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Crl.O.P.Nos.13132, 14795, 14804, 14860, 14899 & 14901 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR

and

THE HONOURABLE MR.JUSTICE R.SAKTHIVEL

Crl.O.P.Nos.13132, 14795, 14804, 14860, 14899 & 14901 of 2023

and

Crl.M.P.Nos.7975, 9244, 9229, 9231, 9256, 9282 & 9283 of 2023

Saravanan

S/o.Palaniappan

... Petitioner in Crl.O.P.No.13132 of 2023

Preetha

W/o.Vijayananth

... Petitioner in Crl.O.P.No.14795 of 2023

Dwarkanathan Vijayakumar

S/o.Dwarkanathan

... Petitioner in Crl.O.P.No.14804 of 2023

Lakshmi Muthuraman

W/o.P.Saravanan

... Petitioner in Crl.O.P.No.14860 of 2023

Vijay Ananth

S/o.Vinayagamurthy

... Petitioner in Crl.O.P.No.14899 of 2023

Aravinth Raj

S/o.Muthukrishnan

... Petitioner in Crl.O.P.No.14901 of 2023

Vs.

The Assistant Director

Directorate of Enforcement

Government of India, Department of Revenue



Crl.O.P.Nos.13132, 14795, 14804, 14860, 14899 & 14901 of 2023

2nd and 3rd Floors, Murugesu Naicker Complex
No.84, Greaves Road, Thousand Lights,
Chennai-600 006.

..Respondent in Crl.O.P.No.13132 of 2023

The Assistant Director
Office of the Joint Director
Directorate of Enforcement,
Chennai Zonal Office-I,
Government of India, 5th and 6th Floor
BSNL Administrative Building
Kushkumar Road, Nungambakkam
Chennai-600 034.

..Respondent in Crl.O.P.Nos.14795, 14804,
14860, 14899 & 14901 of 2023

Criminal Original Petition No.13132 of 2023 filed under Section 482 of Cr.PC praying to call for the records in summons issued by the respondent police vide Summons No.PMLA/SUMMON/CEZO/2023/1152 in ECIR/CEZO-I/63/2022 pending on the file of the respondent and quash the same.

Criminal Original Petition No.14795 of 2023 filed under Section 482 of Cr.PC praying to call for the records in summons issued by the respondent police vide Summons No.PMLA/SUMMON/CEZO/2023/1181 in ECIR/CEZO-I/63/2022 pending on the file of the respondent and quash the same.

Criminal Original Petition No.14804 of 2023 filed under Section 482 of Cr.PC praying to call for the records in summons issued by the respondent police vide Summons No.PMLA/SUMMON/CEZO/2023/1180 in ECIR/CEZO-I/63/2022 pending on the file of the respondent and quash the same.



Crl.O.P.Nos.13132, 14795, 14804, 14860, 14899 & 14901 of 2023

Criminal Original Petition No.14860 of 2023 filed under Section 482 of Cr.PC praying to call for the records in summons issued by the respondent police vide Summons No.PMLA/SUMMON/CEZO/2023/1184 in ECIR/CEZO-I/63/2022 pending on the file of the respondent and quash the same.

Criminal Original Petition No.14899 of 2023 filed under Section 482 of Cr.PC praying to call for the records in summons issued by the respondent police vide Summons No.PMLA/SUMMON/CEZO/2023/1182 in ECIR/CEZO-I/63/2022 pending on the file of the respondent and quash the same.

Criminal Original Petition No.14901 of 2023 filed under Section 482 of Cr.PC praying to call for the records in summons issued by the respondent police vide Summons No.PMLA/SUMMON/CEZO/2023/1183 in ECIR/CEZO-I/63/2022 pending on the file of the respondent and quash the same.

For Petitioner

in Crl.O.P.No.13132 of 2023 : Mr.N.R.Elango
Senior counsel
assisted by Mr.E.V.Chandru @
E.Chandrasekaran and
instructed by
Mr.R.Vivekananthan
Mr.S.Senthil Murugan
Ms.M.Kruthika
Mr.J.Mahesh

in Crl.O.P.Nos.14795, 14804
14860, 14899 & 14901 of 2023: Mr.N.R.Elango
Senior counsel
assisted by Mr.E.V.Chandru @
E.Chandrasekaran and



Crl.O.P.Nos.13132, 14795, 14804, 14860, 14899 & 14901 of 2023

instructed by
Mr.M.Nagoor Moideen
Mr.R.Krishna Kumar
Mr.C.Loganathan
Mr.S.Ganesh, Mr.K.Saravanan

For petitioner
in Crl.MP.No.9244 of 2023

:Mr.P.Vijendran
assisted by Ms.K.Mani Kuyil

For Respondent in all Crl.OPs
and
For Respondent No.1
in Crl.MP.9244 of 2023

: Mr.P.Sidharthan
Special Public Prosecutor (ED Cases)
along with
Mr.Cibi Vishnu
Special Public Prosecutor (ED Cases)

For Respondent No.2
in Crl.MP.9244 of 2023

:Mr.N.R.Elango
Senior counsel
assisted by Mr.E.V.Chandru @
E.Chandrasekaran and
instructed by
Mr.R.Vivekananthan
Mr.S.Senthil Murugan
Ms.M.Kruthika
Mr.J.Mahesh

COMMON ORDER

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

This common order will now dispose of captioned 6 'main criminal
original petitions' ('Crl.OPs' in plural and 'Crl.OP' in singular for the sake of



Crl.O.P.Nos.13132, 14795, 14804, 14860, 14899 & 14901 of 2023

brevity) and captioned 7 'criminal miscellaneous petitions' ('Crl.MPs' in plural and 'Crl.MP' in singular for the sake of brevity).

2. This common final order has to be read in conjunction with and in continuation of earlier proceedings made in earlier listings in captioned Crl.OPs and captioned Crl.MPs. We deem it appropriate to set out the proceedings / orders made in first of the captioned main Crl.OP, i.e., Crl.O.P.No.13132 of 2023 and Crl.MP thereat being proceedings / orders made in the listings on 12.06.2023 and 03.07.2023 {to be noted, there are two proceedings / orders dated 03.07.2023, (one in implead Crl.MP and another in main Crl.OP) and both have been extracted from the case file and reproduced infra} and common proceedings / orders made in captioned 6 Crl.OPs and 7 Crl.MPs in the previous listing on 27.09.2023 which read as follows:

Proceedings dated 12.06.2023:

'Crl.O.P.No.13132 of 2023
and
Crl.M.P.No.7975 of 2023
in
Crl.O.P.No.13132 of 2023

M.SUNDAR, J.,
and



Crl.O.P.Nos.13132, 14795, 14804, 14860, 14899 & 14901 of 2023

K.GOVINDARAJAN THILAKAVADI, J.,

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

Captioned 'Criminal Original Petition' [hereinafter 'Crl. OP' for the sake of convenience, clarity and brevity] has been filed with a prayer to quash summons issued by lone respondent being summons No.PMLA/SUMMON/CEZO/2023/1152 in ECIR/CEZO-1/63/2022 dated 29.05.2023.

2.Mr.N.R.Elango, learned Senior counsel appearing on behalf of counsel on record for petitioner submits, on instructions that summons directs appearance of petitioner on 01.06.2023 but the same has been rescheduled to 13.06.2023.

3. The central theme of captioned Crl.OP is that there can be no ECIR (Enforcement Case Information Report) under 'the Prevention of Money-Laundering Act, 2002' [hereinafter 'PMLA' for the sake of convenience and clarity] against an individual or entity when closure has been given to predicate offence; that in the case on hand, predicate offence is vide Crime No.187 of 2022 on the file of Chennai-CCB PS CCB-1 for alleged offences under Sections 406, 420, 465, 468, 471 and 120B of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]; that predicate offence was on the file of Metropolitan Magistrate for Exclusive Trial of CCB Cases [relating to cheating cases in Chennai] and CBCID Metro Cases, Chennai, wherein a closure was given vide an order dated 05.06.2023 pursuant to closure report dated 02.06.2023; that the closure report is based on de facto complainant and petitioner resorting to arbitration proceedings before Singapore International Arbitration Centre [SIAC] vide SIAC ARB No.113/22 BRP consolidated with Arb No.114/22 BRP; that proceedings before SIAC is underway; that when predicate offence has been given closure, there cannot be ECIR under PMLA as standalone proceedings and therefore, summons deserves to be interfered with is learned Senior counsel's say.

4. This Court having set out the crux and gravamen qua captioned Crl.OP, perused records and noticed that the aforementioned closure report dated 02.06.2023 captures arbitration proceedings before SIAC in paragraph No.7 and the same reads as follows:

'7) It is submitted that it is ascertained that the complainant's company initiated Arbitration Proceeding before the Singapore International Arbitration Centre (SIAC) vide SIAC ARB No.113/22



BRP consolidated with ARB No.114/22 BRP and the same is still pending before the Singapore International Arbitration Centre.'

5. It also comes to light that summons was originally issued before closure order but it is being proceeded with and pursued by respondent notwithstanding closure of predicate offence.

6. Learned Senior counsel, in support of the proposition that in the light of Section 3 of PMLA, there cannot be standalone ECIR proceedings when closure has been given to predicate offence (to be noted, this proposition is the sheet anchor submission of learned Senior counsel) relied on oft-quoted **Vijay Madanlal Choudhary** case [**Vijay Madanlal Choudhary and Others Vs. Union of India and Others** reported in 2022 SCC OnLine SC 929] rendered by Hon'ble Supreme Court and **Harish Fabiani** case [**Harish Fabiani and Others Vs. Enforcement Directorate and Others** reported in 2022 SCC OnLine Del 3121] rendered by a Hon'ble Division Bench of Delhi High Court. In **Vijay Madanlal Choudhary** case, conclusion is crystallized in paragraph No.467 and relevant portion is paragraph (d) of sub-paragraph (v) of main paragraph No.467 which 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 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,



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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.'

*7. As regards **Harish Fabiani** case, a Hon'ble Division Bench of Delhi High Court in a case of similar factual matrix i.e., while dealing with a case of continuation of proceedings vide ECIR, despite predicate offence having been quashed by judgment of High Court of Bombay, quashed the ECIR proceedings inter alia by placing reliance on aforementioned **Vijay Madanlal Choudhary** principle.*

8. To be noted, another Hon'ble Division Bench of this Court also vide order dated 01.11.2022 in W.P.No.10854 of 2020 and W.M.P.No.13179 of 2020 has taken a similar view.

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

10. Issue notice.

11. Mr.S.Sasikumar, learned Special Public Prosecutor for Enforcement Directorate accepts notice for respondent and seeks three weeks time for filing objections.

12. As prima facie case has been made out and as it is clear that there is possibility of an irreversible situation if ECIR proceedings continue pending main Crl. OP, the balance of convenience is in favour of grant of interim order that has been sought for. Therefore, there shall be an interim order as prayed for in the captioned criminal miscellaneous petition [Crl.M.P.No.7975 of 2023 in Crl.O.P.No.13132 of 2023] insofar as the petitioner is concerned till next listing.

13. Request for three weeks time made by learned Prosecutor is acceded to.

14. List on 03.07.2023.'

Proceedings dated 03.07.2023 made in Crl.M.P.No.9244 of 2023:

'Crl.M.P.No.9244 of 2023

in

Crl.O.P.No.13132 of 2022

M.SUNDAR, J.,

and



Crl.O.P.Nos.13132, 14795, 14804, 14860, 14899 & 14901 of 2023

R.SAKTHIVEL, J.,

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

Captioned 'Criminal Miscellaneous Petition' [hereinafter 'Crl.MP' for the sake of convenience and clarity] has been taken out by an individual, who has averred that he is a Journalist.

2. Captioned Crl.MP has been taken out with a prayer to implead the petitioner as respondent No.2 in the captioned main Crl.OP and Crl.MP.No.7975 of 2023 for interim stay thereat.

3. Mr.P.Vijendran, learned counsel on record for petitioner in captioned Crl.MP submits that the petitioner is a Journalist and he wants to implead himself and the aforementioned implead prayer is predicated on this plea.

4. Mr.P.Sidharthan, learned Special Public Prosecutor, who is before us accepts notice for first respondent and requests for time to get instructions and revert to this Court with objections, if any. As regards second respondent, learned counsel on record for petitioner in Crl.OP has already been served.

5. Mr.N.R.Elango, learned Senior counsel appearing on behalf of counsel on record for second respondent submits that the counsel on record who has been served with advance copy needs time to file a detailed counter affidavit opposing the implead prayer.

6. List the captioned implead petition after three weeks. List on 28.07.2023.'

Proceedings dated 03.07.2023 made in Crl.O.P.No.13132 of 2023:

'Crl.O.P.No.13132 of 2022

and

Crl.M.P.No.7975 of 2023

in

Crl.O.P.No.13132 of 2023

M.SUNDAR, J.,

and

R.SAKTHIVEL, J.,

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



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Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 12.06.2023 which reads as follows:

'Captioned 'Criminal Original Petition' [hereinafter 'Crl. OP' for the sake of convenience, clarity and brevity] has been filed with a prayer to quash summons issued by lone respondent being summons No.PMLA/SUMMON/CEZO/2023/1152 in ECIR/CEZO-1/63/2022 dated 29.05.2023.

2.Mr.N.R.Elango, learned Senior counsel appearing on behalf of counsel on record for petitioner submits, on instructions that summons directs appearance of petitioner on 01.06.2023 but the same has been rescheduled to 13.06.2023.

3. The central theme of captioned Crl.OP is that there can be no ECIR (Enforcement Case Information Report) under 'the Prevention of Money-Laundering Act, 2002' [hereinafter 'PMLA' for the sake of convenience and clarity] against an individual or entity when closure has been given to predicate offence; that in the case on hand, predicate offence is vide Crime No.187 of 2022 on the file of Chennai-CCB PS CCB-1 for alleged offences under Sections 406, 420, 465, 468, 471 and 120B of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity]; that predicate offence was on the file of Metropolitan Magistrate for Exclusive Trial of CCB Cases [relating to cheating cases in Chennai] and CBCID Metro Cases, Chennai, wherein a closure was given vide an order dated 05.06.2023 pursuant to closure report dated 02.06.2023; that the closure report is based on de facto complainant and petitioner resorting to arbitration proceedings before Singapore International Arbitration Centre [SIAC] vide SIAC ARB No.113/22 BRP consolidated with Arb No.114/22 BRP; that proceedings before SIAC is underway; that when predicate offence has been given closure, there cannot be ECIR under PMLA as standalone proceedings and therefore, summons deserves to be interfered with is learned Senior counsel's say.

4. This Court having set out the crux and gravamen qua captioned Crl.OP, perused records and noticed that the aforementioned closure report dated 02.06.2023 captures arbitration proceedings before SIAC in paragraph No.7 and the same reads as follows:

'7) It is submitted that it is ascertained that the complainant's company initiated Arbitration Proceeding before the Singapore International Arbitration Centre (SIAC) vide SIAC ARB No.113/22



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BRP consolidated with ARB No.114/22 BRP and the same is still pending before the Singapore International Arbitration Centre.'

5. It also comes to light that summons was originally issued before closure order but it is being proceeded with and pursued by respondent notwithstanding closure of predicate offence.

6. Learned Senior counsel, in support of the proposition that in the light of Section 3 of PMLA, there cannot be standalone ECIR proceedings when closure has been given to predicate offence (to be noted, this proposition is the sheet anchor submission of learned Senior counsel) relied on oft-quoted **Vijay Madanlal Choudhary** case [**Vijay Madanlal Choudhary and Others Vs. Union of India and Others** reported in 2022 SCC OnLine SC 929] rendered by Hon'ble Supreme Court and **Harish Fabiani** case [**Harish Fabiani and Others Vs. Enforcement Directorate and Others** reported in 2022 SCC OnLine Del 3121] rendered by a Hon'ble Division Bench of Delhi High Court. In **Vijay Madanlal Choudhary** case, conclusion is crystallized in paragraph No.467 and relevant portion is paragraph (d) of sub-paragraph (v) of main paragraph No.467 which 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 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,



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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.'

7. As regards **Harish Fabiani** case, a Hon'ble Division Bench of Delhi High Court in a case of similar factual matrix i.e., while dealing with a case of continuation of proceedings vide ECIR, despite predicate offence having been quashed by judgment of High Court of Bombay, quashed the ECIR proceedings inter alia by placing reliance on aforementioned **Vijay Madanlal Choudhary** principle.

8. To be noted, another Hon'ble Division Bench of this Court also vide order dated 01.11.2022 in W.P.No.10854 of 2020 and W.M.P.No.13179 of 2020 has taken a similar view.

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

10. Issue notice.

11. Mr.S.Sasikumar, learned Special Public Prosecutor for Enforcement Directorate accepts notice for respondent and seeks three weeks time for filing objections.

12. As prima facie case has been made out and as it is clear that there is possibility of an irreversible situation if ECIR proceedings continue pending main Crl. OP, the balance of convenience is in favour of grant of interim order that has been sought for. Therefore, there shall be an interim order as prayed for in the captioned criminal miscellaneous petition [Crl.M.P.No.7975 of 2023 in Crl.O.P.No.13132 of 2023] insofar as the petitioner is concerned till next listing.

13. Request for three weeks time made by learned Prosecutor is acceded to.

14. List on 03.07.2023.'

2. Today. Crl.M.P.No.9244 of 2023 in Crl.O.P.No.13132 of 2023 with implead prayer has been taken out by an individual on the basis that he is a Journalist.

3. Mr.P.Sidharthan, learned Prosecutor requested for three weeks time to get instructions as regards implead prayer.

4. In the light of the narrative thus far, list captioned matters on 28.07.2023. Interim order already granted on 12.06.2023 more particularly as set out in paragraph No.12 of 12.06.2023 proceedings / orders to continue until next listing.

List on 28.07.2023.'



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Proceedings dated 27.09.2023 :

'Crl.O.P.Nos.13132, 14795, 14804, 14860, 14901 & 14899 of 2023
and
Crl.M.P.Nos.7975, 9244, 9229, 9231, 9256, 9282 & 9283 of 2023

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

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

As regards the captioned matters, there are six main 'Criminal Original Petitions' ['Crl.OPs' in plural and 'Crl.OP' in singular for the sake of convenience and clarity]. In each main Crl.OP, there is a 'Criminal Miscellaneous Petition' ['Crl.MP' for the sake of brevity] for interim stay and interim orders already granted and extended are operating. One of captioned Crl.MPs viz., Crl.M.P.No.9244 of 2023 in main Crl.O.P.No.13132 of 2023 has been taken out by a third party with a prayer to implead the petitioner thereat as second respondent in that main Crl.OP. This Crl.MP i.e., 'Crl.M.P.No.9244 of 2023' shall be referred to as 'implead Crl.MP' for the sake of convenience and clarity.

2. Mr.N.R.Elango, learned Senior Advocate assisted by Mr.E.V.Chandru @ Chandrasekar, learned counsel, instructed by Mr.R.Vivekananthan, Ms.M.Kruthika, Mr.M.Nagoor Moideen and Mr.R.Krishna Kumar, learned counsel on record for the petitioners in all six captioned Crl.OPs adverted to earlier proceedings made in the previous listings and made further submissions which shall be captured elsewhere infra in this order.

3. To be noted, this proceedings shall be read in conjunction with and in continuation of earlier proceedings made in the previous listings. In other words, proceedings made in the previous listings shall be read as an integral part and parcel of this proceedings.

4. Learned Senior Counsel for petitioners adverted to the earlier proceedings made the following further submissions:

(i) In a case with similar factual matrix, another Hon'ble Co-ordinate Division Bench of this Court made a similar interim order dated 13.04.2023 in a W.M.P. in W.P.No.10901 of 2023. This



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13.04.2023 interim order was assailed in Hon'ble Supreme Court by the 'Enforcement Directorate' ['ED' for the sake of brevity] vide Special Leave Petition in S.L.P.(Criminal) Diary No.28128 of 2023 and Hon'ble Supreme Court in and by order dated 18.09.2023 noticed that F.I.R. qua predicate offence had been quashed on 10.05.2023 after the 13.04.2023 interim order. The SLP was dismissed as withdrawn having become infructuous saying that ED will be entitled to take such steps as may be permissible in law, if the quash order is overturned and the proceedings are revived. Therefore the principle laid down by Hon'ble Supreme Court is, when predicate offence perish ECIR vide PMLA proceedings also will go as the two are coterminous is his further say;

(ii) Learned Senior Counsel submitted that prior to 18.09.2023 order of Hon'ble Supreme Court, on 14.09.2023, this Bench in **Anil Jain's** case in a similar factual matrix acceded to a prayer for closing/dropping all proceedings against the petitioner, i.e., ECIR proceedings. It was submitted that in Anil Jain's case also this Bench has put in a similar caveat. To be noted, such similar caveat was put in by this Bench by respectfully following orders of Hon'ble Supreme Court in **Emta Coal**;

(iii) As regards implead Crl.MP, learned Senior Counsel submitted that a perusal of the affidavit of the implead petitioner would show that (a) even according to the implead petitioner, the de-facto complainant has entered into a settlement and had given a withdrawal letter dated 26.05.2023 itself; (b) the burden of the song in the support affidavit qua implead prayer is one assailing/complaining about closure of predicate offence and it really does not pertain to PMLA proceedings/ECIR;

(iv) There are two criminal cases against the implead petitioner, namely, F.I.R.No.763 of 2023 dated 18.08.2023 and F.I.R.No.303 of 2023 dated 20.08.2023 both on the file of Pallikaranai Police Station and the implead petitioner has been remanded in these cases.

5. Mr.P.Vijendran, learned counsel for implead petitioner made the following submissions:

(i) There is no dispute about the factum of two criminal cases and remand of implead petitioner but according to learned counsel, they are trumped up foisted cases;

(ii) On the basis of Section 301 clause (2) of 'Code of Criminal Procedure' ['Cr.P.C.' for the sake of brevity] the petitioner



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has got locus to seek impleadment.

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6. As regards learned Special Public Prosecutor, Mr.P.Sidharthan made the following submissions:

(i) Reliance was placed on paragraph 269 of **Vijay Madanlal's** case [to be noted, para 269 as in SCC OnLine report i.e., **2022 SCC OnLine SC 929**] to say that even a bare reading of language of Section 3 of the 'Prevention of Money Laundering Act, 2002' [hereinafter 'PMLA Act' for the sake of convenience and clarity], money laundering is an independent offence;

(ii) Even according to the settlement agreement made in 'SIAC' [Singapore International Arbitration Centre], the settlement amount has actually not changed hands and according to learned Special Public Prosecutor this is proceeds of the crime. This according to learned Special Public Prosecutor is the distinguishing feature qua **Anil Jain's** case;

(iii) The argument that the closure was on 05.06.2023 close on the heels of summons to the petitioner was made but this was put to rest as it was pointed out that the settlement arrived at i.e., Memorandum of Understanding (MOU) even as seized by ED is dated 18.01.2023.

7. Mr.R.Vivekananthan, learned counsel for petitioner in Crl.OP (Crl.O.P.No.13132 of 2023) submitted that he will file the details of two criminal cases qua implead petitioner in the Registry and bring it on board. To be noted, Mr.P.Vijendran, learned counsel for implead petitioner has been favoured with a copy of the same. Let it be brought on board.

8. List day after tomorrow. List on 29.09.2023.'

3. Aforementioned proceedings capture short facts and bring out the trajectory the captioned matter has taken thus far which serve as essentials for appreciating this final order and therefore, we are not setting out the same again in this final order. Suffice to say that all proceedings / orders made in the previous listings of the captioned matters (including proceedings / orders



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made in lead case i.e., Crl.O.P.No.13132 of 2023 and Crl.MP thereat which has also been extracted and reproduced supra) shall be read as an integral part and parcel of this final order. This also means that short forms, short references and abbreviations used in the previous proceedings / orders shall be used in the instant final order also for the sake of convenience and clarity.

4. As would be evident from earlier proceedings, we have to deal with Crl.M.P.No.9244 of 2023 in Crl.O.P.No.13132 of 2023 first as that will decide the question of whether the petitioner therein has to be impleaded and / or heard or not. Before we commence this legal drill, we deem it appropriate to record that pursuant to the proceedings made in the previous listing on 27.09.2023, today petitioner has brought on record a typed set which consists of two FIRs namely, FIR No.763 of 2023 dated 18.08.2023 on the file of Pallikaranai Police Station and FIR No.303 of 2023 dated 20.08.2023 on the file of Chitlapakkam Police Station. Mr.N.R.Elango, learned Senior counsel for petitioner, on instructions, submitted that he is not pressing this point and giving up this point in his opposition to the implead prayer in Crl.M.P.No.9244 of 2023. Learned counsel on record has made an endorsement in the typed set and a scanned reproduction of the endorsement



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made by counsel on record for second respondent in Crl.M.P.No.9244 of 2023 is as follows:

Not pressed
S. Senthil Kumar, 549/02
Counsel for 2nd Respondent
29/9/23

This leaves us the argument qua implead prayer in Crl.M.P.No.9244 of 2023 sans the two FIRs and criminal complaints against the implead petitioner.

5. Mr.P.Vijendran, learned counsel for implead petitioner relied heavily on clause (2) of Section 301 of Cr.P.C which reads as follows:

'301. Appearance by Public Prosecutors -

(1)

(2) If in any such case any private person instructs a pleader to prosecute any person in any Court, the Public Prosecutor or Assistant Public Prosecutor in charge of the case shall conduct the prosecution, and the pleader so instructed shall act therein under the directions of the Public Prosecutor or Assistant Public Prosecutor, and may, with the permission of the Court, submit written arguments after the evidence is closed in the case.'

6. Adverting to clause (2) of Section 301 of Cr.PC, learned counsel for



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implead petitioner submitted that when any private person instructs a Pleader to prosecute any person in a Court, learned Public Prosecutor or Assistant Public Prosecutor as the case may, shall conduct the prosecution and Pleader shall be instructed i.e., instructed by a private person may with permission of the Court file written arguments after evidence is closed in the case. Learned counsel submitted that the implead petitioner is a journalist by avocation, he is a public-spirited person, he has espoused public causes and in this backdrop he has instructed a Pleader to prosecute. In support of his argument, learned counsel pressed into service ***Soshit Karamchari*** case [***Akhil Bharatiya Soshit Karamchari Sangh (Railway), represented by its Assistant General Secretary Vs. Union of India and others*** reported in (1981) 1 SCC 246] and ***Fertilizer Corporation*** case [***Fertilizer Corporation Kamgar Union (Regd.) Sindri and others Vs. Union of India and others*** reported in (1981) 1 SCC 568]. Learned counsel Mr.P.Vijendran drew the attention of this Court to paragraph No.62 of ***Soshit Karamchari*** case and paragraph No.23 of ***Fertilizer Corporation*** case which read as follows:

*Paragraph No.62 of **Soshit Karamchari** case :*

'62. A technical point is taken in the counter-affidavit that petitioner 1 is an unrecognised association and that, therefore, the petitioner to that extent, is not sustainable. It has to be overruled.



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Whether the petitioners belong to a recognised union or not, the fact remains that a large body of persons with a common grievance exists and they have approached this Court under Article 32. Our current processual jurisprudence is not of individualistic Anglo-Indian mould. It is broad-based and people-oriented, and envisions access to justice through "class actions", "public interest litigation" and "representative proceedings". Indeed, little Indians in large numbers seeking remedies in Courts through collective proceedings, instead of being driven to an expensive plurality of litigations, is an affirmation of participative justice in our democracy. We have no hesitation in holding that the narrow concept of "cause of action" and "person aggrieved" and individual litigation is becoming obsolescent in some jurisdictions. It must fairly be stated that the learned Attorney-General has taken no objection to a non-recognised association maintaining the writ petitions.'

Paragraph No.23 of Fertilizer Corporation case:

'23. That disposes of the question as regards the maintainability of the writ petition. But, we feel concerned to point out that the maintainability of a writ petition which is correlated to the existence and violation of a fundamental right is not always to be confused with the locus to bring a proceeding under Article 32. These two matters often mingle and coalesce with the result that it becomes difficult to consider them in watertight compartments. The question whether a person has the locus to file a proceeding depends mostly and often on whether he possesses a legal right and



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that right is violated. But, in an appropriate case, it may become necessary in the changing awareness of legal rights and social obligations to take a broader view of the question of locus, to initiate a proceeding, be it under Article 226 or under Article 32 of the Constitution. If public property is dissipated, it would require a strong argument to convince the Court that representative segments of the public or at least a section of the public which is directly interested and affected would have no right to complain of the infraction of public duties and obligations. Public enterprises are owned by the people and those who run them are accountable to the people. The accountability of the public sector to Parliament is ineffective because the parliamentary control of public enterprises is "diffuse and haphazard". We are not too sure if we would have refused relief to the workers if we had found that the sale was unjust, unfair or mala fide.'

7. Mr.P.Sidharthan, learned Special Public Prosecutor for the Enforcement Directorate (ED) has filed a terse counter and we deem it appropriate to extract and reproduce the same :

'COUNTER AFFIDAVIT FILED BY THE ABOVE-NAMED RESPONDENT

I, Deepak Rajput, S/o Shri Vijay Kumar Thakur, aged about 35 years, employed as Assistant Director, Chennai Zonal Office, Directorate of Enforcement, Ministry of Finance, Department of Revenue, having office at No.2, 5th



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and 6th Floor, BSNL Administrative Building, Kushkumar Road, Nungambakkam, Chennai 600034, do hereby solemnly affirms and sincerely state as follows:

RESPECTFULLY SHOWETH:-

1. I humbly submit that I am the Respondent in the instant Criminal Miscellaneous Petition and as well as the investigation officer of the case; I have read the affidavit filed in this petition filed by the Petitioner/Accused herein. I am well conversant with the facts of the case and I have been authorised to file this counter affidavit on behalf of the Directorate of Enforcement against the present petition before this Hon'ble Court.

2. I submit that the Directorate of Enforcement, Govt. of India, is a specialized investigating agency and is entrusted with the investigation in respect of the offence of money laundering as defined under Section 3 of the Prevention of Money Laundering Act, 2002 (PMLA) which is punishable under Section 4 of the PMLA. I submit that I am presently the investigation officer in the crime recorded by the Directorate of Enforcement under PMLA in ECIR/CEZO-1/63/2022.

3. In the present implead prayer which been taken out by petitioner on the basis that he is journalist, it is submitted that that this Directorate has no objections, if, this Hon'ble Court wants to hear the submissions of the said Petitioner.'



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8. Adverting to aforementioned counter affidavit and more particularly, paragraph No.3 thereat, learned Special Public Prosecutor submitted that ED has no objection, if this Hon'ble Court wants to hear the submissions of implead petitioner. Learned Special Public Prosecutor brought to our notice a judgement rendered by a Hon'ble single Judge of this Court on 06.04.2004 in ***Srinath Prasad*** case [***Srinath Prasad Vs. State*** reported in ***2004 SCC OnLine Mad 930 : 2004 Cri LJ 3635***] and supported the contention of implead petitioner that he (implead petitioner) is entitled to join the fray in the light of clause (2) of Section 301 of Cr.P.C.

9. Mr.N.R.Elango, learned Senior counsel instructed by counsel on record for petitioner in main Crl.OP (second respondent in the implead petition, i.e., Crl.M.P.No.9244 of 2023) submitted that clause (2) of Section 301 of Cr.P.C. operates in the arena of victimology which is part of evolved form of criminal jurisprudence (a recent phenomenon) but victimology has no application qua implead petitioner and therefore, this facet of criminal jurisprudence does not come to implead petitioner's aid is his further say. In support of his contention, learned Senior counsel drew our attention to proviso to Section 372, Section 2(wa) and proviso to Section 24(8) of Cr.P.C.



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Learned Senior counsel submitted that all these provisions have been brought into Cr.PC by way of an amendment and the same kicked in on 31.12.2009 and argued that it is clear that a person who wants to come on board qua criminal proceedings vide clause (2) of Section 301 of Cr.PC should be in the realm of a victim and in the case on hand, the implead petitioner (as already alluded to and as already delineated) does not fall in this umbra nay not even penumbra as his case is, he is a journalist espousing public cause. Be that as it may, a perusal of implead petition support affidavit brings to light that implead petitioner's case is, he claims to be aggrieved by the closure of predicate offence. It is always open to implead petitioner to work out his remedies, if any, if available in law but that will not bolster the petitioner's argument to implead himself in the case on hand is learned Senior counsel's say. Learned Senior counsel, in this regard, submitted that the burden of the song in implead affidavit is qua closure of predicate offence and not PMLA proceedings and this seen in the light of the aforementioned three provisions which were brought into Cr.PC on and from 31.12.2009 nullifies the implead prayer. In this regard, a judgement of Hon'ble Supreme Court in ***Rekha Murarka*** case [***Rekha Murarka Vs. State of West Bengal and another*** reported in (2020) 2 SCC 474] rendered on



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20.11.2019 was pressed into service to say that a person has to be a victim to get the benefit of clause (2) of Section 301 of Cr.PC and in any event even that benefit is only in the course of trial.

10. We now commence the discussion and dispositive reasoning part of legal drill as regards implead prayer. As regards ***Soshit Karamchari*** case, on facts that was a matter pertaining to promotion in Railway Administration qua disadvantaged section of the Society and in this fact setting eloquent articulation of Hon'ble Mr.Justice V.R.Krishna Iyer was made vide paragraph No.62 to which our attention is drawn (extracted and reproduced supra). Likewise, ***Fertilizer Corporation*** (to be noted, paragraph No.23 which was pressed into service has already been extracted and reproduced supra) pertains to retrenchment and termination of service due to abolition of posts. Petitioner challenged legality of the sale of certain plant and equipment of the Sindri Fertilizer Factory and in the backdrop of this factual matrix, 'person aggrieved' was viewed in a expansive perspective. In this regard, we respectfully remind ourselves of declaration of law by Hon'ble Supreme Court in the celebrated ***Padma Sundara Rao*** case [***Padma Sundara Rao Vs. State of Tamil Nadu*** reported in (2002) 3 SCC 533]. Relevant paragraph in



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Padma Sundara Rao case is Paragraph No.9 which reads as follows:

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'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 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.'

11. Therefore, we are of the considered view that aforementioned two case laws, i.e., **Soshit Karamchari** and **Fertilizer Corporation** are clearly completely different as regards factual matrix operating in different realm do not come to the aid of the implead petitioner in the case on hand. Be that as it may, Mr.P.Vijendran, learned counsel for implead petitioner in his effort and endeavour to persuade us to accede to implead prayer placed before us two more case laws, i.e., judgments of Hon'ble Supreme Court. One is **Jagjeet Singh** case [**Jagjeet Singh and Others Vs. Ashish Mishra @ Monu and another** reported in (2022) 9 SCC 321] and another is **R.Rathinam** case



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[R.Rathinam Vs. State and another reported in (2000) 2 SCC 391].

R.Rathinam was a case in which factual matrix has been described by Hon'ble Supreme Court as a 'carnage' in a District in Tamil Nadu and which has also been described as a 'gory episode' where 6 persons belonging to a particular community were done to death. In such a social cause scenario, 75 public-spirited advocates of this Court presented two petitions before the then Hon'ble Chief Justice for cancellation of bail granted to the persons concerned. Therefore, **R.Rathinam** case is entirely in a different context and scenario, i.e., fact setting which does not come to the aid of the petitioner and likewise **Jagjeet Singh** case pertains to a case where farmers returning home after protest was epicentre of the matter, several farmers had gathered to celebrate the birth anniversary of Sardar Bhagat Singh and to protest against the Agricultural Acts of 2020. Be that as it may, we notice that **Soshit Karamchari** case, **Fertilizer Corporation** case as well as **R.Rathinam** case were rendered prior to 31.12.2009 before the aforementioned amendments kicked in qua Cr.PC. In this view of the matter also, they do not come to the aid of the petitioner. However, as regards **Jagjeet Singh** case, it is post amendment i.e., rendered in 2022 and what **Jagjeet Singh** case deals with is, right of a victim. This has been elucidatively articulated by Hon'ble Supreme



Court in paragraph Nos.14 and 15 of **Jagjeet Singh** case which read as follows:

'ANALYSIS

14. Having heard learned Senior Counsels for the parties at considerable length, we find that the following questions fall for our consideration:

14.1. (A) Whether a 'victim' as defined under Section 2(wa) of the Code of Criminal Procedure, 1973 (hereinafter 'Cr.P.C.") is entitled to be heard at the stage of adjudication of bail application of an accused?

14.2. (B) Whether the High Court overlooked the relevant considerations while passing the impugned order granting bail to the Respondent-Accused?;

14.3. (C) If so, whether the High Court's order dated 10.02.2022 is palpably illegal and warrants interference by this Court?

A. Victim's right to be heard:

15. Until recently, criminal law had been viewed on a dimensional plane wherein the Courts were required to adjudicate between the accused and the State. The 'victim' - the de facto sufferer of a crime had no participation in the adjudicatory process and was made to sit outside the Court as a mute spectator. However, with the recognition that the ethos of criminal justice dispensation to prevent and punish 'crime' had surreptitiously turned its back on the 'victim', the jurisprudence with respect to the



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rights of victims to be heard and to participate in criminal proceedings began to positively evolve.'

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This Court has no hesitation in saying that victimology has no application to implead petitioner.

12. In ***Srinath Prasad*** case, pressed into service by learned Prosecutor (alluded to supra) a petition was filed for suspension of sentence pending appeal, an earlier petition filed by the petitioner for a similar relief was dismissed. In the earlier round, P.W.1 (father-in-law of the petitioner) filed an intervening petition and an order was passed after hearing both petitioner and intervenor. In the second petition, it was contended by petitioner that intervenor has no right to intervene and it is a matter between the court and the petitioner and if at all, only the prosecution can object and not P.W.1. Learned counsel for intervenor submitted that grievance of the individual cannot be overlooked and he has right to intervene at the stage of suspension of sentence. This Court held that a private person has no right of audience except to assist the prosecution and to file a written argument during trial. Therefore, at the stage of suspension of execution of sentence, the private party has no right of audience and at the highest, he can assist the



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prosecution and submit written arguments at the stage of final hearing of the appeal. In any event, ***Srinath Prasad*** is completely distinguishable on facts as it was intervenor petition by a father-in-law in sections 498-A and 308 IPC case {Husband or relative of husband of a woman subjecting her to cruelty and Attempt to commit culpable homicide}.

13. As regards the facts in ***Rekha Murarka*** case, the appellant is the widow of one Gyan Prakash Murarka (the deceased) who is alleged to have been stabbed and murdered by second respondent and appellant was also injured while trying to save her husband. While the evidence was being recorded, the appellant sought an expeditious trial of the case, which was allowed and subsequently, she filed another application under Section 301 read with the proviso to Section 24(8) of the Cr.PC inter-alia seeking to advance oral argument in support of question of law and fact only after the learned Public Prosecutor, if so required and to raise objection in case any irrelevant question is put to any prosecution witness, if so required. Hon'ble Supreme Court held that if the victim's counsel feels that a certain aspect has gone unaddressed in the examination of the witnesses or the arguments advanced by the Public Prosecutor, he may route any questions or points



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through the Public Prosecutor himself. This would not only preserve the paramount position of the Public Prosecutor under the scheme of CrPC, but also ensure that there is no inconsistency between the case advanced by the Public Prosecutor and the victim's counsel. In this case law cited by learned senior counsel also fact setting is different. Be that as it may, general principle is paramount position of Public Prosecutor vide Cr.PC scheme should be preserved.

14. We now turn to the second limb of argument of second respondent (petitioner in main Crl.OP). A careful perusal of support affidavit qua implead petition makes it clear that burden of the song qua implead petitioner is grievance about the closure of complaint qua predicate offence. Therefore, we are of the view that implead prayer does not appeal to us owing to facts and circumstances of the case. We have already noticed, scanned and reproduced the counter affidavit filed by ED. ED does not oppose implead prayer. This means that the implead petition namely, Crl.M.P.No.9244 of 2023 is dismissed.

15. We now move on to the main matters. This court notices from the



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submissions that the argument of ED in the case on hand is distinguishable qua **Anil Jain** case primarily on the ground that the settlement money has not changed hands. As regards settlement money, it hardly matters, as closure of predicate offence is qua a settlement in what is purely a private transaction between private persons / entities where no public money is involved. To be noted, closure happened on 05.06.2023. On the facts of the case, we find that it is a transaction between two private entities on one side and private individual on the other. Therefore, it is a matter where we are unable to convince ourselves regarding proceeds of crime theory as it is nobody's case that public money is involved. In this private transaction, the matter ran into rough weather and the parties chose to go for 'ADR' ['Alternate Dispute Resolution'] mechanism by way of Arbitration before 'Singapore International Arbitration Centre' ['SIAC'] as already alluded to supra.

16. To put it differently, we find that this is a case where there is nothing to demonstrate that there is 'proceeds of crime'. This is a private transaction between private individuals / entities and the two individuals / entities have chosen to resort to ADR [Alternative Disputes Resolution] i.e., arbitration by SIAC [Singapore International Arbitration Centre]. In the



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course of arbitration by SIAC, the private entities / individuals have chosen to give a closure to the dispute by entering into a Memorandum of Understanding / Settlement. This Court is also acutely conscious of the position that an Arbitration Tribunal (SIAC) is a Private Tribunal and as far as this Court is concerned, the paramount consideration is, this is not a matter where it is anybody's case, much less the case of prosecution that public money is involved. In SIAC, in the course of arbitration proceedings, a memorandum of understanding was entered into on 18.01.2023 as between the adversaries and this memorandum of understanding where the parties settled the issue amongst themselves was the basis of a letter from defacto complainant which lead to closure report which was accepted by the Court hearing the predicate offence case. In this view of the matter, the argument of learned Prosecutor that proceeds of crime have not changed hands becomes a non starter.

17. Learned Prosecutor submitted that the closure is post summons to the petitioner. Learned Prosecutor drew our attention to summons dated 29.05.2023 calling upon the petitioner to appear on 01.06.2023 qua Crl.O.P.No.13132 of 2023 and earlier summons dated 30.04.2023. This



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really does not carry the matter any further for the learned Prosecutor as the settlement has been arrived at on 18.01.2023 itself even according to the document seized by ED as rightly pointed out by learned Senior counsel.

18. As regards an interim order made by another Hon'ble coordinate Division Bench which was carried to Hon'ble Supreme Court and order made by Hon'ble Supreme Court as there was closure in the *interregnum*, the same has been captured in the previous proceedings which has been set out supra which is now being read as an integral part and parcel of this final order. In addition to this, it was also pointed out that Hon'ble Bombay High Court in **Akbar Travels** case [**Directorate of Enforcement Vs. State of Maharashtra and others in Crl.WP(ST) No.3122 of 2020**] in and by order dated 21.12.2020 addressed itself to the question as to the locus of ED qua a closure report filed by State i.e., State of Maharashtra in **Akbar Travels** case and concluded that ED is an independent investigating agency empowered to investigate offences under PMLA and cannot be termed as victim aggrieved / injured or interested person having regard to judicial pronouncements. This order of Bombay High Court was carried to Hon'ble Supreme Court by ED vide SLP (Crl.) No.5524 of 2021 and Hon'ble Supreme Court in and by order



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dated 26.09.2022 refused to interfere with the order of Bombay High Court and dismissed the SLP making a clear observation that rights and remedies can be availed in accordance with law. We also respectfully notice that the question of law if any has been kept open. Therefore, it may not be necessary to delve much into those aspects of the matter and it would suffice if we deal with *Anil Jain* case. *Anil Jain* case made by this Court in W.P.No.3167 of 2023 has been reported in **2023 : MHC : 4314** (Neutral Citation of Madras High Court) and a scanned reproduction of the same is as follows:



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HC:4314

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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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W.P.No.3167 of 2023

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 is 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:

'W.P.No.3167 of 2023

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/CE20-1/19/2021.

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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WP/No.1167 of 2021

17.09.2020 on the file of CCB-1 (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) thereof, 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/prosecution 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.

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

4. Admit. Issue Rule nisi.

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

6. List for week 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, not 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 other 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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IN THE

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REPLY OF 2023

aneta / 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. Palanandavan, learned counsel on record for the writ petitioner and Mr. V. Ramesh, learned Special Public Prosecutor (SPP) 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:

Sr. No.	Date	Name and number of the Case	Court
1.	01.11.2022	S. Jagathrakshakan Vs. another Director, Deputy Directorate of Enforcement, Chennai (N.E.No. 1854 of 2020)	Honble Division Bench of this Court (J.S. Prakash, J. and B.V. Theksharan, J.)
2.	26.05.2023	Harsh Sahani and Others Vs. Directorate and Others reported in 2023 Online De. 1121	Honble Division Bench of Honble Delhi High Court (Mukta Singh, J. and Anshu Upadhyay, J.)

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



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WP No 1162 of 2021

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 thereof 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 thereon. 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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MD No 3162 of 2023

9. In response to the aforementioned argument, Mr.N.Ramesh, learned Special Public Prosecutor for respondent, advertent 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 dispute 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 (a), 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:

13. While so, when the matter was taken up for hearing, both sides represented that this



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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.

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 25 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

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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.' (emphasis supplied)'

'Conclusion

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

a) The relief sought regarding constitutionality or vice 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.

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d) The Look out Circulars issued by respondents pursuant to the CCR No.EDR/07/HJ/2021 are also set aside."

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 remoted 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 a 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 one 'stand alone offence' point. As regards stand alone offence point of PMLA, the same was considered by Hon'ble Delhi High Court in **Emta Coal case (The Deputy Director, Directorate of Enforcement Vs.**

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Emta Coal Limited & Ors., etc., where also the facts are similar i.e., where the closure report was accepted by the Trial Court and the question was whether PMLA offences can proceed. In *Emta Coal* case, as regards stand alone offence point, the most relevant discussion is contained in paragraph 15 and the same reads as follows:

10. On the other hand, Mr. Sharma, Jr. Counsel appearing for the Enforcement Directorate relies upon paragraphs 254, 290 and 295 of the *Upendra 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 maintained under the PMLA by the ED without a predicate offence having existed, the Mr. Counsel submits that this could be the first case!

11. We find from our research that *Emta Coal* case has been referred to Hon'ble Supreme Court vide Special Leave Petition (Civil) No. 13205/2023 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:

Order as under:
Granted. Additional Solicitor General submitted that since there is a pending report in the predicate offence, therefore, no further

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proceedings under the PMA Act could be continued as per the observations of the High Court in the impugned order(s).

Mr. 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 those proceedings. The submission of learned ASG is placed on record.

The Special Leave Petitions are dismissed off 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 Babani's case* and *Emta Chaul'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.

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said Lord Morris in *Herrington v. British Railways Board* [(1972) 2 WLR 537 : (1972 AC 877 (HL) [Sub nom. *British Railways 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 *Enrta 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 revising the proceedings. To be noted this is captured in the intro paragraph of the 26.07.2023 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

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Prayer in the captioned WP is suitably to be with a similar request.

9. Captioned WP disposed of in the aforesaid manner by answering the prayer of the writ petitioner in the affirmative about with the caveat not to reveal that in the event of any further action in respect of predicate offences then the rights/interests of Enforcement Directorate are preserved to take further steps under Section including reviving of the instant proceedings which has been put to by respectfully following the order of Hon'ble Supreme Court in *Emta Coal's case*. There shall be no order as to costs.

19. A careful perusal of *Anil Jain* case will make it clear that *Vijay Madanlal* principle [*Vijay Madanlal Choudhary and others vs. Union of India and others* reported in 2022 SCC OnLine SC 929], *Parvathi Kollur* case [*Parvathi Kollur and another vs. State of Directorate of Enforcement* reported in 2022 SCC OnLine SC 1975] and more particularly *Emta coal* case [*Emta Coal Limited and others vs. The Deputy Director, Directorate of Enforcement*] reported in 2023/DHC/000277 {Neutral Citation of Delhi High Court} rendered by Hon'ble Delhi High Court have all been adverted to. Paragraph No.15 of our *Anil Jain* case is of significance. To be noted, in paragraph No.15, we had recorded that the Court made a research and found



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that ***Emta Coal*** case has been carried to Hon'ble Supreme Court vide a special leave petition (details given therein) and Hon'ble Supreme Court had put in a caveat that in the event of any further action being taken in respect of predicate offence then liberty is preserved for resorting / taking further steps under PMLA. In ***Anil Jain*** case, we had to necessarily mention in paragraph 15 thereof that this Court made a research and fretted out the obtaining position that ***Emta Coal*** had been carried to Hon'ble Supreme Court as neither the petitioner therein nor the prosecution brought to notice of this Court that ***Emta Coal*** case rendered by Hon'ble Delhi High Court was carried to Hon'ble Supreme Court. Be that as it may, we had respectfully put in a similar caveat in ***Anil Jain*** case. We deem it appropriate to respectfully adopt the approach of Hon'ble Supreme Court and put in a similar caveat in the case on hand also. Before we write the operative portion, it may be necessary to deal with the argument of learned Prosecutor who drew our attention to paragraph No.269 of ***Vijay Madanlal*** case which reads as follows:

'269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal



activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.'

20. ***Vijay Madanlal*** case is a cluster of matters where Hon'ble Supreme Court addressed itself to multiple questions made by multiple parties and crystallized the conclusions under the caption 'CONCLUSION' in paragraph No.467 which reads as follows:

'CONCLUSION'

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

(i) *The question as to whether some of the amendments to the Prevention of Money-laundering Act, 2002 could not have been enacted by the Parliament by way of a Finance Act has not been examined in this judgment. The same is left open for being examined along with or after the decision of the Larger Bench (seven Judges) of this Court in the case of Rojer Mathew.*

(ii) *The expression “proceedings” occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court.*

(iii) *The expression “investigation” in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation*



concerning the offence under the Act and is interchangeable with the function of “inquiry” to be undertaken by the Authorities under the Act.

(iv) The Explanation inserted to Clause (u) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicated tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.

(v)(a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word “and” preceding the expression projecting or claiming as “or”; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression “and” occurring in Section 3 has to be construed as “or”, to give full play to the said provision so as to include “every” process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money -laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.

(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 moneylaundering. 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



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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.

(vi) Section 5 of the 2002 Act is constitutionally valid. It provides for a balancing arrangement to secure the interests of the person as also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. The procedural safeguards as delineated by us hereinabove are effective measures to protect the interests of person concerned.

(vii) The challenge to the validity of sub-section (4) of Section 8 of the 2002 Act is also rejected subject to Section 8 being invoked and operated in accordance with the meaning assigned to it hereinabove.

(viii) The challenge to deletion of proviso to sub-section (1) of Section 17 of the 2002 Act stands rejected. There are stringent safeguards provided in Section 17 and Rules framed thereunder. Moreover, the pre-condition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment. The Central Government may take necessary corrective steps to obviate confusion caused in that regard.

(ix) The challenge to deletion of proviso to sub-section (1) of Section 18 of the 2002 Act also stands rejected. There are similar safeguards provided in Section 18. We hold that the amended provision does not suffer from the vice of arbitrariness.

(x) The challenge to the constitutional validity of Section 19 of the 2002 Act is also rejected. There are stringent safeguards provided in Section 19. The provision does not suffer from the vice of arbitrariness.

(xi) Section 24 of the 2002 Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.

(xii)(a) The proviso in Clause (a) of sub-section (1) of Section 44 of the 2002 Act is to be regarded as directory in nature and this provision is also read down to mean that the Special Court may exercise judicial discretion on case-to-case basis.

(b) We do not find merit in the challenge to Section 44 being arbitrary or unconstitutional. However, the eventualities referred to in this section shall be dealt with by the Court concerned and by the Authority concerned in accordance with the interpretation given in this judgment.



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(xiii)(a) *The reasons which weighed with this Court in Nikesh Tarachand Shah for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.*

(b) *We are unable to agree with the observations in Nikesh Tarachand Shah distinguishing the enunciation of the Constitution Bench decision in Kartar Singh ; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, including about it posing serious threat to the sovereignty and integrity of the country.*

(c) *The provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.*

(d) *As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.*

(xiv) *The beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the 2002 Act.*

(xv)(a) *The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not “investigation” in strict sense of the term for initiating prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.*

(b) *The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India.*

(xvi) *Section 63 of the 2002 Act providing for punishment regarding false information or failure to give information does not suffer from any vice of arbitrariness.*

(xvii) *The inclusion or exclusion of any particular offence in the Schedule to the 2002 Act is a matter of legislative policy; and the nature or class of any predicate offence has no bearing on the validity of the Schedule or any prescription thereunder.*

(xviii)(a) *In view of special mechanism envisaged by the 2002*



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Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating “civil action” of “provisional attachment” of property being proceeds of crime.

(b) Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest.

(c) However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering.

(xix) Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.

(xx) The petitioners are justified in expressing serious concern bordering on causing injustice owing to the vacancies in the Appellate Tribunal. We deem it necessary to impress upon the executive to take corrective measures in this regard expeditiously.

(xxi) The argument about proportionality of punishment with reference to the nature of scheduled offence is wholly unfounded and stands rejected.'

21. Paragraph No.467 of ***Vijay Madanlal*** case is the ratio. It is instructive and we respectfully follow paragraph No.467 of ***Vijay Madanlal*** case. In the case on hand, to state with specificity, what is applicable is paragraph No.467(v)(d) of ***Vijay Madanlal*** case. This is a case where there is a closure of the predicate offence and therefore, we say that paragraph



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No.467(v)(d) of ***Vijay Madanlal*** case is applicable in all force to the case on hand. In any event, this paragraph No.467(v)(d) of ***Vijay Madanlal*** case is now subject to the caveat in ***Emta Coal*** case, i.e., caveat that if predicate offence is resuscitated or opened, the entire matter will get revived. The rights are preserved as done in ***Emta Coal*** case by Hon'ble Supreme Court. Therefore, we make it clear that we respectfully follow the ratio in ***Vijay Madanlal*** case {paragraph No.467(v)(d)} and ***Emta coal*** case {paragraph No.16} which we have followed in ***Anil Jain*** case.

22. In ***Anil Jain*** case, it was a writ petition where the prayer was to direct ED to close / drop all proceedings but in the case on hand, it is criminal original petitions under Section 482 of Cr.PC seeking quash the summons qua Summons No.PMLA/SUMMON/CEZO/2023/1152 in ECIR/CEZO-I/63/2022, No.PMLA/SUMMON/CEZO/2023/1181 in ECIR/CEZO-I/63/2022, No.PMLA/SUMMON/CEZO/2023/1180 in ECIR/CEZO-I/63/2022, No.PMLA/SUMMON/CEZO/2023/1184 in ECIR/CEZO-I/63/2022, No.PMLA/SUMMON/CEZO/2023/1182 in ECIR/CEZO-I/63/2022 and No.PMLA/SUMMON/CEZO/2023/1183 in ECIR/CEZO-I/63/2022. Law is well settled that in a Section 482 of Cr.PC



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quash legal drill, what the Section 482 Court would look into is, uncontraverted averments in the complaint without adding or subtracting to the same. In the case on hand, this legal drill becomes extremely simple as quash prayer turns on the legal point that on closure of predicate offence, ECIR cannot proceed. In this view of the matter, we have no hesitation in saying that we are left with the inevitable conclusion that prayers need to be answered in the affirmative i.e., acceded to.

23. This Court deems it appropriate to add that if SIAC ultimately makes an award, it will be an arbitral award within the meaning of 'Foreign Award' under Section 44 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of convenience and clarity] {New York Convention Award} and therefore if the enforcement of the same, if sought in India will be governed by Part II Chapter I of A and C Act but it may not be necessary to go into those aspects of the matter.

24. The result is all 6 Crl.OPs i.e., Crl.O.P.Nos.13132, 14795, 14804, 14860, 14899 and 14901 of 2023 are allowed. Summons No.PMLA/SUMMON/CEZO/2023/1152 in ECIR/CEZO-I/63/2022,



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No.PMLA/SUMMON/CEZO/2023/1181 in ECIR/CEZO-I/63/2022,
No.PMLA/SUMMON/CEZO/2023/1180 in ECIR/CEZO-I/63/2022,
No.PMLA/SUMMON/CEZO/2023/1184 in ECIR/CEZO-I/63/2022,
No.PMLA/SUMMON/CEZO/2023/1182 in ECIR/CEZO-I/63/2022 and
No.PMLA/SUMMON/CEZO/2023/1183 in ECIR/CEZO-I/63/2022 are
quashed albeit with a caveat that if predicate offence case is resuscitated or if
there is any further action in respect of predicate offence, liberty / rights of
all concerned is preserved for restoring / taking further steps under PMLA.
Consequently, 6 Crl.MPs (Crl.MP.Nos.7975, 9229, 9231, 9256, 9282 and
9283 of 2023) are disposed of as closed. Crl.MP No.9244 of 2023 is
dismissed. There shall be no order as to costs.

(M.S.,J.) (R.S.V.,J.)
29.09.2023

Index : Yes
Speaking order
Neutral Citation : Yes
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M.SUNDAR, J.,
and
R.SAKTHIVEL, J.,

mk/vvk

To

1.The Assistant Director
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and
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