

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE THE CHIEF JUSTICE MR. A.J. DESAI

&

THE HONOURABLE MR. JUSTICE V.G. ARUN

THURSDAY, THE 21<sup>ST</sup> DAY OF SEPTEMBER, 2023 / 30TH BHADRA, 1945

WA NO. 1450 OF 2023

[AGAINST THE JUDGMENT IN WP(C) NO. 21061/2023 DATED 08-08-2023 OF  
HIGH COURT OF KERALA]

APPELLANTS/PETITIONERS:

- 1 SANTIAGO MARTIN,  
SON OF SHRI SANTIAGO,  
RESIDING AT 135/1, THIRUVALLUVAR STREET,  
VELLAKINAR, PIRIVU, G.N MILLS POST,  
COIMBATORE, TAMIL NADU - 641029.
- 2 FUTURE GAMING AND HOTEL SERVICES PVT. LTD.,  
54, METTUPALAYAM ROAD, G.N MILL POST,  
COIMBATORE, PIN - 641029,  
REPRESENTED BY ITS MANAGING DIRECTOR  
MR. SANTIAGO MARTIN.

BY ADVS. SRI. ARYAMA SUNDARAM (SENIOR)  
SMT. ROHINI MUSA,  
SRI. ABISHEK SINGH,  
SRI. AMIT BALLA  
SRI. A. KUMAR  
SMT. G. MINI (1748)

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA,  
REPRESENTED BY THE SECRETARY,  
MINISTRY OF FINANCE,  
NEW DELHI, PIN - 110001.
- 2 THE ADDITIONAL DIRECTOR,  
ENFORCEMENT DIRECTORATE, COCHIN ZONAL OFFICE,  
KANOOS CASTLE, A.K SHESHADRI ROAD,  
(MULLASERY CANAL ROAD WEST), COCHIN - 682011.

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- 3 THE DEPUTY DIRECTOR,  
ENFORCEMENT DIRECTORATE, COCHIN ZONAL OFFICE,  
KANOOS CASTLE, A.K SHESHADRI ROAD,  
(MULLASERY CANAL ROAD WEST), COCHIN - 682011.
- 4 ASSISTANT DIRECTOR,  
ENFORCEMENT DIRECTORATE, COCHIN ZONAL OFFICE,  
KANOOS CASTLE, A.K SHESHADRI ROAD,  
(MULLASERY CANAL ROAD WEST), COCHIN, PIN - 682011.

BY ADVS. SRI. L. SUNDARESHAN, ASGI FOR ED  
SRI. JAISHANKAR V. NAIR, CGC  
SRI. S. MANU, DSGI

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 14.09.2023, THE  
COURT ON 21.09.2023 DELIVERED THE FOLLOWING:

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## J U D G M E N T

**A.J. Desai, CJ**

To what extent the High Court would be justified in entertaining a writ petition under Article 226 of the Constitution of India when “adjudication” of the provisional attachment of properties is in progress, as provided under Section 8 of the Prevention of Money-Laundering Act, 2002 (‘the PMLA Act’, for short), and the decision of such adjudicating authority would be subject to appeal under the Act itself, is the question to be decided in this *intra* court appeal filed under Section 5 of the Kerala High Court Act, 1958.

2. The brief facts emerging from the records are that, against petitioner No.1, who is one among the two partners of a partnership firm viz., M/s. M.J. Associates, Palakkad, the 2<sup>nd</sup> petitioner, a private limited company of which petitioner No.1 is the Managing Director, and other different entities, a charge sheet was filed by the Central Bureau of Investigation under

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Sections 120(b) and 420 of the Indian Penal Code, 1860, Sections 4(d), 4(f), 9 r/w. 7(3) of the Lotteries (Regulation) Act, 1998, and Rules 3(5) and 4(5) of the Lottery (Regulation) Rules, 2010, on 03.02.2014, in the Court of Chief Judicial Magistrate, Ernakulam, alleging 7 types of illegal transactions carried out in connivance with each other.

3. The Department of Enforcement, Cochin Zone, received information from the Superintendent of Police, Central Bureau of Investigation, Cochin, about certain transactions recorded in the charge sheet filed during February, 2014. Having examined the materials placed before the Directorate of Enforcement, the officer found a *prima facie* case for the offence under Section 3 of the PMLA Act, 2002, having been committed and advised for further investigation.

4. As provided under Section 5(1) of the PMLA Act, the Enforcement Directorate authority found that the proceeds of crime involved therein are to the tune of Rs.910,29,87,566/- and

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accordingly, a provisional attachment order came to be passed on 31.03.2016.

5. Later, as provided under Section 5(5) of the PMLA Act, a complaint stating the facts of such attachment came to be filed before the adjudicating authority established under the said Act. Both these proceedings, i.e., passing order of provisional attachment and filing a complaint under Section 5(5) of the PMLA Act, came to be challenged by the 1<sup>st</sup> appellant by filing W.P.(C) No. 22327/2016 before this Court.

6. By passing an interim order dated 04.08.2016, a learned Single Judge of this Court permitted to continue the proceedings initiated against the petitioner/1<sup>st</sup> appellant herein. However, the adjudicating authority was directed to decide the question of jurisdiction raised by the petitioner against the said proceedings. Said writ petition is pending for final disposal before the learned Single Judge.

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7. The petitioner also filed an application for discharge, being Crl.M.P. No. 2079/2016, before the learned Single Judge in the CBI case, which is also pending adjudication. The ED authorities then filed a criminal complaint under Section 45 of the PMLA Act, which is numbered as S.C. No.533/2018 and is pending trial before the Special Court for Trial of PMLA case/Special Court (SPE, CBI) - I, Ernakulam. As per the said complaint, which is numbered as S.C. No.533/2018, it is alleged by the complainant that the present appellant has 51% share in M/s. M.J. Associates, whereas his partner viz., Sri. N. Jayamurugan has 49% of share. It was alleged that out of the several illegal transactions, the estimate of certain properties derived and obtained as a result of criminal activities relating to a scheduled offence of the Act, which is defined as “proceeds of crime”, was to the tune of Rs.910,29,87,566/-.

8. The ED authorities thereafter passed several provisional attachment orders between 2016 and 2023. Following are the

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details of the Provisional Attachment Orders (PAO) and the value of the properties attached under the aforesaid orders:

| Sl. No. | PAO No. & Date           | Value of Attachment<br>(in Rs.) |
|---------|--------------------------|---------------------------------|
| 1       | 2/2016 dated 31.03.2016  | 122,04,03,525/-                 |
| 2       | 2/2017 dated 09.03.2017  | 16,52,04,750/-                  |
| 3       | 2/2019 dated 22.07.2019  | 119,59,54,679/-                 |
| 4       | 07/2021 dated 22.12.2021 | 19,59,08,000/-                  |
| 5       | 06/2022 dated 01.07.2022 | 173,47,74,565/-                 |
| 6       | 03/2023 dated 09.06.2023 | 459,07,42,047/-                 |
|         | <b>Total</b>             | <b>910,29,87,556/-</b>          |

9. The total value of the attached properties upto 1.7.2022 comes to Rs.451,22,45,519/-. The properties referred herein-above at Serial Nos. 1, 3, 4 and 5 worth Rs.434,70,40,769/- belonged to the 1<sup>st</sup> appellant, whereas the property to the tune of Rs.16,52,04,750/-, referred at Serial No.2, belonged to his partner Sri. N. Jayamurugan.

10. Meanwhile, a supplementary charge sheet was filed in S.C. No.533/2018. By order dated 12.05.2023, the ED authorities, exercising its power under Section 17 of the PMLA Act, froze

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certain bank accounts, mutual funds, fixed deposits, etc., amounting to Rs.1,57,68,57,503/-.

11. After recording several further statements, the respondent/ED authorities again passed provisional attachment order No.3 of 2023 on 09.06.2023, attaching the properties of the 1<sup>st</sup> appellant only to the tune of Rs.459,07,42,047/-, referred herein-above as item No.6. The 1<sup>st</sup> appellant/original petitioner being aggrieved by the said order and also the order of freezing under Section 17(1A) of PMLA Act dated 12.05.2023, filed the subject writ petition before the learned Single Judge on various grounds, seeking to quash the same by issuing a writ of *certiorari*.

12. The respondent/ED authorities filed a detailed counter affidavit dated 13.07.2023 through the Assistant Director of Director of Enforcement, to which a rejoinder came to be filed by the appellants/writ petitioners.

13. The learned Single Judge, by the impugned judgment, dismissed the writ petition, mainly on two grounds: that there is

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an alternative efficacious remedy available to the appellants, as well as to raise all the contentions, which have been raised in the memo of petition, before the adjudicating authority since, in view of the fact that during the pendency of the petition, a complaint has been filed before the adjudicating authority under Section 5(5) of the PMLA Act, and a competent independent authority is adjudicating all the issues. Hence, this appeal.

14. Learned Senior Advocate Sri. Aryama Sundaram, ably assisted by Sri. A. Kumar, learned counsel for the appellants, vehemently submitted that the learned Single Judge had committed a grave error in rejecting the writ petition on the grounds of availability of alternative remedy. He would further submit that there is no alternative efficacious remedy against an order passed under Section 5(1) of the PMLA Act, by which the competent officer passes an order of provisional attachment of the property. He would also submit that the Appellate Tribunal, constituted under Section 25 of the Act, has the power to deal with

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appeals, against orders of the adjudicating authority, as provided under Section 26 of the Act.

15. Learned Senior Advocate appearing for the appellants would further submit that there is no alternative remedy of filing an appeal, since Section 26 of the PMLA Act does not empower the Appellate Tribunal to examine the validity of the provisional attachment order. According to him, an aggrieved person can get the remedy of filing an appeal provided under sub-section (6) of Section 26 only subsequent to an order passed by the adjudicating authority. In the captioned writ petition, appellants have challenged the provisional attachment order dated 09.06.2023 and the order of seizure passed under Section 17(1A) of the PMLA Act. Therefore, the only remedy available to an aggrieved person questioning the legality of the two orders above would be to request the High Court to exercise its powers under Article 226 of the Constitution of India and to issue a writ of mandamus or any appropriate writ, seeking to quash the said orders. Hence, the

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learned Single Judge ought not to have dismissed the writ petition on that ground.

16. In support of his submissions, learned Senior Advocate appearing for the appellants has relied upon the decision of the Hon'ble Supreme Court in Godrej Sara Lee Ltd. v. Excise & Taxation Officer [Judgment in Civil Appeal No. 5393 of 2010 dated 01.02.2023], wherein it has been held that even if there is an alternative remedy, if the Court finds that the petitioner is seeking enforcement of any of his fundamental rights; where there is violation of principles of natural justice; where the order or the proceedings are without jurisdiction; or where the *vires* of an Act is challenged, the court can exercise its writ jurisdiction and deal with such cases. He would submit that in the present case, the authority has passed the impugned order dated 09.06.2023 without jurisdiction and, therefore, the same is unreasonable and perverse, in view of the fact that there is no relevant material whatsoever to provisionally seize the additional

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properties of the appellants when it is the case of the respondent authority itself that the share of appellant No.1 in the partnership is to the tune of 51% only.

17. By relying upon another decision of the Hon'ble Apex Court in Assistant Commissioner of State Tax and Others v. Commercial Steel Limited [Judgment in Civil Appeal No.5121 of 2021 arising out of S.L.P(C) No.13639 of 2021 dated 03.09.2021], wherein it has been held that even if an alternative remedy is available if the Court finds that it is a case of excess of jurisdiction, the Court may interfere with such orders and deal with the same under Article 226 of the Constitution of India, learned Senior Advocate would submit that the learned Single Judge while passing the impugned judgment, ought to have examined all the orders passed under Section 5(5) of the PMLA Act, compared the allegations made against the appellants, and ought to have held that the authority has passed the impugned provisional attachment order in excess of its jurisdiction.

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18. By relying upon another decision of the Hon'ble Apex Court in Union of India and Others v. Tantia Construction Private Limited reported in (2011) 5 SCC 697, particularly referring to paragraph (33), learned Senior Advocate for the appellants would submit the High Court or Supreme Court can interfere with an injustice, whenever and wherever it takes place, and can strike it down as an anathema to the rule of law and the provisions of the Constitution.

19. By relying upon another decision of the Hon'ble Apex Court in State of H.P. and Others v. Gujarat Ambuja Cement Ltd., reported in (2005) 6 SCC 499, the learned Senior Advocate appearing for the appellants would submit that the Hon'ble Apex Court has dealt with the recourse of exercising powers under writ jurisdiction even if an alternative remedy is available. By taking us through the complaint which was filed in the year 2018, wherein an additional charge sheet was laid, he would submit that, it is the case of the respondent authority itself that the

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proceeds of crime derived from the illegal transactions by the 1<sup>st</sup> appellant is only to the tune of Rs.464.25 Crores (51% of his share in the total proceeds of crime to the tune of Rs.910,29,87,556/-), whereas, in the provisional attachment order dated 9.6.2023, another property of the 1<sup>st</sup> appellant to the tune of Rs.459,07,42,047/- has been attached, which is beyond the scope of the “proceeds of crime”.

20. By taking us through the order dated 9.6.2023, the learned Senior Advocate would also submit that the authority has not referred to any additional material to establish that the proceeds of crime received by the 1<sup>st</sup> appellant are more than Rs.464.25 Crores, and therefore, the case is required to be dealt with as if the authority has acted in excess of its jurisdiction.

21. By relying upon a decision of the Hon’ble Supreme Court in Vijay Madanlal Choudhary and Others v. Union of India and Others [Judgment in S.L.P(C) Nos.28394 of 2011 and connected cases dated 27.07.2022], learned Senior Advocate appearing for

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the appellants would submit that the authority cannot come to the conclusion that all the properties belonging to the 1<sup>st</sup> appellant are the proceeds of crime, particularly when the authority itself has held that the proceeds of crime derived by the 1<sup>st</sup> appellant is to the tune of Rs.464.25 Crores. Therefore, there is no reason to pass additional orders to attach all the properties belonging to the 1<sup>st</sup> appellant.

22. Another submission made by the learned Senior Advocate is with regard to the reasons recorded by the respondent authority while passing the orders of provisional attachment. He would submit that any officer exercising his power under Section 5 of the PMLA Act has to record the reasons for his belief, based on the material produced before him, for finding a person to be in possession of the proceeds of crime, which is lacking in the case on hand.

23. By relying upon another decision of the Hon'ble Apex Court in **Bhikhubhai Vithlabhai Patel and Others** v. **State of**

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**Gujarat and Another** reported in (2008) 4 SCC 144, the learned Senior Advocate for the appellants would submit that the words “is satisfied”, “is of the opinion”, “**has reason to believe**” are indicative of subjective satisfaction and such belief should be recorded on relevant facts. Therefore, in the absence of such facts/material available on record, the belief recorded by the authority is vitiated. Hence, the order ought to have been quashed by the learned Single Judge.

24. The decision in the case of **State of U.P. and Others** v. **Aryaverth Chawal Udyog and Others** reported in (2015) 17 SCC 324 is relied on to submit that if the authority is passing another order on the basis of the same facts and material available, which was therein while passing the earlier orders, the same is required to be dealt with accordingly. He, therefore, would pray that the appeal be allowed by quashing the judgment delivered by the learned Single Judge, and accordingly, the orders impugned in the writ petition be also quashed.

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25. Learned Senior Advocate appearing for the appellants would further submit that the respondent authority has provisionally attached the property of the 1<sup>st</sup> appellant's partner only to the tune of Rs.16,52,04,750/-. He would also submit that the appellants were able to collect information about the property belonging to his partner, Sri. N. Jayamurugan, which is more than Rs.1000 Crores; therefore, the authority could have attached the property belonging to the partner and not the appellants. In support of this submission, the learned Senior Advocate has produced before this Court the relevant documents.

26. On the other hand, learned Additional Solicitor General of India Sri. L. Sundareshan ably assisted by Sri. Jaishankar V. Nair, learned counsel appearing for the respondent/Director of Enforcement, would vehemently oppose the appeal. He has supported the orders passed by the Enforcement Directorate authority and the judgment impugned in this appeal.

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27. The learned ASGI would submit that, during the pendency of the writ petition in which the provisional attachment orders and other orders of freezing the account came to be challenged, the respondent authorities had already made a complaint to the adjudicating authority under Section 5(5) of the PMLA Act. He would submit that the adjudicating authority, established under Section 6 of the PMLA Act, which is an independent authority consisting of judicial members, can adjudicate all the issues raised in the subject writ petition and argued in this appeal.

28. He would further submit that the adjudicating authority has all the powers to deal with a complaint submitted before it under Section 5(5) of the PMLA Act. If the adjudicating authority refuses to accept the complaint or adjudicate accordingly, it may lead to the filing of a criminal case. Either party, including the authority, if aggrieved by the order passed by the adjudicating authority, can file an appeal under Section 26 of the Act,

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particularly under sub-section (1) of Section 26. That apart, even a decision rendered by the Appellate Tribunal is appealable under Section 42 of the Act. Any person aggrieved by the decision or order of the Appellate Tribunal would be entitled to file an appeal before the High Court within the prescribed period of limitation. He would, therefore, submit that the learned Single Judge has rightly refused to entertain the writ petition filed against a provisional attachment order, which is yet to be scrutinised by the competent authority, which is an adjudicating authority. The life of the order passed under sub-section (5) of Section 5 of the Act is 180 days, and therefore, the adjudicating authority has already issued notices to all the parties based on the complaint under Section 5(5). The said proceeding is in progress and is being adjourned at the instance of the appellants, pointing out the pendency of this writ appeal.

29. He would further submit that the High Court would be loath to scrutinise all the bulky materials to compare two

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different provisional attachment orders in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India. The adjudicating authority, already seized of the matter, will scrutinise the materials and deliver its verdict on whether an additional charge sheet is required to be filed in connection with the provisional order dated 09.06.2023.

30. He would further submit that against the order passed under Section 5(1) of the PMLA Act, i.e., passing orders of provisional attachment, no direct appeal is provided, but when the adjudicating authority has complied with Section 5(5) of the Act, i.e., filing of complaint after recording reasons, within the prescribed period of 30 days and the authority is seized of the matter, and whose order is appealable, it is as good as availability of alternative remedy.

31. Placing reliance on the decision of the Hon'ble Apex Court in the case of **South Indian Bank Limited and Others** v. **Naveen Mathew Philip and Another** [Judgment in Civil Appeal

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Nos. of 2023 arising out of S.L.P(C) Nos.22021-22022 of 2022 dated 17.04.2023], learned ASGI would submit that the High Court has discretionary power not to entertain a writ petition when efficacious alternative remedy is available to the aggrieved party. He would also submit that this is a case where the learned Single Judge did not find any reason to exercise its discretionary power under Article 226 of the Constitution of India, as the issue is being scrutinised in detail by the competent authority established under Section 6 of the PMLA Act.

32. Placing reliance on another decision of the Hon'ble Apex Court in **Special Director and Another. v. Mohd. Gulam Ghouse and Another** reported in (2004) 3 SCC 440, learned ASGI would submit that when alternative efficacious remedy is available to the appellants, ordinarily, the High Court would not entertain such writ petitions.

33. The learned ASGI has taken us through the provisional attachment order dated 9.6.2023, which is impugned in the

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subject writ petition to submit that several statements have been recorded and the authority had found sufficient reason to seize the properties of the appellants mentioned therein, which does not call for any scrutiny under Article 226 of the Constitution.

34. He would further submit that, as regards the submission made by the learned Senior Advocate for the appellants about the property belonging to the partner, of which the details have been produced for the first time in this appeal by the appellants, the same can be produced before the adjudicating authority and the adjudicating authority is expected to deal with all such material and is empowered to pass appropriate orders, accepting or refusing the case put forward by the appellants. Therefore, according to the learned ASGI, all these documents are not required to be examined by this Court in this intra-court appeal.

35. We have heard the learned Senior Advocate appearing for the appellants, as well as the learned Assistant Solicitor General of India, and perused the provisional attachment orders

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issued between 2016 and 2022, including the attachment order dated 9.6.2023 challenged in the writ petition.

36. It is an undisputed fact that the provisional attachment order is dated 09.06.2023, which the appellants immediately challenged by filing the captioned writ petition. Before filing the writ petition, an order had been passed under sub-section (1) of Section 5 of the PMLA Act. However, within 30 days, as provided under Section 5(5) of the Act, the appellants filed a complaint before the adjudicating authority, as provided under Section 6 of the Act. Section 5 of the PMLA Act reads as under:

**“5. Attachment of property involved in money-laundering.**

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this Section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

- (a) any person is in possession of any proceeds of crime; and
- (b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

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he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

PROVIDED that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

PROVIDED FURTHER that, notwithstanding anything contained in [first proviso], any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

PROVIDED ALSO that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.;

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of

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the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under [sub-section (3)] of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

*Explanation.* — For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.”

37. Under Section 25 of the PMLA Act, the Appellate Tribunal is constituted, and Section 26 provides for the appealable orders.

Section 26 of the PMLA Act reads as under:

**“26. Appeals to Appellate Tribunal.**

(1) Save as otherwise provided in sub-section (3), the Director or any person aggrieved by an order

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made by the Adjudicating Authority under this Act, may prefer an appeal to the Appellate Tribunal.

(2) Any [reporting entity] aggrieved by any order of the Director made under sub-section (2) of section 13, may prefer an appeal to the Appellate Tribunal.

(3) Every appeal preferred under sub-section (1) or sub-section (2) shall be filed within a period of forty-five days from the date on which a copy of the order made by the Adjudicating Authority or Director is received and it shall be in such form and be accompanied by such fee as may be prescribed:

PROVIDED that the Appellate Tribunal may, after giving an opportunity of being heard, entertain an appeal after the expiry of the said period of forty-five days if it is satisfied that there was sufficient cause for not filing it within that period.

(4) On receipt of an appeal under sub-section (1) or sub-section (2), the Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.

(5) The Appellate Tribunal shall send a copy of every order made by it to the parties to the appeal and to the concerned Adjudicating Authority or the Director, as the case may be.

(6) The appeal filed before the Appellate Tribunal under sub-section (1) or sub-section (2) shall be dealt with by it as expeditiously as possible and endeavour shall be made by it to dispose of the appeal finally within six months from the date of filing of the appeal.”

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38. It is true that there is no provision for challenging an order of provisional attachment, passed under Section 5(1) of the PMLA Act. In the absence of any statutory appeal being provided to challenge a provisional attachment order, a petition under Article 226 of the Constitution of India may be maintainable on its own merits, and the Court may examine the case on hand and may or may not entertain the writ petition on its merit. However, dealing with the present facts of the case, it is undisputed that the complaint under Section 5(5) of the PMLA Act has already been made before the adjudicating authority, and notices have already been issued.

39. Section 6 of the PMLA Act provides composition powers of the adjudicating authority, and the same reads as under:

**“6. Adjudicating Authorities, composition, powers, etc.—**

(1) The Central Government shall, by notification, appoint [an Adjudicating Authority] to exercise jurisdiction, power and authority conferred by or under this Act.

(2) An Adjudicating Authority shall consist of a Chairperson and two other Members:

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PROVIDED that one Member each shall be a person having experience in the field of law, administration, finance or accountancy.

(3) A person shall, however, not be qualified for appointment as Member of an Adjudicating Authority, -

(a) in the field of law, unless he—

(i) is qualified for appointment as District Judge; or

(ii) has been a member of the Indian Legal Service and has held a post in Grade I of that service;

(b) in the field of finance, accountancy or administration unless he possesses such qualifications, as may be prescribed.

(4) The Central Government shall appoint a Member to be the Chairperson of the Adjudicating Authority.

(5) Subject to the provisions of this Act, —

(a) the jurisdiction of the Adjudicating Authority may be exercised by Benches thereof;

(b) a Bench may be constituted by the Chairperson of the Adjudicating Authority with one or two Members as the Chairperson of the Adjudicating Authority may deem fit;

(c) the Benches of the Adjudicating Authority shall ordinarily sit at New Delhi and at such other places as the Central Government may, in consultation with the Chairperson, by notification, specify;

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(d) the Central Government shall, by notification, specify the areas in relation to which each Bench of the Adjudicating Authority may exercise jurisdiction.

(6) Notwithstanding anything contained in sub-section (5), the Chairperson may transfer a Member from one Bench to another Bench.

(7) If at any stage of the hearing of any case or matter it appears to the Chairperson or a Member that the case or matter is of such a nature that it ought to be heard by a Bench consisting of two Members, the case or matter may be transferred by the Chairperson or, as the case may be, referred to him for transfer, to such Bench as the Chairperson may deem fit.

(8) The Chairperson and every Member shall hold office as such for a term of five years from the date on which he enters upon his office:

PROVIDED that no Chairperson or other Member shall hold office as such after he has attained the age of [sixty-five] years.

(9) The salary and allowances payable to and the other terms and conditions of service of the Member shall be such as may be prescribed:

PROVIDED that neither the salary and allowances nor the other terms and conditions of service of the Member shall be varied to his disadvantage after appointment.

(10) If, for reasons other than temporary absence, any vacancy occurs in the office of the Chairperson or any other Member, then, the Central Government shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued

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before the Adjudicating Authority from the stage at which the vacancy is filled.

(11) The Chairperson or any other Member may, by notice in writing under his hand addressed to the Central Government, resign his office:

PROVIDED that the Chairperson or any other Member shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(12) The Chairperson or any other Member shall not be removed from his office except by an order made by the Central Government after giving necessary opportunity of hearing.

(13) In the event of the occurrence of any vacancy in the office of the Chairperson by reason of his death, resignation or otherwise, the senior-most Member shall act as the Chairperson of the Adjudicating Authority until the date on which a new Chairperson, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office.

(14) When the Chairperson of the Adjudicating Authority is unable to discharge his functions owing to absence, illness or any other cause, the senior-most Member shall discharge the functions of the Chairperson of the Adjudicating Authority until the date on which the Chairperson of the Adjudicating Authority resumes his duties.

(15) The Adjudicating Authority shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Adjudicating

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Authority shall have powers to regulate its own procedure.”

40. The provision mentioned above makes it clear that the Chairman or Members of the Committee are persons with sufficient experience in the field of law, administration, finance, and accountancy. Only a person having the qualification for appointment as a District Judge or has been a Member of the Indian Legal Services and has held a post in Grade I of the service will be appointed as a Member. Therefore, there is expected to be judicial scrutiny of a complaint filed under Section 5(5) of the PMLA Act.

41. Section 8 of the PMLA Act provides for the method of adjudication, and the same reads as under:

**“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

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or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized [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.

(2) The Adjudicating Authority shall, after—

- (a) considering the reply, if any, to the notice issued under sub-section (1);
- (b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and
- (c) taking into account all relevant materials placed on record before him,

by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

PROVIDED that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(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

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section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property] or record shall—

(a) continue during [investigation for a period not exceeding [three hundred and sixty-five days] or] the pendency of the proceedings relating to any [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];]

[*Explanation.* — For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.]

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the [possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

PROVIDED that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.]

[(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

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money-laundering, or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government.

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.

(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

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during the trial of the case in such manner as may be prescribed.]”

42. As per the aforesaid provision, the adjudicating authority must either accept the complaint and proceed further with the same or refuse to accept the complaint. The adjudicating authority has to follow the procedure prescribed in Section 8, which suggests that detailed scrutiny would be carried out and that too, at the earliest.

43. It also appears from the show cause notice dated 10.07.2023, issued by the adjudicating authority to the appellants, that appropriate orders are required to be passed under Section 8(3) of the PMLA Act, within a period not exceeding 180 days from the date of the provisional attachment order. Hence, the authority is fully aware of its powers and time-bound programme, since the property belonging to a person has been attached and such attachment cannot be extended for an unlimited time without adjudication.

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44. We are in agreement with the submission made by the learned Senior Advocate for the appellants that the Court may exercise its extraordinary powers under Article 226 of the Constitution of India under exceptional circumstances like; an order passed without jurisdiction, breach of fundamental rights, violation of the principles of natural justice, excess of jurisdiction, or a challenge to the *vires* of a statute or delegated legislation. However, in the present appeal, when the authority empowered under Section 5 of the PMLA Act has scrutinised the materials relied on while passing the provisional attachment order dated 09.06.2023, and when the adjudicating authority is going to examine all such issues and pass appropriate orders, we do not find any justifiable reason to reconsider the same, that too, in this *intra* court appeal. Therefore, we dismiss this appeal.

45. We have not expressed any opinion on the finding of the authority in the provisional attachment order dated 09.06.2023. It is expected that, with the co-operation of all concerned, the

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adjudicating authority shall adjudicate the complaint filed under Section 5(5) of the PMLA Act at the earliest. It is also expected that the adjudicating authority shall not be prejudiced by any observations made by the learned Single Judge in the impugned judgment or by us in this judgment.

Sd/-  
**A.J. Desai,**  
**Chief Justice**

Sd/-  
**V.G. Arun**  
**Judge**

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P.A. TO C.J.