(2017) 06 ATPMLA CK 0010

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-1385, 1569, 1583, 1584/MUM/2015, 1570/MUM/2016, FPA-PMLA-658, 675/MUM/2014, 810/MUM/2015

Dipali Bhaskar Bhingarde — APPELLANT

Vs

Deputy Director Directorate Of Enforcement, Mumbai — RESPONDENT

Date of Decision : 20-06-2017

Acts Referred:

Code Of Civil Procedure, 1908 — Order 40 Rule 1
Prevention Of Money-Laundering (Taking Possession Of Attached Or Frozen Properties Confirmed By The Adjudicating Authority) Rules, 2013 — Rule 7
Prevention Of Money Laundering Act, 2002 — Section 5(1), 5(1)(c), 8(4), 50
Indian Penal Code, 1860 — Section 114, 409, 419, 420, 465, 467, 468, 471, 474

Citation : (2017) 06 ATPMLA CK 0010

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

Bench : Full Bench

Advocate : Ujwal R. Agandsurve, Murtaza Nazmi, S.A. Saud

Judgement

MP-PMLA-1570/MUM/2016(Misc.), MP-PMLA-1569/MUM/2015 (Misc.), FPA-PMLA-658/MUM/2014 & MP-PMLA-

1583/MUM/2015 (COD), MP-PMLA-1584/MUM/2015 (Misc.), FPA-PMLA-810/MUM/2015 & MP-PMLA-1385/MUM/2015 (Misc.),

FPA-PMLA-675/MUM/2014

1. These are three appeals filed by the appellant directed against the order dated 21.08.2014 passed by the Adjudicating Authority at New Delhi on

Complaint No. 299 of 2014, whereby the Adjudicating Authority has confirmed the Provisional Attachment Order passed by the respondent against

the appellants under section 5 (1) of Prevention of Money Laundering Act, 2002. The impugned order being common to all the three appeals and the

facts and issues involved as well as grounds taken in support of the appeals being the same, the three appeals are taken up by this common order.

2. The appeals were listed for hearing on 2nd May, 2017, the learned counsel for the appellant made his submissions. When the appeals were listed on

11th May, 2017, Mr. Saud, learned counsel for the respondent addressed his submissions. While dictating the orders, we have noticed that five

applications in the three appeals are still pending disposal and therefore those are to be disposed off first.

3. The first application being no. MP-PMLA-1569/MUM/2015 in FPA-PMLA-658/MUM/2014 filed by Deepali Dilip Bhingarde wherein the appellant

has sought stay of the order and directions to restrain the respondent from taking possession of the flat no. 302, Jacob Apartment, Baburao Parulkar

Marg, Bhawani Shankar Road, Dadar, Mumbai-400 024. Alongwith the stay application, the prayer is also made for amendment of appeal memo in

the application being MP-PMLA-1570/MUM/2015. The prayer for interim relief was granted vide the order dated 28th May, 2015 subject to

depositing the charges @ Rs. 15,000/- per month (as interim measure) from the 1st September, 2014 by 15th July, 2015 and the future charges for use

and occupation of the premises were to be deposited by the appellant by 15th of subsequent English calendar month. The said applications are still

pending for disposal.

3.1 The third application being no. MP-PMLA-1584/MUM/2014 in Appeal No. FPA-PMLA-810/MUM/2015 filed by Shri Dilip Bhaskar Bhingarde

for stay of impugned order and restraining respondent from taking possession of Flat No. 302, Shri Sai Nirmala Building, Bhavani Shankar Road,

Dadar, Mumbai. The said flat no. 302 being a jointly owned property, it is also subject matter of appeal filed by Deepali Dilip Bhingarde, wife of the

present appellant, being appeal no. FPA-PMLA-658/MUM/2014 and the Application No. MP-PMLA-1569/MUM/2015 in the said appeal.

Alongwith the stay application, the prayer is also made for condonation of delay in filing the appeal, in the application being MP-PMLA-

1583/MUM/2015.

3.2. The fifth application being MP-PMLA-1385/MUM/2015 in FPA-PMLA-675/MUM/2014 was filed on behalf of Shri Sudhakar Vitthal Narvekar

seeking the stay of impugned order and directions to the respondent to restrain from taking the possession of flat no. 303, Jacob Apartment, Baburao

Parulkar Marg, Bhawani Shankar Road, Dadar, Mumbai â?" 400 024 and Flat no. 304, Jacob Apartment, Baburao Parulkar Marg, Bhawani Shankar

Road, Dadar, Mumbai â?" 400 024.

In the said application, the interim order was passed on 28th May, 2015 whereby subject to deposit of charges of use and occupation of the premises

@ Rs. 30,000/- per month (as interim measure). All the above said applications have not been disposed of.

4. On the basis of submissions made by the learned counsel for both parties and material placed on record, we are inclined to dispose the applications

by this common order. The main appeals on merit will be taken up later after further hearing, if counsel for the parties wish to address on the next

date.

4.1 With regard to three applications no. MP-PMLA-1570/MUM/2015 for amendment of memo of appeal and no. MP-PMLA-1583/MUM/2015 for

condonation of delay are concerned, these are consequential applications on account of the initial appeal having been filed jointly and later on the said

appeal being treated as an appeal by one of the parties and and there being some delay in filing one of the separate individual appeal. These

applications are allowed.

5. As far as the three applications for stay of the order and stay against taking over possession of the flats by the respondent is concerned, we now

proceed to deal with the same. The brief facts in this regard are that the charge sheet no. 1-113/2006 dated 26.05.2006 filed by Thane Police

authorities reveals that the Charge-sheet is against 18 accused persons namely (1) Gangadharam Gangaram Yeligeti, President of Sarva Dharma

Manav Seva Charitable Trust (hereinafter referred as â??SDMSCTâ?), (2) Kum. Prasanna Gangadharam Yeligetti, Treasurer of SDMSCT, (3)

Tukaram Arjun Mirje, Ex-Secretary of SDMSCT, (4) Shriniwas Gajapati Naidu, Assistant in SDMSCT, (5) Misal Keshav Rokade, Assistant in

SDMSCT, (6) Dilip Bhaskar Bhingarde, Member and Director of Vysya Co-operative Bank Ltd., Parel, Mumbai, (7) Sudesh Madhukar Kulkarni in

the job of collecting deposits for the Banks, (8) Sudhakar Vitthal Narvekar Proprietor of Mahakali Enterprises and Mahakali Chitra, (9) Nitin Ramdas

Raut â?" employed in the Protek Phrmaceutical Company, (10) Ashok Himmatlal Parekh Share Broker, (11) Shiv Kumar Lalchandra Maheshwari engaged in the business of the Book Binding, (12) Rameshcahndra Dhulilal Sutar owing a Printing Press, (13) Shri Narsayya Nagayya Gaddam,

Secretary of the Trust, (14) Satishchandra Raghunath Thakre, Accounts Director in the Charity Commissioner Office, Worli, Mumbai, (15) Krishna

Panduran Gandhe working as an Accounts officer in the Slum Redevelopment Authority, Bandra, Mumbai, (16) Devnath Nilkanth Khawas, Deputy

Accountant in the Slum Redevelopment Authoirty, Bandra, Mumbai, (17) Hiralal Kalwa Gupta, Driver employed in Slum Redevelopment Authority,

Bandra, Mumbai, (18) Kersi Minubhai Guard, Estate Agent. The accused no. 8 and 6 in the said proceedings are the appellant in FPA-PMLA-

675/MUM/2014 and FPA-PMLA-810/MUM/2015.

5.1. From the police investigations, it is revealed that the appellant namely Dilip Bhaskar Bhingarde and Sudhakar Vithal Narvekar alongwith some

others have started a trust by the name of Sarvadharma Manav Seva Charitable Trust, duly registered under the provisions of the Bombay Public

Trust Act, 1950 (for short SDMSCT) and the co-accused had opened a current account No. 01000005341 in the State Bank of India, Wagle Estate

Branch, Thane, Maharashtra.

5.2. As per the charge-sheet, by resorting to cheating and forgery the appellants obtained two cheques for Rupees 1 Crore each from the Charity

Commissionerâ??s Office, Worli, Mumbai, one cheque for Rupees 3 Crore and another cheque for Rs. 7 Crore from the office of Slum

Redevelopment Authority, Bandra, Mumbai and deposited these cheques in the account of SDMSCT at State Bank of India, Wagle Estate, Thane.

Thereafter, the accused persons withdrew the said amount from the account and utilized the same/part thereof for personal purposes including

purchase of the attached properties. The said charge sheet is alive and trial is pending.

6. On the basis of the said Charge Sheet no. 1-113/2006 dated 26.05.2006 filed against 18 accused persons including two of the present appellants

namely Shri Dilip Bhaskar Bhingarde, and Sudhakar Vithal Narvekar, by Wagle Estate Police Station, Thane City, Thane for offence punishable under

sections 465, 467, 468, 471, 474, 419, 420, 114, 409 of IPC and since the offences committed under Section 419, 420, 471, 467 of IPC are Scheduled

Offences specified in Paragraph No. 1 of Part A of the Schedule under PMLA, 2002, vide ECIR No. 13/MZO/2008 dated 22/10/2008, the case was

registered under PMLA, 2002 for investigation into the offence of money laundering by the Directorate of Enforcement, Mumbai Zonal Office,

Mumbai and for the attachment and confiscation of the properties derived from or involved in money laundering.

7. On the basis of investigation conducted under the PMLA, 2002 and as per charge-sheet and material available, the respondent passed the order of

Provisional Attachment Order No. 05/2014 (PAO, for short) in ECIR No. 13/ MZO/2008 dated 27th day of March, 2014. The case of the appellant

before us is that despite of expiry of eight years from the filing of Charge Sheet in 2006 and six years of registration of ECIR in 2008, there was no

fresh material gathered or collected by the respondent and the PAO was passed. Thereafter, the show cause notice was issued by the Registrar,

Adjudicating Authority on 28.04.2014 asking the appellants as to why the provisional attachment order in respect of the referred properties should not

be confirmed and the appellants were asked to appear before the adjudicating authority PMLA in person or through an Advocate on 25.06.2014.

8. The appellants also challenged the constitutional validity of section 8(4) of Prevention of Money Laundering Act, 2002 and also the Provisional of

Attachment Order (PAO) No. 5 of 2014 dated 27.03.2014 passed by the first respondent before the Honâ??ble High Court, Bombay, wherein by

order dated 22.07.2014 the Honâ??ble High Court was pleased to pass the following order:-

In the event the provisional attachment order is confirmed by the Adjudicating Authority no effect is given to the said order of attachment for a period

of two weeks, so that the applicant can approach the proper Forum.

8.1 Subsequent to the above, the present appeals and applications have been filed. Initially, one appeal FPA-PMLA-658/MUM/2014 was filed by Ms.

Dipali Bhaskar Bhingarde along with Shri Dilip Bhaskar Bhingarde and Shri Sudhakar Vithal Narvekar. Vide the Tribunalâ??s order dated 17th

October, 2014, Shri Dilip Bhaskar Bhingarde and Shri Sudhakar Vithal Narvekar were allowed to withdraw from the appeal and the said appeal no.

FPA-PMLA-658/MUM/2014) was treated as appeal on behalf of the Ms. Dipali Bhaskar Bhingarde. Subsequently, Shri Sudhakar Vithal Narevekar

filed an Appeal No. 675/MUM/2014 and Dilip Bhaskar Bhingarde filed appeal no.

FPA-PMLA-810/MUM/2015. Miscellaneous applications seeking

stay of the impugned order was filed in all the three appeals besides an application for condonation of delay in FPA-PMLA-810/MUM/2015 and

another for amending memo of appeal in FPA-PMLA-658/MUM/2014.

9. It is the admitted position that before the case was registered under the PMLA and the properties attached under PMLA, 2002, these were already

attached by the Police in the criminal case and these were in the custody of the Court. The respondent admittedly made an application dated

21.03.2013 before the Chief Judicial Magistrate, First Class, 13th Court, Thane requesting the Court not to release any of the attached property and to

permit the Directorate to intervene in the matter and to pass and serve the provisional attachment order under the PMLA. The appellant filed the

detailed reply on 22.10.2013 to the Departmentâ??s prayer wherein it has inter alia been stated that in the year 2007 Mr. Agnihotri from the

concerned department had called the present applicants in their office, took their statement, investigated the matter properly and all possibilities of

money laundering in this matter and came to the conclusion that the Prevention of Money Laundering Act (PMLA) does not apply in the aforesaid

case and finally concluded the investigation and now after a gap of six years, a new officer who is from the same department comes and asked for

intervention and tries to apply the PMLA. The outcome of the said application before the Special Court is not clear. However, vide PAO dated 27th

May, 2014 the properties in question were attached by the Deputy Director, Enforcement Directorate under the PMLA. An original complaint was

also filed by the Deputy Director, Directorate Enforcement before the adjudicating authority seeking confirmation of the Provisional Attachment

Order.

10. The case of the appellants in the criminal proceeding and in the proceedings before the Adjudicating Authority was that their properties could not

have been attached by this Authority (i.e. Enforcement Directorate) because they are not involved in money laundering and order should not be

confirmed as they were no more the member of the society i.e. Serva Dharma Manav Seva Charitable Trust (hereinafter referred to as

â??SDMSCTâ??) who committed the crime which is reported in Chief Judicial Magistrate Court, Thane in Court Cases No. 451/2006.

11. It is stated on behalf of appellants that the Ld. Adjudicating Authority has come to a wrong conclusion by stating in paragraph No. 8.14 of the

order that the present appellants have though received huge amounts, the said amount were not converted into income and no tax has been paid in the

next assessment year but, here one thing is pertinent to note that the Ld. Adjudicating Authority has drawn its own conclusion without examining the

list of witnesses whose names were appearing in the cash receipts nor any statements of these witnesses are recorded. But, all of a sudden by only

looking to the cash receipts, the Adjudicating Authority has drawn wrong conclusion. The applicants state and submit that at the most the authorities

ought to have prosecuted them under the Income Tax Act for tax evasion and not under the PMLA. It shows wrong observation by the Ld.

Adjudicating Authority and hence the order passed by the Ld. Adjudicating required to be quashed and set aside.

12. It is stated by all the appellants that they have never received any money from â??SDMSCTâ? by way of cheque, D.D. or any Banking

transactions. Thus, they made an application in the Court of Thane for possession of the flats which was given to the applicants on signing of the bond.

The appellants submit that infect the properties which are provisionally attached by the Enforcement Directorates under PMLA were attached before

the Court at Thane and were released on bond and certain conditions on 03.11.2007. The main purpose of attachment from this department is to stop

appellants from alienating, selling or creating third party interest in the property, which is already done by J.M.F.C. Court, Thane by taking conditional

bond from the appellants.

13. Admittedly, the custody of the attached properties in question is still with the court. It is also a matter of record that in 2007, the Police Authority

before the Special court, had opposed the request of the appellant to hand over the property to the appellant on Superdhari. Despite of opposition on

behalf of police authority, the possession was given by the court to the appellants against the bond furnished which was duly accepted by the Court.

As per law, admittedly if the present application is not allowed, the next step of the respondent would be to invoke the provision of Section 8(4) of the

Act to take over the possession of the three flats which are already in the custody of the Special Court where the criminal matter is pending.

14. It is argued on behalf of the appellant that Section 5(1) (c) mandates the following three conditions for applicability of the Section viz. (a) any

person is in possession of any proceeds of crime, (b) such person has been charged of having committed a scheduled offence; (c) such proceeds of

crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceeding relating to confiscation of such

proceeds of crime under this Chapter.

15. It is further contended that there is not even a whisper (in the Provisional Attachment Order) as to what is the basis of apprehension that the

proceeds of crime were likely to be concealed, transferred or dealt with in the manner laid down by clause (c) of Section 5(1). The Deputy Director

also stated in para-2 of his order that he was relying on the material placed before him i.e. the copy of the FIR registered by Wagle Industrial Police

Station, Thane, Police Commissionerate, Thane as well as Charge Sheet filed by Thane Police and material collected during the course of

investigation. This would show that besides the above material he had no other material in his hand. The provisional attachment order was passed

after about eight years from the date of filing the charge sheet. Moreover, the second proviso to section 5(1) has been added by virtue of amendment

which is effective w.e.f. 15.02.2013.

16. With regard to the nature of possession of the Court and consequences thereof, the appellant has referred to the judgment of the Supreme Court in

the case of Teeka Vs. State of U.P reported AIR 1961 SC page 801 at 805 in para 7 which reads as under:-

â??7. The next question is, what is the effect of a valid attachment of movables? Order XXI, R. 43, of the Code of Civil Procedure describes

the mode of attachment of moveable properties other than agricultural produce in the possession of the judgment-debtor. It says that the

attachment of such properties shall be made by the actual seizure, and the attaching officer shall keep the attached property in his own

custody or in the custody of one of his sub-ordinates & shall be responsible for the due custody thereof. The relevant rule framed by the

Allahabad High Court is R. 116, which reads,

â??Live stock which has been attached in execution of a decree shall ordinarily be left at the place where the attachment is made either in custody of the judgment-debtor on his furnishing security, or in that of some land-holder or other respectable person willing to undertake

the responsibility of its custody and to produce it when required by the Court.â??

The aforesaid rule also empowers the attaching officer to keep the animals attached in the custody of a sapurdar or any other respectable

person. Attachment by actual seizure involves a change of possession from the judgment-debtor to the court, and the rule deals only with the

liability of the attaching officer to the court. Whether the amin keeps the buffaloes in his custody or entrusts them to a sapurdar, the

possession of the amin or the sapurdar is in law, the possession of the court and, so long as the attachment is not raised, the possession of

the court continues to subsist. Would it make any difference in the legal position if the sapurdar, for convenience or out of necessity, keeps

the said animals with a responsible third party? In law the said third party would be a bailee of the sapurdar. Would it make any difference

in law when the bailee happens to be the decree-holder? Obviously it cannot, for the decree â?"holderâ??s custody is not in his capacity

as decree-holderâ??s custody is not in his capacity as decree-holder but only as the bailee of the sapurdar. We, therefore, hold that the

decree-holderâ??s possession of the buffaloes in the present case was only as a bailee of the sapurdar.â??

On the basis of the above judgment, it was contended that the application for stay may be allowed by the Honâ??ble Tribunal failing which the

respondent were likely to take over possession of the flats in terms of the Section 8(4) of the Act.

17. It is the case of the respondent that all the grounds raised by the applicant are untenable in the eyes of the law and the appeal is liable to be

dismissed. Mr. Saud, learned counsel for the respondent, contested the submissions made on behalf of the appellant. He referred to the provisional

attachment order and the impugned order in the case to contend that after registration of ECIR in 2008, investigations had been made by the

respondent under the PMLA wherein the different persons accused in the case were examined and their statements recorded under section 50 of the

Act. The recording of statements has taken place during 2010 to 2014 which would be evident from the PAO and the impugned order.

17.1 He submitted that this was a case where by hatching a conspiracy, the accused persons conspired with each other and defrauded the

Government offices to the tune of Rs. 12 crores out of which property/cash of approximately was 7 cr. was traced during the course of investigation.

The investigation has also showed that part of the money so defrauded was utilized by the appellants to acquire the attached properties and the money

trail in this regard had been established. As regards the reasons leading to the formation of belief in terms of section 5 (1) (c) of the Act., he stated

that summons had been issued to Shri Dilip Bhaskar Bingarde and Sudhakar Narverkar under Section 50 of PMLA on 25.02.2013 and them again on

23.12.2013 but they did not respond to the same. The appellants were also not cooperating with the department in the investigation. This led to the

formation of belief on part of the Deputy Director, that if the immovable property in question are not attached provisionally, the same would have been

transferred or disposed of which would have resulted in the frustration of the proceedings relating to the confiscation of the property under the Said

Act.

18. He also submitted that his client is entitled to take possession of the properties irrespective of the fact whether the property in question is with the

Court, and that such possession can be taken even without obtaining the leave of Court. It is also submitted by him that as far as conditional stay

granted by the Tribunal is concerned, he is not sure as to whether the appellant have complied with the orders or not.

18.1 With regard to his argument of it being permissible to proceed in a case under the PMLA in a case where the property is in the possession of the

court, Shri Saud has referred the judgment dated 29th September, 2011 of the Honâ??ble Bombay High Court in first appeal no. 967 of 2010 entitled

Om Prakash Daulat Ram Nogaja Vs. Union of India & Anr., the relevant portion of which reads as under :-

â??15. It was next contended that, out of Rs.6,25,40,171/- lying in various bank accounts, a sum of Rs.4,23,85,083/- was the amount that

was already frozen by the Narcotics Control Bureau on 16th June, 2006 under the NDPS Act, as per the direction in terms of order passed

by the learned Single Judge of the High Court dated 10th August, 2000. In terms of the same order, that amount was already invested in the specified bank in fixed deposit account. It was not open to the Adjudicating Authority to disregard the order of the High Court and proceed

to provisionally attach even that amount. Besides, no prior permission of the High Court has been obtained. The argument, though

attractive at the first blush, will have to be stated to be rejected. In the first place, this argument clearly overlooks that the order of

provisional attachment has been passed by the Appropriate Authority in exercise of powers under the provisions of the PMLA. The amount,

which was frozen in terms of order of the learned Single Judge dated 10th August, 2000, was in connection with the freezing of that amount

by the Narcotics Control Bureau under the provisions of the NDPS Act. That would not be any impediment for the Appropriate Authority

under the PMLA to proceed with the provisional attachment of the said amount. The purpose of freezing the amount under the provisions of

the NDPS Act is different than the purpose of provisional attachment of the amount under the PMLA. It is possible to argue that the amount

was fully secured because of the conditions specified in the order of the learned Single Judge of this Court dated 10th August, 2000. That,

however, does not mean that the Appropriate Authority could not have proceeded in the matter under the PMLA, which is a special

enactment. Obtaining of permission of this Court before proceeding to issue order of provisional attachment of the amount governed by the

order of this Court can be said to be a matter of propriety and prudence; but not obtaining such permission of the High Court does not

result in action of the Appropriate Authority under the PMLA, being without jurisdiction. It was certainly not intended to frustrate the order

of the High Court, but to further the purpose and object of the provisions of the PMLA, which, as aforesaid, is a special enactment. The

effect of provisional attachment under the PMLA is that the property can be finally confiscated with the Central Government, in the event

the accused person is found guilty by the Court of competent jurisdiction trying the Scheduled Offence. Such provisional attachment is

imperative, as that would not only facilitate the confiscation of that property, but also secure the availability of that property for

confiscation at the end of the trial against the accused persons relating to Scheduled Offence.â??

18.2 He further submitted that in case the binding precedent exists about the interpretation of provisions of the Act, and upon the question raised on

that statute itself, the same question cannot be held to be otherwise, ignoring the binding precedent, holding that the said binding precedent, does not

refer to judgments of higher courts, of statutes pari materia. In support of this argument, he has referred the decision in the case of State of Punjab

V/s. Okara Grain Buyers Syndicate Ltd., (1964) 5 SCR 387: AIR SC 669, the relevant portion of which reads as follows:

â?34. We are clearly of the view that this argument does not deserve to be accepted. In the first place, we are concerned solely with the

interpretation of the Act of 1951 and unless there was an ambiguity it would be impermissible to refer to any previous legislation for

construing the words in it. The examination we have made of the Act read in conjunction with the purposes it seeks to achieve which are

manifest in its various provisions have led us unmistakably to the conclusion which we have expressed earlier. In the circumstances, there is

no scope for invoking this external aid to the construction of the expressions used in the Act. Secondly, the scope of the two enactments viz.

the Act of 1948 and that of 1951 are widely different, and the latter has a definitely more extended scope and is designed to secure

substantive advantages to displaced persons which were wholly foreign to the earlier law which was but of very limited scope. Therefore,

even if the language used in the two enactments were identical â?" which is not even the case here â?" the same conclusion would not

necessarily follow having regard to the differing scopes of the two pieces of legislation. It could not therefore be said that the two Acts are

in pari materia so as to attract the Rule relied on. Lastly, the Rule of construction which is certainly not one of a compelling nature, is

generally adopted in the construction which is certainly not one of enactments where provisions which have appeared in earlier repealed

statutes which have received an uniform and accepted judicial interpretation are re-enacted. Obviously that is not the case here. In the

circumstances, we consider it unnecessary to examine whether this solitary decision on the construction of Section 4 of the Act of 1948, was

correct. We have, therefore, no hesitation in rejecting the second point urged.â??

In view of the above he submitted that the binding precedent of Honâ??ble High Court, in first appeal no. 967 of 2010 entitled Om Prakash Daulat

Ram Nogaja Vs. Union of India & Anr. supra would directly apply in the present case, and no permission or leave of the Court is necessary for

provisional attachment of the property the property under the PMLA, even if in the question is in the custody of the Court.

19. On consideration of the rival contentions of both the sides, it is noted that the charge-sheet in the matter was filed on 26.05.2006. The provisions of

the Prevention of Money Laundering Act Amendment Act, 2009 which came into the effect from 1st June, 2009, whereas the period of offence

committed is admittedly 2005 and 2006. The issue raised by the appellant that on the date of alleged offence, the offences in question were not

schedule offence. The same is to be considered at the time of hearing of the main appeal as to whether the amendment of 2009 the Act could be

applied to the present case.

20. It is strongly argued on behalf of the appellant that the material stated in the Provision of Attachment order was 8 years old as the charge sheet

was filed on 26th May, 2006. As per plea taken by the appellants, there was no new material gathered or collected after that to substantiate clause (c

) of section 5 (1) and the provisional attachment order passed by the Deputy Director is mechanical, stale, suffers from non application of mind and

based on irrelevant considerations. Though this argument has been contested by the learned counsel for the respondent on the ground that

investigation had taken place during 2010 to 2014 and the statements recorded of accused person during this period were relied on in the PAO and in

the impugned order, at least at this stage and for disposal of the applications, we feel that the appellant have been able to make out an arguable case

for staying the action to take over possession of the attached properties pursuant to the confirmation of the attachment and in terms of Section 8(4) of

the Act.

21. Firstly, it is also a matter of fact that in the present appeals, the properties which are the subject matter of attachment under appeals are in the

custody of the Court. The possession was given by the court to the appellants in 2007, despite of opposition of the police authority before the Court, on

the basis of bond furnished by them. Later on in 2014, the properties were attached under the PMLA Act.

22. As far as the decisions referred by the counsel for the respondent are concerned, presently we are considering the miscellaneous applications

wherein the appellants have sought stay of the action proposed by the respondent to take over possession of the attached property in terms of section

8(4) of the Act specially when the properties in question were already in possession of the Special Court. The judgment cited by the Ld. Counsel of

the respondent in the case of Om Prakash Daultram Naugaja Vs. Union of India & Ors., supra is on the question of jurisdiction of the Enforcement

Directorate to proceed with the provisional attachment of certain amounts under the PMLA when the said amounts were already frozen under the

NDPS Act as per the directions of the Learned Single Judge of the High Court. It was held in the said Judgment that the purpose of freezing the

amount under the NDPS Act being different than the purpose of provisional attachment under the PMLA and therefore there was no impediment for

the appropriate authority to have proceeded in the matter under the PMLA and in provisionally attaching the property. However, the issue presently

under consideration is not regarding provisional attachment of the property when the property was already in possession by the Court but regarding

taking over possession in terms of Section 8(4) of the Act. As the issue presently involved has not at all been considered in the cited judgment, the

judgment is not relevant in the present context. We may add that the applicability of the said judgment, as well as that in the case of State of Punjab

vs. Okara Grain Wires Syndicate Ltd., supra to the appeals on merits would be considered while deciding the appeal on merits.

23. It is further observed that on the question of proceedings in the case of property under custody of the court, the Honâ??ble Supreme Court in the

case of Kanhaiyalal V. Dr. D.R. Balaji and others, [1959 SCR 333: AIR 1958 SC 725 h]as laid down the principles of law on this aspect. It was held

in the said decision that proceedings taken in respect of a property which is in the possession and management of a Receiver appointed by Court

under Order 40, rule 1 of the Code of Civil Procedure without leave of that Court are illegal in the sense that the party proceeding against the property

without the leave of the Court concerned, is liable to be committed for contempt of the Court, and that the proceedings so held do not affect the interest in the hands of the Receiver who holds the property for the benefit of the party who, ultimately, may be adjudged by the Court to be entitled to

the same. The relevant extract of the same are read as under:-

â??It is also settled law that proceedings taken in respect of a property which is in the possession and management of a Receiver appointed

by Court under Order 40, Rule 1 of the Code of Civil Procedure, without the leave of that Court, are illegal in the sense that the party

proceeding against the property without the leave of the Court concerned, is liable to be committed for contempt of the Court, and that the

proceedings so held, do not affect the interest in the hands of the Receiver who holds the property for the benefit of the party who,

ultimately, may be adjudged by the Court to be entitled to the same. The learned counsel for the respondent was not able to bring to our

notice any ruling of any Court in India, holding that a sale held without notice to the Receiver or without the leave of the Court appointing

the Receiver in respect of the property, is void ab initio. In the instant case, we do not think it necessary to go into the question raised by the

learned counsel for the respondents that a sale of a property in the hands of the Court through its Receiver, without the leave of the Court,

is a nullity. The American Courts appear to have taken the view that such a sale is void. In our opinion, it is enough to point out that the

High Court took the view that the sale was voidable and could be declared illegal in a proper proceeding or by suit. We shall assume for

the purposes of this case that such a sale is only voidable and not void ab initio.

8. On the assumption that the sale held in this case without the leave of the Court and without notice to the Receiver, is only voidable and

can be declared illegal on that very ground, the suit had been instituted for the declaration that the sale by the revenue courts was illegal.

The plaint was subsequently amended by adding the relief for recovery of possession, â??because in the meanwhile, the auction-purchaser

had obtained delivery of possession of the property through the revenue authorities, sometime in 1940. The general rule that property in

custodia legis through its duly! appointed Receiver is exempt from judicial process except to the extent that the leave of that court has been

obtained, is based on a very sound reason of public policy, namely, that there should be no conflict of jurisdiction between different Courts.

If a court has exercised its power to appoint a Receiver of a certain property, it has done so with a view to preserving the property for the

benefit of the rightful owner as judicially determined. If other Courts or Tribunals of co-ordinate or exclusive jurisdiction were to permit

proceedings to go on independently of the Court which has placed the custody of the property in the hands of the Receiver, there was a

likelihood of confusion in the administration of justice and a possible conflict of jurisdiction. The Courts represent the majesty of law, and

naturally, therefore, would not do anything to weaken the rule of law, or to permit any proceedings which may have the effect of putting

any party in jeopardy for contempt of court for taking recourse to unauthorised legal proceedings. It is on that very sound principle that

the rule is based. Of course, if any Court which is holding the property in custodia legis through a Receiver or otherwise, is moved to grant

permission for taking legal proceedings in respect of that property, the Court ordinarily would grant such permission if considerations of

justice require it. Courts of justice, therefore, would not be a party to any interference with that sound rule. On the other hand, all Courts

of justice would be only too anxious to see that: property in custodia legis is not subjected to un-controlled attack, while, at the same time,

protecting the rights of all persons who may have claims to the property.â??

(emphasis supplied)

The judgment of the Honâ??ble Apex Court in the case of Kanhaiya Lal, supra has not been noted by the Honâ??ble Bombay High Court while

pronouncing the judgment in the case of Om Prakash Daulatram, supra.

24. In this context, it is also observed that in terms of Rule 7 of The Prevention of Money-laundering (Taking Possession of Attached or Frozen

Properties Confirmed by the Adjudicating Authority) Rules, 2013 (Possession Rules, for short) in cases where the confirmed attached property is in

the custody of any court, the authorized officer is required to make an application to such court and that such applications shall contain a relief that

such property may be released in favour of the Directorate of Enforcement. Pertinently, the said Possession Rules are of 2013 i.e later to the

judgment in the case of Om Prakash Daulatram, supra. In view of the said Rule on the particular issue under consideration, the submission of the Ld.

Counsel for the Respondent that even when the possession of a property is in the custody of the Court, the possession can be taken over in terms of

the provisions of the PMLA without leave of the court is without any merit and is rejected.

25. In view of the facts and circumstances of the case and the discussion in the foregoing paras, we are inclined to allow the prayer made in the

applications MP-PMLA-1569/MUM/2015, MP-PMLA-1584/MUM/2015 and MP-PMLA-1385/MUM/2015 for stay of the impugned order as far as

taking over possession of the subject flats are concerned, unconditionally. It is directed that till the appeals are finally decided, action for taking over

possession of Flat No. 302, Shri Sai Nirmala Building, Bhavani Shankar Road, Dadar, Mumbai, Flat no. 303 and Flat No. 304, Jacob Apartment,

Baburao Parulkar Marg, Bhawani Shankar Road, Dadar, Mumbai-400 024 in pursuance of the impugned order and the notices under Section 8(4) of

PMLA (if issued), shall remain stayed.

29. However, the order of attachment of the said flats shall continue. Till the disposal of the appeal, the appellant shall not dispose of or create any

third party right or interest in the above said three attached properties of the appellants in any manner.

30. All the applications are disposed of accordingly. List on 1st November, 2017.

