

Ghuge

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

CRIMINAL REVISION APPLICATION.492 OF 2022

Directorate of Enforcement ... Applicant

V/s.

Surana Developers (Wadala) LLP and Ors ... Respondents

Mr. Hiten Venegaonkar for the applicant.

Mr. Aftab Diamondwala with Mr. Noorain Patel, Ms. Sheetal Shreevastav, Mr. Pradeep Jain i/b Diamondwala & Co. for the respondent Nos. 1 to 8.

Mr. Arfan Sait, APP for the State.

CORAM : AMIT BORKAR, J.

DATED : APRIL 28, 2023

P.C.:

1. The challenge in this criminal revision application is to the order dated 18th October 2022 passed by learned Special Judge in Prevention of Money Laundering Act, 2002 Act, City Civil & Sessions Court, Mumbai discharging respondent nos.1 to 8 for 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 report bearing First Information Report No.109 of

2020 against respondent nos.1 to 8 and others alleging that the company mentioned in the report and 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 section 406, 420 and 34 of the Indian Penal Code, 1860 (hereafter “IPC”, for short). During the course of investigation, the complainant and accused of predicate offence settled their dispute. The accused persons paid 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 misunderstanding and has 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 ‘C’ summary report and disposed of Criminal Miscellaneous Application No.434 of 2021 for offence under section 406, 420 and 34 of IPC.

4. In the meantime, the applicant registered ECIR/MCZO No.II/20/2020 dated 16th December 2020 against respondent nos.1 to 8 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, respondent nos.1 to 8 filed discharge applications before the Special Judge for being discharged for offence under section 3, punishable under section 4 of the PML Act. By the impugned order, respondent nos.1

to 8 have been discharged.

6. Learned advocate for the applicant submitted that discharge of the applicant's 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 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 rejection of discharge application on the ground of acceptance of 'C' summary for scheduled offences by the jurisdictional Magistrate. The Division Bench of this Court, after considering 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 exercise of discretion by the Special Court discharging respondent nos.1 to 8.

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

(AMIT BORKAR, J.)