(2023) 03 ATPMLA CK 0001

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : FPA-PMLA-2342, 2343, 2346, 2358, 2359/DLI/2018, MP-PMLA-4554, 4576, 4577/DLI/2018, 9751/DLI/2022

Pulkit Garg — APPELLANT

Vs

Deputy Director Directorate Of Enforcement — RESPONDENT

Date of Decision : 16-03-2023

Acts Referred:

Indian Penal Code, 1860 — Section 120B
Prevention of Corruption Act, 1988 — Section 13(1)(d), 13(2)
Prevention Of Money Laundering Act, 2002 — Section 3, 8(6), 8(7), 26, 35

Citation : (2023) 03 ATPMLA CK 0001

Hon'ble Judges : V. Anandarajan, Member;Rajesh Malhotra, Member

Bench : Division Bench

Advocate : Arun Kumar Agarwal, Shubham Agarwal, Sankar, Sarthak Anand, Anubha Bhardwaj

Final Decision : Allowed

Judgement

1. Present appeals are filed against the impugned order dated 19.04.2018 passed by Learned Adjudication Authority in original complaint No. 854/2017 and thereby confirming the provisional attachment of properties of the appellants attached vide order No. 12/2017 dated 08.11.2017.

2. On 14.09.2022 appellant Sh. Pulkit Garg & M/s Garg Trading Co. filed miscellaneous application No. 9751 of 2022 to set aside the impugned order dated 19.04.2018 on the ground that CBI after investigation filed closure report before Learned Special Judge (PC Act) CBI-17 New Delhi in December 2019. Shri Inder Jeet Singh, Learned Special Judge (PC Act), CBI-17, New Delhi vide order dated 12.12.2019 accepted the closure report, as in the CBI investigation it is concluded that no schedule offence under Section 120-B of IPC and under Section 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988, was committed by any person.

As CBI filed closure report and the same was accepted on 12.12.2019, the complaint case CT No. 33/2018 filed by Respondent ED in Special Court PMLA for the Commission of offence u/s 3 of PMLA was also dismissed by Shri Reetesh Singh, Learned ASJ-2 (East) Karkardooma Court vide order dated 23.12.2021.

Prayer was accordingly, made to set aside the impugned order dated 19.04.2018 and the provisional attachment order dated 08.11.2017, in view of the above two orders dated 12.12.2019 & 23.12.2021.

3. On notice Respondent ED filed the reply admitting the factual position, but objected the release of attached properties on the ground that the power of release of the property is in ambit of Learned Special Judge, PMLA, as per Section 8(6) & 8(7) of Prevention of Money Laundering Act. Prayer was accordingly, made to dismiss the present miscellaneous application.

4. Learned counsel for both the parties argued in verbatim to their respective averments as made in the miscellaneous application and the reply.

5. After hearing both the sides, we have given our thoughtful consideration to the same. The Hon'ble Supreme Court of India in case Vijay Madanlal Chaudhary & Ors. vs. Union of India & Ors. in para 187 has held that:- "(v)(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process of activity connected with such property, which constitutes the offence of money laundering. The Authorities under the 2002 Act cannot prosecute any person on national basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdiction police and/ or pending enquiry / trial including by way of criminal complaint before the competent forum. If the person is finally discharged acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to sated scheduled offence through him".

Now, coming to the objection raised by Ld. Counsel for the respondent, we are of the view that Section 8(6) & (7) of Prevention of Money Laundering Act does not restrict the power of this Appellate Tribunal to dispose of the present appeal filed under Section 26 of the Prevention of Money Laundering Act 2002. Moreover, when this Appellate Court has specific power under Section 26 of PMLA Act to check the legality of the attachment order confirming the provisional attachment order, there is no bar to entertain the present miscellaneous application under Section 35 of the PMLA Act.

6. It is pointed out in the miscellaneous application that vide order dated 12.12.2019 passed by Learned Special Judge (PC Act) CBI, closure report filed by CBI pertaining to schedule offence under Section 13(2) of Prevention of Corruption Act was accepted and further vide order dated 23.12.2021 passed by Learned Special Judge (PMLA), Learned ASJ-2 (East), Karkardooma Court, accused were discharged in the complaint case for commission of offence under section 3 of PMLA.

In view of the above development after filing of appeals, during the intervening period, for accepting the closure report vide order dated 12.12.2019 by Ld. Special Judge, CBI Court and discharge of the accused person in complaint case vide order dated 23.12.2021, by Ld. Special Judge, PMLA Court, the present miscellaneous application No. 9751 of 2022 is hereby allowed, and thereby all the present appeals No. 2342, 2343, 2358, 2359, 2346 of 2018, are also consequently allowed, resulting in the release of all the attached properties, attached by Ld. Adjudication Authority vide impugned order dated 19.04.2018 in original complaint No. 854/2017 confirming the provisional attachment order dated 08.11.2017. However, it is made clear that this final order in present cases is subject to any attachment order under Income Trax Act or any other law.

7. Ld. Counsels for both the sides are hereby directed to collect the attested copies of this Final Order from Registrar (Judicial) of this Appellate Tribunal and the same will not be sent to the parties by post.

Miscellaneous Application & All Appeals Allowed.

Pronounced in open Court on this 16th day of March 2023.

