

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

OWP 734/2009
IA(1/2009[1954/2009])

- 1. G. M. Bhat (Aged: 62 years)**
S/o Jalal ud din Bhat.
- 2. Mohsin Mahuf Bhat (Aged: 28 years)**
S/o G.M.Bhat
Both residents of Hyderpora,
Budgam, Kashmir.

...Petitioner(s)

Through: Mr. M.A.Qayoom, Advocate.

V/s

- 1. State of JK through SHO Police Station Udhampur.**
- 2. Designated Authority under**
Unlawful Activities (Prevention) Act, 1967
(Divisional Commissioner), Jammu.
- 3. Sessions Judge, Udhampur.**

...Respondent(s)

Through: None.

Coram: HON'BLE MR. JUSTICE WASIM SADIQ NARGAL, JUDGE

JUDGMENT / ORDER

05.10.2023

Oral:

- 1. The instant Writ Petition has been filed on behalf of the petitioners, whereby they have called in question the impugned orders dated 30.06.2008, 17.11.2008 and 30.06.2009 passed by respondent No.2 and 3 i.e., Designated Authority under Unlawful Activities (Prevention) Act, 1967, (Divisional Commissioner), Jammu and Sessions Judge Udhampur, respectively. Petitioners, by issuance of writ of mandamus against the respondents, are also seeking that the properties seized from the two residential houses/accommodation of**

the petitioners located in Delhi and Hyderpora, be released in favour of the petitioners on any condition which the Court may deem fit and proper under the facts and circumstances of the case.

2. With a view to appreciate the controversy involved, it would be apt to give brief factual background of the instant case.
3. A notice was issued by respondent no.2 on 26.03.2008 to the petitioners indicating therein that Deputy Superintendent of Police, HQ Udhampur, after obtaining search warrant from the CJM Udhampur duly endorsed by Metropolitan Magistrate, Delhi, conducted search of their houses situated at Nadira Apartment 2nd Floor, Johri Farm, Okhla, New Delhi on 08.11.2007 and recovered the cash amounting to Rs. 16,000/-, 02 Laptops, 01 CPU (LG), 04 Floppies, 03 CDs, foreign currencies of different countries, 01 digital camera 'Kodak' and a book titled Constitution of J&K APHC.
4. It was further stated that Superintendent of Police, SSR Jammu, after obtaining search warrant from the CJM Udhampur duly endorsed by Metropolitan Magistrate Delhi, conducted search of the house of the petitioners situated at Green Park, Hyderpora, Budgam Kashmir and recovered 01 Laptop HP, 01 Laptop Toshiba, 01 Laptop Campaq, 03 Passports, 02 Election Photo Identity Cards, 03 Identity cards, 03 Driving licenses, 04 Mobile Phones, cheque books of J&K Bank, 01 ATM card, 19 photographs, consumer pass book of Electric Department, 01 diary of J&K Bank, Medi-claim Policy card, 01 ration card, documents of IRM Industries, revenue papers, map of residential houses, 46 CDs, 19 books and some other documents of vehicle including insurance papers on 18.11.2007.

5. Further case of the petitioners is that the aforesaid notice dated 26.03.2008 was received by petitioner no.1 on 08.04.2008 when he was in Central Jail, Kotebhalwal Jammu and accordingly, submitted his reply through his counsel to the said notice, stating therein that the cash amounting to about Rs.50.00 lacs was declared to have been recovered from a CNG Kit carried by some Delhi based businessman from Udhampur by the J&K Police. This cash, according to the respondents, was linked to the ongoing militancy and was termed as 'hawala' transaction and the petitioner was sought to be involved in the case. Further it was stated that the petitioner no.1 was arrested by police on 04.11.2007 from Qazigund on his way from Delhi to Srinagar and was lodged in police custody. Raids were conducted at the New Delhi residence of the petitioner no.1 during the intervening night of 3/4th November 2007, wherefrom cash amounting to Rs.16,000/-, 02 laptops, 01 CPU (LG make), 04 floppies, 03 CDs, 01 digital camera and certain documents were seized in absence of the petitioner no.1 from the said residence.
6. The specific stand of the petitioners is that at the time of search and seizure, petitioner no. 1 was not present in the house and petitioner no.2 along-with his sister, who both were students, were present at their residence. Further case of the petitioners is that since inventory was prepared in presence of petitioner no.2 but neither any independent person was called to witness the search and seizure nor signatures of petitioner no.2 were taken on the inventory. Petitioners were also not provided copy of the said inventory.

7. Furthermore, it is stated that in a similar fashion, Hyderpora residence of petitioner no.1 was raided during the intervening night of 3/4th November 2007, where petitioner's son and his wife were present.
8. Further stand of the petitioners is that instead of considering the matter in its true and correct perspective, respondent no.2 by virtue of order dated 30.06.2008 confirmed the seizure of cash amounting to Rs.2.50 lacs recovered from Mst. Samina Khan, Rs. 46,89,500/- seized after cutting CNG cylinder and recovered from Jamal Khan, Rs.16,000/- recovered from the residence of petitioner no.1 at Hyderpora, Rs.1500/- from Danish Anwar, Rs.3.00 lacs on his disclosure and Rs.20,000/- from the personal search of Shri R.K.Jain in case FIR No. 252 of 2007 Police Station Udhampur and directed Deputy Superintendent of Police HQ Udhampur to deposit the seized cash into the Government Treasury after appeal period of 30 days.
9. Feeling aggrieved of the orders dated 30.06.2008 and 17.11.2008, the petitioners preferred appeal before respondent no.3.
10. According to learned counsel appearing on behalf of the petitioners, Section 25(6) of the Unlawful Activities (Prevention) Act, 1967 provides that if any person is aggrieved by an order made by the designated authority, he is entitled to prefer an appeal to the court within a period of 30 days from the date of receipt of order and the court may either confirm the order of attachment of property or the seizure so made or revoke such order and release the property.
11. Learned counsel further submits that there is no provision under law where-under the Appellate Authority can remand back the matter to the Designated Authority and in the instant case, the appellate

authority by virtue of order impugned dated 30.06.2009 has remanded the case back to the designated authority for reconsideration and passing of fresh order to that extent. According to learned counsel for the petitioners, the said course of remanding the case back to the Designated authority for reconsideration and passing of fresh order, is not permissible under law as there is a specific bar under Section 25(6) of the Unlawful Activities (Prevention) Act, 1967.

12. Heard learned counsel for the petitioners at length and perused the record. **Admit.**
13. This case was listed before this Court on 20.09.2009, whereby, the proceedings before the Designated Authority were directed to remain stayed, and the said order, as per the learned counsel for the petitioners, is in operation as on date.
14. The record further reveals that a number of opportunities were granted to the respondents for filing reply / counter affidavit, but the respondents have chosen not to file the same.
15. This Court vide order dated 15.12.2022 has made it clear that in case pleadings are not completed within the prescribed time, right to file reply shall stand closed. Since reply has not been filed within the time granted by the Court, therefore, the right to file same stood closed. However, inadvertently, this Court vide order dated 24.08.2023 had granted time to the respondents for filing rejoinder, when infact rejoinder ought to have been filed by the petitioners only subject to filing of counter affidavit / reply. Since no counter affidavit was filed on behalf of the respondents and their right stood closed, there was no

occasion on part of the petitioners to have filed rejoinder in the instant case.

16. Today, when the case is taken up for consideration, there is no representation on behalf of the respondents. Therefore, this Court is left with no other option but to decide the instant case in absence of the reply/counter affidavit of the respondents, as the petitioner is insisting for its disposal.
17. Before proceeding further, it would be apt to reproduce the relevant statutory provisions i.e. Section 25, 26, 27 and 28 of the Unlawful Activities (Prevention) Act, 1967 as under:-

“25. Powers of investigating officer and Designated Authority and appeal against order of Designated Authority. -- (1) If an officer investigating an offence committed under Chapter IV or Chapter VI, has reason to believe that any property in relation to which an investigation is being conducted, represents proceeds of terrorism, he shall, with the prior approval in writing of the Director General of the Police of the State in which such property is situated, make an order seizing such property and where it is not practicable to seize such property, make an order of attachment directing that such property shall not be transferred or otherwise dealt with except with the prior permission of the officer making such order, or of the Designated Authority before whom the property seized or attached is produced and a copy of such order shall be served on the person concerned.

(2) The investigating officer shall duly inform the Designated Authority within forty-eight hours of the seizure or attachment of such property.

(3) The Designated Authority before whom the seized or attached property is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of sixty days from the date of such production: Provided that an opportunity of making

a representation by the person whose property is being seized or attached shall be given.

(4) In the case of immovable property attached by the investigating officer, it shall be deemed to have been produced before the Designated Authority, when the investigating officer notifies his report and places it at the disposal of the Designated Authority.

(5) The investigating officer may seize and detain any cash to which this Chapter applies if he has reasonable grounds for suspecting that—

(a) it is intended to be used for the purposes of terrorism; or

(b) it forms the whole or part of the resources of a terrorist organization:

Provided that the cash seized under this sub-section by the investigating officer shall be released within a period of forty-eight hours beginning with the time when it is seized unless the matter involving the cash is before the Designated Authority and such Authority passes an order allowing its retention beyond forty-eight hours.

Explanation.—For the purposes of this sub-section, “cash” means—

(a) coins or notes in any currency;

(b) postal orders;

(c) traveller’s cheques;

[(ca) credit or debit cards or cards that serve a similar purpose;]

(d) banker’s drafts; and

(e) such other monetary instruments as the Central Government or, as the case may be, the State Government may specify by an order made in writing.

(6) Any person aggrieved by an order made by the Designated Authority may prefer an appeal to the court within a period of thirty days from the date of receipt of the order, and the court may either confirm the order of attachment of property or seizure so made or revoke such order and release the property.

26. Court to order forfeiture of proceeds of terrorism.—Where any property is seized or attached on the ground that it constitutes proceeds of terrorism and the court confirms the order in this regard under sub-section (6) of section 25, it may order forfeiture of such property, whether or not the person from whose possession it is seized or attached, is prosecuted in a court for an offence under Chapter IV or Chapter VI.

27. Issue of show cause notice before forfeiture of proceeds of terrorism.—(1) No order forfeiting any proceeds of terrorism shall be made under section 26 unless the person holding or in possession of such proceeds is given a notice in writing informing him of the grounds on which it is proposed to forfeit the proceeds of terrorism and such person is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of forfeiture and is also given a reasonable opportunity of being heard in the matter.

(2) No order of forfeiture shall be made under sub-section (1), if such person establishes that he is a bona fide transferee of such proceeds for value without knowing that they represent proceeds of terrorism.

(3) It shall be competent for the court to make an order in respect of property seized or attached,—

(a) directing it to be sold if it is a perishable property and the provisions of section 459 of the Code shall, as nearly as may be practicable, apply to the net proceeds of such sale;

(b) nominating any officer of the Central Government or the State Government, in the case of any other property, to perform the function of the Administrator of such property subject to such conditions as may be specified by the court.

28. Appeal.—(1) Any person aggrieved by an order of forfeiture under section 26 may, within one month from the date of the receipt of such order, appeal to the High Court within whose jurisdiction, the court, which passed the order appealed against, is situated.

(2) Where an order under section 26 is modified or annulled by the High Court or where in a prosecution instituted for any offence

under Chapter IV or Chapter VI, the person against whom an order of forfeiture has been made under section 26 is acquitted, such property shall be returned to him and in either case if it is not possible for any reason to return the forfeited property, such person shall be paid the price therefore as if the property had been sold to the Central Government with reasonable interest calculated from the day of seizure of the property and such price shall be determined in the manner prescribed.”

18.Section 25 of the Unlawful Activities (Prevention) Act, 1967 provides a complete mechanism with respect to the powers of the investigating officer, the Designated Authority and the appellate authority against the order of the designated authority.

19.From a bare perusal of Section 25(3), it is manifestly clear that the Designated Authority before whom the seized or attached properties is produced shall either confirm or revoke the order of seizure or attachment so issued within a period of **60** days from the date of such production, provided that an opportunity of making a representation by the person whose property is being seized or attached, shall be given. On the other hand, under Section 25(2), the Investigating Officer is under an obligation to inform the Designated Authority within **48** hours of the seizure or attachment of such property. Thus, it is clear that both for the investigating officer and the designated authority, there is a prescribed period of limitation, which cannot be condoned.

20.In the instant case, once the appellate authority has come to a conclusion that the order passed by the Designated Authority is without any reasoning, then the appellate authority ought to have exercised the power of giving a finding whether the seized property is

proceeds of crime or not. According to the finding recorded by the appellate authority in the order of appeal, which is impugned in the instant petition, the said issue has not been adjudicated by the Designated authority while discharging the duty of considering the representation of the effected persons and exercising his power of confirming the seizure. As per the appellate authority, the designated authority must have recorded a finding as to how he is satisfied with the view taken by the investigating officer that the seized property/ items particularly items like passport, identity cards, cash memos, represent the proceeds of terrorism. The appellate authority was of the view that such onerous power and duty cannot be said to have been discharged by the designated authority by rejecting the explanation without assigning any reason, thereto. Once, the appellate authority was convinced that the order passed by the designated authority was bereft of any reasoning, then the appellate authority ought to have exercised the power under section 25 (6), by revoking such order of the designated authority and releasing the property. The appellate authority instead of acting in conformity with the provisions of Section 25(6), has remanded the case back to the designated authority for reconsideration and passing fresh order, which in a way tentamounts to extending the period of limitation of sixty days, provided under section 25(3) of the Unlawful Activities Prevention Act, 1967, which is not permissible under law.

21.The argument of the learned counsel for the petitioners that the appellate authority only had two options, i.e., either to confirm the order of attachment of the designated authority or to revoke and

release the property, cannot be accepted. This is for the simple reason that the bare wording of Section 25 (6), uses the words that the appellate authority “*may*” resort to these two courses of action. This is in contradistinction to the words used in section 25 (3), wherein, the word, “*shall*” confirm or revoke, albeit in context of the designated authority, has been used instead of “*may*”.

22. However, it must be noted that the statute, under Section 25(3) clearly prescribes a time limit of **60** days for the designated authority to either confirm or revoke the order of attachment. The legislature, in its wisdom while framing the statute, has envisioned that the designated authority “**shall**” within a period of **60** days either confirm or revoke the order of seizure or attachment. In the present facts and circumstances, the appellate authority, has remanded the case back to the designated authority for reconsideration, it would tantamount to an extension of that **60** day limit prescribed by the statute.

23. It must also be noted that there is nothing which prevented the appellate authority from deciding the matter on its merit, without having to shift the onus back on the designated authority, leading to a situation, where the statutory time limit is extended, *de hors* the statute.

24. When there is an expressly prescribed time limit for the designated authority to render its decision within a stipulated time period of 60 days, in the opinion of this court, the appellate authority by no stretch of imagination can infuse jurisdiction in the designated authority to act beyond the statutorily prescribed time limit, even if it is by way of remand.

25. In light of the scheme of the statute, this Court is of the opinion that the appellate authority ought not have remanded the matter back to the designated authority in the facts and circumstances of the present case, as it would de facto tantamount to extending the statutorily prescribed time limit and also, when there was nothing which prevented the appellate authority to have decided the case on its merits without having to remand it back to the designated authority.

26. This Court notes that the designated authority, although has dealt with the representation made by the petitioner herein, however, has not recorded any reasons as to how the seized property represents the proceeds of terrorism. This finding is also reiterated in the order of the Appellate authority. This Court is of the opinion, that in line with the scheme of the Act, instead of remanding the matter back, the appellate authority, while dealing with the matter on its merits, should have decided whether the property represents the proceeds of terrorism as defined in clause 'g' of section 2 of the UAPA. Clause 'g' of Section 2 is reproduced as under:

“2(g). “proceeds of terrorism” means,—

- (i) *all kinds of properties which have been derived or obtained from commission of any terrorist act or have been acquired through funds traceable to a terrorist act, irrespective of person in whose name such proceeds are standing or in whose possession they are found; or*
- (ii) *any property which is being used, or is intended to be used, for a terrorist act or for the purpose of an individual terrorist or a terrorist gang or a terrorist organization.*

Explanation.—For the purposes of this Act, it is hereby declared that the expression “proceeds of terrorism” includes any property intended to be used for terrorism.”

27. It appears from the record and the order passed by the appellate authority, that the said authority, in a way, has refused to exercise the power vested in it and has remanded the matter to the designated authority which as per the statute is not permissible as it tantamounts to extending the period of limitation provided under Section 25(3) of the Unlawful Activities Prevention Act, 1967.
28. I have gone through the order passed by the appellate authority minutely and this Court is of the opinion that the order passed by the appellate authority is silent and no reasons have been spelled out with regard to the fact that what prevented the appellate authority to deal the issue on its merits, rather than remanding the case back to the designated authority for reconsideration and passing a fresh order to that extent by setting aside the said order of the designated authority.
29. What prevented the appellate authority to have recorded a finding whether seized property/items are the proceeds of terrorism or not, is not forthcoming from the record, in absence of any cogent reasons. The powers under an appeal include powers where the merit of the matter and the evidence can be re-appreciated.
30. It is a settled preposition of law that when law requires a particular thing to be done in a particular manner, the act has to be done in that manner only.
31. In this regard, I am fortified with the judgment of Supreme Court in a case titled **Sharif ud din Vs. Abdul Gani Lone** reported as **1980 AIR 303**, wherein it has been observed that :-

“Whenever a statute prescribes that a particular act is to be done in a particular manner and also lays down that failure to comply with the said

requirement leads to a specific consequence, it would be difficult to hold that the requirement is not mandatory and the specified consequence should not follow.”

32. A similar observation has been given by the Apex Court in a case titled **Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala & Ors.** reported as (2002) 1 SCC 633, which reads as under:-

“It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself.”

33. From the perusal of Section 25(6) of the Unlawful Activities (Prevention) Act, 1967, as reproduced hereinabove, it is apparent that there were only two options available for the Appellate Authority while considering the appeal filed by the petitioners against the order passed by respondent no.2, either to confirm the order of attachment of property or seizure so made or revoke such order and release the property.

34. As per the finding recorded by the Appellate authority, the onerous power and duty has not been discharged by the designated authority by rejecting the explanation without assigning any reason thereto. The Appellate authority has further recorded a finding that the Designated authority while rejecting the representation filed by the petitioner no.1 without assigning any reason for the same and confirming the attachment, has not duly exercised his jurisdiction and the Appellate authority has further gone to the extent of observing that failure on the part of the Designated authority in this regard, is evident

from the fact that having passed the original order of confirmation dated 30.06.2008 as regards various monies seized by the Investigating Officer, and by a simple stroke of pen, extended its operation as regards all the seized articles under the subsequent order dated 17.11.2008.

35. This Court is of the view that once, the Appellate authority was of the considered opinion that order passed by the Designated authority was not in consonance with law, as the said order has been passed without assigning any reason, then the only course which was available to the Appellate authority was to revoke such order in *toto* or else could have decided the case on its own merits by appreciating all the material facts on record and couldn't have remanded the case back to the Designated authority to act in derogation to the mandate and spirit of Section 25(3) of the Unlawful Activities (Prevention) Act, 1967. Thus, the order passed by the Appellate authority is in flagrant violation of the statutory provisions as envisaged under Section 25 of the Unlawful Activities (Prevention) Act, 1967.

36. For the reasons stated hereinabove, this petition is allowed to the extent that the order impugned dated 30.06.2009 passed by the Appellate authority is set aside/quashed and the matter is remanded back to the Appellate authority to decide the appeal of the petitioners afresh, strictly in conformity with provisions of Section 25 of the Unlawful Activities (Prevention) Act, 1967. It is, however, made clear that the Appellate authority before initiating proceedings afresh, shall issue notice to all the parties concerned and decide the appeal

expeditiously, as per law after providing an opportunity of being heard to all the concerned.

37. Disposed of in the manner indicated above along-with connected applications.

(WASIM SADIQ NARGAL)
JUDGE

Srinagar
05.10.2023
Muzammil. Q

Whether the Judgment/Order is Reportable: Yes

Whether the Judgment/Order is Speaking: Yes

