(2022) 10 TEL CK 0064

In the Telangana High Court

Case No : Writ Petition No. 45712 Of 2018

Manturi Shashi Kumar APPELLANT

Vs

Director RESPONDENT

Date of Decision : 17-10-2022

Acts Referred:

Constitution Of India, 1950 — Article 20(2)
Prevention of Money-laundering (Restoration of Confiscated Property) Rules, 2016 — Section 3A
Code of Criminal Procedure, 1973 — Section 173(2), 300, 320
Indian Penal Code, 1860 — Section 120B, 420, 423, 468, 471
Prevention of Money Laundering Act, 2002 — Section 2(1)(u), 4, 5(1), 8(3), 26

Citation : (2022) 10 TEL CK 0064

Hon'ble Judges : K.Lakshman, J

Bench : Single Bench

Advocate : K Jayasree, Thakur Roopa Singh

Final Decision : Dismissed

Judgement

1. Heard Sri Vedula Srinivas learned counsel representing Smt. K. Jai Shree, learned counsel for the petitioner, Sri. B. Rama Krishna Reddy, learned counsel for respondents.

2. This writ petition is filed to declare the action of the respondent no. 2 in continuing attachment of the properties even after closer of C.C.No.319 of 2010 on which action was initiated under PMLA as illegal and for a consequential direction to the respondent to raise the order of attachment as confirmed by adjudicating authority in O.C.No.681 of 2017.

FACTS OF THE CASE:-

3. Petitioner No. 1 is Accused No.1 in F.I.R.No.369 of 2002 pending on the file of the Police Station, Patancheru. The said crime was registered on the complaint lodged by Sri. P. Sudheer Reddy. The offences alleged against the petitioner No. 1 herein are under Section 420,423,468 and 471, read with 120 B of the Indian

Penal Code. The investigating officer, on completion of investigation, filed Charge Sheet against the 1st petitioner and others. The same was taken on the file vide C.C.No.319 of 2010, pending on the file of Judicial First Class Magistrate Special Mobile Court, Sangareddy District. During the pendency of the said C.C, a petition under Section 320 was filed vide Cr.M.P.No.126 of 2018, to record the compromise and to acquit the accused. The said petition was allowed on 30.03.2018 permitting the prosecution for withdrawal of charges levelled against the accused. The matter was referred to Lok Adalat. The said case was called for before the Lok Adalat on 20.03.2018. The Lok Adalat has recorded the compromise entered between the parties and passed an Award dated 20.03.2018.

4. An intimation letter dated 01.05.2018 was submitted to the 2nd respondent informing about the closer of the aforesaid C.C. and requested him to raise the attachment. Despite receiving and acknowledging the said letter, 2nd respondent did not act upon the same, therefore, this writ petition is filed.

5. It is relevant to note that in the aforesaid crime no. 369 of 2002 pending on the file of the Police Station, Patancheru, one of the offences is a predicate offence. According to 2nd respondent, the investigation conducted under the provisions of Prevention of Money Laundering Act. (herein after referred to as PMLA for brevity) has revealed that the 1st petitioner/A-1 in crime no. 369 of 2002, by using proceeds of crime had purchased immovable properties in his name as well as in the name of his wife namely Smt. Swapna, 2nd petitioner herein during the relevant period. During the course of investigation, petitioner no. 1 could not show any licit income for purchase of such properties, in his name and in the name of his wife. They have no income of their own, however, immovable properties purchased in the name of the 2nd petitioner by the 1st petitioner by using the proceeds of crime derived as a result of criminal activity and with a view to obscure the identity of the properties purchased out of proceeds of crime and thus protected the properties is untainted. Since the said property found after proceeds of crime in terms of Section 2(1)(u) of the Act and has been attached under Section 5 (1) of the Act to make the properties available for confiscation after conclusion of the trial for the offences of money laundering.

6. The Enforcement Directorate had also filed a complaint as contemplated under the Act before the Designated Court and the same was also taken cognizance and assigned number as S.C.No.342 of 2018. The proceedings are pending in the said case before the Designated Court. Therefore, acquittal in predicate offence has no bearing or effect in investigation or trial under the PMLA as the said Act deals only with the offences of money laundering. In the present case, the allegation against the 1st petitioner is that he along with other accused have cheated P. Sudheer Reddy and have derived the proceeds of crime as a result of criminal activity and thereby they have acquired the properties in the name of 2nd petitioner by using proceeds of crime. They have attempted the same as untainted and thereby committed an offence punishable under Section 4 of the

Act.

7. A Provisional attachment order No.06 of 2016 dated 30.12.2016 was issued by Enforcement Directorate authority and the same was confirmed by the adjudicating authority vide order dated 30.12.2016 in O.C.No.681 of 2016 in terms of Section 8 (3) of the Act, by holding that properties attached under P.A.O have involved in money laundering. Therefore, if the petitioners have any grievance with regard to the said provisional attachment order as confirmed by adjudicating authority order, they have the remedy of appeal before the appellate authority under Section 26 of the Act. The 2nd petitioner who is claiming to be the owner of the property and 1st petitioner, her husband failed to explain as to why an appeal under Section 26 of the Act was not filed. However, they are seeking to release of the aforesaid property.

8. According to the 2nd respondent, PMLA being a complete Code or Act and has also contemplated procedure for release of properties and rules also provide the said procedure. Therefore, the petitioner herein instead of approaching the designated court seeking release of the property, filed the present writ petition.

9. The above stated facts would reveal that on the complaint file by Enforcement Directorate, the designated court had taken cognizance of the same and assigned numbered as S.C.No.342 of 2018. It is pending before the Metropolitan Sessions Court Judge, Hyderabad, Designated Court under the Act. It is also not in dispute that provisional attachment order No.06 of 2016 was issued on 30.12.2016 attaching the properties belongs to the 2nd petitioner. Adjudicating authority vide order dated 02.05.2017 confirmed the said order dated 30.12.2016 in O.C. No.681 of 2017.

10. If the petitioners are aggrieved by the said order, they would have preferred an appeal under Section 26 of the Act before the Appellate Tribunal. Admittedly, they have not preferred any appeal challenging the aforesaid orders and thus the aforesaid order attained finality.

11. The procedure for release of properties is prescribed under the provisions of the Act and also the Prevention of Money Laundering (registration of confiscated property) 2016 by way of amendment Rule 3-a was inserted. As per Rule 3-a of the aforesaid rules, the Special Court is empowered to order release of the properties attached under Section 5(1) of the Act prior to confiscation. Therefore, if the petitioners is having any grievance, they have to approach the Special Court under the aforesaid rules. Admittedly they have not approached either Tribunal under Section 26 or the Designated Court under Rule 3-a of the Rules.

12. The only ground on which they have filed present writ petition is that the proceedings in C.C.No.319 of 2010 basing on which the respondent has initiated proceedings which was ended in acquittal by virtue of compromise. Therefore, there are no ‘proceeds of crime’ and the allegation of respondent that the 1st petitioner has purchased the property derived out of the proceeds of crime is false and baseless. Therefore, the petitioner is entitled for release of the

aforesaid property.

13. As stated above, both the criminal proceedings and proceedings under the Act are different and distinct. Enforcement Directorate had filed a complaint before the designated court and the same was also taken cognizance by the Designated Court proceedings in S.C.No.342 of 2018 are pending. If at all, the petitioner is having any grievance, they have to file an appeal under Rule 3-a of the aforesaid rules seeking release of the aforesaid properties.

14. The Hon'ble Apex Court in Jai Shanker v. Directorate of Enforecment registered in criminal appeal no. 738 of 2022 (assigned out of special leave petition Cr.no. 8305 of 2021 dated 05.05.2022) relying the ratio of its decisions in Radhesham v. State of West Bengal reported in 2001, (3) SCC 581 and Ashoo surendranath v. Deputy Superintendent Of Police reported in 2020 (9) SCC 636 held as follows:

I. Adjudication proceedings and criminal proceedings can be launched simultaneously.

II. Decision in adjudication proceedings is not necessary before initiating criminal prosecution.

III. Adjudication and criminal proceedings are independent in nature to judge.

IV. The findings against the person facing prosecution in the adjudication proceeding is not binding on the proceedings for criminal prosecution.

V. Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law which attracts provisions of Article 20(2) of the Constitution of India or section 300 of the Criminal Procedure Code.

VI. The findings of the adjudication proceedings in favor of the person facing trail have identical violation will depends on the nature of findings.

15. If the exoneration in adjudication proceedings is on technical grounds and not on merits, the prosecution may continue and in case of exoneration, however, on merits where the allegation found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and the circumstances cannot be allowed to continue, to the underlying principle being the highest standard of proof in criminal cases. In the said judgment, it was finally concluded that "in our opinion, therefore, the yardstick would be to judge as to whether the allegation in adjudication proceedings as well as the proceedings for prosecution is on merits. If, in case, it is found on merits that there is no contravention of the Act in the adjudication proceedings, the trial of the persons concerned shall be an abuse of process of court. Whereas in the present case the aforesaid C.C.No.319 of 2010 was ended in acquittal by way of compromise, but not on merits.

16. The petitioner herein has also relied on the principle laid by the Apex Court in Jai Shanker. In the said case, the F.I.R was registered by CBI bearing No. RCMA

1 of 2016, A0040 and thereafter two other cases i.e., RCMA 1 of 2016 A0051 and RCMA 1 of 2016 A0052 are based upon the information furnished by the I.T. Department. The aforesaid cases have been quashed by the High Court vide order dated 27.06.2018 passed in Cr.M.P.No.4091 of 2017. Thereafter, in the main F.I.R. NO. RCMA 1 of 2016 A0040, C.B.I., had submitted its closer report. The said closer has been accepted by the court in exercise of powers under Section 173(2) of Criminal Procedure Code. In view of the said facts, the Apex Court held that, the chance to prove the allegations within for the purpose of provision of PMLA in the Court are bleek. Therefore, on the said grounds Apex Court has set aside the impugned order passed by the High Court.

17. Whereas in the present case as stated supra, proceedings in C.C.No.319 of 2010 were ended in acquittal on record of compromise. It is not on merits. Therefore, the facts in Jai shanker supra are different. The facts in the said case are different to the facts of the present case. Therefore, the said judgment is not useful to the petitioner herein.

18. However, as discussed supra, the petitioner herein have to approach Designated Court for release of property by way of an application under Rule 3-a of the Prevention of Money Laundering (registration for confiscated properties rules 2016). It is for the said court to decide the said matter. Therefore, this Court is not inclined to grant any relief by raising the attachment order. Viewed from any angle this writ petition is liable to be dismissed.

19. Accordingly, the writ petition is dismissed. No costs.

As a sequel, miscellaneous petitions, if any, pending in the writ petition shall stand closed.