

AGK

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVISION APPLICATION NO.370 OF 2022

Directorate of Enforcement

... Applicant

V/s.

Surana Developers (Wadala) LLP & Ors.

... Respondents

Mr. Hiten Venegaonkar for the applicant.

Mr. Aabad Ponda, Senior Advocate with Mr. Manohar Ramsinghani, N. Patel, Mr. Pradeep Jain and Mr. Vinay D. i/by Diamondwala & Co. for respondents nos.1 and 2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 29, 2023

RC.:

1. The challenge in this criminal revision application is to the order dated 24th August 2022 passed by the learned Special Judge in Prevention of Money Laundering Act, 2002 Act, City Civil & Sessions Court, Mumbai, discharging respondent nos.1 and 2 for an offence under section 3 punishable under section 4 of the Prevention of Money Laundering Act, 2002 (hereafter "PML Act", for short).

2. Facts giving rise to the filing of the present criminal revision application are as under:

On 7th March 2020, the complainant, Mahendra Sampatrao

Surana, lodged a report bearing First Information Report No.109 of 2020 against respondent nos.1 and 2 and others, alleging that the company mentioned in the report and respondent nos.1 and 2 being directors of the said company had issued a cheque of closed bank account to the tune of Rs.12,17,84,451/- for offences under sections 406, 420 and 34 of the Indian Penal Code, 1860 (hereafter "IPC", for short). During the course of the investigation, the complainant and the accused settled their dispute. The accused persons paid the amount of Rs.14,73,84,361/- to the complainant by demand draft. The complainant, therefore, recorded a statement before the Investigating Officer that he had lodged a complaint against the accused persons due to a misunderstanding and received the entire amount.

3. The Investigating Officer, therefore, filed a 'C' summary report with the jurisdictional Magistrate. The learned 3rd Joint Judicial Magistrate First Class, Aurangabad, by order dated 12th February 2021, accepted the 'C' summary report and disposed of Criminal Miscellaneous Application No.434 of 2021 for an offence under sections 406, 420 and 34 of IPC.

4. In the meantime, the applicant registered ECIR/MCZO No.II/20/2020 dated 16th December 2020 against respondents nos.1 and 2 and others based on scheduled offence being First Information Report No.109 of 2020 dated 7th March 2020.

5. After being discharged for a scheduled offence, respondents nos.1 and 2 filed discharge applications before the Special Judge for being discharged for an offence under section 3, punishable

under section 4 of the PML Act. By the impugned order, respondents nos.1 and 2 have been discharged.

6. Learned advocate for the applicant submitted that the applicant's discharge is not sustainable as the 'C' summary report was based on a settlement between the parties. Such discharge cannot be termed as acquittal as contemplated by the judgment of the Apex Court in the case of **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.** reported in 2022 SCC OnLine SC 929.

7. The issue involved as to whether the discharge of the accused for scheduled offences would entitle persons accused of an offence under the PML Act on discharge is no longer *res integra* in view of the Division Bench judgment of this Court in **Naresh Goyal v. The Directorate of Enforcement Mumbai Zone II** in Criminal Writ Petition No.4037 of 2022 decided on 23rd February 2022. This Court was considering a petition arising out of the rejection of the discharge application on the ground of acceptance of the 'C' summary for scheduled offences by the jurisdictional Magistrate. The Division Bench of this Court, after considering the judgment in the case of **Vijay Madanlal Choudhary** (supra) and **Parvathi Kollur & Anr. v. State by Directorate of Enforcement** in Criminal Appeal No.1254 of 2022 decided on 16th August 2022 held in paragraph 13 as under:

“13. As noted above, admittedly there is no scheduled offence as against the petitioner in both the petitions, in view of the closure report filed by the police, which was accepted by the Courts as stated aforesaid. There being no predicate offence i.e. scheduled offence, the impugned ECIR registered

by the respondent NO.1 – ED will not survive and as such the said ECIR will have to be quashed and set aside.”

8. Since the issue involved in the present criminal revision application is covered by the Division Bench decision of this Court, I find no error in the exercise of discretion by the Special Court discharging respondents nos.1 and 2.

9. The criminal revision application is, therefore, dismissed. No costs.

(AMIT BORKAR, J.)