

(2017) 03 KAR CK 0024

KARNATAKA HIGH COURT

Case No: Writ Petition Nos. 5962 and 11440 to 11442 of 2016 (GM-MM-C)

Obulapuram Mining Company
Private Limited

APPELLANT

Vs

Joint Director, Directorate Of
Enforcement

RESPONDENT

Date of Decision: March 13, 2017

Acts Referred:

- Constitution of India, 1950 - Article 20, Article 226
- Penal Code, 1860 (IPC) - Section 120B, Section 411, Section 420, Section 471
- Prevention of Money-Laundering Act, 2002 - Section 2(p), Section 2(v), Section 2(y), Section 3

Citation: (2017) 173 AIC 804 : (2017) 3 KantLJ 179

Hon'ble Judges: Subhro Kamal Mukherjee, C.J. and Budihal R.B., J.

Bench: Division Bench

Advocate: Sri Sudhir Nandrajog, Senior Advocate along with Sri Mayank Jain, Advocate, for the Petitioner; Sri Krishna S. Dixit, Assistant Solicitor General, for the Respondent Nos. 2 to 4; Served and Unrepresented, for the Respondent No. 1; In Writ Petition No. 11442 of 2016; Sri Sudhir Nandrajog, Senior Advocate along with Sri Mayank Jain, Advocate, for the Petitioner; Sri Krishna S. Dixit, Assistant Solicitor General, for the Respondent; In Writ Petition Nos. 11440-11441 of 2016; Sri Sudhir Nandrajog, Senior Advocate along with Sri Mayank Jain, Advocate, for the Petitioner; Sri Krishna S. Dixit, Assistant Solicitor General, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Subhro Kamal Mukherjee, C.J.—By consent of the learned Advocates appearing for the parties, all these writ petitions are taken up for hearing together, as similar questions of law are involved in these writ petitions, in order to avoid a conflicting

judicial opinion. We are also informed that facts are, almost, identical.

However, for the sake of convenience, we are dealing with the facts in relation to Writ Petition No. 5962 of 2016.

2. Writ Petition No. 5962 of 2016 is filed challenging the action of the authorities in lodging and enforcing of an Enforcement Case Information Report, being No. ECIR/83/BZ/2010, dated September 22, 2010, and an order of attachment, both provisional and final, under the provisions of the Prevention of Money Laundering Act, 2002 (for short, the "PML Act").

3. Mr. Sudhir Nandrajog, learned Senior Advocate, appearing in support of the writ petitioner, raised a short, but interesting point. He submits that the offences alleged against the writ petitioner are not scheduled offences under the PML Act, and, therefore, the writ petitioner could not be prosecuted under the provisions of the PML Act.

4. Mr. Sudhir Nandrajog draws our attention to the ECIR at Annexure-B to the writ petition. Our reading of the allegations is that this writ petitioner acquired 17.59 lakh MT of iron ore by extracting the same from outside the leased area and, thus, committed the offences under Sections 120-B, 420 and 411 of the Indian Penal Code, 1860 and Sections 13(2) read with Sections 13(1)(d) and 13(1)(e) of the Prevention of Corruption Act, 1988 (for short, the PC Act). However, in the final order of attachment, it is alleged that 29.32 MT iron ore were extracted from outside the leased area.

5. Mr. Nandrajog, submits that those offences were included as scheduled offences only on June 1, 2009. He draws our attention to page 225 of the paper book to show that the alleged offences were allegedly committed between June 21, 2007 and May 15, 2009. Therefore, he submits that all the offences were allegedly committed prior to the coming into operation of the amendment to the PML Act.

6. Section 2(p) of the PML Act defines that "money-laundering" has the meaning assigned to it in Section 3. Section 2(u) provides that the "proceeds of crime" means any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property. Section 2(y) defines the "scheduled offence" as (i) the offences specified under Part "A" of the Schedule; or (ii) the offences specified under Part "B" of the Schedule if the total value involved in such offences is thirty lakh rupees or more; or (iii) the offences specified under Part "C" of the Schedule.

7. Mr. Sudhir Nandrajog, further, draws our attention to the provisions of the Prevention of Money Laundering (Amendment) Act, 2009, by which, the offences under Sections 120-B, 420, 411 and 471 of Indian Penal Code and the provisions of the Prevention of Corruption Act, 1988, were included as the scheduled offences. At page 87 of the paper book, a copy of the notification issued by the Union

Government is produced. It provides that the amended provisions of the PML Act, as amended by the Prevention of Money Laundering (Amendment) Act, 2009, would come into operation on the appointed date, that is, June 1, 2009.

8. Mr. Krishna S. Dixit, learned Assistant Solicitor General, referring to Section 5 of the PML Act, vehemently, submits that the proceedings must continue, as the offences alleged against the writ petitioner are all civil in nature and, therefore, PML Act could be invoked with retrospective effect for the offences committed prior to June 2009.

9. We have bestowed our attention to the submissions made by the learned Senior Counsel appearing for the writ petitioner and the learned Assistant Solicitor General appearing for the respondent-authorities.

10. It can be seen from the records that all the offences allegedly committed by the writ petitioner were earlier to the insertion of the provision in the schedule of the Prevention of Money Laundering (Amendment) Act, 2009, and as such, they have no application.

11. Therefore, the Enforcement Case Information Report and the order of attachment are without jurisdiction and are liable to be quashed. As we have, already, held that the writ petitioner cannot be prosecuted for the offences alleged, as they are not the scheduled offences under the PML Act. Those offences under the Mines and Geology (Development and Regulation) Act, 1957, the Forest (Conservation) Act, 1980, the Indian Penal Code and the Prevention of Corruption Act, 1988, were included in the PML Act declaring them as scheduled offences only with effect from June 1, 2009. Hence, the Enforcement Directorate could not have invoked the provisions of the PML Act with retrospective effect.

12. The petitioner cannot be tried and punished for the offences under the PML Act when the offences were not inserted in the schedule of offences under the PML Act. This would deny the writ petitioner the protection provided under clause (1) of Article 20 of the Constitution of India. Article 20(1) of the Constitution of India prohibits the conviction of a person or his being subjected to penalty for ex-post facto laws. Consequently, the order of attachment is, also, liable to be set aside.

Re: Writ Petition Nos. 11440 and 11441 of 2016:

13. However, there is a slight difference in the case of writ petitioners in these writ petitions. Here, the first petitioner has, since, been discharged and, therefore, the writ petition as against the first petitioner has become infructuous.

14. Insofar as the second petitioner is concerned, the allegation is that he has committed theft of 24,00,000 MT of iron ore by illegal mining, when his own quarry was not under operation. It is, also, alleged against this writ petitioner that he had sold the iron ore outside and thereby illegally acquired a sum of Rs. 480 crores (Rupees four hundred and eighty crore) only.

15. Mr. Sudhir Nandrajog, learned Senior Advocate, appearing in support of the writ petitioners, has taken a short point, contending that the allegation of theft or illegal mining is not a scheduled offence under the PML Act.

16. As the offence of theft is not a scheduled offence under the PML Act, by applying the same principles as we have taken above, we find no merit in the initiation of proceedings against the petitioners in these writ petitions under the amended PML Act. Hence, the action taken against them under the said Act is, also, liable to be quashed.

17. In addition to the aforesaid submissions, Mr. Nandrajog, learned Senior Advocate appearing for the writ petitioners in all these writ petitions, submits that till date, no proceeding was advanced against the writ petitioners far less to say about any conviction against the writ petitioners. He submits that in the absence of conviction, there could not have been a final order of attachment.

18. An ECIR can, only, be registered once there has been a conviction and a judicial conclusion has been arrived at as to the quantum of proceeds of that crime. It is only upon a conviction by a Trial Court in the predicate offence the accused could be investigated upon accordingly.

19. We, therefore, allow all these writ petitions and quash the action initiated against all these writ petitioners by the enforcement authorities. We, also, quash the attachment orders passed against the writ petitioners.

20. There will be no order as to costs.