P.V.R. Murthy Vs Deputy Director, Directorate Of Enforcement

Court: Appellate Tribunal Under Prevention Of Money Laundering Act

Date of Decision: Dec. 15, 2023

Acts Referred: Prevention Of Money Laundering Act, 2002 â€" Section 2(1)(u), 3, 5(1), 8, 8(1), 8(2), 8(3), 17(1), 26
Indian Penal Code, 1860 â€" Section 120B, 406, 420, 477A
Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 â€" Section 3, 4

Hon'ble Judges: Munishwar Nath Bhandari, Chairman; Rajesh Malhotra, Member

Bench: Division Bench

Advocate: Hardik Sharma, Rachit Bansal, Muskan Aggarwal, N.K. Matta, Aaditya Raj Sharma

Final Decision: Disposed Of

Judgement

S.No.,Name,Designation

1.,Sh. Yashovardhan Birla,Chairman/Director

2.,Sh. P.V.R. Murthy,"Managing

Director

3.,Sh. Y.P. Trivedi,Director

4.,Sh. Rajesh Shah,

5.,Upkar Singh Kohli,

6.,Mahendra Singh Arora,

7.,Ashish Mahendrakar,

8.,Tushar Dey,

9.,Anant Pathak &,

10.,"Manish Malani for offence under

section 406, 420, 120(B) of IPC.",

person who claims the possession and the control of the property. He is required to be afforded an opportunity of hearing. It is stated that the,,

properties attached are under the control of Official Liquidator. The Adjudicating Authority passed the impugned order without an opportunity of,,

hearing, to the Official Liquidator. Thus, also, the impugned order deserves to be set aside .",,

12. It is also submitted that section 8 (2) and (3) of Act of 2002 have not been complied rather Adjudicating Authority recorded finding going beyond,,

its power under those provisions. The Adjudicating Authority has no power to hold that a predicate offence has been committed by the defendants. In,,

fact, the jurisdiction for it lies with the Special Court, yet a finding for commission of offence has been recorded. Thus, for the aforesaid reasons also,",,

the order deserves to be set aside.,,

13. The arguments raised by the appellant and even submitted written arguments for it have been contested by the counsel for the respondent. Their,,

arguments would be discussed while drawing the conclusions on each issue.,,

14. The appellant have submitted that there was a mis-joinder of parties. The proceedings were taken by the Adjudicating Authority against appellant,,

despite not in possession of proceeds of crime.,,

15. A reference of section 5 (1) of the Act of 2002 has been given and reproduced hereunder:-,,

Section 5. Attachment of property involved in money-laundering.,,

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this,,

section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that--",,

(a) any person is in possession of any proceeds of crime; and,,

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any",,

proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such",,

property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:",,

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a",,

Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to",,

investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case",,

may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:",,

Provided further that, notwithstanding anything contained in first proviso], any property of any person may be attached under this section",,

if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to,,

believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in",,

money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding",,

under this Act.,,

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings",,

under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of",,

vacation of such stay order shall be counted.,,

16. The proceeds of crime can be attracted if the conditions of section 5 (1) are satisfied. According to the appellant, they were not in possession of",,

proceeds of crime. We find that apart from M/s Birla Power Solution Limited, M/s Birla Surya Limited was also party before the Adjudicating",,

Authority but remain unrepresented in spite of the notice. Who appeared before the Adjudicating Authority out of the defendants are :-,,

(1) Sh. Yashwardhan Birla.,,

(2) Sh. P.V.R. Murthy,,

(4) M/s Godavari Corporation Pvt. Ltd. and lastly,,

(5) M/s Nirved Trades Ltd.,,

17. All other defendants before the Adjudicating Authority remain unrepresented. It is submitted that the proceeds of crime was in the hands of M/s,,

Birla Surya Ltd. but an Official Liquidator was appointed. Thus, the proceeds of crime was under the possession and control of the Official Liquidator,",,

but he was not given an opportunity of hearing despite the mandate under section 5 (1) of the Act. We do not find any mandate under section 5 (1),,

that before attachment of the property, the Official Liquidator was required to be heard by the Adjudicating Authority. The provision for hearing is",,

given under section 8(1) of the Act. Section 5(1) provides for attachment against Ã¢â‚¬Å“any personÃ¢â‚¬ in possession of proceeds. At the relevant time,,

defendant was in possession of the proceeds. The Competent Authority passed the order of attachment was not having information that an Official,,

Liquidator has been appointed. The information was given only to the Adjudicating Authority.,,

18. In view of the above, the first argument in reference to section 5 (1) of the Act of 2002 alleging mis-joinder of parties is not made out. The facts",,

available on records shows a serious allegation against the accused for inviting investments on higher rate of interest and then investors were denied,,

interest and refund of amount. Thus, the accused had cheated the investors. The FIRs were thus registered. It is not that appellants have denied",,

acceptance of investments by M/s Birla Power Solution Limited and thereafter its transfer to various entities which includes M/s Birla Surya Power,,

Limited. The M/s Birla Surya Power Limited was a party and at the stage of attachment, they were alleged to be in possession of the proceeds of",,

crime. At this stage, it may be clarified that attachment may not be of the proceeds of crime but it can of the property of equivalent value in view of",,

the definition of proceeds of crime given under section 2 (1) (U) of the Act of 2002.,,

19. The apprehensions of the respondent was that proceeds of crime or the property of equivalent value of the proceeds of crime may be transferred,,

or alienated, thus the attachment of the property was made. In view of the aforesaid, ground of misjoinder in reference of section 5(1) is not made out.",,

The second ground is regarding non compliance of section 8 (1) of the Act of 2002 and the provision aforesaid is reproduced hereunder:-,,

Section 8 in The Prevention of Money-Laundering Act, 2002",,

8 (1) Adjudication.,,

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-",,

section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an 13 [offence under section 3",,

or is in possession of proceeds of crime], he may serve a notice of not less than thirty days on such person calling upon him to indicate the",,

sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of",,

section 5, or, seized under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to",,

show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by,,

the Central Government: Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of,,

any other person, a copy of such notice shall also be served upon such other person: Provided further that where such property is held",,

jointly by more than one person, such notice shall be served to all persons holding such property.",,

20. It is alleged that the properties attached are under the control of Official Liquidator and prayer was specifically made to issue notice to the,,

Liquidator in compliance of section 8 (1) of the Act of 2002. Despite a request, notice was not issued to the Official Liquidator having control and",,

possession of the property and thereby section 8 (1) was not complied.,,

21. We have considered the submission and find that as per section 8 (1), the Adjudicating Authority remain under obligation to have reasons to",,

believe that any person has committed an offence under section 3 of the Act of 2002 or is in possession of proceeds of crime then to serve a notice of,,

not less than thirty days calling up the person to indicate the source of income, earning or assets out of which he has acquired the property attached",,

under sub section 5 (1) of the Act. We find that notice by the Adjudicating Authority is to be given to the person who committed an offence under the,,

Act of 2002 or a person having possession of the proceeds of crime. The Adjudicating Authority found and recorded reasons to believe that defendant,,

have committed offence under section 3 of the Act of 2002 and accordingly all those persons were given an opportunity of hearing. It is not that,,

Official Liquidator has made an application to provide an opportunity of hearing and has been denied. Rather, we find that M/s Birla Surya Limited",,

remain unrepresented and it is they who were relevant party to inform about the appointment of Official Liquidator. We otherwise find that section,,

8(1) mandate a notice to a person committed an offence under section 3 of the Act and defendants were alleged to have committed offence and for,,

possession of proceed, it could have been either M/s Birla Surya Limited or the Official Liquidator and not the appellant. It is not that the hearing",,

under section 8 (1) is to be given only to a person in possession of proceeds of crime, but also to a person committed the offence under section 3 of",,

the Act and accordingly all the defendants before the Adjudicating Authority, having an allegation for commission of offence under section 3 of the",,

Act of 2002 were necessary party and provided an opportunity of hearing.,,

22. The Official Liquidator never came forward to seek an opportunity of hearing and otherwise the appellant said to be not in possession of proceeds,,

of crime cannot make an issue when they alleged to have committed an offence under section 3 of the Act of 2002 and were provided opportunity of,,

hearing.,,

23. In view of the above, we do not find even violation of section 8 (1) of the Act of 2002.",,

24. The third issue is regarding the power and jurisdiction of Adjudicating Authority for which reference of section 8 (2) and (3)has been given and,,

are reproduced hereunder:-,,

Section 8 in The Prevention of Money-Laundering Act, 2002",,

8 (2) The Adjudicating Authority shall, afterÃ¢â‚¬"",,

(a) considering the reply, if any, to the notice issued under sub-section (1);",,

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf, and",,

(c) taking into account all relevant materials placed on record before him,",,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in",,

money-laundering: Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such",,

person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.,,

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order",,

in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized under",,

section 17 or section 18 and record a finding to that effect, such attachment or retention of the seized property or record shallÃ¢â‚¬"",,

(a) continue during the pendency of the proceedings relating to any scheduled offence before a court; and,,

(b) become final after the guilt of the person is proved in the trial court and order of such trial court becomes final.,,

25. It is submitted that Adjudicating Authority has recorded finding that defendants before it have committed the scheduled offence, generated",,

proceeds of crime and laundered the money thereupon.,,

26. The conclusions for commission of offence has been questioned by the appellants and for which we quote para 44 of the impugned order and is,,

reproduced hereunder :-,,

Ã¢â‚¬Å“On a thorough perusal of the PAO, Complaint, relied upon documents, the investigations conducted by the ED and the statements recorded u/s 50",,

of the PMLA and on careful consideration of the arguments advanced on behalf of the Complainant and Defendants undersigned comes to the prima,,

facie conclusion that the Defendants have committed the Scheduled Offence, generated proceeds of crime and laundered themÃ¢â‚¬â€<.",,

27. The perusal of the conclusions does not show a conclusive finding about commission of scheduled offence, rather a prima facie conclusion has",,

been drawn by the Adjudicating Authority.,,

28. It is thus not correct to state that the final conclusions about commission of offence has been drawn by the Adjudicating Authority. We otherwise,,

find that Adjudicating Authority is under obligation to record a finding that properties are involved in money laundering. To find out that a case of,,

money laundering is made out, essentially a prima facie opinion has to be drawn about commission of offence. Otherwise, the question may be raised",,

for formation of opinion of money laundering without an offence. In our opinion, no illegality has been committed by the Adjudicating Authority to",,

record a prima facie opinion about the commission of offence which may generate the proceeds of crime and if laundered, then an offence under",,

section 3 of the Act of 2002. It is however made clear that the prima facie opinion of Adjudicating Authority is not conclusive, rather it would be",,

recorded by the Special Court in criminal case and accordingly the issue is clarified to the extent.,,

29. In view of the discussion made above, we find no reasons to cause interference in the impugned order.",,

30. However, the appeals are disposed of with the clarification that a prima facie opinion recorded by the Adjudicating Authority for commission of",,

offence would not drive the Special Court rather it would record its findings based on the evidence without being influenced by the order of,,

Adjudicating Authority.,,

31. However, no interference in the interim order has been made.",,