

[2022 LiveLaw \(SC\) 161](#)

IN THE SUPREME COURT OF INDIA

A.M. KHANWILKAR; C.T. RAVIKUMAR, JJ.

Petition(s) for Special Leave to Appeal (Crl.) No(s). 565/2022; Date : 07-02-2022

M/S KAUSHALYA INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED

VERSUS

UNION OF INDIA & ANR.

Prevention of Money Laundering Act, 2002 - Section 5(1) - The fact that the provisional attachment order is set aside by the High Court, does not per se result in nullifying the adjudication proceedings, which, can proceed and need to be taken to its logical end by the Adjudicating Authority in accordance with law.

Prevention of Money Laundering Act, 2002 - Section 5 - The satisfaction to be recorded by the authorised officer in terms of Section 5 of the PMLA is in two respects. The first is that the property in question had been acquired through proceeds of crime and involved in an offence of money laundering; and the second satisfaction specific in terms of Section 5(1) of the Act is that the owner/occupant of the property, who is in possession, is likely to conceal, transfer or deal with the same in any manner. This satisfaction is recorded for the purpose of interim arrangement during the pendency of the adjudication proceedings for securing the property in question.

Prevention of Money Laundering Act, 2002 - Section 5, 17 and 18 - The adjudication gets triggered after the complaint under Section 5(5) is filed before the adjudicating authority or on an application under Section 17(4) and also 18(10) of the Act.

Prevention of Money Laundering Act, 2002 - Section 5(1) - The power to provisionally attach tainted property is only of the authorised officer upon being satisfied about the existence of circumstances referred to in Section 5(1).

Prevention of Money Laundering Act, 2002 - Section 8 -The adjudication under Section 8 entails finally in confiscation of the tainted property or release thereof.

(Arising out of impugned final judgment and order dated 26-10-2021 in WPCR No. 226/2021 passed by the High Court Of Jharkhand At Ranchi)

For Petitioner(s): Mr. Siddhartha Dave, Sr. Adv. Mr. Indrajit Sinha, Adv. Ms. Anusuya Sadhu Sinha, Adv. Mr. Shubhankar, Adv. Ms. Pallavi Pratap, AOR

ORDER

This special leave petition takes exception to the order passed by the High Court remanding the matter to the concerned authority under the Prevention of Money Laundering Act, 2002 (for short, "PMLA"), to pass a fresh order under Section 5(1), in light of the observations made in the impugned judgment.

According to the petitioner, the High Court having acceded to the argument of the petitioner that the provisional attachment order served on the petitioner did not disclose proper reason, much less tangible reason and only reproduced the provisions of the subject Act, ought not to have relegated the petitioner before the concerned authority for recording of reasons.

It is further urged that provisional attachment order triggers the adjudication proceedings and as the provisional attachment order is set aside by the High Court, no adjudication proceedings can be continued further against the petitioner.

Going by the scheme of Sections 5 and 8 of the PMLA, we have no hesitation in observing that the aforementioned argument is misplaced. The fact that the petitioner has succeeded before the High Court, does not per se result in nullifying the adjudication proceedings, which, nevertheless, can proceed and need to be taken to its logical end by the Adjudicating Authority in accordance with law. The satisfaction to be recorded by the authorised officer in terms of Section 5 of the PMLA is in two respects. The first is that the property in question had been acquired through proceeds of crime and involved in an offence of money laundering; and the second satisfaction specific in terms of Section 5(1) of the Act is that the owner/occupant of the property, who is in possession, is likely to conceal, transfer or deal with the same in any manner.

This satisfaction is recorded for the purpose of interim arrangement during the pendency of the adjudication proceedings for securing the property in question. The adjudication on the other hand, gets triggered after the

complaint under Section 5(5) is filed before the adjudicating authority or on an application under Section 17(4) and also 18(10) of the Act. There is no express provision in the Act, at least brought to our notice, to indicate that once complaint is filed before the Adjudicating Authority, the authorised officer is prevented from passing a provisional attachment order under Section 5(1) of the Act. As a matter of fact, the power to provisionally attach tainted property is only of the authorised officer upon being satisfied about the existence of circumstances referred to in Section 5(1). The adjudication under Section 8 entails finally in confiscation of the tainted property or release thereof.

In other words, the fact that the petitioner has succeeded in persuading the High Court to quash the provisional attachment order passed by the appropriate authority under Section 5(1) of the Act, will in no way impact the adjudication process initiated before the adjudicating authority, which must proceed on its own merits in accordance with law.

In our opinion, therefore, the challenge to the order as passed by the High Court to send back the matter to the appropriate authority to pass a fresh order, if so advised, is unexceptionable. For, the petitioner has succeeded before the High Court on the limited argument that the stated order does not record proper satisfaction as required under Section 5(1) of the Act, but merely reproduces the provisions of the Act. Hence, we decline to interfere in this special leave petition. The special leave petition is accordingly dismissed.

We make it clear that rejection of this special leave petition will not come in the way of the petitioner in pursuing other appropriate remedy including to question the validity of fresh order of provisional attachment, if passed by the appropriate authority.

This order is not an opinion on the merits of the issues, to be dealt with by the adjudicating authority or the appropriate authority, as the case may be.

Pending applications, if any, stand disposed of.