

2025 LiveLaw (SC) 338

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

ABHAY S. OKA; J., NONGMEIKAPAM KOTISWAR SINGH; J.

March 05, 2025

CRIMINAL APPEAL NO.1102 OF 2025 (Arising out of S.L.P.(Criminal) No.5706 of 2023)

UNION OF INDIA versus J.P. SINGH

Prevention of Money Laundering Act, 2002 - Person need not be named as accused in complaint to retain seized property under Section 8(3). (Para 10)

For Petitioner(s): Mr. Zoheb Hossain, Adv. Mr. Annam Venkatesh, Adv. Mr. Vivek Gurnani, Adv. Mr. T.S. Sabarish, Adv. Mr. Saurabh Kumar Kaushik, Adv. Mr. Gurmeet Singh Makker, AOR

For Respondent(s): Mr. J.P. Singh, in-person

ORDER

Leave granted.

2. Heard the learned counsel appearing for the parties.

3. A very narrow issue arises for our consideration which is flagged by this Court in order dated 27th March, 2023, while issuing notice.

4. A reference to only few basic facts will be necessary. On 17th March, 2017, ECIR was registered by the Enforcement Directorate (for short, "the ED") against the respondent and others. During the course of search on 13th October, 2017, various electronic items, documents and cash were seized by the ED. The Adjudicating Authority passed an order on 4th April, 2018 under Section 8(3) of the Prevention of Money Laundering Act, 2002 (for short, "the PMLA") confirming the earlier order under Section 17(4) of the PMLA. A complaint was filed on 8th February, 2018 under Section 44 of the PMLA on which cognizance was taken by the Special Court on 19th February, 2018.

5. In an appeal preferred by the respondent before the Appellate Authority against the order dated 4th April, 2018, on 25th April, 2019, the Appellate Authority came to a conclusion that the order under Section 17(4) of the PMLA which was confirmed on 4th April, 2018 will cease to exist after completion of period of 90 days, as provided in clause (a) of Section 8(3) of the PMLA. This order was confirmed by the High Court by the impugned judgment.

6. The learned counsel appearing for the appellant submitted that in this case, Section 8 as it existed from 14th May, 2015 till 18th April, 2018 will apply. He pointed out that till 18th April, 2018, clause (a) of sub-section (3) of Section 8 did not contain any time-limit. It provided that the order of the Adjudicating Authority of seizure of the record will continue during the pendency of proceedings relating to any offence under the PMLA before a Court. He submitted that even assuming that clause (a) of sub-Section (3) of Section 8, as in force from 19th April, 2018 till 19th March, 2019, is applied, it provided that the order of retention or seizure will continue during investigation for a period not exceeding 90 days or the pendency of the proceedings relating to any offence under the PMLA. Therefore, he submitted that the order is completely erroneous.

7. The respondent appearing in person submitted that he is not made accused in the complaint filed by the appellant under Section 44 of the PMLA. He submitted that the electronic items, documents etc. seized have been unnecessarily retained by the appellant for inordinarily long time though the same are not relevant for the complaint filed by the appellant. He states that, even as of today, the same have not been relied upon or

used by the appellant in the complaint. He submitted that continuation of the order of retention will be unjust in this case.

8. A very limited issue arises for consideration in this appeal. The issue is about the period for which the order of attachment or retention or freezing passed by the Adjudicating Authority under sub-Section (3) of Section 8 will continue to operate. Section 8 of the PMLA was amended from time to time. We are concerned with Section 8 which was on the statute book from 14th May, 2015 till 18th April, 2018 (both days inclusive). Sub-Section (3) of Section 8 which was on the statute book during the said period reads thus:

"(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money laundering he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or [record seized or frozen. under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention on freezing of the seized or frozen property]

(a) continue during the pendency of the proceedings relating to offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the [Special Court];"

9. Therefore, at the relevant time, in view of clause (a) of sub-Section (3) of Section 8, the order of the Adjudicating Authority continued during the pendency of the proceedings relating to an offence under the PMLA before a Court. The respondent appearing in person does not deny that this was the provision which was applicable at the relevant time. But he submits that he was not named as an accused in the complaint filed under Section 44 of the PMLA and therefore, there was no proceedings pending.

10. There is no dispute that the complaint is based on ECIR dated 17th March, 2017 in which the respondent was shown as one of the accused. Moreover, clause (a) will apply during the continuation of the proceedings relating to an offence under the PMLA in a Court. There is no dispute that when an order under Section 8(3) was passed, the proceedings of a complaint under Section 44 of the PMLA was pending before the Special Court and cognizance of the offence under Section 3 of the PMLA was taken on the basis of the complaint. For attracting clause (a), it is enough if a complaint alleging commission of offence under Section 3 of the PMLA is pending. It is not necessary for the applicability of clause (a) that the person affected by the order under Section 8(3) must be shown as an accused in the complaint. The complaint under Section 44 will always relate to the offence under Section 3 punishable under Section 4 of the PMLA. The order of cognizance is of the offence and not of the accused or the offender.

11. Therefore, when an order under sub-Section (3) of Section 8 of the PMLA was passed, in view of clause (a) of sub-Section (3) of Section 8 as applicable on that day, the order was to continue till the disposal of the complaint.

12. We may note here that the Appellate Authority and the High Court have relied upon the amended Section 8 which came into force on 19th April, 2018. The amended sub-Section (3) reads thus:

"(3) where the Adjudicating Authority decides under sub-section (2) that any property is involved in money laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or [record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property]

(a) continue during [investigation for a period not exceeding ninety days or] the pendency of the proceedings relating to [offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and]...."

13. Obviously, the amended clause (a) was not applicable when the order dated 4th April, 2018 was passed under Section 8(3). Even assuming that the amended clause (a) was applicable, even after completion of investigation for 90 days, the order under Section 8(3) would continue to operate as the complaint remained pending. Therefore, in our view, the Appellate Tribunal as well as the High Court have committed an error and both orders deserve to be set aside.

14. Accordingly, we quash and set aside the impugned judgment and order dated 16th February, 2022 of the High Court and the impugned order dated 25th April, 2019 passed by the Appellate Tribunal and restore the order dated 4th April, 2018 passed by the Adjudicating Authority with a clarification that the same shall continue to remain in force till the disposal of the complaint.

15. At this stage, the respondent appearing in person submits that in view of Section 21(2) of the PMLA, he is entitled to copies of the records which are ordered to be retained under Section 17(4) of the PMLA.

16. We direct that on a formal application being made by the respondent, compliance with sub-Section (2) of Section 21 shall be made by the appellant within three weeks.

17. The appeal is accordingly allowed.

© All Rights Reserved @LiveLaw Media Pvt. Ltd.

*Disclaimer: Always check with the original copy of judgment from the Court website. Access it [here](#)