*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN**

+ CRIMINAL PETITION No.1072 OF 2021

% Date**:**08-09-2022

M/s.Jagati Publication Limited

... Petitioner

v.

$ Enforcement Directorate,
Office of Kendriya Sadan, Hyderabad.

... Respondent

! Counsel for the Petitioner : Mr. S.Niranjan Reddy, learned Senior Counsel appearing for
Mr. N.Naveen Kumar

^ Counsel for respondent : Mr. T.Surya Karan Reddy,
Additional Solicitor General of India
For
Mr. B.Narasimha Sarma

< GIST:

➢ **HEAD NOTE**:

? CASES REFERRED:

1. 2021 SCC OnLine TS 646
2. 2022 SCC OnLine SC 929
3. W.P. (Crl) No.257 of 2012 and batch, dated 19.02.2013
4. (2018) 11 SCC 1
5. (1985) 4 SCC 573
6. (2014) 4 SCC 392
7. (2016) 3 SCC 183

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

CRIMINAL PETITION No.1072 OF 2021

ORDER:

Heard Mr. S.Niranjan Reddy, learned Senior Counsel for Mr. N.Naveen Kumar, learned counsel for the petitioner and Mr. T.Surya Karan Reddy, learned Additional Solicitor General of India for Mr. B.Narasimha Sarma, learned counsel for the respondent.

2. This criminal petition has been filed under Section 482 of the Code of Criminal Procedure, 1973 (briefly 'CrPC' hereinafter) seeking a correction in the appropriate procedure to be followed while conducting enquiry and trial of offences classified as "scheduled offences" under the Prevention of Money Laundering Act, 2002 (briefly, "PMLA" hereinafter) and the "consequential offences" under PMLA. Related prayer made is for quashing order dated 11.01.2021 passed by the learned Special Judge for CBI Cases, Hyderabad in S.C.No.2 of 2016.

3. It is stated that petitioner has been accused of committing offences under Sections 420, 471 and 120B read

with Section 420 of the Indian Penal Code, 1860 (IPC) as per charge sheet filed by the Central Bureau of Investigation (CBI) in C.C.No.10 of 2012 pending on the file of Principal Special Judge for CBI Cases, Hyderabad. The matter is at the stage of framing of charge.

4. While at that stage, categorizing Sections 420, 471 and 120B IPC as "scheduled offences" under PMLA and in furtherance of the allegation that petitioner had committed the consequential offence of "money laundering", respondent has filed complaint before the Special Court for CBI Cases, Hyderabad (briefly, "Special Court" hereinafter) in S.C.No.2 of 2016.

5. Both C.C.No.10 of 2012 and S.C.No.2 of 2016 filed by the respondent are being heard on the discharge applications filed by the petitioner.

6. According to the petitioner, after arguments in the discharge petitions commenced in C.C.No.10 of 2012, S.C.No.2 of 2016 was posted before the Special Court to hear the petitioner in S.C.No.2 of 2016. Petitioner has stated that it

was brought to the notice of the Special Court that the offence of money laundering being preceded by the predicate/ scheduled offence, unless the predicate/scheduled offence is heard earlier or simultaneously with the offence of money laundering, trial in money laundering case may be vitiated and may violate the right of the petitioner to a fair trial. However, respondent contended that money laundering being a standalone offence, the enquiry or trial in S.C.No.2 of 2016 along with C.C.No.10 of 2012 need not be done simultaneously; rather enquiry and trial in S.C.No.2 of 2016 may precede the enquiry and trial in C.C.No.10 of 2012.

7. Special Court passed order dated 11.01.2021 in S.C.No.2 of 2016 holding that the enquiry and trial in S.C.No.2 of 2016 is not in any manner dependant on C.C.No.10 of 2012. Therefore, it shall precede the trial in C.C.No.10 of 2012.

8. Aggrieved thereby, the present petition has been filed.

9. Learned Senior Counsel Mr. S.Niranjan Reddy appearing for the petitioner has referred to the order of the

Special Court dated 11.01.2021 and submits that Special Court was not justified in holding that the offence of money laundering is a standalone offence and shall precede the trial of predicate/scheduled offence. He has referred to a Single Bench decision of this Court in **Madhu Koneru v. Directorate of Enforcement**[1], more particularly to paragraph 22 thereof, to contend that once the charge sheet in respect of scheduled offences is quashed, there cannot exist anymore scheduled offence for the purpose of prosecution under Sections 3 and 4 of PMLA. He has also referred to a Single Bench decision of this Court dated 10.08.2021 passed in Crl.P.No.1073 of 2021 and batch and submits that reason given in the said order that offence of money laundering is a standalone offence; is independent of the scheduled offence; and consequently it can proceed independently of the trial for the scheduled offence is not based on sound logic. Submitting that the principle of *res judicata* is not applicable in criminal proceedings, he contends that this Court can pass appropriate order without being bound by the said order. Therefore, the Court can look

[1] 2021 SCC OnLine TS 646

into the submissions made by the petitioner *de hors* the decision in Crl.P. No.1073 of 2021 and batch.

10. On the other hand, Mr. T.Surya Karan Reddy, learned Additional Solicitor General of India submits that impugned order dated 10.01.2021 is a correct order and calls for no interference. In so far decision of the learned Single Bench of this court in **Madhu Koneru** (supra) is concerned, he submits that respondent has filed Special Leave Petition before the Supreme Court bearing Diary No.29438 of 2021 which is pending. In so far the decision of this Court dated 10.08.2021 in Crl.P.No.1073 of 2021 and batch is concerned, learned Additional Solicitor General of India submits that the aforesaid judgment is based on sound principles. The same having not been challenged and interfered with, it has attained finality. Therefore, the present case is squarely covered by the aforesaid decision dated 10.08.2021. In the circumstances, learned Additional Solicitor General of India seeks dismissal of the criminal petition.

11. After the case was reserved for judgment, on being mentioned and on memo dated 02.08.2022 being filed, the case was once again listed before the Court.

12. Mr. S.Niranjan Reddy, learned Senior Counsel for the petitioner submits that after the case was reserved for judgment, a three-Judge Bench of the Supreme Court in **Vijay Madanlal Choudhary v. Union of India**[2] in para 281 has held that the offence under Section 3 of PMLA is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. In para 283 Supreme Court has held that PMLA is only in respect of matters connected with the offence of money laundering. For that, existence of proceeds of crime within the meaning of Section 2(1)(u) is quintessential. In the absence of existence of proceeds of crime, authorities under PMLA would have no jurisdiction to initiate any prosecution. Supreme Court has held that only if action is taken for confiscation of proceeds of crime and until vesting thereof in the Central Government, process initiated under PMLA would be a standalone process.

[2] 2022 SCC OnLine SC 929

Referring to paras 306 and 307 of the aforesaid judgment, learned Senior Counsel for the petitioner submits that the extreme and drastic action of dispossession of a person from the property in each and every case until a formal order of confiscation is passed is not warranted as the provision in Section 8(4) of PMLA can be resorted to only by way of exception and not as a rule.

13. Responding to the above submissions, learned Additional Solicitor General of India contends that application of the decision of the Supreme Court in **Vijay Madanlal Choudhary** (supra) would not be necessary in the present batch of cases as there is already a decision of a Coordinate Bench holding that there is no infirmity in the view taken by the Special Court that prosecution under PMLA can proceed ahead of prosecution for "scheduled offence". For the same group of cases, there cannot be two sets of different opinions rendered by this Court. It would lead to an incongruous situation.

14. However, learned Senior Counsel for the petitioner submits that the earlier decision of the Coordinate Bench in Crl.P.No.1073 of 2021 and batch would no longer be the correct law in view of the decision rendered by the Supreme Court in **Vijay Madanlal Choudhary** (supra). Special Court is bound to follow the decision of the Supreme Court in **Vijay Madanlal Choudhary** (supra).

15. Submissions made by learned counsel for the parties have received the due consideration of the Court.

16. It is not in dispute that petitioner is an accused in C.C.No.10 of 2012 facing prosecution for alleged commission of "scheduled offence". It is also not in dispute that petitioner is also an accused in the complaint filed by the respondent alleging commission of the offence of money laundering under Section 3 of PMLA by the petitioner.

17. It may be mentioned that petitioner along with other accused had earlier filed miscellaneous petition before the Special Court requesting it to defer all further proceedings in S.C.No.2 of 2016 till the conclusion of adjudication in

C.C.No.10 of 2012. By the order dated 17.01.2020, Special Court held that C.C.No.10 of 2012 and S.C.No.2 of 2016 were being posted on every working Friday simultaneously. Following the decision of the Jharkhand High Court in **Anosh Ekka v. Enforcement Directorate**[3], trial of scheduled offence and trial of offence punishable under PMLA were directed to be proceeded simultaneously.

18. Later on respondent moved the Special Court contending as follows:

> (a) Through Finance (No.2) Act, 2019, Section 44 of PMLA has been amended by inserting an *Explanation* to clause (d) of sub-section (1) of Section 44 of the Act. As per the amended provision, it clearly sets out that the trial for the offence of money laundering is independent offence which is governed by its own provisions and it need not get interfered with by the trial of the scheduled offence.
>
> (b) The offence of money laundering and trial of scheduled offence are not joint trial, the fate of the former does not depend on the latter.
>
> (c) The offence of money laundering is a stand-alone offence; a person, who has not committed a scheduled offence, could be prosecuted for an offence of money laundering. In such a situation, the prosecution need not wait for the scheduled offence to be established.

[3] W.P. (Crl) No.257 of 2012 and batch, dated 19.02.2013

(d) The offence of money laundering under Section 3 of PMLA is an independent offence which is fortified by a catena of judgments.

(e) The trial proceedings in money laundering is completely different from those of scheduled offence which is comprehended by Section 24 of PMLA. The burden of proving proceeds of crime or untainted property shall be on the accused.

(f) As money laundering offence is a stand-alone offence, hearing on charges may be taken up without any delay by considering the gravity of offence as PMLA is a special legislation.

18.1. However, this was objected to by learned counsel for the petitioner. On behalf of the petitioner, the following contentions were raised:

(a) The scheduled offence must result in a profit or proceeds of a crime, proceeds of crime must be laundered and crime must be resulted in money laundering.

(b) Ideal way is that the predicate offence has to be tried first and complainant/ED never said that the scheduled offence has to be tried independently and earlier thereto ED said that it can be tried simultaneously.

(c) Without a conviction in the scheduled offence i.e. C.C.No.10/2012 proceeds of crime will not arise and PMLA case i.e. S.C.No.2/2016 cannot be tried first and independently.

(d) Company running into losses is not money laundering and one of the allegations in the complaint touch the same.

(e) 'Simultaneous' means whether both have to be heard together or one be heard in immediate succession of the other i.e.

C.C.No.10/12 and S.C.No.2/2016 which qualify for simultaneous hearing. In predicate offence if the accused is acquitted, offence of money laundering cannot continue.

(f) None of the allegations in the complaint touch money laundering and they do not in any manner come under PMLA. Adjudicating authority is an officer of ED.

(g) PMLA starts from assumption, like Section 212 of IPC. Except Section 3 of PMLA, there is no other IPC offence.

(h) Person not arrayed in the scheduled offence can be prosecuted under PMLA. Offences are distinct, but the scheduled offence hinges upon the ED complaint. Money laundering offence cannot be tried ahead of the predicate/scheduled offence.

(i) Scheduled offence events and money laundering events are one and the same and there are no additional facts in the ED complaint. There is no evidence about the proceeds of crime. Money laundering offence starts at the end of predicate offence, harbouring of offence is a stand-alone offence.

(j) Facts in the scheduled offence (C.C.No.10/2012) and facts in money laundering offence (S.C.No.2/2016) are one and the same; offences may be distinct but can be tried simultaneously. Money laundering offence necessarily depends on predicate offence.

18.2. In addition to the above, the following further contentions were also advanced on behalf of the other accused:

(a) There is no definition in PMLA about stand-alone offence. Scheduled offence/predicate offence and offence under money laundering are inextricably linked to each other.

(b) Word used in Section 44(1)(d) *Explanation* is "orders" but not "judgment". Procedure introduced in the above said section transgresses or pollutes the penal legislation which has a large bearing on Section 2(1)(u) of PMLA.

(c) Contention of ED that scheduled offence result has nothing to do with the result of money laundering is prohibited by law. Money laundering offence should not be construed as stand-alone offence. Money laundering offence cannot be looked at in isolation.

(d) There is no binding judgment to say that money laundering offence has nothing to do with the scheduled offence.

18.3. On the basis of the above rival contentions, learned Special Court framed the following questions for consideration:

1) Whether money laundering offence (S.C.No.2/2016) is a stand-alone offence or not?

2) If the answer is in the affirmative, whether S.C.No.2/2016 should precede the trial under scheduled offence i.e. C.C.No.10/2012?

3) If the answer is in the negative, whether scheduled offence (C.C.No.10/2012) must precede the trial in S.C.No.2/2016 or both the offences i.e. scheduled offence and money laundering offence shall be tried simultaneously?

4) To what relief?

18.4. After referring to several decisions of the Supreme Court and High Courts, learned Special Court observed that it was

trying both the predicate/scheduled offences and the offence of money laundering and thereafter concluded that Prevention of Corruption Act, 1988 and PMLA are two different enactments. They decide the controversies that arise under the respective Acts; one authority cannot interfere with the functioning of the other authority under the different Acts; and PMLA has overriding effect over other law. Special Court held that the offence of money laundering is a standalone offence. Scheduled offence cannot precede the offence under money laundering nor can be tried simultaneously. Therefore, the offence of money laundering shall precede the trial of predicate/scheduled offence. It was held as under:

> 32. Prevention of Corruption Act, 1988 and the Prevention of Money Laundering Act, 2002, are two different enactments, they decide the controversies that arise under respective Acts, one authority cannot interfere with the function of other authority under different Acts. PML Act has overriding effect under Section 71.
>
> 33. In view of my discussions above, offence under Money Laundering Act (S.C.No.2/2016) is a stand-alone offence, hence point No.1 is answered in favour of complainant/ED. Scheduled offence (C.C.No.10/2012) cannot precede the offence under money laundering (S.C.No.2/2016) nor can be tried simultaneously, hence point No.3 is answered against the accused.

Point No.2:

34. In view of my discussions above, as point No.1 is answered in favour of complainant/ED and the offence under money laundering (S.C.No.2/2016) shall precede the trial of the predicate/scheduled offence (C.C.No.10/2012). Hence, this point is answered accordingly.

Point No.4:

35. In the result, the offence under money laundering (S.C.No.2/2016) is a stand-alone offence and shall precede the trial of predicate/scheduled offence (C.C.No.10/2012).

19. At this stage, we may briefly advert to some of the relevant provisions of PMLA. PMLA is an Act which has been enacted to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering and for matters connected therewith or incidental thereto. It may be mentioned that PMLA was last amended by the Finance (No.2) Act, 2019. Section 2 is the definition section. Section 2(1)(p) defines money laundering. It says that money laundering has the meaning assigned to it in Section 3. Section 3 defines the offence of money laundering. Section 3 along with the Explanation which was introduced by way of amendment with effect from 01.08.2019 reads as follows:

Section 3. Offence of money-laundering. – Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected

with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation. – For the removal of doubts, it is hereby clarified that,-

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:-

(a) concealment; or
(b) possession; or
(c) acquisition; or
(d) use; or
(e) projecting as untainted property; or
(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

19.1. Thus, from the above, it is deducible that whoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of committing

the offence of money laundering. The Explanation clarifies that a person shall be guilty of the offence of money laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in concealment or possession or acquisition or use or projecting as untainted property or claiming as untainted property, in any manner whatsoever. It is further clarified that the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

19.2. While on Section 3, we may mention that Section 4 provides for punishment for committing the offence of money laundering.

20. Reverting back to Section 2(1)(u), it defines proceeds of crime as under:

> **Section 2(1)(u)** 'Proceeds of crime' means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;
>
> ***Explanation.***--For the removal of doubts, it is hereby clarified that 'proceeds of crime' include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

20.1. Thus proceeds of crime means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad. The Explanation clarifies that proceeds of crime would include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

21. Scheduled offence is defined in Section 2(1)(y) to mean offences specified under Part A of the Schedule; or offences under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or offences specified under Part C of the Schedule. Schedule means the Schedule to the PMLA (Section 2(1)(x)).

22. Section 8 deals with adjudication into complaint that any person has committed an offence under Section 3 or is in possession of proceeds of crime. After following the procedure laid down in Section 8, the adjudicating authority may record a finding that all or any of the properties mentioned in the show cause notice or involved in money laundering which may lead to attachment of the property and later on confiscation.

23. We may now refer to Section 43 of PMLA. Section 43 deals with Special Courts and reads as under:

> **43. Special Courts:-** (1) The Central Government, in consultation with the Chief Justice of the High Court, shall, for trial of offence punishable under Section 4, by notification, designate one or more Courts of Session as Special Court or Special Courts for such area or areas or for such case or class or group of cases as may be specified in the notification.

> *Explanation.*-In this sub-section, "High Court" means the High Court of the State in which a Sessions Court designated as Special Court was functioning immediately before such designation.
>
> (2) While trying an offence under this Act, a Special Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under the Code of Criminal Procedure, 1973 (2 of 1974), be charged at the same trial.

23.1. Thus, as per sub-section (2), while trying an offence under PMLA, a Special Court designated as such under sub-section (1) shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may be charged at the same trial under the provisions of CrPC.

24. Section 44 deals with offences triable by Special Courts. Section 44 is extracted as under:

> **44. Offences triable by Special Courts.** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-
>
> (a) an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:
>
> Provided that the Special Court, trying a scheduled offence before the commencement of this Act, shall continue to try such scheduled offence; or;
>
> (b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act

take cognizance of offence under section 3, without the accused being committed to it for trial;

Provided that after conclusion of investigation, if no offence of money-laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.

Explanation.--For the removal of doubts, it is clarified that,--

(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.

> (2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to "Magistrate" in that section includes also a reference to a "Special Court" designated under section 43.

24.1. Sub-section (1) of Section 44 starts with a *non-obstante* clause. It says that notwithstanding anything contained in CrPC, an offence punishable under Section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed. If the Court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money laundering, it **shall** on an application by the authority authorized to file a complaint under PMLA commit the case relating to the scheduled offence to the Special Court and the Special Court **shall** on receipt of such case proceed to deal with it from the stage at which it is committed. While trying the scheduled offence or the offence of money laundering, the Special Court shall hold

trial in accordance with the provisions of CrPC as it applies to a trial before a Court of Session.

24.2. The Explanation inserted by way of amendment clarifies two things. Firstly, the jurisdiction of the Special Court while dealing with the offence under PMLA during investigation, enquiry or trial shall not be dependent upon any orders passed in respect of the scheduled offence. Trial of both sets of offences by the same Court shall not be construed as a joint trial. Secondly, the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence for which complaint has already been filed.

24.3. What is discernible from the above is that if the Court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money laundering and an application is filed by the authority authorized to file a complaint under PMLA, than the Court taking cognizance of

the scheduled offence shall commit the case relating to the scheduled offence to the Special Court. On such committal, the Special Court shall proceed to deal with the trial of the case relating to scheduled offence from the stage at which it is committed. The use of the work "shall" is indicative of the legislative intent that both the scheduled offence and the offence of money laundering should be tried by the same Special Court trying the offence of money laundering. This has a purpose which we will dilate at a later stage.

25. Before we analyse the basic thrust of the contention of learned Senior Counsel for the petitioner vis-à-vis Section 44 of PMLA, more particularly the Explanation thereto, it would be apposite to briefly dilate on the earlier decision of this Court rendered in Crl.P.No.1073 of 2021 and batch, decided on 10.08.2021. Learned Single Judge framed amongst others the following two questions:

> 1. Whether hearing on charges and trial proceedings can go on in subject Sessions Cases registered for the offences under PML Act before commencement of hearing on charges and trial proceedings in the subject Calendar Cases registered for the predicate/scheduled offences?

2. Whether trial proceedings of predicate/scheduled offences and offences under PML Act be conducted simultaneously?

25.1. Learned Single Judge adverted to Section 44(1)(d) of PMLA and thereafter held that trial of money laundering offence is an independent trial and need not get interfered with the trial of scheduled offence. Offence of money laundering contemplated under Section 3 of PMLA is an independent offence i.e., a standalone offence. Learned Single Judge concluded that a bare reading of Sections 2(1)(u), 3 and 44(1)(d) of PMLA along with Explanations thereto makes it clear that the offence of money laundering is a standalone offence and the trial proceedings are completely different from that of the scheduled offence. Trial of money laundering offence is an independent trial; it will not meddle with the trial of scheduled offence. On the above basis, learned Single Judge negatived the contention raised that without proving the guilt of the accused in the predicate/scheduled offence, trial of offences under PMLA cannot be proceeded with; and that money laundering offence starts at the end of predicate offence.

26. Keeping the principles of judicial discipline and the doctrine of precedent, this Court would have followed the aforesaid decision of the learned Single Judge dated 10.08.2021 rendered in Crl.P.No.1073 of 2021 and batch, but for the decision of the Supreme Court in **Vijay Madanlal Choudhary** (supra).

27. In **Vijay Madanlal Choudhary** (supra), Supreme Court was called upon to deal with the pleas concerning validity and interpretation of certain provisions of PMLA and the procedure followed by the Enforcement Directorate while inquiring into/investigating offences under PMLA. Following the decision of the Supreme Court in **Nikesh Tarachand Shah v. Union of India**[4], Parliament amended Section 45 of PMLA vide Act 13 of 2018 so as to remove the defect noted in the said decision and to revive the effect of the twin conditions specified in Section 45 to offences under PMLA. Challenge to this amendment was also before the Supreme Court.

[4] (2018) 11 SCC 1

27.1. Supreme Court examined in detail the definitions of "money laundering" and "proceeds of crime" in the context of PMLA and held as follows:

> **251.** The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled

offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.

... ...

253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now.

27.2. Thus, Supreme Court has expressed the view that expression proceeds of crime which is the very essence of the offence of money laundering needs to be construed strictly.

Only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. On the above basis, Supreme Court has held that in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction either on account of discharge or acquittal or quashing of the criminal case (scheduled offence), there can be no action for money laundering against such a person or a person claiming through him in relation to the property linked to the stated scheduled offence. No other view is possible.

27.3. Thereafter, analyzing various provisions of PMLA, in paragraph 281 of the report, the Supreme Court posed the question as to whether the offence under Section 3 is a standalone offence? Supreme Court answered the question in the following manner:

> **281.** The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The

property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and *ex-consequenti* proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.

282. Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously,

including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

283. Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.

284. In other words, the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.

28. Supreme Court has thus taken the view that the offence under Section 3 is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a

scheduled offence. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of PMLA. All or whole of the crime property linked to the scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. What is significant, however, to note is the clear enunciation by the Supreme Court that in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to the scheduled offence, and if it is established in the Court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and *ex-consequenti* proceeds of crime within the meaning of Section 2(1)(u). Supreme Court noted that in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to the person concerned. It would then be paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent

jurisdiction. Significantly, Supreme Court also says that it would be well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter. Though PMLA is a complete Code in itself, it is only in respect of matters connected with the offence of money laundering, or for that matter, existence of proceeds of crime within the meaning of Section 2(1)(u) of PMLA is quintessential. In the absence of proceeds of crime, the authorities under PMLA cannot step in or initiate any prosecution.

29. While on **Vijay Madanlal Choudhary** (supra), we may also refer to what the Supreme Court has said regarding taking over physical possession of property. It is in that context, Supreme Court referred to various provisions of Section 8 of PMLA and held that physical dispossession of the person from the property concerned is unwarranted in every case. It is an extreme and drastic action and should not be resorted to until a formal order of confiscation is passed. It is possible that the Special Court in the trial concerning money laundering offence may decide the issue in favour of the person in possession of the property as not being proceeds of crime or

for any other valid ground. Before such order is passed by the Special Court, it would be a case of serious miscarriage of justice, if not abuse of process to take physical possession of the property held by such person. Paragraphs 306 and 307 of the report are extracted as under:

> **306.** The learned counsel appearing for the Union of India, had invited our attention to the recommendations made by FATF in 2003 and 2012 to justify the provision under consideration. The fact that non-conviction based confiscation model is permissible, it does not warrant an extreme and drastic action of physical dispossession of the person from the property in every case — which can be industrial/ commercial/ business and also residential property, until a formal order of confiscation is passed under Section 8(5) or 8(7) of the 2002 Act. As demonstrated earlier, it is possible that the Special Court in the trial concerning money-laundering offence may eventually decide the issue in favour of the person in possession of the property as not being proceeds of crime or for any other valid ground. Before such order is passed by the Special Court, it would be a case of serious miscarriage of justice, if not abuse of process to take physical possession of the property held by such person. Further, it would serve no purpose by hastening the process of taking possession of the property and then returning the same back to the same person at a later date pursuant to the order passed by the Court of competent jurisdiction. Moreover, for the view taken by us while interpretating Section 3 of the 2002 Act regarding the offence of money-laundering, it can proceed only if it is established that the person has directly or indirectly derived or obtained proceeds of crime as a result of criminal activity

> relating to or relatable to a scheduled offence or was involved in any process or activity connected with proceeds of crime.
>
> **307.** It is unfathomable as to how the action of confiscation can be resorted to in respect of property in the event of his acquittal or discharge in connection with the scheduled offence. Resultantly, we would sum up by observing that the provision in the form of Section 8(4) can be resorted to only by way of an exception and not as a rule. The analogy drawn by the Union of India on the basis of decisions of this Court in *Divisional Forest Officer* v. *G.V. Sudhakar Rao*[5], *Biswanath Bhattacharya v. Union of India*[6], *Yogendra Kumar Jaiswal* v. *State of Bihar*[7], will be of no avail in the context of the scheme of attachment, confiscation and vesting of proceeds of crime in the Central Government provided for in the 2002 Act.

30. Thus, Supreme Court expressed the view that it is unfathomable as to how the action of confiscation can be resorted to in respect of property in the event of acquittal or discharge of the person in connection with the scheduled offence. The above decision of the Supreme Court has now cleared the legal position. It succinctly sums up that offence under Section 3 is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. In the event of acquittal of the person

---

[5] (1985) 4 SCC 573
[6] (2014) 4 SCC 392
[7] (2016) 3 SCC 183

concerned or being absolved from the allegation of criminal activity relating to scheduled offence and if it is established that crime property in the concerned case is rightly owned and possessed by the concerned person, such a property by no stretch of imagination can be termed as crime property. In fact, Supreme Court has explained that if in the trial in connection with the scheduled offence, the person concerned is acquitted then the Court would be obliged to direct return of such property as belonging to him. It would then be paradoxical to still regard such property as proceeds of crime despite acquittal by a Court of competent jurisdiction.

31. Finally Supreme Court summarized its conclusions on the various points. Relevant for our deliberation is the conclusion reached by the Supreme Court in paragraph 467(v)(d) which is extracted as follows:

> 467. In the light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:-
>
> *** *** *** ***
>
> (v) (d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which

> constitutes the offence of money laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence claiming him.

31.1. Thus, Supreme Court has rendered a clear and categorical finding that offence under Section 3 of PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. If the person is finally discharged/acquitted of the scheduled offence or criminal case against him is quashed by a Court of competent jurisdiction, there can be no offence of money laundering against him or anyone claiming such property being the property linked to stated scheduled offence through him.

32. This decision of the Supreme Court is binding on all Courts and Tribunals in India. As a matter of fact, after rendering of this decision by the Supreme Court, the position

has been clarified and it is this law which now has to be followed by the Courts. Therefore, the decision rendered by the learned Single Judge dated 10.08.2021 in Crl.P.No.1073 of 2021 and batch would have to give way to the decision of the Supreme Court in **Vijay Madanlal Choudhary** (supra).

33. Before parting with the record, it would be apposite to examine the provisions of Section 44 of PMLA in the light of the decision of the Supreme Court in **Vijay Madanlal Choudhary** (supra).

34. As already analysed, Section 44 of PMLA clarifies that notwithstanding anything in CrPC, any scheduled offence and an offence punishable under Section 4 of PMLA are to be tried by the Special Court having territorial jurisdiction. However, if the Court which had taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money laundering, the authority authorized under the PMLA to file complaint shall file an application before the Special Court trying the scheduled offence and on such application being

filed, the Special Court shall commit the case relating to the scheduled offence to the Special Court, which shall thereafter proceed with the case from the stage at which it is committed. The purpose behind this provision is to ensure that the scheduled offence and the offence of money laundering under PMLA are not tried by two different Courts which may lead to contrary/conflicting verdicts. It is mandatory on the part of the Court which had taken cognizance of the scheduled offence to commit the same to the Special Court which had taken cognizance of the complaint of money laundering once an application is filed. There is no discretion on the Court which had taken cognizance of the scheduled offence. It must mandatorily commit the trial of scheduled offence to the Special Court trying the offence of money laundering. This is to ensure that it is the same Court which tries both the offences so as to rule out any contrary or conflicting decisions leading to a paradoxical situation. It is in this context that the Explanation which is clarificatory in nature needs to be understood. Certainly, the two trials cannot be construed as joint trial. These are separate trials and will proceed

separately. The investigation, enquiry or trial under PMLA would not be dependent upon any "order" in respect of the scheduled offence. An "order" as is understood in CrPC is not a conclusive pronouncement at the end of the trial. Section 235 of CrPC says that after hearing arguments and point of law, the judge shall give a judgment in the case, which may either be of acquittal or of conviction. It is on this basis, Supreme Court has observed that conviction under Section 4 of PMLA for committing offence under Section 3 is dependent upon conviction for a scheduled offence; if there is no crime there cannot be any proceeds of crime. And if there are no proceeds of crime, the offence of money laundering cannot be sustained. It is on this logic, Supreme Court has held as above in **Vijay Madanlal Choudhary** (supra).

35. From the above, the position which emerges is that existence of scheduled offence and proceeds of crime being the property derived or obtained as a result of criminal activity relating to the scheduled offence are *sine qua non* for not only initiating prosecution under PMLA, but also for continuation thereof. In the absence of these two conditions,

the Special Court dealing with the offence under PMLA would not be competent to pronounce on the guilt or otherwise of the person concerned accused of money laundering.

36. Thus, on a thorough consideration of all aspects of the matter, impugned order dated 11.01.2021 is hereby quashed. Further, it is directed that though the trial relating to the offence of money laundering can proceed independent of the trial of scheduled offence, nonetheless as the outcome of the trial for scheduled offence would have a definite bearing on the outcome of the trial for the offence of money laundering, it would be in the interest of justice if the Special Court trying the offence of money laundering while independently proceeding with the trial, may, however take a pause and await the ultimate pronouncement/decision of the Special Court trying the scheduled offence. Otherwise, as has been pointed out by the Supreme Court in **Vijay Madanlal Choudhary** (supra), it may lead to a paradoxical result if the concerned person is later on acquitted of the scheduled offence while convicted of the offence of money laundering under PMLA at

an earlier point of time. This would not only be paradoxical but contrary to well established tenets of law as well.

37. The Criminal Petition is allowed to the above extent.

Miscellaneous petitions, if any, pending in this criminal petition shall stand closed.

UJJAL BHUYAN, CJ

08.09.2022
pln

Note: LR copy be marked.
(By order)
pln