(2019) 08 ATPMLA CK 0011

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : MP-PMLA-407, 423/HYD/2013, FPA-PMLA-461, 466/HYD/2013

Madala Ramesh APPELLANT

Vs

Joint Director Directorate Of Enforcement, Hyderabad RESPONDENT

Date of Decision : 26-08-2019

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 2(1)(y), 5, 5(1), 5(5), 8(1), 8(2), 8(3), 8(5), 48, 49
Code Of Criminal Procedure, 1973 — Section 173, 248(1)
Indian Penal Code, 1860 — Section 34, 409, 419, 420, 468, 471

Citation : (2019) 08 ATPMLA CK 0011

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : G. Kiran Kumar, K. S. Rama Rao, K.L.B. Kumar, Shilpi Satyapriya Satyam

Judgement

Sr. No.,"Name of the property

owner",Document No. & Year,Name of the SRO,Details of Property

1.,Shri Katneni Sarath Babu,No. 886 dated 07.02.2003,"Kukatpally,

Rangareddy Dist.","F la t No. B-205

(1289 Sq.ft.),

H.No.1-156, 1- 157

1-158 and 1- 150/1

2nd Floor, Vamsi

Enclave, Snehapur

Colony, Motinagar,

Babbuguda Village,

Balanagar Mandalm,

Kukatpally

Municipality.

2.,Shri Madala Ramesh,"No. 4938, dated 28.11.2007","Nandigama, Krishna

Dist.","2.04 Acres in Survey

No.40 & 3.11 Acres

in Survey No.42

totally admeasuring

5.15 Acres in

Ketaverunipadu

Village, Nandigama

Mandal, Krishna

Dist.

are reproduced here below:,,,,

â??47. The Investigating Officer also admitted that basing on the confession of A1, the names of other accused and their role brought on",,,,

record. Except the confession of A1 to A8, no other reliable evidence is there on record and no such investigation is conducted by",,,,

Investigating Officer, which connects any of the accused directly to the offence.",,,,

49. A3 role was not specifically stated by any witness that he participated directly in the offence. As per the evidence of PW2 has given the,,,,

clearance for passing of Ex.P30 Cheque. No incriminating material collected to prove the role of A4 and A8.,,,,

52. In view of the above circumstances, this court has no hesitation to hold that the prosecution utterly failed to prove the case against",,,,

accused beyond all reasonable doubt and the accused are entitled for acquittal under benefit of doubt.,,,,

53. In the result, the accused A1, A3, A5 to A8 are found not guilty for the offences punishable Under Sections 409, 419, 420, 468 and 471",,,,

IPC and accordingly, they are acquitted as per the provisions Under Sections 248 (1) Cr.P.C. The bail bonds of the accused shall stands",,,,

cancelled after the expiry of appeal time.â??,,,,

11. The question now is as to whether by the acquittal order any benefit can be drive by the appellant under the said provisions of PMLA. Admittedly,,,,

the Impugned Order in the above said matter was passed in 2012. The relevant amendments in the Act was incorporated w.e.f. 15.02.2013,",,,,

thereafter, an amended provisions of PMLA, 2002 was apply on the date of passing the confirmation order as well as the Provisional Attachment",,,,

Order.,,,,

12. The relevant provisions under Section 8 (1) to (3) and (5) of â??The Prevention of Money â?" Laundering Act, 2002â?? (15 of 2003) as amended",,,,

by â??The Prevention of Money Laundering (Amendment) Act, 2009â?? (21 of 2009) are reproduced here below:-",,,,

8. Adjudication:- (1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of Section 17",,,,

or under sub-section (10) of Section 18, if the Adjudicating Authority has reason to believe that any person has committed an [offence",,,,

under Section 3 or is in possession of proceeds of crime] it may serve a notice of not less than thirty days on such person calling upon him,,,,

to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under",,,,

sub-section (1) of Section 5, or, seized under Section 17 or Section 18 the evidence on which he relies and other relevant information and",,,,

particulars, and to show cause why all or any of such properties should not be declared to be properties involved in money-laundering and",,,,

confiscated by the Central Government:,,,,

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy",,,,

of such notice shall also be served upon such other person:,,,,

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such",,,,

property.,,,,

(2) The Adjudicating Authority shall, after-",,,,

(a) considering the reply, if any, to the notice issued under sub-section (1);",,,,

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and,,,,

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the",,,,

properties referred to in the notice issued under sub-section (1) are involved in money laundering.,,,,

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be",,,,

given an opportunity of being heard to prove that the property is not involved in money-laundering.,,,,

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order",,,,

in writing, confirm the attachment of the property made under sub-section (1) of Section 5 or retention of property or record seized under",,,,

Section 17 or Section 18 and record a finding to that effect, such attachment or retention of the seized property or record shall-",,,,

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and,,,,

(b) become final after that guilt of the person is proved in the trial court and order of such trial court becomes final.,,,,

(5) Where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention",,,,

of the seized property under sub-section (3) and net income, if any, shall cease to have effect.",,,,

13. It is Special Act, the provisions of this Act have to be considered on the date of offence as well as on the date of passing the orders.",,,,

14. The appellants are acquitted from the schedule offence, no appeal has been filed either by the State or ED as admitted by the counsel for the",,,,

respondent.,,,,

15. Admittedly, the State as well as the respondent has not challenged the acquittal order before any Court even after expiry of 3 years. The counsel",,,,

for the respondent has merely stated that the Bank was cheated by the appellants as well as the main accused, the Bank has challenged the said order",,,,

before the High Court and the appeal filed by the bank is pending. It is an admitted position that the Bank is not a party in the present proceedings.,,,,

Therefore, in case the order was to be challenged, it was to be challenged by the ED or the State. The same has not happened.",,,,

16. Thus, attachment of two properties lapses under the operation of law. The impugned order is set-aside by allowing the appeal.",,,,

17. No costs.,,,,

