In the High Court of Punjab and Haryana, at Chandigarh

Civil Writ Petition No. 29265 of 2023 (O&M)

Reserved On: 22.08.2024
Pronounced On: 04.09.2024

M/s IREO Private Limited

... Petitioner(s)

Versus

Union of India and Another

... Respondent(s)

CORAM: Hon'ble Mr. Justice Sheel Nagu, Chief Justice.
Hon'ble Mr. Justice Anil Kshetarpal.

Present: Mr. Vikram Chaudhri, Senior Advocate
with Mr. Keshavam Chaudhri and Ms. Hargun Sandhu,
Advocates, for the petitioner.

Mr. Puneet Bali, Senior Advocate
with Mr. Sandeep Singh, Mr. Arshdeep Singh,
Ms. Neha Nagpal and Mr. Karan Sirohi, Advocates
for the petitioner.

Mr. Zoheb Hussain, Advocate (through Video Conferencing)
and Mr. Lokesh Narang, Senior Panel Counsel
for the respondent-ED

<u>**Anil Kshetarpal, J.**</u>

1. <u>**Brief Facts of the Case**</u>

1.1 While invoking the extraordinary writ jurisdiction under Article 226 and jurisdiction of Superintendence under Article 227 of the Constitution of India, the petitioner - a corporate entity prays for the following reliefs:-

*"I) In consonance with the principles laid down by the Hon'ble Supreme Court in "**Vijay Madanlal Choudhary Versus Union of India & Others 2022 SCC OnLine SC 929**" Read down and/or Read into Sub-Section (2) of*

Section 66 Prevention of Money Laundering Act, 2002 and hold that:-

a) The only power conferred under Sub-Section 2 of Section 66 to the "Director or any other authority specified by him" is confined to "share the information with the concerned agency for necessary action" in the event of forming opinion "on the basis of information or material in his possession that the provisions of any other law for the time being in force are contravened" and nothing beyond;

b) No power or authority vests with the "Director or any other authority specified by him" to prompt, compel, coerce, force, browbeat or pressurize any private individual to lodge criminal case(s) against any person or entity as contemplated under Section 2(1)(s) of the Prevention of Money Laundering Act, 2002 as any such act would tantamount to blatant illegality, arbitrariness and thus unconstitutional;

II) Set aside and quash the impugned communication dated 14.12.2023 (Annexure P-16) issued by Respondent No. 2, whereby, a questionnaire has been sent to various customers of the petitioner company in a veiled and circuitous attempt to virtually prompt, compel, coerce,

> *force, browbeat, overawe and pressurize them to lodge criminal cases against the company, as such a communication has no legal sanctity under the Act and the same cannot qualify the test of fairness or equity either."*

1.2 The various FIRs were registered against the companies established by the IREO Fund in India. Keeping in view certain facts, the Enforcement Case Information Report (ECIR) No. GNZO/10/2021 dated 15.06.2021 was registered by the Enforcement Directorate (ED) and the prosecution complaint was filed by the ED before the Special Court against Lalit Goyal, the petitioner company and five other companies. A Provisional Attachment Order (PAO) attaching various properties as well as the bank accounts of the petitioner company under Section 5 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as "the 2002 Act") was issued on 14.12.2022 which was challenged before this Court in Civil Writ Petition No. 6121 of 2023 wherein the passing of final order by the Adjudicating Authority was stayed.

1.3 On 21.02.2022, the Special Court took cognizance of the offence and summoned the accused. The ED filed the supplementary prosecution complaint on 04.08.2023 against as many as 52 accused. The co-accused in the first supplementary prosecution complaint filed Civil Writ Petitions No. 27342 of 2023 and 27920 of 2023 seeking quashing and annulment of the proceedings against them in which all further proceedings before the Trial Court were stayed. On 14.12.2023, the ED in order to gather information sent the following questionnaire along with a communication to the various customers of seven incomplete projects of the petitioner:-

> *"(i) What was the nature of booking done in the projects of IREO Group Companies?*
>
> *(ii) What is the built-up / carpet area and purchase price of the said unit?*
>
> *(iii) What was the delivery date promised?*
>
> *(iv) Whether the payment is made in full / part and what is balance amount, if paid in part?*
>
> *(v) Whether delivery of unit booked is made as promised? If yes, when was it made? and if no, since when it is outstanding?*
>
> *(vi) If delivery was not made, was there any negotiation for return of money? If yes, what is the outcome of such negotiation?*
>
> *(vii) Was the money returned? Yes or No.*
>
> *(viii) If no, is any FIR / Complaint has been filed before any forum? If yes, then it's details thereof.*
>
> *(ix) If not filed, then do you wish or plan to file such complaint with respect to your booking with IREO Group?"*

1.4 The petitioner has immediately filed the present writ petition. On the basis of the information gathered/complaints received, the Joint Director, ED, shared information under Section 66 (2) of the 2002 Act with the Special Commissioner of Police, Economic Offences Wing, Police

Station Mandir Marg Complex, New Delhi, leading to the registration of FIR No. 14, dated 12.03.2024, which is pending investigation.

1.5 The ED, in its reply, has stated that the information was sought from the customers of seven incomplete projects of the petitioner company in order to collect material information. On the basis of the material gathered, the involvement of the petitioner, the Directors, the former Directors, the key managerial persons of the IREO Group of companies transpired as the above said key position holders have been involved/played a major role in the criminal activities of cheating and defrauding the customers/investors of the IREO Group of Companies and the IREO Private Limited. The petitioner company on the pretext of purchase of land, plots, booking of flats diverted the funds of the investors and also fudged of the books of accounts so as to siphon off the buyers' money; while concealing the vital information. They also gave false assurance to prospective customers of possessing the necessary permissions to sell and develop the colonies wherein the money against the bookings was pocketed and misappropriated.

1.6 A prosecution complaint under Section 44 and 45 of the 2002 Act for the commission of offence of money laundering is pending before the Special Court at the stage of framing of the charges. Further, during the course of investigation, it was revealed that in addition to the identified proceeds of crime i.e. ₹1,376/- crores, the IREO Group further diverted its funds of more than ₹400/- crores through M3M Group of Companies in Bhiwadi land deal which has never been developed till date. The customers/receipt funds to the tune of ₹404/- crores, collected by the IREO

Private Limited, were acquired and then projected as untainted by routing these funds through some shell companies which were claimed to be unrelated, but during the course of investigation were found to be related to the companies of M3M Group of Companies wherein Basant Bansal is/was the Managing Director while Roop Kumar Bansal and Pankaj were the Directors. During the course of investigation, further survey was also carried out at the business premises of the nine shell entities wherein it was revealed that these entities are the shell companies without any actual business and their offices are in a single narrow room managed by the one-two persons. None of the directors of the said entities, had maintained proper records. Apart from that, necessary workforce as required, as well as other infrastructural facilities including the books of accounts were also found lacking during the survey.

2. **Submissions put forth by the Learned Counsels representing the Petitioner**

2.1 The learned senior counsels representing the petitioner have made the following submissions:-

i) Out of 32 FIRs, 31 FIRs have been quashed/closed, whereas in the last FIR, a settlement has been arrived at and the proceedings have been stayed. They submit that ECIR is based on the predicate offences in the various FIRs, which no more exist. Hence, the ECIR is required to be quashed.

ii) The ED is not repository of the powers which are beyond the Statute. They submit that under Section 66 of the

2002 Act, the ED is only entitled to share information which is in their possession with the concerned agency for necessary action. Hence, the ED has no power to register the FIR.

iii) An attempt to overreach the Statute has been made by the ED as the 2002 Act does not provide for sending questionnaire.

iv) It is not permissible to add new FIRs in the ECIR. It is contended that the new FIR may result in registering of new ECIR but it could not be added in the previous ECIR.

v) The ED is not authorized to solicit information from the allottees and hence, it cannot act as a Judge, Jury and Executioner itself.

vi) A similar information sent to the EOW, Gurgaon, has not been accepted by the police as it was found to be a civil dispute. It is submitted that the ED was entitled to share information with the jurisdictional police. In this case, the jurisdictional Police Station is EOW, Gurgaon, which has refused to register FIR. It is submitted that all the seven projects are located in the area of Gurugram.

vii) The communication dated 14.12.2023 is not on the format of notice as prescribed under Section 50 of the 2002 Act. It has been submitted that the ED has exceeded its jurisdiction by sending such communication. Hence, the same is liable to be quashed. Heavy reliance has been placed on the judgment passed by the Supreme Court in ***Vijay Madan Lal Chaudhary and Others v. Union of India and Others (2022) SCConline SC 729***. The petitioner has also relied upon the following judgments/orders passed by the Supreme Court from time to time:-

Sr. No.	***Case Title and Citation***
1.	***Pankaj Bansal v. Union of India and Others*** *2023 SCC Online SC 1244*
2.	***Harish Fabiani v. Directorate of Enforcement*** *2022 SCC Online DEL 3121 Delhi High Court*
3.	***Prakash Industries Ltd. v. Union of India and Others*** *2023 SCC Online DEL 3336 Delhi High Court*
4.	***V.P.Nandkumar v. Enforcement Directorate*** *2023 SCC Online KER 6848 Kerala High Court*
5.	***Parvathi Kollur and Another v. State by Directorate of Enforcement*** *Criminal Appeal No. 1254 of 2022, Decided on 16.08.2022 (Supreme Court)*
6.	***Indira Patnaik and Another v. Enforcement Directorate and Others*** *W.P (C) No. 368 of 2021 Decided on 03.11.2022 (Supreme Court)*
7.	***M/s V.G.N Developers Pvt. Ltd. v. Directorate of Enforcement*** *S.P (Crl.) No. 10627/2019 Decided on 02.12.2022 (Supreme Court)*
8.	***M.Nagarajan and Another v. Directorate of Enforcement & Others*** *SLP (Crl.) No. 10917/2022 Decided on 23.041.2023 (Supreme Court)*
9.	***Selvi Pushpam Appala Naidu v. Directorate of Enforcement*** *Crl. O.P. No. 2279/2019 Decided on 12.09.2022*
10.	***Directorate of Enforcement v. Selvi Pushpam Appala Naidu and Others*** *SLP (Crl.) Diary No. 19592/2023 Decided on 18.08.2023*
11.	***Indiabulls Housing Finance Limited and Others v. Union of India and Anothe****r 2022 SCC Online DEL 3121*
12.	***M/s Nik Nish Retail Limited and Another v.***

	Enforcement Directorate *CRR No. 2752 of 2018 Decided on 28.11.2022*
13.	***Directorate of Enforcement v. Nik Nish Retail Limited and Others*** *SLP (Crl.) Diary No. 24321/2023 Decided on 14.07.2023*
14.	***Dependra Kumar Panda v. Union of Indi****a Crl. M.C. No. 3059 off 2019 Decided on 13.01.2023*
15.	***Emta Coal Limited and Others v. Directorate of Enforcement*** *W.P.(C) No. 3821/2022 Decided on 10.01.2023*
16.	***Directorate of Enforcement v. Emta Coal Limited and Others*** *SLP (Civil) 15235/2023 Decided on 06.07.2023*
17.	***Muktanand Agro Farming Pvt. Ltd. v. Adjudicating Authority and Others*** *W.P.(C) No. 11474 of 2022 Decided on 16.02.2023*
18.	***Directorate of Enforcement v. Muktanand Agro Farming Pvt. Ltd. and Other****s SLP (Civil) Diary No. 24848/2023 Decided on 25.08.2023*
19.	***Omkar Realtors & Developers Pvt. Ltd. v. Adjudicating Authority and Others*** *W.P.(C) No. 11473 of 2022 Decided on 16.02.2023*
20.	***Directorate of Enforcement v. Omkar Realtors & Developers Pvt. Ltd. and Other****s SLP (Civil) Diary No. 23799/2023 Decided on 04.08.2023*
21.	***Pratap Singh Tiwari and Another v. Directorate of Enforcement*** *CRLP No. 1928/2022 Decided on 07.09.2022*
22.	***Directorate of Enforcement v. M/s Pratap Singh Tiwari and Another*** *SLP (Civil) Diary No. 19609/2023 Decided on 05.07.2023*
23.	***Sri Jayanand Narasannavar and Another v. Directorate of Enforcement*** *CRLP No. 9685/2022 Decided on 25.09.2023*
24.	***Directorate of Enforcement v. M/s Sri Jayanand Narasannavar and Another*** *SLP (Criminal) Diary No. 13442/2023 Decided on 03.07.2023*
25.	***S. Revanna and Another v. Directorate of Enforcement*** *Criminal Revision Petition No. 1010 of 2021 Decided on 25.0.2023*
26.	***Directorate of Enforcement v. M/s S. Revanna and Another*** *SLP (Criminal) Diary No. 24029/2023 Decided on 14.07.2023*
27.	***Pavana Dibbur v. Directorate of Enforcement*** *Criminal Appeal No. 2779 of 2023 Decided on 29.11.2023*

28.	***Rajinder Singh Chadha v. Union of India*** *W.P. (Crl.) No. 562/2023 Decided on 24.11.2023*
29.	***Anjaneya Hanumanthaiah v. Union of India*** *Criminal Appeal No. 1391 of 2024 Decided on 05.03.2024*
30.	***Ram Ludhra v. Directorate of Enforcement*** *Criminal Appeal No. 382 of 2024 Decided on 22.01.2024*
31.	***Yash Tuteja and Another v. Union of India and Others*** *Writ Petition (Criminal) No. 153 of 2023 Decided on 08.04.2024 (Supreme Court)*
32.	***Rajiv Channa v. Union of India*** *Misc. Appeal (PMLA) No. 13/2024 Decided on 08.04.2024 (Delhi High Court)*
33.	***Nayati Healthcare and Research Private Limited and Others*** *v. Union of India and Another W.P. (Crl.) No. 2871/2022 Decided on 11.10.2023 (Delhi High Court)*
34.	***Directorate of Enforcement v. Akhilesh Singh and Others*** *Criminal Revision Petition No. 1119/2023 Decided on 30.04.2024 (Delhi High Court)*
35.	***Chetan Gupta v. Directorate of Enforcement and Others*** *CRM-M No. 39214 of 2020 Decided on 29.04.2024 (Punjab and Haryana High Court)*
36.	***Shanmugam Ramachandran v. Union of India and Others*** *W.P. No. 3047 of 2024 Decided On 16.07.2024 (Madras High Court)*
37.	***K.T.M.S.Mohd., v. Union of India*** *(1992)3 SCC 178*
38.	***Arvind Kejriwal v. Directorate of Enforcement*** *Criminal Appeal No. 2493 of 2024 Decided on 12.07.2024*

2.2 Per contra, the ED's counsel, namely Mr. Zoheb Hussain, Advocate, contends that the ED has power to search 'proceeds of the crime' and hence, 1700 customers of the petitioner company and other related companies who did not receive possession in the seven incomplete projects were sent a questionnaire in order to gather information and material to find out about the proceeds of crime. Moreover, further investigation in the case reveals that in addition to the identified proceeds of crime of ₹1376/- crores, the petitioner further diverted its funds of more than ₹404/- crores in

Bhiwadi land deal which has never been developed. The aforesaid parcel of land was purchased at a price more than the market value in order to launder money. He places reliance on the judgment passed in ***V. Senthil Balaji v. The State represented by Deputy Director and Others (2024) 3 SCC 51 and*** submits that the judgment passed in ***Vijay Madan Lal Chaudhary's case*** *(supra)* has also been explained in the said judgment. The Special Court has also refused either to close or drop the proceedings vide two orders passed on 17.07.2024. FIR No. 195 of 2018, out of the original 32 FIRs, is still pending. Neither Section 50 nor Section 66 of the 2002 Act provides that registration of an ECIR is a prerequisite to collect/gather information. The learned counsel submits that Section 66 of the 2002 Act is not dependent on predicate offence and that the communication (Annexure P16) was sent only to ascertain the whereabouts of proceeds of crime while seeking information. While relying upon the judgment passed in ***Rajinder Singh Chadha*** *(supra)*, he submitted that a subsequently registered FIR can be included in an ECIR registered previously. He further submitted that on the careful examination of the audited annual financial status of the petitioner company, it is revealed that huge funds have been routed by the IREO Group to M3M Group of companies apart from nine shell entities. He also referred to the auditors' report to show that as on 31.03.2011, advance for purchase of development rights have been shown at ₹6,771,001,709/- whereas advance from the customers has been shown as ₹3,807,985,666/- and the complaints received from the customers/investors were forwarded to the EOW, Delhi, which resulted in the registration of FIR.

3. **<u>Analaysis and Evaluation of the submissions of the learned counsels representing the parties.</u>**

3.1 This Court has considered the submissions of the learned counsel representing the parties while analyzing, evaluating and appreciating the respective contentions.

3.2 The relevant provisions of the 2002 Act are reproduced as under for better comprehension and context:-

> ***2. Definitions.***
>
> *2(1)(a) to (n) XXXX XXXX XXXX XXX*
>
> *(na) "investigation" includes all the proceedings under this Act conducted by the Director or by an authority authorised by the Central Government under this Act for the collection of evidence.*
>
> *(o) XXXX XXXX XXXX XXXX XX*
>
> *(p) "money-laundering" has the meaning assigned to it in section 3.*
>
> *(q) to (t)XXXX XXXX XXXX XXXX*
>
> *(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;*
>
> *Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or*

obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence.

(v) to (x)XXXX XXXX XXXX XXXX

(y) "scheduled offence" means— (i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule.

XXXX XXXX XXXX XXXX XXXX

3. Offence of money-laundering.*—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*

Explanation.—For the removal of doubts, it is hereby clarified that,—

> *(I) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or*

more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

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44. Offences triable by Special Courts.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),

(a) an offence punishable under section 4 and any scheduled offence connected to the offence under that section shall be triable by the Special Court constituted for the area in which the offence has been committed:-

Provided that the Special Court, trying a scheduled offence before the commencement of this Act, *shall continue to try such scheduled offence; or*

(b) a Special Court may, upon a complaint made by an authority authorised in this behalf under this Act take cognizance of offence under section 3, without the accused being committed to it for trial.

Provided that after conclusion of investigation, if no offence of money laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court; or

(c) if the court which has taken cognizance of the scheduled offence is other than the Special Court which has taken cognizance of the complaint of the offence of money-laundering under sub-clause (b), it shall, on an application by the authority authorised to file a complaint under this Act, commit the case relating to the scheduled offence to the Special Court and the Special Court shall, on receipt of such case proceed to deal with it from the stage at which it is committed.

(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1 973, as it applies to a trial before a Court of Session.

Explanation.—For the removal of doubts, it is 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 trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.

(2) Nothing contained in this section shall be deemed to affect the special powers of the High Court regarding bail under section 439 of the Code of Criminal Procedure, 1973 (2 of 1974) and the High Court may exercise such powers including the power under clause (b) of sub-section (1) of that section as if the reference to Magistrate in that section includes also a reference to a Special Court designated under section 43."

XXXX XXXX XXXX XXXX XXXX

***50. Powers of authorities regarding summons, production of documents and to give evidence, etc.**—(1) The Director shall, for the purposes of section 13, have the same powers as* *are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—*

(a) discovery and inspection;

(b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;

(c) compelling the production of records;

(d) receiving evidence on affidavits;

(e) issuing commissions for examination of witnesses and documents; and

(f) any other matter which may be prescribed.

(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.

(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.

(4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of

1860).

(5) Subject to any rules made in this behalf by the Central Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act: Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director.

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***66. Disclosure of information**.—(1)The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—*

(i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public

interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

(2) If the Director or other authority specified under sub-section (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action."

3.3 It is evident that Section 3 of the 2002 Act defines the offence of money laundering and it is not narrowly focused. The proceeds of crime is a pivotal ingredient constituting the offence of money laundering. Section 3 of the 2002 Act has been explained elaborately in ***Vijay Madan Lal Chaudhary's case*** *(supra)*. It is evident that the definition of the offence of 'money laundering' is wide and expansive. It makes liable not only the person who directly or indirectly indulges with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property, but even the person who knowingly assists or knowingly is a party or is actually involved in any process or activity connected shall also be liable. Explanation (i) further explains the position.

Similarly, Explanation (ii) to Section 3 of the 2002 Act provides that the process or activity connected with the proceeds of crime is a continuing activity and it continues till the time a person is directly or indirectly enjoying the proceeds of crime. While defining the expression 'proceeds of crime', it has been provided that any property derived or obtained directly or indirectly by any person as a result of criminal activity relating to the said property shall constitute the proceeds of crime. Where the property is taken or held outside the country, then the property equivalent in value held within the country or abroad shall be included in such proceeds. In the explanation attached to the definition, it has been added that if the property is directly or indirectly derived or obtained as a result of any criminal activity related to the scheduled offence, the same shall also be included in the proceeds of crime.

3.4 Explanation (ii) to Section 44(1) of the 2002 Act provides that the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which the complaint has already been filed, whether named in the original complaint or not.

3.5 Section 50 of the 2002 Act enlists the powers of authorities regarding summons, production of documents and to give evidence.

3.6 Section 66(2) of the 2002 Act enables the Director or other authority specified by a general/special order under sub-section (1) to share information if he is of the opinion that the provisions of any other law for the time being in force are contravened on the basis of information or material in his possession.

3.7 Both the learned senior counsels for the petitioner have laid emphasis on the ground that out of 32 FIRs, 31 have either been quashed or closed except FIR No,. 195 of 2018 in which the settlement has been arrived at between the parties and the quashing petition on that basis is pending before the High Court. The proceedings before the Trial Court have already been stayed. Thus, it is the contention of the learned senior counsels that ECIR was registered on the basis of 32 FIRs which stand closed or quashed. Hence, the predicate offences have ceased to exist and as a result, ECIR shall be quashed. They submitted that the proceedings cannot continue in view of the interpretation of law by the Supreme Court in ***Vijay Madan Lal Chaudhary's case*** *(supra)*.

3.8 In the considered opinion of this Bench, this argument of the learned counsels suffer from a fundamental flaw. It is evident that out of 32 FIRs, one remains open. According to Explanation II to Section 44 of the 2002 Act, any subsequent complaint should be incorporated into the pending complaint for further investigation to gather additional evidence against any accused, as reflected in the statutory language. The legislative intent in cases involving multiple FIRs is thus quite clear. Consequently, it can be concluded that even if all FIRs except one have been resolved through compromise or other means, the investigation under the same ECIR will continue. This is because Explanation II to Section 44 of the 2002 Act mandates that subsequent complaints be considered part of the original complaint by the Special Court. Moreover, *sine qua non* to proceed under the 2002 Act is the offence of money laundering which is wholly dependent upon the proceeds of crime. It is evident that the proceeds of crime should be the result of criminal activity related to a scheduled offence included in the Schedule attached to the Act which includes offence under Section 420 of the Indian Penal Code, 1860 (hereinafter referred to as "IPC"). In that context, the offence of money laundering is dependent upon the proceeds of crime from criminal activity relating to a scheduled offence, however, the registration of FIR in the scheduled offence is not *sine qua non* for initiating the proceedings under the 2002 Act. Section 66 of the 2002 Act is not dependent on the predicate offence as explained by the Supreme Court in ***Pavana Dibbur v. Directorate of Enforcement 2023 SCC Online SC 1586***.

3.9 After having made the elaborate submissions, Mr. Puneet Bali, Senior Advocate, representing the petitioner, submitted that he is not praying for quashing of ECIR in this writ petition. In the considered opinion of this Bench, after having made elaborate submissions, it was not appropriate for the learned counsel to make such submission.

3.10 The investigation of crime is exclusive domain of the Investigating Agency similar to the powers of police in the cases that are governed by the provisions of Code of Criminal Procedure, 1973 (hereinafter referred to as "Cr.P.C."). It is evident that the word 'investigation' has been defined in Section 2(na) of the 2002 Act which has already been extracted in para 3.2 of this judgment. It includes all the proceedings under this Act conducted by the Director or by an authority authorized by the Central Government for the collection of evidence. Section 50 of the 2002 Act enables the authorities to summon or compel production of documents and to give evidence etc. including discovery and inspection, enforcing attendance of any person compelling production of record, receiving evidence on affidavits, issuing commissions for examination of witnesses and documents and any other matter which may be prescribed. The scope of Court's interference in the manner of investigation is extremely limited unless the Court finds that the exercise of powers by the authorities is totally arbitrary.

3.11 In ***Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria (1998) 1 SCC 52***, the Supreme Court held that it is not the function of the Court to monitor the investigation process as long as the investigation does not transgress any provision of law. The questions and manner of asking such questions to likely victims of crime should be left to the Investigating Agency. The ED has the enabling power to search for proceeds of crime in scheduled offence. In order to collect information and related material, the ED has the powers as enlisted in Section 50. The questionnaire as sent to the customers of incomplete projects of the petitioner company is an attempt in that direction. After collecting the information, the same has been shared with EOW, Delhi, which has already registered an FIR. This FIR has been challenged in a pending petition before the Delhi High Court. Hence, there is no substance in the arguments of the learned counsel that the ED has transgressed its powers or overreached the Statute.

3.12 It would be noted here that once the ECIR has been filed in the Special Court, Explanation (ii) of Section 44(1) of the 2002 Act does enable the Special Court to include any subsequent complaint in respect of further investigation. Moreover, if the process or activity connected with the proceeds of crime is a continuing activity i.e. the person is directly or indirectly enjoying the proceeds of crime, then the same is included in the offence of 'money laundering'.

3.13 The learned senior counsels representing the petitioner has failed to draw the attention of the Bench to any such provision which debars the Court from adding a new FIR in the existing ECIR. The provisions of the 2002 Act are required to be interpreted in a manner which advance the object sought to be achieved by the enactment. Hence, in the absence of an express prohibition, it would not be appropriate to hold that the subsequently registered FIR cannot be included in the existing ECIR. Second Explanation to Section 44 of the 2002 Act specifically provides for inclusion of subsequent complaint. Similarly, the argument of the learned senior counsels that the ED cannot solicit information from the allottees lacks any substance because Section 50 of the 2002 Act enables the Director to collect information and material to locate the proceeds of crime.

3.14 Moreover, the Supreme Court in para 467 of ***Vijay Madan Lal Chaudhary's case*** *(supra)* has held that the expression 'investigation' is not limited to the offence under the Act. It is interchangeable with the "inquiry" to be undertaken by the Authorities. The expression 'proceedings' occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry. Hence, the ED has power to solicit information from the allottees, who as promised, have not been delivered possession of the plots/flats.

3.15 As far as the argument regarding refusal to register FIR by the EOW, Gurugram, is concerned, it is not conclusive. From the reading of FIR

No. 14 dated 12.03.2024, registered in EOW, Police Station Mandir Marg Complex, New Delhi, it becomes evident that the information was shared because all the investors/complainants who had informed the ED were the residents of Delhi. Apart from that, the ED had also shared information that it has already registered ECIR on 15.06.2021 and during investigation, it has been found that the various customers who made booking of the properties in different projects were neither handed over the possession of properties nor their amount was refunded. It was also alleged that diversion of funds including the proceeds of crime outside India in the form of buying the shares back, resumption and purchase of shares etc. have also been found. In these circumstances, at this stage, it is not appropriate for this Court to interfere particularly when the petition against the FIR registered in Delhi is pending before the Delhi High Court.

3.16 The last submission of the learned senior counsels representing the petitioner is insubstantial because the manner of investigation and the questions which required to be posed in order to get information is the exclusive domain of the Investigating Agency and the Courts are not expected to interfere in general.

3.17 Though the petitioner in the writ petition, in its first prayer, prays for reading down or reading into Section 66 of the 2002 Act, however, during the course of arguments, the attention of the Bench has not been drawn to the requirement of reading down the aforesaid provision. The doctrine of reading down a statutory provision may be resorted only to avoid holding the provision as unconstitutional or arbitrary. The aforementioned provision is not ambiguous, hence, the Court does not find it appropriate to avoid its literal interpretation. Usually, the words used by the Statute are required to be interpreted in their plain grammatical meaning and unless there is violation, the need to read down a provision does not arise. Similarly, reading into the provision can be done in order to give meaningful interpretation or to save the provision from being declared unconstitutional. On a plain reading of Section 66 of the 2002 Act, it becomes evident that the Statute enables the Director or any other officer authorized by him to share information with any officer, authority or body performing any functions under any law in public interest. Sub Section 2 of Section 66 of the 2002 Act is also confined to sharing information if the Director or any other authority is of the opinion that the provisions of any other law for the time being in force are contravened; on the basis of information and the material in his possession. In the opinion of the Court, the aforesaid provision has a laudable object; as it enables exchange of information between the various public authorities who are in the field of law enforcement, collection of tax, duty or cess or prevention of illicit traffic in the narcotics and psychotropic substances.

3.18 Similarly, the prayer made under Clause (b) of (II) has no substance because by sending the questionnaire the Director or any other authority has not compelled or coerced or browbeaten the allottees/investors to file a complaint, but at the most, it has only asked question No.9 in the questionnaire about the wish or plan to file any such complaint. The questions posed to the allottees in the questionnaire are only to collect information with an ultimate object to find the proceeds of crime relating to a scheduled offence.

3.19 With respect to prayer (III), it would be noted that pursuant to the information collected, EOW has already been shared the information resulting in registration of FIR No. 14 dated 12.03.2024. Moreover, the manner and method of collecting information during investigation and inquiry is the exclusive domain of the Investigating Agency and it is not be appropriate to interfere in the same. Moreover, the information and material has already been collected and handed over to the concerned Law Enforcement Agency.

3.20 While relying upon the judgments to persuade the Court to take a particular view, it is incumbent upon the Court to distinguish between the *ratio decidendi* and *obiter dicta*. A decision is only an authority for what it actually decides. The essence in a decision is its ratio. Only law culled out from a judgment is alone declaration for law.

3.21 The Supreme Court in ***Rajbir Singh Dalal v. Chaudhary Devi Lal University, Sirsa and Others (2008) 9 SCC 284*** held that a decision of the Court cannot be treated as Euclid's formula and read and understood mechanically. A decision must be considered on the facts of the matter at hand. The distinction between the *ratio decidendi* and *obiter dicta* is well defined. The Supreme Court, in ***Vijay Madan Lal Chaudhary's case*** *(supra)*, has examined the validity of certain provisions of the 2002 Act and also interpreted them, while commenting on the procedure followed by the ED while inquiring into or investigating the offence under the 2002 Act. After detailed deliberation, the conclusions were summarized in para 467 of the ***Vijay Madan Lal Chaudhary's case*** *(supra)*. The judgment is required to be read in that context. The learned counsel admits that the validity of

Section 66 of the 2002 Act was neither challenged nor addressed or dealt with by the Supreme Court. Similarly, this Bench refuses to go into alleged certain incongruities and different dimensions laid down in the judgment.

3.22 Reliance placed by the learned counsels representing the petitioner on the judgment of the Division Bench of the Delhi High Court in ***Harish Fabiani's case*** *(supra)* is wholly misplaced because in that case the High Court of Bombay had already quashed the proceedings in predicate offences. In that context, the case was decided. Similarly, in ***Parkash Industries Limited's case*** *(supra)*, the Delhi High Court has considered the following two questions:-

> "a) Can ED provisionally attach the properties under Section 5 even though no proceedings relating to the predicate offence may have been initiated by the competent agencies functioning under the Statute and in terms of which the scheduled offence stands created?
>
> b) Whether the ED would be recognized to have jurisdiction to enforce the measures? The measures contemplated under Section 5 of the 2002 solely upon being of the opinion that the material gathered in the course of investigation inquiry evidences the commission of predicate offence?"

The matter was decided with respect to the aforesaid questions.

3.23 In ***V.P.Nandkumar's case*** *(supra)*, ***Parvathi Kollur's case*** *(supra)*, ***Indira Patnaik's case*** *(supra)*, ***M/s V.G.N Developers Pvt. Ltd.'s case*** *(supra)*, ***M.Nagarajan's case*** *(supra)*, ***Selvi Pushpam Appala Naidu's***

case *(supra)*, ***Indiabulls Housing Finance Limited's case*** *(supra)*, ***M/s Nik Nish Retail Limited's case*** *(supra)*, the proceedings under the 2002 Act were quashed as the foundational scheduled offence ceased to exist by virtue of the Court's order. There was no further registration of fresh FIR.

3.24 Similarly, in ***Dependra Kumar Panda's case*** *(supra)*, ***Emta Coal Limited's case*** *(supra)*, ***Muktanand Agro Farming Pvt. Ltd.'s case*** *(supra)*, ***Omkar Realtors & Developers Pvt. Ltd.'s case*** *(supra)*, ***Pratap Singh Tiwari's case*** *(supra)*, ***Sri Jayanand Narasannavar's case*** *(supra)*, ***S. Revanna's case*** *(supra)*, ***Anjaneya Hanumanthaiah's case*** *(supra)*, ***Ram Ludhra's case*** *(supra)*, ***Yash Tuteja's case*** *(supra)*, ***Rajiv Channa's case*** *(supra)*, ***Nayati Healthcare and Research Private Limited's case*** *(supra)*, ***Akhilesh Singh's case*** *(supra)*, ***Chetan Gupta's case*** *(supra)* and ***Shanmugam Ramachandran's case*** *(supra)*, the Courts have quashed the ECIRs only for the reason that either the FIR stood quashed on merits or the accused have been acquitted or discharged in the predicate offence.

3.25 The judgment passed in ***Rajinder Singh Chadha's case*** *(supra)* in fact supports the case of ED. In the said case, ECIR was registered on the basis of two FIRs which were either allowed to be compounded or quashed by the Courts. However, in the meantime, third FIR was registered disclosing scheduled offence. The same was included in the ECIR. It was held that in such circumstances, ECIR cannot be quashed and the investigation can continue on the basis of the third FIR. However, it was declared that ECIR will not relate to the first two FIRs.

3.26 The judgment passed by the Supreme Court in ***Arvind Kejriwal's case*** *(supra)* is in the context of the ED's power of arrest under

Section 19 of the 2002 Act. The Supreme Court has, in para 84 of ***Arvind Kejriwal's case*** *(supra),* referred three legal questions for consideration by the Larger Bench while granting interim bail to the petitioner. Hence, the observations made in the aforesaid judgment are in terms of Section 19 of the 2002 Act. Consequently, the same is not applicable to the facts of the present case.

3.27 This aspect can be examined from another perspective. Further investigation even after filing of the charge sheet is a statutory right of the Investigating Officer. Even in para 360 of ***Vijay Madan Lal Chaudhary's case*** *(supra)*, the legal position was clarified. Similarly, in the ***State of Andhra Pradesh v. A.S.Peter (2008)2 SCC 383*****,** the Supreme Court held that the law does not mandate taking of prior permission from the Magistrate for further investigation. Similar views were expressed in ***Rama Chaudhary v. State of Bihar (2009) 6 SCC 346***. While making distinction between further investigation, fresh investigation and re-investigation, the Court held that the police has a right to further investigate under Section 173(8) Cr.P.C.

3.28 Though, the ECIR is not an FIR, however, the ED is an Investigating Agency that has been constituted to investigate the various offences including the offence of money laundering. In these circumstances, after the filing of ECIR in the year 2022, the ED continued to investigate. In that process, it collected information and material by various methods including written communication (Annexure P16). After the collection of the information, the jurisdictional police was informed resulting in the registration of FIR No. 14 dated 12.03.2024. Hence, there is no occasion to either quash or declare that the communication (Annexure

P16) is beyond the ED's jurisdiction, as it is not violative of law and the Investigating Agency has acted within the precincts of law, ensuring that all procedures and actions taken during the course of investigation adhered to law.

4. Decision

4.1 For the foregoing discussion, this Bench does not find substance in the present writ petition and hence, the same is dismissed.

4.2 The miscellaneous application(s) pending, if any, shall stand disposed of.

(Anil Kshetarpal)
Judge

(Sheel Nagu)
Chief Justice

September 04, 2024
"DK"

Whether speaking/reasoned :Yes/No
Whether reportable : Yes/No