

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

CRIMINAL WRIT PETITION NO.4037 OF 2022

Naresh Goyal
Age: 73 years
72, Jupiter Apts,
Anstey Road,
Off Altamount Road,
Mumbai – 400026.

...Petitioner

Versus

1. The Directorate of Enforcement
Mumbai Zone II,
Ceejay House,
Unit Nos.301, 302, 303, 402 & 403
Dr. Annie Besant Road,
Worli, Mumbai – 400 018.

2. State of Maharashtra
Through the Public Prosecutor

...Respondents

***WITH
CRIMINAL WRIT PETITION NO.4038 OF 2022***

Anita Naresh Goyal
Age: 69 years
72, Jupiter Apts,
Anstey Road,
Off Altamount Road,
Mumbai – 400026.

...Petitioner

Versus

1. The Directorate of Enforcement
Mumbai Zone II,
Ceejay House,
Unit Nos.301, 302, 303, 402 & 403
Dr. Annie Besant Road,
Worli, Mumbai – 400 018.
2. State of Maharashtra
Through the Public Prosecutor ...Respondents

Mr. Ravi Kadam, Senior Advocate a/w Mr. Karan Kadam, Mr. Ameet Naik, Mr. Abhishek Kale, Mr. Avdhoot Prabhu, Ms. Arya Bile and Mr. Vidhur Malhotra i/b Naik Naik & Company, for the Petitioner in WP/4037/2022.

Mr. Aabad Ponda, Senior Advocate a/w Mr. Ameet Naik, Mr. Abhishek Kale, Mr. Avdhoot Prabhu, Ms. Arya Bile and Mr. Vidhur Malhotra i/b Naik Naik & Company, for the Petitioner in WP/4038/2022.

Mr. Shreeram Shirsat a/w Mr. Amandeep Singh Sra and Mr. Aman Oomen, for the Respondent No.1 – ED.

Mr. Y. M. Nakhwa, A.P.P for the Respondent No.2 – State.

***CORAM : REVATI MOHITE DERE &
PRITHVIRAJ K. CHAVAN, JJ.***

DATE : 23rd FEBRUARY 2023

JUDGMENT (Per Revati Mohite Dere, J.) :

1. Heard learned counsel for the parties in both the petitions.

2. Rule. Rule is made returnable forthwith, in both the aforesaid petitions, with the consent of the parties and is taken up for final disposal. Mr. Shirsat waives notice on behalf of the respondent No.1 – ED and the learned A.P.P waives notice on behalf of the respondent No.2–State in both the petitions.

3. By these petitions, preferred under Article 226 of the Constitution of India and under Section 482 of the Code of Criminal Procedure, the petitioner in both the petitions seek identical substantive relief, which reads thus;

“18.
.....

- (a) issue a writ of certiorari or a writ in the nature of certiorari or any other appropriate writ, order or direction under Article 226 of the Constitution of India, 1950, calling the records of the Respondent No.1 pertaining to the ECIR/MBZO-II/01/2020 dated 20.02.2020 (“**Impugned ECIR**”) (Exhibit A) and quash and / or set aside the ECIR/MBZO-II/01/2020 dated 20.02.2020 (“**Impugned ECIR**”) (Exhibit A), the investigation carried thereunder and all proceedings and actions emanating therefrom against the Petitioner, as being illegal and contrary to law.”

4. Learned senior counsel for the petitioner in both the petitions submit that the ECIR registered by the respondent No.1 – The Directorate of Enforcement (“ED”) does not survive, inasmuch as, there is no scheduled offence, which is a condition precedent for initiating ED proceeding. In support of their submission, learned senior counsel relied on the following judgments: -

(i) *Harish Fabiani and Others v/s Enforcement Directorate and Others*¹ and

(ii) *Criminal Appeal No.1269 of 2017 (Directorate of Enforcement v/s M/s. Obulapuram Mining Company Pvt. Ltd. and other connected appeals) decided on 02.12.2022.*

5. Mr. Shirsat, learned counsel for the respondent No.1 – ED does not dispute the fact that there is no scheduled offence pending against either of the petitioners. He also does not dispute the fact that registration of a scheduled offence is a condition precedent for initiating ED proceeding. He, however submits that it is well possible,

1 2022 SCC OnLine Del 3121

that there may be other cases against the petitioner in both the petitions, which may be registered against the petitioners. He submits that in the investigation carried out by the ED, the ED has unearthed certain irregularities in the forensic audit accounting conducted by them and as such it is well possible to keep the ECIR registered by the respondent No.1 – ED, alive.

6. Perused the papers. A few facts as are necessary to decide the aforesaid petitions are set out hereinunder :-

Admittedly, the petitioner in Writ Petition No.4037 of 2022 is the husband of the petitioner in Writ Petition No.4038 of 2022. It appears that Akbar Travels India Private Limited ('Akbar Travels') had filed a private complaint in the Court of the learned Metropolitan Magistrate, Ballard Pier, Mumbai, against Jet Airways (India) Limited ('Jet Airways') and its erstwhile non-executive directors i.e. the petitioner in both the petitions, alleging offences punishable under Sections 120B r/w 406, 420, 467, 468, 471 and 471-A of the Indian Penal Code ('IPC'). Vide order dated **15th February 2020**, the

trial Court passed an order under Section 156(3) of the Code of Criminal Procedure ('Cr.P.C') and directed the Senior Police Inspector of the MRA Marg Police Station, Mumbai, to register an FIR as against the petitioner in both the petitions. Pursuant thereto, on **18th February 2020**, an FIR bearing C.R. No.66 of 2020 was registered by the said police station against Jet Airways and the petitioner in both the petitions, alleging offences punishable under Sections 406, 420, 465, 467, 468, 471 r/w 120B of the IPC.

It appears that on **20th February 2020**, based on the aforesaid FIR, the respondent No.1 – ED registered ECIR/MBZO-II/01/2020 under Sections 3 and 4 of the Prevention of Money Laundering Act (PMLA), (as the aforesaid offences specified in the FIR were scheduled offences under paragraph 1 of Part A of the Schedule to PMLA), against Jet Airways and the petitioner in both the petitions.

Admittedly on **9th March 2020**, a closure report was filed by the police of the MRA Marg Police Station, Mumbai in the trial Court. It was recorded in the closure report that the dispute was civil

in nature; that the matter concerned, dues payable to Akbar Travels by Jet Airways, and, that the claim in respect thereof, had already been filed by Akbar Travels with the resolution professional of Jet Airways in the insolvency proceedings initiated under the provisions of Insolvency and Bankruptcy Code, 2016.

On **15th June 2020**, the respondent No.1 – ED filed an Intervention Application as well as a Protest Petition challenging the closure report filed by the police, in the trial Court. The original complainant i.e. Akbar Travels also filed a separate protest petition on 16th June 2020, challenging the said closure report. The trial Court rejected the intervention application/protest petition filed by the respondent No.1 – ED, vide order dated 19th September 2020, after observing that the respondent No.1 had no locus to intervene especially when the informant (original complainant) had appeared in the matter.

Being aggrieved by the said order dated 19th September 2020, the respondent No.1 – ED filed a Criminal Revision Application, being Criminal Revision Application No.400 of 2020 in

the Sessions Court. The Sessions Court vide order dated 15th October 2020 dismissed the said Criminal Revision Application, observing that the respondent No.1 – ED had no locus to intervene.

Thereafter, the respondent No.1 – ED challenged the Sessions Court's order dated 15th October 2020 in this Court by filing Criminal Writ Petition (Stamp) No.3122 of 2020. This Court whilst dismissing the said writ petition vide order dated 21st December 2020 observed that there was no provision of law which supported the claim of the ED, with respect to its locus to intervene and contest the closure report.

Pursuant thereto, the respondent No.1 – ED filed a Special Leave Petition being Special Leave Petition (Criminal) No.5524 of 2021 (“SLP”) in the Apex Court, challenging the order passed by this Court dated 21st December 2020. The Apex Court vide order dated 26th September 2022, dismissed the said SLP.

It appears that in the interregnum, the trial Court vide order dated **22nd December 2020** accepted the ‘C’ Summary Report and rejected the original complainant's complaint i.e. of Akbar Travels,

as also the protest petition filed by the original complainant.

The original complainant i.e. Akbar Travels challenged the said order dated 22nd December 2020 in the Sessions Court and the Sessions Court vide order dated 6th August 2021, dismissed the said Criminal Revision Application, after observing that the order of the trial Court does not suffer from any illegality, impropriety or incorrectness and as such confirmed the trial Court's order, accepting the 'C' Summary Report. Admittedly, the said order has attained finality, inasmuch as, the same has not been challenged, by the original complainant i.e. Akbar Travels.

7. Thus, a perusal of the aforesaid facts clearly show that the order dated 22nd December 2020, passed by the trial Court, accepting the 'C' Summary Report and consequently, dismissing the private complaint has attained finality. As noted earlier, the said order dated 22nd December 2020 was challenged before the Sessions Court, however, the Sessions Court vide order dated **6th August 2021** confirmed the order passed by the trial Court and as such dismissed

the Criminal Revision Application filed by the original complainant. Again, as noted above, there is no challenge to the said order. Thus, the FIR registered as against the petitioner in both the petitions, stands closed, in view of the order passed by the trial Court accepting the closure report, filed by the police and dismissal of the protest petition filed by the original complainant, and with the Sessions Court confirming the said order. The fact, that the said order has attained finality is not in dispute.

8. Admittedly, the respondent No.1 – ED had registered the ECIR in question, pursuant to the registration of an FIR i.e. scheduled offence/predicate offence, which predicate offence now stands closed.

9. It is well settled by a catena of judgments including the latest judgment of the Apex Court in *Vijay Madanlal Choudhary and Others v/s Union of India and Others*², that only if there is a predicate offence, that an ECIR will be maintainable. Thus, if the FIR stands closed, by a judicial process, the ECIR will not survive. Thus, the

2 2022 SCC OnLine SC 929

natural corollary would be that the respondent No.1 – ED would not be able to continue with the investigation, there being no predicate offence.

10. This Court in the case of *State of Maharashtra v/s Bhimrao Vithal Jadhav, decided on 21.09.1974* had observed that granting of ‘C’ Summary amounts to an acquittal. Similarly, in *Vijay Madanlal Choudhary (Supra)*, the Apex Court had observed that if a person is discharged or acquitted of a scheduled offence by a competent Court, there can be no offence of money laundering against him. The relevant paragraph, reads thus:-

“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.”

11. Although, the learned counsel for the respondent No.1 – ED tried to impress upon this Court that the ECIR is a private internal document and not at par with an FIR, and as such is not required to be quashed, the said submission was not pressed, when the learned senior counsel for the petitioner in both the petitions showed a copy of the order passed by the Apex Court in the case of ***M/s. Obulapuram Mining Company Pvt. Ltd. (supra)***. In the said case, the learned Solicitor General appearing for the appellant – ED made a statement that since the proceedings before the Court (Apex Court) arose from an order of attachment and there is acquittal in respect of the predicate offence, the ED proceeding really would not survive.

12. The ratio in ***Vijay Madanlal Choudhary (Supra)***, has been relied upon by the another Bench of the Apex Court in ***Parvathi Kollur and Another v/s State by Directorate of Enforcement***³, In the said case, the Apex Court in paras 7 to 9 has observed as under:-

*“7. Learned counsel for the appellants has contended that the issue as involved in this matter is no more res integra, particularly for the view taken by a 3-Judge Bench of this Court in the case of ***Vijay Madanlal Choudhary & Ors. vs. Union Of India & Ors.*** decided on 27.07.2022 where, the consequence of failure of prosecution for the scheduled offence has been clearly provided in the following terms:*

*187.(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 through him.*

3 Cri. Appeal No.1254/2022 (Arising out of S.L.P. (Cri.) No.4258/2021) decided on 16.08.2022

8. *Learned ASG appearing for the respondent, in all fairness, does not dispute the above position of law declared by this Court.*

9. *The result of the discussion aforesaid is that the view as taken by the Trial Court in this matter had been a justified view of the matter and the High Court was not right in setting aside the discharge order despite the fact that the accused No. 1 had already been acquitted in relation to the scheduled offence and the present appellants were not accused of any scheduled offence.”*

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.

14. The petitions are accordingly allowed and the ECIR/MBZO-II/01/2020 registered by the respondent No.1 – ED, is quashed and set-aside against the petitioners, in both the petitions.

15. Rule is made absolute in the aforesaid terms. Petitions are disposed of accordingly.

16. All concerned to act on the authenticated copy of this judgment.

PRITHVIRAJ K. CHAVAN, J.

REVATI MOHITE DERE, J.