

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
AN APPEAL FROM JUDGMENT AND ORDER PASSED IN ITS
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE**

**APML/1/2025
IA No.GA/1/2025**

**SMT. TAIJUNNEHAR BIBI
Versus
THE JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT.**

**APML/2/2025
IA No.GA/1/2025**

**ILTUSH AHMMED
Versus
THE JOINT DIRECTOR, DIRECTORATE OF ENFORCEMENT.**

Present :

The Hon'ble Justice Debangsu Basak

-And-

The Hon'ble Justice Md. Shabbar Rashidi

For the Appellant : *Mr. Apurba Kumar Ghosh, Adv.*

For the Respondent : *Mr. Arijit Chakraborty, Adv.
Ms. Swati Kumari Singh, Adv.*

HEARD ON : 20.05.2025 & 17.06.2025

DELIVERED ON : 17.06.2025

DEBANGSU BASAK, J.:-

1. Two appeals are taken up for analogous hearing as the same are directed against the same Final Order dated February 25, 2025 passed by the Appellate Tribunal under SAFEMA at New Delhi in

two appeals being FPA-PMLA-1429/Kol/2016 and FPA-PMLA-1430/Kol/2016.

- 2.** Learned advocate appearing for the appellants submits that, the offences alleged as against the appellants were committed allegedly for the period between June 13, 2005 to June 16, 2007. He points out that the schedule of offences to the Prevention of Money Laundering Act, 2002 were amended with effect from June 1, 2009. Therefore, the Enforcement Directorate (ED) acted without jurisdiction in proceeding under the Act of 2002.
- 3.** Relying upon the value of the properties appearing from the title deeds, learned advocate appearing for the appellants submits that, such value was less than Rs.30 lakhs and, therefore, again the same were not within the jurisdiction of the authorities under the Act of 2002.
- 4.** In response to a query of the Court, learned advocate for the appellants submits that, there is a proposal for settlement with the bank. He points out that proceedings under the Recovery of Debts due to Banks and Insolvency Act, 1993 are pending. He also points out that there are criminal proceedings pending as against the appellants.
- 5.** Learned advocate for the ED submits that, the offences of the appellants are continuing till date. They are in possession of the

proceeds of the crime till date. Therefore, the proceeding under the Act of 2002 cannot be said to be without jurisdiction.

- 6.** Referring to Section 2 (y) of the Act of 2002 learned advocate for the ED submits that the appellants are being proceeded against for offences described in part A of the schedule and therefore there is no pecuniary limit as sought to be contended.
- 7.** Materials on record establish that, the appellants were borrowers of Indian Overseas Bank. By mortgaging 11 several immovable properties with Indian Overseas Bank, the appellants obtained loan from such bank. Loan was not repaid by the appellants. Despite our requests to the appellants to inform the Court as to the time period within which the liability to the bank will be discharged, it is contended on behalf of the appellants, since proceedings before the Debts Recovery Tribunal are pending and that there are settlement proposals, they would not commit to any payment schedule. The appellants did not exhibit any intention to repay the bank in course of hearing of the appeals. Till date the proceeds of the crime are yet to be recovered. Appellants are in possession of the proceeds of the crime.
- 8.** Stand of the appellants, if accepted, is one of a repayment holiday in respect of a loan obtained by the appellants from a public sector bank.

9. Transactions between the appellants and the Bank are not simplicities to on transactions. Central Bureau of Investigation (CBI), Bank Securities and Fraud Cell, Kolkata registered a first information report (FIR) against the appellants amongst other persons, with active facilitation by employee of the bank for commission of fraud on the bank. The first information report speaks of fraud being committed for the period from June 13, 2005 to May 16, 2007. The first information report was registered, inter alia, under Section 120B/41419/420/467/468/471 of the Indian Penal Code and Sections 11/12/13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 for causing wrongful loss to the Indian Overseas Bank to the tune of Rs.5.24 crores. On the basis of the first information report, Enforcement Directorate recorded ECIR No.KLZO/05/2009 dated November 16, 2009 against the accused persons. ED recorded the statement of the accused persons including the appellants before us.

10. On the basis of the materials collected during investigation, ED attached 11 several properties as described in the order under appeal under the Provisional Attachment Order dated April 3, 2014. Thereafter Original Complaint No.320/2014 was filed before the adjudicating authority for confirmation of the Provisional Attachment Order.

- 11.** The adjudicating authority confirmed the attachment by its order dated June 30, 2016. Being aggrieved the appellant filed two several appeals before the Tribunal being FPA-PMLA-1429/Kol/2016 and FPA-PMLA-1430/Kol/2016, which resulted in the impugned order.
- 12.** With regard to the issue of the period of alleged offences and the schedule of offences are concerned, we find that, the period of the offences is alleged to be between June 13, 2005 to May 16, 2007. It is alleged that within this period that fraud was committed. By perpetrating such fraud, the appellants along with other persons, denuded a public sector bank, Indian Overseas Bank, of money legitimately belonging to Indian Overseas Bank, on the plea of obtaining loan by mortgaging several immovable properties. The proceeds of the crime remain with the appellants till date. It remained with the appellants on the date when the Schedule to the Act of 2002 was amended with effect from June 1, 2009.
- 13.** Therefore, it cannot be said that, as on the date when the Schedule to the Act, 2002 was amended, the appellants were not in possession of the proceeds of the crime of an offence within the meaning of the Act of 2002 disentitling the authorities under the

Act, 2002 to invoke the provisions of the Act of 2002 as against any of the appellants before us.

14. The plea, therefore, that by virtue of the Schedule to the Act, 2002 being amended with effect from June 1, 2009 and the offences alleged to be committed for a period prior thereto is not accepted. In our view, the Act of 2002 attempts to deal with and prevent money laundering. It is this essence which should be kept in mind while deciding the issue as to whether or not the period of the commission of the offence, is beyond the Act of 2002. The test would be whether or not with the coming into force of the Act of 2002 as also the subsequent amendments thereto, the persons charged under the Act, 2002 are in possession of the proceeds of the crime. If the answer to the issue as to whether the persons charged are in possession of the proceeds of the crime, after the Act, 2002 and its amendment came into effect, is in the affirmative then the invocation of the Act, 2002 against such charged persons cannot be faulted.

15. In the facts and circumstances of the present case, it appears that the appellants were dealing with immovable properties concerned as well as the proceeds of the crime subsequent to June 1, 2009. Therefore, we are not in a position to agree with the contention of the appellants that the period of offence being prior to

June 1, 2009, therefore, the provisions of Act of 2002 are not attracted.

16. Section 2(1)(y) of the Act of 2002 defines a scheduled offence. Clause (ii) thereof speaks of total value involved in offences to be in excess of Rs. 1 crore or more. Clause (ii) was amended by the amending Act of 2015 and Rs. 30 lakhs was substituted with Rs. 1 crore.

17. The proceedings initiated by ED as against the appellants herein relates to Section 2(1)(y) Clause (i) of the Act of 2002 which does not prescribe any pecuniary value. That apart, Clause (ii) prior to its amendment stood at Rs. 30 lakhs whereas, the proceeds of the crime are in excess of Rs. 5.24 crores. Even taking the value prescribed by way of the amendment to Clause (ii) then also, the proceedings are in respect of proceeds of crime far in excess of the prescribed limit. We hasten to add that, the proceedings of the ED against the appellants, are in respect of offences specified under Part A of the Schedule of the Act of 2002 which does not prescribe any pecuniary limit.

18. In a proceeding under the Act, 2002 so as to adjudicate whether the subject-matter falls within the pecuniary jurisdiction or not, one should be concerned with the quantum of the fraud committed rather the value of the immovable properties concerned.

19. Moreover, the prescription of value as made under the Act, 2002 under Section 2(1)(y) relates to Part-B of the Schedule and not to Part-A thereof. The offence alleged as against the appellants are under Part-A of the Schedule. The contention that the proceedings being below the prescribed pecuniary limit is without any basis.

20. In such circumstances, we do not find any merit in the present appeal.

21. Accordingly, both the appeals along with the connected applications (APML/1/2025 with IA GA/1/2025 and APML/2/2025 with IA GA/1/2025) are dismissed without any order as to costs.

(DEBANGSU BASAK, J.)

22. I agree.

(MD. SHABBAR RASHIDI, J.)