
(2017) 11 ATPMLA CK 0004

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : FPA-PMLA-1913/CHN/2017

Ajay Kumar Gupta

APPELLANT

Vs

Joint Director Directorate Of Enforcement, Chennai

RESPONDENT

Date of Decision : 23-11-2017

Acts Referred:

Constitution Of India, 1950 — Article 20(1)
Prevention Of Money Laundering Act, 2002 — Section 5, 5(5), 26
Prevention Of Corruption Act, 1988 — Section 13(1)(e), 13(2)
Code Of Criminal Procedure, 1973 — Section 482

Citation : (2017) 11 ATPMLA CK 0004

Hon'ble Judges : Manmohan Singh, J; Anand Kishore, Member

Bench : Division Bench

Advocate : Ajay Kumar Gupta, S.K. Sharma

Final Decision : Allowed

Judgement

FPA-PMLA-1913/CHN/2017

1. The above mentioned appeal has been under Section 26 of the Prevention of Money Laundering Act, 2002 against the order in O.C. No. 770/2017

dated 21.07.2017 passed by the Adjudicating Authority (PMLA) under the said Act.

2. The appellant, Ajay Kumar Gupta (A1) was a public servant and was working as Customs Appraiser in Chennai Custom House. A case was

registered against A1 along with others vide FIR No. RCMA1/2005A/0031 on 29.06.2005 by CBI, Anti Corruption Branch, Chennai for allegedly

being in possession of assets and pecuniary resources in his name for alleged offences under Section 13(2) read with 13(1)(e) of the Prevention of

Corruption Act 1988.

3. In CC No. 18 of 2009 dated 13.01.2009, the trial is under progress in the court of 14th Additional Special Judge for CBI cases, Chennai.

4. The Deputy Director, ED, Chennai registered an Enforcement Case Information Report (ECIR No. CZO/08/2015 dated 20.02.2015) against A1

and A2 after six years as the aforesaid offence under Section 13(2) read with Section 13(1)(e) of the Prevention of Corruption Act, 1988 is a

scheduled offence under PMLA as on the date of registering the ECIR.

5. The Deputy Director, Directorate of Enforcement, Chennai went before the Adjudicating Authority under Section 5(5) of the Prevention of Money

Laundering Act, 2002 (PMLA) on 27.04.2017 against Shri Ajay Kumar Gupta and three others of Chennai subsequent to passing of a provisional

attachment order (PAO) No.09/2017. By virtue of the said provisional order, various properties were attached.

6. The petitioner filed the criminal petition under Section 482 of CRPC before the High Court of Judiciary at Chennai to quash the provisional

attachment order dated 09.04.2017.

7. The Respondents were duly represented by the public prosecutor. which has been recorded in the judgment passed on 13.07.2017. The said

judgment was reserved on 13.06.2017. The operative part of the judgments i.e. at Para No. 12 & 15 are reproduced here below:

12. From the above judgments and also the fact that the offences allegedly committed by the first and second petitioners prior to

1.7.2005, the Prevention of Money Laundering Act was not in force. Even after 1.7.2005, the offences were not included in the scheduled

offences till 1.6.2009. Since the charge sheet dated 13.1.2009, even on that date, Prevention of Corruption Act has not included in the

scheduled list of offences. Therefore, this court is of the view that if retrospective effect is given to any statute of any penal nature, it will be

directly in conflict with the fundamental rights of the citizen enshrined in Article 20(1) of the Constitution of India. Admittedly, 2nd

respondent filed the case only based on the charge sheet of the CBI, who have not conducted any enquiry on their own. In fact, all the

documents are original documents of the alleged proceeds of crime, which are in the custody of the CBI Court. When the entire documents

are in the custody of the Court, there cannot be any reason to believe that the

properties will be dealt with in any other manner. The impugned order was as if 1st petitioner not able to offer any satisfactory explanation during examination. Therefore, the attachment officer has passed an order without a reason to believe that the proceeds of crime are likely to be transferred or disposal. In the absence of any sufficient reason, arriving to such conclusion by mere reproducing the words ""reason to believe"", it cannot be stated that the order has been passed! After considering the entire gamut of materials. Admittedly, in this case, entire documents are available and the properties are in the custody of the court. Therefore, the order of attachment is not maintainable.

15. In view of the above, the Provisional Attachment Order No. 09/2017 dated 07.04.2017 in ECIR/CEZO/08/2015 and the Original

Complain in O.C. NO. 855 of 2017 are quashed.

The point is answered accordingly.â??

8. The final order by the Madras High Court was reserved on 13.06.2017 and the same was rendered on 13.07.2017, whereby the provisional

attachment order 09/2017 dated 07.04.2017 was quashed. Despite the judgment delivered by the Madras High Court, the Adjudicating Authority

passed the impugned order dt. 21.07.2017 confirming of the provisional order. It is not disputed by the respondent that the said confirmation order was

passed after the judgment given by the Madras High Court.

9. On the last date of hearing, the learned counsel for the respondent submitted that the hearing officer may not be aware about the passing of

judgment passed by the Madras High Court otherwise he will not have passed the impugned order.

10. It is evident from the judgment delivered by the Madras High Court which shows that the appearance of the Respondent No. 1 & 2 i.e.

Adjudicating Authority, New Delhi as well as Enforcement Directorate are duly represented by the public prosecutor. Even the respondent was

aware about the pendency of quashing petition prior to final hearing of the said petition.

11. It was the duty of the Adjudicating Authority and the Enforcement Directorate to inform the officer who in violation of the order passed by the

Madras High Court has passed the impugned order. The said confirmation has

been challenged before us by filing the appeal. Reply to the appeal has been filed. The counsel for the respondent does not dispute that the impugned order was passed after passing the order by the Chennai High Court where the proceedings under Section 5 were quashed and despite the same quashing of the provisional attachment order, the same was confirmed which is apparently in violation of the order passed by the Chennai High Court.

12. For the afore said reasons, we are of the view that it is a serious matter that once the Adjudicating Authority as well as the Deputy Director,

Directorate of Enforcement were party before the Writ Petition where the quashing orders were passed and were aware of the proceedings, the

impugned order has been passed contrary to the judgment given by the Madras High Court stated to be on account of some communication gap. We

are of the view that necessary steps should be taken immediately so that it should not happen in future as the Adjudicating Authority is supposed to

respect the orders of Higher Courts. In the present case, there is no valid explanation given by the learned counsel for the respondent as to why the

order of the High Court was not given due respect except the statement made by the learned counsel for the respondent that the Department may

challenge the order passed by the Madras High Court or the respondent might not be aware. The said submission is without any substance as the

Adjudicating Authority was party in the said Petition filed by the appellant for quashing of attachment orders. The four months period has already

expired. Counsel for the respondent is admitting before us that so far the order has not been challenged in the Supreme Court, the respondent may

challenge the same in Supreme Court. We are not concerned at this stage. At present there is no impediment not to accept the judgment of the Higher

Court i.e. Chennai High Court where the proceedings of Section 5 (Provisional Attachment Order) have been quashed.

13. Under these circumstances, we have no option but to allow the appeal. The impugned order is accordingly set aside. Consequently, the attachment

does not exist. The appellant would be entitled to take back the possession of the attached property as per procedure to release the properties.