

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 08.02.2021  
PRONOUNCED ON : 23.02.2021

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH  
AND  
THE HONOURABLE Mr.JUSTICE V.SIVAGNANAM

CRL.O.P.Nos.20127 & 25688 of 2018  
AND

CRL.M.P. Nos.10736 & 14642 of 2018

M.Suresh Khatri ..Petitioner  
in Crl.O.P.No.20127 of 2018

M/s.Mohanlal Jewellers Pvt. Ltd.  
Rep by its managing director,  
shri M.Suresh khatri, Old No.12/1,  
NSC Bose Road, Soucarpet, Chennai 1 ..Petitioner  
in Crl.O.P.No.25688 of 2018

Vs.

Directorate of Enforcement  
Rep. by the Deputy Director  
Government of India  
Ministry of Finance  
Department of Revenue  
2<sup>nd</sup> & 3<sup>rd</sup> Floor, C Block  
Murugesha Naicker Complex  
84, Greams Road, Thousand Lights  
Chennai 6

..Respondent in both Crl.O.Ps

Criminal Original Petitions filed under Section 482 Cr.P.C.  
to quash the proceedings in C.C.No.13 of 2018 pending on the  
file of the Principal Sessions Judge, Chennai as against the  
petitioners

For Petitioners : Mr.A.Ramesh  
Senior Counsel for  
Mr.Jayesh B. Dolia  
for M/s.Aiyar & Dolia

For Respondent : Mr.R.Sankaranarayanan  
Additional Solicitor General  
assisted by Mr.N.Ramesh

Special Public Prosecutor for ED

C O M M O N   O R D E R

P.N.PRAKASH, J.

For the sake of convenience, the parties will be referred to by their names.

2. On a complaint lodged by the General Manager, State Bank of India (SBI), Chennai, the CBI registered an FIR in Crime No.RC.05/E/2018/CBI/BS&FC/BLR on 21.03.2018 for the offences under Sections 120-B, 420, 467, 468 and 471 IPC read with Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, 1988, against M/s.Kanishk Gold Pvt. Ltd. (in short "KGPL"), Chennai and five named accused. The sum and substance of the allegations in the FIR is that, during 2011, a consortium of 14 banks with SBI as the lead bank, had sanctioned working capital credit facilities which KGPL (A1) had allegedly diverted, resulting in loss to the banks to the tune of Rs.824.15crores as on 31.12.2017. Since the FIR disclosed the commission of a 'schedule offence' under the Prevention of Money Laundering Act, 2002 (in short "the PML Act"), the Enforcement Directorate registered a case in ECIR No.CEZO-I/07/2018 on 22.03.2018, conducted investigation under the PML Act, collected materials and filed a complaint in C.C.No.13 of 2018 in the Court of the Principal Sessions Judge (Special Court), Chennai, against KGPL (A1), Bhoopesh Kumar Jain (A2), Mohanlal Jewellers Pvt. Ltd. (in short "MJPL") (A3), Suresh Khatri (A4) and T.K.S.Pugazhendi (A5) for the offence under Section 3 read with 4 of the PML Act, for quashing which, MJPL (A3) has filed Crl.O.P.No.25688 of 2018 and Suresh Khatri (A4) has filed Crl.O.P.No.20127 of 2018 under Section 482 Cr.P.C.

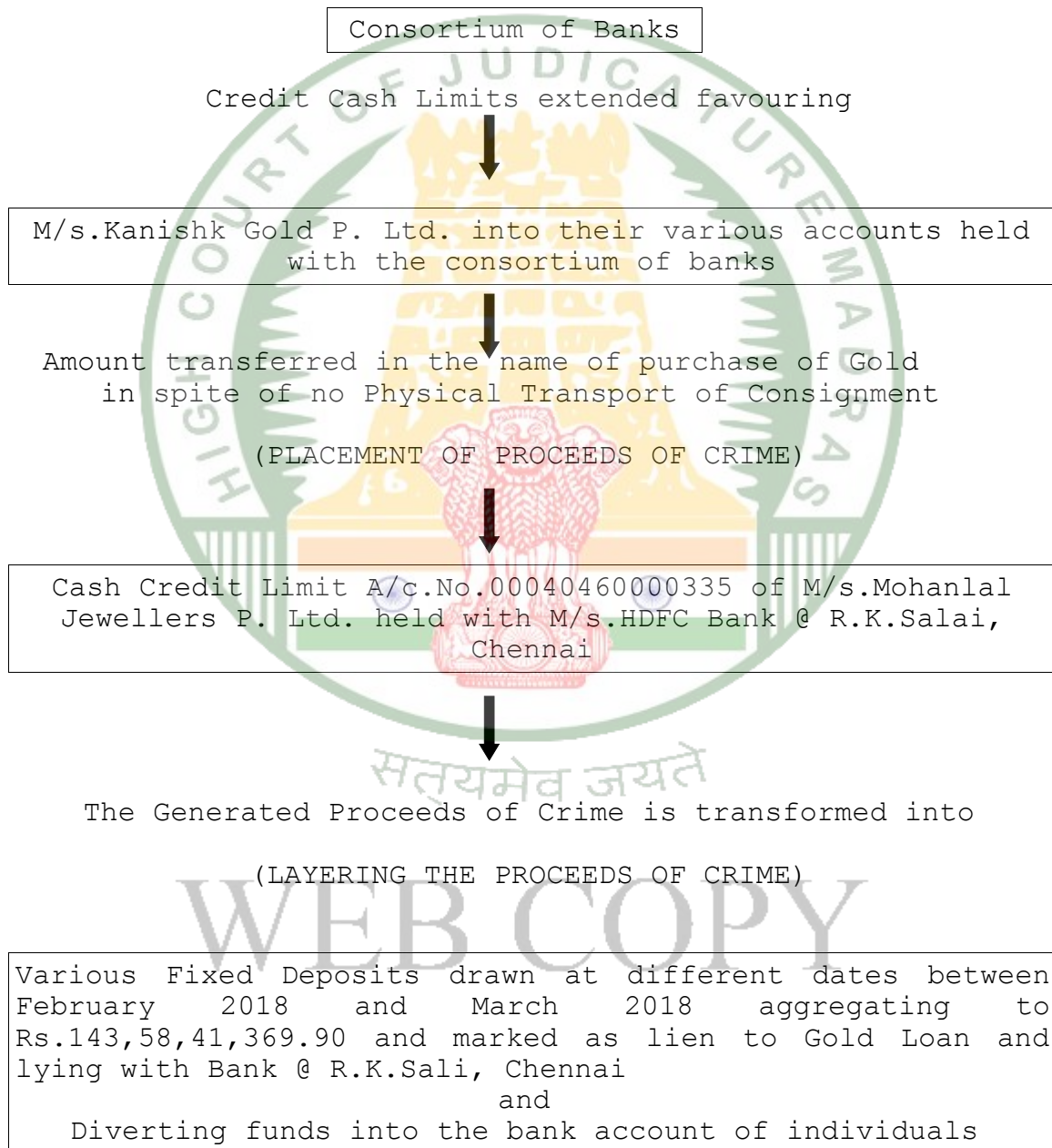
3. Heard Mr.A.Ramesh, learned Senior Counsel representing Mr.Jayesh B.Dolia, learned counsel on record for MJPL (A3) and Suresh Khatri (A4) and Mr.R.Sankaranarayanan, learned Additional Solicitor General assisted by Mr.N.Ramesh, learned Special Public Prosecutor appearing for the Enforcement Directorate.

4. Before adverting to the submissions raised at the Bar, it is necessary to set out the allegations against the accused. The fact that the CBI registered a case which disclosed a 'schedule offence' under the PML Act is not in dispute. MJPL (A3) and Suresh Khatri (A4) have not been shown as accused in the FIR that has been registered by the CBI. The allegations against KGPL (A1) and the other accused in the present case are that, KGPL (A1) had obtained huge loans from the consortium of banks for their business purpose, which they diverted into the account of MJPL (A3) and that the amounts so diverted, being

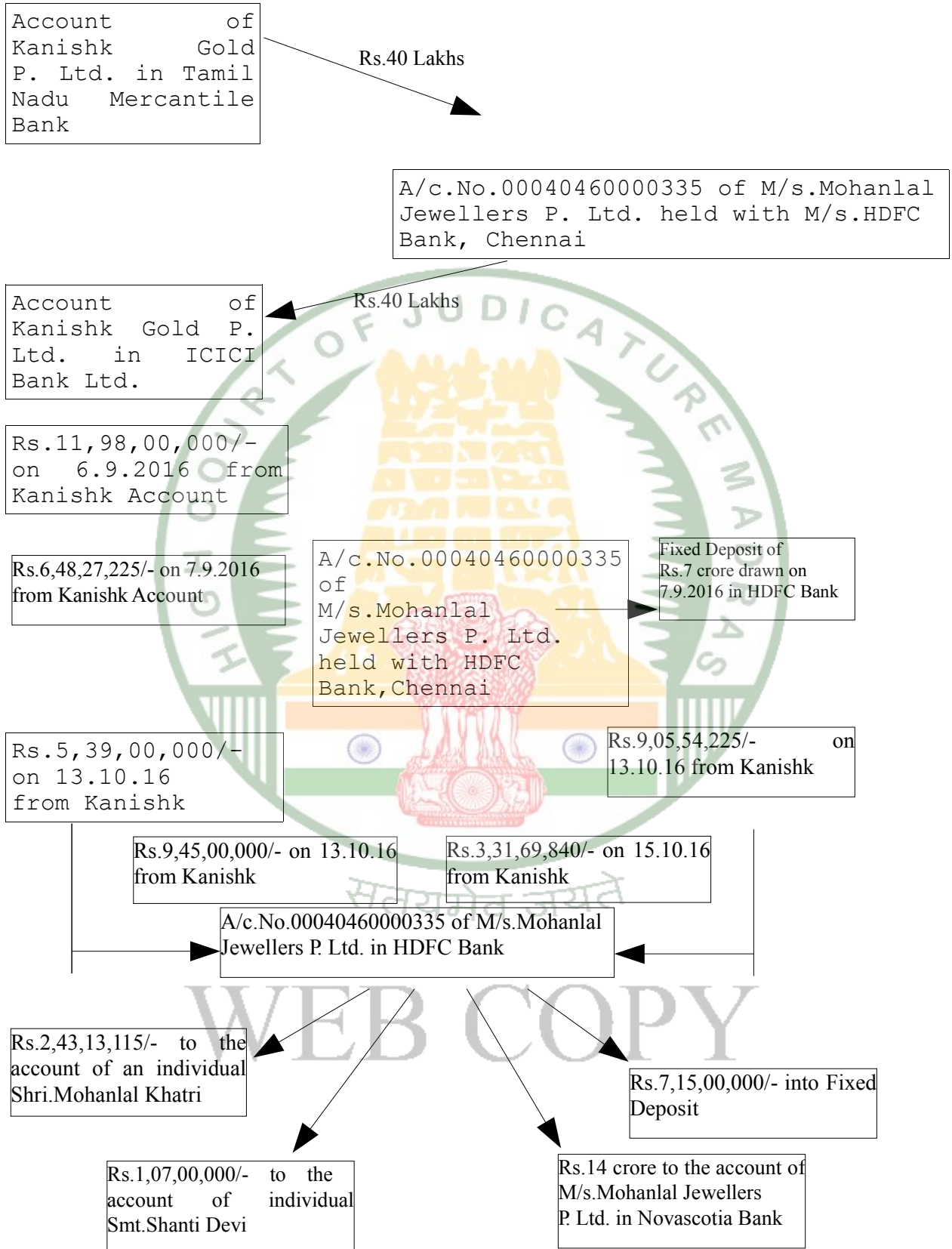
proceeds of crime, was projected as untainted money.

5. In the complaint in C.C.No.13 of 2018, the Enforcement Directorate has given the following flowcharts :

"CHART ON ILLUSTRATION OF FLOW OF FUND GENERATED OUT OF PROCEEDS OF CRIME



INSTANCES OF INTER-CONNECTED TRANSACTIONS PROVING LAUNDERING OF PROCEEDS OF CRIME



6. In paragraph 14.4 of the complaint, it is more clearly stated as under :

"14.4. On the basis of the Transaction Testing conducted by the Forensic Audit Team on the sample purchase transactions made by KGPL, the Forensic Audit made the following observation :

"Mohanlal Jewellers Pvt. Ltd.: We received 3 purchase invoices of the party (Mohanlal Jewellers) amounting to a total of Rs.52.98 Crores. However, the borrower (KGPL) has not provided the purchase order, document evidencing receipt of goods and gold purity certificate, if any"

The Forensic Audit has further reported that on examination of the Purchase Register, it was noticed that the total purchases made by KGPL for the review period from April 01, 2009 to June 30, 2017, amounted to Rs.10,134 Crores. Further, on analysing the yearly purchase it was observed that Rs.6984 Crores, i.e., about 69% of the total purchases were made in the period FY 2013-14 to FY 2017-18 (uptill 18<sup>th</sup> May 2017) revealed that purchases of top ten parties constitute about 65.71% of the total purchases in that period, and M/s.Mohanlal Jewellers Pvt. Ltd., are one among them, who had sold 1089105.37 gms of Gold Bullions valued at Rs.318.75 Crores to KGPL. KGPL had made the payments from their various bank accounts held inside the consortium, out of working capital borrowings, for the purchase of the Gold Bullions from M/s.Mohanlal Jewellers Pvt. Ltd. which is to the tune of Rs.318.75 Crores during the above mentioned period. The amounts were paid through RTGS into the account of M/s.Mohanlal Jewellers Pvt. Ltd. held in HDFC Bank, ITC Centre, Anna Salai, Chennai, (now transferred to R.K.Salai Branch), with Account Number 00040460000335. The purchases of Gold Bullions were made only on Sale Invoice/Vouchers issued by the Seller, viz., M/s.Mohanlal Jewellers Pvt. Ltd. and no other documents/records for the receipt of goods in to the premises of either to the factory or corporate office of KGPL, as observed by the Forensic Audit in their Report."

7. The Enforcement Directorate found Fixed Deposits to the tune of around Rs.143 crores (to be more specific, Rs.143,58,41,369.90) held in HDFC Bank, which were categorized as a part of proceeds of the crime. Thus, from the above, the crux of the allegations against MJPL (A3) and its Managing Director, Suresh Khatri (A4) is that, from the loans given to KGPL (A1), a sum of Rs.318.75 crores was transferred into the account of MJPL (A3) for the alleged purchase of gold bullions, but actually, no purchase was made and out of Rs.318.75crores.

A sum of Rs.143 crores was found to be parked in the HDFC Bank in the form of 22 fixed deposits. The Enforcement Officer passed an order of interim attachment of the said 22 fixed deposits under Section 5 of the PML Act. But, the Adjudicating Authority, by order dated 17.10.2018, set aside the order of interim attachment under Section 8 of the PML Act. Challenging the same, the Enforcement Directorate has filed an appeal in the Appellate Tribunal at New Delhi in FPA-PMLA-2731/CHN/2018 & MP-PMLA-5309/CHN/2018, wherein, an order of status quo has been passed on 11.02.2018, which reads as under :

"... .. In the meanwhile, notice be issued to respondent No.4 i.e. Mohanlal Jewellers Pvt. Ltd. for the next date. 'Status quo' shall be maintained by the appellant and respondent no.4 with regard to the attached properties."

8. Mr.A.Ramesh, with great pains, took this Court through the attachment order dated 17.10.2018 and submitted that, when the Adjudicating Authority himself has held that the 22 fixed deposits with the HDFC bank are not proceeds of crime and that, the deposits were created with the loans provided by the HDFC bank, then, the prosecution of MJPL (A3) and Suresh Khatri (A4) under the PML Act is misconceived.

9. Before the Adjudicating Authority, it was the case of the MJPL (A3) that for the amounts received by them from KGPL (A1), gold bullion was actually delivered to them in accordance with the trade practice that prevails amongst the bullion traders and that, the transaction between KGPL (A1) and MJPL (A3) will be squarely covered under Section 33 of the Sale of Goods Act, 1930. It is true that the Adjudicating Authority has relied upon Section 33 of the Sale of Goods Act, 1930 and has held that MJPL (A3) had delivered the gold bullions to KGPL (A1), on receipt of monies from them.

10. The short question is, whether the criminal Court is bound by these findings of the Adjudicating Authority or inter alia can this Court proceed to quash the criminal prosecution, based on such findings of the Adjudicating Authority, especially, when the matter is pending before the Appellate Tribunal.

11. Mr.A.Ramesh placed strong reliance on various judgments, to drive home the point that the findings of the Adjudicating Authority, in certain circumstances, can form the basis for quashing the parallel criminal prosecution. In recent times, the bedrock case on this subject is the judgment of the Supreme Court in Radheshyam Kejriwal Vs. State of West Bengal and Another [(2011) 3 SCC 581], wherein, the Supreme Court has quashed the prosecution under Section 56 of the Foreign Exchange

Regulation Act, 1973 (In short "FERA") against the accused therein, on the findings of the Adjudicating Authority that there was no violation of the provisions of the FERA. The ratio of the various judgments on this subject has been succinctly culled out by the Supreme Court in paragraph 38 of the said judgment.

12. Mr.A.Ramesh placed further reliance upon the judgment of the Supreme Court in Ashoo Surendranath Tewari Vs. Deputy Superintendent of Police, EOW, DBI and Another [(2020) 9 SCC 636], wherein, the Supreme Court has quashed the prosecution under the Prevention of Corruption Act, 1988, based on the report of the Chief Vigilance Commissioner. Thus, relying upon the aforesaid rulings and other connected rulings, Mr.A.Ramesh contended that in the teeth of the findings of the Adjudicating Authority exonerating MJPL (A3) and Suresh Khatri (A4) that the 22 fixed deposits are not proceeds of crime, the prosecution of MJPL (A3) and Suresh Khatri (A4) deserves to be quashed.

13. Per contra, Mr.R.Sankaranarayanan refuted the aforesaid contentions and stated that when the Directorate has taken the order of the Adjudicating Authority on appeal, this Court cannot quash the prosecution. He further contended that the scheme of adjudication under the PML Act is substantially different from the scheme that obtains in enactments like the FERA, the Customs Act, the Central Excise Act, etc. He also placed strong reliance on Section 48 of the Evidence Act, 1872 and submitted that, any custom or usage or right etc. has to be proved by the person who asserts it, in the manner known to law before the criminal Court and a finding by an Adjudicating Authority on such a matter is not conclusive and is not binding with criminal Court.

14. This Court gave its anxious consideration to the rival submissions.

15. To recapitulate, the allegation against MJPL (A3) is that, KGPL (A1) had parked a sum of Rs.318.75 crores that was taken by them as loan from the banks into the accounts of MJPL (A3), out of which, a sum of Rs.143 crores is in the form of 22 fixed deposits. It is the specific case of the prosecution that no gold bullion was in fact supplied by MJPL (A3) and only a paper transaction was effected. Thus, the 22 fixed deposits for a sum of Rs.143 crores represents only part of the proceeds of crime. This is a seriously contested and a disputed question of fact between the Enforcement Directorate and MJPL (A3). The Adjudicating Authority has accepted the version of MJPL (A3), by relying upon a certain trade practice and also by relying upon Section 33 of the Sale of Goods Act.

16. As rightly pointed by Mr.Sankaranarayanan, a custom or usage in a particular trade, has to be proved in the manner set out in Section 48 of the Evidence Act and the Court cannot take judicial notice of it. Before the Adjudicating Authority, MJPL (A3) and HDFC bank played the same tune and they were on the same page obviously because, the HDFC bank did not want to lose Rs.143 crores as it had given loans to MJPL (A3).

17. Unlike the FERA, the Customs Act and the Central Excise Act, where the Adjudicating Authority deals completely with the confiscation proceedings, under the PML Act, the Adjudicating Authority interferes only to confirm the interim order of attachment passed by the Enforcement Officer under Section 5 of the PML Act. In other words, under Section 5 of the PML Act, the Enforcement Officer has the power to pass an interim order of attachment, to safeguard the proceeds of crime from disappearing and the Adjudicating Authority, who exercises powers under Section 8 of the PML Act decides, whether the interim attachment was proper or improper. He has no authority to confiscate the proceeds of crime and that power is vested once again with the Special Court under Section 8(5) to (8) of the PML Act.

18. In a given case, the Special Court can proceed with the trial, even if the Enforcement Officer had not passed any order under Section 5 of the PML Act. Neither in Radheshyam Kejriwal (supra) nor in Ashoo Surendranath Tewari (supra), the Supreme Court has held as a matter of thumb rule that whenever an Adjudicating Authority exonerates a person, its findings are binding on the criminal Court. In both the cases, the Supreme Court went deeply into the adjudication order and thereafter, quashed the prosecutions by holding that no useful purpose would be served by prosecuting the offender, in the light of the findings of the Adjudicating Authority.

19. In the case at hand, the picture is totally different. The criminal Court can independently come to a conclusion that the 22 fixed deposits were proceeds of crime and they were projected as untainted money from MJPL (A3) and Suresh Khatri (A4). The other distinguishing feature in this case is that, the total proceeds of crime is Rs.318.75crores, out of which, the 22 fixed deposits represent only Rs.143crores and for the balance amount which has gone into the kitty of MJPL (A3), they can be prosecuted as abettors of the offence of money laundering committed by KGPL (A1). Lastly, the order of the Adjudicating Authority in this case, has not attained finality and the same is pending before the Tribunal and therefore, on this ground too, the criminal prosecution cannot be quashed.

20. Mr.A.Ramesh placed strong reliance on the order of cognizance dated 13.07.2018 passed by the Special Court while taking the complaint on file and submitted that the said order does not reflect application of mind. It is his main grievance that this Court had earlier failed to appreciate the fact that a three Judge Bench had decided the case in Sunil Bharti Mittal Vs. CBI [(2015) 4 SCC 609] and that judgment has to be relied upon as laying down the law on the subject and not any subsequent judgment of a two Judge Bench.

21. Mr.A.Ramesh further submitted that Sunil Bharti Mittal (supra) has been subsequently considered by the Supreme Court in Mehmood Ul Rehman Vs. Khazir Mohammad Tunda and Others [(2015) 12 SCC 420], where the cognizance order has been quashed, on the ground that it did not reflect application of mind. He shoved up his arguments by placing reliance on a judgment of the Karnataka High Court in S.C.Jayachandran Vs. Enforcement Directorate (W.P.No.18442 of 2017 decided on 17.12.2020), wherein, a learned Singe Judge has quashed the order of cognizance, by relying upon the judgment of the Supreme Court in Sunil Bharti Mittal (supra) and has directed the trial Court to pass orders afresh.

22. In criminal law, the principle of stare decisis cannot be mechanically applied. In Sunil Bharti Mittal (supra), the CBI had filed a charge sheet against Bharti Cellular Ltd. and other telecom companies and one Shyamal Ghosh. While taking cognizance, the Special Judge added Sunil Bharti Mittal, Chairman-cum-Managing Director of Bharti Cellular Ltd. and issued process to him. This was the subject matter of the challenge before the Supreme Court. The Supreme Court went into the charge sheet that was filed by the CBI and found that the CBI themselves had come to the opinion that there was no material to implicate Sunil Bharti Mittal. In fact, in paragraph 32 of the judgment, the Supreme Court held as follows :

"32. The fulcrum of the issue before us is the validity of that part of the impugned order vide which the two appellants who were not named in the charge-sheet, have been summoned by the Special Judge, for the reasons given therein."

After discussing the facts, the Supreme Court held in paragraph 53 as under:

"53. However, the words "sufficient ground for proceeding" appearing in Section 204 are of immense importance. It is these words which amply suggest that an opinion is to be formed only after due application of mind that there is sufficient basis for proceeding against the said accused and formation of such an opinion is to be stated in the

order itself. The order is liable to be set aside if no reason is given therein while coming to the conclusion that there is prima facie case against the accused, though the order need not contain detailed reasons. A fortiori, the order would be bad in law if the reason given turns out to be ex facie incorrect."

The above passage should be seen from the context it was stated. It was stated in the context in which, Sunil Bharti Mittal was not an accused in the charge sheet and he was included as an accused by the Special Judge, while taking cognizance of the offence disclosed in the charge sheet. Similarly, in Mehmood Ul Rehman (supra), the Supreme Court dealt with a private complaint for defamation. It may be pertinent to extract paragraph 21 of the said judgment :

"21. Under Section 190(1)(b) CrPC, the Magistrate has the advantage of a police report and under Section 190(1)(c) CrPC, he has the information or knowledge of commission of an offence. But under Section 190(1)(a) CrPC, he has only a complaint before him. The Code hence specifies that "a complaint of facts which constitute such offence". Therefore, if the complaint, on the face of it, does not disclose the commission of any offence, the Magistrate shall not take cognizance under Section 190(1)(a) CrPC. The complaint is simply to be rejected."

(emphasis supplied)

23. However, very recently in State of Gujarat Vs. Afroz Mohammed Hasanfatta [(2019) 20 SCC 539], the Supreme Court, in paragraph 22, held as follows :

"22. In summoning the accused, it is not necessary for the Magistrate to examine the merits and demerits of the case and whether the materials collected is adequate for supporting the conviction. The court is not required to evaluate the evidence and its merits. The standard to be adopted for summoning the accused under Section 204 CrPC is not the same at the time of framing the charge. For issuance of summons under Section 204 CrPC, the expression used is "there is sufficient ground for proceeding..."; whereas for framing the charges, the expression used in Sections 240 and 246 IPC is "there is ground for presuming that the accused has committed an offence...". At the stage of taking cognizance of the offence based upon a police report and for issuance of summons under Section 204 CrPC, detailed enquiry regarding the merits and demerits of the case is not required. The fact that after investigation of the case, the police

has filed charge-sheet along with the materials thereon may be considered as sufficient ground for proceeding for issuance of summons under Section 204 CrPC."

The above statement of law cannot be distinguished by contending that it would apply only for a police report because, all investigations culminate in the investigating agencies filing either a police report or a complaint with the materials collected by them, for the Court to take cognizance thereon.

24. In a simple private complaint case, the Magistrate may not have any materials dehors the sworn statement of the complainant to take cognizance of the offences alleged in the complaint. In such cases, it will be desirable, if the Magistrate passes an order giving reasons for taking cognizance of the offence and issuing process. In this case, along with the complaint, the Enforcement Directorate has filed 56 documents and also the statements recorded under the PML Act, in support of the allegations in the complaint.

25. The Supreme Court was aware that in a private complaint, apart from the complaint, there will not be any other material before the Magistrate, while taking cognizance. This is clear from the underlined portion in paragraph 21 of *Mehmood Ul Rehman (supra)*. Superadded, we cannot lose sight of the following judgments of the Supreme Court, wherein, it has been held in no uncertain terms that failure of the Magistrate to pass a detailed cognizance order, will not vitiate the act of taking cognizance:

- *U.P. Pollution Control Board Vs. Mohan Meakins Ltd. and others* [(2000) 3 SCC 745]
- *Kanti Bhadra Shah and another Vs. State of West Bengal* [(2000) 1 SCC 722]
- *Dy. Chief Controller of Imports & Exports Vs. Roshanlal Agarwal and others* [(2003) 4 SCC 139]
- *Jagdish Ram Vs. State of Rajasthan and another* [(2004) 4 SCC 432]
- *Bhushan Kumar and another Vs. State (NCT of Delhi) and another* [(2012) 5 SCC 424]

In *Bhushan Kumar (supra)*, the Supreme Court has held in unequivocal terms that the summoning order under Section 204 Cr.P.C. requires no explicit reasons to be stated because, it is imperative that the Magistrate must have taken notice of the accusations and applied his mind to the allegations made in the

police report and the materials filed therewith. Illustration (e) to Section 114 of the Evidence Act says, "The Court may presume that judicial and official acts have been regularly performed". In view of the above discussions, the cognizance order in this case does not deserve to be quashed.

26. Finally, Mr.A.Ramesh assailed the prosecution by submitting that the entire prosecution is founded upon a forensic audit report, but, the report itself says that, it cannot be used for any judicial purpose. This Court is unable to persuade itself to agree with the above submission because, the forensic audit report had triggered the investigation and no report can ever form the only basis for convicting a person of an offence. The prosecution has to prove the offence, by adducing evidence and this opportunity has to be given to the prosecution in this case too.

In the result, the prosecution of MJPL (A3) and Suresh Khatri (A4) cannot be said to be unfounded and accordingly, these Criminal Original Petitions are dismissed. Connected Crl.M.Ps are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Director  
Directorate of Enforcement  
Government of India  
Ministry of Finance  
Department of Revenue  
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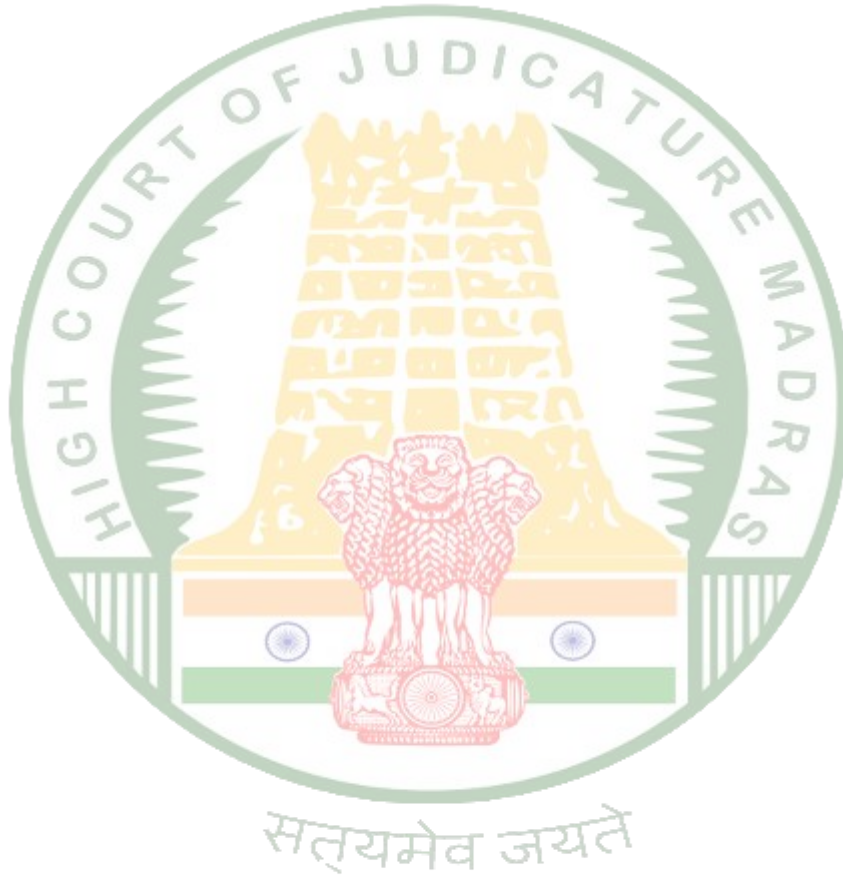
2.The Principal Sessions Judge  
Chennai

3.The Special Public Prosecutor for ED,  
High Court, Madras

+1cc to M/s.Aiyar & Dolia, Advocate, S.R.No.10914

CRL.O.P.Nos.20127 & 25688 of 2018

AK (CO)  
CB(28/04/2021)



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