

IN THE HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD

WRIT PETITION NO.39378 of 2022

Between:

1. M/s. Musaddilal Gems and Jewels (India) Private Limited,
Hyderabad and three others

...Petitioners

AND

1. Union of India, Ministry of Finance, Represented by its
Secretary, North Block Central Secretariat, New Delhi
and two others

...Respondents

JUDGMENT PRONOUNCED ON: 11.01.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE K.SARATH

1. Whether Reporters of Local : Yes/No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment : Yes/No
may be marked to Law
Reports/Journals
3. Whether Their Lordship/Ladyship : Yes/No
wish to see the fair copy of
judgment

JUSTICE K.SARATH

THE HON'BLE SRI JUSTICE K.SARATH

+WRIT PETITION NO.39378 of 2022

%Dated 11.01.2023

M/s Musaddilal Gems and Jewels (India) Private Limited,
Hyderabad and three others

...Petitioners

AND

\$ Union of India, Ministry of Finance, Represented by its
Secretary, North Block Central Secretariat, New Delhi and
two others

...Respondents

! Counsel for Petitioners : Mr. B.Chadnrasen Reddy

^ Counsel for Respondents : Sri T.Suryakaran Reddy
Additional Solicitor-General

< GIST :

> HEAD NOTE :

? Cases referred :

1. (2021) 6 SCC 707
2. Judgment of Calcutta High Court in WA No.17454 of
2022 dt.27.03.2019
3. 1982 SCC-online-232
4. FPA-PMLA-2328/MUM/2018
5. (1984) 1 SCC 700
6. 2022 (SCC) online 929
7. 2022 SCC ONLINE SC 872
8. 2014 (4) SCC 392

THE HON'BLE SRI JUSTICE K.SARATH

WRIT PETITION No.39378 of 2022

ORDER:

Heard Sri B.Chandrasen Reddy, Learned Senior Counsel appearing for the petitioners and Sri T.Suryakaran Reddy, Learned Additional Solicitor-General, for the respondents.

2. The learned Senior Counsel for the petitioners submits that the petitioners are challenging the search and seizure conducted on 17.10.2022 and consequential panchanamas contrary to the Section 17 of the Prevention of Money Laundering Act (for brevity 'PMLA').

3. The learned Senior Counsel for the petitioner submits that the petitioner No.1-Company established in the year 2013 and commenced its business from

October, 2016 and the petitioner Nos. 2 to 4 are the Directors of the petitioner No.1-Company. The Central Bureau of Investigation (CBI), Hyderabad registered a case against one Mr.Sukesh Guptha and the officials of MMTC for defrauding M/s MMTC Limited in purchase bullion under buyer's credit scheme in F.I.R.No.RC01/(A)/2013 dated 03.01.2013 and also filed charge sheet No.25/2014 dated 27.11.2014. The petitioner No.1 being independent company, neither the petitioner No.1-company nor its directors are related to the alleged offences registered against Mr.Sukesh Guptha and others. The respondents assuming that there was connection between the petitioners and the above offences, have conducted search in the year 2019 at the premises of the petitioner No.1 company and even at the residence of petitioners No.2 to 4 and has not found any relevant

documents and also has not seized any cash, gold or jewellery.

4. The learned Senior Counsel for the petitioners further submits that the petitioner No.1 Company is an independent company and the father of the petitioner No.2 i.e. Mr.Anurag Gupta is never the Director of the petitioner No.1 Company. The petitioner No.1 company is not the benami entity of Mr.Anurag Gupta. The Central Bureau of Investigation after due process and investigation did not make Mr.Anurag Gupta as accused in the offences in charge sheet No.25/21014 dated 27.11.2014.

5. The learned Senior Counsel for the petitioners further submitted that the search warrant dated 17.10.2022 was only shown and signatures were forcefully taken and the petitioners could not read the contents of the search warrant. The respondents failed

to provide the details of the date and time for the recording of the 'reasons to believe' as per the Section 17 (1) of PMLA, 2002 and also failed to provide the contents of the reasons and further the respondents also failed to provide the dispatch details of the postal acknowledgment through which the reasons were communicated and failed to meet the mandatory provisions of Section-17 of PML Act. The Writ Petition is maintainable under Article 226 by virtue of the full bench judgment of Hon'ble Apex Court.

6. The learned Senior Counsel for the petitioners submits that the petitioners are attacking the impugned action of the respondents, mainly two grounds viz., (i) the reasons are to be recorded in writing before issuing search warrant and (ii) the reasons are to be communicated immediately after the search and seizure.

7. The learned Senior Counsel for the petitioners, in support of his contention, relied upon the following judgements:

1. *Opto Circuit India Limited Vs. Axis bank and others* ¹
2. *M/s Rashmi Metaliks Ltd & Another Vs. Enforcement Directorate & and others* ²
3. *The State of Maharashtra Vs. B.B.Kothavade* ³
4. *Sony Music Entertainment India Pvt. Ltd., Vs. The Asst. Director,* ⁴
5. *CIT, West Bengal-III and others Vs. Oriental Rubber Works and batch (1984)* ⁵
6. *Vijay Madan LalChoudary and others Vs. Union of India* ⁶

8. Sri T.Suryakaran Reddy, the Learned Additional Solicitor General of India, appearing for the respondents, submits that the writ petition filed by the petitioners is not maintainable. The writ petition is

1. (2021) 6 SCC 707
2. Judgment of Calcutta High Court in WPA No.17454 of 2022 dt.27.03.2019
3.1982 SCC-Online-232
4. FPA-PMLA-2328/MUM/2018
5. (1984) 1 SCC 700
6. 2022 (SCC) online 929

filed against the search action dated 17.10.2022 conducted under Section 18 (1) of PMLA, 2002 and subsequent seizures made as per panchanamas. An alternative remedy is available to the petitioners under Section 8 (1) of PMLA, 2002 before the Adjudicating Authority, PMLA, New Delhi. The PML Act itself provides the remedy to the petitioners before the Adjudicating Authority, instead of approaching this Court, as such the Writ Petition is not maintainable.

9. The learned Additional Solicitor General further submits that an FIR No.RC01(A)/2013 dated 03.01.2013 and charge sheet No.25/2014 dated 27.11.2014 was filed by the CBI, Hyderabad against Mr.Sukesh Gupta and officials of MMTC for defrauding M/s MMTC Limited in purchase of gold bullion under Buyer's Credit Scheme and during the course of investigation it was revealed that MMTC Limited

imports bullion from Foreign Suppliers on consignment basis and sells to local customers through its billion centres located at Regional/Sub-Regional Offices including office at Hyderabad. A Provisional Attachment Order (PAO) bearing No.07/2021 dated 26.08.2021 was issued in the subject case under Section 5 (1) of PMLA, 2022 and Enforcement Directorate has provisionally attached movable and immovable properties belonging to MBS Group of companies.

10. The Learned Additional Solicitor General submits that father of the petitioner No.2 Mr.Anurag Gupta is a director of M/s.Shroff Apparels Private Limited which is a shell company and Mr.Anurag Gupta was also Director in M/s. MBS Jewellers Private Limited. The said company and M/s. MBS Impex Private Limited which had defrauded MMTC. Mr.Anurag Gupta was

one of the directors of M/s MBS Jewellers Private Ltd., and M/s. MBS Impex Pvt Ltd., during the relevant period when the offences of defrauding MMTC had taken place.

11. The learned Additional Solicitor General further submits that the search action dated 17.10.2022 under Sections 17 and 18 of PMLA, 2002 had been conducted on the basis of 'Reasons to believe', duly recorded in writing. The petitioner No.2 had himself acknowledged by signing on the Authorization/Warrant along with the independent panchas/witnesses. The petitioners will have an opportunity of being heard and present their case before the Adjudicating Authority, New Delhi in terms of Section 8 of PMLA, 2002.

12. The learned Additional Solicitor General further submits that the respondents are duty to collect evidence and summons were issued to record the statements and collect documents from the witnesses and suspects. The statements were recorded in a professional manner and under Section 50 of PMLA, 2002 and Section 50 (2) of PMLA, 2002 empowers the authorities to summon any person whose attendance considers necessary whether to give evidence or to produce any records during the course of any investigation proceedings under the Act. The petitioners were given an opportunity to appear before summoning authority to adduce evidence as per the principles of natural justice, but instead of cooperating with the authority, the present writ petition is filed questioning the issuance of summons, which is not maintainable.

13. The learned Additional Solicitor-General submits that a writ petition cannot be entertained during summons stage and writ petition is deserves to be dismissed.

14. The learned Additional Solicitor General relied upon the following judgments:

*7. Principal Director of Income Tax (Investigation) and others Vs. Laljibhai Kanjibhai Mandalia*⁷

*8. Biswanth Bhattacharya Vs. Union of India*⁸

15. At the time of hearing, the Learned Senior Counsel appearing for the petitioners mainly argued that the respondents without following the procedure as contemplated under Section 17 of the PML Act conducted search and seizure and even after completion of search also not followed the procedure as contemplated under PML Act.

7. 2022 SCC ONLINE SC 872

8. 2014 (4) SCC 392

16. In view of the above submissions made by the learned Senior Counsel appearing for the petitioners, this Court directed the respondents to produce all the relevant records. Accordingly, the respondents have shown the original record to the Court and submitted photo copies of the said record in two (2) sealed covers to the Court. The index of photo copies of the record in two (2) sealed covers are as follows:

1	Panchanama drawn at M/s MBS Jewellers Private Limited, Secunderabad
2	Panchanama drawn at M/s Musaddilal Gems and Jewels India Pvt. Ltd., 6-3-563, Banjara Hills Main Road, Erramanjil Colony, Venkataraman Colony, Khairatabad, Hyderabad
3	Panchanama drawn at Residence of Shri Anurag Gupta, Ex-Director of M/s MBS Jewellers Pvt. Ltd., 3-5-784/B & C, 1 st Floor, Musaddilal House, King Koti, Basheerbagh, Hyderabad
4	Panchanama drawn at MBS Jewellers Pvt. Ltd., D.no.3-5-886/1 to 4A, 5 th Floor, Ward No.3, Old MLA Quarters Road, Himayathnagar, Hyderabad – 500 029
5	Panchanama drawn at M/s MBS Jewellers Pvt Ltd., Show Room, 40-1-40, Dutta Plaza, MG Road, Labbipet, Vijayawada, Andhra Pradesh – 520 010
6	Copy of “Reasons to Beleive” forwarded to Adjudicating Authority (PMLA)
7	Authorization/Warrant for Search and Seizure in Form No.I
8	Forwarding letter and Index signed for forwarding reasons to believe
9	1
10	Acknowledgment slip in Form No.IV (reasons to believe)
11	Dak Dispatch Register
12	Acknowledgment Slip Register
13	Retention of property order dated 07.11.2022
14	Acknowledgment Slip in Form No. I (Retention Order)
15	Acknowledgemnt Slip in Form No.II (Retention order)

17. The records submitted by the respondents in sealed covers reveals that on 17.10.2022 one Mr.Dinesh Paruchuri, Additional Director, Enforcement Directorate, had reasons to believe that viz., M/s. Musaddilal Gems and Jewels (India) Private Limited has committed an act which constitutes money laundering, and authorized Mr.Rahul Singhania, Deputy Director, Directorate of Enforcement, Hyderabad Zonal Office, Hyderabad to conduct the search and seizure of the premises of the petitioner No.1-company under Section 17 of the PML Act, 2002.

18. The true extract of Search Warrant issued by the Additional Director, Directorate of Enforcement, Hyderabad on 17.10.2022 as follows:

AUTHORIZATION (SEARCH WARRANT)

[See Sub Rule (1) of Rule 3]

Authorisation No.42 of 2022

Date:17.10.2022

Whereas I, Dinesh Paruchuri, Additional Director, Directorate of Enforcement, Hyderabad Zonal office, Hyderabad, have reason to believe that:

M/s Musaddilal Gems and Jewels (India) Private Limited

- i) Has committed an act which constitutes money laundering, or]
- ii) Is in Possession of any proceeds of crime involved in money-laundering, or
- iii) Is in Possession of any records relating to money-laundering, or
- iv) Is in Possession of any property related to crime

certain documents including proceeds of crime and / or records relating to money-laundering, which in my opinion, will be useful for or relevant to the investigation and proceedings under the Prevention of Money Laundering Act, 2022 (15 of 2003) are secreted in the premises specified in Scheduled below.

I, hereby authorize, Rahul Singhania, Deputy Director, Directorate of Enforcement, Hyderabad, Zonal Office, Hyderabad to conduct the search and seizure of the premises specified in Schedule below, under sub-section (I) of Section 17 of the Prevention of Money Laundering Act, 2022 (15 of 2003) add Rule-3 of the Prevention of Money Laundering (Forms, Search and Seizure and Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and Custody of Records and Period of Retention) Rule, 2005.

Given under my hand and seal this 17th Day of October, Two Thousand and Twenty.

SCHEDULE OF PREMISES

Xxxx xx xx

Sd/-

Dinesh Paruchuri, Addl. Director

19. This Court has gone through the entire record produced by the respondents. Mr. Dinesh Paruchuri,

Additional Director, has not recorded the 'reasons to believe', but Mr.Rahul Singhania, who was authorized to conduct search and seizure recorded 'reasons to believe" without any date and time.

20. Section 17 of the Prevention of Money Laundering Act, reads as follows:

17. Section Search and seizure. —

(1) Where [the Director or any other officer not below the rank of Deputy Director authorized by him for the purposes of this section,] on the basis of information in his possession, has reason to believe (the reason for such belief to be recorded in writing) that any person—

- (i) has committed any act which constitutes money-laundering, or*
- (ii) is in possession of any proceeds of crime involved in money-laundering, or*
- (iii) is in possession of any records relating to money-laundering,*
- (iv) is in possession of any property related to crime.*

then, subject to the rules made in this behalf, he may authorize any officer subordinate to him to—

- (a) enter and search any building, place, vessel, vehicle or aircraft where he has reason to suspect that such records or proceeds of crime are kept;*
- (b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not available;*
- (c) seize any record or property found as a result of such search;*

- (d) place marks of identification on such record or (property, if required or) make or cause to be made extracts or copies therefrom;*
- (e) make a note or an inventory of such record or property;*
- (f) examine on oath any person, who is found to be in possession or control of any record or property, in respect of all matters relevant for the purposes of any investigation under this Act:*

[I-A) where it is not practicable to seize search record or property, the officer authorized under sub-section (1), may take an order to freeze such property whereupon the property shall not be transferred or otherwise dealt with, except with the prior permission of the officer making such order, and a copy of such order shall be served on the person concerned.

Provided that if, at any time before its confiscation under sub-section (5) or sub-section (7) or Section 58-B or sub-section (2-A) of Section 60, it becomes practical to seize a frozen property, the officer authorized under sub-section (1) may seize such property].

(2) The authority, who has been authorized under sub-section (1) shall, immediately after search and seizure [or upon issuance of a freezing order] forward a copy of the reasons so recorded 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 reasons and material for such period, as may be prescribed.

(3) Where an authority, upon information obtained during survey under section 16, is satisfied that any evidence shall be or is likely to be concealed or tampered with, he may, for reasons to be recorded in writing, enter and search the building or place where such evidence is located and seize that evidence:

Provided that no authorization referred to in sub-section (1) shall be required for search under this sub-section.

(4) The authority, seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1-A) shall, within a period of thirty days from such seizure, as the case may be, file an application, requesting for retention of such record or property seized under sub-section (1) or for continuation of the order of freezing served under sub-section (1-A), before the Adjudicating Authority.

21. After hearing both the sides and after perusing the records submitted by the respondents in two (2) sealed covers this Court is of considered view that the Additional Director of the Enforcement Directorate without recording the ‘reasons to believe’ issued search warrant/authorisation to his subordinates and the Deputy Director of the Enforcement recorded the reasons to believe without any date and time, which clearly shows that without following the requirements under Section 17 (1) of PML Act conducted search and seizure and seized jewellery, cash and other articles belonging to the petitioners.

22. The judgments relied on by the learned Senior Counsel for the petitioners in respect of Section 17 of PML Act apply to the instant case. The Hon'ble Apex Court in ***Opto India Axis Bank and Others (supra 1)***, at para No.14 and 15, held as follows :

14. *“This Court has time and again emphasized that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and in no other manner. Among others, in a matter relating to the presentation of an Election Petition, as per the procedure prescribed under the Patna High Court Rules, this Court had an occasion to consider the Rules to find out as to what would be a valid presentation of an Election Petition in the case of Chandra Kishor Jha vs. Mahavir Prasad and Ors. (1999) 8 SCC 266 and in the course of consideration observed as hereunder:*

17. *“It is a well settled salutary principle that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner and in no other manner”.*

Therefore, if the salutary principle is kept in perspective, in the instant case, though the Authorised Officer is vested with sufficient power; such power is circumscribed by a procedure laid down under the statute. As such the power is to be exercised in that manner alone, failing which it would fall

foul of the requirement of complying due process under law. We have found fault with the Authorised Officer and declared the action bad only in so far as not following the legal requirement before and after freezing the account. This shall not be construed as an opinion expressed on the merit of the allegation or any other aspect relating to the matter and the action initiated against the appellant and its Directors which is a matter to be taken note in appropriate proceedings if at all any issue is raised by the aggrieved party.

15. *Apart from the above consideration, what has also engaged the attention of this Court is with regard to the plea put forth on behalf of the appellant regarding the need to defreeze the account to enable the appellant to pay the statutory dues. The appellant in that regard has relied on the certificate issued by the Chartered Accountant, (Annexure P/38 at page 231) which indicates the amount payable towards ITDS, PF, ESI, Professional Tax, Gratuity and LIC employees' deductions, in all amounting to Rs.79,93,124/-. Since we have indicated that the freezing has been done without due compliance of law, it is necessary to direct the respondents No.1 to 3 to defreeze the respective accounts and clear the cheques issued by the appellant, drawn in favour of the Competent Authority towards the ITDS, PF, ESI, Professional Tax, Gratuity and LIC employees' deductions, subject to availability of the funds in the account concerned. Needless to mention that if any further amount is available in the account after payment of the statutory dues and with regard to the same*

any action is to be taken by the respondent No.4 within a reasonable time, it would open to them to do so subject to compliance of the required procedure afresh, as contemplated in law”.

23. The High Court of Calcutta, in **M/s. Rashmi Metaliks Limited and Another Vs. Enforcement Directorate & others** (supra 2), at para No.13 and 18 held as follows:

13. *Therefore, the search and seizure under Section 17(1) must also satisfy the defining characteristic of "money-laundering" and "proceeds of crime" as well as their respective procedural requirements as separately stipulated in the PMLA. In other words, the power to enter and search any place or to seize any record or property must be predicated by the satisfaction of all the requirements under Section 17(1) which should find a particularized statement in the written "reason to believe" component by the authorised officer under Section 17(1). It is only on the fulfilment of the conditions stipulated under Section 17(1) together with the satisfaction of the conditions of Sections 2(1)(u) and 3 that the power to search and seize is crystallized.*

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18. *The singular absence of statements of reasons or the basis of an apprehension, factual or otherwise, for freezing the properties of the petitioners is apparent from the impugned orders. The requirement of satisfaction of the conditions stated in Section 17(1) before proceeding to Section 17(1-A) do not contemplate parroting the words used in the sections but a precise statement, in writing, reflecting the factors which form the basis of the conclusion arrived at. A person reading the order must be able to find the connecting link between the reason given and the action taken. The view of the Court is bolstered by the specific conditions under Section 17(1) as well as in Section 3 (Offence of money-laundering) which demand that properly graded reasons must be stated in an order justifying initiation of measures under Sections 17(1) and 17(1-A).*

24. The Hon'ble Apex Court in **Vijay Madanlal Choudhary & others Vs. Union of India and others** (*supra 6*) at para No.312 held as follows:

312. *As aforementioned, Section 17 provides safeguards, not only mandating exercise of power by high ranking officials, of the rank of Director (not below the rank of Additional Secretary to the Government of India, who is appointed by a Committee chaired by the Central Vigilance Commissioner in terms of Section 25 of the CVC act, or Deputy Director authorized by the Director in that regard, but also to adhere to other stipulations of recording of reasons regarding the belief formed on the basis of information in his possession about*

commission of offence of money-laundering and possession of proceeds of crime involved in money-laundering. Further, such recorded reasons along with the material is required to be forwarded to the three-member Adjudicating Authorities (appointed under Section 6 of the 2002 act headed by a person qualified for appointment as District Judge) in a sealed cover to be preserved for specified period, thus guaranteeing fairness, transparency and accountability regarding the process of search and seizure. This is unlike the provision in the 1973 Code where any police officer including the Head Constable can proceed to search and seize records or property merely on the basis of allegation or suspicion of commission of a scheduled offence”

25. In the instant case the record reveals that the Additional Director of Enforcement Directorate without recording the ‘reasons to believe’ as contemplated under Section 17 (1) of PML Act, issued Search Warrant/Authorisation to the Deputy Director to conduct search and seizure of the premises of the petitioners and thereafter the Deputy Director recorded ‘reasons to believe” without any date and time.

26. The Hon'ble Apex Court in **Opto Circuit India Ltd. Vs. Axis Bank (*supra*1.)**, held that the authorised Officer is vested with sufficient power and such power is circumscribed by a procedure laid down under the statute, as such the power is to be exercised in that manner alone, failing which it would fall foul of the requirement of complying due process under law.

27. In view of the same, the action of the respondents in conducting search and seizure at the premises of the petitioner No.1-company and the residences of petitioners 2 to 4 and seizing of all the cash, jewellery and other articles in pursuance to the search warrant/authorization dated 17.10.2022 is contrary to the Section 17 of Prevention of Money Laundering Act, 2002 and accordingly the same is hereby set aside. The respondents are directed to release all the jewellery, cash and other articles seized

in pursuance to the search warrant/authorization dated 17.10.2022. It is left open to the respondents to take any action, subject to compliance of the required procedure afresh, as contemplated under law.

28. Accordingly, with the above direction the Writ Petition is allowed. No order as to costs.

29. Miscellaneous petitions pending, if any, shall stands closed.

30. The Registrar (Judicial) is directed to return the two (2) sealed covers produced by the respondents to the concerned authorities, after expiry of appeal time, under proper identification and acknowledgment.

JUSTICE K.SARATH,

Date:11.01.2023

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