

M/s. Obulapuram Mining Company Pvt. Ltd., Represented by its Director Vs. Joint Director, Directorate of Enforcement and Others

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Court : Karnataka

Decided On : Mar-13-2017

Judge : The Honourable Chief Justice Mr. Subhro Kamal Mukherjee & R.B. Budihal

Appeal No. : Writ Petition Nos. 5962, 11442 & 11440-11441 of 2016 (GM-MM-C)

Appellant : M/s. Obulapuram Mining Company Pvt. Ltd., Represented by its Director

Respondent : Joint Director, Directorate of Enforcement and Others

Judgement :

(Prayer: This Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the ECIR Dated 22.9.2010 at Annexure-B passed by R-1, Provisional Attachment Order Dated 4.12.2012 at Annexure-G passed by R-1 and Complaint U/S. 5[5] of the Act at Annexure-D Dated 17.12.2012 filed by R-1 and proceedings under PMLA, 2002 against the Petitioner. and etc.

This Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the ECIR at Annexure-C passed by R-1; Complaint u/s 5(5) of the Act at Annexure-E filed by R-1; Provisional Attachment Order No. 8/2012 dated 04.12.2012 at Annexure-B passed by R-1 and proceedings under PMLA 2002 against the petitioner, and etc.

These Petitions are filed under Articles 226 and 227 of the Constitution of India, praying to quash Original Complaint No. 293/2014 Dated 11.04.2014 at Annexure-C and Provisional Attachment Order No. 7/2014 Dated 28.03.2014 at Annexure-B and proceedings under PMLA, 2002 against the Petitioners and etc.)

1. 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 120B, 420 and 411 of the Indian Penal Code 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 paperbook 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 'schedule 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 120B, 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 paperbook, 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. 11440-11441 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. In so far 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 ` 480 crore [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.

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