(2019) 09 ATPMLA CK 0007

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : FPA-PMLA-2979/KOL/2019

Mayuri Mitra APPELLANT

Vs

Joint Director, Directorate Of Enforcement, Kolkata RESPONDENT

Date of Decision : 06-09-2019

Acts Referred:

Prevention Of Money Laundering Act, 2002 — Section 2(1)(y), 3, 4, 17(1), 17(4)
Indian Penal Code, 1860 — Section 120B, 419, 420, 467, 468, 471

Citation : (2019) 09 ATPMLA CK 0007

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

Bench : Division Bench

Advocate : Anand, C Rajeshri Nivurati Reddy, Debdas Khanna, Bharneet Singh, S. K. Sharma

Final Decision : Allowed

Judgement

FPA-PMLA-2979/KOL/2019

1. By this order, we propose to decide the appeal filed by the appellant Smt. Mayuri Mitra, u/s 26 of Prevention of Money Laundering Act-2002 to set

aside the order dated 31st January, 2019 passed by the Adjudicating Authority in O.A. no. 250/2018 confirming the retention of the seized records.

2. The appellant is the wife of Sh. Siraj Mukherjee, who is the respondent no. 4 before the Adjudicating Authority.

3. The main allegations as per the respondent against the husband of the appellant and others are as under;

(a) The Superintendent of Police CBI, EOW, Kolkata vide letter dated 28.04.2017 forwarded a copy of CBI charge sheet dated 30.09.2013 on which

it was mentioned that the FIR of the instant case was registered u/s 120B r/w 419,420,467,468 & 471 of IPC against Sh. Siraj Mukherjee, Director of

M/s. Saharsh Vyapar Pvt. Ltd.. and 07 others on 11.01.2013 on which it was alleged that the Director of the company Sh. Siraj Mukherjee with the

help of accomplices defrauded State Bank of India, Chowringhee Branch to the tune of Rs. 8,00,00,000/-

On perusal of FIRs and charge sheets, it reveals that Sh. Siraj Mukherjee, Director of M/s. Saharsh Vyapar Pvt. Ltd. in criminal conspiracy with his

accomplices Sh. Bishwanath Dutta, Shri Arindam Ghosh Dastidar, Shri Sandip Bharti, Proprietor of M/s Sponsor Sales and M/s Sandip Enterprise,

Shri Arnab Roy, Proprietor of M/s Epson India and Shri Sunil Deb, Proprietor of M/s United Traders, Shri Nabin Sarma Proprietor of M/s Nabin

Enterprise and Sh. Sanat Chakraborty by impersonating himself as Ajay Sankar Roy. They dishonestly and fraudulently availed credit facilities

consisting of Cash Credit limit which was sanctioned for Rs. 7.50 Crores and Stand by Line Credit Limit of Rs. 0.50 crores from State Bank of India,

Chowringhee Branch, Kolkata by using fake documents and accommodative transactions on paper.

The offence punishable under Sections 120B & 419, 420, 467,471 of Indian Penal Code (IPC), comes under the purview of the Scheduled Offence in

terms of Section 2(1)(y) of Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA). On the basis of these information and

documents received from CBI, a prima â?"facie case for an offence of money laundering under section 3 of PMLA punishable under section 4 of the

said Act, appears to have been made out and accordingly investigation under the provisions of PMLA was initiated by registering an Enforcement

Case Information Report on 04.07.2017 against M/s. Saharsh Vyapar Pvt. Ltd. and others.

(b) During the course of investigation conducted under PMLA 2002, it was revealed that Sh. Siraj Mukherjee, Shri Ajay Shankar Roy s/o Prativa

Shankar Roy are the Directors of the Company purportedly having their business of wholesale trading of chemicals used in leather industries. After

availing the Cash Credit facilities Shri Ajay Shankar Roy without any prior intimation to the bank retired from the Directorship of the Company and in

this place Smt. Mayuri Mitra D/o Jivan Kr. Mitra, w/o Sh. Siraj Mukherjee joined as Director of the Company.

The Directors of the Company conspired together with dishonest intention and fraudulently cheated SBI and got the sanction of Cash Credit Limit and stand by Line of Credit of Favour of M/s. Saharsh Vyapar Pvt. Ltd.. Further they offered forged Sale Deed for creating equitable mortgaged of land

at 252C, Picnic Garden Raod, Kolkata-39, Mouza Bondel, JL NO. 16, CS dag No. 12, Khatian No. 157, Ward No. 67, PS â?"Tiljala, measuring an

area of 8.33 Cottahs. Actually no such land has been purchased or owned by Shri Siraj Mukherjee.

The documents recovered from the house of Smt. Mayuri Mitra, Shri Siraj Mukherjee, Shri Rakesh Banerjee and Shri Sandip Bharti were seized

because these documents could help to trace the proceeds of Crime. The term â?? proceeds of crimeâ? means by property derived or obtained

directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or value of any such property of where such

property is taken or held outside the country, then the property equivalent in value held within the county.

(c) During the search conducted on 03.09.2018 at the residence of Shri Rakesh Banerjee. One black CamiApp diary having 19 pages with writing

(hand written) was found and later seized. In this diary handwritten entries of monthly expenses of Sh. Rakesh Banerjee showing 4-7 lakhs expenses

per months has been found from June 2018- September, 2018. Source of income for spending 4-7 lakhs expenses per month by Shri Rakesh Banerjee

shows huge properties, wealth, assets are accumulated in the hands of Shri Rakesh Banerjee. This wealth is acquired out of the illegitimate income of

Shri Rakesh Banerjee and therefore involved in money laundering.

During the search, an agreement executed on 02 November 2015 between Mrs. Lalita Shri and Mr. Amit Banerjee containing 10 pages was seized.

Along with this agreement are copies of rent receipt for month of November, December, January, February, (These four receipts are of same date

i.e. 24.03.2016 for 4 different months) March receipts is of date 07.04.2016. All these rent were paid in cash i.e. Rs 40,000 for each month. One

deposit slip of ICICI bank dated 13.05.2016 in the name of Mrs. Lalita Shri with account No, 127101000086 is also there. Also a copy of complaint

against Mrs. Lalita Shri by Mr. Amit Banerjee addressed to Anandpur Police Station dated 28.05.2016. After this no rent has been paid by mr. Amit

Banerjee to Mrs. Lalita Shri. Neither Mrs. Lalita Shri nor her family members have contacted Mr. Amit Banerjee for any rent after that.

Whereabouts of Mrs. Lalita Shri is not known. This represents a very suspicious transaction.

Similarly for the other two floors also agreements dated 02 November 2015 were executed between Mrs. Lalita Shri and Mrs. Sanchari Banerjee.

Mrs. Sanchari Banerjee similar to Mr. Amit Banerjee was paying Rs. 40,000/- as rent per month to Mrs. Lalita Shri. Mrs. Sanchari Banerjee has also

not paid any rent after May, 2016. She also does not know the whereabouts of Mrs. Lalita Shri. This represents a very suspicious transaction.

The ground floor of the house was rented to Miss. Neha Panda of M/s. Desi Trunk was actually a company of Shri Rakesh Banerjee. Miss Neha

Panda of M/s. Lalita Shri. Miss Neha Panda of M/s. Desi Trunk has also not paid any rent after May, 2016. She also does not know the whereabouts

of Mrs. Lalita Shri. This also represents a very suspicious transactions.

4. It is also stated by the respondent that it has been revealed in investigation that the main activity of Saharsh Vyapaar Pvt. Ltd. was carried out by

Shri Siraj Mukherjee, Shri Sandip Bharti, Shri Rakesh Banerjee and Shri Arnab Roy. Smt. Mayuri Mitra was the director of M/s. Saharsh Vyapar Pvt.

Ltd. and also the wife of Shri Siraj Mukherjee.

5. During the search and seizure, various FDs and policies were recovered and seized originally and copy of the policies. Details of the same are

mentioned in para 1(a) of the impugned order. It is also stated by the ld. counsel for the appellant is that the name of the appellant is not in the FIR nor

she has been chargsheeted. The details of the original/copy of FD policies were recovered and seized:-

i. Rs. 10 lac in the A/c no. 127414000563 dt. 01.09.2012 with ICICI Bank in the name of Mr. Jiban Kumar Mitra.

ii. Rs. 2 lac in the A/c no. 127413001432 dt. 01.08.2017 with ICICI Bank in the name of Mr. Jiban Kumar Mitra

iii. Rs. 9 lac in the A/c no. 10180004135479 dt. 01.08.2018 with Bandhan Bank in the name of Mrs. Malobika Mitra and Mr. Jiban Kumar Mitra.

iv. Rs. 65,049.55 in the A/c no. 023623291052 with HSBC Bank in the name of Mr. Jiban Kumar Mitra.

v. Rs. 5 lac in the A/c no. 08725300011644 dt. 06.07.2013 with DCB bank in the name of Mr. Jiban Kumar Mitra.

vi. Rs. 5 lac in the A/c no. 08725200082217 dt. 18.03.2016 in the name of Mrs.

Malobika Mitra with DCB Bank.

vii. Rs. 9 lac in the A/c no. 08725300023092 dt. 05.01.2016 with DCB Bank in the name of Mrs. Malobike Mitra

viii. Rs. 3.5 lac in the A/c no. 08725300011802 dt. 22.07.2013 in the name of Mr. Jiban Kumar Mitra with DCB Bank.

ix. Rs. 3 lac in the A/c no. 0872530022987 dt. 17.12.2015 with DCB Bank in the name of Mr. Jiban Kumar Mitra

x. Rs. 12 in the A/c no. 0872530023126 dt. 07.01.2016 in the name of Mr. Jiban Kumar Mitra with DCB Bank.

6. The application was filed by the respondent under section 17(4) for retention of the abovesaid policies and FD and other record and documents as

per details mentioned in the impugned order.

7. Reply to the application was filed by the present appellant. The main contents of the reply are given as under:

(i) The complainant has failed to discharge burden cast upon him under section 17(1) of Prevention of Money Laundering Act, 2002.

(a) As per Section 17(1) of the Act, the authorities had to discharge burden of â?? reason to believeâ? (the reasons for such belief to be recorded in

writing) and only then proceed further.

The only material available on record which contains reason to believe is the ECIR No. KLZO/12/2017 dt. 04.07.2017 wherein there is no mention for

the name of the defendant No. 3. But his premises were searched and the records were seized under Section 17(1) vide seizure Memo dt.

03.09.2018. The seizure memo do not contain any reason to believe as mandatorily required to be recorded in writing before making seizure of the

records.

The authorities have thus failed to discharge statutorily burden cast upon them for conducting such seizure.

(b) In the absence of not recording of any reason to believe before searching the premises and /or seizing the records, the seizure itself is illegal and

not sustainable. The records so seized by the authorities are required to be returned.

(c) It is admitted fact that no moveable or immoveable properties were attached/ seized as also mentioned in Para no. 5 of the complaint. Only the

documents/records which are not related to any crime and /or proceeds of crime were seized as part of seizure memo.

(d) The contentions in para no. 8 of the complaint with regard to reasons for issue of order under section 17 (1) of the Act is not only vague but also

not sustainable in as much as it does not show as to how the documents seized from the premises of the defendant no. 3have any role and /or relation

in the said offence and/or proceeds of crime. Merely making vague comments and presumptions do not establish any reason to believe as statutorily

required. The provisions of Section 17(1) burdens the authority that the reason to believe must be based on material in his possession, that the persons

is in possession in proceeds of crime and that such proceeds are likely to be concealed, transferred or dealt with in any manner. But in the present

case, there is no such disclosure and/or recording by the authorities.

(e) The seizure of records on 03.09.2018 and retention thereof is without any basis and also is illegal.

In the present case the seizure of the records was made on 03.09.2018 under Section 17(1) of Prevention of Money Laundering Act. The records

seized from the premises of defendants No. 3 does not related to any of the schedule offence and/or the proceeds of crime as alleged or at all. The

said properties were acquired by the defendant out of the bonafide earnings and lawful source of income. The allegations in the complaint are mere

presumptions & Assumptions, surmises and conjectures and are not based on any cogent evidence.

(ii) In view of the above, it is respectfully prayed that this Honâ?ble Adjudicating Authority may kindly be pleased to reject the complaint of the

complainant and to disallow the application so made for retention of the properties and records and to declare that the seizure and retention of the

records so seized is illegal and to drop the present proceedings.

8. The adjudicating authority who has passed the impugned order by allowing the application u/s 17(4) for retention of the documents, mainly has given

the following conclusion:-

â??Based on the submission made by both the Applicant and Respondents no. 1,3,& 4, it is not in dispute that CBI has filed a case against these

respondents for defrauding SBI Chowringhee Branch Kolkata for an amount of Rs. 8 crore and charge sheet has been filed by the CBI before the

competent court and matter is pending. ED has also carried out investigation intensively and it has been found that the loan amount received by these

respondents have been misused in criminal conspiracy with other respondents and in order to gather further evidence in the matter search was

conducted at the premises of 4 Respondents wherein largenumber of documents/ properties had been recovered and seize. Since examination of these

seized items will take time, applicant has requested permission for retention of these documents/properties. Respondents have not made any

convincing and acceptable arguments to oppose the retention of seized documents/ properties and they have simply made arguments based on

technical aspects. Therefore submission made by them are not strong enough to oppose the retention. In view of these discussion, there is a case for

retention of the seized documents/property as it may be helpful in further investigation in the matter. Accordingly permission for retention of seizure

made on 03.09.2018 shall be allowed.

9. It is pertinent to mention here that the case of the appellant is that the appellant is wrongly implicated. In para (F) at page no. 69 of the reply field

before the adjudicating authority, the following specific submission has been made by the appellant.

â??The perusal of the records seized from the premises of defendant also shows that the record so seized so not have any relation with any

scheduled offence and/or proceeds of crime as alleged or at all. It is submitted that the documents seized from her premises on 03.08.2018 are relating

to FD/Bank Accounts etc. of her father. Her father worked for a long period with IOC and on his retirement got handsome amount from his

employer. Her father also had long investment in various banks & Govt. Scheme and on maturity received handsome interest. He also invested in

Insurance Policies and received maturity benefits. Her father on his retirement invested the fund, he got from his retirement benefits & LIC Polices, in

FDâ??s and also kept in the bank accounts. It is submitted that the same cannot be said to be proceeds of any crime as alleged at all.

10. It is an admitted position that the said policies and FDs are in the name of Jiban Kumar Mitra & Mrs. Malobika Mitra, who are the parents of the

appellant. The specific submission has been made that her father had been working with I.O.C. for a long period of time and the said policies and FDs

are the retirement benefits received from the employers. It is the matter of fact and same is not denied by the ld. counsel for the respondent during the

course of the arguments. The ld. counsel for the appellant has also shown the photocopies of the FDs policies which were belonging to the father and

mother of the appellant which was, on his retirement, invested the earnings from his retirement benefits and LIC polices. It is also stated by the ld.

counsel for the appellant that the same cannot be proceeds of crime.

10. It is apparent that while passing the impugned order, the reply of the appellant has not been dealt with or discussed at all nor any finding arrived by

the adjudicating authority that the said FDs and LIC policies which were in the name of Father and mother of the appellant were the proceeds of

crime or the appellant has derived the funds towards the same. Nothing has been discussed in the impugned order, even copy of the reasons to believe

has not been filed nor produced during the course of the arguments. They are never charsheeted under any offence.

11. It is also pertinent to mention here that even after retention of the property, the father of the appellant had written one letter dated 01.05.2019 to

the Assistant Director requesting him to release the polices as well as the FDs as he needs the urgent money for medical attention. Copy of the said

letter is read as under:

â??To,

Sri A.G. Pandey,

Assistant Director,

Enforcement Directorate

Salt Lake, Kolkata-700064.

Summon No-AGP/448 dtd. 01/05/2019

Dear Sir,

At the outset, I thank you for the kind courtesy shown to my daughter when she called on you on 20/05/2019.

Kindly, note that on 23/11/2018 I have submitted all the necessary papers containing 925 pages, showing bonafied sources of funds for the

10 no of FDs, seized by your department on 03/09/2018 however, as desired, I am again enclosing a copy of India Oil Corporationâ??s

payment vouchers.

I understand from my daughter that you desire to have the details fo sources is more elaborate way. Accodingly I am enclosing the details

oas desire.

You have also desire to have my identity card of Indian Oil Corporation ltd. Copy of which duly attested by my is attached.

As already informed to you that due to oldage diseases which has paractically incapacitated me. I am unable to attend you in your office

now. As desired by you my daughter will explain the details of papers Submitted to you today.

Since, I am ailing and needed urgent medical attention in form of Hospitalisation etc. I would request you kindly look into the matter

simpatcitically and arrange to release the 10 no of FDs friezed by you and also advice the concerned Banks to release payments of interest

which has been stopped from Sept. 2018

Thanking you.

(Jiban Kumar Mitra)â??

12. In view of the facts and circumstances, we are of the considered view that the impugned order has been passed without application of mind nor

reply filed by the appellant has been considered by the Adjudicating Authority. Therefore, the present appeal is allowed. Impugned order is set aside in

respect of the appellant property. As far as the said LIC Polices and FDs, the details are mentioned above, the same are de-sealed/de-frezeed

forthwith.

We may clarify that, without expressing any opinion on the merits of the case and other parties nor in relation to the other documents, the LIC Polices

and FDs should be de-freezed by the respondent.

