

APPELLATE TRIBUNAL UNDER SAFEMA AT NEW DELHI

MP-PMLA-3126/LKW/2024 Exemp.

MP-PMLA-3125/LKW/2024 Stay

FPA-PMLA-1405/LKW/2024

Vivek Gupta

... Appellant

Versus

The Deputy Director,

Directorate of Enforcement, Lucknow

... Respondent

Advocates/Authorized Representatives who appeared

For the Appellant : Mr. E Krishna Das, Adv.

For the Respondent : Ms. Anubha Bhardwaj, Adv.

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JUSTICE MUNISHWAR NATH BHANDARI : CHAIRMAN

FINAL ORDER

14.05.2026

By this appeal under Section 26 of the Prevention of Money Laundering Act, 2002 (in short 'the Act of 2002'), a challenge has been made to the order dated 22.04.2024 passed by the Adjudicating Authority for retention of the cash and articles seized at the time of search of premises on 24.11.2023.

2. The search was conducted at many places and premises of different persons which includes the appellant at his residence at A-2, 101, 3rd Floor Janakpuri, New Delhi. During the course of search, the documents, apart from Indian Currency Notes of Rs.67,50,000/- were found and

seized. Immediately after seizure of the documents and the currency notes, apart from mobile phone and the passport, the competent authority sent an original application to the Adjudicating Authority to seek retention of the seized articles and the cash. The Adjudicating Authority, after considering the rival submissions of the parties, ordered for retention of the seized cash, apart from the digital devices and being aggrieved by the order of the Adjudicating Authority, the present appeal has been filed.

3. The search conducted at the premises of the appellant was after registration of the FIR against Rashid Naseem, Managing Director of M/s Shine City Infra Project Pvt. Ltd. and other directors for commission of offence under Section 120-B, 419, 420, 467 and 471 of IPC and ECIR under the Act of 2002. The allegation was that the main accused floated a real estate project at various places in Uttar Pradesh. The company lured many persons to invest in the project by promising them high returns on their investments. The accused issued even post-dated cheques to convince the investors. However, when the cheques were deposited, they were dishonoured by the banks. It was rather found that the company had shown forged documents to lure the investors.

4. After registration of the FIR, the respondents recorded the ECIR and initiated investigation under the Act of 2002. The search was conducted at various premises which

includes the premises of the appellant where apart from cash of Rs.67,50,000/-, many agreements between the appellant and unrelated parties and the digital devices, etc. were seized. The search was conducted finding the appellant's close nexus with the main accused Rashid Naseem, Managing Director of M/s Shine City Infra Project Pvt. Ltd. At the time of search, the appellant failed to disclose the source of Rs.67,50,000/- and accordingly after preparation of Punchnama, seizure of cash was caused. Since an order for retention has been passed by the Adjudicating Authority, this appeal has been preferred by the appellant.

5. I have made reference of FIR against M/s Shine City Infra Project Pvt. Ltd., Rashid Naseem, Managing Director of the company, Asif Naseem, Director of the company along with many others in the opening paras. The main allegation was about cheating the general public for the investment involving their hard-earned money with the promise to return the amount with high returns. The cheques were also issued but were not honoured, rather dishonoured by the bank and thereby the general public was cheated by the company and its directors.

6. So far as the appellant is concerned, he was having close nexus with the main accused Rashid Naseem and, therefore, his premises was searched. The appellant was otherwise summoned for recording the statement under

Section 50(2) of the Act of 2002. He admitted about his relation with the main accused Rashid Naseem with whom he met in Dubai and had received huge amount running in crores from Shinecity companies into his personal account. It was placed in his HUF account and also in the accounts of his entity Vardhman Buildtech Pvt. Ltd.

7. The learned counsel for the appellant submitted that the impugned order has been passed by the Adjudicating Authority without following the procedure. The appellant was not supplied with the copies of the documents relied in the proceedings before the Adjudicating Authority and, therefore, the impugned order has been passed in gross violation of the principles of natural justice. The argument aforesaid was contested by the learned counsel for the respondents and submitted that whatever documents were relied in the original application to seek retention of the articles were supplied to the appellant.

8. The learned counsel for the appellant at this stage submitted that only a copy of the punchnamas was supplied and not the documents indicated therein. The counsel for the respondents submitted that the RUDs were only the punchnamas, which were supplied to the appellant. Other than the punchnamas, no other document was relied thus allegation for non-supply of relied upon documents is erroneous.

9. I have gone through the record and find that number of punchnamas were the relied upon documents and have been made part of the proceedings, copies of which were given to the appellant. When no other document was relied upon by the respondents, there was no question to supply a copy of it. In fact, if the appellant was desirous of getting copies of other documents, he could have made an application under Section 21(2) of the Act of 2002. However, no such application was preferred by the appellant to secure the documents and allegations have now been made against the respondents for non-supply of the RUDs though it is not found proved, rather relied upon documents were supplied which were only the punchnamas. Thus, it is incorrect to state that the Adjudicating Authority passed the order without following the procedure.

10. The Adjudicating Authority pass the order on the material which has been relied upon by the respondents and the other parties. The Adjudicating Authority could not have relied and supplied the documents other than what was the part of OA and, therefore, the first argument raised by the appellant cannot be accepted. In fact, if the appellant was desirous of seeking documents, he could have made an application under Section 21(2) of the Act of 2002 and if an adverse order is passed, then to take the appropriate remedy. No such procedure was applied by the appellant in this case and, therefore, it is not a case of non-supply of

RUDs, rather whatever was relied as document had been supplied to the appellant. In view of the above, I find no illegality in the action of the respondents.

11. It is otherwise a fact that after completion of first part of the investigation by the respondent ED, Prosecution Complaint has already been filed, that too on 21.04.2026 where appellant has been arrayed as Accused No.2. The respondents have sought confiscation of Rs.67,50,000/- and that can be only when there remains justification to seek retention of the seized property. It is a fact that by filing of the prosecution complaint, the respondents have not only sought for confiscation of the amount of Rs.67,50,000/- but retention of the digital devices and data, etc. In the light of the above, I do not find any illegality in the order passed by the Adjudicating Authority.

12. The learned counsel for the appellant submitted that appellant has no nexus with the commission of crime and, therefore, there was no reason to retain the seized cash and the articles thus the impugned order should be quashed. The argument aforesaid has been contested by the respondents. It is submitted that the prosecution complaint naming the appellant as an accused has already been filed on 21.04.2026. The appellant has been arrayed as an accused at Item No.2. In the prosecution complaint, confiscation of Rs.67,50,000/- has been sought. In view of

the above situation, the retention of the articles gets justified.

13. I find that what has been seized in the case is largely the cash of Rs.67,50,000/-, apart from the documents and digital devices which have already been made part of the prosecution complaint. Thus, its retention gets justified. The appellant otherwise failed to refer the source of the amount seized at the time of search. It is more so when appellant was called upon to disclose the source under Section 8(1) of the Act of 2002.

14. The appellant has enclosed receipt of money on sale of scrap. It is to prove the source for the cash. The counsel for the respondents seriously opposed the argument and submitted that the documents are not worth acceptance. The appellant seems to have taken weight slips from the "Dharamkanta". It is without referring to the required details, such as name of the parties to whom sale was made. The receipt of money is without indication as to from whom it was received and even invoice and details of GST. The document now filed seems to have been created by the appellant subsequently, otherwise at the first instance the appellant could have disclosed the source of the cash at the time of search.

15. The rival submissions have been considered by me and I find substance in the argument of the respondents. The type of the document submitted by the appellant does not

endorse the source of the cash. The documents do not indicate as to whom the supply of scrap was made coupled with invoice and GST number. The type of document submitted by the appellant can be created by anyone at any time. The disclosure of source by producing such documents cannot be accepted, thus the appellant failed to substantiate the source for possession of the cash. In view of the above also, the respondents were justified to pray for dismissal of the appeal.

16. The counsel for the appellant had made a reference of the rejoinder submitted before the Adjudicating Authority but was not accepted. The perusal of the record shows that when the matter was kept for final hearing, the appellant tried to produce the documents without specifying the provision under which he can do so. Thus, it is not that any principle of law was violated so as the instructions, rather finding appellant's involvement in the commission of crime under Section 3 of the Act of 2002, the seizure of amount was retained. I do not find any error in the aforesaid. It is when appellant has already been named as Accused No.2 in the prosecution complaint with prayer for confiscation of the amount of Rs.67,50,000/- and retention of the documents which have been made part of the RUDs to the prosecution complaint, thus their retention also gets justified. Therefore, I do not find any reason to cause interference in the impugned order. Appeal fails and is dismissed. The seizure

of the articles and the cash would, however, remain subject to the final outcome of the trial.

(Justice Munishwar Nath Bhandari)
Chairman

New Delhi,
14th May, 2026

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