

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

PRESENT:

THE HON'BLE DR. JUSTICE AJOY KUMAR MUKHERJEE

CRR 4586 of 2023

M/S. Future Gaming of Hotels Services Pvt. Ltd.

Vs.

The Enforcement Directorate, Kolkata

With

CRR 708 of 2023

M/S. Future Gaming and Hotels Services Pvt. Ltd.

Vs.

Union of India & Ors.

For the petitioner	:	Ms. Meenakshi Arora, Sr. Adv. Mr. Kishore Datta, Sr. Adv. Mr. Sandipan Ganguly, Sr. Adv. Mr. Abhisekh Singh Mr. Ayan Banerjee Mr. Amit Bhatta Mr. Chandratanay Chaube Mr. Somopriyo Chowdhury Mr. Debashree Dhamali Mr. Kushal Bhattacharya Ms. Riya Ghosh
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For the E.D	:	Mr. Dhiraj Trivedi, DSGI Mrs. Debjani Ray Mr. Steven Biswas
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For the Union of India		Mr. Kallol Mondal
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Heard on	:	07.08.2025
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Judgment on	:	23.12.2025
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Dr. Ajoy Kumar Mukherjee, J.

Brief background

1. The instant two proceedings have been preferred by the petitioner herein seeking quashment of the proceeding being in ML Case No. 15 of 2013 pending before learned Special CBI Court 1 under section 3 read with section 70 of the Prevention of Money Laundering Act, 2002 (herein after called as PMLA) in CRR 4586 of 2023 along with Enforcement Case Information Report (in short ECIR) bearing no. KLZO I/22/2021 dated 28.05.2021 which were initiated by the Enforcement Directorate (in short ED). The said ECIR was registered by the ED pursuant to the FIR bearing no. 246/2019 dated 01.08.2019 at Bhawanipure PS Kolkata and FIR bearing no. 260 of 2019 dated 12.11.2019 registered at PS Belegghata (in short would be referred as Kolkata FIRs).

2. The petitioner at first challenged the continuation of the aforesaid ECIR before this court in CRR 708 of 2023 *inter alia* on the grounds of the same being non-est without jurisdiction since the ECIR was based on the aforesaid two Kolkata FIRs, wherein police had submitted final report on the ground of mistake of facts and such closure report /final report had also been accepted by the concerned Magistrate.

3. During pendency of the aforesaid application being CRR 708 of 2023 before this Court, the ED filed a complaint in terms of section 45(1) (second proviso) of the PMLA before the learned Special Judge, CBI-1 Kolkata resulting in aforesaid ML Case no. 15 of 2023 and vide order dated

21.09.2023, the learned judge was pleased to take cognizance on the said complaint. The petitioner therefore in aforesaid two Applications filed before this Court had challenged the impugned proceeding in ML Case no. 15 of 2023 as well as the ECIR bearing no. KLZO I/22/2021 and all orders passed therein including the order dated 21.09.2023

Chronology of events in short

Date	Event
12.01.2010- 09.11.2010	The state of Kerala filed about 32 FIRs alleging violation of provisions of lotteries regulation Act, 1998 and illegal sale of lotteries of other states.
14.07.2011	By a notification, the investigation of said 32 FIRs was entrusted to CBI
03.02.2014	The CBI filed consolidated chargesheet before CJM, Ernakulam being charge sheet no. DV-1 of 2014 in respect of 7 cases alleging commission of offence under section 120B and 420IPC read with section 4(d) , 4(f), 9 and section 7(3) of the Lotteries Regulations Act 1997 and Rule 4(5), 3(5) of Lotteries Regulation Rules 2005.
19.02.2014	The CBI submitted closure report in respect of 24 FIRs out of 34 FIRs.
13.11.2015	Learned CJM Ernakulam took cognizance in respect of aforesaid chargesheet
19.08.2014 - 11.06.2018	Treating the allegations of the aforesaid charge sheet as schedule offences, the ED Kochi registered ECIR being no. KCZO/4/2014 by way of six provisional attachment orders, the proceeds of crime amounting to Rs. 910 crores were attached. One prosecution complaint being SC 533/2018 and two supplementary complaints were filed. Court after taking cognizance issued process against the accused persons. Learned CJM, Ernakulam accepted the closure report filed by the CBI in connection with the aforesaid 24 cases.
01.08.2019	Kolkata FIR no. 246 of 2019 was registered at Bhawanipur P.S. alleging

	commission of offence under section 34/120B/406/409/417/418/419 and 420 of the IPC and section 7(3) and 9 of the Act of 1997 with the allegation <i>interalia</i> that the accused being the distributor/stockist of the lottery tickets could not be the end consumers and unlawfully participated in the game to win prizes and that the accused had been recipients of unlawful prizes with respect to the draws held during the period. 22-1-2017 to 25-7-2017
12.11.2019	Second Kolkata FIR no. 260 of 2019 was registered at P.S. Beliaghata under section 406 /420/467/468/120B IPC read with section 7(3) and 9 of the Lotteries Regulation Act concerning the organization of the state lotteries by the state of Sikkim and Nagaland. It was alleged that as per 2010 Rules tickets of the lotteries owned by the State Government should not be sold at the Prize structure and amount offered as the prize money was notified by the owner/organizer State Government.
17.09.2020 and 25.09.2020	The State of Sikkim as well as the state of Nagaland issued public notices <i>interalia</i> stating that there was no illegality in the conduct of their respective lotteries
28.05.2021	Based on the aforesaid two Kolkata FIRs, PMLA Case No. ECIR being no. KLZO I/22/2021 was registered by ED Kolkata.
22.12.2021- 23.12.2021	Searches were conducted under the provision of section 17 at various premises in which proceeds of crime worth Rs. 2.68 crores were freezed in connection with ECIR/KL20-I/22/2021.
25.12.2021	The First predicate Case FIR case no. 246/2019 in connection with Bhawanipur P.S. was completed and final report in the form of closure of investigation on the ground of mistake of fact was filed.
21.01.2021	ED, Kolkata filed original Application (OA) No. 623/2022 in pursuance of the freezing order dated 23.12.2021 in connection with predicate case for ECIR/KLZO-I/22/2021,
28.01.2022	The second predicate case being FIR no. 260 of 2019 of Beliaghata P.S. ended in final report and the investigating agency submitted final report in

	the form of closure of investigation on the ground of mistake of fact.
05.03.2022	Learned ACJM, Sealdah accepted the final report/closure report in FIR No. 260 of 2019 P.S. Beliaghata.
31.03.2022	Provisional attachment order no.11 of 2022 was passed whereby proceeds of crime (in short POC) worth of Rs.409.22 crore was attached alleging Rs. 290.86 crores as POC of FIR No. 246/2019 and Rs 118.36 crores as POC of FIR 260/2019 in ECIR/KLZO-I/22/2021.
05.05.2022	The final report/closure report filed in connection with other predicate case being FIR No. 246 of 2019 was accepted by the learned CJM.
12.09.2022	Finding of the investigation under PMLA was shared with Kolkata Police under the provision of 66(2) of the PMLA for further necessary action by police.
07.12.2022	A Petition under section 173 (8) of Cr.P.C. was filed before learned CJM Alipore, with prayer to issue direction to conduct further investigation in FIR no. 246/2019
09.12.2022	A similar petition under section 173(8) of Cr.P.C. was filed with prayer for same direction in connection with FIR no. 260 of 2019
13.03.2023	The instant Application being aforesaid CRR 708 of 2023 was admitted by this Court and direction was passed for service of copy of the application upon the ED.
09.06.2023	Kolkata ECIR being no. ECIR bearing no. KLZO I/22/2021 was transferred to Kochi zonal office, ED.
07.09.2023	As per direction of this High Court learned counsel of the ED filed a report which discloses that the said ECIR of Kolkata was again transferred back to Kolkata zonal office.
21.09.2023	ED filed prosecution complaint (PC) being M.L. case no. 15 of 2023 as per provision of section 8 of PMLA where ED claimed about inclusion of CBI Kochi charge sheet DV-I/2014 in the Kolkata ECIR/KLZO-I/22/2021 and learned court took cognizance.

11.11.2023	The instant other Application being CRR 4586 of 2023 was filed seeking quashment of ML case No. 15/2023.
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4. Being aggrieved by the aforesaid proceedings Ms. Arora, learned counsel for the petitioner argued that on 21.01.2022 in pursuance of freezing order dated 23.12.2021, the ED authorities, Kolkata filed OA no. 623 of 2022. Even in the said OA case the ED disclosed that the aforesaid two Kolkata FIRs registered at Beliaghata and Bhawanipur PS as the scheduled offence and there was no mention about the CBI charge sheet at Kochi. Thereafter on 25.03.2022, ED authorities filed their rejoinder in OA no. 623 of 2022, wherein their stand was that the aforesaid Kolkata FIRs were the only predicate case/scheduled offence for the Kolkata ECIR and there was no mention of the CBI charge sheet of Kochi, Kerala.

5. On 31.03.2022 a provisional attachment order dated 31.03.2022 was passed by the ED, Kolkata in connection with the ECIR at Kolkata against the petitioner and other 11 entities whereby the total assets to the extent of Rs.409,92,14,598/- of the petitioner and others were attached. In pursuance of the provisional personal attachment order, Kolkata ED had filed original complaint under section 5(5) of the PMLA being OC No. 1721 of 2022 and learned adjudicating authority had confirmed such provisional attachment order as above, against which petitioners and others preferred an appeal before the Appellate Tribunal. It is only on 29.04.2022, ED for the first time disclosed about the CBI Case at Kochi which is already subject matter of another PMLA proceeding at Kochi. Therefore, said CBI charge-sheet, Kochi cannot be the subject matter of the PMLA case, Kolkata.

6. Ms. Arora further argued that on 03.06.2022, ED authorities at Kochi in the PMLA criminal complaint i.e. SC no. 533 of 2018 filed supplementary complaint before learned Special Court and as per supplementary PMLA complaint filed by the ED authorities, no proceeds are alleged to have been generated from the petitioner. Therefore, according to petitioner, it is admitted position that Kolkata ECIR was only based on the aforesaid two Kolkata FIRs registered in Bhawanipur and Beliaghata, which culminated into a closure report stating mistake of facts and said closure report has also been accepted by the Court. Since PMLA proceeding cannot have an independent existence de hors the underlying predicate offence, in the absence of which the said PMLA proceeding cannot exist.

7. She further argued that in connection with the freezing order dated 23.12.2021 as confirmed by order dated 18.08.2022, the period of 365 days as contemplated in section 8(3) (a) had lapsed on 19.08.2023. Similarly in connection with the provisional attachment order confirmed by order dated 22.09.2022, the period of 365 days has also been lapsed.

8. Despite the closure of predicate cases and acceptance of the closure report by the concerned courts, the opposite parties herein have proceeded to file the aforesaid complaint under the provision of PMLA being ML Case no. 15 of 2023 and based upon such complaint, the court below had taken cognizance.

9. She strenuously argued that the impugned petition of complaint has been filed on 21.09.2023 with the sole purpose of interfering with and scuttling the hearing of the instant quashing petition pending before this High Court i.e. the other application being CRR 708 of 2023. She further

pointed out that CRR 708 of 2023 was filed at the stage of pendency of ECIR bearing no. KLZO I/22/2021, when complaint had not been filed by the ED. However in the impugned complaint the ED authorities have admitted that the Kolkata FIRs have resulted in closure report. The act of ED in making prayer for further investigation is nothing but sharp practice to obviate the effect of closure of the scheduled offences. The reliance of the CBI Case as being the predicate offence is nothing but reliance of irrelevant material extraneous to the present proceeding.

10. She further argued that from the very inception of the Kolkata ECIR the ED had treated the said two FIRs as predicate cases disclosing 'scheduled offences'. Their own repeated pleadings before the adjudicating authority is in support of such contention. However, when ED found that the scheduled offences have been dropped, they conveniently changed their stand to incorporate the CBI charge sheet no. DV-1/ 2014 filed at Kochi as a scheduled offence suppressing that the said charge sheet is already a scheduled offence in a pending PMLA case at Kochi. Dual prosecution/investigation on the self same cause of action is barred under criminal jurisprudence and on the self same set of schedule offence/predicate case, two separate PMLA proceeding cannot be permitted to continue. Therefore the impugned complaint smacks of *malafide* and suffers from suppression of material facts and therefore, the proceedings are liable to be quashed.

11. Mr. Dhiraj Trivedi learned counsel appearing on behalf of the ED argued that the existence of scheduled offence is only required and relevant for the purpose of investigation under the PMLA and not the jurisdiction in

which the scheduled offence has been registered. CBI, Kochi has already given the finding that scheduled offence has been committed involving the grave magnitude of the instant case, which involves approximately Rs. 10,000 crore. Here the FIR registered in Kochi is still in existence and CBI has been investigating the matter. PMLA offence is an independent and continuing offence and in the present case, it is still going on.

12. Mr. Trivedi further argued that CBI Kochi Charge sheet dated 03.02.2014 records about the scheduled offence committed in different States in India including West Bengal. Offence as alleged in the CBI charge sheet is continuing as the agreement of petitioner with Sikkim Government were renewed. The prosecution complaint filed in Kochi is for the period around 2010-2014, whereas the Kolkata ML Case no. 15 of 2023 relates to a different period i.e. the period after 2016. The proceeds of crime attached therein are different from the ML Case of 15 of 2023 filed in Kolkata. Also the persons cheated by the sale of lottery tickets i.e. victims are also different. Thus there is no second time cognizance of the PMLA offence, in the scope and ambit of section 44 of the PMLA.

13. Relying upon paragraph 134 and 135 of the Judgment of Apex Court in ***Vijay Madan Lal Choudhary Vs. Union of India*** reported in **(2023) 12 SCC 1**, he argued that 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 tainted property or claiming it to be so. Therefore, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money laundering and these offence otherwise has nothing to do with the criminal activity relating to a

scheduled offence, except the proceeds of crime derived or obtained as a result of that crime. Therefore, the process/activity as adopted by the petitioner in the present facts situation is a continuing offence irrespective of the date and time of commission of the scheduled offence.

14. Mr. Trivedi in this context further argued that the ECIR is the internal document unlike FIR. It is settled law that several FIRs may be merged with single ECIR. He further contended that it is evident from record that prior to the acceptance of the closure report in connection with FIR no. 246 of 2019 on 05.05.2022, the provisional attachment order under PMLA being order no. 11/2022 was passed and thereby proceeds of crime worth Rs. 409 crore was attached including the charge sheet of Kochi CBI on 31.03.2022. As per the definition given in section 2 (u) of PMLA, the proceeds of crime are not different for two Kolkata FIRs and charge sheet of CBI, which are all based on the same facts of cheating public at large by illegally selling lottery tickets and claiming prizes in the State of West Bengal. ECIR is internal document of the ED and it is not an impediment for the ED to only investigate the FIRs as were recorded at the time of first initiation of the ECIR and ED are well within its power to incorporate other FIRs/charge sheets after having knowledge of the same subsequently, into the same ECIR. In this context Mr. Trivedi also relied upon para 369 and 370 of ***Vijay Madan Lal Choudhury case*** (Supra).

15. In reference to permissibility of clubbing of FIRs/charge sheet, Mr. Trivedi also relied upon a judgment of Delhi High Court in ***Rajinder Singh Chadha Vs. Union of India*** reported in **2023 SCC Online Del 7515** and

another Division Bench judgment of P&H High Court in ***Ireo Pvt. Ltd. Vs. Union of India and another*** reported in **2024 SCC Online P& H 11314**.

16. Mr. Dwivedi Strenuously argued that since the petitioner has already preferred application under section 173(8) of Cr.P.C., which is pending for disposal, it cannot be said that the accused/petitioner has been finally absolved by a court of competent jurisdiction owing to an order of discharge acquittal or because of quashing of the scheduled offence against him. In this context he also relied upon para 109 of ***Vijay Madan Lal Choudhury Case*** (supra) which also referred pending enquiry. Thus the petitioner's role relating to a scheduled offence can be said to be finally absolved owing to an order of discharge, acquittal or because of quashing of criminal case against him by a court of competent jurisdiction.

17. Therefore, learned counsel for the opposite party submits that the petitioner being also an accused in the CBI charge sheet and for the offence committed in the State of West Bengal, he is liable to be prosecuted under PMLA. Moreover section 66(2) of PMLA report of the ED is pending enquiry before the State Police Authority. Furthermore the petitioner is not finally absolved by a court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case and on the contrary the applications preferred under section 173(8) Cr.P.C. is pending for adjudication. Therefore, it is obligatory for the State to enquire further in response to section 66(2) of the PMLA and the jurisdictional police is to act upon section 66(2) of the PMLA without considering as to whether the report is in connection with a new case or an existing one. In this context he relied upon para 150 and 151 of the ***Vijay Madan Lal choudhury Case*** (supra).

18. CBI, Kochi has already given the finding that scheduled offence has been committed and considering the grave magnitude of the instant case which involves approximately Rs. 10,000/- crores, and that the ED within the limitation period prescribed under section 8(3) of the PMLA has filed the prosecution complaint, therefore there appears to be no reason to quash the impugned proceeding. He prayed for dismissal of the instant Applications.

Decision

19. It is not in dispute that the predicate case for ECIR being no. KCZO/4/2014 was initiated on the basis of Bhawanipur PS FIR No. 246 of 2019 and Beliaghata P.S. FIR No. 260 of 2019. It is also not in dispute that police after investigation filed closure report on the ground of mistake of fact in both the cases, which have also been accepted by learned Magistrate. It is EDs specific contention that they have already made prayer for further investigation under section 173(8) Cr.P.C., which are pending for disposal by the concerned Magistrate. In the above backdrop while it is the case of the petitioner that in view of acceptance of final report by the concerned Magistrate, ECIR being no. KCZO/4/2014 does not exist and ML Case no. 15 of 2021 cannot continue as they ceased to exist and cannot survive with the negation of scheduled offence, in view of the ratio laid down in ***Vijay Madan Lal Choudhury Case*** (supra). On the contrary contention of ED is that since PMLA offence is a continuing offence and as the FIR registered in Kochi at Kerala is still in existence and since scheduled offence having grave magnitude involving approximately Rs. 10,000/- crores, so relying upon section 66(2) read with section 2(1) (u) of PMLA and also in view of ratio laid

down in **Vijay Madanlal Choudhury Judgment** (Supra), it is obligatory for the jurisdictional police to act upon section 66(2) and since prayer under section 173(8) is pending, so it cannot be said that two FIRs have been quashed or accused/ petitioner has been discharged or acquitted.

20. Therefore, the question which is posed before this court for consideration is whether in view of acceptance of final report by the Magistrate concerned, said two proceedings are liable to be quashed or not.

21. First of all I need to consider whether the proceeds of crime involved in the said two kolkata FIRs, still survives or not. The proceeds of crime has been defined in section 2(1) (u) of the PMLA which runs as follows:-

(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 3 [or where such property is taken or held outside the country, then the property equivalent in value held within the country] 4 [or abroad]; 5 [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;

22. In **Vijay Madanlal Choudhury Case** (supra) Supreme Court observed offence under section 3 of the PMLA is dependent on the wrongful and 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 offence of money laundering and property must qualify the definition as given in section 2(1) (u). Relevant paragraphs of said judgment may be reproduced below:-

148. *The next question is : Whether the offence under Section 3 is a stand-alone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act.*

149. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of “proceeds of crime” under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the case concerned has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a court of competent jurisdiction. It is well within the jurisdiction of the court concerned trying the scheduled offence to pronounce on that matter.

150. Be it noted that the authority of the authorised officer under the 2002 Act to prosecute any person for offence of money laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of “proceeds of crime” under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence.

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

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

23. After laying down the aforesaid ratio by the Apex Court in **Vijay Madnalal Case** (supra), thereafter on several occasion the same question arose before Supreme Court and before different High Courts i.e. if the predicate case is absolved by way of either acquittal or discharge or quashing of predicate case or by acceptance of the closure report, whether PMLA proceeding can continue.

24. In The Deputy Director, Directorate of Enforcement Vs. EMPTA Coal Ltd & others. Supreme Court while deciding SLP (Civil) Diary no. 15235 /2023 on 06.07.2023 made the following observation:-

“Learned additional Solicitor General submitted that since there is a closure report in the predicate offence, therefore, no further proceedings under the PMLA Act could be continued as per the observations of the High Court in the impugned order (s).

He, however, submitted that in the event any further action is taken in respect of the predicate offence, then liberty may be reserved to the petitioner herein to take further steps under the said Act, including reviving these proceedings. The submission of learned ASG is placed on record.

The special Leave Petitions are disposed of in light of the aforesaid submission and liberty is accordingly reserved to the petitioner”

25. In Directorate of Enforcement Vs. ObulaPuram Mining Co. Pvt. Ltd., Criminal Appeal no. 1269 of 2017 dated 02.12.2022, the Apex Court made the following observation:-

Learned Solicitor General fairly states that since the proceedings before this court arise from an order of attachment and there is acquittal in respect of predicate offence, the proceedings really would not survive.

In view of the aforesaid, the appeals filed by the adjudicating Authority (PMLA) do not survive and are accordingly disposed of.

26. In Naresh Kumar Kejriwal Vs. Directorate of Enforcement Criminal Appeal no. 1262 of 2023 dated 25th April, 2023, the court made the following observation:-

4.*Learned Additional Solicitor General appearing for the respondent, in all fairness, though has not disputed the order so passed by the High Court quashing the proceedings but, has submitted that the present case relates to a fact situation where the order quashing the proceedings qua the appellant has itself proceeded on the reasoning that the appellant was not in possession of the proceeds of crime.*

5.*Taking the totality of the facts and circumstances into account, we find no reason to allow the proceedings against the appellant under Prevention of Money Laundering Act, 2002 (for short, ‘PMLA’) to continue any further.*

6.*However, taking note of the submissions made by the learned Additional Solicitor General and in the interest of justice, we reserve liberty for the respondent in seeking revival of these proceedings if there be any legitimate ground to proceed under PMLA in accordance with law.*

7.*Subject to the observations and liberty foregoing, this appeal is allowed while quashing the proceedings qua the appellant in Complaint/ECIR No.02*

of 2018 dated 03.11.2018 pending in the Court of Additional Judicial Commissioner-I-cum-Special Judge for PMLA at Ranchi.

27. In *Adjudicating Authority (PMLA) and Ors. Vs. Shri Ajay Kumar*

Gupta and others the supreme court noted as follows:-

Learned Solicitor general fairly states that since the proceedings before this court arise from an order of attachment and there is acquittal in respect of predicate offence, the proceedings really would not survive. In view of the aforesaid, the appeals filed by the adjudicating Authority (PMLA) do not survive and are accordingly disposed of.

28. In *Parbathi Kollur and Anr Vs. State by ED* criminal appeal no. 1254 of 2022(decided on 16.8.2022) the proceeding was dropped in view of the fact that the accused was acquitted in that case in relation to the scheduled offence and they were not accused of any other scheduled offence.

29. In *Indrani Patnaik and another Vs. ED & Ors.* (writ petition (Civil) no. 368 of 2021 the relevant observation of Supreme Court is as follow:-

However, taking note of the submissions made by the learned Additional Solicitor General and in the interest of justice, we reserve the liberty for the respondents in seeking revival of these proceedings if the order discharging the petitioners is annulled or in any manner varied, and if there be any legitimate ground to proceed under PMLA. Subject to the observations and liberty foregoing, this petition is allowed while quashing the proceeding in Complaint Case No. 05 of 2020 dated 10.01.2020 pending in the Court of Sessions Court, Khurdha at Bhubaneswar cum Special Court under the Prevention of Money-laundering Act, 2002.

30. Therefore from the aforesaid observations made by the Apex Court after ***Vijay Madanlal Choudhury*** (supra) Judgment in different cases, it is clear that the Apex Court has not made any distinction as to whether the accused is absolved by way of quashing, discharge, acquittal or closure of the predicate case and so far as the PMLA proceedings are concerned, the effect would be the same i.e. upon negation of the predicate case, the PMLA proceeding will not continue.

31. It is true that in the present context the aforesaid two FIRs are neither quashed nor the accused persons have been discharged. But what has been

culled out from the aforesaid decisions is that when the offender of the predicate offence has been discharged or acquitted or the proceeding have been quashed or final report of the proceeding has been accepted, so long such order regarding acquittal or discharge or quashing or acceptance of closure report are not set aside by taking further action, it cannot said that PMLA proceeding still survive, though in all such cases Court also inclined to grant liberty for revival, if any of aforesaid order is quashed at a subsequent stage.

32. Mr. Trivedi learned Counsel for the opposite party argued that ECIR being an internal document of the ED, there is no impediment for the ED to investigate not only the FIRs that were recorded at the time of first information of ECIR but ED is well within its power to incorporate other FIRs/charge sheet subsequently after having knowledge of the same into the same ECIR.

33. In a recent judgment in **M.S. Jaffar Sait Vs. ED** (Criminal appeal no. 2609 of 2025) dated 15.05.2025 the court reiterated the same observation:-

“7. During the pendency of this appeal before this Court, now the circumstances have changed. The predicate offence has been quashed as against all the accused persons. Therefore, the learned Special Judge by an order dated 12th May, 2025 took a note of quashing of the predicate offence and accordingly, the pending case was disposed of by the said order.

8. Thus, the scenario, which emerges today, is that the predicate offence does not survive, in the sense, that the predicate offence has been quashed against all the accused persons and the same does not exist. Therefore, the ECIR deserves to be quashed.

9. Accordingly, we dispose of the pending Criminal Original Petition No.17762 of 2024 by quashing the ECIR No. CEZO-I/35/2020 dated 22nd June, 2020.

10. The appeal is accordingly allowed.

11. However, we clarify that in the event the order of quashing the predicate offence is set aside, the respondent can always apply to this Court for the recall of this order and for restoration of the ECIR.”

34. During the course of argument learned counsel for the petitioner had also relied upon the following judgments in support of the proposition that PMLA proceedings, whether it be the ECIR or the criminal proceeding or the Civil Proceedings of attachment and confirmation cannot be continued post the quashing, closure, acquittal or discharge of the accused in the predicate offence.

- (i)** N.K. Cibi Chakravarty Vs ED, Karnataka HC judgment and order dated 26/12/2024, (NC 2024:KHC:51750). Complaint quashed.
- (ii)** Dr. Lakhwinder singh V Ed, Himachal HC, Judgment and order dated 03/01/2025, (NC 2025: HHC:591) complaint & ECIR quashed, Para 13
- (iii)** Chetan Gupta Vs ED, P&H HC, judgment and order dated 29/04/2024 (NC 2024 : PHHC : 057900) ECIR quashed, para 34,35,39,41
- (iv)** Jeevan Kumar Vs ED, DHC, judgment and order dated 15/01/2024,(NC 2024:DHC:329) complainant quashed, para 12& 13
- (v)** Narahari D Vs ED, Karnataka HC, judgment and order dated 16/12/2024 (NC 2024 : KHC : 51749). Complaint quashed para4.
- (vi)** Nayati Health care Vs ED, DHC, judgment and order datd 11/10/2023, (NC 2023 : DHC : 7542) ECIR & LOC quashed, para 13& 14.

- (vii)** Nik Nish Retail Vs ED(Kolkata HC), judgment and order dated 28/11/2022 passed in CRR 2752 of 2018: complaint quashed.
- (viii)** Maneesh Parmar (Madras HC) judgment and order dated 27/02/2025 passed in WP Nos. 15465 and 15473 of 2024: ECIR quashed., Para3
- (ix)** Kapil Mohan Vs Ed, Karnataka HC, judgment and order dated 15/03/2024(NC 2024:KHC: 10880) ECIR & Summons quashed Para 7 & 8
- (x)** Gurjinder Pal Singh Vs Ed, Chhattisgarh HC, Judgment and order dated 03/02/2025 (NC 2025:CGHC:6050-DB) ECIR Quashed, para 12.
- (xi)** V.P. Nandkumar Vs ED (Kerala HC), judgment and order dated 25/08/2023 passed in CrI MC 5167 of 2023, ECIR quashed para 9,10,11,12,13,14,15,16,17,18,19,20
- (xii)** S. Jagathrakshakan Vs Ed (Madras HC), Judgemnt and order dated 01/11/2022 passed in WP 10854 of 2020: ECIR quashed para 5.
- (xiii)** Harish Fabani Vs ED, 2022 SCC Online Del 3121, ECIR quashed, para 20,22,23,26
- (xiv)** South Indian Bank Vs Ed (Kerala HC) NC:2024: Ker: 53873 ECIR quashed u/s 482 Cr.P.C. para 10& 11
- (xv)** Emta Coal Vs Ed (Delhi HC), judgment and order dated (NC 2023/DHC/000277), para 24& 25

(xvi) Adjudicating Authority Vs Ajay Kumar Gupta (SC), judgment and order dated 02/12/2022 in Criminal Appeal No. 391-392/2028

(xvii) Manturi Shashi Kumar Vs ED, judgment and order dated 19/04/2023(property released after Closure reports), Para 30 to 32

35. In **South Indian Bank Vs. ED** closure report in respect of predicate offence was accepted by the Chief Judicial Magistrate, the Kerala High Court was pleased to quash the proceeding. Para 10 and 11 of the said judgment may be reproduced below:-

“Even though the ECIR registered by the enforcement directorate is an internal and administrative document, since an investigation by the ED is impossible without the existence of a predicate offence, it is essential that the ECIR be closed by the ED on its own volition soon after the predicate offence is quashed or the accused is acquitted or discharged. When the ED refuses to close the ECIR, an aggrieved person is certainly entitled to knock at the doors of this Court either under Article 226 of the Constitution of India or under Section 482 Cr.P.C.

The final report in the predicate offence did not reveal the commission of any criminal offence. The order of the learned Chief Judicial Magistrate, Thrissur accepting the final report as RC.No. 73/2023 on 05.01.2024 is an order issued under the Cr.P.C. to give full effect to such an order, this court can exercise its inherent powers to quash a proceeding, including an administrative document like the ECIR, when it continues to exist, without legal authority.”

36. In the instant case the ECIR bearing no. KLZO I/22/2021 was registered by ED Kolkata, predicated on the two aforesaid FIRs namely FIR No. 246 of 2019 and FIR no. 260 of 2019. It is not in dispute that all the subsequent acts of freezing, attachment and confirmation have been passed believing the same to be proceeds of crime of aforesaid two FIRs and thereby prayer was also made for confiscation of properties at the end of trial as proceeds of crime of said two FIRs. In this context it also needs to be mentioned that section 5 of PMLA gives the office power to provisionally

attach any property in respect of which he has “reason to believe” the same as ‘proceeds of crime’.

37. Needless to repeat that the offence of money laundering relates to the proceeds of crime, the genesis of which is a scheduled offence. Accordingly before initiation of any, it would be necessary for the concerned authorities to identify the scheduled crime. Therefore, in cases where the scheduled offence is negated with the acceptance of final report on the ground of mistake of fact, the fundamental principle of continuing any proceeding under the PMLA also vanishes, at least so long such acceptance be not set aside.

38. It is true that the term “reason to believe” has not been defined in PMLA but it has been defined in section 26 of Indian Penal Code/Section 2(29) (IPC) of BNS, which defines that a person is said to have reason to believe a thing if he has sufficient cause to believe that thing and not otherwise. Here acceptance of final report by Magistrate, prima facie establishes that there exists no belief at this stage and unless order of acceptance is recalled or set aside such belief cannot be said to be *bonafide* belief. Therefore belief of ED about POC is now based upon vague irrelevant or nonspecific information. “Reason to believe” cannot be equated with suspicion or doubt. In ***Joti Prasad Vs. State of Haryana*** reported in **1993 supp (2) SCC 497/AIR 1993 SC 1167** court held in paragraph 5 as follows:-

5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of “intention” or “knowledge” or “reason to believe”. We are now concerned with the expressions “knowledge” and “reason to believe”. “Knowledge” is an awareness on the part of the person concerned indicating his state of mind. “Reason to believe” is another facet of

the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same. Section 26 IPC explains the meaning of the words "reason to believe" thus:

"26. 'Reason to believe'.— A person is said to have 'reason to believe' a thing, if he has sufficient cause to believe that thing but not otherwise."

In substance what it means is that a person must have reason to believe if the circumstances are such that a reasonable man would, by probable reasoning, conclude or infer regarding the nature of the thing concerned. Such circumstances need not necessarily be capable of absolute conviction or inference; but it is sufficient if the circumstances are such creating a cause to believe by chain of probable reasoning leading to the conclusion or inference about the nature of the thing. These two requirements i.e. "knowledge" and "reason to believe" have to be deduced from various circumstances in the case. In the context of the circumstances obtaining in the instant case namely that the appellant admittedly was a licenced stamp vendor and he was found in possession of counterfeit stamps, the explanation of the accused also becomes relevant and important in assessing and appreciating whether he had such knowledge or reason to believe that the stamps were counterfeited. Admittedly he used to purchase stamps from the treasury and all such transactions are duly recorded in the official registers. There is absolutely no material whatsoever to show that the counterfeit stamps were in fact purchased by him from the treasury. A bare allegation by way of an explanation by the accused-appellant that he purchased all the stamps including the counterfeit ones from the treasury appears on the face of it to be false, as he has neither produced registers maintained by him nor did he make even an effort to summon the treasury records. There is no material whatsoever even to probablise such a plea. In these circumstances the only inference that can be drawn is that he had "knowledge" and "reason to believe" that the stamps which he had in his possession and which he was selling or offering to sell, were counterfeit ones. These ingredients of the two provisions of law are fully established. Therefore the convictions are correct. The offence also is a serious one and the sentence awarded is not excessive. The appeal is therefore dismissed.

39. It is also well settled that formation of opinion about "reason to believe" must be based on tangible material which indicates a live link to the necessity to order a provisional attachment to protect the interest of government revenue. The prosecution complaint is filed qua those properties that have been attached and frozen under the ECIR, believing those properties to be the proceeds of the crime of the predicate case which formed the basis of the of ECIR. Upon conclusion of the trial depending upon the acquittal or conviction of the accused persons, the properties already

attached or frozen are either released or confiscated as the case may be based on finding that the property provisionally attached is involved in money laundering or not. It is not possible to conceive of a situation where the accused are absolved in the predicate case, the PMLA proceedings still can be continued believing that the properties attached are proceeds of crime of the predicate case that has ceased to exist.

40. Therefore upon filing and acceptance of final report, in the form of closure by the concerned Magistrate, the situation as it stands now is that the scheduled offence i.e. two Kolkata FIRs have been negated by Magistrate and thereby the existence of proceeds of said crime has also been negated.

41. Now let me consider the claim of ED that ECIR of Kolkata namely ECIR bearing no. KLZO I/22/2021 was also registered based on Kochi CBI Charge Sheet, (DV-1 of 2014) and therefore ED is justified in clubbing Kolkata ECIR with the Kochi CBI charge sheet DV-1/2014.

42. ED in this context has not disputed that Kochi CBI charge sheet (DV-1/2014) had registered ECIR bearing no. KCZO/4/2014 and prosecution complaint and supplementary complaint are also filed in that context where cognizance taken by court and presently pending before Special Court of PMLA at Kochi. The CBI Case at Kochi being charge sheet CC no. 218 of 2015, on an application under section 44(1) (c) of PMLA filed by the ED Kochi, was committed to the Special Court for PMLA at Ernakulam. A supplementary complaint dated 27.10.2022 was filed at Kochi. It is submitted by the petitioner that in the said supplementary complaint, ED has not made any averment concerning aforesaid Kolkata FIRs, though the aforesaid Kolkata FIR was lodged before filing of the said application under

section 44(1) (c) of PMLA by ED in Kochi Case. Therefore argument raised on behalf of the ED that the basis of Kolkata ECIR was also the basis of charge sheet submitted in the aforesaid Kochi Case does not hold water. The proceeds of crime is confined to two aforesaid Kolkata FIRs is also evident from the affidavit dated 03.06.2021 filed by Deputy Director, ED, Kolkata. There is no reflection that the proceeds of crime of the aforesaid two FIRs is also involved in the Kochi case, in the original application filed by ED in connection with the freezing order, passed in the same ECIR/KLZO /I/22/2021 nor it is reflected in the rejoinder filed in the aforesaid OA case. There is also no reference of Kochi FIR in the original complaint filed in connection with the Kolkata Case being ECIR bearing no. KLZO I/22/2021.

43. Moreover, proceeds of crime as defined in 2(1) (u) has laid emphasis upon the words “as a result of” criminal activity relating to the stated scheduled offence. Therefore to be “proceeds of crime” of the scheduled offence at Kochi, ED must have to show that the property derived or obtained directly or indirectly as a result of criminal activity relating to scheduled offence of Kochi. For example possession of unaccounted property acquired by accused persons, if any, may be subject matter of separate proceeding under Tax legislation but may not be regarded as proceeds of crime, unless it is shown that the property acquired “as a result of” criminal activity relating to the concerned scheduled offence at Kochi.

44. In this context though learned counsel for ED pointed out explanation of section 2(1) (u) which was incorporated in 2019 and states:-

“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;”

45. It is true that under section 2(1) (u) proceeds of crime refers to any property including abroad derived or obtained directly or indirectly. However explanation added in 2019 in section 2(1) (u) in no way can be interpreted beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to scheduled offence. The explanation is in the nature of clarification but does not increase the scope or extent of the main definition of “proceeds of crime”.

46. There is one more aspect in the matter. Kochi CBI charge sheet is already the subject matter of PMLA proceeding before Special court at Kochi and said court has taken cognizance on prosecution complaint filed by ED long back. In such circumstances, the claim of inclusion of the Kochi CBI charge sheet no. DV-1 of 2014 and filing of a second PMLA complaint in Kolkata amounts to taking second cognizance based on same predicate case being Kochi CS DV-1 of 2014 which is barred under law. In this context reliance is placed on the ratio laid down in ***Vijay Kumar Ghai Vs. State of West Bengal***, reported in **(2022) 7 SCC 123**, ***Krishna Lal Chawla Vs. State of U.P.*** reported in **(2021) 5 SCC 435**, ***Aekta Ltd & Ors. Vs. Neelam Lamboria***, reported in **2004 SCC Online Cal 602**.

47. Therefore the proceeds of crime in connection with two Kolkata FIRs apparently has no nexus with the Kochi CBI case as proceeds of crime in the Kolkata ML Case. It can only have nexus to the Kolkata FIRs and cannot have any nexus with the Kochi CBI Case, which is evident from the available documents in record.

48. Aforesaid materials in record does not support the EDs contention that ECIR bearing no. KLZO I/22/2021 at Kolkata has 3 pillars i.e. two

Kolkata FIRS and the other at Kochi CBI charge sheet and such contention has not been substantiated during hearing also. Infact according to the aforesaid Kolkata ECIR, the proceeds of crime as alleged is Rs. 290.86 crores which is relatable to FIR 246/2019 and Rs. 118.36 crores which is relatable to FIR 260 of 2019, in total Rs. 409.22 crores.

49. Learned counsel for ED also strenuously argued that ML Case in Kolkata is sustainable adverting to sharing of information under section 66 (2) of the PMLA. Section 66 (2) of PMLA runs as follows:-

“(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.”

50. Section 66(2) of PMLA conceives of a situation where there is no pre existence predicate offence or a pending predicate case and that there is chance of discovery of an information or material. The scope of section 66(2) has been explained by Apex Court in Vijay Madanlal Chowdhury (supra) Case which runs as follows:-

“150. Be it noted that the authority of the authorised officer under the 2002 Act to prosecute any person for offence of money laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of “proceeds of crime” under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence.

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

51. Therefore, unless the property can be categorized as proceeds of crime under section 2(1) (u) of PMLA, the proceeding under PMLA is not maintainable. Section 66 (2) therefore contemplates mainly about registration of a new case and or inclusion for further investigation of a pending case. In **Harish Fabani Vs. ED** reported in **2022 SCC Online Del 3121** the supreme Court held in para 23 as follows:-

“23. As regards the contention of the learned ASG for the ED that Section 66 PMLA permits the Respondents to activate any authority by disclosure of a scheduled offence, this Court is of the considered view that an ECIR or a proceeding under the PMLA cannot be triggered merely on that assumption alone, as noticed by the Hon'ble Supreme Court in the para 253 of Vijay Madanlal Choudhary (supra). Section 66(2) which was being pressed by the Respondents for this purpose merely encapsulates the power of the Director or any other authority to disclose/share any information it may have regarding contravention of any other law by a person/entity “for necessary action”. The provision itself enables disclosure and sharing of information inter se authorities, however mere disclosure does not crystallize a scheduled offence. It is merely an “assumption” till it precipitates as being “registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum” (per the Hon'ble Supreme Court).”

52. In **V.P. Nandakumar Vs. ED** (criminal MC 5167 of 2023) Kerala High Court in this context delivered a judgment on 25th August, 2023, and relevant portion of which runs as follows:-

“18. Section 66(1) of the PMLA prescribes the obligations of the Enforcement Directorate (ED) to provide or facilitate the provision of act of disclosure in and of itself would not categorically render the information as constituting a “scheduled offence.” Such information remains in the realm of an accusation and is to be construed as an “assumption” until such time as it is formally registered with the appropriate jurisdictional police or is subjected to an inquiry pursuant to a complaint filed before a competent forum.”

53. In the present context ED failed to substantiate how the proceeds of crime in the said two Kolkata FIRs are relatable to the Kochi PMLA in CBI Case. The documents with the case record clearly suggests that the alleged proceeds of crime sought to be confiscated according to allegations are relatable to the Kolkata FIR

54. Mr. Trivedi during hearing relied upon the judgments in the case of **Rajinder Singh Chadha Vs. Union of India** (supra) and another and **Ireo Pvt. Ltd. Vs. Union of India** to canvass a proposition that an ECIR is being an internal administrative document is unlike statutory document like FIR and therefore the possibility of inclusion of other predicate cases cannot be ruled out. Both the **Rajinder singh Case** (supra) and **Ireo Pvt Ltd**, (supra) are factually distinguishable. Said cases have dealt with a factual situation where during the subsistence of the ECIR the subsequent and contemporaneous FIR i.e. predicate cases were included. But here the situation is upon acceptance of closure report in the two Kolkata FIRs the Kolkata ECIR does not survive and has ceased to exist. This is also evident from the fact that on 17.08.2023 a claim was made before this High Court that Kolkata ECIR has been transferred to Kochi, meaning thereby that during the subsistence of Kolkata ECIR, the CBI Kochi charge sheet was not included in Kolkata ECIR and the claim of such inclusion of Kochi CBI charge sheet in Kolkata ECIR has been made only for the purpose of filing the aforesaid ML Case at Kolkata. Since Kochi CBI charge sheet is already the subject matter of another ECIR and PMLA proceeding, including a prosecution complaint and cognizance before the PMLA, Special Court at Kochi, therefore said two judgments relied by the ED have got no application in the facts and circumstances of the present case.

55. In view of above discussion CRR no. 708 of 2023 and 4586 of 2023 are allowed. ECIR bearing no. KLZO I/22/2021 and ML Case no. 15 of 2023 are hereby quashed. However taking note of the submissions made on behalf of the ED that their prayer under section 173 (8) of Cr.P.C. is pending

before the Magistrate relating to predicate offence, liberty is reserved for the ED in seeking revival of the said two proceedings, if there be any legitimate ground arises at a subsequent stage to proceed under PMLA in accordance with law.

Urgent Xerox certified photocopies of this Judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(DR. AJOY KUMAR MUKHERJEE, J.)