

(2023) 06 ATPMLA CK 0001

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-12144, 12145, 12147, 12148, 12150, 12151, 12160, 12161/KOL/2023,
FPA-PMLA-6072, 6073, 6074, 6079/KOL/2023

Shilpa Modi

APPELLANT

Vs

Directorate Of Enforcement

RESPONDENT

Date of Decision: June 23, 2023

Acts Referred:

- Prevention Of Money Laundering Act, 2002 - Section 8(1), 21(1), 21(2)

Hon'ble Judges: G. C. Mishra, Member; V. Anandarajan , Member

Bench: Division Bench

Advocate: Manu Sharma, Arshdeep Singh Khurana, Tannavi Sharma, Anshika Bawa, Varun Kumar, Varun Malla, Nattasha Garg

Final Decision: Dismissed

Judgement

1. The aforementioned four appeals have been filed by different appellants challenging the common impugned order dated 26.05.2023 passed by the Ld. Adjudicating Authority (AA) and these appeals involve common questions of law and facts, so these appeals are heard and decided by this common order.

1. The prayers made in the appeals are also substantially similar. The same are reproduced as below:-

- Set aside the impugned order dated 26.05.2023 passed by the Ld. Adjudicating Authority in OA No. 811/2023; AND
- Direct Respondent Directorate of Enforcement to comply with the provisions of Section 21(2) of the Prevention of Money Laundering Act, 2002 and supply a copy of the data of the electronic devices alleged seized by the ED from the Appellant during the search and seizure operation conducted by the ED on 31.01.2023; AND
- Direct the ED to supply a copy of the reasons to believe Section 21(1) of the Prevention of Money Laundering Act, 2002, if the same have been recorded, to the Applicant; AND
- Grant the Appellant a time period of at least 30 days from the date of the order passed by the Hon'ble Tribunal in the present appeal or receipt of the afore-mentioned copies of records/documents/data of the electronic devices and reasons to believe, whichever is later, to file her reply to the SCN dated 02.03.2023 issued by the Ld. Adjudicating authority;
- Pass any other order that this Hon'ble Court may deem fit in the interest of justice.

2. Facts in brief

A. It is revealed from the record that on the basis of FIR bearing No. 220 of 2021 dated 10.08.2021 registered at PS Kotwali, Jaunpur, U.P. u/s 420, 467, 468, 471, 474, 476, 323, 504, 506, 511 and 120-B of Indian Penal Code (IPC) an ECIR bearing No. KLZO-I/20/2022 dated 19.09.2022 was registered by Respondent-ED as 120-B, 420, 467, 471 and 476 of the IPC are scheduled offences under PMLA, 2002.

B. Consequent to the above, it appears that searches were made by the Respondent-ED on 31.01.2023 at different premises, simultaneously. During the course of searches certain records which includes electronic devices such as mobiles, laptops, and other records as per the schedules annexed to the respective Panchanamas were found and seizures were effected. Panchanamas of the same were prepared by the officers of the Respondent-ED in presence of Panchas and the persons present, who have signed the Panchanamas.

C. It is seen from the record that the documents and electronic devices seized in Appeal Nos. FPA/PMLA/6072&6079/2023 are same as the place of search is the premises of Trinity Alternative Investment Managers Ltd. (Appellant in Appeal No. FPA/PMLA/6079/2023) at Unit No. 709, 7th Floor, Merlin Infinite DN-51, Sector-V, Saltlake City, Kolkata, West Bengal. During the search certain documents, one mobile phone, two laptops are found and seized as per the schedule annexed to the Panchnama.

And in the case of Appeal No. FPA/PMLA/6073/2023 the premises, belongs to Shri Satish Chandra Saxena, Appellant, at Flat No. 3, 3rd Floor, 10 Judges Court Road, Kolkata - 700027 was searched and documents and one mobile with sim card and charger (as mentioned in the schedule to the Annexures to Panchnama dated 31.01.2023) have been seized.

Whereas, in the case of Appeal No. FPA/PMLA/6074/2023, the residence of Ms. Neelima Chatterjee, Appellant, was searched and during the course of search one electronic device i.e. one mobile has been seized (as mentioned in the seizure memo inventory of items/Panchnana dated 31.01.2023).

3. During the course of argument, the Ld. Counsel for the Appellants confined his arguments to providing the copies of the records/documents/data in the electronic devices seized by the respondent from the appellant during the search and seizure. There was no further argument from the side of the appellants on the supply of copy of the reasons to believe u/s 21(1) of the PMLA, 2002 in spite of specific question being posed to the Ld. Counsel for the Appellants that "anything more to be argued to which it was submitted that no, this is the sum and substance here." There was no further arguments from the side of the appellants even after being the Ld. Counsel for the Appellants was specifically asked that "you are confining your argument, what you have orally submitted today?

4. During the course of argument, the Ld. Counsel for the Appellant relied upon the judgment dated 27.10.2021 passed by the Hon'ble High Court of Delhi in the matter of J. K. Tyre and Industries Ltd. & Ors. Vs. Directorate of Enforcement & Ors.

5. On the basis of aforesaid arguments, the appellants have prayed for allowing the appeals.

6. During the course of the hearing, the respondents largely confined their arguments to the reply filed by them to the appeal. It was also argued by referring to para 81 of the aforesaid judgment that the relied upon documents have been supplied to the appellants. It is also argued that the contents in the electronic devices are required to be examined by the forensic experts and supply of the copies of the contents of the

electronic devices at the present stage will jeopardise the investigation. He also referred to regulation 13(2) of The Adjudicating Authority (Procedure) Regulations, 2013 and submitted that every summon and notice shall be served by the complainant or applicant upon the defendant or respondent alongwith complete relied upon document in a bound paper book and that the same has been complied with as the copies of the relied upon documents have already been supplied to the appellants. It is also further submitted that the copies of the reason to believe have also been supplied/mentioned in the OA paper book and that no further records need to be supplied at this stage as this is a retention proceedings for retaining the records for the purpose of investigation and that the Appeals have no merit, therefore, the same be dismissed.

7. Heard both sides, perused the records filed alongwith the appeal memos and the reply filed by the respondent.

8. It is seen from the appeal memos that the appellants have admitted in their pleadings that on 09.03.2023 the appellants have received a copy of show cause notice, reasons recorded by the Ld. Adjudicating Authority under sub-section 8(1) of the PMLA, copy of the OA and copies of relied upon documents. On perusal of the appeals paper books filed by the appellants, the reason to believe is available at page 156-157, 158-159, 157-158 & 158-159 respectively. It is also seen from the appeals paper books that the respondent has disclosed the reason to believe, the reasons for requesting retention of records and for continuation of the order of seizing at Para No. 9 and also disclosed the reasons for issue of orders u/s 17(1) of the PMLA, at Para No. 10 of the OA. So, in our view there is compliance of the findings in the judgment passed by Hon'ble High Court of Delhi (supra).

9. During the course of arguments, it is admitted by Ld. Counsels for both the parties that they had filed two other appeals vide Appeal Nos. FPA-PMLA-6002-6003/KOL/2023 challenging the same impugned order. It is also admitted by the parties that similar questions of law and facts were raised and decided by the co-ordinate division bench of this Tribunal on 16.06.2023 and that the appeals were dismissed. It is seen from the said order of this Tribunal that the Ld. co-ordinate bench has discussed the relevant facts and law, which were raised therein and have also been raised in the present proceedings. We have perused the aforesaid order dated 16.06.2023 and we are in agreement with the view taken by the co-ordinate bench.

10. In addition to what is stated in para 9 above, we may mention here that there was no personal search of Ms. Shilpa Modi and that nothing from her person has been seized, rather the records including electronic devices and other records have been seized from the premises of M/s Trinity Alternative Investment Ltd. i.e. the Appellant in Appeal No. FPA-PMLA-6079/KOL/2023. According to the Section 21(2) of PMLA, 2002 the person, from whom records seized or frozen, shall be entitled to obtain copies of records. Since, the records/documents have been seized from the premises of M/s Trinity Alternative Investment Ltd., so Ms. Shilpa Modi is not entitled to any of the records seized from the aforesaid premises. No records have been produced before us that either the mobile and two laptops belongs to Ms. Shilpa Modi. There is nothing in the Panchnama executed in the presence of Ms. Shilpa Modi and signed by her disclosed that these electronic devices are owned by Ms. Modi. Therefore, the appeal filed by Ms. Modi has no merit. Hence, the appeal filed by Ms. Modi is dismissed on this ground also.

11. Considering the facts and circumstances as well as law in force and also the discussion made above we do not find any illegality or infirmity in the impugned order.

12. In the light of discussion made above and in view of the orders passed by co-ordinate bench in the matters of Appeal Nos. FPA-PMLA-6002-6003/KOL/2023, the present appeals as well as the misc. applications are dismissed.

In the facts and circumstances of the case there is no order as to costs.

The record be consigned to record room.

Order pronounced in open Court.