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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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*Reserved on: 08.05.2024**Pronounced on: 12.07.2024*

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**W.P.(CRL) 521/2023 & CRL.M.A. 4808/2023, CRL.M.A.
24507/2023**

LEENA PAULOSE

..... Petitioner

Through: Mr. Wills Mathews, Mr. Paul
John Edison, Mr. Anant Malik
and Ms. Akanshya Misra,
Advs.

versus

DIRECTORATE OF ENFORCEMENT

& ANR

..... Respondents

Through: Mr. Zoheb Hosain, Spl.
Counsel for ED with Mr.
Vivek Gurnani, Mr. Kartik
Sabharwal and Mr. Sachin
Sharma, Advs. for R-1.
Ms. Rupali Bandhopadhya,
ASC with Mr. Abhijeet Kumar
and Mr. Sagar Mehlawat,
Advocates along with
Inspector Ramkesh, P.S.
EOW.

CORAM:**HON'BLE MS. JUSTICE SWARANA KANTA SHARMA****JUDGMENT****Index to the Judgment**

FACTUAL BACKGROUND.....2



SUBMISSIONS BEFORE THIS COURT	9
Submissions on behalf of Petitioner	9
Submissions on behalf of Directorate of Enforcement	12
Submissions on behalf of State	14
ANALYSIS & FINDINGS	15
Relevant Provisions of Law.....	15
Interplay between Section 17 & 8 of PMLA and Rule 3 & 4 of PMLA Rules of 2013.....	20
Whether the proceedings carried out in this case by the Directorate of Enforcement are as per law?	21
Whether Vehicles are subject to natural decay?.....	23
Conclusion	28

SWARANA KANTA SHARMA, J.

1. The present writ petition under Article 226 of Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 (*'Cr.P.C.'*) has been filed by the petitioner for quashing and setting aside of impugned orders dated 20.12.2022 and 15.02.2023 passed by learned Additional Sessions Judge-03, Patiala House Courts, New Delhi.

FACTUAL BACKGROUND

2. Mrs. Leena Paulose, the petitioner herein who as per her pleadings states that she is a model, actor, business woman, dentist with strong roots in society and belongs to a respectable family hailing from Perumbavoor, Kerala, had got married to Mr. Sukash Channdersekhar on 18.07.2014. After marriage, they both lived together in Bangalore and Chennai.



3. In August 2021, the Special Cell of the Delhi Police had registered an FIR against unknown individuals for orchestrating a criminal conspiracy. The conspirators, pretending to be high-ranking government officials, had extorted approximately Rs. 200 crores from a complainant, Mrs. Aditi Singh. The ordeal began when Mrs. Singh had received a call from a man, claiming to be the Law Secretary of India, who had offered to assist her in her legal battles including obtaining bail for her husband. He had directed her to communicate with his junior officer, Abhinav, via Telegram. Abhinav had convinced her that she was under surveillance and had pressured her to contribute Rs. 20 crores to a party fund, which she had managed to arrange through various means. Later, the man had demanded an additional Rs. 130 crores, and had extended threats to her. Succumbing to the pressure, Mrs. Singh had ended up paying around Rs. 200 crores. Investigations later revealed that the petitioner's husband Mr. Sukash Channdersekhar, an inmate of Tihar Jail, had orchestrated the entire scam, and by using spoof calls, he had impersonated senior government officials and, along with his accomplices, he had defrauded and extorted a significant sum from Mrs. Aditi Singh.

4. On the basis of these allegations, an FIR bearing no. 208/2021 was registered on 07.08.2021 under Sections 170, 384, 386, 388, 419, 420, 506 and 120B of Indian Penal Code, 1860 (*'IPC'*) and Section 66D of Information Technology Act, 2000. On the same day, the petitioner herein was arrested. Since some of these sections were scheduled offences under Prevention of Money Laundering Act, 2002



(‘PMLA’), an ECIR number ECIR/DL10-11/54/2021 was recorded on 08.08.2021 by the Directorate of Enforcement to investigate the offence of money laundering under PMLA.

5. The investigation into Mr. Sukash Channdersekhar activities revealed that his wife, Mrs. Leena Paulose, was also implicated in previous cases alongwith him. During a probe under the PMLA, the Directorate of Enforcement had searched the residence of Mrs. Leena Paulose in Chennai on 16.08.2021, suspecting that it would contain records relating to money laundering and proceeds of crime. This search under Section 17 of PMLA led to recovery and seizure of several property documents, utensils made of white metals, electronic items, and sixteen luxury cars.

6. In her statement recorded by the Directorate of Enforcement, Mrs. Paulose disclosed that she had spent approximately Rs. 4 crores on the luxurious interior design of the property, stating that her husband enjoyed a flamboyant lifestyle, but she was unaware as to why so much money was spent on the interiors. She also disclosed that her husband Sukash had arranged for the furniture and decorative items, and some payments had been made in cash provided by him. She also mentioned that she was not even aware of the owner of the property in question, except the name of the company. With respect to the sixteen cars seized during the search, Mrs. Paulose stated that these cars were used by her husband whenever he visited Chennai, and thus, he must have been the owner of all these cars.

7. During investigation, it was revealed that certain luxury vehicles of Mr. Sukash Channdersekhar/Mrs. Leena Paulose were



kept at the business premises of M/s Titanium Motors, Chennai, and thus, the said premises was also searched, leading to recovery of one more luxury vehicle. Investigation further revealed that one other luxury car, owned by Mrs. Leena Paulose through her proprietary concern namely M/s Super Car Artistry had been given to M/s Lanson Toyota in Chennai for repairing, which was then seized after conducting a search at the premises of M/s Lanson Toyota. It was also revealed that one associate of Mr. Sukash Chandrasekhar i.e. Mr. Arun Muthu had also purchased some high-end cars, which had been funded by Mr. Sukash. Therefore, a search had also been conducted at the residence of Mr. Arun Muthu, which led to seizure of four vehicles. It was also revealed that some vehicles of Mr. Sukash Chandrasekhar/Mrs. Leena Paulose were kept at the business premises of one Mr. Karthik, located in Chennai. Pursuant to search conducted at this premises, four more cars were recovered and seized by the Directorate of Enforcement.

8. The investigation further revealed that Mr. Sukash had purchased these cars either in the name of some firms of his wife or third parties, and had made cash payments through his associates Mr. B. Mohanraj, Mr. Arun Muthu, etc. and further had legitimized the transactions with rent agreements. Significant commissions were paid to associates and third parties involved. These twenty-six (26) vehicles were found to be acquired using proceeds from criminal activities and were retained for further investigation and potential confiscation under PMLA.

9. In October 2021, Mr. Sukash Channdersekhar and seven other



accuseds including the petitioner Mrs. Leena Paulose were arrested by the Directorate of Enforcement. On 04.12.2021, prosecution complaint was filed before the Special PMLA Court, Patiala House Court against all eight accused persons and cognizance was taken by the Court.

10. The Directorate of Enforcement had thereafter filed applications for retention of seized/frozen properties and records in accordance with Section 17(4) of PMLA before the Adjudicating Authority, for adjudication under Section 8(3) of PMLA. These original applications bearing OA Nos. 555, 558, 559, 565 and 572 of 2021 were allowed by the Adjudicating Authority.

11. Pursuant thereto, an application was moved by Directorate of Enforcement in the month of June, 2022, seeking permission in terms of Rule 4(2) of the Prevention of Money Laundering (Taking possession of attached or frozen properties confirmed by Adjudicating Authority), Rules 2013 (***Rules of 2013***) for the disposal of the vehicles, seized by it during searches conducted under section 17 of PMLA, which was confirmed by the Adjudicating Authority *vide* its respective orders.

12. The learned Additional Sessions Judge-03, Patiala House Courts, New Delhi, *vide* impugned order dated 20.12.2022 granted the possession of the abovesaid 26 vehicles to the Directorate of Enforcement for disposal in accordance with law and the Rules of 2013. The relevant portion of the same reads as under:

“ An application has been moved on behalf of ED under Rule 4(2) of Prevention of Money Laundering (taking possession of



attached / frozen properties confirmed by adjudicating authority) Rules 2013 (hereinafter referred to as Rules 2013). It is stated in the application that under Rules of 2013, as per properties mentioned in Table A which are different vehicles/cars seized during the investigation of the ED and stated to be allegedly having been purchased by proceeds of crime. It is stated in the application that the adjudicating authority has already decided about the above said vehicles as per details given in Table B and therefore, the above said 26 vehicles are now liable to be taken into possession by the ED. Order of the adjudicating authority is annexed with the application. Same has not been challenged by A-2 from whose possession the vehicles have been attached. Therefore, the possession of above said vehicles are ordered to be given to ED for disposal in accordance with law and the Rules of 2013.

Application is accordingly disposed off.”

13. Thereafter, an application was moved by the State praying that the Directorate of Enforcement be directed to not dispose of the said vehicles without prior intimation to the Delhi Police/ Economic Offences Wing. The petitioner herein i.e. Mrs. Leena Paulose had also filed her objections to the prayer of Directorate of Enforcement, for sale of vehicles in question.

14. After considering the submissions made on behalf of all the parties, the learned Additional Sessions Judge *vide* order dated 14.02.2023 held that the Directorate of Enforcement was at liberty to proceed ahead to dispose off the 26 vehicles as per Rule 4 of Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicatory Authority), Rules 2013. It was further directed that the Directorate of Enforcement would file the report regarding disposal of those vehicles and further that the representative of Delhi Police/ Economic Offences Wing can



also participate in the process of auction of those vehicles. The relevant portion of order dated 14.02.2023 is extracted hereunder:

“ Today matter is also listed for disposal of application of State with the prayer for giving directions to Directorate of Enforcement, not to dispose off the vehicles possessed by ED during its investigation, without prior intimation to Delhi Police/ EOW. It is matter of record that in the proceedings of ECIR No.54/2021, this court had already passed order dated 20.12.2022 regarding handing over the custody of 26 vehicles to ED. Those vehicles were allegedly having purchased from proceeds of crime and therefore in the matter of ED, by above said order dated 20.12.2022, since the provisional attachment of those vehicles was already affirmed by Adjudicating Authority under PML Act.

Ld. SPP for State has no objection in this regard, however it is submitted that prior intimation was required to be given to Delhi Police.

Reply to this application has also been filed on behalf of accused Leena Paulose objecting regarding attachment of 26 vehicles, Ld. Counsel for accused Leena submitted that the attachment of vehicles in question was actually not affirmed by Adjudicating Authority.

Since this court after taking into account the submissions made on behalf of ED as well as also hearing counsel for accused Leena Paulose had passed the order dated 20.12.2022 in ED matter. In such situation this court cannot review its own order unless it is set aside or modified in any manner by any Superior Court where accused Leena Paulose has not challenged the order upto now. Therefore this court would not go into details of submissions made by Id. Counsel for that accused

Having considered the submissions for Id. SPP for State as well as Id. SPP for ED, ED in terms of already passed order dated 20.12.2022 is at liberty to proceed ahead to dispose off above said 26 vehicles as per Rule 4 of Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicatory Authority), Rules 2013. Needless to mention that both the investigating agencies are required to cooperate with each other and in this regard before disposing off those vehicles, an inventory of engine number,



registration number etc. would be prepared by ED along with photographs of those vehicles for the purpose of record/proof of those vehicles during the course of trial in ED as well as State matter. ED is also directed to file the report regarding disposal of those 234 vehicles in its ED matter as well as in the present matter. Representative of EOW can also participate in the process of auction of those vehicles so that they can also record the proceedings for the purpose of record of this case.

With these directions application of State disposed off.”

15. The above-mentioned orders dated 20.12.2022 and 14.02.2023, and the action of respondent i.e. Directorate of Enforcement of selling the 26 vehicles seized in the present case, has been challenged by the petitioner by way of present petition.

SUBMISSIONS BEFORE THIS COURT

Submissions on behalf of Petitioner

16. Learned counsel, appearing on behalf of petitioner Mrs. Leena Paulose, argues that the petitioner is suffering from depression with memory loss, after prolonged isolated life in jail for more than 16 months; however, she is able to remember that two cars i.e. Rolls Royce Ghost with registration no. DC12CA8000 and Brabus with registration no. HP12L0850, were purchased in the year 2018 i.e. much prior to the date of the alleged offence and by any stretch of imagination, these cars cannot come under the ambit and scope of proceeds of crime. It is submitted that the petitioner also remembers that 3 cars were taken on rent out of which one is Bentley Bentayaga having registration no. HR26DE0016, but she is unable to recollect about the details of the other cars. It is stated that seizure of these cars



is illegal and arbitrary. It is stated that the learned Trial Court has also failed to take into account these facts.

17. It is also argued on behalf of the petitioner that intent and content of Section 8(6) of PMLA has also to be kept in mind which provides that on conclusion of trial under PMLA, if the Special Court finds, that the offence of money laundering has not taken place or the property is not involved in money laundering, it shall order release of such property to the person entitled to receive it. Therefore, it is argued that till the conclusion of trial in this case, the property seized by the Directorate of Enforcement ought not to be disposed of since the accused persons would be entitled to receive the same back if they are found not guilty of the alleged offence.

18. It is also stated that the order passed by the Adjudicating Authority clearly states that the documents/ records/ vehicle/ Electronic items/ digital devices can be retained for the purpose of 'investigation and adjudication'. It is further stated that there is nothing in the said order which grants a substantial right to the Directorate of Enforcement to entitle them to confiscate the property of petitioner. It is stated that the respondent can merely retain the property but it cannot dispose it off. It is argued that the learned ASJ has failed to appreciate these facts.

19. It is stated that petitioner is aged about 40 years, who is suffering from depression, after prolonged isolated life in jail for more than 15 months, all away from near and dear ones despite the fact that she is totally innocent. It is also stated that petitioner does not remember the complete facts about the business activities of M/s



Super Car Artistry, having client service for buying and selling cars. It is stated that after the arrest of the petitioner and questioning of her near and dear ones, the professional associates such as Chartered Accountants etc. had started distancing themselves from the petitioner. The petitioner was not allowed professional meetings with her staff and associates and, therefore, she is unable to cross check the business transactions of the firm for the purpose of answering the queries of the Directorate of Enforcement. It is stated that the petitioner has been implicated in the present case only for the reason of being wife of accused no. 1 i.e. Mr. Sukash Chandrasekhar and that she was having an independent business in the name of M/s Super Car Artistry for buying and selling cars. It is also argued that most of the cars are taken on legally valid Loan Agreements and the petitioner was paying the EMI for the same without fail.

20. It is also argued that any action of the respondent, of selling the cars, will go to the root of the Articles 14, 19 and 21 of the Constitution of India as the chances of a dignified life to the petitioner will be denied to her and ignoring the fact that 26 cars are essential for her business activities. It is also argued that out of 26 cars, she is emotionally connected with some of the cars and once sold, no amount of money can get it back. It is also stated that just because she is the wife of the main accused, the same should not mean the end of dignified life for her. It is stated that most unfortunately, the entire pleadings of the respondent about the present petitioner is about her being the wife of the main accused and nowhere they have considered her status as an independent



professional paying huge tax to the Government and the earnings out of her business, which is against the idea of 'gender equality'.

21. It is accordingly prayed that the impugned orders passed in this case be set aside, and the respondent be directed to immediately halt the process of sale of 26 vehicles in question.

Submissions on behalf of Directorate of Enforcement

22. Learned Special Counsel, appearing on behalf of the Directorate of Enforcement, submits that the present petition has become infructuous since in view of the impugned orders dated 20.12.2022 and 14.02.2023 passed by the learned Additional Sessions Judge, 17 cars out of 26 cars have already been auctioned after following the due process.

23. It is submitted that as per the directions of the learned Additional Sessions Judge, first round of E-auction had concluded on 11.08.2023 through MSTC, a Government of India Undertaking, as a result of which two cars were sold at combined sale price of approx Rs. 1.35 crores. Further, the second round of e-auction was held on 29/30.09.2023, in which 15 cars were sold at a combined sale price of approx. Rs. 19.04 crores, and all the developments of e-auction are being informed to the EOW, Delhi.

24. It is stated that in this case, total 34 Original Applications had been filed for retention of seized properties/records, and the Adjudicating Authority had confirmed retention of the 26 cars in question. Thereafter, an application was moved by Directorate of Enforcement in the month of June, 2022, seeking permission in terms



of Rule 4(2) of the Prevention of Money Laundering (Taking possession of attached or frozen properties confirmed by Adjudicating Authority), Rules, 2013 for the disposal of the vehicles, seized during searches conducted under section 17 of PMLA. The learned Additional Sessions Judge had thereafter granted the possession of the above-said 26 vehicles to the Directorate of Enforcement for disposal in accordance with law and the Rules of 2013, *vide* order dated 20.12.2022.

25. It is submitted that pursuant thereto, another application was moved by the State (EOW) with the prayer for giving directions to Directorate of Enforcement, not to dispose off the vehicles seized during investigation, without prior intimation to Delhi Police/EOW. Further, a reply to the was also filed on behalf of the present petitioner objecting to sale/disposal of 26 vehicles. The Directorate of Enforcement in its reply had submitted that the amount received from the disposal of the vehicles will be kept available for transfer to the actual claimant. It is argued that after having considered the submissions on behalf of all the parties, learned Additional Sessions Judge in continuation of its earlier order dated 20.12.2022, directed *vide* order dated 14.02.2023 that the Directorate of Enforcement was at liberty to proceed ahead to dispose of the 26 vehicles as per Rule 4 of Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicatory Authority), Rules 2013. It was also ordered that the representative of EOW can participate in the process of auction of those vehicles so that they can also record the proceedings for the purpose of records this case.



26. Therefore, it is prayed that the present petition be dismissed since the proceedings carried out by the Directorate of Enforcement are as per law.

Submissions on behalf of State

27. Learned ASC, appearing on behalf of the State, argues that as per the provisions of MCOCA, every proceed of crime generated through commission of organized crime in the last 10 years by the members of the organized crime syndicate, before registration of FIR under the provisions of MCOCA, can be attached by the Investigating Agency. It is stated that in the present case, FIR was registered in the year 2021; therefore, any property, movable or immovable, gathered in the last 10 years, i.e. from 2011 to 2021, from the commission of organized crime can be seized by the Investigating Agency. It is submitted that all the 26 cars in question were purchased by the organized crime syndicate members within a period of last 10 years. It is submitted that since offences of FIR No. 208/2021 fall within the scheduled offences under the PMLA, the Directorate of Enforcement had registered the ECIR in question, and the 26 cars in question were seized by the Directorate of Enforcement.

28. It is further argued that investigation in this case had revealed that these cars were purchased/procured/leased using proceeds of the crime generated from the commission of the organised crime by indulging in continuing unlawful activity in the last 10 years. It is also submitted that the petitioner herein has not challenged the



seizure memo in this case yet before any Court of law. Therefore, it is prayed that the present petition be dismissed.

29. This Court has **heard** arguments addressed by learned counsel for the petitioner as well as learned Special Counsel for the Directorate of Enforcement, and has gone through the material placed on record by both the sides.

ANALYSIS & FINDINGS

Relevant Provisions of Law

30. Before appreciating the rival contentions raised before this Court, it shall be appropriate to take note of a few relevant provisions of PMLA, essential for the adjudication of controversy in question.

31. Section 17 of PMLA, which grants the power of search and seizure to the Directorate of Enforcement, is extracted hereunder:

“17. Search and seizure.—(1) Where the Director or any other officer not below the rank of Deputy Director authorised 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, or

(iv) is in possession of any property related to crime,

then, subject to the rules made in this behalf, he may authorise 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:

(4) The authority seizing any record or property under sub-section (1) or freezing any record or property under sub-section (1A) shall, within a period of thirty days from such seizure or freezing, 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 (1A), before the Adjudicating Authority.”

(emphasis supplied)

32. Section 8 of PMLA, which confers the power of ‘adjudication’ upon the Adjudicating Authority, reads as under:

“8. Adjudication.—

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or, seized 2 [or frozen] under section 17 or section 18, the evidence on which he relies and other relevant



information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) **The Adjudicating Authority shall, after—**

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, **record a finding whether all or any of the properties referred to in the notice issued under subsection (1) are involved in money-laundering:**

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) **Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under subsection (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall—**

(a) **continue during investigation** for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or



sub-section (2A) of section 60 by the Special Court;

Explanation.—For the purposes of computing the period of three hundred and sixty-five days under clause (a), the period during which the investigation is stayed by any court under any law for the time being in force shall be excluded.

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of...”

(emphasis supplied)

33. Insofar as the manner of taking possession of attached or frozen properties, confirmed by Adjudicating Authority is concerned, the same has been dealt with by Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicatory Authority), Rules 2013. Relevant rules, i.e. Rule 3 and 4, are extracted hereunder for reference:

“3. Procedure relating to possession.—

Where the provisional order of attachment made under sub-section (1) of section 5 of the Act or **order for retention of property or records seized or frozen under section 17 or section 18 has been confirmed by the Adjudicating Authority under sub-section (3) of section 8, the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property or record in the manner prescribed in these rules.**

4. Manner of taking possession of movable property.—



(1) **Where the attached property confirmed under sub-section (3) of section 8 of the Act is a movable property**, the authorized officer shall take physical possession of such property and deposit it in a warehouse or a storage place.

(2) **Where the attached property confirmed by the Adjudicating Authority, is liable to speedy and natural decay or the expense of maintenance is likely to exceed its value, the authorized officer shall sell such property with the leave of the concerned Special Court or Adjudicating Authority, as the case may be, and deposit the sale proceeds in the nearest Government Treasury or branch of the State Bank of India or its subsidiaries or in any nationalised bank in fixed deposit and retain the receipt thereof:**

Provided that where the owner of the property furnishes the fixed deposit receipt of a nationalised bank equivalent to the value of property in the name of Director of Enforcement, the authorised officer may accept and retain such fixed deposit receipt as security and send a report to the Special Court or Adjudicating Authority, as the case may be, for information and appropriate action:

Provided further that where the movable property is a mode of conveyance of any description, the authorised officer, after obtaining its valuation report from the Motor Licensing Authority or any other authority, as the case may be, may accept and retain the fixed deposit receipt of a nationalised bank equivalent to the value of the movable property as security in the name of Director of Enforcement and send a report to the Special Court or Adjudicating Authority, as the case may be, for information and appropriate action.

(3) Where the attached property confirmed by the Adjudicating Authority consists of cash, government or other securities or bullion or jewellery or other valuables, the authorized officer shall cause to deposit it in a locker in the name of the Director of Enforcement or in the form of fixed deposit receipt, as the case may be, in State Bank of India or its subsidiaries or in any nationalised bank and retain the receipt thereof.

(4) Where the attached property confirmed by the Adjudicating Authority is in the form of shares, debentures, units of mutual fund or instruments, the authorised officer shall cause to get such shares, debentures, units of Mutual Fund or instruments to be transferred in favour of the Director of Enforcement.

(5) Where the property confirmed by the Adjudicating



Authority is in the form of money lying in a bank or a financial institution, the Authorized Officer shall issue a direction to the bank or financial institution, as the case may be, to transfer and credit the money to the account of the Directorate of Enforcement.”

(emphasis supplied)

Interplay between Section 17 & 8 of PMLA and Rule 3 & 4 of PMLA Rules of 2013

34. A careful perusal of the above-mentioned provisions of PMLA and PMLA Rules of 2013 would reveal as follows:

- (i) **Section 17 of PMLA** grants the Director or an authorised officer of Directorate of Enforcement **to conduct searches and seizures** if there is **reason to believe**, recorded in writing, that a person is involved in money laundering or possesses related proceeds, records or properties. **Any property seized or frozen must be reported to the Adjudicating Authority** within a period of 30 days for retention of such record or property or for continuation of order of freezing, **as provided under sub-section (4)**.
- (ii) Under **Section 8 of PMLA**, the Adjudicating Authority is empowered to **adjudicate the application filed by the Directorate of Enforcement under Section 17(4) of PMLA**. After following the procedure as provided under Section 8(1), the Authority has to then **decide as to whether all or any of the properties are involved in money laundering**. In case the Adjudicating Authority reaches a conclusion that any property is involved in money laundering, the Authority can, in writing,



confirm the retention of property seized/frozen under Section 17 of PMLA. Thereafter, the **Directorate of Enforcement is required to take the possession of the property** frozen under Section 17 of PMLA, in such manner as may be prescribed.

- (iii) **Rule 4** of Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicatory Authority), Rules 2013 **provides that where the attached property confirmed by the Adjudicating Authority, is liable to speedy and natural decay or the expense of maintenance is likely to exceed its value**, the authorized officer shall **sell such property with the leave of the concerned Special Court** or Adjudicating Authority, as the case may be, and deposit the sale proceeds in the nearest Government Treasury or branch of the State Bank of India or its subsidiaries or in any nationalised bank in fixed deposit and retain the receipt thereof.

Whether the proceedings carried out in this case by the Directorate of Enforcement are as per law?

35. Having gone through the records of the case, **this Court is of the opinion** that in the present case, in order to collect the records relating to the money laundering and to trace proceeds of crime involved in money laundering, the Directorate of Enforcement had carried out search under Section 17 of PMLA at several locations and premises. In this process, a total of 26 luxury and high-end cars were



found and seized by the respondent, which were *prima facie* found to have been purchased out of the “proceeds of crime” generated out of the criminal activities of Mr. Sukash Channdersekhar.

36. In compliance of Section 17(4) of PMLA, the Directorate of Enforcement had filed five original applications bearing numbers OA Nos. 555, 558, 559, 565 and 572 of 2021. The common prayers in all these applications were as follows:

“I. In the facts and circumstances stated above, it is prayed that **retention of the properties and records seized under sub-section (1) of Section 17 of the Prevention of Money Laundering Act, 2002 may please be granted under sub-section (3) of Section 8** of the Prevention of Money Laundering Act, 2002 by this Hon'ble Adjudicating Authority.

II. It is expedient in the interest of justice that the properties and records seized as discussed above may please be ordered for retention till the finalization of the case...”

(emphasis supplied)

37. The applications preferred by the Directorate of Enforcement were allowed by the Adjudicating Authority *vide* orders dated 19.04.2022, 24.05.2022 and 25.05.2022. It is important to note that **none of these orders has been challenged by the petitioner herein**, as revealed from the contents of petition.

38. At this juncture, it is to be noted that since the applications filed under Section 17(4) had been allowed by the Adjudicating Authority under Section 8 of PMLA, the officer concerned of Directorate of Enforcement was then required to take possession of the said properties, records, etc.

39. It is the case of respondent that since the 26 luxury cars i.e.



movable properties, which had been approved to be retained by the Adjudicating Authority, were liable to speedy and natural decay and since the expenses of maintenance of the said vehicles were likely to exceed their value and cause unnecessary burden upon the exchequer, an appropriate application was moved before the learned ASJ seeking permission under Rule 4(2) of Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicatory Authority), Rules 2013, for the sale of vehicles in question, in accordance with the procedure prescribed under the said rule. The same was allowed by the learned ASJ *vide* impugned order dated 20.12.2022.

40. Thus, a bare perusal of the record leads to only one conclusion that the procedure followed by the respondent was in accordance with the provisions of PMLA and the Rules of 2013. Even the petitioner, neither through the contents of the petition nor during the course of arguments, has been able to point out any infirmity in the above-mentioned process followed by the respondent. Further, the validity of the relevant rule(s) of Rules of 2013, as referred hereinabove, has also not been assailed before this Court by the petitioner herein.

Whether Vehicles are subject to natural decay?

41. Rule 4 of Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicatory Authority), Rules 2013 provides the manner of taking possession of movable properties is concerned, which clearly outlines



as follows:

- (i) Where the property in question is a movable property, the authorized officer shall take physical possession of such property and deposit it in a warehouse or a storage place [*Rule 4(1)*].
- (ii) Where the property in question is **liable to speedy and natural decay or the expense of maintenance is likely to exceed its value**, such property **shall be sold** of with the leave of the concerned Special Court or Adjudicating Authority, and the **sale proceeds shall be deposited in the nearest Government Treasury or branch of the State Bank of India** or its subsidiaries or in any nationalised bank in fixed deposit and the receipt of the same shall be retained [*Rule 4(2)*].

42. The applicability of Rule 4(2) has not been disputed by the petitioner Mrs. Leena Paulose. It is the specific case of respondent that the 26 cars in question, which are expensive and luxury cars, are those movable properties which are subject to natural decay or the expense of their maintenance is likely to exceed its value. No argument has been addressed on behalf of the petitioner that the vehicles in question are not subject to natural decay.

43. **This Court is further of the opinion** that vehicles are inherently subject to natural decay and depreciation over a period of time, which significantly impacts their value and functionality. With the passage of time, vehicles undergo wear and tear. Further, storing a vehicle in a container warehouse, as in the present case, for a long period of time results in decay since if a car is left stationary for



years, several issues can compromise its condition. Environmental factors such as weather conditions also contribute to this decay, causing issues such as rust and corrosion. Rust, in particular, can severely damage a vehicle's structure and all other components. Moreover, mechanical components of a vehicle also suffer from decay, requiring frequent and expensive maintenance to keep the vehicle operational, especially in the present case, where the vehicles involved are 26 high-end luxury cars such as Rolls Royce, Ferrari, Range Rover etc. The upkeep and maintenance of the same is also expensive. In container warehouses, the care and protection cars require, from environmental onslaughts and decay due to rusting, cannot be ensured.

44. The depreciation of vehicles is also a well-recognized phenomenon in the automobile industry. From the moment a car is driven out of the showroom, its value begins to decrease. This depreciation accelerates with each passing year, and the resale value drops substantially. After some years, most vehicles lose a significant part of their original value, making them less economically viable to maintain or sell.

45. In this background, this Court also takes note of the observations of the Coordinate Bench in case of *Manjit Singh v. State* 2014 DHC 4541 wherein it was observed, though in context of release of vehicles on *superdari*, that vehicles which deteriorate with time must be disposed of speedily. The relevant observations are extracted hereunder:

“20. In case of perishable properties or those subject to speedy



and natural decay, **disposal should be ordered keeping in view the expected life of the property rather than the conclusion of investigation/trial. Certain items like vehicles, which also deteriorate with time**, speedy disposal shall similarly be ensured to effectively implement the mandate of the Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat (supra 1)* that articles are not to be kept for a period of more than one month. As regards valuable articles and currency notes, mandate of the Supreme Court as prescribed in above mentioned judgments should be strictly ensured.”

(Emphasis supplied)

46. Therefore, the relevant rules of PMLA which allow the sale of seized vehicles and depositing the proceeds of the same into a fixed deposit addresses the above-mentioned issues. For the accused, if the trial concludes in his favor after several years, he would receive the monetary value rather than a decayed, non-operational, rusted vehicle, almost reduced to junk. This ensures the accused does not suffer any financial loss due to the prolonged judicial process. For the investigating agency, this approach ensures that the value of the seized properties will be available to the investigating agency if the trial concludes in their favour.

47. Therefore, by converting the sale proceeds of a movable property subject to natural decay, such as a vehicle, into an interest-bearing fixed deposit, the Rule ensures that the value of seized properties is preserved and potentially increased, thereby ensuring equal justice to either of the party, regardless of the trial’s duration. In this manner, both the right of an accused as well as the right of the investigating agency is protected, since a piece of junk or scrap is of no use to either of them.



48. It is also significant to note that *proviso* to aforesaid Rule 4(2) provides that where the owner of the property furnishes the fixed deposit receipt of a nationalised bank equivalent to the value of property in the name of the Director of Enforcement, the authorised officer may accept and retain such fixed deposit receipt as security and send a report to the Special Court or Adjudicating Authority, for information and appropriate action, and not sell the property.

49. However, in the present case, the petitioner herein has not made any request whatsoever in terms of *proviso* to Rule 4(2) that in exchange of any fixed deposit receipt equivalent to the value of cars furnished by her, the cars in question be not sold by the Directorate of Enforcement.

50. Furthermore, though it has been contended on behalf of the petitioner that Section 8(6) of PMLA provides for release of property seized and retained under PMLA, if the accused is found not guilty after conclusion of trial and is therefore acquitted, **this Court is of the view** that a provision of law cannot be read in isolation and rather, has to be read as a whole. As noted in the preceding discussion also, Section 8(4) of PMLA itself provides that after an order is passed under Section 8(3) by the Adjudicating Authority, the concerned officer of Directorate of Enforcement has to take possession of the properties in such “manner as provided”. This ‘manner’ has been provided under Prevention of Money Laundering (Taking Possession of Attached or Frozen Properties Confirmed by Adjudicatory Authority), Rules 2013, which have been framed by the Central Government in exercise of power under Section 73 of



PMLA. This procedure has been explained in detail in the preceding paragraphs.

51. Therefore, there is no merit in the argument that the sale of seized vehicles in this case is against the mandate of Section 8(6) of PMLA. Needless to say, as per Section 8(6), if the accused persons in this case are found *not* guilty of offence of money laundering, they would be entitled to receive the amount generated from selling the movable property i.e. cars in the present case, which the Directorate of Enforcement is obliged to keep deposited in the nearest Government Treasury or branch of the State Bank of India or its subsidiaries or in any nationalised bank in fixed deposit.

Conclusion

52. This Court has also considered the arguments presented on behalf of Mrs. Leena Paulose, who claims to be a model, actor, dentist, and successful businesswoman. She has also claimed her involvement in various business activities, including M/s Super Car Artistry. However, her statements contain contradictions and inconsistencies, which this Court will address in the following paragraphs.

53. On the one hand, Mrs. Leena Paulose states that she is a model, actor, dentist and an independent successful business woman, having various business activities including M/s Super Car Artistry, and that she has been implicated in the present case solely because she is the wife of the main accused in this case. However, on the other hand, she states in her application dated 31.08.2022 filed before



the learned Trial Court, that as a dutiful wife, she had complied with the suggestions/demands of her husband Mr. Sukash Channdersekhar without understanding various alleged legal issues and consequences involved, as she was made to understand that the amount credited in her account are all loans and a part of business. In this regard, the relevant portion of application dated 31.08.2022 is extracted hereunder:

“3. The accused in good faith, and as a dutiful wife, complied with the suggestions/demands of the accused husband/the main accused without understanding various alleged legal issues and consequences involved as she was made to understand that the amount credited in her account are all loans and a part of business . The accused is not a beneficiary of the alleged crime receipts, and was under the bonafide belief that, all the amounts credited in her account is Loan taken by her husband, and has not done anything for her benefit, as she herself was earning well”

54. Therefore, Mrs. Paulose has presented a contradictory stance in her defence before this Court. On one hand, she portrays herself as a successful and independent individual, which starkly contrasts with her statements made before the learned ASJ where she has portrayed herself as a dutiful wife who had complied with her husband’s suggestions and demands. Thus, if Mrs. Paulose is indeed an independent business woman as she claims, it is hard to believe that she would be unaware of the legal implications of significant financial transactions in her bank accounts made by her husband i.e. Mr. Sukash Channdersekhar. If she was genuinely unaware and simply following her husband’s directives, it contradicts her claim of being an independent businesswoman, having an identity of her own,



who knew what she was doing.

55. Further, this court notes that, in one breath, she states that she is suffering from depression with memory loss due to prolonged incarceration and she does not remember any details of the cars in question except 5 cars, and in the other, she states that most of the cars were taken on loans, based on legally valid loan agreements and she was paying the EMIs for the same without fail and the said cars are essential for continuing with her business activities.

56. The petitioner also states that these 26 cars are essential for continuing with her business activities, but at the same time, she mentions in the petition that she does not even remember the complete facts about her business M/s Super Car Artistry. Likewise, she further states that she is emotionally connected with some of these cars and once sold, no amount of money can get it back. However, at the same time, it is important to note that at-least 8 cars were not even recovered from the residential or business premises of the petitioner Mrs. Leena Paulose, but from the premises of Mr. Arun Muthu and Mr. Karthik. Strangely, the petitioner does not even remember the make and registration number of the cars in question, nor does she know where the registration papers and other relevant documents of the cars in question were, which belie her contentions. The argument regarding emotional connection with some of the cars in question is also not palatable since neither the restriction of such cars nor the reason for the emotional connect was provided in the pleadings or during arguments. Even otherwise, when one does not even have the knowledge about majority of the cars or other details,



where will be the question of emotional attachment with any of them.

57. A reasonable human being, who is able to purchase 26 luxurious cars, would have not only the documents and the details *qua* her own income, but all the details of expenditure incurred on purchasing/maintaining such luxury cars. Mrs. Paulose, however, has placed no documents before this Court to support her claims over the cars in question. Further, she cannot be allowed to take shelter under the pretext that her incarceration in the jail is responsible for distress and depression leading to memory loss, moreso when there is no medical evidence to support her claim.

58. On the other hand, it is the specific case of Directorate of Enforcement that it had conducted searches under Section 17 of PMLA at various locations, in connection with the present case, and had found that these cars were purchased out of the 'proceeds of crime' generated by Mr. Sukash Chandrasekhar through his illegal activities. The Adjudicating Authority, *vide* five separate orders, has already allowed the application filed by the Directorate of Enforcement under Section 17(4) read with Section 8 of PMLA, after *prima facie* recording that commission of offence of money laundering has taken place and proceeds of crime have been generated and that the cars in question had been purchased out of the said proceeds of crime generated through commission of scheduled offence, and thus, the properties, documents, etc. seized by the Directorate of Enforcement are required to be retained. These orders have not been challenged by the petitioner till date.

59. Therefore, considering the aforesaid facts and circumstances,



and for the reasons recorded in preceding discussion including paragraphs 35 to 51, this Court finds no infirmity with the orders impugned by way of this petition.

60. However, **the Directorate of Enforcement is directed to keep the entire amount generated from sale of cars in question in an 'interest bearing' fixed deposit.**

61. In view thereof, the present petition alongwith pending applications stands dismissed.

62. Nothing expressed hereinabove shall tantamount to an expression of opinion on the merits of the case.

63. The judgment be uploaded on the website forthwith.

SWARANA KANTA SHARMA, J

JULY 12, 2024/A