



2024/KER/46882

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

FRIDAY, THE 28TH DAY OF JUNE 2024 / 7TH ASHADHA, 1946

WP(CRL.) NO. 406 OF 2024

PETITIONER

SATISH MOTILAL BIDRI
AGED 64 YEARS
R/O 35 A BASESHWAR NAGAR,
HOTI ROAD, SOLAPUR, NORTH,
SOLAPUR, MAHARASHTRA, PIN - 413002
BY ADV VINAY MATHEW JOSEPH
ADV.MANISH K.JHA
ADV.ABHIJEET PANDAY
ADV.KISLAY KUMAR

RESPONDENTS :

- 1 UNION OF INDIA.
THROUGH SECRETARY,
MINISTRY OF FINANCE,
JEEVAN DEEP BUILDING,
PARLIAMENT STREET,
NEW DELHI, PIN - 110003
- 2 ASSISTANT DIRECTOR,
ENFORCEMENT DIRECTORATE,
KOCHI ZONAL OFFICE,
KANEES CASTLE,
MULLASSERY CANAL ROAD WEST,
COCHIN, PIN - 682011
- 3 ENFORCEMENT DIRECTORATE,
MINISTRY OF FINANCE,
GOVERNMENT OF INDIA
6TH FLOOR, LOK NAYAK BHAVAN,
KHAN MARKET,
NEW DELHI, PIN - 110003



2024/KER/46882

W.P.(CrI.) No.406 /24

-:2:-

BY ADV JAISHANKAR V.NAIR
ADV.ANUJ UDUPA

THIS WRIT PETITION (CRIMINAL) HAVING COME UP FOR ADMISSION
ON 21.06.2024, THE COURT ON 28.06.2024 DELIVERED THE
FOLLOWING:

**"C.R."****BECHU KURIAN THOMAS, J.****-----
W.P.(CrI.) No.406 of 2024
-----**Dated this the 28th day of June, 2024**JUDGMENT**

During the course of an investigation under the provisions of the Prevention of Money Laundering Act, 2002 (for short 'PMLA') against a proprietary concern called M/s. Masters Finserv, and others, the bank accounts of the petitioner were frozen by an order dated 05.09.2023. While the challenge against the freezing of bank accounts was pending consideration in this writ petition, an order of provisional attachment was issued on 22.05.2024, attaching the very same bank accounts and an immovable property of the petitioner. The subsequent order of attachment was incorporated as an additional challenge after amending the writ petition. Thus petitioner, inter alia, challenges the freezing of his bank accounts and the provisional order of attachment issued under section 5 of PMLA, in this petition under Article 226 of the Constitution of India.

2. Petitioner is a businessman having an electronic shop at Sholapur, Maharashtra and claims that he has no connection with the business of Masters Finserv or its proprietor. During September 2023,



petitioner was informed by his bankers that his bank accounts maintained with the IDFC Bank, ICICI Bank and Federal Bank were frozen under orders of the Enforcement Directorate. Since the order freezing the bank accounts was in violation of Section 17(1) of the PMLA, petitioner approached this Court in this writ petition. In the meanwhile, on 25.04.2024, an interim direction was issued by this Court, directing the second respondent to consider petitioner's request for permitting him to withdraw money from his bank account due to his wife's medical condition. Though the said direction was challenged by the petitioner before the Supreme Court in SLP (CrI) No.6628/2024, it was disposed of with a direction for an expeditious adjudication of the writ petition. While so, on 22.05.2024, the second respondent issued an order under Section 5(1) of the PMLA, provisionally attaching an immovable property of the petitioner together with the three bank accounts which were earlier frozen by the order dated 05.09.2023. Petitioner thus challenges not only the order freezing his bank accounts but also the order of provisional attachment of his properties - both immovable and his bank accounts.

3. A counter affidavit has been filed by respondents 2 and 3 stating that the writ petition is not maintainable as the petitioner has an alternative remedy before the adjudicating authority under Section 8 of the PMLA Act. The predicate offence alleged includes multiple FIR's including F.I.R No. 1156/2022, wherein, offences are alleged to have been committed by the



proprietary concern called M/s.Masters Finserv and its proprietor Sri. Ebin Varghese and others during the period 27-01-2021 and 14-11-2022 under Sections 406, 420 and 34 of the Indian Penal Code, 1860. Respondents stated that during the investigation it was revealed that the accused had induced complainants to make deposits promising to generate huge profits on their investments after giving false assurances of high interest rates and thereafter embezzled more than 73 crores from various complainants. It was further stated that the investigation also revealed that petitioner who is not an accused in any of the FIR's had arranged two mule accounts under the name of M/s. Prashant Traders and M/s. Model Traders and received a credit of Rs.85.50 lakhs and Rs.3.98 crores from the bank accounts of the accused and its related entities for use in Online Casinos, and in return, petitioner received Rs. 33 lakhs for the said arrangement of which Rs.15,00,000/- was through his bank account and Rs.18,00,000/- in cash from local hawala operators. It is also stated that during the course of the investigation, the second respondent felt it necessary to issue a provisional attachment order and therefore on 22.05.2024, the impugned order Ext.P11 was issued and since the bank account has also been attached provisionally, the lien marked over the said bank accounts have lost its significance. The respondents further alleged that petitioner do have an appropriate remedy before the adjudicating authority under the provisions of the PMLA and that the writ petition is not a proper remedy.



4. I have heard Sri. Manish K. Jha, along with Sri. Vinay Mathew Joseph, learned counsel for the petitioner, while Sri. Jaishankar V. Nair and Adv. Anuj Udupa appeared on behalf of respondents 2 and 3. Though the counsel on either side exhaustively addressed various aspects of the case, this Court is of the opinion that in view of the order of provisional attachment dated 22.05.2024, the challenge against freezing of bank accounts has become academic in nature. The scope of the writ petition therefore revolves only around the order of provisional attachment and the consideration is confined to the said challenge.

5. PMLA was enacted as a preventive and punitive measure to combat the evil of money laundering. Removal of tainted money or those derived from selected crimes is understood as an effective mode of combating serious offences. Sections 3 and 4 of PMLA make money laundering an offence punishable with imprisonment which may extend upto 7 years apart from fine. The word 'money laundering' is explained to be an attempt to indulge or assist or be a part of any process or activity connected with the proceeds of crime. Section 5 of the PMLA authorises the Director or other persons mentioned therein to provisionally attach the property which are proceeds of crime in the possession of a person or which are likely to be concealed, transferred or dealt with, in a manner that may frustrate the proceedings relating to confiscation of such proceeds of crime.



6. Two primary safeguards are provided in Section 5 of PMLA to protect a person from unreasonable or illegal attachments and they are (i) reasons to be recorded in writing, and (ii) a period of validity for the order of provisional attachment. There is yet another safeguard provided in the statute in the form of a separate independent authority for considering the validity of the order of provisional attachment. As per section 5(5) of the PMLA, an officer who issues the provisional order of attachment shall within 30 days from the attachment, file a complaint before the Adjudicating Authority under Section 6 and the said Authority, which is an independent body, is entitled to consider whether all or any other property as referred to, are involved in money laundering. A further challenge is also provided, enabling the aggrieved to approach the Appellate Tribunal constituted under Section 26 of the PMLA and a further appeal to the High Court is also provided under Section 42. Thus, the statute has created a code in itself in respect of provisional attachment orders which can generally redress the grievances of those aggrieved. Normally when such a scheme is provided as an efficacious alternative remedy, it is not proper for this Court to interfere under Article 226 of the Constitution of India. In this context, reference to the judgment of this Court in **Santiago Martin and Another v. Union of India and Others** (2023 (5) KLT 388) would be relevant.

7. However, the rule of exhaustion of alternative remedy is a rule of



discretion and not one of compulsion. Though normally Court may desist from entertaining a writ petition under Article 226 of the Constitution, when effective remedies exist, in exceptional circumstances, the High Court can interfere, especially when the orders or any part of it are ex facie illegal and without jurisdiction. The phrase accentuated in **State of U.P v. Mohammad Nooh** (AIR 1958 SC 86) and oft-quoted thereafter that 'exhaustion of alternative remedy is a rule of policy, convenience and discretion and not of law' is apposite in this context. Further, recently in **PHR Invent Educational Society v. UCO Bank and Others** (2024 INSC 297), the Supreme Court reiterated that when the statutory authority has not acted in accordance with the provisions of the enactment in question, a petition under Article 226 of the Constitution could be entertained, despite the availability of an alternative remedy. Thus, notwithstanding the existence of an alternative remedy, there is no absolute restriction in considering the contentions advanced, provided the case falls within the parameters mentioned above.

8. A reading of the impugned order of provisional attachment dated 22.05.2024 indicates that two schedules of properties have been ordered to be attached. Schedule A consists of an immovable property and Schedule B consists of movable properties. For the purpose of better comprehension, the schedule attached to Exhibit P11 is extracted as below:

**SCHEDULE OF PROPERTIES**

A. Immovable Property			
Sr. No.	Description of Property	Location of Property	Amount (in INR)
1	Title Deed No.45/9/26 dated 05.01.2004 registered with Sub Registrar, North Solapur, Maharashtra – 413 001	Plot No.35A, Baveshwar Nagar, Hotgi Road, Solapur – 413 003	Rs.3,30,000/-
Total (A)			Rs.3,30,000/-
Movable Properties			
Sr. No.	A/c Details	Bank Name	Amount in Rs.
1	Account No.000501035165 in the name of Mr.Satish Motilal Bidri	ICICI Bank	Rs.1,00,477.23/-
2	Account No.15930200002161 in the name of M/s.S.B.Electrical	Federal Bank	Rs.2,80,106/-
3	Account No.10080142800 in the name of Mr.Satish Motilal Bidri	IDFC Bank	Rs.1,125,473.44
Total (B)			Rs.15,06,056.67
Total (A+B)			Rs.18,36,056.67

9. On a perusal of the above schedule which specifies the properties that have been provisionally attached, it is evident that the immovable property attached was purchased by the petitioner on 05.01.2004. From Ext.P11 it can be understood that M/s.Masters Finserv - the proprietary concern promoted by the accused in the predicate offence, commenced its operations in 2017 while the predicate offences are alleged to have been committed between 27-01-2021 and 14-11-2022. Therefore, it is evident that the immovable property that has been provisionally attached as per the impugned order was purchased more than a decade and a half before the alleged offence took place.

10. The power of attachment of property is provided as per section 5 of PMLA. For the purpose of reference, the said provision is extracted as below:



“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.”

11. The term ‘proceeds of crime’ is defined in section 2(1)(u) of the PMLA as follows:

“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 or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad.

Explanation: For the removal of doubts, it is hereby clarified that “proceeds of crime” include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or



obtained as a result of any criminal activity relatable to the scheduled offence.”

12. On a reading of the above provisions, it can be assimilated that there are three types of proceeds of crime and they are:

- (i). property derived or obtained from a criminal activity,
- (ii) value of any such property and,
- (iii) if the property is taken or held outside India, then a property equivalent in value held within India.

13. Section 5 of PMLA authorizes attachment of proceeds of crime. The definition of the term 'proceeds of crime' explicitly states that when the proceeds of a crime is a property, such property must have been obtained or derived as a result of any criminal activity relating to a scheduled offence. No doubt, even if the property was obtained indirectly, it can still be regarded as proceeds of crime. Assuming that a property derived out of a criminal activity mentioned is not available, still, attachment can be effected to the extent of the value of such property. The term 'value' in section 2(1)(u) can only mean the monetary worth of the property that was derived from the criminal activity. If the attachment is to be effected to the extent of the monetary worth of a property which was not derived out of the criminal activity, then PMLA mandates that the property derived out of such criminal activity be taken out of India or is held outside the country. In other words, the only power to proceed against a property of equivalent



value, which has no link with the predicate offence is, when the property was taken out or held out of India. Therefore, except when the property derived out of the criminal activity is not inside the country, can the provisional attachment be effected on a property purchased prior to such criminal activity.

14. In this context, it is appropriate to refer to the decision in **Seema Garg v. Deputy Director, Directorate of Enforcement** (2020 SCC Online P&H 738), wherein the High Court of Punjab and Haryana elaborately considered the concept of proceeds of crime and held that property purchased prior to the commission of scheduled offence, does not fall within the ambit of the first limb of the definition of proceeds of crime, though it certainly falls within the purview and ambit of the third limb of the definition. The Andhra Pradesh High Court has also observed along the same lines in **Satyam Computer Services Limited v. Directorate of Enforcement, Government of India** (2018 SCC Online Hyd 787) wherein it was observed that PMLA being a statute which deals with substantive rights, cannot have a retrospective effect. However, the Delhi High Court had taken a differing stance in **The Deputy Director, Directorate of Enforcement, Delhi v. Axis Bank and Others** (Crl.A. No.143/2018), where it was observed that the term value of property must be understood to have been used in the same sense as the third limb. With respects, I am unable to subscribe to the views of the Delhi High Court and on the other hand wholly concur with the views of the High Court of Punjab and Haryana and that of Andhra Pradesh.



15. I am further fortified in the above view that I have taken in view of the observations of the Supreme Court as well. In the decision in **Vijay Madanlal Choudhary and Others v. Union of India and Others** [2022 SCC Online SC 929], it has been held in paragraph numbers 295 and 296 that *“The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence.Be it noted that the attachment must be only in respect of property which appears to be proceeds of crime and not all the properties belonging to the concerned person who would eventually face the action of confiscation of proceeds of crime, including prosecution for offence of money-laundering. As mentioned earlier, the relevant date for initiating action under the 2022 Act - be it of attachment and confiscation or prosecution, is linked to the inclusion of the offence as scheduled offence and of carrying on the process or activity in connection with the proceeds of crime after such date. The pivot moves around the date of carrying on the process and activity connected with the proceeds of crime; and not the date on which the property has been derived or obtained by the person concerned as a result of any criminal activity relating to or relatable to the scheduled offence.”*

16. Apart from the above, in **Pavana Dibbur vs. Directorate of Enforcement** (2023 SCC online SC 1586), it has been observed as follows: *“Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, ex facie cannot be said to have any connection with the proceeds of crime as the acts constituting*



the scheduled offence took place after its acquisition.This is not a case where any material is placed on record to show that the sale consideration was paid from a particular bank account of the appellant. Therefore, it is not possible to record a finding at this stage that the second property was not acquired by using the proceeds of crime.” (emphasis supplied).

17. The aforesaid observations indicate that the properties that can be proceeded against, exercising the powers of attachment must be those that have been acquired utilising the proceeds of crime. The contention of the learned counsel for the respondents that the term proceeds of crime will also include the value of the property which had been acquired even earlier is, according to me, too far-fetched and will not be justifiable in the light of the constitutional provisions of fairness and reasonableness. It is also necessary to observe at this juncture that the purpose of the PMLA is to remove tainted money and also to initiate proceedings against the proceeds of crime which have been transformed or converted into other property or intermingled with legitimate sources and then the value of the intermingled gain will assume the colour of proceeds of crime. Such a provision cannot be used to enable the authorities to proceed against properties that are unconnected with any of the criminal activity in question.

18. Viewed in the above perspective, as the provisionally attached immovable property was purchased in 2004 - more than a decade and a



half before the predicate offence was allegedly committed, the order attaching the immovable property is ex-facie, ultra vires the powers of the statute and totally illegal and arbitrary to the extent of the said attachment. Since ex facie illegal acts can be interfered with under Article 226 of the Constitution of India, notwithstanding the existence of an alternative remedy, this Court is of the view that the provisional attachment of the immovable property as seen from schedule A to Exhibit P11 order dated 22.05.2024 is liable to be set aside. However, as relating to the provisional attachment mentioned in schedule B to Exhibit P11, i.e. those relating to the amount in the bank accounts - the petitioner has an effective alternative remedy provided by the statute.

19. In the result, the provisional attachment order dated 22.05.2024 produced as Exhibit P11, in so far as it relates to Schedule A is hereby set aside. The provisional attachment in relation to the movable properties shown in Schedule B to Exhibit P11 is not interfered with and the petitioner is relegated to pursue his alternative remedies.

Writ Petition is allowed in part.

Sd/-
BECHU KURIAN THOMAS
JUDGE

vps

APPENDIX

PETITIONER'S EXHIBITS

- Exhibit P1 TRUE COPY OF THE ORDER DATED 05.09.2023 ISSUED BY THE RESPONDENT NO. 2 TO IDFC BANK DIRECTING TO FREEZE THE BANK ACCOUNT OF THE PETITIONER
- Exhibit P2 A TRUE COPY OF THE LETTER DATED 30.10.2023 SENT BY ICIC BANK TO THE PETITIONER INFORMING OF THE ORDER ISSUED BY THE RESPONDENT NO.2/ED TO THE BANK FOR FREEZING THE BANK ACCOUNT
- Exhibit P3 A TRUE COPY OF THE LETTER DATED 01.11.2023 SENT BY FEDERAL BANK TO THE PETITIONER INFORMING OF THE ORDER ISSUED BY THE RESPONDENT NO.2/ED TO THE BANK FOR FREEZING THE BANK ACCOUNT
- Exhibit P4 A TRUE COPY OF THE SUMMON/NOTICE DATED 07.08.2023
- Exhibit P5 A TRUE COPY OF SUMMON DATED 12.01.2024 TO THE PETITIONER
- Exhibit P6 A TRUE COPY OF THE BANK ACCOUNT STATEMENT OF THE ABOVE-MENTIONED ACCOUNT OF THE PETITIONER
- Exhibit P7 TRUE COPY OF THE MEDICAL REPORT OF PETITIONER'S WIFE
- Exhibit P8 A TRUE COPY OF THE ORDER PASSED BY THIS HON'BLE COURT DATED 25.04.2024
- Exhibit P9 A TRUE COPY LETTER DATED 03.05.2024 PASSED BY RESPONDENT NO.2
- Exhibit P10 A TRUE COPY OF THE ORDER DATED 17.05.2024 PASSED BY THE HON'BLE SUPREME COURT IN SLP(CRL) NO. 6628 OF 2024
- Exhibit P11 A TRUE COPY OF THE ORDER DATED 22.05.2024 PASSED BY THE RESPONDENT NO.2 UNDER SECTION 5(1) OF PMLA ACT 2002

RESPONDENT'S ANNEXURES:

- ANNEXURE R1(a) TRUE COPY OF THE PROVISIONAL ATTACHMENT ORDER DATED 22.05.2024