector of Police, E-2 Police Station (Crime), Royapettah, Chennai-14, against Smt. Dr. C.S. Meenakshi and her husband Shri Natesan of Mylapore,

Chennai-4, the Police registered an FIR No. 972/2012 dated 19.08.2012 for commission of offences under Section 406 & 420 IPC and that since Section 420 of IPC is a scheduled offence under PMLA, 2002 ECIR 4/2013 dated 14.06.2013 was registered and that investigation under PMLA, 2002 was initiated. Consequent thereto the Respondent herein passed the Provisional Attachment Order (PAO) No. 6/2017 dated 24.03.2017 provisionally attaching the property mentioned above and Original Complaint was filed before the Adjudicating Authority vide O.C. No. 729/2017 for confirmation of the Provisional Attachment of the said property. The Learned Adjudicating Authority confirmed the PAO No. 6/2017 on 01.09.2017. In the said O.C. No. 729/2017 the present Appellants were cited as Defendant Nos. 3 & 4. Being aggrieved with the order of the Learned Adjudicating Authority the present appeals have been filed and that subsequently the prosecution complaint filed by the Respondent herein was quashed at the summon stage, by the Hon'ble High Court, Madras (supra) vide Criminal O.P. Nos. 22869 & 24151 of 2018.

It is also important to mention here that the Directorate of Enforcement filed prosecution complaint against the Appellant Shri Ashok Bajaj as one of the accused, whereas, admittedly, no prosecution complaint has been filed against the other Appellant i.e. M/s. Jam Surgical Company Pvt. Ltd. but the property in question is common in both the cases.

It is an admitted fact that the Hon'ble High Court of Madras has quashed the prosecution complaint vide C.C. No. 12 of 2017 on the file of the XIV Additional Court for CBI cases, Chennai which has arisen out of the aforesaid ECIR. It is not denied by the Respondent that the said prosecution complaint is no more pending in view of the order passed by the Hon'ble High Court, Madras. This being so, now the short question

before us is whether the present Appeals/Applications are to be allowed or otherwise in the given facts and circumstances of the Appeals in hand.

In their order, the Hon'ble Division Bench of High Court of Madras has categorically held that dispute between the parties are civil in nature which can be resolved only by a civil court and not via a criminal prosecution by invoking Sections 3 & 4 of PMLA, 2002 and that till now there is no final report with respect to the predicate offence.

The relevant portions of the order passed by the Hon'ble High Court are reproduced below:-

“13 According to the Enforcement Directorate, a sum of Rs.22.50 lakhs was received by Meenakshi from Manikka Thyagarajan and invested in 1.08 acres of land which was registered in the name of Ashok Bajaj on 17.09.2008 and therefore, the land measuring 1.08 acres is proceeds of crime. There is a fundamental fallacy in this inference drawn by the Enforcement Directorate, because, even before Manikka Thyagarajan came into the picture, Meenakshi had entered into an agreement of sale as early as 26.09.2007 with the original owners of the land, viz., the seller trio, and the said agreement has been registered, as stated above, as Document No.12262 of 2007. Ashok Bajaj is able to demonstrate that he had lent Rs.35 lakhs to AFPL on 20.07.2008 and had obtained the land measuring 1.08 acres as a security for the loan. When AFPL defaulted, the original owners of the land, viz., the seller trio, have executed the sale deed dated 17.09.2008 (document no.8001 of 2008) in favour of Ashok Bajaj for a sale consideration of Rs.32,70,000/~. All these transactions are on record and are known to the Enforcement Directorate, as could be seen from the averments in the impugned complaint as well from the statements of the witnesses. Therefore, by no stretch of imagination, can it be said that the land measuring 1.08 acres is proceeds of crime that was generated by Meenakshi via a criminal activity perpetrated on Manikka Thyagarajan. In our opinion, rather, Manikka Thyagarajan has suppressed several facts. He has not stated that AFPL was founded by him on 09.04.2008, along with others, for the purpose of doing real estate business. Even before he coming into the picture by making the first two payments of Rs.3.75 lakhs and Rs.1.25 lakhs on 01.10.2007 to Meenakshi, the latter had cornered 1.43 acres of land (being her 1/3 share of the whole property) by entering into an agreement of sale on 26.09.2007 with the original owners, viz., the seller trio in respect of 5.73 acres.

14 Besides, be it noted, for attracting the penal provisions of the PML Act, there should be materials to

show that the accused had committed a criminal activity via which he has generated proceeds of crime, which, he projects as untainted. In this case, even according to Manikka Thyagarajan, Meenakshi had taken monies from him for investing in real estate business. If Meenakshi, instead of investing the monies taken from Manikka Thyagarajan in some other activity, say opening of a beauty parlour, then, it can legitimately be inferred that she has cheated Manikka Thyagarajan and has projected the proceeds of crime as untainted property. That is not the case of the Enforcement Directorate either. The case of the Enforcement Directorate is that Meenakshi had taken a sum of Rs.22.50 lakhs from Manikka Thyagarajan for investing in real estate business and the proceeds of crime is 1.08 acres of land and not any other property. Thus, it is manifest and evident that the investment by Meenakshi has been only in real estate business, but, of course, there is a dispute with regard to this investment between Manikka Thyagarajan and Meenakshi, which can be resolved only by a Civil Court and not via a criminal prosecution by invoking Sections 3 and 4 of the PML Act. Further, the fact that from 2012 to this day, the police are grappling with the investigation of the case in E~2 Royapettah P.S.Cr.No.972 of 2012 without filing a final report itself shows that there is something wrong somewhere.

15 For all the reasons aforesaid, this Court is of the opinion that the prosecution of the petitioners in C.C. No.12 of 2017 on the file of the XIV Additional Court for CBI Cases, Chennai, is clearly an abuse of process of law and ex consequenti, the same is quashed.

In the upshot, these criminal original petitions are allowed. Connected Crl.M.Ps. stand closed.”

There is no controversy so far as the orders passed by the Hon'ble High Court of Madras (supra) is concerned. During the course of hearing, it is submitted from the side of the Appellants that the Learned Special Court, has accepted the order dated 18.02.2022 of Hon'ble High Court, Madras (supra) and that the said prosecution complaint is no more pending and that there is no dispute from the side of the Respondent in this regard.

During the course of hearing it is submitted from the side of the Respondent that the order dated 18.02.2022 passed by Hon'ble High Court Judicature at Madras (supra) in Criminal O.P. Nos. 22869 &

24151/2018 are under challenged before the Hon'ble Supreme Court by way of S.L.P vide Diary No. 32996/2022.

Nothing has been produced before us to show that the operation of the order of Hon'ble High Court, Madras (supra) has been stayed.

During the course of hearing the learned Counsel for the Respondent strongly submitted that for the release of the property in question the proper forum is the Special Court not the Tribunal in view of the provision as prescribed under Section 8(7) of PMLA, 2002. To this argument the Learned Counsel for the Appellants submitted that the Tribunal is not powerless for release of the property in question.

We are not in agreement with the submissions made from the side of the Respondent that this Tribunal cannot release the property. This power is inherent once it is held by this Tribunal that the impugned order is quashed and set aside, corollary to it is that the attachment of the property does not survive and that the prosecution complaint has been quashed before the commencement of Trial so, the property has to be released. However the aforesaid order like any other order of the Tribunal is subject to the order passed under Section 42 of PMLA, 2002. In view of the above, we are of the considered view that in the present facts and circumstances of the case this Tribunal has power to give directions for release of the property.

The Respondent has relied upon judgments mentioned above which are applicable to the facts and circumstances of the present case as there is no issue from either side that whether the PMLA, 2002 is a complete code in itself or not. The Respondent has also not clarified how paragraph 19 of the judgment of Hon'ble Supreme Court passed in the matter of Vijay Madanlal Choudhary (supra) is applicable to the present facts and circumstances of the case. We also do not find how the said paragraph 19 is made applicable when it is held by the Hon'ble High

Court that no proceeds of crime has been generated. Therefore, the judgments relied upon by the Respondent are of no avail.

The Respondent has referred and relied on Section 8(5) and Section 8(6) of the PMLA, 2002. These Sections are concerned with the procedures to be followed on the conclusion of the Trial but in the present case there is no Trial and the prosecution has come to an end at an early stage being quashed by Hon'ble High Court, Madras (supra). Hence the provision under Section 8(7) of PMLA, 2002 is of no help to the Respondent ED in the present circumstances. Section 3 of the PMLA, 2002 is also of no relevance in view of the order of the Hon'ble High Court.

Now the question remains to be decided, whether in the given facts and circumstances of the case, the impugned order is liable to be set-aside?

These appeals have been decided without going into the grounds mentioned in the Appeal Memo. We have decided the Appeals only on the basis of the orders passed by Hon'ble High Court Judicature at Madras in Criminal O.P. Nos. 22869 & 24151/2018.

In the present situation, the fact is that the Hon'ble High Court has quashed the prosecution proceedings by analyzing the circumstances in the order dated 18.02.2022, by holding in para no.13 of the order that, "by no stretch of imagination, can it be said that the land measuring 1.08 acres is proceeds of crime that was generated by Meenakshi via a criminal activity and in para no. 14 it is held that for attracting the penal provision of the PMLA there should be material to show that the accused had committed a criminal activity through which he has generated proceeds of crime, which, he projects as untainted. The Hon'ble High Court further went on to hold that there is a dispute in regard to this investment between Manikka Thayagarajan and Meenakshi, which can be resolved only by a civil court and not via a

criminal prosecution by invoking Sections 3 & 4 of the PMLA, 2002. Admittedly, though S.L.P has been filed challenging the order of the Hon'ble High Court, Madras (supra) but there is no stay order staying the operation of the order dated 18.02.2022. This being the case at this stage and since there is a clear finding of Hon'ble High Court, Madras (supra) that proceeds of crime has not been generated, we are inclined to allow the Applications/ Appeals by setting aside the impugned order dated 01.09.2017 and the provisional attachment order dated 24.03.2017.

In the light of the discussions made above, the Applications bearing Nos. MP-PMLA-9792/CHN/2022 (Misc.) in FPA-PMLA-2002/CHN/2017 & MP-PMLA-9793/CHN/2022 (Misc.) in FPA-PMLA-2038/CHN/2017 are allowed in terms of the prayers made therein, consequently the Appeals are also allowed. The other pending applications are accordingly disposed of.

In the event the S.L.P is allowed the Respondent is given liberty to file appropriate application for revival of the Appeals, which would be decided on merit.

In the circumstances, there is no order as to costs.

Pronounced in the open Court this day the March, 2023.

(Balesh Kumar)
Member

(G. C. Mishra)
Member

New Delhi,
13th March, 2023
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