

(2018) 05 ATPMLA CK 0003

In the Appellate Tribunal Under Prevention Of Money Laundering Act

Case No : FPA-PMLA-448/BNG/2013

Saraswathi

APPELLANT

Vs

Joint Director Directorate Of Enforcement, Bangalore

RESPONDENT

Date of Decision : 11-05-2018

Acts Referred:

Constitution Of India, 1950 — Article 14

Code Of Civil Procedure, 1908 — Order 16 Rule 1(2)

Prevention Of Money Laundering Act, 2002 — Section 2(u), 3, 5, 5(1), 5(5), 8, 8(1), 8(5), 11, 45, 45(1)

Code Of Criminal Procedure, 1973 — Section 173

Citation : (2018) 05 ATPMLA CK 0003

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : R. Swaroop Anand, Vikas Garg

Final Decision : Disposed Of

Judgement

SI.

No.",Details of accused,Sections invoked

1,Mr Katta Subramanya Naidu,"7, 13(1)(d) r/w 13(2) Prevention of Corruption Act, 1988 (PC Act) and 465, 471 r/w 120(B) of Indian Penal Code(IPC)Â Â Â ;

2,Mr K.S.Jagadish @ Katta Jagadish Naidu,"8, PC Act, 1988 and 420, 465,468,120(B) of IPC |

3,Mr S.V.Srinivas,"12 PC Act, 1988, 420, 465, 468,506 r/w 120(B) of IPC,

4,"Mr Jagaiah (absconding at the time of filing

chargesheet),"420, 465, 468 r/w 120(B) IPC

5,"Mr Venkaiah (absconding at the time of filing chargesheet),"420, 465,468 r/w 120(B) of IPC

6,Mr Basavapoornaiah,"12 PC Act, 1988& 120(B) of IPC

7,Mr T.P.Muninarayanappa,"13(1)(d) r/w 13(2) P.C. Act, 1988 & 120(B) of IPC

8,Mr B.K.Manju., "420,506 r/w 120(B) of IPC

9,Mr M.Gopi,"420, 506 r/w 120(B) of IPC

before the Principal City Civil and Sessions Judge and Special Court for Prevention of Money Laundering Act, Bangalore on 24/03/2014 against",,

various parties however, the appellant herein is not arrayed as an accused. In the said complaint, the Respondent has made the prayer confiscations of",,

all the attached properties vide provisional attachment order No. 7/2012 dt: 25.09.2012 in terms of Section 8(5) of the Act among other things including,,

the attached property of the appellant. The principal City Civil and Session Judge and Special Court for Prevention of Money Laundering Act",,,

Bangalore by its order dt. 24.03.2014 registered the complaint filed by the Respondent as Spl CC 124/2014.,,,

12. It is the admitted position that before the Adjudicating Authority, the Appellant herein furnished detailed information pertaining to the source of",,

funds from which the above said attached property had been purchased to rebut the stand of the Complainant vide her reply and submitted that during,,

the year 2010 this Appellant wanted to purchase a flat to provide residence to her daughter. She spoke regarding the same with her son S.V.Srinivas,,

who promised to help her to buy a flat.,,

13. As per record a registered sale deed dated 19/08/2010 was executed in favour of this Appellant by her Vendors, Embassy Properties",,

Development Ltd for a consideration of Rs.20,48,750/- for undivided right, title and interest proportionate to the flat to be owned by this Appellant, a",,,

sum of Rs.51,52,085/- was payable to Embassy Properties Development Ltd., towards the construction of the said flat. The copy of the said sale deed",,,

is filed as ANNEXURE A-5 in the present appeal and the consideration details in the said sale deed are at page 184.,,

14. It is indicated in the said sale deed that the same was only the undivided

right, title and interest in land. It is clearly mentioned in the recitals of the",,,
sale deed filed that the consideration for the sale was paid by the confirming
party in the said sale deed, i.e. M/s Magarath Property Development.",,,

15. The notice issued by Embassy Properties Development Ltd, being partners of
M/s Magarath Property Development who had paid to the vendors",,,

under the sale deed dt: 19/08/2010 a sum of Rs.20,48,750/- and claimed
reimbursement of the said amount from the Appellant.",,,

16. Proof is placed on record in order to show that the Appellant received a
notice through registered post, dated 15/09/2011 from M/s Embassy",,,

Properties Development Ltd., intimating her that her son had issued post-dated
cheques drawn in favour of M/s Embassy Properties Development",,,

Ltd., for various sums totaling to Rs.72,00,835/- and another cheques for
Rs.4,38,900/- in favour of M/s Magarath Property Development. It was also",,,

informed to the Appellant that it is because of the post-dated cheques issued by
her son they acknowledged receipts of the amounts under the,,

construction agreement and also the consideration under the sale deed dated
19/08/2010, however, the cheques issued in favour of M/s Magarath",,,

Property Development for Rs.4,38,900/- has been presented and dis-honored. A
copy of the said notice is filed as ANNEXURE A-6 at page",,,

192 and in the appeal.,,,

17. When this Appellant received the said notice, her son S.V.Srinivas was in
judicial custody. She handed over the said notice to her husband Sri",,,

SKV. Chalapathy who made enquiries with M/s Embassy Properties Development
Ltd., and learnt that their son had issued post-dated cheques",,,

towards consideration for purchase of undivided interest in the land as well as for
payment to be made to Embassy Properties Development Ltd for,,

construction of the flat. Her husband thereafter agreed to pay payments due to
Embassy Properties Development Ltd., as well as M/s Magarath",,,

Property Development from his bank account.,,,

18. Accordingly by he in his letter dated 21/9/2011 (which is filed in the appeal
at page 196), he issued cheques drawn from his account in Axis bank",,,

Ltd, Sampige Road, Bangalore.",,,

19. The statement issued by the said bank pertaining to this Appellant's
husband account is filed at page 202 has already been made available to,,

the Complainant by this Appellant's son S.V. Srinivas pursuant to the

summons issued to him. Copy of the letter dated 21/09/2011 and account,, statement of this Appellant's husband is filed as ANNEXURE A-7& A-8.,,

20. The details of the cheques issued by this Appellant's husband are as follows:,,

i) Cheque No.291072 dated 21/09/2011 drawn on Axis Bank, drawn in favour of Embassy Properties Development Ltd., for Rs.32 lakhs.",,

ii) Cheque No.291073 dated 21/09/2011 drawn on Axis Bank, drawn in favour of M/s Magarath property development, for Rs.3,56,950/-",,

iii) Cheque No.291074 dated 21/01/2012 drawn on Axis Bank, drawn in favour of M/s Embassy Habitat Owners Association for Rs.1,41,397/-.",,

21. The said factual position with regard to the payment made by the appellant's husband has not been denied by the respondent. However, the",,

provisional attachment order was confirmed as it was apprehended by the respondent that the payments of Rs.20 lacs which was balance,,

consideration towards the purchase of said flat might be paid by her son from the proceeds of crime. Although in the letter it was stated that the,,

balance amount payable will be paid to them in due course which was also paid by her husband only.,,

22. Subsequently, alongwith his letter dated 19/11/2012, this Appellant's husband has paid a sum of Rs.20 lakhs to Embassy Properties",,

Development Ltd., by cheques dated 19/11/2012 drawn on Axis Bank Ltd. A copy of the said letter is filed as ANNEXURE A-9 at page 200",,

available in the appeal.,,

23. As already mentioned that the conduct of the appellant was doubted in the impugned order, once it was transpired the question was raised by the",,

respondent that why the remaining payment was not made therefore one of the main reason for confirming the attachment order.,,

24. But the fact remains that no payment whatsoever has been made by the Appellant's son SV Srinivas, for acquisition of the property by this",,

Appellant. In the provisional order of attachment, nothing was considered.",,

25. It is come on record that the entire amount for purchase of property referred to as Sl.No.32 in para 2 of the complaint by this Appellant has been,,

paid by this Appellant's husband who also paid the balance 20 lakhs to Embassy Properties Development Ltd on 15/07/2013. For the proof of,,

payment has placed the account statement of her husband before this Tribunal by filing as MP No. 1594/2015.,,

26. It is evident from record that the Appellant's husband has paid a total sum of Rs.72 lakhs to Embassy Properties Development Ltd out of his,,

separate income. No doubt earlier, the cheques were issued by her son S.V. Srinivas but the same were bounced. In fact no amount was made in the",,,

said property by Mr. S.V. Srinivas- son of the appellant.,,

27. Even the Appellant herein in order to clear any aspersion on the source of funding for the purchase of the above said property and in order to,,

show her bona-fide had also filed an application under section 11 of PMLA r/w Order 16 Rule (1)(2) of the Code of Civil Procedure before the,,

Adjudicating Authority to issue summons to M/s Embassy Properties Development Ltd to give evidence and produce the post dated cheques issued by,,

her son SV Srinivas and the bank endorsement for the dis-honored cheque issued to M/s Margarath Property Development. The copy of the said,,

application is produced filed as ANNEXURE A-11 at page 205 in the present appeal. No order in the said application was passed even it was,,

not dealt in the impugned order.,,

28. As already stated that the Adjudicating Authority accepts the fact that all payments for purchase of the flat in question was made by this,,

Appellant's husband only except Rs. 20 lakh which was paid later on but on the basis of mere apprehension, Adjudicating Authority passed the",,,

order to continue the attachment, on the reason that as post-dated cheques were issued by S.V. Srinivas (One of them was dishonored and the others",,,

were not encashed at paragraph 140 at page 67 of impugned order).,,

29. It is apparent from the recital in the sale deed that a sum of Rs.20,48,750/- lakhs was paid towards sale consideration and hence it must be held",,,

that the said amount constitutes proceeds of crime and was utilized to acquire the above said property. The Adjudicating authority did not appreciate,,

that the said payment had been made by M/s Embassy Developers Ltd to the vendors under the sale deed and they in turn claimed reimbursement of,,

the same which was duly paid to them by the husband of the Appellant herein.,,

30. In nutshell, on the face of record, no amount was paid by S.V Srinivas for the acquisition of the said property by the Appellant. No doubt earlier",,,

the post-dated cheques were issued by S.V. Srinivas but the same were admittedly dishonored, the question of purchasing the impugned property from",,, the funds of S.V. Srinivas does not arise.,,,

31. The finding of the adjudicating authority is absolutely against the material on record and the notice issued by M/s Embassy Developers to the,,

Appellant herein, wherein M/s Embassy Developers have stated that they have not received even a single rupee as consideration for the purchase of",,,

the flat from S.V Srinivas as evident from document filed as Annexure A6 at page 192 with the appeal. In the recitals of the sale deed it is mentioned,,

that the consideration for the sale was paid by the confirming party in the said sale deed, i.e. M/s Magarath Property Development of which M/s",,,

Embassy Developers Ltd was a partner.,,,

32. Thus, it is even prime facie not established against the Appellant of receiving proceed of crime is not made out and requirement of section 5(1) of",,,

PMLA was not satisfied. The first requirement of the section 5(1) is regarding being in possession of proceeds of crime on the date of the provisional,,

attachment, i.e. 25/09/2012 as none of amount has even used by the appellant for purchasing the said property. Admittedly, her husband is admittedly",,,

not involved in any matter. Both husband and wife-appellant here no link or nexus in the crime allegedly committed by others.,,,

33. Similarly Accused No.1 and Accused No. 8 in FIR 57/2010 resulting in charge sheet numbered as SPL CC 135/2011, i.e. Mr. Katta Subramnaya",,,

Naidu and M. Gopi respectively challenged FIR 57/2010 resulting in charge sheet numbered as SPL CC 135/2011 before the Honâ??ble High Court,,

of Karnataka in Criminal RP 432/2013 and CrIP 2313/2016 respectively.,,,

34. The Honâ??ble High Court of Karnataka by a common order dt: 03/11/2016 allowed Criminal RP 432/2013 and CrIP 2313/2016 and quashed,,

FIR 57/2010 resulting in charge sheet numbered as SPL CC 135/2011, as against Mr. Katta Subramnaya Naidu and M. Gopi. The prosecution has",,,

challenged the order of the Honâ??ble High Court of Karnataka in Criminal RP 432/2013 and CrIP 2313/2016 before the Honâ??ble Supreme,,

Court in SLP (CrI) 1192-1193/2017. Notice is ordered in the said matters.,,,

35. The appellant in appeal No. 447/2013 is Smt Reshma Srinivas. She is the wife of SV Srinivas. She is not accused in the schedule offence. She is,,

an accused in the section 45 compliant filed by the Respondent herein numbered

as SPL CC 124/2014 and is arrayed as accused No.22. The said,,

SPL CC124/2014 was instituted on 24/03/2014 after the impugned order dt: 21/02/2013 passed by the Adjudicating authority in OC 158/2012.,,

36. The Adjudicating Authority upon receipt of a complaint under section 5(5) of Act; under section 8 (1) of the Act is bound to peruse the same and,,

upon perusal of such a complaint if it has reason to believe that any person has committed an offence under section 3 of the Act or is in possession of,,

proceeds of crime may serve a notice on such person calling upon them to indicate the means by which he has acquired the property attached under,,

section 5(1) of the Act.,,

37. There are no valid reasons to believe in order to pass the order of provisional attachment. Actually, the provisional attachment is just repetition of",,,

the allegation made in the complaint. Such allegations are treated as gospel truth.,,

38. The appellant was not issued any notice before passing the attachment order. No statement of her was recorded in order to verify the position.,,

The Complainant before attaching the property owned by the Appellant herein described at Sl. No. 29 in Para-2 of the Complaint. No copy of reason,,

to believe was served before passing the provisional attachment order.,,

39. The provisional order passed by the respondent is violative of principles of natural justice and violates the rights of this Appellant enshrined in Art.,,

14 and 21 of the Constitution of India. In case section 5(1) is read in meaning manner, it reveals that it is a mandatory provision and before passing the",,,

provisional attachment order, reasons in writing is mandatory and the allegations against the accused are to be recorded in the reasons to believe. The",,,

property of third party cannot be attached without proper investigation, particularly when the respondent was fully aware about all facts and materials",,,

available.,,

40. The notice issued by the Adjudicating Authority under Section 8 of the Act, is issued in gross violation of Article 14 of the Constitution of India and",,,

is against principles of natural justice.,,

41. Adjudicating Authority while adjudicating the validity of the provisional attachment was bound to examine as to whether the value of such property,,

has a direct relation to proceeds of crime, which is a condition prerequisite to constitute proceeds of crime in terms of section 2(u) under the PMLA.",,,

42. No case was brought out against the appellant either in the charge-sheet filed by the Lokayuktha Police Wing or the complaint filed by the,,

Complainant and as such Section 2(u) of PMLA does not come into operation and as a consequence of the same Section 5 of PMLA.,,

43. Thus, in the light of aforesaid reasons as stated above, the present appeal is allowed with regard to the property owned by the appellant. The",,,

impugned order is set-aside. Consequently, the provisional attachment order pertaining to the appellant in relation to the property in question is",,,

quashed. The property is released forthwith.,,

44. This order shall not have any bearing in other appeals providing before this Tribunal. Those would be decided as per their own merit. The appeal,,

and pending applications are disposed off.,,

45. No costs.,,