



\$~

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

%

Reserved on: December 18, 2023

Decided on: January 15, 2024

+ **CRL.REV.P. 429/2012 & CRL.M.A. 13622/2012**

SANJAY GUPTA

..... Petitioner

**Through: Counsel (Appearance not
given)**

versus

**PRABHAKANT DIRECTORATE OF
ENFORCEMENT GOVT. OF INDIA**

..... Respondent

**Through: Mr. Anurag Ahluwalia,
CGSC**

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

1. The present petition is filed under section 47 of The Prevention of Money Laundering Act, 2002 (hereinafter referred to as “PMLA”) read with sections 397/401 and section 482 of The Code of Criminal Procedure, 1973 to impugn the order on charge dated 24.04.2012 (hereinafter referred to as “**the impugned order**”) passed in CC bearing no. 01/2011 titled as **E.D. V Dr. Jeevan Kumar etc.**



(hereinafter referred to as **“the complaint”**) by the court of Sh. P.S. Teji, District Judge and Additional Sessions Judge/Special Judge (PMLA), East, Karkardooma Courts, Delhi whereby the petitioner was charged for the offence punishable under section 4 of PMLA.

2. Briefly stated, the facts of the case are that FIR bearing no. 27/2008 was got registered under section 420 of The Indian Penal Code, 1860 (hereinafter referred to as **“IPC”**) and sections 18/19 of The Transplantation of Human Organs Act, 1994 (hereinafter referred to as **“TOHO Act”**) at P.S. Palam Vihar, Gurgaon. The investigation of the abovementioned FIR was entrusted to CBI and consequently, RC/1(E)/08/CBI/EOU-VII/ND was registered under sections 326/342/417/465/473/ 307/506/120B IPC and sections 18/19/20 of TOHO Act by the CBI being the predicate offence. After conclusion of investigation, the final report was filed by the CBI and the trial was conducted by the court of Sh. Najar Singh, ASJ/Special Judge (CBI), Panchkula, Haryana (hereinafter referred to as **“the trial court”**).

3. The aforesaid RC was premised on an allegation that Dr. Jeevan Kumar, along with others, was involved in illegal racket



of kidney transplantation and committed various offences including the offence punishable under section 307 IPC and the offences punishable under sections 18/19/20 of TOHO Act which are scheduled offences under PMLA. It was also alleged that illegal kidney transplantation was the only occupation of Dr. Jeevan Kumar and his entire earnings were from this source only.

3.1 The respondent/ED registered the ECIR bearing no. ECIR/7/DZ/2008 based on the alleged income derived by Dr. Jeevan Kumar from his criminal activity and the co-accused persons including the petitioner have been alleged to have assisted him in projecting it as untainted property.

3.2 The court of Sh. P.S. Teji, District Judge and Additional Sessions Judge/Special Judge (PMLA), East, Karkardooma Courts, Delhi framed the charge for the offence under section 3 of PMLA punishable under section 4 of PMLA against the petitioner vide the impugned order.

4. The trial court acquitted Dr. Jeevan Kumar of all the charges framed against him vide judgment dated 22.03.2013 and the same has not been challenged and has therefore, attained finality.



5. The counsel appearing on behalf of the petitioner submits that in view of the fact that the co-accused Dr. Jeevan Kumar has been acquitted by the trial court, the present complaint filed by the ED is not maintainable. In this regard, he places reliance on the judgment of the Supreme Court in **Vijay Madanlal Choudhary V Union of India**, 2022 SCC OnLine SC 929; judgment of Division Bench of this Court in **Harish Fabiani and Others V Enforcement Directorate and Others**, 2022 SCC OnLine Del 3121; judgments of Coordinate Benches of this Court in **Nayati Healthcare and Research Pvt. Ltd. And Others V Union of India Ministry of Home Affairs and Another**, W.P.(CRL) 2871/2022, decided on 11.10.2023; in **Prakash Industries Ltd. and Another V Directorate of Enforcement**, 2022 SCC OnLine Del 2087; in **Directorate of Enforcement V Gagandeep Singh and Others**, 2022 SCC OnLine Del 514 and in **Arun Kumar Mishra V Directorate of Enforcement**, 2015 SCC OnLine Del 8658. The counsel for the petitioner also cited various other judgments in support of his submissions and prayed that the impugned order passed by the court of Sh. P.S. Teji, District Judge and Additional



Sessions Judge/Special Judge (PMLA), East, Karkardooma Courts, Delhi be set aside qua the petitioner along with consequential proceedings.

6. The learned Central Government Standing Counsel (CGSC) appearing for the respondent/ED submits that in view of the fact that one of the co-accused has been acquitted in respect of the predicate offence, the impugned order cannot be set aside. He places reliance on the order passed by the Supreme Court dated 10.02.2023 in SLP (Crl.) Diary No.42315/2022 titled as **Directorate of Enforcement V Gagan Deep Singh** to submit that the issue whether proceedings under PMLA would survive upon acquittal/discharge of the accused in a scheduled offence is still pending before the Supreme Court and submitted that the present petition be adjourned *sine die* till the decision of the Supreme Court on this issue.

7. The issue which needs consideration is that if in case an accused is acquitted/discharged in a predicate offence, in that eventuality, whether the prosecution initiated by the respondent/ED can be allowed to be continued or is liable to be quashed.



8. The above issue was considered by the Supreme Court in case of **Vijay Madanlal Choudhary** (*supra*) and it was observed as under:-

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 through him.

9. A Division Bench of this Court in **Harish Fabiani** (*supra*) also considered this issue and observed as under:

22. The Hon'ble Supreme Court has been clear and categorical in its reasoning as evident from the para extracted above. The undeniable sequitur of the above reasoning is that firstly, authorities under the PMLA cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed; secondly, the scheduled offence must be registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum; thirdly, in the event there is already a registered



scheduled offence but the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or quashing of the criminal case of the scheduled offence, there can be no action for money laundering against not only such a person but also any person claiming through him in relation to the property linked to the stated scheduled offence. In other words no action under PMLA can be resorted to unless there is a substratum of a scheduled offence for the same, which substratum should legally exist in the form of a subsisting (not quashed) criminal complaint/inquiry or if it did exist the accused has since been discharged or acquitted by a Court of competent jurisdiction.

10. A Coordinate Bench of this Court in case of **Nayati Healthcare** (*supra*) has also considered the issue whether the prosecution initiated by the respondent/ED can be continued in a case where the accused has already been acquitted/discharged for the predicate offence. The relevant portion of the aforesaid judgment is reproduced as under:-

10. In *Nik Nish Retail Ltd.* (*supra*) [Nik Nish Retail Ltd. V Assistant Director, Enforcement Directorate, 2022 SCC OnLine Cal 4044], the Calcutta High Court also dealt with a case where the FIR in respect of the predicate offence was quashed on the basis of settlement. Following the aforesaid findings of *Vijay Madanlal Choudhary* (*supra*), the complaint of the ED was quashed. The relevant observations of *Nik Nish Retail Ltd.* (*supra*) are set out below:-

34. The quashing of FIR of regular case automatically created a situation that the offences, stated and alleged in the FIR has no existence; thus the “Scheduled



Offence” has also no existence after quashing of the FIR. When there is no “Scheduled Offence”, the proceeding initiated under the provisions of Prevention of Money Laundering Act, 2002 cannot stand alone.

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

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

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

The Special Leave Petition is accordingly disposed of.

12. Similarly, another SLP being SLP (Crl.) Diary No.28128/2023 filed by the ED against the judgment of the Madras High Court on a similar issue was dismissed as withdrawn on the basis that the FIR on the predicate offence had been quashed.

13. The Telangana High Court in *Manturi Shashi Kumar* (supra) [Manturi Shashi Kumar V Director, Directorate of Enforcement, 2023 SCC OnLine TS 1098] has also quashed a complaint under Section 3 of the PMLA on the grounds of the accused being discharged/acquitted of the scheduled offence. The relevant observations of the said judgment are set out below:-

28. Thus, according to Supreme Court, the offence under Section 3 of PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. If the person is finally discharged or



acquitted of the scheduled offence or the criminal case against him is quashed by the court, there can be no offence of money laundering against him or anyone claiming such property being the property linked to the scheduled offence. It is immaterial for the purpose of PMLA whether acquittal is on merit or on composition.

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

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

11. The counsel for the petitioner, to counter the argument advanced by the learned CGSC that the observations made in para no. 467 of **Vijay Madanlal Choudhary** (*supra*) are pending consideration before the Supreme Court and as such, the present petition be adjourned *sine die* till the decision of the Supreme Court on this issue, referred the judgment passed by the Supreme Court in **Union Territory of Ladakh and Others V Jammu and Kashmir National Conference and Another**, 2023 SCC OnLine SC 1140, the relevant portion of which is reproduced as under:-

35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading



judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands. It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in National Insurance Company Limited v. Pranay Sethi, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it.

12. In view of the aforesaid legal position, the present complaint filed by the respondent/ED and the consequential proceedings cannot survive. Considering that the co-accused Dr. Jeevan Kumar has been acquitted by the trial court vide judgment dated 22.03.2013 and that the said judgment has not been challenged till date, there can be no offence of money laundering under section 3 of PMLA against the petitioner. Accordingly, the impugned order is set aside qua the petitioner along with all consequential proceedings arising therefrom stated to be pending before the concerned court.



13. The respondent/ED shall be at liberty to initiate appropriate proceedings for the revival of the present complaint along with consequential proceedings in case of altered circumstances or in view of the final decision of the Supreme Court in SLP (Crl.) Diary No.42315/2022 titled as **Directorate of Enforcement V Gagan Deep Singh.**

14. The present petition, along with pending applications, stands disposed of.

DR. SUDHIR KUMAR JAIN
(JUDGE)

JANUARY 15, 2024
SK/AM