(2019) 08 ATPMLA CK 0015

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : FPA-PMLA-2541/SNR/2018

Gurjeet Kaur APPELLANT

Vs

Deputy Director Directorate Of Enforcement, Srinagar RESPONDENT

Date of Decision : 22-08-2019

Acts Referred:

Jammu And Kashmir State Ranbir Penal Code, 1989 — Section 120B, 406, 409, 420, 467, 468

Prevention Of Money Laundering Act, 2002 — Section 8(3)(a)

Citation : (2019) 08 ATPMLA CK 0015

Hon'ble Judges : Manmohan Singh, J;G. C. Mishra, Acting Chairman

Bench : Division Bench

Advocate : P. Ojha, Shilpi Satyapriya Satyam

Judgement

FPA-PMLA-2541/SNR/2018

1. The present appeal has preferred against the order dated 18th July, 2018 passed by the Learned Adjudicating Authority in the matter of OA No.

190/2018 in which the Ld. Adjudicating Authority has allowed the OA holding that the respondent has made a case for retention of seized property.

2. The facts of the case are that an FIR was registered on the basis of complaint of one S. Joginder Singh, S/o S. Gurbaksh Singh of Jammu wherein

it was alleged that one Jammu based finance company namely â??Dutta Financiersâ? and few other finance companies/firms, run by S. Gurbachan

Singh Dutta and his son S. Harpal Singh Dutta had cheated about 1000 depositors of District Jammu, Kathua, Samba, Poonch, Baramulla and

Srinagar, who had deposited their hard earned money in the company. It was alleged that when some of the depositors approached the said finance

company for payment of interest and the principle amount in the month of April, 2011, the Directors and other officials of the said company took

flimsy grounds and did not pay back the amount, rather the said Finance Company closed its office and the Managing Director of the company S.

Harpal Singh Dutta fled to United States of America with depositor?s amount of approximately 20 to 25 crores.

3. It is further revealed from the record that the Crime Branch of the local Police filed first Chargesheet on 19.07.2013 and supplementary

chargesheet on 12.03.2014 under Section 406, 409, 420, 467, 468 & 120-B of RPC. Since the offences under Section 420, 467 & 120-B of RPC are

covered under Schedule offences of PMLA, hence the respondent department at Srinagar registered an ECIR dated 03.01.2014.

4. The appellant Smt. Gurjeet Kaur is the wife of Shri S. Charanjeet Singh. It is reflected in the OA and the impugned order that an agreement to sell

dated 14.05.2003 executed between Shri S. Charanjeet Singh and Shri S. Harpal Singh Dutta against sale of 18 Marlas of land under Khasra No. 112

min, Khewat No.17, Khata No. 52 situated at Digiana, Jammu at the rate of Rs. 67,500/- per Marla. On the reverse of the agreement paper it was

found mentioned that the seller i.e, the husband of the appellant, Shri S. Charanjeet Singh, has received Rs. 10,45,000/- in cash and Rs. 1,20,000/-

through cheque against the sale of aforesaid land. According to the respondent, the total amount of money invested by Shri Dutta to purchase the said

land is Rs. 11,65,000/- as sale consideration.

5. According to the respondent, to trace and locate the proceeds of crime a search was conducted at residential and office premises of Shri S.

Charanjeet Singh on 16.03.2018 which resulted in recovery of total 8 incriminating documents. During the course of search, the respondent seized

FDR Rs. 12,00,000/- bearing no.37305237363 dated 17.11.2017 issued on dated 16.12.2017 in the name of the appellant with SBI, ADB Canal Road

Branch, Jammu from the residence of Shri S. Charanjeet Singh. There was seizure of photocopies of other FDRs in the name of his son and daughter,

copies of ITRs, Partnership Deed, etc. The aforesaid seizure of the FDRs and documents has led the respondent to file the OA in question before the

Adjudicating Authority for retention on the ground that these documents are suspected to be part of proceeds of crime.

6. It is also seen from the record that the husband of the appellant had offered

the FDR dated 20.03.2018 for Rs. 10,45,000/- under account

no.37603153052 with the same bank and branch to the respondent for attachment and the same has already been attached under Attachment Order

No. 02/SRZO/2018 dated 28.03.2018 dated and in this regard the husband of the appellant has already received the copy of the order vide OC

No.931/2018.

7. The seizure of FDR for Rs. 12,00,000/- of the present appellant is over and above the FDR dated 20.03.2018 for Rs. 10,45,000/- which has already

been attached by the Enforcement Directorate as revealed from the record.

8. The learned counsels for both sides were heard. The relevant materials placed on records are perused. It appears from the record that, according

to the respondent, a sum of Rs. 10,45,000/- which is considered to be proceeds of crime has been paid to the husband of the appellant and an FDR to

the extent of this aforesaid amount has already Â been secured and attached by the ED vide OC No. 931/2018. There is no allegation against the

present appellant, nor there is any allegation that any part of the proceeds of crime has been utilized for the purpose of the said FDR to the tune of Rs.

12,00,000/-. The appellant is a partner in the Petrol Pump and it is out of her own income she has got the said FDR of Rs. 12,00,000/-.

9. There is no specific allegation against the appellant. She is neither an FIR named accused nor cited as an accused in the chargesheet filed in

criminal case instituted by the Special Crime Branch of the local Police and nor named in the ECIR. There is nothing placed on record before us

involving the appellant in the commission of the alleged offence under PMLA. No prosecution complaint has been filed against the appellant. No

material has also been placed before us that the FDR of Rs. 12,00,000/- bearing no. 37305237363 dated 17.11.2017 issued vide dated 16.12.2017 is

part of prosecution complaint arising out of the present ECIR under PMLA.

10. The arguments of this appeal were heard on 25.07.2019 and order was reserved.

11. In the circumstances, as per the provisions of Section 8(3)(a) of PMLA, 2002 as existed till 31.07.2019 prosecution complaint was to be filed

within 90 days. The impugned order was passed on 18th July, 2018. As per the said mandatory provision then existed, the prosecution complaint was

to be filed involving the property in question within the prescribed period of 90 days and that if no prosecution complaint is filed in respect of the

property concerned, the retention order of seizure lapses. In the present case more than 90 days have been passed since the day of passing of the

impugned order and no prosecution complaint is filed that the FDR seized herein are part of any prosecution complaint.

12. On merit we find that the Enforcement Directorate has already secured the alleged amount of Rs. 10,45,000/- as proceeds of crime that has

suspected to have been travelled into the hands of Shri S. Charanjeet Singh. We feel that there is no strength in the argument of the learned counsel

for the respondent to retain the FDR amounting to Rs. 12,00,000/- in the name of the appellant as it appears to us that injustice will be caused if

retention is allowed in the given facts and circumstances.

13. Considering the entire materials available on record and after hearing the learned counsels for the parties, we are of the considered view that the

appeal is liable to be allowed both on merit as well as under Section 8(3)(a) of PMLA, 2002. We are not in agreement with the view of learned

Adjudicating Authority on the grounds stated in the foregoing paragraphs, hence the impugned order is set aside. The respondent is directed to release

the FDR of Rs. 12,00,000/- bearing no. 37305237363 dated 17.11.2017 issued on dated 16.12.2017 in favour of the appellant within four weeks.

No costs.