



W.P.No.5402 of 2024 batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	03.07.2024
DELIVERED ON	16.07.2024

CORAM:

THE HON'BLE MR. JUSTICE M.S.RAMESH
and
THE HON'BLE MR. JUSTICE SUNDER MOHAN

W.P.Nos.5402, 1689, 1711, 1765, 2935, 2995, 3047, 3048, 3381, 3389,
3411, 3481, 3607, 3648, 3878, 4412, 4416, 4421, 4463, 4578,
4583, 4629, 4657, 4661, 5439, 5444, 5449, 5450, 5645, 5652, 8435,
8563, 8568, 8689, 8697, 8871, 9312, 9327, 9333, 9379, 9383, 9391, 9395,
1655 and 4891 of 2024 and 35515, 35656, 35658 of 2023

and

W.M.P.Nos.10330, 10347, 10349, 10389, 10394, 10409, 1734, 1758, 1819,
5944, 6005, 6011, 6016, 6018, 6246, 9390, 9509, 9513, 9698, 9710,
9877, 10406, 1688, 9878, 10333, 10348, 10351, 10392, 10395, 10407,
10410, 1690, 1735, 1759, 1821, 3182, 3183, 3265, 3325, 3326, 3642, 3648,
3667, 3668, 3739, 3740, 3893, 3935, 4196, 4749, 4755, 4762, 4823, 4999,
5007, 5071, 5008, 5095, 5353, 5945, 6006, 6013, 6019, 6020, 6244, 6240,
6250, 9391, 9514, 9700, 9712 and 9511 of 2024 and 35478, 35626, 35629,
35479, 35628, 35630 of 2023

W.P.No.5402 of 2024

K.Govindaraj

...Petitioner

vs.

1.Union of India,
Represented by Secretary,



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Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

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2. Directorate of Enforcement,
Rep its Assistant Director,
Shastri Bhawan, 3rd Floor, 3rd Block,
B Wing No.26, Haddows, Road,
Chennai – 600 006.

3. State of Tamil Nadu,
Represented by Additional Chief Secretary to Government,
Water Resources Department,
Fort St George, Chennai – 600 009. ...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call upon the entire file pertaining to the ECIR/CEZOII/22/2023 dated 11.09.2023 issued by the 2nd respondent and quash the same as *non-est* and in contravention to the foundational principles that govern the invocation of penal action under the Prevention of Money Laundering Act, 2002 ('PMLA')

W.P.No.3047 of 2024

Shanmugam Ramachandran

...Petitioner

vs.

1. Union of India,
Represented by Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

2. Directorate of Enforcement,
Represented by its Deputy Director,



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Shastri Bhawan, 3rd Floor, 3rd Block,
B Wing No.26, Haddows, Road,
Chennai – 600 006.

3.Present Single Member of Adjudicating Authority
(under the Prevention of Money Laundering Act, 2002),
Rep its Registrar/Administrative Officer,
Room No.26, 4th Floor, Jeevan Deep Building,
Parliament Street, New Delhi.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India,
praying for issuance of Writ of Certiorari, to call for the records pertaining
to the issuance of Provisional Attachment Order No.1/2024 dated
31.01.2024 in File No.ECIR/CEZO-II/22/2023/6965 on the file of the
Respondent No.2 and quash the same.

W.P.No.35656 of 2023

K.Rethinam

...Petitioner

vs.

1.Union of India,
Represented by Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

2.Directorate of Enforcement,
Rep its Assistant Director,
Shastri Bhawan, 3rd Floor, 3rd Block,
B Wing No.26, Haddows, Road,
Chennai – 600 006.



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3.State of Tamil Nadu,
Represented by Chief Secretary
Fort St George, Chennai – 600 009.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call upon the entire file pertaining to the ECIR/CEZOII/22/2023 dated 11.09.2023 and quash the same as *non-est*; in contravention to the foundational principles that govern the invocation of penal action under the Prevention of Money Laundering Act, 2002 ('PMLA') and contrary to the spirit and essence of the settled law laid to rest by the Hon'ble Supreme Court in a plethora of cases including "*Vijay Madanlal Choudhary & others vs. Union of India & others 2022 SCC OnLine SC 929.*"

W.P.No.35515 of 2023

A.Rajkumar

...Petitioner

vs.

1.Union of India,
Represented by Secretary,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

2.Directorate of Enforcement,
Rep its Assistant Director,
Shastri Bhawan, 3rd Floor, 3rd Block,
B Wing No.26, Haddows, Road,
Chennai – 600 006.

3.State of Tamil Nadu,
Represented by Chief Secretary
Fort St George, Chennai – 600 009.

...Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call upon the entire file



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pertaining to the ECIR/CEZOII/22/2023 dated 11.09.2023 and quash the same as *non-est*; in contravention to the foundational principles that govern the invocation of penal action under the Prevention of Money Laundering Act, 2002 ('PMLA') and contrary to the spirit and essence of the settled law laid to rest by the Hon'ble Supreme Court in a plethora of cases including "*Vijay Madanlal Choudhary @ others vs. Union of India & others 2022 SCC OnLine SC 929.*"

Counsel for the Petitioners:

WP.Nos. 35656 & 35668 of 2023 and : Mr.Vikram Chaudhri,
1689 , 1765, 2935, 2995, 3047, 3048, Senior Advocate
3381, 4416, 4578, 4583, 8871, 9327, for M/s.S.Elambharathi
9333, 9379, 9383, 9391 & 9395 of 2024

WP.No.35515 of 2023 and : M/s.Abdul Saleem,
WP.Nos.1655, 1711, 3389, 3411, 3481, Senior Advocate
3607, 3648, 3678, 4412, 4421, 4463, for M/s. M.Vijayamehanath
4629, 4657, 4661, 4891, 5402, 5439,
5444, 5449, 5450, 5645, 5652, 8435,
8563, 8568, 8689, 8697 & 9312 of 2024

Counsel for the Respondents
in all WPs

: Mr.AR.L.Sundaresan,
Addl.Solicitor General
assisted by M/s.N.Ramesh
Spl.Public Prosecutor (ED)
and Mr.Zoheb Hussain
Spl. Counsel for (ED)



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COMMON ORDER

M.S.RAMESH,J.
AND
SUNDER MOHAN,J.

The above Writ Petitions challenge the various actions initiated by the respondents herein against the petitioners.

(i) Twenty-four out of the captioned Writ Petitions challenge the ECIR bearing reference No. ECIR/CEZO-II/22/2023 dated 11.09.2023.

(ii) Thirteen Writ Petitions challenge the Provisional Attachment Order in No.1/2024 dated 31.01.2024, passed in respect of the properties of the petitioners.

(iii) Eleven Writ Petitions challenge the proceedings in the Original Applications filed by the respondents seeking confirmation of the Attachment Order.



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2. Since the issue involved in all the Writ Petitions is the same, they were heard together and a common order is passed. The following facts are undisputed:

(a). An ECIR/CEZO-II/22/2023 was recorded on 11.09.2023 on the basis of the following four First Information Reports:

(i) FIR No. 68/2023, dated 25.04.2023, registered by Murappanadu Police Station, Thoothukudi District.

(ii) FIR No.02/2022, dated 05.02.2022 registered by V & AC, Theni.

(iii) FIR No.08/2018, dated 23.07.2018 registered by V & AC, Thanjavur.

(iv) FIR No.03/2020, dated 20.10.2020 registered by V & AC, Dindigul.

(b) Pursuant to the recording of the ECIR, searches were conducted in various places.

(c) Summons were also sent to various parties, in connection with the inquiry/investigation, with reference to the above ECIR.



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(d) The Provisional Attachment Orders were passed in relation to the properties of some of the petitioners, on the ground that they were in possession of proceeds of crime and also recording the fact that they evaded the summons or did not respond to the summons.

(e) In the meanwhile, the summons were issued to all the Collectors in the State of Tamil Nadu in connection with the inquiry in the above referred ECIR. The State of Tamil Nadu and the Collectors filed Writ Petitions challenging the summons issued to them in W.P.Nos.33459 to 33468 of 2023. This Court, passed an order on 28.11.2023 granting interim stay of the operation of the summons impugned in those Writ Petitions.

(f) Some of the petitioners in the captioned Writ Petitions filed the Writ Petitions challenging the ECIR insofar as they were concerned in W.P.Nos.35515 of 2023, 35656 of 2023 and 35658 of 2023. This Court passed an order of interim stay of the operation of summons issued to the petitioners in the ECIR proceedings. In certain other captioned Writ Petitions, this Court granted stay of the ECIR proceedings against the



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petitioners and also stay of the Provisional Attachment Order in W.M.P.Nos. 3182, 3183, 3265, 3326 and 3325 of 2024 in W.P.No.2935, 2995, 3048 and 3407 of 2024 etc.

(g) In the meanwhile, the respondents filed a Special Leave to Appeal (Crl.) No(s). 1959 – 1963/2024 before the Hon'ble Supreme Court challenging the interim orders passed by this Court in the Writ Petitions filed by the State of Tamil Nadu and the Collectors. The Hon'ble Supreme in Special Leave to Appeal (Crl.) No(s).1959 – 1963/2024 was pleased to pass an order of stay on the execution of the orders passed by this Court in those Writ Petitions. The Hon'ble Supreme Court had also observed that since the respondents are conducting the investigation in the ECIR, the Collectors are bound to respond to the summons. Consequently, the District Collectors were directed to appear and respond to the summons issued by the respondents.

(h) The respondents also challenged the interim orders passed by this Court in W.P.No.35515 of 2023 in Special Leave to Appeal (Crl.)



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No(s). 3358 - 3360/2024 before the Hon'ble Supreme Court. The Hon'ble Supreme Court had observed that the proceedings before this Court would continue and directed the respondents herein to file their counter. Though the respondents herein prayed for the stay of the order, the Hon'ble Supreme Court made the above observations. It is also conceded by the respondents that the Hon'ble Supreme Court made the above observations, though they had pointed out the earlier orders passed by the Hon'ble Supreme Court in the Writ Petitions filed by the State of Tamil Nadu.

(i) The respondents had filed their counter in the above Writ Petitions on 03.04.2024.

(j) All the petitions have been filed on the primary ground that the respondents lack jurisdiction to initiate action under the Prevention of Money Laundering Act, 2002, on the basis of the four First Information Reports, which do not reveal the proceeds of crime generated by any of the accused in the four First Information Reports, cited by the respondents or by any one else, and that the reading of the ECIR and the Provisional



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Attachment Orders would suggest that the respondents are assuming the role of investigating into illegal sand mining in the absence of any First Information Report registered for a scheduled offence indicating the generation of proceeds of crime.

3. (a) Mr.Vikram Chaudhri, the learned Senior Counsel, pointed out the observations made by this Court in the interim orders on a *prima facie* reading of the ECIR and the submissions made on either side. The learned Senior Counsel submitted that the Hon'ble Supreme Court in *Vijay Madanlal Choudhary and others vs. Union of India and others* reported in **2022 SCC Online SC 929**, observed that there cannot be any inquiry/ investigation by the Enforcement Directorate on the assumption that there is proceeds of crime.

(b) The learned Senior Counsel further submitted that the Provisional Attachment Orders suggest that a discreet investigation was conducted by the Enforcement Directorate and they had proceeded on the basis of a report filed by an independent private company and such a report has no value;



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that even assuming that the report is true, it is for the respondents to inform the concerned Investigating Agency and only if, they find that there is a scheduled offence, register a case and if it has generated proceeds of crime, then the Enforcement Directorate can attach the properties of persons, if they have reasons to believe that such persons have dealt with the proceeds of crime.

(c) The learned Senior Counsel further submitted that the existence of the proceeds of crime is *quintessential* and in the absence of the same, the respondents cannot assume jurisdiction to initiate any action under Prevention of Money Laundering Act, 2002.

(d) The learned Senior Counsel further submitted that the investigation sought to be conducted by the respondents is actually an investigation of a possible scheduled offence under the garb of investigating money laundering offence;



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(e) that none of the petitioners are either suspects or accused in the scheduled offences or suspects in the ECIR recorded by the respondents.

Since the respondents were unable to ascertain the proceeds of crime, the attachment of property without any causal link between those properties and the proceeds of crime relating to any scheduled offence, the attachment of properties would be illegal.

(f) The learned counsel further submitted that knowledge and awareness are the mental states required for proceeding under the Prevention of Money Laundering Act, 2002, and none of the petitioners can be said to have any involvement or the requisite *mens rea*.

4. M/s.Abdul Saleem, the learned Senior Counsel, reiterated the submissions made by Mr.Vikram Chaudhri, and submitted that the company employed by the Enforcement Directorate to ascertain, if there is any illegal sand mining is a private company, and their report would be of no consequence in the absence of any other proof that the petitioners had dealt with the proceeds of crime relating to any scheduled offences.



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WEB COPY 5. Per contra, Mr.AR.L.Sundaresan, learned Additional Solicitor General, had made the following submissions:

(a) that the ECIR is an internal document and cannot be equated with an FIR; that merely because four First Information Reports were referred to in the ECIR, it cannot be assumed that those are the only materials available with the respondents to show that the petitioners dealt with proceeds of crime.

(b) that the State of Tamil Nadu had also conceded that there are other First Information Reports, registered throughout the State of Tamil Nadu, suggesting that there is illicit sand mining in the State of Tamil Nadu, which would consequently generate the proceeds of crime; that the ECIR need not record all the First Information Reports and it is sufficient for the respondents to satisfy this Court that there are scheduled offences committed and those have generated proceeds of crime.



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(c) that the Prevention of Money Laundering Act, 2002, is a complete code; that the inquiry under Section 50 of the Prevention of Money Laundering Act, 2002, can be both for civil and criminal proceedings and cannot be allowed to be stalled at the nascent stage; and that unless the investigation is allowed to continue, which would bring out more facts, the respondent would not be able to carry out their duty under the Act.

(d) that the petitioners have an effective alternative remedy to challenge the Attachment Orders before the adjudicating authority and thereafter challenge any orders if they are aggrieved before the Appellate Tribunal; that the Act further provides an appeal to this Court; and therefore, what would be brought before this Court as a Second Appeal is sought to be raised in a Writ Petition, which is not maintainable.

(e) that the Writ Petitions raise several factual issues that cannot be addressed at this stage and that whether the petitioners had the requisite mental state is a question of fact, and hence the investigation cannot be stalled at this nascent stage. He relied upon the following judgments:



(i) State of Gujrat etc vs. Choodamani Parmeshwaran Iyer and another reported in **2023 SCC Online SC 1043.**

(ii) Special Director and another Vs.Mohd.Ghulam Ghouse and another reported in **(2004) 3 SCC 440.**

(iii) Raj Kumar Shivhare Vs. Assitant Director, Directorate of Enforcement and another reported in **(2010) 4 SCC 772.**

(iv) United Bank of India Vs. Satyawati Tondon and others reported in **(2010) 8 SCC 110.**

(v). South Indian Bank Ltd., and others Vs. Naveen Mathew Philip and another reported in **2023 SCC Online SC 435.**

(vi) Neeharika Infrastructure Pvt. Ltd Vs. State of Maharashtra and others reported in **2021 SCC OnLine SC 315.**

(vii) Enforcement Directorate Vs. Niraj Tyagi and others in Criminal Appeal No.843 of 2024 @ Special Leave Petition (Crl.) No.10913 of 2023.

(viii) Central Bureau of Investigation Vs. Aryan Singh reported in **2023 SCC Online SC 379.**

(f) that the interim orders passed by this Court in the Writ Petitions filed by the State of Tamil Nadu challenging the summons issued to the Collectors were stayed by the Hon'ble Supreme Court with the direction to the Collectors to appear and cooperate in the investigation; that the Hon'ble Supreme Court held that the Collectors were bound to obey the summons as



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the Enforcement Directorate is investigating the offence under the Prevention of Money Laundering Act, 2002. The learned Additional Solicitor General therefore submitted that the order of the Hon'ble Supreme Court would suggest that the Hon'ble Supreme Court had recognized and approved the investigation conducted by the respondents and therefore, this Court cannot stall the investigation at the instance of any of the parties; and that the ECIR is an internal document, has no statutory basis and therefore cannot be quashed and relied upon the following decisions:

(i) *Vijay Madanlal Choudhary & Others Vs. Union of India & Others* reported in *2022 SCC Online SC 929*.

(ii) *N.Dhanraj Kochar and others Vs. Director Directorate of Enforcement and others* reported in *2022 SCC Online Mad 8794*.

(iii) *Pawan Insaa Vs. Directorate of Enforcement, Government of India* reported in *2024 LiveLaw (PH) 113*.

(g) that the judgment of the Hon'ble Supreme Court in *Vijay Madhanlal Choudhary's case (cited supra)* would show that even in the absence of a First Information Report in the predicate offence, the respondents can initiate action under Section 5 of the Prevention of Money



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Laundering Act, 2002, in view of the introduction of the second proviso to Section 5(b) of the Prevention of Money Laundering Act, 2002, and also specifically referred to the observations made in paragraph 290 in ***Vijay Madhanlal Choudhary's case (cited supra)***.

(h) The learned Additional Solicitor General also pointed out paragraphs 281 to 284, 291 to 295 and paragraph 467 of ***Vijay Madhanlal Choudhary's case (cited supra)*** in support of his submissions. He further submitted that in order to initiate action against any particular individual under the Prevention of Money Laundering Act, 2002, it is not necessary that he must be an accused in the predicate offence and relied upon the judgments of (i) ***Pavana Dibbur Vs. Directorate of Enforcement*** reported in ***2023 SCC Online SC 1586*** and ***Anoop Bartaria & etc Vs. Deputy Director, Enforcement Directorate and another*** reported in ***2023 SCC Online SC 477***.



(i) The learned Additional Solicitor General further submitted that when a person is summoned under Section 50 of the Prevention of Money Laundering Act, 2002, he cannot be considered to be a person aggrieved, and a Writ Petition filed by him challenging the said summons is premature and relied upon the following judgments.

(i) Kirit Shrimankar Vs. Union of India and others reported in *(2018) 12 SCC 651*.

(ii) Commissioner of Customs, Calcutta and others Vs. M/s. M.M.Exports and another reported in *(2010) 15 SCC 647*.

(iii) C.M.Raveendran Vs. Union of India, reported in *2020 SCC Online Ker 7555*.

(iv) Virbhadr Singh and another Vs. Enforcement Directorate, reported in *2017 SCC Online Del 8930*.

(v) State of Gujarat etc. Vs. Choodamani Parmeshwaran Iyer and another reported in *2023 SCC Online SC 1043*.

6. (a) Mr.Vikram Chaudhri, learned Senior Counsel, in response, submitted that the respondents chose to commence investigation only on the basis of four First Information Reports, which have nothing to do with the



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petitioners and in any case do not suggest any generation of proceeds of crime; that without any basis, they had referred to information gathered through open resources relating to sand mining; and that the fact that they have taken the assistance of a private agency would show that they had sub-delegated their powers of investigation conferred under “Section 54 of the Prevention of Money Laundering Act, 2002,” which is impermissible.

(b) The learned Senior Counsel submitted that this Court may decide issues that were not decided by the Hon'ble Supreme Court in *Vijay Madhanlal Choudhary's case*, (*cited supra*) as there are many uncharted territories, that may require adjudication independently and relied upon the Judgment of the Hon'ble Supreme Court in *Pankaj Bansal vs. Union of India and others* reported in *2023 SCCOnline SC 1244*.

(c) The learned Senior Counsel further submitted that the judgment of the Hon'ble Supreme Court has to be read harmoniously and the reading of the judgment would suggest that unless the respondents have to take an emergent action, the registration of First Information Report for the



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scheduled offence is necessary to initiate action under the Prevention of Money Laundering Act, 2002; that word “prosecute” in paragraph 467 (v) (d) of the *Vijay Madhanlal Choudhary's case (cited supra)* has to be understood as “any action” and the said word had not been employed in the sense used for initiating any criminal action alone; that as an illustration, if the Enforcement Directorate during the course of inquiry/ investigation come across Narcotic drugs or excessive cash, they can always proceed under the Act in the absence of any First Information Report, and that however in a case of this nature, such a power cannot be exercised.

(d) The learned Senior Counsel brought to our attention, the observations of Hon'ble Supreme Court in *State of Haryana and others vs. Bhajan Lal and others* reported in *1992 Supp (1) SCC 335*, in which the Hon'ble Supreme Court had observed that no investigating agency can demand absolute immunity, even if they are wrong and claim unquestionable rights and unlimited powers.

(e) The learned Senior Counsel also commented on the conduct of the



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respondents in writing a letter dated 13.06.2024, after he made his submissions before this Court on 12.06.2024. He further submitted that the respondents were aware of the interim orders passed by this Court and, in violation of the said orders, had communicated to the Director General of Police on 13.06.2024 purporting to be a communication sent under Section 66 (2) of the Prevention of Money Laundering Act, 2002 [hereinafter referred to as PMLA] as if to show that they discovered the commission of scheduled offences.

(f). The learned Senior Counsel submitted that, besides showing absolute disregard for the orders of this Court, the letter concedes that, hitherto, the action of the respondents was without any corresponding scheduled offence or determination of proceeds of crime; and that the letter only reiterates the report of the private company dated 17.10.2003 and there are no other materials.

7. (i) The learned Additional Solicitor General, in response to the



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learned Senior Counsel's reply, submitted that mere obtaining a report from a company would not amount to sub-delegation that it would only amount to obtaining expert opinion and collecting evidence during the investigation, and that the said company is an incubated company of IIT Kanpur.

(ii) He has also submitted that there are statements from the suppliers of machines and equipment that would confirm that there was illegal sand mining by the petitioners and that there were proceeds of crime.

(iii) He reiterated that the ECIR is an internal document, and it cannot be said that they cannot proceed with information received besides what they have recorded in the ECIR and that the respondents have more than sufficient material to proceed with the investigation, and the investigation cannot be curtailed.

(iv) He further submitted that the letter issued under Section 66(2) of the PMLA, is a statutory requirement and cannot be taken as a violation of orders of this Court, and it could only be considered as curing a defect if at



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all there was one.

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8. We have considered the rival submissions and perused all the materials placed before us.

9. Before we proceed to deal with the rival submissions, we may analyse the materials available with the respondents to assume the power to conduct the inquiry/ investigation under the PMLA. The ECIR recorded by the respondents refers to four First Information Reports. The Four First Information Reports, are as follows:

- (i) FIR No.08/2018 dated 23.08.2018
- (ii) FIR No.03/2020 dated 20.10.2020
- (iii) FIR No.02/2022 dated 05.02.2022
- (iv) FIR No.68/2023 dated 25.04.2023

The respondents concede that the four First Information Reports by themselves do not indicate any proceeds of crime, though they have been registered for scheduled offences. However, in the ECIR, there is reference to information gathered from open resources that there is large scale illegal sand mining in the State of Tamil Nadu and also a possible nexus between



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the illegal miners, officials, and local Goondas in the State; and that since the mining mafias are involved in the theft of national wealth and generating huge proceeds of crime, there is a possibility of laundering the proceeds of crime so generated by their illegal activities.

10. (a) In the counter filed by the respondents, which is almost the same in all the Writ Petitions, they have stated about the materials gathered during their investigation against the petitioners. Paragraph No.6 of the counter affidavit in W.P.No.5402 of 2024, which is similar to the counter affidavit in all other cases, reads as follows:

“6. Before leaping into the merits of the Petition, the findings of the investigation under PMLA, 2002, and involvement of the Petitioner in the case uncovered so far, is submitted concisely:

6.1 It is submitted that the investigation under the PMLA was initiated in the case of illegal sand mining widespread across the State of Tamil Nadu by recording a, Enforcement Case Information Report (ECIR) bearing No. ECINCEZ-tr12212023 dated 11-09-2023 on the basis of various FIRs registered by the Tamil Nadu Police. The offences under Section 302, 120(B), 471 of IPC and r.r/s 7,7(a), 8(l), 12 and 13 of PC Act, 1988 (as amended



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in 2018) as invoked in the said FIRS are scheduled offences as specified under Part A of the Schedule of Prevention of Money Laundering Act 2002. On the premise of registration of above. mentioned FIRS and on perceiving that prima-facie an offence of Money Laundering under Section 3 of the Act is made out which is punishable under Section 4 of the Act, the investigation under PMLA, 2002, was commenced.

6.2 During investigation under PMLA, 2002, the Respondent No.2 engaged the services of M/s.Terraqua UAV Solutions Private Limited (a Company incubated at IIT Kanpur and the team comprising Profession of IIT, Kanpur), to conduct a technical study of all the mining sites using Drone and LIDAR Surveys, Bathymetric surveys, satellite imagery processing etc. in the 28 sites and nearby areas. The report on the technical study establishes that there has been excessive mining in the mining sites and there has been illegal sand mining in the nearby areas as well. It is revealed from the Expert Report submitted by M/s Terraqua UAV Solutions Private Limited, that there are violations in terms of area and depth of excavation which has resulted in excessive volume of sand excavation. Even at 4 sand quarries, there is estimate of excessive & illegal sand mining up to 10-30 times of the actual permitted quantity and as against the permitted area of 4.90 Ha, mined area of 104-105 Ha is found adjacent to the original permitted area. The Report



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has evidently spelt out that the sand to the extent of 23,64,871.96 Units has been mined excessively and illegally and it was never brought in the books & records of the Govt. The total cost of the sand mined in excess in the mining sites and in the outside areas (in the Total Mining Impacted Area 987.01 Hectares and the excess volume of mining of 2364871.96 Units 6621641.5 Cubic Meter of Sand) is arriving at Rs.4730 Crores and whereas the revenue in the books of accounts of WRD has been shown as Rs. 36.45 Crores (as furnished by the Executive Engineers of the Water Resources Department, Government of Tamil Nadu).

6.3 The subsequent investigation led to the identification of individuals and companies engaged in unlawful sand mining activities and it is revealed that a few private parties have virtually monopolized all sand mining activity in the state.

6.4 During investigation, information /documents were obtained from IWs Kobelco Construction Equipment Private Limited and IWs JCB India Limited (manufacturer & supplier of excavator/ Poclain machines) regarding sales made in the State of Tamil Nadu which revealed that only a group of 15 persons/entities were sold 203 excavators since 01.01-2021 including the Petitioner herein. The Petitioner herein purchased 86 excavators either in his name or in the



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name of his firms/companies. All these 15 persons/entities apparently appeared to be related to each other. Further, the Geoscanning report of these excavator machines was also obtained from M/s.Kobelco Construction Equipment India Private Limited which contained details of GPS position of the machines, Working Hours, Idling Hours, digging hours, swing hours etc.

6.5 Upon comparing the GPS coordinates data denoted by IWS Kobelco Construction Equipment India Private Limited for working position of the machines vis-d-vis the GPS coordinates of the permitted sand quarries in the State, it is pointed out that these machines have worked outside/contiguous to the permitted/legalised sand quarries which signifies about the illegal sand quarrying activity carried out by the Petitioner and other owners of the excavators.

6.6 Further analysis of Geoscanning/ Geofencing data of the excavators provided by IWS Kobelco Construction Equipment India Private Limited and IWS JCB India Limited revealed that multiple excavators were working simultaneously on a single sand mining site whereas as per the terms & conditions put forth by the Govt., only 2 machines are allowed to work on a single quarry.



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6.7 The bank account analysis of the Petitioner, his family members and his firms/companies has shown substantial cash deposits in the accounts. The cash deposited so, has been subjected to continuous transfers through different accounts to hide the source of the funds.

6.8 Thus, it is revealed that the Petitioner herein has indulged in illegal sand mining and generated proceeds of crime and dealt with the proceeds from the criminal activity.”

(b) In support of the said allegations, the respondents have relied upon the statements of some witnesses, which are referred to in paragraph Nos. 11 to 16 of the said counter and the same are reproduced below:

“11. Mr. Ashokan Muthaiah, the then Engineer-in-Chief in Water Resources Department, Govt. of Tamil Nadu, in his statement under Section 50 of PMLA, 2002, has inter-alia stated that the private contractors are supposed to quarry the sand only within the permissible limit around 4.5 hectares approved area and for the approved depth, say 0.9 meters below the bed level. That the entire sand quarried within the permissible limit by the private contractors must necessarily be transported



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and sold to the nearest government depot. However, these private contractors as well many other unauthorised private contractors are engaged in rampant excessive mining of sand much beyond the permissible limit. That,' against the permissible 'limits', the excess mined sand is loaded in the lorries and sold directly outside to public/private players without routing through the government depot. He further stated that there are around 15 entities who have been engaged with the sand mining in the State and all these entities are related to associated with the Petitioner herein and other 2-3 private parties including Mr. K. Rethinam and Mr. P.Karikalan. He further submitted that, as per the Govt. policy, any tender about Rs 50 lakhs has to be online wherein anybody can participate. However, to facilitate these selected 3-4 private contractors only to get he contracts for all the sites in different names, the contract amounts are broken in such a manner, based on time period of contract or scope of contract that each contract value comes to below Rs 50 lakhs, for which only physical tendering is sufficient. He further admitted regarding the excessive illegal sand mining prevalent in the State and he also admitted at the same time that no efforts/remedial measures are being taken by the Water Resources Department and other concerned Departments to curb the illegal sand mining.

12. Mr.S.Lenin Francis, Executive Engineer,



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Mining & Monitoring Division, Villupuram, in his statement under Section 50 of PMLa, 2002, has inter-alia stated that during his monitoring visit to sand quarries under his jurisdiction, he has noticed excessive mining of sand has been done and the mined area is beyond the limits of 'precise area plan'. He further stated that the sand excavated within legal permitted limits is shown in the books & records of Water Resources Department as Revenue. Remaining sand which is mined illegally or excessively is not recorded anywhere. In the past 2 years, total sand recorded as sold in books is around Rs.30 Crores.

13. It is humbly submitted that the Executive Engineers (Mining & Monitoring) of different Division, in their statements under PMLA, 2002, have unambiguously admitted that illegal sand mining is happening at huge level in the State but no action is being taken against the offenders/private contractors.

14. The bank account analysis of the Petitioner herein has revealed that substantial cash deposits were made in the account which was further used for repayment of loans availed for purchase of excavators. Further, the bank account analysis also revealed that the Petitioner herein and his related/associated entities/individuals have sizeable with other inter-connected transactions suspected entities/ individuals.



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15. That, it is implied that from the comprehensive assessment of the data provided by WRD, Govt. of Tamil Nadu; M/s.Kobelco India / M/s.JCB India; and the inspection report of M/s.Terraqua UAV Solutions Private Limited, that illegal and excessive sand mining has been done by Mr.S.Ramachandran, Mr.K.Rethinam, Mr.P.Karikaran and their associates.

16. In the course of the investigation under PMLA, 208, it has surfaced that illicitly extracted sand is being circulated in, the market through cash transactions, avoiding any traceable entries in the government or private contractors' books. Therefore, the bank account analysis of Mr. S. Ramachandran (Petitioner herein), his family members and his business concerns has been done which has revealed that cash has been infused in various bank accounts and then routed, layered through further bank accounts to conceal the source of funds. Further, a substantial part of the same has been utilized to repay the loans availed for purchasing excavators from M/s. Kobelco Constructions Equipment India Private Limited. Further, the bank account analysis also revealed that the Petitioner herein and his related/associated entities/individuals have sizeable inter-connected transactions with other suspected



entities/individuals.”

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(c) The respondents have also given reasons for issuing the Provisional Order of Attachment in paragraph No.14, which is also similar and reads as follows:

14 Reason to believe for issuing the Provisional Attachment

Order:

“14.1 Whereas upon careful consideration of the above-mentioned facts & findings and the material placed before me including FIR, data/ information submitted by excavator manufacturers/ suppliers (M/s Kobelco Construction Equipment India Private Limited, M/s JCB India Limited), facts/ material relating to search proceedings in the case (in respect of which Original Application No.1016/2023 is filed before the Hon'ble Adjudicating Authority under PMLA), Inspection Report prepared by M/s Terraqua UAV Solutions Private Limited, statement of bank accounts of Mr. Shanmugam Ramachandran, Shri K.Rethinam, Shri P. Karikalan & other associated entities, relevant statements of the Officials of WRD, Govt. of Tamil Nadu & Others recorded under Section 50 (2) & (3) of the Prevention of Money Laundering Act, 2002, I have reasons to believe that the material placed before me prima facie discloses that properties are involved in money laundering as discussed herein above and detailed in Schedule



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- I & II.

14.2. The Officials (Executive Engineers and Engineer-in-Chief) of Water Resources Department in their statements recorded under Section 50 of PMLA, 2002, have explicitly admitted regarding illegal and excessive sand mining being done in the state on a large scale and further admitted that no strict action is being taken against the persons involved in illegal mining and their associates.

14.3. Furthermore, the higher officials (the National Head and the Managing Director) of M/s.Kobelco Construction Equipment India Private Limited have submitted the information which reveals that they have sold around 200 excavating machines in last 3-4 years to 15-16 entities only and all of them belonging to Mr S Ramachandran, Mr. K. Rethinam, Mr. P. Karikalan and their associates and all such machines are being used for sand mining. The data submitted by M/s JCB India Limited also disclosed that they have sold 32 excavating machines to Mr.S. Ramachandran, Mr. K. Rethinam, Mr. P Karikalan and their associates out of which 21 are engaged in sand mining activity. The Geolocation data provided by M/s Kobelco India clearly showed that multiple excavator machines have been deployed at each quarries whereas as per the terms & conditions put forth by the Govt. only 2 machines are allowed to work on a single quarry. The



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Geofencing analysis report provided by M/s JCB India Limited has proved that the excavators were not working inside the approved GPS Coordinates of the sand quarries instead the machines were deployed outside/ adjacent to the legalized sand quarries which again points out that the illicit sand mining has occurred.

14.4 The inspection report submitted by M/s Terraqua UAV Solutions Private Limited after exhaustive & methodical analysis aided by scientific and advanced technological tools. revealed that illegal and excessive mining has been done on almost all of the sand quarries.

14.5 A combined analysis of the data provided by the WRD, Govt. of Tamil Nadu; M/s Kobelco India/ M/s JCB India Limited; and inspection report of M/s Terraqua UAV Solutions Private Limited has established that excessive and illegal sand mining has taken place using machinery/ equipment as detailed above.

14.6 The illegally quarried sand has been sold in the market at outrageous price in cash since there is uprise in demand of sand in the Tamil Nadu State and supply of the same is not adequate in the market as per Govt. policies/regulations. Thus, Mr S Ramachandran, Mr P Karikalan, Mr. K. Rethinam and their associates have fetched undue monetary gains from such illegal activity which is nothing but proceeds of crime.



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14.7 The analysis of bank accounts of Mr. Shanmugam Ramachandran, Mr. K. Rethinam and Mr. P. Karikalan and their associated entities/ individuals has revealed that huge cash deposits have been made in their account which was used to make repayments of the loans for purchasing excavators. In order to obscure the original source of the funds and layering of ill gotten wealth, cash deposits have been made in different bank accounts and then a sequence of funds transfers has been made before ultimately making repayment of loans. It is also observed that the excavator machines are being used for generation of proceeds of crime thus leading to commission of offence of money laundering. The part of proceeds of crime/benefits derived or obtained by these entities are used for payment for purchase of excavators and were exhausted, thus, the excavators are being attached as equivalent value of such proceeds or benefits derived.

14.8 It is further revealed from the material on record so far that the excavators are not registered with any independent authority. Thus, the excavators are at disposal of the owners and their ownership can very well be altered without any information/permission to/ of any Authority. In light of these facts, coupled with non-cooperative and evasive approach of the owners of the excavators, there is formidable apprehension that these excavators are likely to be dissipated by them to frustrate the further proceedings under PMLA,



2002.

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14.9 Apart from the excavators, the balance amount lying in the bank accounts as mentioned in the Table - 28 above are also liable to be attached as equivalent value of such proceeds or benefits derived as the same are liable to be speedily transferred, considering regular transactions being in such bank accounts which will lead to frustrate proceedings under this Act.

14.10 Thus, I have reasons to believe that the properties mentioned in Schedule-I & Schedule- II to this Provisional Attachment Order are likely to be concealed, transferred, or dealt with in such a manner may result in frustrating proceedings under this Act. Besides these, the excavators are being continuously used as a tool for commission of offence of money laundering. In the present circumstances, if no provisional attachment order is passed in this case at this stage, it may result in frustrating proceedings under the Prevention of Money Laundering Act, 2002.”

11. The reading of the counter affidavits and the Provisional Attachment Order reveals the following:

(a) that an ECIR was recorded on 11.09.2023 on the basis of four



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FIRs, which disclose scheduled offences;

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(b) that M/s.Terraqua UAV Solutions Private Limited, a company incubated at IIT Kanpur, conducted a study at the instance of the respondents and submitted a report, which revealed that there has been excessive mining in the mining sites and there has been illegal sand mining in the nearby areas; and that the total costs of the sand mined in excess of the mining sites in the outside areas were about Rs.4730 Crores, whereas the revenue in the books of accounts of WRD has been shown as Rs.36.45 Crores;

(c) that on enquiry from M/s.Kobelco Construction Equipment India Private Limited and M/s.JCB India Limited (manufacturer & supplier of excavator/ Poclain machines) it is revealed that 203 excavators, which were mainly used for sand mining were sold to a group of 15 persons/entities including the petitioners; that the Geoscanning report obtained from M/s Kobelco Construction Equipment India Private Limited, which contained



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the GPS position of the machines, the Working Hours, Idling Hours, digging hours, swing hours etc., suggested that these machines have worked outside the permitted mining sites, contiguous to the said sites, thereby establishing illegal sand mining; that it also revealed that multiple excavators were working simultaneously on a single sand mining site, whereas as per the conditions of the Government only two machines were allowed to work in a single quarry;

(d) The statement of one Ashokan Muthaiah, the then Engineer-in-Chief in Water Resources Department, Govt. of Tamil Nadu, that the private contractors indulged in excess sand mining and the excess sand mining was loaded in lorries and sold directly to private persons without routing through the Government depot; and that the excess sand mining was prevalent in the State and no efforts/remedial measures are being taken by the Water Resources Department and other concerned Departments to curb the same;

(e) that the statement of one S.Lenin Francis, the Executive Engineer of Mining and Monitoring Division, Villupuram would show that excess



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sand mining has been done and the mining areas are beyond the precise area plan and sand excavated within legally permitted limits is shown in the books and records of WRD as Revenue and that illegal sand mining is not recorded anywhere; and

(f) that the bank accounts of some of the petitioners reveal that huge deposits have been made in their account, which were used for the repayment of loans for purchasing the excavator; that in order to obscure the original source of funds, cash deposits have been made in different bank accounts and then a sequence of funds transfers has been made before ultimately making the repayment of loans;

12. The question involved in the instant Writ Petitions in our view is not whether there is illegal sand mining in the State. The question is whether, even assuming that the respondents have material to show that there was illegal sand mining and it had generated huge proceeds, they would be entitled to initiate action under PMLA, in the absence of a scheduled offence investigated by any other investigation agency and



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determination of proceeds of crime.

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13. Before we answer the said question, we would like to deal with the other submission of the learned Additional Solicitor General.

14. The learned Additional Solicitor General submitted that when the interim order was passed by this Court in a connected Writ Petition filed by the State and the Collectors of some of the Districts in the State, challenging the summons issued to them, the respondents had challenged the said order before the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) 1959 – 1963/2024. The Hon'ble Supreme Court in the said Special Leave to Appeal, had made the following observations:

“4. The impugned summons have been issued by the petitioner - ED in exercise of the powers conferred upon it under Section 50 (2) of the PMLA, which reads as under:-

“(2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.”



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5. Sub-section (3) of Section 50 thereof being relevant,
reads as under: -

"(3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required."

6. From the bare reading of the said provisions, it clearly transpires that the concerned officers as mentioned therein, have the power to summon any person whose attendance he considers necessary, either to give evidence or produce any record during the course of investigation or proceeding under the PMLA. Since, the petitioner - ED is conducting the inquiry/ investigation under the PMLA, in connection with the four FIRS, namely (I) FIR No. 08 2018 dated 23.08.2018 registered by V&AC, Thanjavur, under Sections 120 (B), 421, 409, 109 of IPC and Sections 13(1)(c), 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (P.C. Act) r/w 109 of IPC etc.; (II) FIR No. 03 2020 dated 20.10.2020 registered by V&AC, Dindigul under Sections 41, 109 of IPC and Section 7(a) of P.C. Act; (III) FIR No.02 2022 dated 05.02.2022 registered by V&AC, Theni under Sections 7, 13(c), 13(1) (d) (1), 13(1)(a) r/w 13(2) and 12 of P.C. Act, Sections 120 (B), 167, 379, 409, 465, 468, 471, 477 r/w 109 of IPC and Sections 7, 8(1), 13(1)(a) r/w 13(2) and 12 of PC Act, as amended; (IV) FIR No. 68/2023 dated 25.04.2023 registered by Murappanadu Police Station, Thoothukudi District, under



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Section 449, 332, 302 and 506 (2) of IPC, and since some of the offences of the said FIRS are scheduled offences under PMLA, the same would be the investigation/proceeding under the PMLA, and the District Collectors or the persons to whom the summons are issued under Section 50 (2) of the Act are obliged to respect and respond to the said summons.”

7. The Writ Petitions filed, at the instance of the State Government, challenging such summons issued to the District Collectors prima facie appears to be thoroughly misconceived, and the impugned order passed by the High Court also being under utter misconception of law, we are inclined to stay the operation of the impugned order.”

15. After the interim orders passed by this Court, which were impugned in the above Special Leave to Appeal and before the above said order was passed by the Hon'ble Supreme Court, this Court had passed interim orders on the Writ Petitions filed by some of the petitioners and granted stay of the summons issued to them. Even after this Court had passed the orders of interim stay of the summons, it was represented by some of the petitioners that their properties were attached by Provisional Attachment Order and in some cases, after attachment, Original



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Applications, were filed before the adjudicating authority for confirmation and Writ Petitions were filed challenging the same. We had granted interim orders in those Writ Petitions as well. Against one such interim order, the respondents had filed Special Leave to Appeal (Crl.) Nos. 3358 – 3360/2024 and the Hon'ble Supreme Court was pleased to pass the following orders:

*“Proceedings before the High Court will continue.
The petitioners, who are the respondents before the High Court, will file their counter affidavit/reply, within three weeks.”*

16. The learned Additional Solicitor General fairly conceded that the respondents had prayed for the stay of interim orders passed by this Court and had also referred to the orders passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) 1959 – 1963/2024 to pray for the stay of the orders passed by this Court. However, the Hon'ble Supreme Court had passed the above order, observing that the proceedings before this court would continue in respect of the Writ Petitions filed by the petitioners. Therefore, we are of the view that we are obliged to consider the questions



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raised and examine whether the respondents are right in initiating action under PMLA against the petitioners.

17. We had extracted the facts and material relied upon by the respondents for initiating action against them. The respondents have proceeded on the premise that a scheduled offence has been committed and that it has generated proceeds of crime. Neither in their counter nor in any of the Provisional Attachment Orders, the respondents have spelt out the exact scheduled offence committed by the petitioners. That apart, they have also not spelt out as to whether an FIR has been registered for a scheduled offence said to have been committed by either the petitioners or someone else whose proceeds of crime are held by the petitioners. Above all, the exact proceeds of crime, have not been determined. The necessity to determine the proceeds of crime, which is quintessential for initiating action, has been reiterated by the Hon'ble Supreme Court in ***Vijay Madhanlal Choudhary's case (cited supra)***. The relevant portion reads as follows:

“251. The "proceeds of crime" being the core of



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the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act - so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act For being regarded as proceeds of crime, the property associated



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with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.

252. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification



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and not to increase the width of the main definition "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act.

253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum For, the



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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.

..

281. The next question is: whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be



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regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.

282. Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under



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Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence case, contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

283. Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.

284. In other words, the Authority under the 2002 Act, is to prosecute a person for offence of money-



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laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process.

....

467 (v) (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



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through him.”

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18. (a) The above observations make it very clear that in order to assume jurisdiction to proceed under the PMLA, the respondents have to first satisfy that there is a scheduled offence that has been committed and the same is registered with jurisdictional Police or pending enquiry by way of a complaint before the competent forum.

(b) Secondly, the expression 'proceeds of crime' has to be construed strictly. To consider a property as 'proceeds of crime', it must be derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.

(c) Possession of unaccounted property or illegal money cannot be considered as proceeds of crime unless it is associated with the scheduled offence.



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(d) that the authorities under the PMLA cannot resort to action against any person on the assumption that the property acquired from them must be the proceeds of crime and that a scheduled offence has been committed unless the same is registered by the jurisdictions police or pending enquiry by way of a complaint before the competent forum.

19. The above observations made by the Hon'ble Supreme Court are self-explanatory and answer the issues involved in the instant Writ Petitions. However, the learned Additional Solicitor General submitted that the Act contemplated two types of action and is an amalgam of civil and criminal proceedings; and that in order to initiate civil proceedings, registration of FIR is always not necessary and relied upon the second proviso to Section 5 (2) (b) of the PMLA, and the observations made by the Hon'ble Supreme Court in paragraph 290 in ***Vijay Madhanlal Choudhary's case (cited supra)*** is extracted hereunder for better understanding.

“290. As a matter of fact, prior to amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. We must



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hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 of the Act registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with the scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including prevent and regulate the commission of offence of money-laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond appropriately to such information, the authorised officer under the 2002



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Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act.”

The above observation, in our view, would make it clear that the power is vested with the respondents to attach properties, even in the absence of a preregistered case, only if urgent measures need to be taken. If paragraphs 253 and 290 are read together, it would make it clear that action for Provisional Attachment can be resorted to in exceptional cases where urgent measures are required to be taken, and it cannot be resorted to as a matter of routine.

20. In the instant case, we are convinced that neither the FIRs relied upon by the respondents nor the reasons given by the respondents for initiating proceedings under PMLA warrant an emergent action. We may note here that though the Provisional Attachment Orders were passed as



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early as in January 2024, the respondents have not taken any action to inform the concerned jurisdictional Police about the commission of any scheduled offence by the petitioners or any other person through whom the petitioners are dealing with the proceeds of crime. Strangely, the respondents have chosen to write a letter purporting to be communication under Section 66 (2) of the PMLA, on 13.06.2024, to the Director General of Police. In the said letter, the materials that were available to the respondents as early as January 2024 were reiterated. There was no reason as to why the respondents had suddenly discovered the need to send a letter on 13.06.2024, when the matters were heard by this Court on 12.06.2024.

21. Be that as it may. We find that the delayed letter only suggests that there were no urgent measures required to be taken by the respondents so as to warrant action even before the registration of the FIR. The letter also suggests that there is no FIR registered for the scheduled offences that had generated proceeds of crime.

22. An attachment of property would result in serious consequences



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for the concerned persons and cannot be based on assumptions made by the respondents as observed by the Hon'ble Supreme Court. The FIRs relied upon by the respondents are not even remotely connected to the petitioners. There are no other FIRs as on date to connect the alleged proceeds of crime in the possession of the petitioners in connection to any scheduled offence. In the Provisional Attachment Order, which is challenged in W.P.No.3047 of 2024, the respondents were unable to justify as to how they arrived at the conclusion that the value of the properties attached would be equivalent to proceeds of crime. There is absolutely no discussion as to what is the proceeds of crime and how they had arrived at that figure. Even if there is proceeds of crime, the respondents cannot assume jurisdiction to attach all other properties on the premise that they were ill-gotten. The Schedule to the Attachment Order suggests that all the money that is lying in the bank accounts were also subject matter of the attachment. In this regard, we are reminded of the observations made by the Hon'ble Supreme Court in ***Bhajan Lal's case (cited supra)***, which read as follows:

“60. The sum and substance of the above deliberation results in a conclusion that the investigation of an offence is



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the field exclusively reserved for the police officers whose powers in that field are unfettered so long as the power to investigate into the cognizable offences is legitimately exercised in strict compliance with the provisions falling under Chapter XII of the Code and the courts are not justified in obliterating the track of investigation when the investigating agencies are well within their legal bounds as aforementioned. Indeed, a noticeable feature of the scheme under Chapter XIV of the Code is that a Magistrate is kept in the picture at all stages of the police investigation but he is not authorised to interfere with the actual investigation or to direct the police how that investigation is to be conducted. But if a police officer transgresses the circumscribed limits and improperly and illegally exercises his investigatory powers in breach of any statutory provision causing serious prejudice to the personal liberty and also property of a citizen, then the court on being approached by the person aggrieved for the redress of any grievance, has to consider the nature and extent of the breach and pass appropriate orders as may be called for without leaving the citizens to the mercy of police echelons since human dignity is a dear value of our Constitution. It needs no emphasis that no one can demand absolute immunity even if he is wrong and claim unquestionable right and unlimited powers exercisable up to unfathomable cosmos. Any recognition of such power will be tantamount to recognition of 'Divine Power' which no authority on earth can enjoy."



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Therefore, while we agree with the submissions made by the learned Additional Solicitor General that this Court should not ordinarily interfere with the investigation, but, whenever we find that the investigation/inquiry is proceeding beyond the circumscribed limits, we have a duty to interfere. To borrow the words of the Hon'ble Supreme Court, we cannot allow the citizens to be at the mercy of such investigating officers. Since the very action to initiate proceedings under the PMLA is without any basis, we are not impressed with the submissions made by the Additional Solicitor General that this Court would not interfere in proceedings when there is an alternative remedy. Therefore, the judgments relied upon by the learned Additional Solicitor General are not applicable to the facts of the instant case.

23. We are also aware of the legal position that in order to prosecute/ initiate action against a person under the PMLA, it is sufficient if it is shown that he is in possession of or otherwise dealing with the proceeds of crime and he need not be an accused in the predicate offence. There cannot be any quarrel with that proposition. However, it has to be established that



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the person against whom an action is sought to be taken, is involved with the proceeds of a crime, derived from a scheduled offence. We are also conscious of the fact that the ECIR is an internal document and does not have any statutory recognition. However, that does not mean that even if any excesses are pointed out, we have no right to interfere with the further action of the respondents. Therefore, we are of the view that the impugned actions insofar as they relate to the petitioners are liable to be quashed.

24. However, the above observations are based only on the interpretation of the provisions of PMLA and on the basis of the observations of the Hon'ble Supreme Court in ***Vijay Madhanlal Choudhary's case (cited supra)***. We have not expressed any opinion on the correctness or otherwise of the allegations or materials collected by the respondents in support of their case that there is illegal sand mining in the State and that the petitioners played an active part in the illegal sand mining and had generated huge illegal money. We are only concerned with the procedure adopted by the respondents. Even assuming that the respondents have the object to curb the illegal sand mining in the State, the procedure



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prescribed under the law cannot be violated. The four FIRs which were the basis for recording the ECIR, are not even remotely connected to the petitioners. The other reasons assigned by the respondents in the provisional attachment order and in the counter affidavits to justify their action against the petitioners do not satisfy the requirements under the PMLA, as reiterated by the Hon'ble Supreme Court in ***Vijay Madhanlal Choudhary's case (cited supra)***.

25. The respondents' case is that there are other FIRs and the State of Tamil Nadu is refusing to share those particulars with the respondents. If that is the case, the remedy lies elsewhere. We are also informed that the respondents have filed a petition before the Hon'ble Supreme Court for a direction to the State of Tamil Nadu to share the information.

26. We are thus of the view that unless an information with regard to any case in the scheduled offence is registered and such an offence has generated proceeds of crime, which is dealt with by the petitioners, no action can be initiated. As stated earlier, the materials collected and the



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reasons shown in the Provisional Attachment Order, even if accepted to be true only suggests that the respondents have unearthed large scale illegal sand mining and that may have generated illegal money.

27. The Hon'ble Supreme Court in ***Vijay Madhanlal Choudhary's case (cited supra)***, has observed that even assuming that the money obtained by the petitioners is ill-gotten, in the absence of any scheduled offence, that has resulted in proceeds of crime, the respondents cannot assume jurisdiction to initiate action under PMLA. However, we would also make it clear that the respondents would have every right to initiate such action to ensure that the scheduled offence is registered and is investigated. Till such time, the properties of the petitioner cannot be subjected to attachment and the respondents otherwise cannot initiate any action under the PMLA. One cannot put the cart before the horse.

28. Therefore, we are of the view that the impugned actions, which are challenged in the Writ Petitions, are without jurisdiction and they are



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liable to be quashed and as such, stand quashed.

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29. In view of the above

(a) The respondents shall not continue further action pursuant to the ECIR, in so far as the petitioners are concerned, till such time the statutory and other legal requirements that we have pointed above are complied with.

(b) The Provisional Attachment Orders impugned in the Writ Petitions are quashed.

(c) The Original Applications impugned in the Writ Petitions, seeking confirmation of the Provisional Attachment Order, are quashed.

(d) The Writ Petitions stand ordered accordingly. No costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

(M.S.R.,J.) (S.M.,J.)
16.07.2024



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Index: Yes/No

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Neutral Citation : Yes / No

Speaking / Non-Speaking Order

dk/ars

Copy to:-

1.The Secretary,
Union of India,
Department of Revenue, Ministry of Finance,
North Block, New Delhi – 110 001.

2.The Assistant Director,
Directorate of Enforcement,
Shastri Bhawan, 3rd Floor, 3rd Block,
B Wing No.26, Haddows, Road,
Chennai – 600 006.

3.The Additional Chief Secretary to Government,
State of Tamil Nadu,
Water Resources Department,
Fort St George, Chennai – 600 009.



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M.S.RAMESH,J.

AND

SUNDER MOHAN,J.

dk/ars

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Dated: 16.07.2024