

Financial Crimes Commission V Bimla Ramloll & Anor 2024 SCJ 326

Law: sections 77 and 79 of the Financial Crimes Commission Act 2023 [FCCA]

The applicant moved for a Criminal Confiscation Order against both defendants ordering them to pay to the State, within such time as it may determine, an amount equal to the value of the benefits derived by them.

In virtue of section 168(5)(b) FCCA, an application for a Restraining Order, Confiscation Order, Restriction Order or Recovery Order made under the repealed Asset Recovery Act and pending on the commencement of the Act shall be deemed to be an application made under the FCCA for a Criminal Attachment Order, Criminal Confiscation Order, Civil Attachment Order or Civil Confiscation Order, respectively, and shall be dealt with in accordance with the FCCA.

The Applicant had made several averments which were initially resisted by both defendants and later indicated that they have no objection to the application. The defendants did not adduce any evidence at the hearing of this present application.

The applicant had attached to the application a statement setting out an assessment of the value of the benefit obtained by the defendants and since the defendants did not deem it fit to respond to each averment in it or to state which averment they do not accept, there is no evidence that they do not accept any of the averment in the applicant's affidavit.

In assessing the value of the benefit, the Court took into account the evidence adduced by the applicant in the statement which had been attached to the present application, assessing the monetary value of the benefit which each defendant had derived. The statement, setting out the assessment of the monetary value of the benefit obtained by the defendants, considered the value of property that was derived, directly or indirectly, by the defendants as well as the increase in the total value of property in Sodnac in which the defendants had an interest in the period beginning immediately before the commission of the offence and ending at some time after the commission of the offence, that is within the period between September 2012 and March 2013.

Section 80 (6) provides that the defendants' failure to respond may be treated by the court as an acceptance of every averment in the statement other than an averment regarding whether he complied with the requirement and an averment that he has benefited from the offence or that he obtained any property or advantage as a result of or in connection with the commission of the offence. Section 80 (5) FCCA also provides that the Court may, for the purpose of determining whether there was a benefit and the value of the benefit, treat any acceptance by the defendant of the averments set out in the statement referred to in section 77(1)(b) as conclusive of the matters to which it relates.

In view of the fact that the defendants have not adduced any evidence, the evidence adduced by the applicant in its affidavit in support of the application and the attached statement stand unchallenged and unrebutted; and taking into account that the property and assets had been acquired by the defendants between September 2012 to March 2013 when Sunkai had received investments to the tune of Rs 690,668,800, the court found it established that both defendants have benefitted from the commission of the offence of money laundering and defendant No. 1 has additionally benefitted from the commission of the offence of swindling.

In the light of the above and for the reasons given the applicant has established that defendant No. 1 has benefitted from the monetary value in the sum of Rs 609,020,650.05 from the commission of the offences for which she has been convicted whereas defendant No. 2 has benefitted from the commission of the offence of money laundering in the value of Rs 735,000. Furthermore, since both defendants have not adduced any evidence, they have not persuaded the Court that the total value of their resources is less than the benefitted amount.

The Cour granted the application in terms of Motion Paper and issued a Criminal Confiscation Order under Section 79 FCCA ordering:

1. Defendant No. 1 to pay to the State the sum of Rs 609,020,650.05 representing an amount equal to the value of her benefit within 6 months from the date of this present judgment; and
2. Defendant No. 2 to pay to the State, the sum of Rs 735,000 being an amount equal to the value of his benefit within 6 months from the date of this present judgment.