

Maria S.

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.180 OF 2021

Joseph Faust D'Sa

...Petitioner

Versus

Union of India, thr. The Secretary,
Ministry of Law And Justice, New Delhi
And 2 Ors.

.... Respondents

**Mr Shivraj Gaonkar, Advocate with Mr Prabhav Pravin Sirvoicar,
Advocate for the Petitioner.**

**Mr Nikhil A. Vaze, Additional Government Advocate for
Respondent No.3..**

CORAM: VALMIKI SA MENEZES, J

DATED: 28th March 2024.

ORDER:

By this Petition under Article 227 of the Constitution of India the petitioner impugns the order dated 25.02.2021 passed under Section 8 of the Prevention of Money Laundering Act, 2002 (PMLA). In a search carried out on 15.11.2020 under Section 17(4) of the PMLA at the premises of the petitioner, certain foreign currency was seized by the authorities and an offence was registered in FIR No.34/14 under Section 420, 471 and 120B IPC, which are scheduled offences under the PMLA, against the petitioner and several other persons. Upon further

investigation being conducted a charge-sheet bearing No.55/2020 was instituted on 25.06.2020 before the Special Court at Mapusa.

2. An application under Section 17(4) of the PMLA was filed by the authorities on 04.12.2020 before the adjudicating authority for adjudication under Section 8 of the Act. The impugned order has been passed on that application in terms of sub-Section 2 and 3 of Section 8.

3. The main contention raised by the petitioner was that he did not have a proper opportunity to place before the adjudicating authority certain documents which were at the relevant time not in his possession, and in which and if the same were considered by the adjudicating authority, the order passed by the authority could have been in favour of the petitioner. The petitioner has produced these documents at pages (91 to 110 (P-6 Colly, Annexure P-8).

4. On service of notice on the Respondents, preliminary objection has been raised to the maintainability of this petition raising a plea that the petitioner has an alternate and equally efficacious remedy in terms of an appeal provided under Section 26 before the Appellate Tribunal constituted in terms of Section 25 of the Act.

5. In support of the contention that an alternate remedy exists under the Act, learned Advocate Mr Nikhil Vaze for the Respondent places reliance on the judgment of the Supreme Court in ***Raj Kumar Shivhare v/s. Assistant Director, Directorate of Enforcement And Another (2010) 4 SCC 772.***

6. Opposing this contention, learned Advocate Shri Shivraj Gaonkar for the petitioner contends that the impugned order itself is passed without

jurisdiction since there is no specific finding recorded in the impugned order that the perpetrators are involved in money laundering. He further contends that recording of such a finding is a sine qua non for assuming jurisdiction by the adjudicating authority to proceed in passing an order under Section 8 of the Act.

7. If one goes through the scheme of the PMLA, sub-Section 1 of Section 26 provides for the filing of an appeal by any person aggrieved by an order made by the adjudicating authority, under the Act, before the Appellate Tribunal constituted under Section 25 therein. This appeal is to be filed within 45 days from the date of receipt of the copy of the order. The proviso to Section 3 of Section 26 empowers the Appellate Tribunal to condone the delay beyond the period of limitation of 45 days.

8. Against orders passed by the Appellate Tribunal further appeal is provided in terms of Section 42 of the PMLA to the High Court within a period of 60 days from that order. Such appeal to the High Court can be maintained on grounds which relate to question of law or fact arising out of order of the Appellate Tribunal.

9. Thus, the scheme of the Act provides for two appeals, i.e. first to the Appellate Tribunal and the second appeal, both on law and on fact, to this Court. Looking to the scheme of the Act, where the second appeal is before the very Court where the petitioner has now chosen to invoke its power under Article 227, it would be inappropriate for this Court to exercise its writ powers under Article 227 of the Constitution, when the second appeal is to the very same Court.

10. ***Raj Kumar Shivhare v/s. Assistant Director, Directorate of Enforcement And Another*** refers to this very same principle and stresses that writ petitions should not be entertained ignoring the statutory dispensation. These observations are found in paragraphs 31, 32 and 37 of the judgment which read thus:

'31. When a statutory forum is created by law for redressal of grievance and that too in a fiscal statute, a writ petition should not be entertained ignoring the statutory dispensation. In this case the High Court is a statutory forum of appeal on a question of law. That should not be abdicated and given a go-by by a litigant for invoking the forum of judicial review of the High Court under jurisdiction. The High Court, with great respect, fell into a manifest error by not appreciating this aspect of the matter. It has however dismissed the writ petition on the ground of lack of territorial jurisdiction.

32. No reason could be assigned by the appellant's counsel to demonstrate why the appellate jurisdiction of the High Court under Section 35 of FEMA does not provide an efficacious remedy. In fact there could hardly be any reason since the High Court itself is the appellate forum.

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37. In view of such consistent opinion of this Court over several decades we are constrained to hold that even if the High Court had territorial jurisdiction it should not have entertained a writ petition which impugns an order of the Tribunal when such an order on a question of law, is appealable before the High Court under Section 35 of FEMA.'

11. Following the principles laid down in ***Raj Kumar Shivhare v/s. Assistant Director, Directorate of Enforcement And Another*** and applying the ratio laid therein to the facts of this case, I am of the opinion that this would not be a fit case to entertain in writ jurisdiction of this Court under Article 227 of the Constitution of India. Accordingly, the

petition will have to be rejected without entering into the merits of the impugned order.

12. Considering the fact that the petitioner has approached this Court within a period of 45 days limitation under Section 27 of the PMLA, it would be appropriate for the Appellate Tribunal before whom the petitioner may now file an appeal to consider this fact and exercise its jurisdiction to condone the delay in terms of the proviso to sub-Section 3 of Section 26 favourably.

The petitioner makes a statement that he would file an appeal before the Appellate forum within the period of four weeks from today. The Appellate forum may consider condoning the delay in terms of the above observations made by this Court. The Appellate forum may also consider the additional documents to which reference has been made in paragraph 3 of this order whilst disposing of the appeal. Needless to state that these documents may be considered only after the respondents file their say to the application that the petitioner would move along with his appeal memo on that count.

13. The petition shall stand dismissed as not maintainable in view of the alternate and equally efficacious remedy available of an appeal in terms of Section 26 of the PMLA, however, with the observations made hereinabove.

14 No costs.

VALMIKI SA MENEZES, J.