(2019) 06 ATPMLA CK 0009

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-3640/COCHIN/2017, FPA-PMLA-898/COCHIN/2015

Hari Karishnan K.	APPELLANT
Vs	
Joint Director Directorate Of Enforcement, Cochin	RESPONDENT

Date of Decision : 07-06-2019

Acts Referred:
Prevention Of Money Laundering Act, 2002 — Section 8(5), 8(7), 50, 58B, 60(2A)

Citation : (2019) 06 ATPMLA CK 0009

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Dr. Shamsuddin, Atiqur Rehman Khan, Devesh Pandey, S. Hussain, Neeraj Atri

Final Decision : Disposed Of

Judgement

FPA-PMLA-898/COCHIN/2015

1. The appellant has challenged the impugned order dated 25th March, 2015 passed by the adjudicating authority confirming the Provisional

Attachment Order No. 05/2014 dated 28.11.2014 attaching two properties, one 4.86 arcs (approx. 486 Sqr. Yards) situated in Pathiyoor village,

Karthikapally Taluk and another 4.85 arcs (approx. 485 Sqr. Yards) situated in Karumady village, Ambalpuzha Taluk both in Alappuzha District.

2. It is a case of respondent that the appellant acquired the attached properties from the proceeds of crime, which are the subject matter of the case,

thus the appellant is involved in money laundering.

3. The appellant states that the same were purchased for a valuable consideration of Rs 6,20,000/- and Rs 6,10,000/-, respectively.

4. The source of the same is explained by the appellant, as under:

(i) The first Property of 4.86 arcs (approx.486 Sqr. Yards) was purchased for Rs.6,20,000/- from Jemini Jacob. The said amount was paid out of the

advance amount (Rs 10,00,000) received from Dr. Shibu Jayaraj for which the Appellant sold his land admeasuring 4.05 arcs (approx.405 Sqr. Yards)

situated at resy. No/377/2 in Block No. 14 of Ambalapuzha Village. The Agreement dated 16.01.2013 executed between the Appellant and Dr. Shibu

Jayaraj is annexed with the Appeal.

(ii) The second property of 4.85 arcs (485 Sqr. Yards) situated in Karumady village Ambalapuzha Taluk, Alapuzha District was purchased by the

Appellant for an amount Rs.6,10,000/- from Mr. Santosh Kumar vide Agreement dated 26.05.2012 which is already placed on record as Exhibit:A-11.

The said Agreement has not been disputed or challenged by the Respondent and therefore stands admitted. The Appellant paid an amount of

Rs.1,00,000/- on the date of Agreement (26.05.2012) and part payment of Rs.50,000/- was made on 16.05.2013 to Mr. Santosh Kumar. The said

amount of Rs 1,00,000 was paid by availing a gold loan of Rs 1,56,000/; the amount of Rs.50,000/- was paid by withdrawing Rs.30,000/- on 09.05.2013

from the Appellantâ?s Account along with Rs.20,000/- kept in cash. The balance amount for the purchase of property was given to the Appellant by

his sister by withdrawing Rs. 5,00,000/- from her Account with the Canara Bank, Ambalapuzha on the day of execution of the Sale Deed dated

31.07.2013.A copy of passbook of Canara Bank account is also annexed with the Appeal.

5. It is argued on behalf of the appellant that the Respondent has wrongly relied upon the Order dated 26.07.2017 passed by the Honâ?ble Kerala

High Court in {M.F.A No. 11 of 2016:Kavitha G. Pillai vs. The Joint Director, Enforcement Directorate, Cochin}. Firstly, the Appellant was not a

party, nor any of his properties were involved therein. Secondly, the said order has been challenged by filing of an appeal before the Honâ?ble High

Court of Kerala by Kavitha Pillai against the Order dated 05.08.2015 of this Appellate Tribunal in O.C No. 308/2014. It is stated that the said order

has nothing to do with the present O.C. and it does not help the case of the respondent.

6. It is submitted that the other properties of Kavitha Pillai has no connection whatsoever with the properties legally owned and purchased by the

Appellant, therefore, the findings recorded in the above-mentioned High Court Order (M.F.A No. 11 of 2016: Kavitha G. Pillai vs. The Joint Director,

Enforcement Directorate, Cochin) cannot be made binding upon the present Appellant as both the cases are different, the OCs are different, the

properties are different and the parties are also different.

7. It is submitted on behalf of the appellant that Kavitha Pillai is involved in more than 17 cases registered against her which is evident from Para 3 of

the judgment dated 26.07.2017 of the Honâ?ble High Court of Kerala in M.F.A No. 11 of 2016. The appellant has acquired the properties in bona-fide

manner and for a fair market value. The same cannot be termed as â??proceeds of crimeâ?? and could not have been attached.

8. It is submitted that the Appellant in his statement dated 11/12.09.2014 was coerced to write that the actual sale consideration of the properties were

Rs.15,00,000/- and Rs.10,00,000/-. The said statement was retracted by the Appellant on the very same date i.e. 12.09.2014 and thus the same cannot

be relied upon. The copy of the Retraction Letter is also filed along with the Appeal.

9. It is settled law that statement which is retracted on the same day cannot be relied upon and thus cannot be used as evidence against the Appellant.

Reliance is placed upon the following judgments:

(i) Vinod Solanki v. Union of India (2008) 16 SCC 537 Para No. 23, 36 and 39

(ii) Pullangoda Rubber Produce v. State of Kerala (1972) 4 SCC 683, Para 5

(iii) Commissioner of Central Excise, Delhi-1 v. Vishnu & Co. Pvt. Ltd. & Ors 2015 SCC On Line Del 13824

10. It is submitted on behalf of the appellant that he has received Rs. 2,74,000/-, Rs.2,03,270/- and Rs.1,79,000/- from his share franchise business for

the years 2011-12, 2012-13 and 2013-14, respectively and the TDS of Rs 1,24,956/- was deducted from the Appellant from the year 2008 onwards.

Therefore, the amount lying in his Account cannot be considered as â??proceeds of crimeâ? by any sense of imagination. The Adjudicating Authority

committed an error in law by overlooking the said fact. A copy of TDS Certificate issued to the Appellant is also annexed in the Appeal.

11. The statements of the real owner as well as the title holder of item No. 1 property (Jemini Jacob) was not recorded by the Respondent.

12. After hearing both parties and having gone through the record, it appears from the impugned order that the various contentions raised by the

appellant have either been ignored or not decided as per law.

13. This tribunal however, does not wish to express any opinion about the merit of the case of appellant as to whether the properties in question are

acquired from the proceeds of crime or not, but at the same time, the details of amount mentioned have to be dealt within the impugned order before

coming to the conclusion that it was proceeds of crime as culmination of these proceedings involved in the criminal liabilities, at least the contention

raised by any party has to be considered and discussed and to be decided as per law.

14. In the Impugned Order dated 25.03.2015, the hearing officer was not sure as to whether the properties attached were acquired from proceed of

crime or not. The hearing officer has taken middle path while coming to the conclusion that â??no doubt the properties attached are proceeds of

crime or value thereof and are involved in money launderingâ?. It suffers from inherent contradiction as the impugned Order has been passed without

due application of mind. Para 24 of the said Order is read, the same is reproduced here under:-

â??On a thorough perusal of the PAO, Complaint, the FIR and the Charge Sheet, the Investigation conducted by the ED and the statements recorded

u/s 50 of the PMLA and on careful consideration of the arguments advanced on behalf of the Complaint & defendants undersigned comes to the

prima facie conclusion that the defendants have committed the Scheduled Offences, generated proceeds of crime and laundered them. No doubt the

properties attached are proceeds of crime or value thereof and are involved in money laundering. Undersigned therefore orders confirmation of the

above Provisional Attachment Order. This order shall continue during the pendency of the proceedings relating to any offence under this Act before

court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India as the case may be and

become final after an order of confiscation is passed under sub-section (5) to sub-section (7) of section 8 or section 58 B or sub section 2A or section

60.â??

15. This tribunal is of the view that the adjudicating authority is duly bound to

specifically come to the final conclusion as to whether the property

attached was involved in money laundering or not and it was acquired from the proceed of crime or not. No doubt, if the property which was acquired

is not traceable or disposed of due to misconduct of the accused party, only then other property can be attached in lieu of value thereof, in order to

secure the proceeds of crime. However, in the present appeal, the hearing officer was unsure about the same, he had adopted â??obliqueâ? system

which is not permitted in law. It is evident that due process has not been followed which is mandated in law. If alternative oblique system will

continue, the confusion is to continue.

16. In view of above mentioned reasons, the impugned order is set-aside. The matter is remanded back to the Adjudicating Authority to decide afresh

after hearing both parties and their contentions raised. The same be decided within 180 days from today. All the contentions raised by the appellant

shall be considered by the Honâ??ble Member (Law) who will hear the matter.

17. Parties to appear before the Adjudicating Authority on 8th July, 2019 for directions.

18. The appeal and pending application are disposed of.

19. No costs.