

# **M/S Mahindra & Mahindra Financial ... vs State Of U.P. And 2 Others on 28 February, 2025**

**Author: Mahesh Chandra Tripathi**

**Bench: Mahesh Chandra Tripathi**

HIGH COURT OF JUDICATURE AT ALLAHABAD

Neutral Citation No. - 2025:AHC:28895-DB

AFR

Court No. - 42

Case :- CRIMINAL MISC. WRIT PETITION No. - 1126 of 2025

Petitioner :- M/s Mahindra & Mahindra Financial Services Ltd.,

Respondent :- State of U.P. and 2 others

Counsel for Petitioner :- Kartikeya Saran, Srishti Gupta

Counsel for Respondent :- G.A.

Hon'ble Mahesh Chandra Tripathi,J.

Hon'ble Kshitij Shailendra,J.

1. Heard Sri Kartikeya Saran, learned counsel for the petitioner and Sri Manish Goyal, learned Additional Advocate General for the State respondents.

## **THE CHALLENGE**

2. The petitioner, a public limited company registered under the Companies Act, 1956 and functioning as a Non-Banking Financial Company (NBFC), is primarily engaged in the business of financing vehicles and has approached this Court under Article 226 of the Constitution of India challenging an order dated 20.09.2024 whereby the Commissioner/ Special Court, Acquisition of Crime Generated Property, Commissionerate of Police, Gautam Budh Nagar, has rejected the representation dated 24.05.2024 filed by the petitioner under Section 15(1) of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986 (in short 'the Act, 1986'). By the said representation, prayer was made that vehicles financed by the petitioner-company to one JSR Roadlines (borrower) be released in favour of the petitioner.

## FACTUAL MATRIX

3. As per record, a first information report was registered against one Rajkumar under Section 2/3(1) of the Act, 1986. During the investigation proceedings, it was found that a company, namely, M/s Eskon Exports Private Limited was established by one Ravi Kana, a gang was operational and properties were acquired by gangster Rajkumar by illegally earned money and Rajkumar was appointed as Director and was, later on, made share-holder of the said company. On 15.08.2018, a plot was purchased in the name of the company, whereat one M/s Prime Pressing Tools Private Limited Company was operating. Seven (7) vehicles were financed by the petitioner-company pursuant to seven different agreements, wherein one Ravindra Singh stood as a guarantor and the said vehicles were parked inside the premises operated by M/s Prime Pressing Tools Private Limited. The record further reveals that a police report was prepared on 03.02.2024 with regard to the property acquired by Rajkumar, whereafter an attachment order was passed on 09.02.2024 by the Commissionerate of Police, Gautam Budhnagar under Section 14(1) of the Act, 1986. Following movable and immovable properties were attached under the said order:-

"(a) M/s. Eskon Exports Pvt. Ltd. Company HDFC Bank account number 502000076825503 with amount deposited in Rs.212356/-

(b) Plot number D-116 in Ecotech 12 of 4000 sq. meter whose current value is Rs.220000000/- which is in the name of M/s Eskon Exports Pvt. Ltd. Company, and

(c) Residential Plot 1735 square feet on which at present Building Flat No. B1/1838 Tower 10, GH- 05, Sector- CHI V Greater Noida, whose present value is Rs. 6300000/-"

4. It is alleged that multiple defaults were committed towards discharge of financial liability arising out of loan facility availed by the borrower and when the authorised representative of the petitioner company visited the premises of the borrower on 15.04.2024, the petitioner acquired knowledge about the seizure of seven vehicles parked inside the premises of M/s Prime Pressing Tools Private Limited. The petitioner preferred a representation dated 24.05.2024 before the Commissioner seeking release of the vehicles in question. The same has been rejected by the order impugned dated 20.09.2024.

## PREVIOUS PROCEEDINGS IN THIS CASE

5. The matter was earlier heard on 17.02.2025, on which date, Sri Kartikeya Saran, learned counsel for the petitioner, apart from arguing that the vehicles were not attached under the attachment order dated 09.02.2024 and, therefore, the Commissioner was not justified in refusing to release the vehicles, raised a legal submission to the effect that under the Act of 1986, Commissioner is not vested with the power to reject a release application/ representation. Submission was that whenever a representation under Section 15 is made seeking release of the property attached, the Authority can either release the property or, if he is of the opinion that release cannot be ordered, he is obliged to refer the matter with his report to the court having jurisdiction to try an offence under the Act.

6. Sri Manish Goyal, learned Additional Advocate General, on the last occasion, submitted that a reference had already been made by the Commissioner in July, 2024. The reference order was sought to be placed before the court, however, the Court adjourned the matter fixing 28.02.2025, orally asking Sri Saran to look into the reference order and then address the Court.

## TODAY'S PROCEEDINGS

7. A supplementary affidavit has been filed today annexing therewith the reference order dated 23.07.2024 passed by the Commissioner and it is urged by Sri Saran that though the reference was made two months prior to passing of the order impugned, the Commissioner has not spelt a word about the same in the order impugned in the petition and, in any case, once the reference had already been made, the representation under Section 15 moved by the petitioner should have been directed to be placed before the court for decision in terms of Section 16 of the Act 1986.

8. Sri Goyal, on the other hand, submits that the Commissioner has recorded cogent reasons for not releasing the vehicles in favour of the petitioner, however, he could not dispute that the order impugned does not refer to the order of reference already passed on 23.07.2024. He, otherwise, submits that since Section 16(1) of the Act itself refers to the representation under Section 15(1), the same has to be filed within three months from order of attachment and since the petitioner filed representation after expiry of three months period, the same has rightly been rejected though not on the ground of limitation but, in any case, reference of a time barred representation cannot be made.

9. Meeting this submission, Sri Saran submits that three months period of limitation begins to run from the date of "knowledge" of such attachment and the petitioner's specific case in the writ petition is that when the authorized representative of the petitioner company visited the premises of borrower on 15.04.2024, attachment of the property came in knowledge of the petitioner-company and, accordingly, the representation was moved on 24.05.2024 that was well within three months period of limitation.

## ANALYSIS

10. Having heard learned counsel for the parties, first of all, we would like to refer some relevant statutory provisions contained in the Act of 1986. Sections 15, 16 and 17 of the Act are reproduced

herein under:-

"15. Release of property.- (1) Where any property is attached under Section 14, the claimant thereof may, within three months from the date of knowledge of such attachment, make a representation to the District Magistrate showing the circumstances in and the sources by which such property was acquired by him.

(2) If the District Magistrate is satisfied about the genuineness of the claim made under sub-section (1) he shall forthwith release the property from attachment and thereupon such property shall be made over to the claimant.

16. Inquiry into the character of acquisition of property by court.- (1) Where no representation is made within the period specified in sub-section (1) of Section 15 or the District Magistrate does not release the property under sub-section (2) of Section 15 he shall refer the matter with his report to the Court having jurisdiction to try an offence under this Act.

(2) Where the District Magistrate has refused to attach any property under sub-section (1) of Section 14 or has ordered for release of any property under sub-section (2) of Section 15, the State Government or any person aggrieved by such refusal or release may make an application to the Court referred to in sub-section (1) for inquiry as to whether the property was acquired by or as a result of the commission of an offence triable under this Act. Such court may, if it considers necessary or expedient in the interest of justice so to do, order attachment of such property.

(3) (a) On receipt of the reference under sub-section (1) or an application under sub-section (2), the Court shall fix a date for inquiry and give notices thereof to the person making the application under sub-section (2) or, as the case may be, to the person making the representation under Section 15 and to the State Government, and also to any other person whose interest appears to be involved in the case.

(b) On the date so fixed or on any subsequent date to which the inquiry may be adjourned, the Court shall hear the parties, receive evidence produced by them, take such further evidence as it considers necessary, decide whether the property was acquired by a gangster as a result of the commission of an offence triable under this Act and shall pass such order under Section 17 as may be just and necessary in the circumstances of the case.

.....

(emphasis supplied)

17. Order after inquiry.- If upon such inquiry the Court finds that the property was not acquired by a gangster as a result of the commission of any offence triable under this Act it shall order for release of the property of the person from whose possession it was attached. In any other case the Court may make such order as it thinks fit for the disposal of the property by attachment, confiscation or delivery to any person entitled to the possession thereof, or otherwise."

(emphasis supplied)

11. A bare perusal of Section 15 would reveal that claimant of any property attached under Section 14 may, within three months from the date of knowledge of such attachment, make a representation to the District Magistrate and, in case the District Magistrate is satisfied about the genuineness of the claim, he shall forthwith release the property from attachment and thereupon such property shall be made over to the claimant. Section 16(1) of the Act deals with following two contingencies:-

"(i) where no representation is made within the period specified in sub-section (1) of Section 15; or

(ii) the District Magistrate does not release the property under sub-section (2) of Section 15."

12. Section 15(2) read with Section 16(1) would make it clear that whenever a representation seeking release of the attached property comes before the District Magistrate, he has two options; firstly, in case, he is satisfied about the genuineness of the claim, he shall forthwith release the property from attachment and make over the property to the claimant; or, secondly, in the reverse situation, when the District Magistrate is not inclined to release the property for any reason, he shall prepare a report and make a reference to the court having jurisdiction to try an offence under the Act.

13. Sub-section (3) (a) of Section 16, in clear terms, provides that on receipt of the reference under sub-section (1) or an application under sub-section (2), the Court shall fix a date for inquiry and give notices thereof to the person making the application under sub-section (2) or, as the case may be, to the person making the representation under Section 15 and to the State Government, and also to any other person whose interest appears to be involved in the case.

14. In the instant case, by the other impugned dated 20.09.2024, the petitioner's representation under Section 15(1) of the Act has been rejected and no reference has been made at least by the other impugned. However, it has come on record through Annexure No. S.A.-1 to the supplementary affidavit that a final order dated 23.07.2024 was passed by the Commissioner on the ground that since after expiry of the statutory period, no representation has been filed by Rajkumar despite service of order of attachment upon his cousin, the matter was referred under section 16(1) to the competent court. It is significant to refer the last four lines of the reference order dated 23.07.2024 which read as under:-

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15. It is, therefore, clear that when the order impugned in the writ petition was passed rejecting the representation filed by the petitioner, the matter had already been referred to the competent court two months prior thereto and, as a matter of fact, the entire file was sent through reference. Therefore, it is surprising as to how the petitioner's representation dated 24.05.2024 was entertained by the Commissioner, who had become functus officio after making a reference by transmission of the file to the competent court. During the course of arguments, in spite of our pointed query made to learned counsel representing both sides qua the aspect that when on 23.07.2024, the Commissioner had already made a reference, as to how the representation dated 24.05.2024 was entertained by the Commissioner, no satisfactory response was given to us.

#### SOME OTHER CONSEQUENCES OF ATTACHMENT AND REFERENCE

16. In a situation like the one involved in the instant case, another significant question arises for consideration by this Court as to the consequences of attachment and making a reference in such matters.

17. From the scheme of the Act, 1986, it is apparent that whenever any property is attached under Section 14 of the Act, there may be numerous claimants seeking release. In view of comprehensive scope of Section 15 read with Section 16(3) (a), a claimant may seek release of the property attached or make any other claim showing the Authority/ court his interest involved in the matter. Identical situation has arisen in the instant case where the petitioner has come up seeking release of seven (7) vehicles which were not attached but were parked inside the immovable property attached. Possibility of there being numerous identical claimants cannot be ruled out and, therefore, if, on account of non-compliance of provisions of Section 15(1) of the Act or for any other reason, a reference is made by the authority to the Court concerned, a situation may arise that there remains no record available before the authority in relation to the case in which release of the property is sought.

18. Now in a situation where, after making reference, further claimants come up with their statutory representations and no record is maintained by or left with the competent authority, he may not be aware of the reference already made on a previous occasion. In that event, in case the authority is satisfied about the genuineness of the claim, he shall release the property but in the reverse situation, he will have to make another reference. In fact absence of record of previous proceedings, he may not have sufficient material before it to form an opinion either to grant release or make a reference. In such an event, the authority may commit a glaring error not referable to his administrative/quasi judicial wisdom but only on account of lack of knowledge of previous proceedings including a reference already made and the reasons behind the same.

19. We find that Chapter VI contained in U.P. Gangster and Anti-Social Activities (Prevention) Rules, 2021 (for short 'the Rules of 2021') deals with certain provisions relating to attachment of property and it would be apt to refer Rules 39 and 51 thereof, which are as under:-

"39. Register of Section 14.- A register shall be maintained in the office of the Commissioner of Police/ District Magistrate, in which the date of registration of each seizure report shall be recorded and other relevant details shall also be recorded.

51. Certified copy of decision.- (1) The original of each decision shall be filed in the Judicial Record Room of the Commissioner of Police/ District Magistrate concerned.

(2) The Commissioner of Police/ District Magistrate shall provide a certified copy of the decision to each party on receipt of the fee fixed by the District Level Supervision Committee."

20. A perusal of Rule 39 reflects that registers are to be maintained qua "each seizure report and other relevant details" and Rule 51 provides that original of each decision shall be filed in the Judicial Record Room of the Commissioner of Police/District Magistrate concerned. None of these two Rules or any other rule visualizes a situation where, on a reference made by the Commissioner/District Magistrate, if the file is forwarded to the court concerned as per Section 16 and nothing remains with the authority, except a bare a register with no documents, what would be the fate of decision making process when further claims qua release are received by the authority. Rules being silent in this regard, in order to sub-serve the purpose of law so enacted and to facilitate lawful adjudication of claims under Section 15/16 of the Act, certain directions are required to be issued by this Court.

21. Therefore, we are of the view that the State Government should take immediate appropriate measures so that in every case where the competent authority, for the first time, refers the matter to the court having competence to deal with the release aspect as per Sections 15, 16 and 17 of the U.P. Gangster and Anti-Social Activities (Prevention) Act, 1986, a complete duplicate photostat copy of the case file be retained by the authority in his office and whenever further representations seeking release come up before the authority, aid of the previous proceedings be taken. Measures should also provide that the associated staff in the office of the competent authority is under obligation to place every representation along with previous record before the authority and not separately. Such measures, if taken, shall certainly rule out not only institution of proxy or collusive proceedings but also prevent abuse of process of law so that no order is obtained by misleading the authority in absence of complete record.

## CONCLUSION

22. Once we are satisfied that the scope of making claim for release is comprehensive under the scheme of the Act of 1986 and any person whose interest appears to be involved in the case is to be heard by the competent court, particularly as per Section 16(3)(a) of the Act, we are of the view that in the instant case, the Commissioner has erred in passing the impugned order dated 20.09.2024 as she had become functus officio after making a reference in July, 2024. Further, we are of the view that as soon as the petitioner's representation came before the Commissioner, she should have directed placement of the same before the court in the pending reference. Having not done so, the order impugned is in teeth of the statutory provisions and we deem it appropriate that the

petitioner's representation dated 24.05.2024 be placed before the court concerned pursuant to the reference order dated 23.07.2024 for decision on merits.

23. Accordingly, the writ petition is partly allowed. The order impugned dated 20.09.2024 is set aside and a direction is issued to the Commissioner/ Special Court, Acquisition of Crime Generated Property, Commissionerate of Police, Gautam Budh Nagar to forthwith place the petitioner's representation dated 24.05.2024 before the competent court in the reference already made by order dated 23.07.2024. If the reference has already been decided, the representation shall be considered on merits as a referred matter.

24. The court concerned shall decide the representation as per the statutory mandate contained under Sections 16 and 17 of the Act of 1986 read with relevant Rules of 2021 and within two months from the date of receipt of representation. It is made clear that we have not examined the merits of the petitioner's claim contained in its representation dated 24.05.2024 and it is for the competent court to examine and decide the same in accordance with law.

25. The Registrar General of this Court is directed to send a copy of this order to the Chief Secretary, Government of U.P., Lucknow so as to take measures by the Government as per observations made in paragraph no.21 of this order.

Order Date :- 28.2.2025 AKShukla/-

(Kshitij Shailendra, J.)      (Mahesh Chandra Tripathi, J.)