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**(2019) 07 ATPMLA CK 0008**

**In the Appellate Tribunal Under Prevention Of Money Laundering Act**

**Case No : FPA-PMLA-1781/CHD/2017**

M/S. Prakash Industries Ltd. & Ors

APPELLANT

Vs

Assistant Director, Directorate Of Enforcement, Chandigarh

RESPONDENT

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**Date of Decision : 18-07-2019**

**Acts Referred:**

Prevention Of Money Laundering Act, 2002 — Section 2(1)(u), 8(3)(a), 17, 17(1), 17(4), 18, 20, 20(1), 20(2), 20(3), 21, 21(2), 26  
Indian Penal Code, 1860 — Section 120B, 420  
Prevention of Corruption Act, 1988 — Section 13, 13(1)(d), 13(2)  
Code Of Criminal Procedure, 1973 — Section 157, 173

**Citation : (2019) 07 ATPMLA CK 0008**

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

**Bench :** Division Bench

**Advocate :** Rajiv Nayar, Ankur Chawla, Anshuman Sinha, Vinay Prakash, Rohit Choudhary, Mohd. Faraz

**Final Decision :** Partly Allowed

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## **Judgement**

FPA-PMLA-1781/CHD/2017

1. The Appellants have filed this appeal under section 26 of Prevention of Money Laundering Act, 2002 against OA-No.63/2016 dated 05.04.2017

passed by the Adjudicating Authority inter alia allowed the application filed by the Assistant Director, Directorate Of Enforcement, Chandigarh and

allowed the ED authorities to retain documents and jewellery recovered during the search.

2. The FIR lodged initially by the CBI being FIR No. RC 219 2014 E0002 dated 26.03.2014, the allegation was that the alleged offence of Criminal

Conspiracy, Cheating and Criminal Misconduct which are punishable under section 420 read with section 120-B of IPC and section 13(2) read with

section 13(1)(d) of the Prevention of Corruption Act, 1988 were committed during the period of 2007-2008. The present ECIR is proceeds of

crime alleged that the proceed of crime may have been generated during the commission of said offence.

3. After seizure of gold and jewellery and documents, the application was filed by the Assistant Director, Directorate of Enforcement, Chandigarh

under Section 17(4) of the Prevention Money Laundering Act, 2002(PMLA) being OA No. 63 of 2016, inter alia, seeking retention of

documents/articles seized on 23.11.2016 in the case of Appellant No.1.

4. The allegations in the application is on the basis on which the Enforcement Case Information Report No. ECIR/03/CDZO/2014 dated 29.12.2014

(herein after referred to as 'the ECIR') was registered on the basis of a FIR No.RC2192014E 0002 dated 26.03.2014. The allegations made

against the appellants in FIR are that on 12.01.2007 an application is made by the Appellant No.1 seeking allocation of coal block and after several

rounds of disqualifications of various applicants for allocation of coal blocks, the Appellant No.1 Company was qualified and was initially

recommended allocation of coal block vide letter no. 38011/1/2007-CA-1 dated 06th November, 2007 and finally allocation was made by the Ministry

of Coal on 06th February, 2008. It is mentioned in the ECIR that 'As the Coal Block has been got allocated fraudulently; therefore the money

generated on the basis of coal blocks is a Proceeds of Crime and such Laundered need to be investigated.'

5. The Appellants appeared in the matter and filed reply raising various preliminary objections including that the Original Application is gross abuse of process of law and powers of seizure.

6. The basis of the present ECIR being the FIR No. RC 219 2014 E0002 dated 26.03.2014 registered by the CBI, has sought to be closed by the said

Central Agency. The CBI has already filed Final Report under section 173 of the Cr.P.C. seeking closure of the said FIR on the reason that offence

is not made out. The FIR was lodged on account of 'mistake of fact.'

7. It was contended on behalf of the appellant that the ED has sought retention of various properties including documents and jewellery as described in

Panchnama dated 23.11.2016, which has been seized from the family residential premise of the Appellant No.2. It is the case of the appellant that

there is no link whatsoever between the said jewellery articles and/or documents seized by the Director. The entire jewellery have been owned and in

possession of the Appellant No.2, his wife and his HUF, even prior to the period during which the offence is alleged to have been committed.

Therefore, the said jewellery and other articles documents can be termed as "Proceeds of Crime" as defined under section 2(1)(u) of the PMLA, at the relevant time.

8. Learned Counsel appearing on behalf of respondent has not denied the fact about the closure report by CBI stating the FIR was registered due to

mistake, however his submission is that since the closure report has not been accepted by the CBI Court, therefore, till that time, the retention may

continue. It is not denied by him that ECIR was registered on the basis of FIR.

9. It is the admitted case of the Enforcement Directorate that dates of the acts constituting predicate/ scheduled offences are as under:-

(a) Date of Advertisement for inviting interest for allotment of coal block- 12.11.2006;

(b) Application for allocation of Fatehpur Coal Block- 12.1.2007;

(c) Presentation before Screening Committee-21.6.2007;

(d) Letter from Ministry of Coal seeking consent for joint allocation of Coal Block to the Petitioner 1 and SKS- 6.11.2007;

(e) Final Allotment of Fatehpur Coal Block- 6.2.2008.

(f) Sale of Shares of Petitioner. 1- 3.3.2008.

10. It is submitted on behalf of the appellant that each and every act and transaction which is alleged to have constituted the predicate scheduled

offence is prior to 1.6.2009, when The Prevention of Money Laundering (Amendment) Act, 2009 came into effect. It is by such amendment that

Sections 420 and 120 B of the Indian Penal Code were made part of scheduled offences notified under The Prevention of Money Laundering Act,

2002. They are also prior to 15.2.2013, when The Prevention of Money Laundering (Amendment) Act, 2013 came into effect. It is by such

amendment that Section 13 of The Prevention of Corruption Act, 1988 was made part of scheduled offences notified under The Prevention of Money-

Laundering Act, 2002.

11. The Adjudicating Authority has come to the conclusion that the Adjudicating

Authority is only concerned with the permission for retention of these seized items at the stage of passing of the order of freezing.

12. On 12.11.2018, the writ-petition was filed by the appellant in the High Court of Delhi at New Delhi, the same was disposed of on 12.11.2018 while passing the following order:-

â??CORAM:

HONâ??BLE MR. JUSTICE VIBHU BAKHRU

% ORDER

Â 12.11.2018

1. The petitioner has filed the present petition, inter alia, praying as under:-

â??(a) To direct the Directorate of Enforcement not to conduct any actions of seizure/attachment of any movable/immovable property of the

Petitioner or others under the Prevention of Money Laundering Act, 2002 w.r.f. ECIR/03/CDZO/2014 dated 29.12.2014, as no proceeds of

crime have been derived or obtained out of the alleged predicate offence.

(b) Quashing the Seizure Memo dt. 23.11.2016 under Section 17(1) of PMLA, 2002, the OA No.63 of 2016 dated 21.12.2016 and the final

order dated 05.04.2017 passed by the Learned Adjudicating Authority in OA No.63/2016, as the initial action itself was illegal.â??

2. Respondent No. 2 (Directorate of Enforcement) has registered an ECIR dated 29.12.2014 based on a FIR dated 26.03.2014 filed by the

CBI. The allegation against the petitioner company is that it had obtained the allotment of coal block for captive consumption by

misrepresentation of its network. This allegation is stoutly contested by the petitioner. Admittedly, the closure report in regard to the FIR

(FIR No. RC 219 2014 E-0002 dated 26.03.2014) has been filed, wherein it has been stated that the investigations have revealed that there

is no offence committed by the petitioner. The said closure report is pending consideration before the Special Judge, CBI, (Coal Blocks

Allocation Cases), Patiala House Courts, New Delhi.

3. Prima facie, it is difficult to understand the action now being proposed by respondent no.2 after more than four years of filing of said

FIR. This Court was otherwise inclined to entertain this petition. However, it is pointed out that an appeal (FPA PMLA 1781/CHD/2017) has

already been preferred before the Appellate Tribunal against an order of the Adjudicating Authority passed on 05.04.2017. Undisputedly,

the issues raised in the said appeal are similar to those raised present petition. In view of the aforesaid, this Court does not consider it

apposite to entertain this petition.

4. However, the Appellate Tribunal is requested to consider the petitioner's appeal as expeditiously as possible and preferably within a period of eight weeks from today.

5. In the event, respondent no.2 takes any further action, the petitioner is at liberty to apply.

6. The petition is disposed of in the aforesaid terms. The pending application stands disposed of.

7. Order dasti under signatures of the Court Master.

VIBHU BAKHRU, J

November 12, 2018/MK

13. Section 17 of PMLA, 2002 reads as under:

17 Search and seizure. (1) Where [the Director or any other officer not below the rank of Deputy Director authorised by him for the

purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in

writing) that any person

(i) has committed any act which constitutes money-laundering, or

(ii) is in possession of any proceeds of crime involved in money-laundering, or

(iii) is in possession of any records relating to money-laundering, (or)

(iv) is in possession of any property related to crime]

then, subject to the rules made in this behalf, he may authorize any officer subordinate to him to -

(a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime

are kept;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where

the keys thereof are not available;

- (c) seize any record or property found as a result of such search;
- (d) place marks of identification on such record or [property, if required or] make or cause to be made extracts or copies therefrom;
- (e) make a note or an inventory of such record or property;
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:

[Provided that no search shall be conducted unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under

section 157 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person, authorised to investigate the

offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or in

cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an

officer authorised to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or

equivalent being head of the office or Ministry or Department or Unit, as the case may be, or any other officer who may be authorised by the

Central Government, by notification, for this purpose.]

[(1A) Where it is not practicable to seize such record or property, the officer authorised under sub-section (1), may make an order to freeze

such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making

such order, and a copy of such order shall be served on the person concerned:

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) of Section 8 or Section 58B or sub-Section (2A) of

Section 60, it becomes practical to seize a frozen property, the officer authorised under sub-Section (1) may seize such property.]

(2) The authority, who has been authorized under sub-section(1) shall, immediately after search and seizure [or upon issuance of a freezing

order] forward a copy of the reasons so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating

Authority in a sealed envelope, in the manner, as may be prescribed and such Adjudicating Authority shall keep such reason and material

for such period, as may be prescribed.

(3) Where an authority upon information obtained during survey under section 16, is satisfied that an evidence shall be or is likely to be

concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is

located and seize that evidence.

Provided that no authorization referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority seizing any record or property under sub-Section (1) or freezing any record or property under sub-Section (1A) shall,

within a period of thirty days from such seizure or freezing, as the case may be, file an application, requesting for retention of such record

or property seized under sub-Section (1) or for continuation of the order of freezing served under sub-Section (1A), before the Adjudicating

Authority.].

14. Section 18 of PMLA, 2002 reads as under:

18. Search of persons.

(1) If an authority, authorised in this behalf by the Central Government by general or special order, has reason to believe (the reason for

such belief to be recorded in writing) that any person has secreted about his person or in anything under his possession, ownership or

control, any record or proceeds of crime which may be useful for or relevant to any proceedings under this Act, he may search that person

and seize such record or property which may be useful for or relevant to any proceedings under this Act:

[Provided that no search of any person shall be made unless, in relation to the scheduled offence, a report has been forwarded to a

Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to

investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case

may be.]

(2) The authority, who has been authorised under sub-section (1) shall, immediately after search and seizure, forward a copy of the reasons

so recorded along with material in his possession, referred to in that sub-section, to the Adjudicating Authority in a sealed envelope, in the

manner, as may be prescribed and such Adjudicating Authority shall keep such reasons and material for such period, as may be prescribed.

(3) Where an authority is about to search any person, he shall, if such person so requires, take such person within twenty-four hours to the

nearest gazetted officer, superior in rank to him, or a Magistrate:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey undertaken to take such person to the nearest

gazetted officer, superior in rank to him, or Magistrate's Court.

(4) If the requisition under sub-section (3) is made, the authority shall not detain the person for more than twenty-four hours prior to taking

him before the Gazetted Officer superior in rank to him, or the Magistrate referred to in that sub-section:

Provided that the period of twenty-four hours shall exclude the time necessary for the journey from the place of detention to the office of the

Gazetted Officer, superior in rank to him, or the Magistrate's Court.

(5) The Gazetted Officer or the Magistrate before whom any such person is brought shall, if he sees no reasonable ground for search,

forthwith discharge such person but otherwise shall direct that search be made.

(6) Before making the search under sub-section (1) or sub-section (5) the authority shall call upon two or more persons to attend and witness

the search, and the search shall be made in the presence of such persons.

(7) The authority shall prepare a list of record or property seized in the course of the search and obtain the signatures of the witnesses on the

list.

(8) No female shall be searched by any one except a female.

(9) The Authority shall record the statement of the person searched under sub-section (1) or sub-section (5) in respect of the records or

proceeds of crime found or seized in the course of the search:18 [\*\*\*]

(10) The authority seizing any record or property under sub-section (1) shall, within a period of thirty days from such seizure, file an

application requesting for retention of such record or property, before the Adjudicating Authority.



15. Sub-section (1), (2) and (3) of Section 20 read as under:-

20. Retention of property.â?

(1) Where any property has been seized under section 17 or section 18 or frozen under sub-Section (1A) of Section 17 and the officer

authorised by the Director in this behalf has, on the basis of material in his possession, reason to believe (the reason for such belief to be

recorded by him in writing) that such property is required to be retained for the purposes of adjudication under section 8, such property

may, if seized be retained or if frozen, may continue to remain frozen, for a period not exceeding one hundred and eighty days from the day

on which such property was seized or frozen, as the case may be.

(2) The officer authorized by the Director shall, immediately after he has passed an order for retention or continuation of freezing of the

property for purposes of adjudication under section 8, forward a copy of the order along with the material in his possession, referred to in

sub-section (1), to the Adjudicating Authority, in a sealed cover, in the manner as may be prescribed and such Adjudicating Authority shall

keep such order and material for such period as may be prescribed.

(3) On the expiry of the period specified in sub-section (1), the property shall be returned to the person from whom such property was seized

or whose property was ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such property

beyond the said period.

16. Section 21 of PMLA reads as under:-

â??21. Retention of records. â?

(1) Where any records have been seized, under section 17 or section 18 or frozen under sub-section (1A) of section 17 and the Investigating

Officer or any other officer authorised by the Director in this behalf has reason to believe that any of such records are required to be

retained for any inquiry under this Act, such records may if seized, be retained or if frozen, may continue to remain frozen, for a period not

exceeding one hundred and eighty days from the day on which such records were seized or frozen, as the case may be.

(2) The person, from whom records seized or frozen, shall be entitled to obtain

copies of records.

(3) On the expiry of the period specified under sub-section (1), the records shall be returned to the person from whom such records were

seized or whose records were ordered to be frozen unless the Adjudicating Authority permits retention or continuation of freezing of such

records beyond the said period.

(4) The Adjudicating Authority, before authorising the retention or continuation of freezing of such records beyond the period specified in

sub-section (1), shall satisfy himself that the records are required for the purposes of adjudication under section 8.

(5) After passing of an order of confiscation [or release under sub-section (5) or sub-section (6) or sub-section

(7) of section 8 or section 58B or sub-section (2A) of section 60] , the Adjudicating Authority shall direct the release of the records to the

person from whom such records were seized.

(6) Where an order releasing the records has been made by the Court [Adjudicating Authority under section (5) of section 21] the Director

or any other officer authorised by him in this behalf may withhold the release of any such record for a period of ninety days from the date of

(receipt of] such order, if he is of the opinion that such record is relevant for the appeal proceedings under this Act. ]

17. It is settled law that a particular thing is to be done in a particular manner, it must be done in that way and none other. Reliance in this regard is

also placed on a judgements of Honâ?ble Supreme Court in the cases of Dipak Babaria and another vs. State of Gujarat 2014 (3) SCC 502 and J.

Jayalalitha & Anr vs State of Karnataka & Ors 2014 (2) SCC 401.

18. Sub-section (1) of Section 17 provides that the authorised officer has to record the reason to believe in writing. In the such reason to believe, he

has also to record the basis of information which is in his possession before conducting the search and seizure.

19. It stipulates that if person concerned has committed any act which constitutes money-laundering, or is in possession of any proceeds of crime

involved in money-laundering, or is in possession of any records relating to money-laundering, then any authorised officer can enter and search any

building, place, vessel, vehicle or aircraft where that such records or proceeds of

crime are kept, who is also empowered to break open the lock of any door, box, locker, safe, almirah or other receptacle where the keys thereof are not available and seize any record or property found as a result of such search, place marks of identification on such record or make or cause to be made extracts or copies therefrom; make a note of an inventory of such record or property and to examine on oath any person who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation.

However, the said action is sustainable subject to conditions stipulated in the proviso of Section 17(1) of the Act, which says that the search and seizure shall not be conducted unless â?

â?¢ in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973, (2 of 1974)

or

â?¢ a complaint has been filed by a person, authorised to investigate the offence mentioned in the Schedule, before a Magistrate or court for taking cognizance of the schedule offence, as the case may be,

or

â?¢ in cases where such report is not required to be forwarded, a similar report of information received or otherwise has been submitted by an officer

authorized to investigate a scheduled offence to an officer not below the rank of Additional Secretary to the Government of India or equivalent being

head of the office or Ministry or Department or unit, as the case may be, or any other officer who may be authorised by the Central Government, by

notification, for this purpose.

In the present case, no report against the appellant has been forwarded to the Magistrate. No complaint against the appellant was filed before a

Magistrate. No cognizance of schedule offence was taken by any authority or Additional Secretary to the Government of India.

20. From the entire gamut of matter, the following peculiar and circumstances emerges: -

(a) ECIR was registered on the basis of FIR, the closure report has been filed CBI who stated that no case is made out and it was registered mistake

of fact.

(b) The said closure is yet to be considered by the Special Court.

(c) No reasons to believe were produced. The seizure was made on the basis of apprehension and presumption.

(d) No business has been carried out on the basis of coal blocks.

(e) The jewellery, coins, gold and papers were seized. As far as papers are concerned, the appellants are entitled to obtain the copies if so

essential under the provision of sub-section 2 of Section 21 of the Act.

21. The only reason given in the impugned order for the purpose of retention of the jewellery and copies of documents was that the share value of

the company may rise, therefore, it is a matter of investigation.

22. It was admitted in the impugned order that the gold jewellery may not be in any way related to the manipulation in share price or may not have any

linkage but Adjudicating Authority wishes to retain the same for the purposes of investigation as there would not be any harm caused to the appellant.

As a matter of fact, the Adjudicating Authority is duty bound on the basis of material to give the reasons that the party is involved in money laundering

and property is acquired from proceeds of crime.

23. The impugned order was passed on 5th April 2017. Thereafter, Hon'ble Delhi High Court in the WP(C) 11943/2018 has passed order.

Thereafter the present appeal was filed by the appellant. The respondent has not complied with our orders dated 6.3.2019 and 11.4.2019. The respondent

has also not produced the copies of reasons to believe recorded, if any, at the stage of Section 17 (1) of the Act and at the stage of Section 20 and 21

of the Act. Reply to the Appeal was filed on 24.4.2018 i.e. after more than one year.

24. There is no specific reference about the investigation about the jewellery and gold as to whether those are acquired from proceeds of crime or

not despite of ninety days period provided under section 8(3)(a) of the Act. It is therefore evident that the gold and jewellery is not the part of alleged

proceeds of crime or any linkage. It is a matter of shocking when we read the findings of Adjudicating Authority that "no harm will be caused if

retention may continue."

25. Under these circumstances, the impugned order is set aside as far as gold

and jewellery is concerned. With regards to documents, the Appellant is entitled to take the copies under sub section (2) of Section 21 of the Act. 26. The appeal is partly allowed by modifying the impugned orders.