

(2023) 05 ATPMLA CK 0003

Appellate Tribunal Under Prevention Of Money Laundering Act

Case No: MP-PMLA-10202, 10203, 10204, 10205, 10206, 10207, 10208, 10209, 10210,
10211/CHN/2022 In FPA-PMLA-1980, 1981, 1989, 1990, 1991, 1992, 1993, 1994, 1996,
1997/CHN/2017

M/S Gold Quest Enterprises India
Pvt. Ltd.

APPELLANT

Vs

Deputy Director Directorate Of
Enforcement, Chennai

RESPONDENT

Date of Decision: May 22, 2023

Acts Referred:

- Prize Chit & Money Circulation Banning Act, 1978 - Section 4, 5, 6
- Indian Penal Code, 1860 - Section 120B, 420
- Code Of Criminal Procedure, 1973 - Section 320, 482
- Prevention Of Money Laundering Act, 2002 - Section 3

Hon'ble Judges: G. C. Mishra, Member; Rajesh Malhotra, Member

Bench: Division Bench

Advocate: M. R. Venkatesh, Rakesh Karela, Bharat Upreti, T. L. Venkateshan, Nidhi Raman,
Akash Mishra

Final Decision: Disposed Of

Judgement

1. The above mentioned ten Misc. Applications Nos. 10202 to 10211/CHN/2022 for bringing on record the common order dated 12.09.2022 passed by

Honâ€™ble Madras High Court in Crl.O.P. No. 2279 of Â 2019 and Crl.M.P. No. 1502 of 2019 are filed by the appellants in ten appeals out of the

eleven appeals pending before this Appellate Tribunal, with prayer to set aside the impugned order dated 29.08.2017 passed by Learned Adjudication

Authority in O.C. No. 772 of 2017, alongwith Provisional Attachment Order No. 08/2017 dated 05.04.2017. Prayer is made by the applicants to

release all the assets attached by the respondents ED as mentioned in para 23 of impugned order in O.C. No. 772 of 2017.

2. As per brief facts of the case, on the basis of written complaint, FIR No. 454/2008 dated 02.05.2008 was registered with Sembium Police Station,

Chennai and other places in Tamil Nadu for commission of offences under Section 4, 5 & 6 of the Prize Chit & Money Circulation Banning Act, 1978,

read with Section 420/120B IPC against 25 accused persons named therein. In the said FIR it is alleged by the complainants that M/s QuestNet

Enterprises India Pvt. Ltd., cheated gullible general public through money circulation scheme in the guise of Multi-Level Marketing Scheme and by

way of said act, amassed innumerable amount of wealth. After the investigation police filed single charge-sheet before Ld. Metropolitan Magistrate,

Egmore, Chennai, on 21.10.2009 vide C.C. No. 3876 of 2009. Thereafter, government of Tamil Nadu attached the properties of accused company

vide G.O. No. 95 dated 30.01.2009 and G.O.M. No. 345 dated 24.09.2009.

Meanwhile, respondent ED on the basis of said FIR & charge-sheet registered an ECIR dated 25.04.2016 and initiated investigation under PMLA,

2002. Thereafter, respondent ED issued a Provisional Attachment Order No. 08/2017 dated 05.04.2017 and thereby provisionally attached the

movable and immovable properties of the applicants/appellants. Thereafter, respondent ED preferred an Original Complaint No. 772 of 2017Â dated

06.05.2017 before Ld. Adjudication Authority under PMLA, at New Delhi. Ld. Adjudication Authority confirmed the Provisional Attachment Order

vide impugned order dated 29.08.2017 and aggrieved by the same the appellants filed eleven appeals before this Appellate Tribunal challenging the

said attachment orders.

3. It is pertinent to mention here that after filing of charge-sheet, M/s QuestNet Enterprises India Pvt. Ltd. filed a Writ Petition under Section 482

Cr.P.C. vide CrI.O.P. No. 22943/2009, before Honâ€™ble Madras High Court for permitting the said company to compound with the complainants in

FIR No.454/08, as the offences under Section 4, 5 & 6 of the Prize Chit & Money Circulation Banning Act, 1978, read with Section 420/120B IPC

are compoundable as per Section 320 CrPC, 1973 and thereby quashing the criminal case filed against them.

The Honâ€™ble Madras High Court vide order dated 16.11.2009 allowed the Criminal Original Petition bearing No. CrI. O.P. 22943 of 2009 filed for compounding of offences in Crime No. 454/2008, stating therein that:

â€œThis Court is of the view that the interests of justice would best be served by directing the lower Court to permit compounding of complaints

between the accused company and the claimants as and when the request thereof is made from both the parties. As the case is based on numerous

complaints, it becomes necessary to state that prosecution shall cease on such of the complaints compoundedâ€.

Aggrieved by the above order passed by Honâ€™ble Madras High Court, State of Tamil Nadu filed SLP No. 1547 to 1549 of 2010 (CrI. Appeal No.

823 to 825/2012) before Honâ€™ble Supreme Court of India. The Honâ€™ble Supreme Court of India vide order dated 26.02.2010 directed the State

to furnish a list of complainants to the respondents and when such list is furnished, the respondents are allowed to compound the legitimate claims by

giving notice to the concerned police officers. Thereafter, Honâ€™ble Supreme Court of India vide order dated 19.04.2010 appointed Mr. Justice K.

P. Siva Subramaniam, Former Judge of Honâ€™ble Madras High Court as Settlement Commissioner to settle the claims after publishing in the local

dailies to enable the affected persons to submit their claims. The Settlement Commissioner was permitted to recommend compounding of the

legitimate claims to the concerned court after affording opportunity of hearing to the parties concerned, where complaints are pending before

concerned courts. In other matters Ld. Settlement Commissioner was directed to settle the claims and pass orders accordingly, if satisfied with

settlement between the parties. He was directed to file final report after settlement. The Honâ€™ble Supreme Court of India in said SLP vide order

dated 04.03.2011 made it clear that the frozen assets can be released only for the purpose of settling the claims before the Settlement commissioner

as recommended by him and to the extent the amount that may be quantified by Ld. Settlement Commissioner. Thereafter, Honâ€™ble Supreme

Court of India vide order dated 29.10.2012 accepted the final report of settlement send by Ld. Settlement Commissioner and further clarified that for

other applications, if any, relating to the recovery of money from the respondent company, the aggrieved persons are free to approach the appropriate court having jurisdiction and thereafter, if any, further remedy is required, they are free to approach the Honâ€™ble High Court of Madras and Crl.

Appeals Nos. 823 to 825/2012 in SLP No. 1547 to 1549/2010 were disposed of accordingly with the direction.

On 12.01.2016, the CB-CID, Tamil Nadu filed supplementary charge-sheet in C.C. No. 3876 of 2009. After filing of said supplementary charge-sheet

M/s QuestNet Enterprises India Pvt. Ltd., filed Crl.O.P. No. 24461 of 2016 before Honâ€™ble High Court of Madras for seeking direction for the

appointment of Advocate Commissioner for validating, settling and compounding the claims. The order dated 20.08.2019 passed by Honâ€™ble

Madras High Court in the said Crl.O.P. reflects that out of 17790 complaints, almost all the complaints have been settled by the Settlement

Commissioner, except 67 persons, who are not reported to be willing to accept the terms of settlement suggested by the company. Accordingly,

direction was issued to Ld. Settlement Commissioner to call the 67 complainants for an enquiry and collect the necessary document from them and put

it to the company, in order to make an attempt to settle these complaints also. In the meantime, the applicants/appellants filed another Crl.O.P. No.

30144 of 2019 before Honâ€™ble Madras High Court for quashing the Complaint Case No. 3876 of 2009 with respect to supplementary charge-sheet

filed by the State Police, as all the Crl. Complaints are already compounded with the complainants, being compoundable u/s 320 CrPC. Thereafter,

Crl.O.P. No. 24461 of 2016, alongwith Crl.O.P. No. 30144 of 2019 was disposed of by Honâ€™ble Madras High Court vide common order dated

02.01.2020 and held that â€œfor the foregoing reasons, the impugned CC No. 3876 of 2009 now pending on the file of the Special Magistrate at

Allikulam Road, Chennai is quashed. Crl. O.P. No. 30144 of 2019 thus stands allowed. The prayer sought for in Crl.O.P. No. 24461 of 2016 has

become infructuous, since the advocate/Settlement Commissioner has also already been appointed and thus, Crl.O.P. No. 24461 of 2016 stands

closed.â€

Similarly, vide order dated 12.09.2022 passed by Honâ€™ble Madras High Court in CrI.O.P. No. 2279 of 2019 quashed the criminal case No. 07/2018

pending before Principal Session Judge, Special Court under PMLA, Chennai for commission of offence under PMLA Act.

4. During the arguments on misc. applications, Ld. Counsel for applicants/appellants submitted that complainants have settled their claims with the

appellants, as per provisions of Section 320 CrPC and it amounts to acquittal as the offence has been compounded. He contended that there is an

inordinate delay of about seven years in registering the ECIR in respect of the offence under PMLA. He pointed out that the alleged crime period is

of the year from 2004 to 2008, whereas 420 IPC is inserted in Part A of the Schedule with effect from 01.06.2009. He argued that when the said

allegation for commission of fraud punishable under Section 420 IPC pertains to period prior to the amendment of the Part A of the Schedule, the

question of initiating the attachment proceedings under Prevention of Money Laundering Act, 2002 does not arise, as the said amendment will have no

retrospective effect. He further submitted that alleged commission of offence under Section 4, 5 & 6 of the Prize Chit & Money Circulation Banning

Act, 1978 is not covered under Schedule of PMLA, 2002. He stressed that as per settled principle of law when a property is attached by a Court, the

said property becomes Custodia-Legis and the Court receiver act as an administrator & custodian of the said property and respondent ED or Ld.

Adjudication Authority has no right to attach the said property being already in possession of the court receiver. He argued that even otherwise, there

is no nexus between the property sought for attachment and the alleged proceeds of crime, as the properties were purchased by the

applicants/appellants out of their legitimate earnings. He further pointed out that the criminal case on the basis of charge-sheet filed by State, vide CC

No. 3876 of 2009 is also quashed by Honâ€™ble Madras High Court vide order dated 02.01.2020 in CrI.O.P. No. 30144 of 2019, being compounded

with the complainants for commission of alleged compoundable offences as per Section 320 Cr.P.C.. He further pointed out that CC No. 07/2018 filed

under PMLA is also quashed by Honâ€™ble Madras High Court vide order dated 12.09.2022 in CrI.O.P. No. 2279/2019. Accordingly, he stressed

that presently there is no ground to continue with the attachment of properties vide impugned order dated 29.08.2017. Prayer was accordingly made to allow the present applications and thereby dispose of the appeals with direction to release the properties attached vide impugned order dated 29.08.2017 passed by Ld. Adjudication Authority in O.C. No. 772 of 2017 confirming the Provisional Attachment Order No. 8/2017 passed by respondent ED.

5. On the other hand, learned counsel for respondent ED submitted that if the properties are under attachment by Government of Tamil Nadu, there is no restriction or prohibition to attach the same under PMLA by respondent ED, as the said properties are derived by the commission of schedule offence and involved in Money Laundering. Ld. Counsel pointed out that bare perusal of common order dated 02.01.2020 passed by Honâ€™ble Madras High Court in Crl.O.P. No. 30144/2019 and 24461/2016 vide which police case CC No. 3876/2009 pending before Honâ€™ble Special Court, Allikulam was quashed, reflects that the complaints from 32011 persons across the State of Tamil Nadu were received by the Investigation Agency. However, the complaints received by Settlement Commissioner even after wide publicity were only 15486. Out of the said 15486 claimants, 141 victims were unable to settle their dispute with the accused company and refused for quashing of criminal proceedings. Accordingly, Ld. counsel for the respondent ED stressed that the claims were not settled by accused company with all the victims and hence applicants/appellants are in possession and enjoyment of proceeds of crime derived by commission of schedule offence and have not discharged their liability in full. She further argued that as per explanation inserted to Section 3 of PMLA, 2002 through Finance (No. 2) Act, 2019, it is no longer res integra that the offence of money laundering as defined under Section 3 of PMLA, 2002 is a continuing offence and will continue till such person is in possession of the proceeds of crime by its concealment. Accordingly, it is stressed that applicants cannot claim the benefits of the order dated 02.01.2020 passed in Crl.O.P. No. 30144/2019 and 24461/2016. She further argued that as per the ratio laid down in Vijay Madhanlal Chowdharyâ€™s case, it is clear that the offence

of money laundering is an independent offence regarding the process or activity connected with proceeds of crime which had been derived or obtained

as a result of criminal activity relating to scheduled offence and this offence has nothing to do with the criminal activity relating to a scheduled offence

except the proceeds of crime derived or obtained as a result of that crime. Ld. counsel for respondent further contended that just because the

company has repaid the investors it does not absolve the company of the crime and proceeds of crime has also been acquired by them in the forms of

investments and interest accrued. She further stressed that PMLA is a special enactment and the attachment of properties is to further the purpose

and the object of the provision of PMLA which means that the attachment of properties is to secure them to make them available for confiscation

which are nothing but the proceeds of crime and such attachment is imperative as that would only facilitate confiscation of those properties and hence

the PMLA proceedings are within the ambit of law and it is maintainable. Ld. counsel further contended that the offence of money laundering is an

independent offence though the commission of schedule offence is a fundamental precondition for initiating the proceedings under the Act and the

scheme of the Act indicates that it deals only with acquired proceeds of crime related to the criminal activity and with laundering of money acquired

by committing the schedule offence. So, the respondent Department is in the process of filing SLP and the applicants would not be put to any loss or

harm, if they wait till the filing and disposal of the SLP proceedings.

6. After hearing the rival arguments from both the sides and going through the documents and the judgments passed by Honâ€™ble Madras High

Court and Honâ€™ble Supreme Court of India pertaining to the case of applicants, we have given our thoughtful consideration to the same.

7. The Honâ€™ble Madras High Court vide order dated 16.11.2009 allowed the Criminal Original Petition bearing No. CrI. O.P. 22943 of 2009 filed

for compounding of offences in FIR No. 454/2008, stating therein that:

â€œThis Court is of the view that the interests of justice would best be served by directing the lower Court to permit compounding of complaints

between the accused company and the claimants as and when the request thereof is made from both the parties. As the case is based on numerous

complaints, it becomes necessary to state that prosecution shall cease on such of the complaints compoundedâ€. SLP No. 1547 to 1549 of 2010 filed

by respondent ED before Honâ€™ble Supreme Court of India, challenging the order dated 16.11.2009 passed by Honâ€™ble Madras High Court.

Honâ€™ble Supreme Court of India vide order dated 26.02.2010 permitted the respondents (present applicant-appellants) to compound with the

complainants and thereafter vide order dated 19.04.2010 Settlement Commissioner was directed to settle the claims of Complainants after publishing

in the local dailies for compounding the legitimate claims and thereafter file the final report. The Honâ€™ble Supreme Court of India in said SLP vide

order dated 04.03.2011 made it clear that the frozen assets can be released only for the purpose of settling the claims before the Settlement

commissioner as recommended by him and to the extent the amount that may be quantified by Ld. Settlement Commissioner. Thereafter, Honâ€™ble

Supreme Court of India vide order dated 29.10.2012 accepted the final report of settlement send by Ld. Settlement Commissioner and further clarified

that for other applications, if any, relating to the recovery of money from the respondent company, the aggrieved persons are free to approach the

appropriate court having jurisdiction and thereafter, if any, further remedy is required, they are free to approach the Honâ€™ble High Court of

Madras and Crl. Appeals Nos. 823 to 825/2012 in SLP No. 1547 to 1549/2010 were disposed of accordingly with the direction. The above order

passed by Honâ€™ble Supreme Court of India clearly reflects that the interest of all the claimants/victims is duly protected and saved. Therefore, if

the impugned order dated 29.08.2017 is set aside by this Appellate Tribunal, it will not affect the right of the claimants/victims, who have not

compromised with the applicants/appellants, as the remaining attached property after payment of settled amount is in the custody of State Government

vide G.O. No. 95 dated 30.01.2009 and G.O.M. No. 345 dated 24.09.2009.

8. Supplementary charge-sheet in CC No. 3876 of 2009 was filed on 12.01.2016, by CB-CID Tamil Nadu. After filing of said supplementary charge-

sheet, Crl.O.P. No. 24461 of 2016 and Crl.O.P. No. 30144 of 2019 were filed by the applicants/appellants before Honâ€™ble Madras High Court.

The Honâ€™ble Madras High Court vide common order dated 02.01.2020, held that
â€œfor the foregoing reasons, the impugned CC No. 3876 of
2009 now pending on the file of the Special Magistrate at Allikulam Road, Chennai is
quashed. Crl. O.P. No. 30144 of 2019 thus stands allowed. The
prayer sought for in Crl.O.P. No. 24461 of 2016 has become infructuous, since the
advocate/Settlement Commissioner has also already been
appointed and thus, Crl.O.P. No. 24461 of 2016 stands closed.â€ Thus, as per this
order all the pending complaints pertaining to commission of
offences in FIR No. 454/08, for commission of offences under Section 4, 5 & 6 of the
Prize Chit & Money Circulation Banning Act, 1978, read with
Section 420/120B IPC were disposed of as compounded, being compoundable as
per Section 320 Cr.P.C., 1973. At present there is nothing on record
that any criminal case for the said offences is pending against any of the
applicants/appellants before any Court. Moreover, if any case is not settled
or compromised with any of the complainants/victims or/and the same is still
pending, then their right is duly protected by Honâ€™ble Supreme Court
of India vide order dated 04.03.2011 passed in SLP No. 1547 to 1549 of 2010 and
attachment by State Govt. of Tamil Nadu vide G.O. No. 95 dated
30.01.2009 and G.O.M. No. 345 dated 24.09.2009.

9. Similarly, the Honâ€™ble Madras High Court vide order dated 12.09.2022, passed
by in Crl.O.P. No. 2279 of 2019 quashed the criminal case
No.07/2018 pending before Principal Session Judge, Special Court under PMLA,
Chennai for commission of offence under PMLA Act and at present
no criminal case is pending against any of the applicants/ appellants and thus
question of continuing with attachment vide impugned order dated
29.08.2017 does not arise. There is no ground to wait for filing of SLP by respondent
ED, as this order is passed by the Honâ€™ble Madras High
Court on 12.09.2022 and even after expiry of eight months, no SLP is filed till date.

10. Before concluding, it is hereby made known that we have not gone into the
other legal issues contended in the appeals and applications, except
that are discussed and decided in paras 7 to 9 of this order.

11. In sequel to our above discussion, the present applications are hereby allowed
and consequently the appeals filed by the applicants/ appellants are

also hereby disposed of with direction to release the attached properties vide impugned order dated 29.08.2017.

12. It is made clear that this final order will not affect the right of the other complainants/victims who have not compromised with the

applicants/appellants u/s 320 Cr.P.C. and the attachment of the properties by State of Tamil Nadu vide G.O. No. 95 dated 30.01.2009 and G.O.M.

No. 345 dated 24.09.2009, or by any other authority will remain continue to satisfy the claims of the complaints/victims, who have not compromised.

Applications Allowed & Appeals Disposed of.