IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.RC.No.1876 of 2023
and Crl.MP.No.17855 of 2023

S.Durga Prasad ... Petitioner

Vs.

Assistant Director
Directorate of Enforcement
Directorate of Revenue Ministry of Finance,
Government Of India
2nd and 3rd Floor, Murugesa Naicker Complex
No.84, Greams Road, Thousand lights
Chennai – 600 006. ... Respondent

Prayer: Criminal Revision is filed under Section 397 r/w.401 Cr.PC to set aside the order of the lower Court in Crl.MP.No.6211 of 2023 in CC.No.57/2018 dated 08.09.2023 on the file of the XIII Additional Special Judge for CBI Cases, Chennai.

For Petitioner : Ms.L.Infant Dinesh

For Respondent : Mr.P.Sidhartha, SPP for ED.

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

Under assail is the order dated 08.09.2023 passed by the XIII Additional Special Judge for CBI Cases, Chennai in Crl.MP.No.6211 of 2023 in CC.No.57 of 2018 dated 08.09.2023.

2. The facts in nutshell reveals that the petitioner/accused entered into criminal conspiracy with one Mr.G.Elumalai and Mr.J.Manigandan in order to obtain medical seat for his daughter in Saveetha University, Chennai by abusing his official position and given instructions to conduct inspection in Saveetha Group of Institutions. On 19.03.2024, the search team formed at the instruction of the petitioner/accused and conducted inspection, search and made seizures from Saveetha Group of Institutions.

2.(i)The petitioner/accused was holding the post of Regional Commissioner, Employment Provident Fund Organisation (EPFO), Chennai. The accused could not secure medical seat for his daughter and demanded illegal gratification of Rs.50lakhs from the Saveetha Group of Institutions and subsequently reduced the illegal gratification from Rs.50 lakhs to Rs.25 lakhs as bribe money to condone the irregularities.

2(ii). On 17.01.2016, the CBI team seized an amount of Rs.14.50 lakhs from accused and Rs.40,000/- from Sudalaimuthu who was later arrested and remanded by CBI.

2.(iii). Since, the schedule offence has been registered ECIR was recorded by the Enforcement Directorate under the provisions of Prevention of Money Laundering Act (herein after referred to as PMLA) in ECIR CEZO/1/2016 dated 11.02.2016. Consequently investigation was launched by the Enforcement Directorate, statements under Section 50(2)(3) were recorded. The documents were collected and consequently the Enforcement Directorate filed the prosecution complaint under Section 45(1) r/w. 3 & 4 of PMLA Act.

2.(iv). The Enforcement Directorate made a provisional attachment of the assets of the accused and the adjudicating authority confirmed the provisional attachment in proceedings dated 28.08.2018 under Section 8 of the PMLA.

3. The learned counsel for the petitioner would mainly contend that the

petitioner filed petition under Section 309 Cr.PC to defer trial commenced under PMLA. The petition was filed on the ground that in the event of acquittal in the predicate offence, the petitioner is entitled to be acquitted in the PMLA case.

4. The Hon'ble Supreme Court in *Vijay Madanlal Choudhry case* reiterated that the discharge or acquittal in the predicate offence is a ground to seek exoneration from the PMLA proceedings.

5. Therefore, the trial Court has to proceed with the predicate offence at the first instance and after disposal of the predicate offence, PMLA case is to be taken up for trial and disposal. Since, the trial Court disagreed with the said ground, the present petition came to be instituted before this Court.

6. The Special Public Prosecutor would oppose by stating that the legal position is otherwise and the predicate offence trial is not dependant on the PMLA trial. Both are distinct and different and the provisions of the PMLA would amplify, the said position and further judicial verdicts are also in support of the respondent. Thus rejection of the grounds raised by the petitioner by the trial Court is in consonance with the judicial pronouncements.

7. Prima facie case against the petitioner for the offence of money laundering in the complaint filed by the Enforcement Department are extracted hereunder :-

"17. Investigation under PMLA, with enquiry of the persons acquainted with the subject transaction and examination of the documents evidencing the circumstances and the events that had transpired, reveal, inter-alia the following:-

18. Shri Durga Prasad, during March 2014, entered into a conspiracy with S/Shri G.Elumalai and J.Manigandan, Enforcement Officers of Sub-Regional Office, EPFO, Ambattur, Chennai in order to obtain a medical seat for his daughter, Ms Pratheeba Prasad in Saveetha University, Chennai by abusing his official position.

19. Accordingly, a squad consisting of J.Manigandan, G.Elumalai and Subramanian conducted inspection, search and seizure at Establishments pertaining to M/s Saveetha Group of Institutions on 18.03.2014. In pursuance to the conspiracy Shri Durga Prasad visited M/s Saveetha Group of

Institutions during 2014 and requested Dr. Veeraiyan, Chancellor of M/s Saveetha Group of Institutions for medical seat for his daughter Ms Pratheeba Prasad and submitted application dated 22.03.2014. However, she di not get her medical seat in Saveetha University due to poor ranking n the entrance exam and cut off mark. Ms Pratheeba Prasad joined Balaj? Medical College, Chrompet, Chennai. As an aftermath, the EPFO, Sub-Regional Office, Ambattur initiated enquiry against the M/s Saveetha Group of Institutions.

20. Disappointed with response of M/s Saveetha Group of Institutions, in pursuance of the criminal conspiracy, Shri Durga Prasad, through his subordinates, namely S/Shri Elumalai and Manigandan, demanded Rs. 50 lakhs as illegal gratification from M/s Saveetha Group of Institutions represented by Dr Veeraiyan, Shri Sengottaiyan, M.Saravanan. Finally, illegal gratification amount was settled to Rs.25 lakhs. In furtherance to the criminal conspiracy, Shri Durga Prasad called Sudalaimuthu to collect the cash from the representatives of M/s Saveetha Group of Institutions and keep *it with him.*

21. On the instructions of Dr Veeraiyan, the Administrative Officer of Saveetha Group of Institutions viz., Shri M Saravanan took the advance amount of illegal gratification of Rs.15 lakhs from bank lockers held with Karur Vysya Bank, PH Road, Saveetha Campus and along with Shri Sengottaiyan proceeded to meet Shri Sudalaimuthu. Shri M. Saravanan in coordination with Elumalai, Manigandan and Durga Prasad handed over a cover containing cash to Sudalaimuthu. Shri M.Saravanan and Shri. Sengottiyan informed Shri J Manigandan about the handing over the cash to Shri Surianarayanan, Manager of Shri Sudalaimuthu, as per the instructions of Shri Sudalaimuthu. Shri Saravanan recorded the transactions in a register maintained for the operation of the lockers held a Karur Vysya Bank. It revealed that the register seized from the possession of Shri M Saravanan contained the entry to the effect that on 12.01.2016 "EPFO expenses advance" Rs. 15 lakhs. Thereafter, the said locker was opened and the cash of Rs.2,53,04,160/- found in *the locker was seized by CBI.*

24. In view of the foregoing examination and subjective satisfaction, in the case investigated under the PMLA vide ECIR No.CEZO/16/2016 dated 16.08.2016, against the accused persons covered under FIR/ Charge Sheet filed by CBI, ACB, Chennai including Shri Durga Prasad and Shri Sudalaimuthu and others have conspired together to receive the illegal (gratification of Rs. 15 Lakhs from Dr.Veeraiyan, Chancellor of M/s Saveetha Group of Institutions to settle certain pending issues with the Employees Provident Fund Organisation. Further, while committing the said scheduled offences, Shri Durga Prasad unhesitantly camouflaged the illegal gratification held in his possession, as loan amount borrowed for his friend Shri Raja, with a criminal intention to alienate the crime proceeds, would demonstrate the aggravation on the part of Shri Durga Prasad, by projecting the same as loan amount. The above act of Shri Durga Prasad would reflect the clear intention to alienate the cash amount of Rs. 14,50,000/- in his possession, acquired out of criminal *activities, investigated for the offence of money laundering under PMLA.*

25. Having taken into consideration the facts and circumstances of the case and evidences available on record including the aforesaid material, the Deputy Director had reasons to believe that in the case investigated under the PMLA, Shri S.Durga Prasad, Shri S.Sudalaimuthu and others received the illegal gratification of Rs.15 lakhs from Dr. Veeraiyan, Chancellor of M/s Saveetha Group of Institutions, and projected the same as loan amount to friend and thus the following properties involved in money laundering:-

MOVABLE PROPERTY

SL.No	*Description*	*Value*	*Present Status*
1	*Cash recovered by LEA from Shri Durga Prasad on 17.01.2016*	*Rs.14,50,000/-*	*Custody of Court*
2	*Cash recovered by LEA from Shri G.Sudalaimuthu on 17.01.2016*	*Rs.40,000/-*	*Custody of Court*

		Total	*Rs.14,90,000/-*	

30. The investigation carried out by the Directorate of Enforcement has revealed so far that the following Accused person have indulged in the Offence of Money Laundering under Section 3 of PMLA, 2002, punishable under Section 4 of this Act".

8. The respondents have stated that the offence of Money Laundering, consequent investigation and the subsequent Complaint under PMLA are independent of the investigation and the trial of the predicate offence. The commission of predicate offence merely acts as a trigger point for initiation of investigation under PMLA and since it is a distinct offence the persons who aided in the process of Layering, Integration and Projection of proceeds of crime might be third parties to the schedule offence and hence would not have been arrayed as an Accused in the Schedule offence. The Respondent on receiving information about commission of the Schedule offence has registered an ECIR and after conducting investigation duly as contemplated under PMLA, has filed the Prosecution Complaint U/s. 44(1) of PMLA along with all the relevant evidence both oral and documentary.

8.1 It is common knowledge of interpretation that any judgment is to be taken as its whole but the Petitioner has conveniently extracted the portion which are beneficial to his interest. It is pertinent to take note of the following extracts from the same case of ***Vijay Madanlal Choudhary vs. Union of India and others, reported in 2022 SCC Online 929*.** The relevant portion is extracted hereunder

For ease of referance:

"269. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property. or claiming it to be so. Thus, involvement in any one of such process

or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the trial of the scheduled offence and the trial in connection with the money-laundering are in any way required to proceed independently. That is because, the offence of money-laundering by itself is an independent offence in respect of the process and activity connected with the proceeds of crime which may have been derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence"

8.2 Further the Government of India vide the Act in the year 2019 inserted explanation to para (d) of Section 44 of PMLA wherein categorically clarified that *"(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trail of both sets of offences by the same court shall not be* *construed as joint trial".*

9. In the case of **The Assistant Director (PMLA), Directorate of Enforcement, Chennai v. Ashok Anand** in **Crl.RC.No.1262 of 2024 dated 25.09.2024**, this Court held as follows :-

> *"17. In the present case, an application filed under Section 309 Cr.P.C. was allowed. The powers conferred on the High Court under Section 397 (1) would be sufficient to entertain the criminal revision petition against the order passed under Section 309 Cr.P.C. When the High Court is conferred with the powers to verify the correctness and legality of the order, the revision petition would lie. Thus, the maintainability point raised deserves to be rejected.*
>
> *18. The learned Senior Counsel for the respondent mainly contended that in the event of an acquittal in the criminal appeal in the schedule offence, the respondent is entitled to be exonerated from the PMLA proceedings. In this context, it is relevant to consider the scope of PMLA.*

19. Section 65 of PMLA stipulates that "Code of Criminal Procedure, 1973 to apply."Accordingly, the provisions of Code of Criminal Procedure, 1973 shall apply, insofar as they are not inconsistent with the provisions of the Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.

20. Section 65 of PMLA stipulates that the special enactment namely PMLA would prevail over Cr.P.C. Thus, the reliance placed on by the learned Senior Counsel would have no assistance to support the case of the respondent. When the procedures contemplated under PMLA are independent and distinct to other penal laws, the same would prevail over the general provisions and the commencement of proceedings under PMLA, thereafter will be a standalone process.

21. Section 71 of PMLA states that the provisions of PMLA shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

22. Holistic reading of the provisions of PMLA would indicate that schedule offence is prerequisite condition for initiation of proceedings under PMLA. Once proceedings are initiated under PMLA by recording ECIR, thereafter the investigation and offence of money laundering traced out by the Enforcement Directorate become independent and to be dealt with under the provisions of PMLA and the application of Cr.P.C is undoubtedly limited in view of Section 65 and 71 of PMLA.

23. ECIR cannot be equated with FIR. The schedule offence is quintessential for initiation of proceedings and recording of ECIR but both the offences cannot be placed *on the same footing. PMLA proceedings are distinct and the said Act is a complete code in itself. Whereas scheduled offences are tried under other penal laws. When two documents are different and distinct in their own nature, a combined reading and implication cannot be adduced to them.*

24. ECIR is born from FIR, but once the ECIR is born, the umbilical cord that connects the ECIR with FIR looses its relevance and the ECIR becomes an independent document in itself. Consequently, a new life in the form of ECIR emerges, which has breath on its own without the support of FIR. So, the FIR and ECIR become two different documents and both tend to take shape on its own, independent of each other.

25. "Proceeds of Crime" is the focal point for an ECIR, whereas scheduled offence is dealt with under the FIR. Further reliance may be relevant with reference to the *judgment in the case of Vijay Madanlal Choudhary vs. Union of India and Others reported in 2022 SCC Online sc 929 and Rajinder Singh Chada vs. Union of India1.. Both these judgments have noted the distinction between FIR and ECIR. More so, ECIR is treated as an internal document.*

26. In Vijay Madanlal's case (supra), the relevant portion to support this contention is, as extracted below;

"457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same

authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. <u>There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the Accused unlike Section 154 of the 1973 Code.</u> The fact that such

ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard."

27. Further, in the case of Rajinder Singh Chada vs. Union of India cited supra, the Delhi High Court held as follows;

"32... Since the ECIR has not been equated with a FIR and has been held to be an internal document, there cannot possibly be a restriction to bringing on record on any subsequent scheduled offence registered by way of an FIR alleged to have been committed in respect of the same transaction which was the subject matter of such ECIR.

34 ...It is clarified that since this Court is of the opinion that the ECIR, as explained in Vijay Madanlal Choudhary (supra) cannot be equated with an FIR and as *per the stand of the department, the same is only for administrative purposes, there is no impediment in taking the third FIR on record which related to the same project forming the basis for registration of the first two FIRs, resulting in initiation of the impugned ECIR."*

28. In cases as such, where initiation of PMLA proceedings prima facie proceeds of crime has been placed, there arises a pertinent question as to whether the Court can stall such proceedings in spite of preliminary findings of the existence of proceeds of crime. The conscience of this Court is directed towards delivery of justice and though the FIR of schedule offence stands quashed or the trial ended with an order of acquittal on mere technical grounds without analysing the merit of the schedule offence, then the case is to be considered on its merits. When "proceeds of crime" is placed in parallel investigation by the Enforcement Directorate, this gives rise to another question once *proceeds of crime in prima facie unearthed and ECIR been brushed aside on the ground that the criminal appeal against an order of conviction is pending.*

29. In the present case, PMLA proceedings are set in motion and prima facie findings have already made, investigation completed and complaint was filed. The Court has to frame charges and proceed with the trial. At this stage, it is not a viable ground to take a view that pendency of criminal appeal against an order of conviction is a bar for the continuance of trial with reference to offence under PMLA.

30. A blanket application of the observations made by the Apex Court in Vijay Madhanlal Choudhary's case will not advance the object set out under PMLA, 2002 and in turn will defeat its primary object. The Vijay Madhanlal Choudhary's case is a binding precedent for all Courts below and on careful application of the judgement, *analysing on a case to case basis, the output shall defer for each case and not render the same result.*

31. Therefore, the preposition laid down in Vijay Madhanlal Choudhary's case being applied with reference to the petition filed for quashment of ECIR or complaint need not be applied in the present case, in view of the fact that the respondent has been convicted in the schedule offence and the conviction as on today stands against him and mere pendency of the criminal appeal need not be a ground for postponement of trial in PMLA case.

32. In any angle, pendency of a criminal appeal cannot be an absolute bar for proceeding with the PMLA trial, which is now being undertaken by the Special Court for PMLA. Both the trial in the schedule offence and the trial in the PMLA case are distinct and different and the nature of offences are distinguishable.

33. The wider implications and ramifications of the offence of money laundering cannot be equated with the offence under the other penal laws. The objective of PMLA are to protect the economic status of our Country. Therefore, we are of the considered opinion that the trial court has committed an error in postponement of PMLA trial during the pendency of the criminal appeal. The same claim may be made by the convicted persons on the ground that they have a right of further appeal to the Supreme Court and considering all these facts, we are inclined to interfere with the order impugned.

10. In the case of **Pallab Singh v. The Deputy Director, Directorate of Enforcement, Chennai** in **Crl.RC.No.1697 and 1699 of 2022 dated 30.08.2024**, this Court reiterated the principles again as under :-

"14. With reference to the question raised, whether mere acquisition of Proceeds of Crime/accumulation of money by indulging in corrupt practice will fall under the ambit of

Section 3 of PMLA or not, has been replied by the respondents as under :-

"Reliance is placed on the ruling laid down by the Hon'ble Supreme Court of India in the case of Vijay Madanlal Choudhary vs Union of India, had stated as follows:

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

(b) Independent of the above, we are clearly of the

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

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

15. Therefore, it is submitted that the Act of the Petitioner, indulging in corrupt practice, amounts to an offence of money laundering as per the definition under Section 3 of PMLA and the Petitioner can discharge the burden under Section 24 of PMLA by establishing that the attached properties were not involved in money laundering and that they have not committed any offence under PMLA only during

trial. Prima facie case is made out against the Petitioner and he cannot be discharged at this stage.

16. Hence the contention that the mere possession of tainted money was not an offence at that time cannot be countenanced in view of the clear dictum laid down by the Hon'ble Supreme Court. Therefore, the ground raised by the Petitioner that the offence of money laundering is not made in this case is rejected."

17. Whether retrospective effect can be given to amendment made to Section 3 of PMLA, though the predicate offence was registered in the year 2009, was considered by the Hon'ble Supreme Court of India in the case of *Vijay Madanlal Chaudhary Vs. Union of India* cited supra and the relevant paragraph is extracted as under:

"270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to

indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act-for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date *is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all".*

Hence, the learned counsel for the respondent submits that the said contention under para (a) to (i) are liable to be dismissed.

18. The expression "money-laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of

tainted property in the formal economy to constitute an act of money-laundering. This is amply clear from the original provision, which has been further clarified by insertion of Explanation vide Finance (No. 2) Act, 2019, Section 3, as amended. The act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money-laundering. In other words, it is not open to read the different activities conjunctively because of the word "and". If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily frustrated by the simple device of one person possessing proceeds of crime and his accomplice would indulge in projecting or claiming it to be untainted property so that neither is covered under Section 3 of the 2002 Act. Thus, a person who is as longer as in possession and enjoyment of Proceeds of Crime, PMLA can certainly be invoked. The subsequent amendments made to the PMLA in respect of Section 3 of PMLA has been upheld by the Hon'ble Supreme Court of India on the premise that all the said amendments are clarificatory in nature.

19. Whether mere receipt of bribe money is an act of money laundering or not is elaborately considered by the Apex Court of India in the case of **Y.Balaji Vs. Karthik Dasari – Manu/SC/0584/2023** as follows:-

"99. It is this bribe money that constitutes the 'proceeds of crime' within the meaning of section 2(1)(u) of PMLA. It is no rocket science to know that a public servant receiving illegal gratification is in possession of proceeds of crime. The argument that the mere generation of proceeds of crime is not sufficient to constitute the offence of money-laundering, is actually preposterous. As we could see from Section 3, there are six processes or activities identified therein. They are, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; and (vi) claiming as untainted property. If a person takes a bribe, he acquires proceeds of crime. So, the activity of "acquisition" takes

place. Even if he does not retain it but "uses" it, he will be guilty of the offence of money-laundering, since "use" is one of the six activities mentioned in Section 3".

20. The Division Bench of this Court, in the case of **Padmanabhan Kishore Vs. Directorate of Enforcement**, supported the views raised by the petitioner in the present revision petition. However, the said case was taken by way of an appeal before the Hon'ble Supreme Court of India by the Enforcement Directorate in the case of **Directorate of Enforcement Vs. Padmanabhan Kishore**. The Hon'ble Supreme Court of India, while reversing the judgment of the Division Bench of this High Court, held as follows:-

"16. It is true that so long as the amount is in the hands of a bribe giver, and till it does not get impressed with the requisite intent and is actually handed over as a bribe, it would definitely be untainted money. If the money is handed over without such intent, it would be a mere entrustment. If it is thereafter appropriated by the

public servant, the offence would be of misappropriation or species thereof but certainly not of bribe. The crucial part therefore is the requisite intent to hand over the amount as bribe and normally such intent must necessarily be antecedent or prior to the moment the amount is handed over. Thus, the requisite intent would always be at the core before the amount is handed over. Such intent having been entertained well before the amount is actually handed over, the person concerned would certainly be involved in the process or activity connected with "proceeds of crime including inter alia, the aspects of possession or acquisition thereof. By handing over money with the intent of giving bribe, such person will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. Without such active participation on part of the person concerned, the money would not assume the character of being proceeds of crime. The relevant expressions from Section 3 of the PML Act are thus wide *enough to cover the role played by such person.*

17. On a bare perusal of the complaint made by the Enforcement Directorate, it is quite clear that the respondent was prima facie involved in the activity connected with the proceeds of crime."

21. The very same Division Bench, in the subsequent judgment in the case of **R.Kannan Vs. Assistant Director, Directorate of Enforcement in Crl.O.P. No. 27174 of 2022 dated 16.12.2022**, followed the ratio laid down by the Hon'ble Supreme Court in the case of Directorate of **Enforcement Vs. Padmanabhan Kishore (supra)**. The Division Bench relied on Paragraph Nos. 14 and 15 of the said judgement which reads as under:-

"14. The further question to be answered is : whether the role played by respondent could come within the purview of Section 3 of the PML Act?

15. Said Section 3 states, inter alia, that whoever *knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-laundering."*

11. In the context of the facts and the judicial pronouncements as stated above, pertinently, Section 44 of PMLA enumerates offences triable by the Special Courts.

12. Explanation (i) & (ii) to Section 44 (1) of PMLA in unequivocal terms removed the doubts and clarifies that "*the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial*"

13. The Prevention of Money Laundering Act is a code in itself and the procedures contemplated are distinct and different. Section 65 & 71 of PMLA clarifies the said position.

14. The complaint under the PMLA has been filed under Section 45 of PMLA, which cannot be equated with the final report in the predicate offence. When the procedures contemplated under the PMLA is distinct and different from that of other penal laws, the special enactment will prevail over the general law. Thus the very ground raised that the PMLA trial is to be kept in abeyance till the completion of predicate offence trial is untenable and meritless.

15. The seriousness of the economic offences and its implications at the national and international level were taken into consideration under the special enactments viz., PMLA.. Therefore, the offences of money laundering are to be dealt with under the provisions of PMLA in stricto sensu.

16. Any attempt to increase the longevity of PMLA trial at no circumstances be encouraged by the Courts. The offences under PMLA is not dependant on the predicate offence after filing of the complaint under section 45 PMLA. The trial must go on, as it is clarified in explanation (i) to Section 44(1) of PMLA. Therefore, we direct the Special Court to proceed with the PMLA trial and conclude the same as expeditiously as possible. However, we made it

clear that the trial must go on uninfluenced by the observation if any made by this Court in the present order, with reference to the facts.

17. Accordingly, the order impugned stands confirmed and consequently, the criminal revision is dismissed.

[S.M.S., J.] **[M.J.R., J.]**

26.11.2024

Index: Yes/No
Speaking/Non-speaking order
tsh

To

Assistant Director
Directorate of Enforcement
Directorate of Revenue Ministry of Finance,
Government Of India
2nd and 3rd Floor, Murugesa Naicker Complex
No.84, Greams Road, Thousand lights
Chennai – 600 006.

2.The Public Prosecutor
High Court Madras.

S.M. SUBRAMANIAM, J.
AND
M. JOTHIRAMAN, J.

tsh

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