



2023: DHC: 7542



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

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Date of decision: 11th October, 2023.+ **W.P.(CRL) 2871/2022 & CRL.M.A. 25054/2022 (stay), CRL.M.A. 26972/2022 (suspension of look out circular)**

NAYATI HEALTHCARE AND RESEARCH NCR PVT. LTD. AND
ORS.THROUGH ITS AUTHORIZED REPRESENTATIVE SH.
SATISH KUMAR NARULA & ORS. Petitioners

Through: Mr. Giriraj Subramaniam,
Mr.Simarpal Singh Sawhney,
Mr.Akhilesh Talluri and Mr. Ravi
Pathak, Advocates.

versus

UNION OF INDIA MINISTRY OF HOME AFFAIRS THROUGH
ITS STANDING COUNSEL & ANR. Respondents

Through: Mr. Anurag Ahluwalia, CGSC for
UOI.
Mr. Zoheb Hossain, Spl. Counsel for
ED with Mr. Vivek Gurnani and
Mr. Kartik Sabharwal, Advocates.

CORAM:**HON'BLE MR. JUSTICE AMIT BANSAL****JUDGMENT****AMIT BANSAL, J. (Oral)**

1. By way of the present petition, the petitioners seek quashing of the complaint filed by the Directorate of Enforcement (ED) under Section 3 of the Prevention of Money Laundering Act, 2002(PMLA) being ECIR bearing No. ECIR/51/DLZO-II/2021 dated 15th June, 2021 and the proceedings/investigations pursuant thereto.

2. It is the case of the petitioners that the present complaint was lodged on the basis of FIR bearing No.175/2020 dated 4th November, 2020 under

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Sections 409/420/467/468/471/120B of the Indian Penal Code, 1860 (IPC) by the Economic Offences Wing, New Delhi, being the predicate offence.

3. The aforesaid FIR was premised on an allegation that the petitioners herein had embezzled and misappropriated a loan amount which had been disbursed by Yes Bank towards the development of a hospital in Gurugram and also with respect to non-payment of salaries; the reduction of equity shareholding of the complainant and also alleged falsification of accounts. Subsequently, the matter was amicably settled between the petitioner and the complainant and No Dues Certificate was issued in favor of the petitioner by Yes Bank. Accordingly, the aforesaid FIR was quashed by the Coordinate Bench *vide* order dated 28th September, 2022 in CRL.M.C.4972/2022.

4. It is pertinent to note that the said order records the no objection of the learned APP for quashing of the aforesaid FIR. It is an admitted position that the aforesaid order has not been challenged and has therefore, attained finality.

5. Noting the aforesaid, the Predecessor Bench of this Court had granted stay of investigation in the present petition *vide* order dated 5th December, 2022.

6. Mr. Giriraj Subramaniam, counsel appearing on behalf of the petitioners submits that in view of the fact that the FIR in respect of the predicate offence stands quashed, the present complaint filed by the ED is not maintainable. In this regard, he places reliance on the judgment of the Supreme Court in ***Vijay Madanlal Choudhary v. Union of India***, 2022 SCC OnLine SC 929; judgment of the Calcutta High Court in ***Nik Nish Retail Ltd. v. Assistant Director, Enforcement Directorate***, 2022 SCC OnLine Cal 4044 and the judgment of the Telangana High Court in ***Manturi Shashi***

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Kumar v. Director, Directorate of Enforcement, 2023 SCC OnLine TS 1098.

7. *Per contra*, Mr. Zoheb Hossain, counsel appearing for the ED submits that in view of the fact that the FIR in respect of the predicate offence has been quashed on the basis of settlement, the present complaint cannot be quashed. He places reliance on the order passed by the Supreme Court dated 10th February, 2023 in SLP (Crl.) Diary No.42315/2022 titled **Directorate of Enforcement v. Gagan Deep Singh** to submit that the issue whether proceedings under Prevention of Money Laundering Act, 2002 would survive upon acquittal/discharge of the accused in a scheduled offence is still pending before the Supreme Court.

8. I have heard the counsels for the parties.

9. The relevant observations of the Supreme Court in **Vijay Madanlal Choudhary** (supra) are set out below:-

“467.

...

*(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.**”*

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10. In **Nik Nish Retail Ltd.** (supra), the Calcutta High Court also dealt with a case where the FIR in respect of the predicate offence was quashed on the basis of settlement. Following the aforesaid findings of **Vijay Madanlal Choudhary** (supra), the complaint of the ED was quashed. The relevant observations of **Nik Nish Retail Ltd.** (supra) are set out below:-

“34. The quashing of FIR of regular case automatically created a situation that the offences, stated and alleged in the FIR has no existence; thus the “Scheduled Offence” has also no existence after quashing of the FIR. When there is no “Scheduled Offence”, the proceeding initiated under the provisions of Prevention of Money Laundering Act, 2002 cannot stand alone.”

11. It is relevant to note here that the SLP filed by the ED against the aforesaid judgment was dismissed by the Supreme Court *vide* order dated 14th July, 2023 in SLP (Crl.) Diary No.24321/2023. The relevant observations of the aforesaid order are set out below:-

*“In paragraph 187 (v)(d) of the decision in the case of **Vijay Madanlal Chowdhury & Ors. v. Union of India & Ors.** (2022) SCC OnLine SC 929, it is held that even if predicate offence is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against the accused.*

Appropriate proceedings can be always filed by the concerned parties for challenging the order by which predicate offence was quashed. If the said order is set aside and the case is revived, it will be always open for the petitioner to revive the proceedings under the Prevention of Money Laundering Act, 2002.

The Special Leave Petition is accordingly disposed of.”

12. Similarly, another SLP being SLP (Crl.) Diary No.28128/2023 filed



by the ED against the judgment of the Madras High Court on a similar issue was dismissed as withdrawn on the basis that the FIR on the predicate offence had been quashed.

13. The Telangana High Court in *Manturi Shashi Kumar* (supra) has also quashed a complaint under Section 3 of the PMLA on the grounds of the accused being discharged/acquitted of the scheduled offence. The relevant observations of the said judgment are set out below:-

“28. Thus, according to Supreme Court, the offence under Section 3 of PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. If the person is finally discharged or acquitted of the scheduled offence or the criminal case against him is quashed by the court, there can be no offence of money laundering against him or anyone claiming such property being the property linked to the scheduled offence. It is immaterial for the purpose of PMLA whether acquittal is on merit or on composition.”

14. In view of the aforesaid legal position, the present complaint filed by the ED and the proceedings arising therefrom cannot survive. Considering that the FIR has been quashed by this court and that it has not been challenged till date, there can be no offence of money laundering under section 3 of the PMLA against the petitioners.

15. Accordingly, the present petition is allowed and the ECIR bearing No.ECIR/51/DLZO-II/2021 and proceedings arising therefrom are quashed. Consequently, the Look Out Circular issued against the petitioners in respect of the aforesaid ECIR also stands quashed.

16. All pending applications stand disposed of.

AMIT BANSAL, J.

OCTOBER 11, 2023/at

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