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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 16th February, 2023

+ **W.P.(C) 11472/2022 and CM APPL. 33898/2022, 7732/2023**

SACHIN JOSHI

..... Petitioner

Through: Mr. Amit Khemka, Mr. Ashwani Taneja, Mr. Sandeep Dash, Mr. Aditya Agarwal and Ms. Himani Singh, Advocates (M: 9920427458).

versus

ADJUDICATING AUTHORITY, PREVENTION OF MONEY
LAUNDERING THROUGH ITS REGISTRAR
AND ORS.

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC (M: 9811418995).

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WITH

+ **W.P.(C) 11474/2022 and CM APPL. 33902/2022**

MUKTANAND AGRO FARMING PVT. LTD.

..... Petitioner

Through: Mr. Amit Khemka, Mr. Ashwani Taneja, Mr. Sandeep Dash, Mr. Aditya Agarwal and Ms. Himani Singh, Advocates (M: 9920427458).

versus

ADJUDICATING AUTHORITY, PREVENTION OF MONEY
LAUNDERING THROUGH ITS REGISTRAR
AND ORS

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC (M: 9811418995).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. The present two petitions are connected to each other. Mr. Sachin Joshi, the Petitioner in **W.P. (C) 11472/2022** titled '**Sachin Joshi v. Adjudicating Authority, Prevention of Money Laundering through its Registrar and Ors.**' is the shareholder/Director of M/s. Muktanand Agro Farming Pvt. Ltd., which is the Petitioner Company in **W.P. (C) 11474/2022** titled '**Muktanand Agro Farming Pvt. Ltd. v. Adjudicating Authority, Prevention of Money Laundering through its Registrar and Ors.**'. In both of these petitions, the impugned Provisional Attachment Order (PAO) No. 1/2022 dated 14th January, 2022 issued by the Directorate of Enforcement (ED) under Section 5 of the Prevention of Money Laundering Act (*hereinafter 'PMLA'*) is under challenge. In addition, the Petitioners are also seeking a direction for release of the attached properties. The basis of the PAO is FIR No. 109/2020 dated 7th March, 2020 registered with City Chowk Police Station Aurangabad invoking Sections 420, 406 and 34 of the Indian Penal Code, 1860.
3. The allegations against Mr. Sachin Joshi who is accused no. 5 in the ECIR No. ECIR/03/MBZO-II/20/2020 are as under: -

"6.5 Further, "Proceeds of Crime" to the extent of Rs. 80 crores (approx.) as mentioned above in Table No. 6 and 8 gets exhausted in the hands of Sachin Joshi and his Viiking Group of Companies. Mr. Sachin Joshi had utilized the entire Proceeds of Crime of Rs. 80 crores (approx.) for various purposes, as discussed above. The Proceed of Crime of Rs. 80 crores (approx.) will be attached under the provisions of Section 2(1)(u) of PMLA, whereby the value equivalent thereof concept is applied. It is gathered during investigation that M/s Muktanand Agro Farming Pvt. Ltd. has properties as

mentioned in below table and Shri Sachin Joshi is the majority shareholder and ultimate beneficiary. The details of properties proposed to be attached for "Proceeds of Crime" to the extent of Rs. 80 crores (approx.) is as under :-

S.No	Name of Holder	Value of Property (in Rs.)	Description of property	Remarks
1.	M/s Muktanand Agro Farming Private Limited. (Through its Directors, Vidya Jagdish Joshi & Sachin Joshi)	80,78,80,982	Open Land situated at Gut No. 380-386,423-424 & 427-454, Village Viram, Tal. Khed, Rajgurunagar, Pune	The said property was acquired under 5 different sale deeds: 1. Document No. 745/2008 dated 22.01.2008 2. Document No. 485/2008 dated 12.01.2008. 3. Document No. 1344/2009 dated 20.03.2009 4. Document No. 744/2008 dated 22.01.2008. 5. Document No. 3579/2008 dated 12.05.2008.

4. The present petitions were first listed before this Court on 2nd August, 2022, where Mr. Ahluwalia, Ld. Counsel for the Respondents made a preliminary objection with regards to the maintainability of the petition on the ground of lack of territorial jurisdiction. The said preliminary objection was dismissed, placing reliance on order dated 2nd June, 2022 passed in ***W.P. (C) 6354/2022*** titled '***M/S Incred Financial Services Ltd. vs. Deputy Director, Directorate of Enforcement***'. In addition, on the said date, *status*

quo was directed. The relevant extract of the order directing *status quo* is extracted as under:

“6. Till the next date of listing, the respondent shall stand restrained from taking further steps as contemplated under Section 8 of Prevention of Money Laundering Act, 2002. The petitioner shall also stand restrained from disposing of or creating any third party rights or encumbering the property which forms subject matter of the provisional order of attachment.”

5. It is the submission of Id. Counsel for the Petitioners that by order dated 18th October, 2022 which has been passed by the Special Court, Greater Bombay under the PMLA, the Petitioners – Mr. Sachin Joshi, who was accused No. 5, as also all his companies have been discharged, in the ECIR i.e., ECIR No. ECIR/03/MBZO-II/20/2020.

6. The findings of the Special Court are that there is no evidence to show any criminality which would result in generation of *proceeds of crime* by Mr. Sachin Joshi. The relevant portions of the said order are extracted as under:-

6. ECIR/MBZO-11/20/2020 was recorded on 16.12.2020 6. based on FIR No.109/2020 in respect of Predicate Offence registered with City Chowk Police Station, Aurangabad. In its investigation it was revealed that, accused Babulal Varma and others have laundered Rs.410 Crores. This amount of Rs.410 Crores was in fact a loan granted by YES Bank to Omkar Realtors and Developers Pvt.Ltd. (for short ORDPL). It was not utilized for the purpose for which it was granted, but the same was siphoned off and projected as untainted. Therefore, this amount Rs.410 Crores is 'Proceeds of Crime' (POC). Present applicant had received an amount of Rs.80/87 Crores from ORDPL, which is part of proceeds of Crime and

used it for the personal business expenses. This Rs.80/87 Crores was transferred from the accounts of ORDPL, out of which part amount was transferred into the account of Sachin Joshi and part amount was transferred into the account of Viking Group companies (which are allegedly associated with him), in which the applicant was Director. An amount of Rs.48 Crores approximately was transferred for the purpose of investment and an amount of Rs.31 Crores (approx.) was transferred for the purpose of facilitation of fee for evacuation of tenements, settlement of non-eligible tenants, resettlement in permanent accommodation, brokerage etc. In this way, ED contended that the role attributed to the applicant is in respect of placement and layering of proceeds of crime (POC).

GROUND FOR CALMING DISCHARGE ON MERITS

- a. The allegations in the complaint itself clearly indicate that Accused No.5 was not a part of the process for generating Proceeds of Crime.*
- b. Babulal Varma (A3) and Kamalkishor Gupta (A4) were the persons who allegedly generated Proceeds of Crime through YES Bank loan.*
- c. No foundational facts have been prima-facie established by the ED to qualify recording of ECIR/MBZO-II/20/2020 and further PMLA investigation on its basis.*
- d. Omkar Group utilized Rs.410 Crore received from YES Bank for the redevelopment of Wadala, Worli Project as stated by both accused (A3 & A4) in their statements under Sec.50 PMLA.*
- e. Utilization of 410 Crores is explained in the statement given by Surana Developers (Wadala) LLP, clearly indicating that none of the amounts under the term loan of Rs.410 Crores was ever given to Accused No.5 and the said term loan was properly utilized by Surana/Omkar Groups.*
- f. Not a single rupee from the alleged Proceeds of*

Crime Rs.410 Crores had come to the applicant.

g. The Prosecution Complaint itself has details of utilization of Rs.410 Crores loan taken from YES Bank by ORDPL and further indicates that the amounts disbursed by YES Bank were spent on specific jobs/works/purposes and the list clearly shows the entities to whom the said payments have been made. Therefore, question of Accused No. 5 even being recipient of a penny thereof does not arise.

h. Alleged sum of approximately Rs.87 Crores ie. received by Accused No.5 and his group companies associated with him (A6 to All) from the group companies of M/s. Omkar Realtors and Developers Pvt. Ltd. (ORDPL.) has nothing to do with the YES Bank loan of Rs.410 Crores nor he had made any activity for securing the said loan from YES Bank with an intention to receive some part thereof in the future. Therefore, he had neither generated Proceeds of Crime nor did any activity of placement, layering and integration thereof in order to attract Sec.2(1)(u) r.w. Sec.3 & 4 of the Prevention of Money-laundering Act.

With these and other grounds relating to non existence of Scheduled Offence and activity relating to Scheduled Offence, he and companies associated with him claimed discharge. I carefully examined these grounds.

XXX XXX XXX XXX

25. Basically burden of showing this foundational fact is on complainant-ED and the same is not explained with cogent documentary evidence in order to rebut and falsify whatever contended by Ld. Sr. Counsel Mr. Ponda on the strength of bank statements and dates of disbursements. **Prima-facie bank statements and dates of disbursements coupled with details thereof alleged in the Complaint itself indicate that upon consideration of the record of the case and the documents submitted therewith, and after hearing submissions of the accused No.5 and the prosecution ED in this behalf, I am of the clear opinion that, the**

applicant/Accused No.5 and his companies were never a part of any proceeds of Crime by way of obtaining loan from the YES Bank. Even there is nothing to show that after obtaining such loan (POC) he had any role in placement, layering and integration thereof. Therefore, I am of the strong view that the Accused No.5 is not involved in any process required under Sec.2(1)(u) r.w. Sec.3 of the PML Act. There is absolutely nothing to show that Accused No.5 and companies associated with him i.e. Accused Nos. 6 to 11 had ever received a single penny from ORDPL, YES Bank A/c No. 1000180200001099. Even there is absolutely nothing with the record of the case to point out material ingredients of Sec.3 i.e. money trail/placement/layering from ORDPL YES Bank No. 1000180200001099 to ORDPL ICICI Bank A/c No. 074005001036 as well as ORDPL Group Companies various accounts from where money had been transferred in the account of Sachin Joshi or any of his companies Accused Nos.6 to 11. Even if, allegations in the complaint are accepted as it is, same itself indicate that even ED admits that the applicant is not recipient with knowledge of POC. Hence, there is absolutely nothing nor there are sufficient grounds for proceeding against Accused No.5. All this, entitles Sachin Joshi (A5) and companies associated with him i.e. Accused No.6 to 11 for discharge as per Sec.227 of Cr.P.C. Therefore, on Merits he (AS) and companies associated with him i.e., Accused No.6 to 11 are entitled to get discharge.

30. In this way, I hold that, Accused No.5 and companies associated with him (A6 to A11) are not only entitled to get discharge on Merits but also entitled for the same in view of law laid down by the Hon'ble Supreme Court in Vijay Choudhary (Supra). He (A5) and his companies are also entitled to the parity. Basically, persons who allegedly generated, placed, layered, integrated Proceeds of Crime Rs.410

Crore, were already discharged vide Common Order dt.24.08.2022 below Exh.145, 146, 149 and 150 and companies associated with them (A1, A2, A12 to A17) are being discharged herewith. Question of continuation of prosecution of PMLA case against the alleged recipient of Rs.80/87 Crore POC out of Rs.410 Crore, that too in the absence of Predicate Offence, does not arise. **Hence, I hold that, upon consideration of the record of the case and the document submitted therewith, and after hearing the submissions of the Accused No. 5,6 to 11 and the prosecution in this behalf, I consider that there is not sufficient ground for proceeding against Accused No.5,6,11. Hence, I am of the opinion to discharge them for the detailed reason discussed above for doing so, as per Sec.227 Cr.P.C..** Hence, point No is answered in the affirmative and following order is passed.

ORDER

- 1 Application (Exh.139) is allowed.
- 2 **Applicant-Accused No.5 Sachin Jagdish Joshi for himself and entities, companies associated with him (A6 to A11) are hereby discharged as per Sec 227 Cr.P.C. from PMLA Special Case No.377 of 2021 in respect of EGIR/MBZO-II/20/2020 from offences under Sec.3 punishable under Sec.4 of the PML Act.**
- 3 His bail bonds stand cancelled, and surety is discharged.
- 4 Accused No.5, Sachin Joshi for himself and Companies associated with him (A6 to A11), was already released on bail. Hence he shall make compliance of Sec.437A. by executing P.R.Bond of Rs.15,000/-with one or two sureties of like amount, to appear before the Hon'ble Higher Court.
- 5 As all accused persons and companies associated with them have been discharged, Record and Proceedings of this case be sent to the Record Department for preserving the same till further orders.
- 6 Accused No.5, Sachin Joshi for himself and

Companies associated with him (A6 to A11) shall provide his correct address for the service of process of Hon'ble Higher Court with undertaking to remain present as directed in such process.

7. Directorate of Enforcement shall immediately return the Pass Port to the Sachin Joshi (A5) on his acknowledgment.

8. Necessary note is being taken on Exh.1.

7. Ld. counsel for the Petitioners submits that Mr. Sachin Joshi was not made an accused in the predicate offense i.e., the FIR but was only made an accused in the ECIR which was registered by the ED in view of the allegations of layering which were made against him. It is his submission that given the Petitioners have been discharged in the PMLA offence itself, the present PAO cannot continue. Further, the allegation in paragraph 6.5 of the PAO was the only basis on which the assets of Company M/s. Muktanand Agro Farming Pvt. Ltd. were attached due to the connection with Mr. Sachin Joshi. Therefore, he submits that the PAO against the assets of M/s. Muktanand Agro Farming Pvt. Ltd. would be liable to be quashed/set aside.

8. The Court has perused the order dated 18th October, 2022 passed by the Special Court in the ECIR. A perusal of the same would show that Mr. Sachin Joshi has been clearly being discharged in the said PMLA case. Paragraph 6.5 of the PAO also makes it clear that the assets of M/s. Muktanand Agro Farming Pvt. Ltd. were attached on the premise that the Mr. Sachin Joshi is the majority shareholder and ultimate beneficiary of M/s. Muktanand Agro Farming Pvt. Ltd. Owing to this connection, the assets of M/s. Muktanand Agro Farming Pvt. Ltd. were attached.

9. In ***Vijay Madanlal Choudhary & Ors. v. UOI & Ors., 2022 SCC***

OnLine SC 929 the Supreme Court has held that if the person accused has been discharged or acquitted of the scheduled/predicate offence, then there can be no offence of money laundering against the said accused person. The relevant portions of *Vijay Madanlal Choudhary (supra)* reads as:

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

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(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.”

Therefore, in the event that the accused person is discharged in the PMLA case itself, the impugned PAO and the attachment of property resulting from the said PAO, deserves to be quashed.

10. This legal position has been subsequently affirmed by the Supreme Court in the following cases.

- i. ***Parvathi Kollur v. Enforcement Directorate*** [Criminal Appeal No. 1254/2022, decided on 16th August, 2022],

- ii. ***Adjudicating Authority v. Shri Ajay Kumar Gupta & Ors.*** [Criminal Appeal Nos. 391-392/2018, decided on 2nd December, 2022],
- iii. ***Directorate of Enforcement v. M/s Obulapuram Mining Company Pvt. Ltd*** [Criminal Appeal No.1269/2017, decided on 2nd December, 2022].

11. Vide order dated 16th August, 2022, in ***Criminal Appeal No.154 of 2022*** titled '***Parvathi Kollur v. Enforcement Directorate***', the Supreme Court also specifically referred to the paragraph as mentioned above in ***Vijay Madanlal Choudhary (supra)*** and held that when the accused person has been acquitted in the scheduled offence under the PMLA, the closure of the proceedings under the PMLA against persons said to connected to the accused person would be the natural consequence. The relevant portion of the said judgment reads as under:

"2. The Appellants herein have questioned the judgment and order dated 17.12.2020 as passed by the High Court of Karnataka at Bengaluru in Criminal Revision Petition No. 590 of 2019 whereby, the High Court allowed the revision petition filed by the Respondent and set aside the discharge order passed by the IIIrd Additional District and Sessions Judge, D.K., Mangaluru (Karnataka) for the offence Under Section 3 of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as 'the Act of 2002').

3. The Appellants herein are wife and son of the accused No. 1 against whom the allegations had been that during his tenure as Deputy Revenue Officer, he amassed assets disproportionate to his known source of income to an extent of Rs. 42,25,859/-. For this, the Lokayukta Police registered a case Under Section 13(1)(e) read with Section 13(2) of the Prevention of Corruption Act, 1988 (hereinafter referred to as 'the

Act of 1988'). During the pendency of trial, the Directorate of Enforcement registered a case against the accused No. 1 and the Appellants under the Act of 2002 and filed a complaint on 08.06.2016 before the Special Court for trial of the offence Under Section 3 thereof.

4. In the meantime, the Special Judge (Lokayukta) acquitted the accused No. 1 of the offences aforesaid under the Act of 1988 while observing that the evidence produced by the prosecution was insufficient to hold him guilty. Then, the accused No. 1 as also the present Appellants moved an application Under Section 277 of the Code of Criminal Procedure, 1973 seeking discharge in the case pertaining to the Act of 2002. Before the said application was considered and decided, the accused No. 1 expired on 08.05.2018.

5. Thereafter, the Trial Court, by its judgment and order dated 04.01.2019, allowed the application and discharged the Appellants from the offences pertaining to the Act of 2002 while observing that occurrence of a scheduled offences was the basic condition for giving rise to "proceeds of crime"; and commission of scheduled offence was a pre-condition for proceeding under the Act of 2002.

6. Aggrieved by the said discharge order, the Directorate preferred a revision petition before the High Court. The High Court proceeded to set aside the discharge order while observing that the allegations made in the complaint and the material produced, prima facie, made out sufficient ground for proceeding against the Appellants for offences under the Act of 2002.

7. Learned Counsel for the Appellants has contended that the issue as involved in this matter is no more res integra, particularly for the view taken by a 3-Judge Bench of this Court in the case of Vijay Madanlal Choudhary and Ors. v. Union of India and Ors. decided on 27.07.2022 where, the consequence of

failure of prosecution for the scheduled offence has been clearly provided in the following terms:

187.(d) The offence Under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

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

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

10. In view of the above, this appeal succeeds and is allowed. The impugned judgment and order dated

17.12.2020 is set aside and the order dated 04.01.2019 as passed by the Trial Court, allowing discharge application of the appellants, is restored”

12. The Ld. Division Bench of this Court in ***Harish Fabiani and Ors. v. Enforcement of Directorate and Ors., 2022 SCC OnLine Del 312*** has also taken a similar view and observed as under:

“22. The Hon'ble Supreme Court has been clear and categorical in its reasoning as evident from the para extracted above. The undeniable sequitur of the above reasoning is that firstly, authorities under the PMLA 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; secondly, the scheduled offence must be registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum; thirdly, in the event there is already a registered scheduled offence but 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 quashing of the criminal case of the scheduled offence, there can be no action for money laundering against not only such a person but also any person claiming through him in relation to the property linked to the stated scheduled offence. In other words no action under PMLA can be resorted to unless there is a substratum of a scheduled offence for the same, which substratum should legally exist in the form of a subsisting (not quashed) criminal complaint/inquiry or if it did exist the accused has since been discharged or acquitted by a Court of competent jurisdiction.”

13. The Supreme Court in ***W.P.(C) 368/2021*** titled '***Indrani Patnaik & Anr. v. Enforcement Directorate and Ors.***' has recently held that there

cannot be any prosecution in relation to an offence for which the accused person has already been discharged. The relevant portion of the said order of the Supreme Court reads as:

*“Learned senior counsel has submitted that in the present case, prosecution of the petitioners in relation to the scheduled offence, on which the proceedings under the Prevention of Money-laundering Act, 2022 (PMLA) were based, have already come to an end with the petitioners having been discharged from V.G.R. Case No. 59 of 2009(T.R. Case No. 80 of 2011) by the order dated 27.11.2020, as passed by the High Court of Orissa in Criminal Revision No. 831 of 2018. Learned counsel would submit that in the given state of facts and the law declared by this Court, **there cannot be any prosecution for the alleged offence of money-laundering in relation to the said offence for which, the petitioners have already been discharged.***

Learned Additional Solicitor General appearing for the respondents though has not disputed the order dated 27.11.2020 passed by the High Court, discharging the petitioners from the scheduled offence but has submitted that he has not received further instructions as to whether the prosecuting agency has challenged the said order or not.

*The record as it stands today, **the petitioners stand discharged of the scheduled offence and therefore, in view of the law declared by this Court, there could arise no question of they being prosecuted for illegal gain of property as a result of the criminal activity relating to the alleged scheduled offence.***

That being the position, we find no reason to allow the proceedings against the petitioners under PMLA to proceed further.

14. This position of law in terms of proceedings under the PMLA has been recently considered by this Court in *EMTA Coal Limited and Ors. v.*

The Deputy Director of Directorate of Enforcement, 2023/DHC/000277. In the said judgement it was held that once the closure report in the offences under respective FIRs has been filed, no criminality is ascertainable and the respective PAOs as well as the ECIRs are liable to be quashed.

15. In view of the fact that Mr. Sachin Joshi himself has been discharged in the ECIR and in view of the settled legal position as discussed above, the impugned PAO deserves to be quashed/set aside concerning Mr. Sachin Joshi and also M/s. Muktanand Agro Farming Pvt. Ltd.

16. Accordingly, in view of the settled legal position in *Vijay Madanlal Choudhary (supra)* and the subsequent decisions and orders thereafter, the properties of Mr. Sachin Joshi and M/s. Muktanand Agro Farming Pvt. Ltd. which were attached by the impugned PAOs shall be released.

17. With these observations, the present petitions are disposed of in the above terms. All pending applications are also disposed of.

18. The Court grants liberty to the ED to seek revival of the PAO in accordance with law, if there is any change in the circumstances. Liberty is also granted to the Petitioners to move an appropriate application if the properties are not released.

PRATHIBA M. SINGH
JUDGE

FEBRUARY 16, 2023

MR/Am

[Corrected and uploaded on 23rd February 2023]