

# VERDICTUM.IN

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE BECHU KURIAN THOMAS

TUESDAY, THE 8<sup>TH</sup> DAY OF AUGUST 2023 / 17TH SRAVANA, 1945

WP(C) NO. 21061 OF 2023

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 - 641029  
REPRESENTED BY ITS MANAGING DIRECTOR  
MR. SANTIAGO MARTIN.  
BY ADVS.  
SRI.MUKUL ROHATGI  
SRI.RAMESH BABU (SR.)  
SRI.A.KUMAR  
SMT.G.MINI

RESPONDENTS:

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

W.P.(C) No.21061/23

-:2:-

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

SRI.A.R.L. SUNDARESHAN , ASGI  
BY ADV JAISHANKAR V.NAIR

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR  
ADMISSION ON 26.07.2023, THE COURT ON 08.08.2023 DELIVERED  
THE FOLLOWING:

“C.R.”

**BECHU KURIAN THOMAS, J.**

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**W.P.(C) No.21061 of 2023**  
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Dated this the 8<sup>th</sup> day of August, 2023

**JUDGMENT**

Through the process of money laundering, those involved in crimes have harnessed an armoury to drain the economic stability and erode the integrity of the country. The need to obviate such threats was identified by the United Nations. Through its conventions and resolutions, the signatory countries to the United Nations were warned of the perils of such baneful conduct. India responded with a Statute named Prevention of Money Laundering Act, 2002 (for short 'the PMLA'). Petitioners challenge a proceeding initiated under the aforestated statute.

2. Properties of the petitioners have been subjected to five different provisional attachments under the PMLA. The challenge in the writ petition is against the provisional attachment order dated 09.06.2023, as well as the order dated 12.05.2022, freezing the movable properties, including mutual funds and

fixed deposits of the writ petitioners. The aforesaid two orders are produced in the writ petition as Ext.P25 as well as Ext.P21, respectively. There is an ancillary challenge against the seizure memo, which is produced as Ext.P22

3. The second petitioner is a Company which is the Distributor of Sikkim Lotteries. The first petitioner is its Managing Director. The issue relates to the period 01.04.2009 to 31.08.2010. Petitioners are the first and third accused in C.C. No.218 of 2015 on the files of the Chief Judicial Magistrate, Ernakulam. The crime was investigated by the CBI. Based on the above case, the Enforcement Directorate (for short 'the ED') registered a case as ECIR No.4 of 2014, which is now pending before the Special Court (Principal Sessions Court) Ernakulam as S.C. No.533 of 2018 under the PMLA. The offences alleged in C.C. No.218 of 2015 pending before the Chief Judicial Magistrate, Ernakulam, are under sections 120(b) and 420 of the Indian Penal Code, 1860 apart from various provisions of the Lotteries (Regulation) Act, 1998 and the Lotteries (Regulation) Rules, 2010. It must be mentioned that one Sri.N.Jayamurugan is the fifth accused in the aforementioned case before the Chief Judicial Magistrate.

4. Of the six provisional attachment orders, except for one attachment of Rs.16 crores, all other attachments are over the properties of the petitioners.

5. Petitioners allege that the proceeds of crime estimated by the ED is Rs.910,29,87,566/- crores, which estimation is notional, and the attachments have been effected on that basis. It is alleged that the ED had presumed that the proceeds of the crime were generated through a partnership firm by the name 'M/s M.J Associates' in which the first petitioner was a partner having only 51% while Sri.N.Jayamurugan, another accused, was a partner having 49%. The contention raised by the petitioners is that on the estimated amount of Rs.910.29 crores, only 51% can, even going by the case of the ED, be attributed to the first petitioner. The said 51% would total to only Rs.464.25 crores, while the balance of Rs. 446.04 crores can only be to the share of Sri.N.Jayamurugan. Reliance is placed on the complaint filed in S.C. No.533 of 2018 for the aforementioned estimation. Petitioners further allege that despite the ED estimating the proceeds of crime attributable to the first petitioner only to 51% in M/s M.J Associates, they have provisionally attached properties of the petitioners for almost Rs.894 crores (Rs.910

crores minus Rs.16 crores) instead of confining the attachment to Rs.464.25 crores.

6. Petitioners allege that after effecting provisional attachments, over the properties of the petitioners, to the extent of Rs.434,70,40,759/- by the first five provisional attachments, (excluding the attachment for Rs.16 crores), the ED issued Ext.P25 Provisional Attachment Order No.3 of 2023 on 09.06.2023 under section 5 of the PMLA for a further amount of Rs.459,07,42,047/- against the properties of the petitioners. The provisional order and the freezing orders, which are produced as Ext.P21 and Ext.P22 are alleged to be without authority and *non est*.

7. A counter affidavit has been filed on behalf of respondents 2 to 4 objecting inter alia to the maintainability of the writ petition itself. Respondents pleaded that petitioners have an effective remedy under the provisions of the PMLA to raise all these contentions, including the lack of authority and even excessive attachment, before the statutory authorities created under the PMLA. Respondents have also pleaded that the first petitioner has invested the proceeds of crime in immovable properties by floating more than 40 companies and has projected

the proceeds of crime as untainted properties. The respondents have also stated that the prosecution complaint was filed on 11-06-2018 and the Special Court has even taken cognizance as S.C. No. 533 of 2018. A supplementary report was also filed on 03.06.2022. It is also averred that the order of attachment has been issued after narrating the reasons to believe and also that if the attachment is not effected, it will frustrate the proceedings under the PMLA.

8. I have heard Sri.Mukul Rohatgi and Sri.Ramesh Babu learned Senior Counsel duly instructed by Sri. A. Kumar, learned counsel for the petitioners. I have also heard Senior Counsel Sri. A.R.L. Sundareshan, the learned Additional Solicitor General of India, along with Sri. Jaishankar V. Nair, the learned Standing Counsel, on behalf of the respondents.

9. The significant contention raised on behalf of the petitioners is that the last of the attachment orders dated 09.06.2023 for a value of Rs.459,07,42,047/- is without any legal basis and palpably arbitrary. According to the learned Senior Counsel, when the complaint filed by the respondents, had alleged that the first petitioner was the beneficiary of only 51% of the alleged proceeds of crime, the ED could not have

issued orders of attachment of anything more than the said percentage out of the alleged proceeds of crime. Learned Senior Counsel further submitted that the proceeds of crime were allegedly generated in a partnership firm called 'M/s M.J Associates' in which the first petitioner held only 51%, and that only a sum of Rs.464,25,23,659/- alone could have been frozen or provisionally attached by the respondents as that of proceeds of crime generated by the petitioners. It was contended that, in issuing Ext.P25, as well as Ext.P21 and Ext.P22 orders, respondents have acted in excess of authority without jurisdiction, and hence the provisional attachment order dated 09.06.2023 ought to be quashed.

10. On behalf of the respondents, it was contended that the six provisional attachment orders were issued on different dates after identifying the properties which formed part of the proceeds of the crime. The last of the provisional attachment order dated 09.06.2023 was issued, attaching properties worth Rs.459,07,42,047/- after having reason to believe that they form the proceeds of crime attributable to the petitioners. It was further pointed out that the writ petition is not a proper remedy for the petitioners, as they are at liberty to seek withdrawal of



attachment of any portion of the property or the entire properties from the provisional attachment by approaching the appropriate authority under the provisions of the PMLA. In support of the contentions, the decisions in **Special Director and Another v. Mohd. Ghulam Ghouse and Another** [(2004) 3 SCC 440], and **Vijay Madanlal Choudhary and Others v. Union of India and Others** (2022 SCC OnLine SC 929) and several other decisions were referred to.

11. The writ petitioners have approached this Court immediately on the issuance of the provisional attachment order. The provisional attachment order runs into 110 number of pages filled with repetitions. The Authority that issued Ext.P25 would have done well had he borne in mind that long orders do not necessarily create fool proof orders.

12. Notwithstanding the above, for consideration of the issues raised, it is appropriate to tabulate the attachment orders issued till date, as is revealed from the pleadings. The following are the provisional attachment orders issued and the value for which they were ordered:

Sl. No.	Order No & Date	Value of Attachment (in Rs.)
1	2/2016 dated 31.03.2016	122,04,03,525/-
2	2/2017 dated 09.02.2017	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/-
Total		910,29,87,556/-

13. Of the above six attachments, except the second, the rest are all over the properties of the petitioners. The second attachment is over the property of Sri.N.Jayamurugan.

14. The PMLA was enacted as a preventive and punitive measure to combat the evil of money laundering. The Criminal Law Amendment Ordinance of 1944, a pre-existing law, was insufficient to tackle the enormous problems arising out of money laundering. Therefore the PMLA was enacted to deal with various aspects of the crime of money laundering. Removal of tainted money or those derived from selected crimes is an effective mode of combating serious offences. If the proceeds of crime have been transformed or converted into other property or have intermingled with legitimate sources, such proceeds and the assessed value of the intermingled gain assume the colour of proceeds of crime. The PMLA provides as one of its objectives,

the confiscation of property derived from or involved in money laundering.

15. Sections 3 and 4 of the PMLA make money laundering an offence punishable with imprisonment, which may extend to 7 years apart from fine. The word money laundering is explained as attempting to indulge or knowingly assisting or being a party or being involved in any process or activity connected with the proceeds of crime. The word proceeds of crime, as defined in section 2(u) of the PMLA, means any property derived or obtained directly or indirectly by any person from any criminal activity relating to a scheduled offence. The word 'person' is defined in section 2(s) as including an individual, or a firm, apart from other legal entities.

16. Chapter III of the PMLA deals with attachment, adjudication and confiscation. Section 5 of the PMLA authorises the Director or other persons mentioned therein to provisionally attach the property, which are proceeds of crime, in the possession of a person and which are likely to be concealed, transferred or dealt with in a manner which may frustrate the proceedings relating to the confiscation of such proceeds of crime. A reading of the said provision indicates that safeguards

have been provided in the very same provision as well as other provisions of the statute, to protect a person from unreasonable or illegal attachments. The primary two safeguards provided are in the form of 'reasons to be recorded in writing' and 'a period of validity for the order' of provisional attachment.

17. A further safeguard is provided by the statute creating a separate independent authority for considering the validity or otherwise of the order of provisional attachment itself. Section 5(5) of the PMLA provides that the officer who issued the provisional attachment shall, within thirty days from the order of attachment, file a complaint before the Adjudicating Authority constituted under section 6. The said Adjudicating Authority consists of a Chairperson who is qualified for appointment as a District Judge, apart from other members. Thus an independent body consisting of a legally qualified person has been created to consider the validity or otherwise of the provisional order of attachment. The nature of the body with a legal person and an independent and composite structure, enhances the credibility of the said Authority.

18. Section 8 of the PMLA deals with adjudication and states that immediately on receipt of a complaint under section 5(5) of

the PMLA, notice will have to be served in a time-bound manner, calling upon the person to show cause why the property should not be declared as those involved in money laundering and be confiscated to the Central Government. The notice will also call upon him to indicate the sources of his income, earning or assets out of which he has acquired the properties attached. An opportunity for a hearing is provided under the statute, and the Adjudicating Authority is entitled to consider whether all or any of the properties referred to in the notice are involved in money laundering.

19. A person aggrieved by an order under section 8 is entitled to approach the Appellate Tribunal as per section 26 of the PMLA. The Appellate Tribunal consists of a Chairman, who is qualified to be a Judge of the Supreme Court or of a High Court. Section 42 of the PMLA provides for yet another appeal to the High Court, including on any question of law or fact. The above mentioned provisions provide for adjudication by an independent and separate authority, followed by an appeal to the Tribunal and then to the High Court, even on facts, indicating that the statute has created a code in itself, vis-a-vis the provisional attachment order. Thus a three-tier remedy is provided under the PMLA

itself, as for a to alleviate the grievances of those aggrieved. When such a scheme is provided for under the PMLA, petitioners do have an efficacious alternative remedy. These remedies, available under the statute, cannot be circumvented unless they are entirely ill-suited to meet the demands of the situation. Considering the timelines provided and the nature of authorities created under the PMLA, the alternative remedies cannot be regarded as ill-suited to meet the exigency. Any prejudice caused on account of the provisional attachment order can be remedied through the scheme of the Statute itself.

20. In this context, it is relevant to advert to the decisions in **Titaghur Paper Mills Co. Ltd. and Another v. State of Orissa and Others** [(1983) 2 SCC 433] and **Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd. and Others** [(1985) 1 SCC 260] wherein it was observed that when the statute itself provides an efficacious alternative remedy by way of an appeal and a second appeal and thereafter to the High Court, it is not proper to exercise the extraordinary jurisdiction under Article 226 of the Constitution ignoring the complete statutory machinery. After terming the approach to the High Court for judicial review as a

measure of tragic concern, the Court observed that Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations should recourse be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters.

21. Under the scheme of the PMLA, an independent authority is constituted as the first tier to consider the claim of an aggrieved, regarding the correctness of the provisional attachment. The second tier, in the form of the Appellate Tribunal, is also authorised to consider the correctness of the order of attachment on facts as well. Significantly, even the High Court as an Appellate Court can consider, even on facts, the validity or otherwise of an order of provisional attachment and its consequent orders. When such statutory remedies are provided, including an appellate power on facts as well to the High Court, exercising the power under Article 226 of the Constitution of India would be akin to usurping the power of the Appellate Court. Such a procedure is not legally proper or justifiable,

unless there are exceptional reasons to do so.

22. The exceptional reason warranting an interference by this Court under Article 226 of the Constitution of India according to Sri. Rohatgi, the learned Senior Counsel is that the attachment could have been effected only to the extent of the percentage of share of the first petitioner in the proceeds of the crime quantified, and any excess is *ex facie* a *non est*. Prima facie the said contention is not tenable. Indubitably the complaint filed by ED had quantified the proceeds of crime as Rs.910.29 crores. First petitioner's share in the partnership firm 'M/s. M.J Associates' is stated to be only 51%. The firm 'M/s. M.J Associates' as well as the other partner Sri.Jayamurugan are both accused in the money laundering case. The proceeds of crime are alleged to have emanated from the firm where the first petitioner is admittedly a partner. Section 25 of the Indian Partnership Act, 1932 creates a joint and several liability on all the partners for all acts of the firm. Therefore if the proceeds of the crime have emerged or flowed from the business of the firm, then, prima facie, all partners may have joint and several liabilities. Of course, this is an issue which requires detailed deliberation on facts as well as on law. Suffice to state, no



exceptional circumstances are made out for an interference under Article 226 of the Constitution of India. Reckoning the nature of conclusion being arrived at in this writ petition, the question on the liability of the first petitioner for the entire Rs.910.29 crores is left open for consideration.

23. In view of the above, the objection of the respondents regarding the maintainability of the writ petition is upheld. The writ petition is therefore held to be not maintainable in view of the alternative remedy available. The Adjudicating Authority, before whom, it is informed that a complaint under section 5(5) of the PMLA has already been preferred, will consider the objections or claims filed by the petitioners, if any, untrammelled by any observations made in this judgment.

The writ petition is dismissed.

**Sd/-**

**BECHU KURIAN THOMAS  
JUDGE**

vps

APPENDIX

PETITIONER'S/S' EXHIBITS

EXHIBIT P1	TRUE COPY OF THE CHARGE SHEET DATED 03.02.2014.
EXHIBIT P2	TRUE COPY OF THE ORDER DATED 20.01.2018. IN CMP NO.2201/2016 IN CC NO.218/2015.
EXHIBIT P3	TRUE COPY OF THE ECIR NO. KCZO/4/2014 DATED 19.08.2014.
EXHIBIT P4	TRUE COPY OF THE PROVISIONAL ATTACHMENT ORDER NO.02/2016 DATED 31/03/2016.
EXHIBIT P5	TRUE COPY OF THE INTERIM ORDER IN W.P. (C) NO.22327/2016 DATED 04/08/2016.
EXHIBIT P6	TRUE COPY OF THE DISCHARGE APPLICATION CRL.MP NO. 2079/2016 FILED BY THE PETITIONER IN THE CBI CASE.
EXHIBIT P7	TRUE COPY OF THE ORDER OF THE ADJUDICATING AUTHORITY DATED 22/09/2016.
EXHIBIT P8	TRUE COPY OF THE ORDER OF THE APPELLATE TRIBUNAL DATED 18/09/2019.
EXHIBIT P9	TRUE COPY OF THE COMPLAINT BEING SC NO.533/2018 DATED 11/06/2018.
EXHIBIT P10	TRUE COPY OF PROVISIONAL ATTACHMENT ORDER 02/2019 DATED 22/07/2019.
EXHIBIT P11	TRUE COPY OF PROVISIONAL ATTACHMENT ORDER 07/2021 DATED 22/12/2021.
EXHIBIT P12	TRUE COPY OF PROVISIONAL ATTACHMENT ORDER 06/2022 DATED 06/07/2022.
EXHIBIT P13	TRUE COPY OF PROVISIONAL ATTACHMENT ORDER 02/2017 DATED 09/02/2017.
EXHIBIT P14	TRUE COPY OF THE SUPPLEMENTARY COMPLAINT DATED 03/06/2022.
EXHIBIT P15	TRUE COPY OF THE LETTER DATED 03/09/2022 TO THE MINISTER OF HOME AFFAIRS AND THE HON'BLE MINISTER OF FINANCE.
EXHIBIT P16	TRUE COPY OF THE REPLY DATED 26/09/2022 FILED IN OC NO 1780 OF 2022.
EXHIBIT P17	TRUE COPY OF THE REJOINDER DATED 10/10/2022 FILED BY THE RESPONDENT NO 4.

# VERDICTUM.IN

W.P.(C) No.21061/23

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EXHIBIT P18 TRUE COPY OF THE SUMMONS DATED 26/04/2023.

EXHIBIT P19 TRUE COPY OF THE COMMUNICATION DATED 08/05/2023 ISSUED BY THE PETITIONER.

EXHIBIT P20 TRUE COPY OF THE SEARCH AND SEIZURE/PANCHNAMA AT THE PREMISES OF THE PETITIONER.

EXHIBIT P21 TRUE COPY OF THE ORDER DATED 12/05/2023 PASSED UNDER SECTION 17(1A) OF THE PMLA ACT, 2002.

EXHIBIT P22 TRUE COPY OF THE SEIZURE MEMO DATED 11/05/2023 AND 12/05/2023.

EXHIBIT P23 TRUE COPY OF THE PRESS RELEASE DATED 15/05/2023.

EXHIBIT P24 TRUE COPY OF LETTER DATED 17.05.2023.

EXHIBIT P25 TRUE COPY OF PROVISIONAL ATTACHMENT ORDER 03 OF 2023 DATED 09/06/2023.

EXHIBIT P26 TRUE COPY OF THE NOTICE DATED 20.6.2023 ISSUED BY 4TH RESPONDENT.

EXHIBIT P27 TRUE COPY OF THE LETTER OF THE PETITIONER TO THE ADJUDICATING AUTHORITY DATED 03/07/2023.

EXHIBIT P28 TRUE COPY OF THE REMINDER DATED 10.7.2023 OF THE PETITIONER TO THE ADJUDICATING AUTHORITY

EXHIBIT P29 TRUE COPY OF THE NOTICE DATED 10.7.2023 ISSUED TO THE 1ST PETITIONER

EXHIBIT P30 TRUE COPY OF THE NOTICE DATED 10.7.2023 ISSUED TO THE 2ND PETITIONER