(2023) 01 ATPMLA CK 0001

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: FPA-PMLA-5382/DLI/2023

Dr. U.S. Awasthi		APPELLANT
	Vs	
Adjudicating Authority, PMLA & Anr.		RESPONDENT

Date of Decision: Jan. 31, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 311
- Prevention Of Money Laundering Act, 2002 - Section 6(15), 8(6)
- Adjudicating Authority (Procedure) Regulations, 2013 - Regulation 21

Hon'ble Judges: Munishwar Nath Bhandari, J; Balesh Kumar, Member

Bench: Division Bench

Advocate: Alok Kumar, Rohil Pandit, Nidhi Raman, Charu Modi

Final Decision: Dismissed

Judgement

FPA-PMLA-5382/DLI/2022

The Appellant herein preferred a Writ Petition before the High Court of Delhi to challenge the order dated 13th December, 2022 passed by the Adjudicating Authority under Prevention of Money Laundering Act, 2002. By the order dated 13th December, 2022, the Adjudicating Authority dismissed the application preferred by the Appellant to seek cross-examination of three persons namely Shri Rajiv Saxena, Shri Amrendra Dhari Singh @ A.D. Singh and Shri Sushil Kumar Pachisia.

The High Court passed a detailed order on 10th January, 2023 while disposing of the Writ Petition with a direction to the Appellant to pursue its cause before the Appellate Tribunal under Prevention of Money Laundering Act, 2002 and accordingly the Writ Petition was transmitted to the Tribunal. The matter was listed before the Tribunal on 18th January, 2023 when a direction was given to the Appellant to pay the court fee and the Appeal was ordered to be listed on 20th January, 2023 looking to the fact that the Appeal is to be decided within two weeks from the first date of listing.

The High Court has excluded the period of two weeks so as also the period till Writ Petition remain pending before it out of total period of 180 days given to the Adjudicating Authority for passing necessary order on provisional attachment of the property.

In pursuance to the aforesaid, the Appeal was listed on 20th January, 2023. The Learned Counsel for the parties made arguments in part and prayed for another date to conclude their arguments and accordingly the Appeal was ordered to be listed on 23rd January, 2023.

The Learned Counsel for the Appellant submitted that the Adjudicating Authority denied opportunity of cross-examination ignoring the fact that same is part of principle of natural justice. As per Section 6(15) of the Prevention of Money Laundering Act of 2002 (in short Act of 2002) the Adjudicating Authority is to guide itself by the principle of natural justice and otherwise shall have power to regulate its own procedure subject to other provisions of the Act. The said provision further provides that the Adjudicating Authority shall not be bound by the procedure laid down in the Code of Civil Procedure however Regulation 21 of the Adjudicating Authority (Procedure) Regulation, 2013 provides for application of the provision of Code of Civil Procedure relating to the issuance of commission for examination of witnesses and documents and also for summoning and enforcing attendance of any persons as witness and issuance of commission for examination of such witness.

Since the Regulation permits issuance of commission for examination of witness by the Adjudicating Authority, it ought to have allowed the application to call for the witnesses for cross examination. Ignoring the aforesaid, the Adjudicating Authority dismissed the application without proper appreciation of fact. The application was not moved with a view to delay the proceedings, to be completed by the Adjudicating Authority within 180 days. The application was moved immediately after the short reply to the notice thus there was no delay in filing of the application to seek cross examination of three persons.

The Adjudicating Authority even ignored the fact that the provisional attachment order makes a reference of the statement of three persons named by the Appellant for cross examination. Since their statement have been relied for passing Provisional Attachment Order, it was obligatory on the part of the Adjudicating Authority to allow cross-examination of those witnesses in compliance of the principle of natural justice. In all fairness, the Appellant should have been permitted to cross-examine those three persons. It is more so when Appellant did not admit contents of their statements. In view of the facts given above, prayer is made to set aside the order of the Adjudicating Authority dated 13th December, 2022 with a direction to provide an opportunity of cross-examination of those witnesses.

The Appellant has made reference of the judgment of the Apex Court and High Courts in the case of Axis Bank & Ors. v/s. Deputy Director, Directorate of Enforcement 2019 SCC OnLine Del 7854, Akhlesh Singh V/s. Krishan Bahadur Singh and Others 2020 SCC OnLine MP 1962, K.L. Tripathi v/s. State Bank of India & Ors (1984) 1 SCC 43, State of Madhya Pradesh v/s. Chintaman Sadashiva Waishampayan AIR 1961 SC 1623 and lastly Whirlpool Corporation v/s. Registrar of Trade Marks, Mumbai and Ors. (1998) 8 SCC 1.

The Learned Counsel for the Appellant has even placed reliance on the judgment of Delhi High Court in the case of Deputy Director, Directorate of Enforcement v/s. Rajiv Saxena dated 08th June, 2020 passed in CRL. M.C. 1477/2020 to demonstrate that the Enforcement Directorate, in their affidavit, declared statement of Shri Rajiv Saxena to be untrustworthy. Contrary to the affidavit filed by them, they placed reliance on the statement of Shri Rajiv Saxena for passing Provisional Attachment order. This is in contradiction to the affidavit submitted by them before Delhi High Court in the Criminal Miscellaneous petition supra. If Shri Rajiv Saxena is not trust worthy then how his statement was relied for passing the Provisional Attachment order and in those circumstances also it was necessary for the Adjudicating Authority to allow cross-examination of that witness but ignoring the fact as well as the provisions of law, the Adjudicating Authority passed the impugned order dated 13th December, 2022.

The Learned Counsel for the Appellant further submitted that if cross-examination is permitted, they will complete it at the earliest so that the Adjudicating Authority may

pass the order within the period of 180 days.

The Appeal is seriously contested by the Learned Counsel for the Department and submitted that Adjudicating Authority has not committed any error or illegality in dismissing the application. The facts on record show involvement of the Appellant in money-laundering. The principles of natural justice does not warrant cross-examination in all the cases. She has cited judgments of the Apex Court to substantiate her arguments and it was more specifically referring to the nature of proceeding involved in passing Provisional Attachment Order under the Act of 2002. The Learned Counsel for the Respondent further submitted that application to seek cross examination was nothing but to delay the proceedings before the Adjudicating Authority so that it may lapse with the expiry of 180 days.

The Learned Counsel for the Respondent referred the application to submit that no reasons for cross-examination of the witnesses has been given. Para 6 of the application was referred to show even contradiction in the application. The Appellant has stated that there is no documentary evidence to make out a case while Provisional Attachment Order makes reference of the documents to show a case of money laundering.

The documents were otherwise provided to the Appellant before passing the Provisional Attachment Order. He did not deny contents of those documents. The Appellant did not recognize Shri Pankaj Saxena and Shri Sushil Kumar Pachisia and shown his acquaintance only with Shri A.D. Singh. In the aforesaid circumstances, there was no justification to seek cross examination of those witnesses to whom the appellant was not even knowing otherwise he could have given explanation to their statements and documents while Appellant was having an opportunity for it.

The learned Counsel for the Respondent further referred to the statement of Shri A.D. Singh whose statement was first recorded by the Income Tax Department. The said Shri A.D. Singh had admitted the documents but retracted his statement later on. The said Shri A.D. Singh failed to give any reason for retraction to the statement and it was after delay of three weeks. The retraction of the statement was not sought on the ground that it was taken by putting any kind of pressure rather without assigning any reasons, thus retraction may not be accepted by the Income Tax Department. In any case, the respondent has relied on the documentary evidence to show involvement of the appellant in money laundering and for which a case was first registered by the CBI and thereupon ECIR was registered by the Enforcement Directorate. The prosecution complaint against Shri A.D. Singh has already been filed and investigation against the Appellant would be completed at the earliest. In the light of the aforesaid, a case is not made out to allow cross examination of the witnesses and it cannot be allowed for the sake of it.

The learned Counsel for the Respondent further submitted that the affidavit filed by the E.D in the case of Shri Rajiv Saxena was not to show him to be untrustworthy, as stated by the Appellant. In fact Shri Rajiv Saxena failed to disclose all the relevant facts. It was to save his culpability and to shield other accused. The affidavit has been misquoted by the Appellant.

The documents are otherwise sufficient to show involvement of appellant in the case of money laundering and accordingly after registration of the case by CBI, ECIR was registered. The prayer is accordingly to dismiss the appeal. She has relied on the following judgments:

(i) Shri Kishanlal Agarwalla V/s. the Collector of Land Customs & Ors. 1965 SCC OnLine Cal 141, (ii) State of Jammu and Kashmir & Ors. V/s. Bakshi Gulam Mohammad & Anr.

AIR 1967 SC 122 (iii) Chairman, State Bank of India and Anr. V/s. M.J. James (2022) 2 SCC 301 (iv) Kanungo & Co. V/s. Collector of Customs and Ors. 1973 2 SCC 438 (v) Shri Arun Kumar Mishra V/s. Union of India.

We have considered the rival submissions of the parties and perused the records.

Before addressing the issue raised by the Learned Counsel for the parties, it would be appropriate to refer to brief facts of the case given in the Provisional Attachment Order dated 22nd September, 2022. Para 3 of the Provisional Attachment Order is quoted hereunder for ready reference:-

"As per FIR No RC221/2021/E/0009 dated 17.05.2021 registered by CBI, two complaints were forwarded to CBI with the approval of the Hon'ble Minister for Chemical & Fertilizers, Govt. of India. Both the complaints contained almost similar allegations against Sh. U.S. Awasthi, MD, IFFCO relating to subsidy fraud in IFFCO, exchange of illegal commissions in import of raw materials and fertilizers, manipulation of sales data of fertilizers for claiming higher subsidy, etc. It has been further alleged that the accused persons entered into a criminal conspiracy among themselves and in pursuance of the same they had cheated and defrauded, IFFCO as well as Indian Potash Ltd. (hereinafter IPL) and the General Shareholders of these entities and above all Govt. of India by fraudulently importing fertilizers and other materials for fertilizer production at inflated prices and claimed higher subsidy from Govt. of India, causing thereby huge loss to the exchequer, running into several crores of rupees. They siphoned off the commission from the suppliers through a complex web of fake commercial transactions through multiple companies registered outside India (beneficially owned by the accused persons) to camouflage the fraudulent transactions as genuine. The FIR also alleged that Rajiv Saxena, Sanjay Jain, Pankaj Jain, A.D. Singh and Sushil Kumar Pachisia are the intermediaries who channelized the ill-gotten money through various firms and companies registered in their names or in the names of Amol Awasthi and Anupam Awsthi, sons of Udai Shanker Awasthi and Vivek Gahlaut son of Parvinder Singh Gahlaut and that group companies of Rajiv Saxena were used for receipt of commission, (which was actually bribe money), from suppliers of fertilizers and related products to IFFCO and IPL. For justifying the receipt of so called commission, Consultancy agreements were made between group companies of Rajiv Saxena and M/s. Uralkali Trading Ltd. & other entities. Invoices for so called consultancy services were raised by Rajeev Saxena without providing any actual consultancy. Subsequently, the amounts were transferred to the Awasthi brothers and Vivek Gahlaut and others by group companies of Rajeev Saxena as per the instructions of middle man Pankaj Jain. For justifying such transfers, group companies of Rajiv Saxena made agreement with M/s Africa Strategic Advisory Services of Anupam Awasthi. Anupam Awasthi raised invoices on the companies of Rajeev Saxena for the so-called services. It has also been revealed that M/s. Catalyst Business Solution Pvt. Ltd., USA (company beneficially owned. by Amol Awasthi); M/s. Thorn Lock Associates (company beneficially owned by Vivek Gahlaut) and M/s. Terra Firma Commodities DMCC, Dubai (company beneficially owned by Amol Awasthi and Vivek Gahlaut) received commission from group companies of Rajiv Saxena without any genuine transaction and such transfers were actually receipt of illegal commission generated out of import of fertilizers and raw materials by IFFCO and IPL on inflated prices. Thus Rajiv Saxena and his associates received a total sum of US$ 114.32 million (Rs. 685 crores approx. @ 1 USD= Rs. 60) of illegal commission in the bank accounts of his group companies and individual accounts of Pankaj Jain, Vivek Gahlaut, Amol Awasthi and A.D. Singh. It has been revealed

that a total amount of USD 80.18 million (Rs. 481 crores approx.) have been channelized through Rare Earth Group of Pankaj Jain and remaining USD 34.14 million (Rs. 204 crores approx.) has been received by Awasthi Brother/Vivek Gahlaut either in the accounts of the firm/ companies owned by them or in cash. It has also been alleged that entities beneficially owned by Pankaj Jain have supplied Fertilizers to IFFCO & IPL. It is pertinent to mention here that none of these entities have any manufacturing capacity and are merely trading entities who have simply routed fertilizers allegedly purchased from other entities to IFFCOIIPL."

The brief facts quoted above show registration of FIR by the CBI. Two complaints were sent to CBI for registration of the case after approval of the Minister of Commerce and Fertilizers, Government of India. It is however a fact that the Appellant challenged it before Delhi High Court mainly on the ground that it is without approval of the Competent Authority. The Delhi High Court has passed an interim order to restrain the CBI from taking any coercive action against the Appellant while permitting the investigation with the directions to the Appellant to co-operate in it. The Provisional Attachment Order is however in reference to the ECIR registered by the Enforcement Directorate. The allegations against the Appellant is of money-laundering. The Provisional Attachment Order was passed in reference to the fact given above and documents referred therein. After the Provisional Attachment Order, it was sent to the Adjudicating Authority for confirmation and accordingly Authority gave notice to the Appellant to submit his reply. A short reply was given followed by an application to allow cross examination of three witnesses. The said application was referred by the Appellant during the course of arguments to show grounds for cross-examination. Para 6 of the application is quoted hereunder for ready reference:-

"6. That the Applicant has gone through the relied upon documents and does not find any documentary evidence against the Defendants. The Complainant is relying solely on some hearsay statements of Rajiv Saxena, some retracted statement of A D Singh and some vague and irrelevant statement of Sushil kumar Pachisia. That the Defendant No. 1, therefore, intends to cross examine the following persons:

(a) Sh. Rajiv Saxena

(b) Sh. Amarendra Dhari Singh@A. D. Singh.

(c) Sh. Sushil Kumar Pachisia

The above-named persons are needed to be cross-examined on various aspects of the matter, more so, when the for issuing Provisional Attachment Order the statements of Sh. Rajiv Saxena, Sh. Amarendra Dhari Singh @ A. D. Singh and Sh.Sushil Kumar Pachisia have been relied upon by the Complainant and would be used against the Defendant No. 1 in the present proceedings, the usage of the said documents against the Defendants without giving them a chance to cross-examine is against the mandate of law. The correctness of the contents made in the statements and Provisional Attachment Order are denied and thus, in accordance with the principle of natural justice, the maker of the documents including original complaint should be allowed to be cross-examined because the right to cross-examine is an indivisible right."

Perusal of the para quoted above shows that in first part it is contended that no documentary evidence exists against the Appellant. The complainant has solely relied upon hearsay statements of Shri Rajiv Saxena, the retracted statement of Shri A.D. Singh & some vague and irrelevant statement of Shri Sushil Kumar Pachisia and thus

those witnesses need to be cross examined in reference to various aspects of the matter. In the second part of the application, the cross examination has been sought in reference to the documents relied by the ED after questioning the correctness of the statements and Provisional Attachment Order. According to the learned Counsel for the Respondent, there exists contradiction in para 6 of the application. The Appellant has denied any documentary evidence against him rather complainant said to have relied solely upon hearsay statement of Shri Rajiv Saxena, retracted statement of Shri A.D. Singh & some vague and irrelevant statement of Shri Sushil Kumar Pachisia.

The cross examination of three witnesses have been sought questioning the correctness of the contents in their statement. It is in ignorance of the fact that the Appellant was given an opportunity to question the correctness of contents of those statements before passing the Provisional Attachment Order. The Appellant was supplied copies of all the documents and statements before recording his statement. The Appellant did not question correctness of the statements at that time and is now asking for a chance of cross examination. It cannot be said to be a bonafide application.

The application to seek cross examination was thus referred by the learned Counsel for the Respondent to show it to be only to delay the proceedings required to be completed within 180 days by the Adjudicating Authority. The Learned Counsel for the Appellant however submitted that cross examination would be made at the earliest so that proceedings may be completed within 180 days.

We find substance in the argument of the learned Counsel for the Appellant to that extent. It is however with the clarification that even if the application was filed at the earliest to seek cross examination, it cannot be accepted as a rule rather is to be analyzed on the facts of the case. In the opinion of the Tribunal, the Appellant has failed to give cogent reasons for cross examination of the witnesses who were not even examined before the Adjudicating Authority. In those circumstances, we could not persuade ourselves to accept the argument of the learned Counsel on the fact of this case. We would however deal with other arguments of the learned Counsel for the parties and analyze the judgments and record our opinion whether chance of cross examination should be given in all circumstances and can be denied in a given case. Thus we need to first analyze the provisions referred by the learned Counsel for the parties and thereafter would deal with other arguments.

The Learned Counsel for the Appellant has relied on Section 6(15) and Regulation 21 of the Adjudicating Authority (Procedure) Regulations, 2013 which are quoted hereunder:-

Section 6 (15)

“The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908, (5 of 1908) but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating Authority shall have powers to regulate its own procedure.”

Regulation 21

Examination of witness and the issue of commissions.-The provision of the Code of Civil procedure, 1908, (5 of 1908) relating to the issuing of commissions for examination of witnesses and documents shall, as far as, may be applicable, apply in the matters of summoning and enforcing attendance of any person as witness and issuing a commission for examination of such witnesses.

Section 6(15) makes it clear that Adjudicating Authority would not be bound by the procedures laid down by the Code of Civil Procedure but shall be guided by the principles of natural justice. It would be open for the Adjudicating Authority to regulate its own procedure subject to other provisions of Act. Regulation 21 of the Adjudicating Authority (Procedure) Regulation 2013 quoted above however provides for application of Code of Civil Procedure for issuance of commission for examination of witnesses and documents etc.

As per Regulation 21, the Adjudicating Authority has power to issue commission for examination of witnesses and documents etc. Regulation 21 does not talk about the cross examination of witnesses and otherwise also it is provided under the Evidence Act and not under CPC. The Evidence Act has not been made applicable, however right of cross examination is recognized as part of principle of natural justice and thus can be allowed in an appropriate case even if Evidence Act is not applicable. Thus we are of the view that cross examination of the witnesses can be allowed by the Adjudicating Authority if case is made out. We would refer to the judgment cited by both the parties on the aforesaid issue but before that we would comment on nature of the proceedings before the Adjudicating Authority.

The perusal of the provisions of the Act of 2002 would demonstrate that the ED can register ECIR in a case of money-laundering and proceed for investigation and file prosecution complaint before the Special Court. The Trial thereupon may result in acquittal or conviction. The aforesaid is one part of the proceedings which can be taken under the Act of 2002. The other part of the Act of 2002 refers to the attachment, adjudication and confiscation of property involved in money-laundering. It is under Chapter III of Act, 2002. The attachment of property may result in confiscation in case of conviction but in case of acquittal of the accused, the attached property is to be released in view of the Section 8(6) of the Prevention of Money Laundering Act, 2002.

Section 8(6)

“Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.”

The attachment of the property is mainly for the purpose of protecting it till the Trial is completed by the Special Court. The Provisional Attachment Order is passed after applying the procedure given under the Act of 2002 to protect the property. It can be confirmed by the Adjudicating Authority. The attached property can be confiscated by the Special Court in case of conviction. Thus attachment is mainly to protect the property during the intervening period of the Trial by the Special Court. In the background aforesaid, we need to analyze as to whether right of cross examination is to be given as a rule or would be an exception in the proceedings for attachment. It is considered to be summary proceedings and to be completed within time frame. The attachment of the property remains subject to final outcome of the trial by the Special Court. In such proceedings, cross examination has not been recognized as a rule.

We have already recorded our opinion that the cross examination is part of principle of natural justice but not in all the circumstances therefore we are not required to elaborately discuss the judgment referred by the learned Counsel for the Appellant. However we record our clarification that a chance of cross examination cannot be sought as a rule and in all the circumstances, rather it can be in a given case. In the case of Shri K.L. Tripathi v/s. State Bank of India & Ors, Supra the Apex Court has referred to the basic concept of fair play in administrative, judicial or quasi-judicial

proceedings.

Para 32 & 33 are quoted hereunder:-

"32. The basic concept is fair play in action administrative, judicial or quasi-judicial. The concept fair play in action must depend upon the particular lis, if there be any, between the parties. If the credibility of a person who has testified or given some information is in doubt, or if the version or the statement of the person who has testified, is, in dispute, right of cross-examination must inevitably form part of fair play in action but where there is no lis regarding the facts but certain explanation of the circumstances there is no requirement of cross-examination to be fulfilled to justify fair play in action. When on the question of facts there was no dispute, no real prejudice has been caused to a party aggrieved by an order, by absence of any formal opportunity of cross-examination per se does not invalidate or vitiate the decision arrived at fairly. This is more so when the party against whom an order has been passed does not dispute the facts and does not demand to test the veracity of the version or the credibility of the statement.

33. The party who does not want to controvert the veracity of the evidence from or testimony gathered behind his back cannot expect to succeed in any subsequent demand that there was no opportunity of cross-examination specially when it was not asked for and there was no dispute about the veracity of the statements. Where there is no dispute as to the facts, or the weight to be attached on disputed facts but only an explanation of the acts, absence of opportunity to cross-examination does not create any prejudice in such cases."

In the instant case, no witness has been examined before the Adjudicating Authority. If any witness would have been examined before the Adjudicating Authority, the prayer for cross examination of that witness could have been sought. Appellant is seeking cross examination of the witnesses who did not appear before the Adjudicating Authority for examination pursuant to the Regulation 21 of the Adjudicating Authority (Procedure) Regulation 2013. Thus the judgment cited by the learned Counsel for the Appellant would not be of any assistance in this case. It is more so when Appellant did not submit any explanation to the statements of Shri Rajeev Saxena and Shri Sushil Kumar Pachisia when he was asked about it before passing Provisional Attachment Order after furnishing copies of the statements. It was stated that he does not know them and is now asking for an opportunity of their cross examination.

We may now make reference of the Judgments cited by the Learned Counsel for the Respondent. In the case of Kanungo & Co. V/s. Collector of Customs and Ors. 1973 2 SCC 438, the same issue was dealt with by the Apex Court. Para 12 of the said judgment is quoted hereunder:-

"12. We may first deal with the question of breach of natural justice. On the material on record, in our opinion, there has been no such breach. In the show-cause notice issued on August 21, 1961, all the material on which the Customs Authorities have relied was set out and it was then for the appellant to give a suitable explanation. The complaint of the appellant now is that all the persons from whom enquiries were alleged to have been made by the authorities should have been produced to enable it to cross-examine them. In our-opinion, the principles of natural justice do not require that in matters like this the persons who have given information should be examined in the presence of the appellant or should be allowed lo be cross-examined by them on the statements made before the Customs Authorities. Accordingly we hold that there is no force

in the third contention of the appellant."

In the judgment quoted above, it was held that in the proceedings referred therein, chance of cross examination cannot be sought as a matter of right in the name of principle of natural justice. The nature of the proceedings involved in this case are of similar nature to what was before the Apex Court in the case supra. In this case also, Appellant is asking for an opportunity of cross examination of those persons whose statements were recorded in the enquiry/investigation. The copies of the statement were supplied to the Appellant to seek his statement. The Appellant did not give comment on their statement to clarify his position and now asking for the cross examination in the same manner as was prayed in the judgment supra. The judgment (supra) squarely applies to the facts of this case.

A reference of judgment in the case of Chairman, State Bank of India and Anr. V/s. M.J. James (2022) 2 SCC 301 has also been given.

Para 28 and 29 of the said judgment are quoted hereunder:-

"28. Traditional English Law recognized and valued the rule against bias that no man shall be a judge in his own cause, i.e. nemo debet esse judex in propria causa; and the obligation to hear the other or both sides as no person should be condemned unheard, i.e. audi alteram partem. To these, new facets sometimes described as subsidiary rules have developed, including a duty to give reasons in support of the decision. Nevertheless, time and again the courts have emphasized that the rules of natural justice are flexible and their application depends on facts of each case as well as the statutory provision, if applicable, nature of right affected and the consequences. In A.K. Kraipak and others v. Union of India and Others,7 the Constitutional Bench, dwelling on the role of the principles of natural justice under our Constitution, observed that as every organ of the State is controlled and regulated by the rule of law, there is a requirement to act justly and fairly and not arbitrarily or capriciously. The procedures which are considered inherent in the exercise of a quasi-judicial or administrative power are those which facilitate if not ensure a just and fair decision. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the frame work of law under which the enquiry is held and the constitution of the body of persons or tribunal appointed for that purpose. When a complaint is made that a principle of natural justice has been contravened, the court must decide whether the observance of that rule was necessary for a just decision in the facts of the case.

29. Legal position on the importance to show prejudice to get relief is also required to be stated. In State Bank of Patiala and Others v. S.K. Sharma, a Division Bench of this Court distinguished between "adequate opportunity" and "no opportunity at all" and held that the prejudice exception operates more specifically in the latter case. This judgment also speaks of procedural and substantive provisions of law embodying the principles of natural justice which, when infracted, must lead to prejudice being caused to the litigant in order to afford him relief. The principle was expressed in the following words: (SCC p. 389, para 32)

"32. Now, coming back to the illustration given by us in the preceding para, would setting aside the punishment and the entire enquiry on the ground of aforesaid violation of sub-clause (iii) be in the interests of justice or would it be its negation? In our respectful opinion, it would be the latter. Justice means justice between both the parties. The interests of justice equally demand that the guilty

should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end. That would be a counter-productive exercise."

The Rule of Natural justice depends on the facts and circumstances of the case. It can be even when prejudice would be caused, if it is not applied. In the instant case, the Appellant has failed to state that if cross examination is not permitted, it will cause serious prejudice to him. The case in hand does not show violation of principle of natural justice when Appellant failed to make statement on the contents of the statement of three persons despite supply of copies of the documents before passing Provisional Attachment Order.

The next judgment cited by the Respondent is in the case of the Chairman, Board of Mining Examination and Chief Inspector of Mines and Ors. V/s. Ramjee 1977 2 SCC 256. Para 13 & 14 of the judgment has been relied by the Learned Counsel for the Respondent and are quoted hereunder:-

"13. The last violation regarded as a lethal objection is that Board did not enquire of the respondent, independently of the one done by the Regional Inspector. Assuming it to be necessary, here the respondent has, in the form of an appeal against the report of the Regional Inspector, sent his explanation to the Chairman of the Board. He has thus been heard and compliance with Reg. 26, in the circumstances, is complete. Natural justice is no unruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential processual propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained of. 'Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt that is the conscience of the matter.

14. Shri Gambir, who appeared as amicus curiae and industriously helped the Court by citing several decisions bearing on natural justice, could not convince us to reach a contrary conclusion. It is true that in the context of Article 311 of the Constitution this Court has interpreted the quality and amplitude of the opportunity to be extended to an affected public servant. Certainly we agree with 'the principles expounded therein. But then we cannot look at law in the abstract or natural justice as a mere artifact. Nor can we fit into a rigid would the concept of reasonable opportunity. Shri Gambhir cited before us the decisions in Teredesai MANU/SC/0509/1969 : [1970] 1SCR 251 Management of DTU MANU/SC/0605/1972 : (1973) ILLJ 76SC and Tandon MANU/SC/0370/1974 : AIR 1974 SC 1589 and one or two other rulings. The ratio therein hardly militates against the realism which must inform reasonable opportunity' or the rule against bias. If the authority which takes the final decision acts mechanically and without applying its own mind, the order may be bad, but if the decision-making body, after fair and independent consideration, reaches a conclusion which tallies with the recommendations of the subordinate authority which held the preliminary enquiry, there is no error in law. Recommendations are not binding but are merely raw material for consideration. Where there is no surrender of judgment by the Board to the recommending Regional Inspector, there is no contravention of the canons of natural justice. We agree with Shri Gambhir that the adjudicating

agency must indicate in the order, at least briefly why it takes the decision it does unless the circumstances are so clear that the concluding or decree part of the order speaks for itself even regarding the reasons which have led to it. It is desirable also to communicate the report of the Inquiry Officer, including that part which relates to the recommendation in the matter of punishment, so that the representation of the delinquent may be pointed and meaningful."

The natural justice is not untruly horse, no lurking land mine, nor a judicial cure-all. If fairness is shown by the decision maker to the man proceeded against, the form, features and fundamentals of such essential procedural propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice can be complained. The perusal of the Provisional Attachment Order shows a fair opportunity to explain the transaction involved in this case. The Appellant was provided all the material before seeking his statement. It is not that the material was used behind his back so seek cross examination of three persons now. We find all fairness in decision making while passing Provisional Attachment Order.

The learned Counsel for the Respondent then referred to the judgment of the Apex Court in the case of State of Jammu and Kashmir & Ors. V/s. Bakshi Gulam Mohammad & Anr. AIR 1967 SC 122 and also the judgment of the Calcutta High Court in the case of Kishanlal Agarwalla V/s. the Collector of Land Customs & Ors. 1965 SCC OnLine Cal 141. The judgments referred to above are on the same issues and lay down same proposition of law as laid down in the other judgments cited by the Respondent.

In the light of the judgment referred by the respective parties, we hold that chance of cross examination can be part of natural justice but cannot be claimed as a rule. It would rather depend on the facts and circumstances and also the nature of proceedings. The nature of proceedings involved herein has been analyzed by us earlier. It is not only summary in nature but is mainly for protection of property till trial is completed. It is to prevent alienation of property by the either side during the period of trial by Special Court. It does not cause serious prejudice to a person involved in money laundering which affects the economy of the country.

One of the witness sought to be cross examined is Shri A.D. Singh who is an accused and against whom prosecution complaint has already been filed. He has retracted his statement recorded by the Income Tax Officer. If cross examination of the co-accused is allowed in the attachment proceedings, he would suffer in reference to the defence in the criminal case and that too at a pre mature stage. The right of accused in regard to the defence cannot be affected in the nature of proceedings before us. It is more so when Special Court is trying the case and therein prosecution would lead its evidence first with a chance of cross examination of witness and thereupon accused would have chance of defence. It would be in reference to the same set of allegation and arising out of the same ECIR. The trial of case by Special Court may result in serious consequence of even conviction thus cross examination is permitted there. The prayer to allow cross examination in this case is of the co-accused who was not even been examined before the Adjudicating Authority. This is the peculiarity of the case in hand.

The retraction from the statement by Shri A.D. Singh through an affidavit is after three weeks. At this stage, if we analyze conduct of Appellant, we would find that he was provided copies of documents before passing Provisional Attachment Order and even asked for his statement in reference to it. The Appellant failed to give explanation pursuant to those documents. The relevant para of the statement of Appellant referred in the Provisional Attachment Order is quoted here under to show the aforesaid:-

"(i) In his statement dated 22.04.2022, he submitted the details of movable and immovable properties held in the name of his wife Mrs. Rekha Awasthi and himself under his dated signatures. On being asked about the sources of funds for acquisition of the two properties in the name of his wife, he stated that initially he had loaned the said amounts to his wife which were converted into gifts in June 2020 on occasion of their 50th marriage anniversary. On being asked about the details of properties in the name of his sons Sh. Amol Awasthi and Sh. Anupam Awasthi, he stated that he did not have any knowledge of the same as they have been residing out of India for a very long time.

(ii) In his statement dated 25.04.2022, he was shown statement dated 11.06.2021 (running into 132 pages), another statement dated 11.06.2021 (running into 5 pages) and statement dated 12.06.2021 (running into 83 pages) of Sh. Amarendra Dhari Singh@ A. D. Singh. He was asked to go through these statements running into 220 pages in all. He stated that he had been shown the statement dated 11.06.2021 (running into 132 pages), another statement dated 11.06.2021 (running into 5 pages) and statement dated 12.06.2021 (running into 83 pages) of Sh. Amarendra Dhari Singh@ A. D. Singh; that he had read pages 1 to 34 of statement dated 11.06.2021 and pages 133 to 137 of the Statement dated 11.06.2021 (running into 5 pages) and pages 138 to 140 of the statement dated 12.06.2021 (running into 83 pages) and have put his dated signatures on all these pages as a token of having read and understood the contents of these pages. He was once again asked that he had been shown three statements and was asked to go through all the pages of these statements. He stated that he had read the statements of Sh. Amarendra Dhari Singh @A. D . Singh only. The other pages contain statements of Sh. Rajiv Saxena and Sh. Sushil Kumar Pachisia. He did not know these persons at all and have never met them so he did not want to read their statements. He was once again requested to go through those statements as those may contain some facts relating to him and/or his family members. He stated that he had no interactions with them and his family consisted of his wife and himself only. That he did not want to read those statements as he did not know these two persons namely Rajiv Saxena and Sushil Kumar Pachisia. He denied having any interaction with Sh. Amarendra Dhari Singh @A. D. Singh after he had tendered his statement before Income Tax authorities. He also denied having any communication by any mode with Sh. Amarendra Dhari Singh@ A. D. Singh after June 2019. On being asked about communication by any mode with Sh. Amarendra Dhari Singh@ A. D. Singh prior to that, he stated that he used to come and visit his office after taking appointment and also he used to meet him at various conferences and dinners. He also used to come and visit him on festivals like Holi, Diwali etc. for extending festive greetings. He admitted that Sh. Amarendra Dhari Singh used to come and discuss mainly about the visits of suppliers to whom he was representing in India and also to discuss the international fertilizer market situation. That after the Income Tax raids on their premises, he stopped all communications with him. On being asked as to how Sh. Rajiv Saxena was in possession of copy of passport of his son and had also provided the details of the payments made by him to his son, he stated that his son was doing business outside India for a very long time and that he was not aware as to in what connection, payments have been made to him. Sh. Sushil Kumar Pachisia had stated in his statement before Income Tax authorities that he had met him in Delhi in some functions of Mr. Sanjay Jain and that Mr. Sanjay Jain and Mr. Pankaj Jain had very good relations with him. On being asked about the same, he stated that he did not remember having met him. He admitted having relation similar to Sh. Amarendra Dhari Singh with Sanjay Jain as both of them were partners. He also admitted that he might have met

Pankaj Jain at some party, other than that he did not have any interaction with him.

(iii) In his statement dated 26.08.2022, he submitted the details of moveable assets in the form of Investments in Securities/ Mutual Funds/ Shares held by him as on 26.08.2022, running into eleven pages under his dated signatures. He stated that the details of moveable assets in the form of investments in Securities/ Mutual Funds/ Shares, as on March 31, 2022 in respect of his wife had been provided vide his earlier statement dated 22.04.2022 and that there was no further change in the investments held in the name of his wife Mrs. Rekha Awasthi. He also provided the detail of Bank Accounts maintained by his wife and himself.

(iv) In his statement dated 05.09.2022, he inter-alia submitted details of investments held in physical form under his name as well under his wife's name as on 26.08.2022 alongwith copies of instruments. He also submitted amended details of moveable assets in the form of investments in Securities/ Mutual Funds/ Shares held him and by his wife."

The paras quoted above show that the Appellant did not avail the opportunity to submit explanation to the documents provided to him before passing Provisional Attachment Order and now wants to cross examine the witnesses. The default and failure of the Appellant therein is now sought to be corrected by seeking cross examination of three co-accused. Reference to the Regulation 21 of the Adjudicating Authority (Procedure) Regulation 2013 has been given to indicate powers of the Adjudicating Authority for summoning of the witnesses for examination. It can be exercised when appropriate case is made out. If a witness is called to make statement before the Adjudicating Authority, an opportunity of cross examination can be prayed but in the instant case, the Appellant did not make an application to summon the witness to record his statement but was only for cross examination in reference to the statement made by them before Income Tax Officer or under Section 50 of Prevention of Money Laundering Act, 2002. The cross examination can be sought when the witnesses is examined by the Adjudicating Authority and not in reference to statement made before other Authority. In the light of the aforesaid, we do not find a case for acceptance of the application for cross examination. The Learned Counsel for the Appellant has made a reference to the affidavit filed by the E.D. in the Criminal Miscellaneous petition before Delhi High Court. According to the Appellant, the statement of Shri Rajeev Saxena was declared untrustworthy by the E.D. The para 3 & 4 have been referred by the learned Counsel for the Appellant and are quoted hereunder:-

"3. That in my opinion, after due appreciation of the evidence and perusal of the records of the case, it is clear beyond doubt that Shri Rajiv Saxena has breached the terms of the tender of pardon granted vide order dated 25.03.2019.

4. That Rajiv Saxena has failed to disclose the full and true set of facts/circumstances in his knowledge and has willfully concealed the true facts of the case. He has further given false evidence to hide his culpability in the case and also made selective disclosures to shield other Accused. He is also in touch with the other Accused persons to derail the investigation."

The para quoted above does not show an affidavit by E.D. declaring statement of Shri Rajeev Saxena to be untrustworthy rather what has been stated is that he failed to disclose true facts in his knowledge rather willfully concealed it. He has given false evidence to hide his culpability and made selectively discloser to shield other accused.

The statement referred to above does not show that Shri Rajiv Saxena was untrustworthy rather he has been blamed for non disclosure of complete and true fact. Thus we cannot accept the plea of the Learned Counsel for the Appellant that an untrustworthy witnesses have been relied for passing the Provisional Attachment Order.

So far as other witnesses Shri Suhil Kumar Pachisia is concerned, no allegations has been made to show him to be untrustworthy rather the Appellant has failed to avail the opportunity of explanation after supply of copies of his statement.

In view of the discussion made above, we do not find a case to cause interference in the order passed by the Adjudicating Authority and accordingly the appeal fails and is dismissed.