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W.P.No.3167 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.09.2023

Coram

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MR.JUSTICE **R.SAKTHIVEL**

W.P.No.3167 of 2023

Anil Jain

.. Petitioner

VS

Directorate of Enforcement rep. By its
Assistant Director,
Chennai I Zonal Office,
2nd 3rd Floors, C-Block,
Murugesu Naicker Office Complex,
No.84, Greaves Road, Thousand Lights,
Chennai – 6.

.. Respondent

Petition filed under Article 226 of the Constitution of India
praying for issuance of a writ of mandamus directing the respondent
to close/drop all proceedings against the petitioner in connection
with the ECIR in F.No.ECIR/CEZO-1/19/2021.

For Petitioner : Mr.C.Manishankar,
Sr. Counsel
for Mr.R.Palaniandavan

For Respondent : Mr.N.Ramesh,
Special Public Prosecutor (ED)
assisted by Mr.Logesh



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ORDER

[Order of the Court was made by M.SUNDAR, J.]

This order will now dispose of the captioned 'Writ Petition' (hereinafter 'WP' for the sake of brevity, convenience and clarity).

2. This order has to be read in conjunction with and in continuation of earlier proceedings made in the captioned WP when it was listed on 26.06.2023. To be noted, the proceedings/orders made by this Court on 26.06.2023 reads as follows:

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M.SUNDAR, J.,

and

R.SAKTHIVEL, J.,

[Order of the Court was made by M.SUNDAR. J.,]

Captioned writ petition has been filed with a mandamus prayer seeking a direction to the respondent to close / drop the proceedings against the petitioner in connection with ECIR in F.No.ECIR/CEZO-1/19/2021.

2. Mr.C.Manishankar, learned Senior counsel appearing on behalf of counsel on record for writ petitioner submits that pursuant to the aforementioned ECIR [to be noted ECIR stands for 'Enforcement Case Information Report'], a summon dated 27.06.2022 calling upon the petitioner to appear before the respondent on 08.07.2022 at 10.00 a.m. along with certain documents set out in the schedule to summons was issued. Learned Senior counsel submits that ECIR in summon is predicated on FIR No.278 of 2020 dated



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17.09.2020 on the file of CCB-I (Chennai-CCB) for alleged offences under Sections 406, 419, 420, 465, 468 and 471 of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for the sake of brevity]. To be noted, summon does not refer to this FIR but this is averment of the petitioner that ECIR in summon is predicated on aforementioned FIR. Learned Senior counsel submits that the aforementioned FIR has since ended in a closure on 01.07.2021 vide proceedings before jurisdictional Metropolitan Magistrate Court i.e., 'Court of the Special Court of CCB & CBCID Metropolitan Magistrate, Egmore, Chennai-8' [hereinafter 'predicate offence Court' for the sake of brevity]. Adverting to principle laid down by Hon'ble Supreme Court in **Vijay Madanlal Choudhary** case [**Vijay Madanlal Choudhary and others Vs. Union of Indian and Others** reported in **2022 SCC OnLine SC 929**], more particularly, paragraph No.467(v)(d) thereat, learned Senior counsel submits that authorities under 'the Prevention of Money-Laundering Act, 2002' [hereinafter 'PMLA' for the sake of convenience and clarity] cannot prosecute any person when closure has been given to predicate offence. To be noted, paragraph No.467(v)(d) of **Vijay Madanlal Choudhary** case reads as follows:

'467 In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:—

- (i)
- (ii)
- (iii)
- (iv)
- (v) (a)
- (b)
- (c)

(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



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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. In the light of the narrative thus far, prima facie case made out.

4. Admit. Issue Rule nisi.

5. Mr.N.Ramesh, learned Special Public Prosecutor accepts notice for lone respondent and requests for time to get instructions and revert to this Court.

6. List four weeks hence. List on 24.07.2023.'

3. The aforementioned 26.06.2023 proceedings/orders shall now be read as an integral part and parcel of this order. The aforementioned 26.06.2023 proceedings captures essentials that are imperative for appreciating this final order and therefore we are not setting out the same again and burdening this final order with further facts. To be noted, the short forms, abbreviations and short references used in the 26.06.2023 proceedings shall continue to be used in the instant final order also for the sake of convenience and clarity. To be noted, in the aforementioned 26.06.2023 proceedings an inadvertent typographical / secretarial error has crept in, the same is 'ECIR in summon is predicated'. This expression should read as 'ECIR and summon are predicated'. This shall now be read as an



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Errata / Corrigendum and aforementioned 26.06.2023 which is now an integral part and parcel of this final order shall be read accordingly.

4. Today, Mr.Mani Shankar, learned senior counsel instructed by Mr.R.Palaniandavan, learned counsel on record for the writ petitioner and Mr.N.Ramesh, learned Special Public Prosecutor (ED) for the lone respondent are before us.

5. Adverting to the aforementioned earlier proceedings, learned senior counsel for petitioner reiterated the same and pressed into two case laws and they are as follows:

Sl. No.	Date	Name and number of the Case	Court
1	01.11.2022	S.Jagathrakshakan Vs. Deputy Director, Directorate of Enforcement, Chennai (W.P.No.10854 of 2020)	another Hon'ble Co-ordinate Division Bench of this Court (P.N.Prakash, J. and RMT.Teekaaraman, J.)
2	26.09.2022	Harish Fabiani and Others Vs. Enforcement Directorate and Others reported in 2022 SCC OnLine Del 3121	a Hon'ble Division bench of Hon'ble Delhi High Court (Mukta Gupta, J. and Anish Dayal, J.)

6. Learned senior counsel submitted that the aforesaid two case laws follow the ***Vijay Madanlal Choudhary*** principle [***Vijay***



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Madanlal Choudhary and others Vs. Union of Indian and Others

reported in 2022 SCC OnLine SC 929] that if a person is finally discharged/acquitted qua scheduled offence there can be no offence of money laundering against him or claiming such property being the property linked to the scheduled offence through him.

7. Learned senior counsel also drew our attention to the counter affidavit of the respondent, more particularly paragraph XI thereat which reads as follows:

'XI. During the investigation a letter dated 14.07.2021 was sent to the Police seeking statement recorded by CCB and evidences collected therein. It was informed in reply vide letter dated 23.11.2021 that case has been closed. Vide the said letter, the order dated 02.07.2021 passed by the Hon'ble Metropolitan Magistrate, Egmore, Chennai was enclosed.'
(underlining made by this Court for ease of reference and for emphasis)

8. It was submitted by learned senior counsel that in the light of the certain stated position of the respondent, prayer in the captioned WP has to be answered in the affirmative.



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9. In response to the aforementioned argument, Mr.N.Ramesh, learned Special Public Prosecutor for respondent advertng to the counter affidavit submitted that money laundering is independent qua scheduled offence in the light of Section 44 of PMLA. However, as regards paragraph XI of counter affidavit, the same is the obtaining fact scenario and stated position of respondent as regards closure of predicate offence.

10. In the light of the narrative thus far, it is clear that in the case on hand, there is closure of predicate offence and there is no disputation or contestation that this closure of predicate offence has attained finality and has been given legal quietus.

11. Reverting to two case laws relied on by the learned senior counsel, facts and questions are similar i.e., whether PMLA proceedings will survive on the teeth of closure of predicate offence when such closure has attained finality/given legal quietus. In *Jagathrakshakan's case*, relevant paragraphs are paragraphs 3 and 4 and the same read as follows:

'3. While so, when the matter was taken up for hearing, both sides represented that this court has allowed Crl.O.P.Nos.12985 and 12986 of 2020 on 23.09.2022 quashing the two First Information Reports in CBCID Crime Nos.2 and 3 of 2016.



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4. In the light of the law laid down by the Supreme Court in *Vijay Madanlal Choudhary and Others Vs. Union of India and Others* (2022 SCC OnLine SC 929), the learned counsel for the petitioner prayed for quashment of the proceedings before the Enforcement Directorate.'

12. In *Harish Fabiani's* case, relevant paragraphs (as in 2022 SCC Online Del 3121) are paragraphs 4, 21 and 26 which read as follows:

'4. The crux of this conclusion in *Vijay Madanlal Choudhary* (*supra*) by the Hon'ble Supreme Court, in context of these petitioners, is that if the person accused of any scheduled offence is finally discharged/acquitted or the criminal case against him is quashed by a court of competent jurisdiction, there can be no case of money laundering against him or anyone claiming such property (which is linked to the stated scheduled offence) through him.'

'21. In this regard reference may also be placed on para 253 of *Vijay Madanlal Choudhary* (*supra*) which reads as under:

"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



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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." (emphasis supplied)'

'Conclusion

26. In light of the above analysis and discussion this Court concludes as under:

a) The relief sought regarding constitutionality or vires of various provisions of the Prevention of Money Laundering Act, 2002 is infructuous having been decided by the Hon'ble Supreme Court in Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929.

b) The ECIR no. ECIR/07/HIU/2021 registered by the Directorate of Enforcement, Department of Revenue, Ministry of Finance, Government of India, under FIR No. 129/2021 dated 13 April, 2021 registered by P.S. Wada, Dist. Palghar, Maharashtra stands quashed.

c) All proceedings arising from the ECIR No. ECIR/07/HIU/2021 are set aside and there would be no further coercive action or search and seizure or summons arising from the said ECIR.

d) The Look out Circulars issued by respondents pursuant to the ECIR No. ECIR/07/HIU/2021 are also set aside.'



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13. This Bench also notices that **Parvathi Kollur's** case (**Parvathi Kollur and Another Vs. State by Directorate of Enforcement**) reported in **2022 SCC OnLine SC 1975** in a similar fact situation has restated paragraph 187 (d) of **Vijay Madanlal Choudhary** which reads as follows:

'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.'

14. The discussion thus far leaves us with the 'stand alone offence' point. As regards stand alone offence point qua PMLA, the same was considered by Hon'ble Delhi High Court in **Emta Coal case (The Deputy Director, Directorate of Enforcement Vs. Emta Coal Limited & Ors., etc.,)** where also the facts are similar i.e., where the closure report was accepted by the Trial Court and



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the question was whether PMLA offence can proceed. In ***Emta Coal case***, as regards 'stand alone offence point', the most relevant discussion is contained in paragraph 16 and the same reads as follows:

'16. On the other hand, Mr.Sharma, Id. Counsel appearing for the Enforcement Directorate relies upon paragraphs 281, 290 and 295 of the Vijay Madanlal Choudhary (supra) judgment to argue that irrespective of whether the predicate offence exists or not, unless and until the Trial Court comes to a conclusion that the assets are not proceeds of crime, the attachment orders can continue and the ED can in fact file an independent complaint in such a case. On a query from the Court as to whether there is even a single case where a separate complaint has been registered under the PMLA by the ED without a predicate offence having existed, the Id. Counsel submits that this could be the first case.'

15. We find from our research that ***Emta Coal case*** has been carried to Hon'ble Supreme Court vide Special Leave Petition (Civil) Diary No.15235/2023 and the same has been disposed of by Hon'ble Bench of Hon'ble Supreme Court in and by an order dated 06.07.2023 which reads as follows:

'Delay condoned.

*Learned Additional Solicitor General submitted that since there is a closure report in the predicate offence, therefore, no further proceedings under the **PMLA Act** could be continued as per the observations of the High Court in the impugned order(s).*



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He, however, submitted that in the event any further action is taken in respect of the predicate offence, then liberty may be reserved to the petitioner herein to take further steps under the said Act, including reviving these proceedings. The submission of learned ASG is placed on record.

The Special Leave Petitions are disposed of in light of the aforesaid submission and liberty is accordingly reserved to the petitioner.

Pending applications shall stand disposed of.'

16. Applying **Padma Sundara Rao** principle, the ratio in *Jagathrakshakan's case*, *Harish Fabiani's case* and *Emta Coal's case*, all of which in turn turn on *Vijay Madanlal's case* of Hon'ble Supreme Court would apply in all force to the case on hand. To be noted, **Padma Sundara Rao** case [**Padma Sundara Rao Vs. State of Tamil Nadu** reported in **(2002) 3 SCC 533**] is a celebrated case law rendered by a Constitution Bench and therefore it is declaration of law and the most relevant paragraph is paragraph 9, which reads as follows:

*'9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom *British Railways**



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Board v. Herrington, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

17. To be noted, we had already set out that facts in the aforementioned four case laws, PMLA facts are similar to the case on hand i.e., closure of predicate offence in the Trial Court and the question as to whether PMLA offence can proceed.

18. As regards *Emta Coal's case*, we remind ourselves of the ***Kunhayammed*** principle (***Kunhayammed & Ors vs State Of Kerala & Anr*** reported in **(2000) 6 SCC 359**) to say that Hon'ble Supreme Court has declined to interfere with the Delhi High Court order which vide paragraph 16 specifically deals with the stand alone offence argument but the Hon'ble Supreme Court has put in a caveat and the caveat is recording of statement of learned Additional Solicitor General that in the event of any further action in respect of the predicate offence liberty has to be preserved for the Enforcement Directorate for reviving the proceedings. To be noted, this is captured in the third paragraph of the 06.07.2023 order of Hon'ble Supreme Court. We respectfully say that this caveat will apply to the case on hand also and therefore when we accede to the prayer in the captioned WP it will clearly be with a similar caveat.



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19. Captioned WP disposed of in the aforesaid manner i.e., answering the prayer of the writ petitioner in the affirmative albeit with the caveat i.e., caveat that in the event of any further action in respect of predicate offence then the rights/liberties of Enforcement Directorate are preserved to take further steps under PMLA including reviving of the instant proceedings which has been put in by respectfully following the order of Hon'ble Supreme Court in *Emta Coal's case*. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
14.09.2023

Index : Yes/No
Neutral Citation : Yes/No
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To

- 1.The Assistant Director,
Directorate of Enforcement,
Chennai I Zonal Office,
2nd 3rd Floors, C-Block,
Murugesu Naicker Office Complex,
No.84, Greaves Road, Thousand Lights,
Chennai – 6.
- 2.The Public Prosecutor,
High Court, Madras.



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**M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,**

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