

CRR-476-2024 (O&M)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRR-476-2024 (O&M)

Union of Bank of India vs. Assistant Director, Directorate of Enforcement

Present: Mr. Akshay Bhan, Sr. Advocate with
Mr. H.P.S. Sandhu, Advocate
Mr. Shantnu Bansal, Advocate
Mr. Shaurya Khanna, Advocate and
Ms. Anjali Sheoran, Advocate
for the petitioner.

Mr. S.V. Raju, Additional Solicitor General of India (Through VC) with
Mr. Jagjot Singh Lalli, Dy. Solicitor General of India
Mr. Zoheb Hussain, Special Counsel (Through VC)
Mr. Lokesh Narang, Sr. Panel Counsel (Through VC) and
Mr. Manish Verma, Advocate
for the respondent-ED.

ECIR No.	
Complaint No.	Case No. COMA/35/2018, Special Judge, PMLA, Panchkula, Haryana

1. Petitioner, aggrieved by the order dated 31.05.2022 passed by the Special Judge, PMLA (Haryana), vide which the properties mortgaged with the petitioner Bank were confiscated in favour of the Enforcement Directorate [ED], has come up before this Court by filing the present criminal revision petition under Section 47 of Prevention of Money Laundering Act 2002 r/w 397 of the Code of Criminal Procedure, 1973 [CrPC, 1973].

2. The facts that led to the filing of the present revision petition are as follows:

3. The property identified as 22 Farmhouse Land in Village Rajokri Tehsil, Vasant Vihar, New Delhi, was mortgaged to the petitioner Union Bank of India in lieu of the credit facilities availed by ABW Infrastructure Ltd. The abovementioned property was confiscated and now vests with the Central Government under Section 9 of the PMLA, 2002.

4. The Enforcement Directorate filed an application under Section 8(7) of the PMLA seeking confiscation of the property identified as 22 Farmhouse Land in Village Rajokri Tehsil, Vasant Vihar, New Delhi. [CRM/13/2022] and trial Court allowed the same vide impugned order. The Union Bank of India claims to have a first charge over the said property, which was mortgaged to it in lieu of the credit facilities availed by ABW

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Infrastructure Ltd.

5. Aggrieved by such confiscation, the Union Bank of India came up before this Court assailing the order dated 31.05.2022 passed by the Special Judge, PMLA (Haryana) at Panchkula in 'Directorate of Enforcement v. Atul Bansal & Ors. bearing Case No. COMA/35/2018.

6. Mr. S.V. Raju, Additional Solicitor General of India, raised a preliminary objection to the maintainability of the present petition by submitting that the appropriate remedy is under Section 8 of the Prevention of Money Laundering Act, 2002 [PMLA] read with Prevention of Money Laundering (Restoration of Confiscated Property) Rules 2016 [PMLA Rules 2016], and not Section 47 of PMLA read with 397 CrPC, 1973. He submits that if the petitioner files an appeal under Section 8 of PMLA, the ED will not take any legal objection to its maintainability. He further submits that the preliminary objection must be decided before deciding on the merits of this case.

7. Mr. Akshay Bhan, Sr. Advocate, counsel for the petitioner, raised the following arguments: -

- a) The revision petition has been filed because the Trial of the offenses under PMLA, 2002 has not yet begun as the Charges have not been framed against the Borrower, the Promoters, or the Guarantors.
- b) The Revisionist has no statutory or alternate remedy to challenge the above order dated 31.05.2022.
- c) Under Section 8(8) of the PMLA is a remedy available only for the confiscation of property under section 8 (5) and not for the confiscation done under section 8 (7).
- d) The Legislature does not provide any statutory remedy for restoring such property confiscated before the trial's conclusion or before the charge's framing. Ergo, the Revisionists have approached this Hon'ble Court.
- e) The appropriate remedy available to the Revisionist was to approach this Hon'ble Court under the provisions of Chapter XXX of the Code of Criminal Procedure, 1973, read with Section 47 of the PMLA, 2002.

8. The counter submissions of Mr. S.V. Raju, the ED's counsel are that the Criminal Revision petition is premature and not maintainable following the statutory framework provided under PMLA, 2002, and raises the following arguments: -

- a) The Directorate of Enforcement filed a prosecution Complaint no. COMA/35/2018 before Special Judge, PMLA, Panchkula, Haryana, against Atul

Bansal, Sona Bansal, ABW Infrastructure Ltd., and its group companies.

- b) The complaint alleges that Atul Bansal, Director of ABW Infrastructure Ltd., purchased 239 acres of land in the name of different developers and companies, subsequently taken over by Atul Bansal of the ABW Group.
 - c) Out of the fifteen licenses granted to ABW Group, six were granted in connivance with bureaucrats from different departments, and political/government machinery procured these licenses.
 - d) Atul Bansal sold three licenses and derived proceeds of crime to the tune of Rs. 169,25,15,648/- by way of earning undue profits on the sale of licenses procured on notified land fraudulently in connivance with different departments and State Government machinery.
 - e) To evade the applicable taxes and hide the proceeds of crime, ABWIL entered into various agreements to sell with different companies. These agreements were canceled, and whooping compensation 6-7 times as per agreements was shown as paid to various fictitious buyers. This amount was received back in cash from them.
 - f) During the proceedings before the trial court, Mr. Atul Bansal and Ms. Sona Bansal were declared Proclaimed Offenders vide court orders dated 30.04.2019 and 12.11.2020, respectively.
 - g) Subsequently, the ED filed an Application Under Section 8(7) of PMLA requesting the confiscation of movable and immovable properties as proceeds of crime.
 - h) Section 8(7) of the PMLA, 2002 stipulates that if the trial of the money laundering offense cannot be conducted due to the death of the accused person, the person being declared a proclaimed offender, or for any other valid reason, the Special Court has the authority to consider an application by the Director and pass an order for confiscation or release of the property.
 - i) Vide order dated 31.05.2022 Special Court PMLA, Panchkula, allowed the application filed by ED u/s 8(7) of the PMLA 2002.
 - j) As a result, Atul Bansal and Sona Bansal's movable and immovable properties were confiscated.
9. The ED's next contention is that the Order dated 31.05.2022 passed by the Ld. Special Court (PMLA), Panchkula, under section 8(7) of PMLA, is an Interlocutory Order. It does not finally determine the parties' rights and liabilities but deals with a

procedural or intermediate stage in the proceedings. The distinction between a Final Order and an Interlocutory Order is crucial, as Union Bank of India's challenge through a Criminal Revision petition is premature and not maintainable.

10. Mr. S.V. Raju, Additional Solicitor General of India submits that dehors the above submissions, the appropriate available statutory remedy for the petitioner against the order dated 31.05.2022 lies in Section 8(8) of the PMLA, 2002. Section 8(7) and 8(8) of PMLA, 2002 clearly stipulated that the Special Court can direct the restoration of confiscated property, or any part of it, to a claimant possessing a legitimate interest in the property. Under Section 8(8) of the PMLA, 2002, any person interested in the properties attached by the ED can file an application under 8(8) of the PMLA, 2002 to claim the properties as a claimant. In the matter at hand, the Petitioner can file an application u/s 8(8) of the PMLA, 2002, to claim the rights over the properties at the appropriate stage of the matter before the Special Court (PMLA), Panchkula.

11. The final argument on behalf of ED is that the petitioner has indulged in "Forum shopping" by approaching DRT, HSIIDC, NCLT, and Ld. Special Court, PMLA (Appellate Tribunal) for the same subject matter and amounts. The same subject matter is already being adjudicated by PMLA (Appellate Tribunal) in FPA-PMLA-3130/CHD/2019, which was fixed for 21.05.2024. The Petitioner had filed an Appeal bearing Appeal No. CRA-S-91 of 2023 on 22.11.2022, before Hon'ble P&H High Court against the said Confiscation Order, which was withdrawn on 02.11.2023, with the liberty to avail appropriate remedy (Appropriate remedy would be an Application u/s 8(8) of the PMLA, 2002 before the Special Court (Panchkula). The petitioner for the same cause of action had filed a Writ Petition before the Hon'ble Delhi Court bearing Petition No. 6623 of 2021 on 14.07.2021, which was dismissed on the ground that the matter was already pending before PMLA (Appellate Tribunal), which is still pending before PMLA (Appellate Tribunal).

12. Given the above question of the maintainability of the present revision petition, I have heard counsel for the parties and pursued the record, and its analysis would lead to the following outcome.

13. It would be appropriate to extract Section 8 (1), (5), (7), and (8) of PMLA, 2002, which read as follows:

8. 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 offence under section 3 or is in possession of proceeds of crime], it 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 2[or frozen] 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.

(5) Where on conclusion of a trial of an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money-laundering:

Provided further that the Special Court may, if it thinks fit, consider the claim of the claimant for the purposes of restoration of such properties during the trial of the case in such manner as may be prescribed.

14. The statute provides for confiscating of property where accused is a proclaimed offender and trial cannot be conducted by the reason of detention of accused under S. 8(7) of PMLA. As such, the property in the present case was confiscated by resorting to this provision.

15. However, S. 8(8) of PMLA applies only when the confiscation is under S. 8(5) of PMLA. Thus, the confiscation of property made under S. 8(7) of PMLA cannot be

challenged under S. 8(8) because S. 8(8) applies to confiscation under S. 8(5) of PMLA.

16. To consider the application of The Prevention of Money-laundering (Restoration of Confiscated Property) Rules, 2016, it would be relevant to extract the following rules:

[2(b)]. "claimant" means a person who has acted in good faith and has suffered a quantifiable loss as a result of the offence of Money-laundering despite having taken all reasonable precautions, and is not involved in the offence of money-laundering.

[3]. Manner for restoration of confiscated property.—(1) The Special Court, within forty-five days from the date of passing the order of confiscation under sub-section (5) section 8 of the Act in respect of property, shall cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where the property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.

17. Rule 3 of the Prevention of Money Laundering (Restoration of Confiscated Property) Rules, 2016, would also apply only when the confiscation is under S. 8(5) of PMLA; as such, an application could not have been filed under Rule 3.

18. It would also be relevant to reproduce Rule 3A, which deals with the manner of restoration of property during the trial and is inserted by Notification No. G.S.R. 23(E), dated 11.1.2019 (w.e.f. 26.9.2016), and it reads as follows:

3A. (1). The Special Court, after framing of the charge under section 4 of the Act, on the basis of an application moved for restoration of a property attached under sub-section (1) of section 5, or, seized or frozen under section 17 or section 18 of the Act prior to confiscation, if it thinks fit, may, for the purposes of the second proviso to sub-section (8) of section 8 of the Act, cause to be published a notice in two daily newspapers, one in English language and one in vernacular language, having sufficient circulation in the locality where such property is situated calling upon the claimants, who claim to have a legitimate interest in such property or part thereof, to submit and establish their claims, if any, for obtaining restoration of such property or part thereof.

19. A reading of Rule 3A makes it clear that it applies only when the charges have been framed.

20. In the present case, the charges have not been framed and the accused are proclaimed offenders.

21. S.47 of PMLA provides for appeals and revisions, and it reads as follows:

[47]. Appeal and revision.—The High Court may exercise, so far as may be applicable, all the powers conferred by Chapter XXIX or Chapter XXX of the Code of Criminal Procedure, 1973 (2 of 1974), on a High Court, as if a Special Court within the local limits of the jurisdiction of the High Court were a Court of Session trying cases within the local limits of the jurisdiction of the High Court.

22. Given the above, it is clear that S. 8(8) of PMLA Act and Rules 3 and 3-A of the Prevention of Money Laundering (Restoration of Confiscated Property) Rules, 2016, would not apply in the present case because the accused have been declared as proclaimed offenders and charges have not been framed in the trial.

23. The next question is whether the impugned confiscation order can be challenged by filing a revision petition or exercising inherent jurisdiction under S. 482 CrPC, 1973/528 BNSS. A perusal of the PMLA, 2002, or the Prevention of Money Laundering (Restoration of Confiscated Property) Rules, 2016, does not provide any specific remedy. The test is whether the impugned order is a final or interlocutory order. The answer is irrespective of the outcome of the PMLA trial, and this order cannot be recalled except per the statutory provisions or rules made thereunder. As far as the PMLA Court is concerned, it has attained finality, and the review, modification, alteration, or recalling will be subject to the bar of S. 362 CrPC, 1973/ 403 BNSS, 2023.

24. In *Amar Nath and Ors. v. State of Haryana and Ors.*, MANU/SC/0068/1977; [1977 INSC 155], Hon'ble Supreme Court holds,

[6]. ...It seems to us that the term "interlocutory order" in Section 397(2) of the 1973 Code has been used in a restricted sense and not in any broad or artistic sense. It merely denotes orders of a purely interim or temporary nature which do not decide or touch the important rights or the liabilities of the parties. Any order which substantially affects the rights of the accused, or decides certain rights of the parties cannot be said to be an interlocutory order so as to bar a revision to the High Court against that order, because that would be against the very object which formed the basis for insertion of this particular provision in Section 397 of the 1973 Code.

Thus, for instance, orders summoning witnesses adjourning cases, passing orders for bail, calling for reports and such other steps in aid of the pending proceeding, may no doubt amount to interlocutory orders against which no revision would lie under Section 397(2) of the 1973 Code. But orders which are matters of moment and which affect or adjudicate the rights of the accused or a particular aspect of the trial cannot be said to be interlocutory order so as to be outside the purview of the re-visional jurisdiction of the High Court.

25. In *Amit Kapoor Vs. Ramesh Chander and Ors.*, MANU/SC/0746/2012; [2012 INSC 398], Hon'ble Supreme Court holds,

[9]. ...Another well-accepted norm is that the revisional jurisdiction of the higher court is a very limited one and cannot be exercised in a routine manner. One of the inbuilt restrictions is that it should not be against an interim or interlocutory order.

[13]. It may be somewhat necessary to have a comparative examination of the powers exercisable by the Court under these two provisions. There may be some overlapping between these two powers because both are aimed at securing the ends of justice and both have an element of discretion. But, at the same time, inherent power under Section 482 of the Code being an extraordinary and

residuary power, it is inapplicable in regard to matters which are specifically provided for under other provisions of the Code. To put it simply, normally the court may not invoke its power under Section 482 of the Code where a party could have availed of the remedy available under Section 397 of the Code itself. The inherent powers under Section 482 of the Code are of a wide magnitude and are not as limited as the power under Section 397. Section 482 can be invoked where the order in question is neither an interlocutory order within the meaning of Section 397(2) nor a final order in the strict sense. Reference in this regard can be made to *Raj Kapoor and Ors. v. State of Punjab and Ors.* MANU/SC/0210/1979 : AIR 1980 SC 258 : (1980) 1 SCC 43}. In this very case, this Court has observed that inherent power under Section 482 may not be exercised if the bar under Sections 397(2) and 397(3) applies, except in extraordinary situations, to prevent abuse of the process of the Court. This itself shows the fine distinction between the powers exercisable by the Court under these two provisions. In this very case, the Court also considered as to whether the inherent powers of the High Court under Section 482 stand repelled when the revisional power under Section 397 overlaps. Rejecting the argument, the Court said that the opening words of Section 482 contradict this contention because nothing in the Code, not even Section 397, can affect the amplitude of the inherent powers preserved in so many terms by the language of Section 482. There is no total ban on the exercise of inherent powers where abuse of the process of the Court or any other extraordinary situation invites the court's jurisdiction. The limitation is self-restraint, nothing more. The distinction between a final and interlocutory order is well known in law. The orders which will be free from the bar of Section 397(2) would be the orders which are not purely interlocutory but, at the same time, are less than a final disposal. They should be the orders which do determine some right and still are not finally rendering the Court functus officio of the lis. The provisions of Section 482 are pervasive. It should not subvert legal interdicts written into the same Code but, however, inherent powers of the Court unquestionably have to be read and construed as free of restriction.

26. In a criminal case, an order confiscating property is not an interlocutory order because it determines the rights of interim custody till the conclusion of the criminal trial.

27. Resultantly, the criminal revision is maintainable, and the preliminary objection is overruled.

28. List CRR-476-2024 on Sep 02, 2024.

(ANOOP CHITKARA)
JUDGE

Reserved on: 09.07.2024
Pronounced on: 30.07.2024
anju rani

Whether speaking/reasoned: Yes
Whether reportable: YES.