



Judgment

493 apl1488.24

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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR**

CRIMINAL APPLICATION (APL) NO.1488 OF 2024

1. Laxmi Narain s/o Chandrup Singh
Kaushik, aged about 57 years, occupation:
business, r/o flat No.402, plot No.123,
Gauri Vandan Apartment, Shivaji Nagar,
Nagpur - 440010.

2. Shachi Kaushik w/o Laxmi Narain
Kaushik, aged about 55 years, occupation:
business, r/o flat No.402, plot No.123,
Gauri Vandan Apartment, Shivaji Nagar,
Nagpur - 440010.

3. Shachi Imports and Exports Pvt.Ltd.
10D Tapowan Complex, Somalwada,
Nagpur-440025.

4. Textile Professional LLP,
plot No.4, Trishan Housing Society,
Takli Seem, Near Dubey Layout,
Nagpur - 440036.

..... **Applicants.**

:: VERSUS ::

1. Directorate of Enforcement,
through the Assistant Director,
Sub-Zonal Office, Nagpur.

2. Chairperson,

Adjudicating Authority,
Directorate of Enforcement Room no
26, 4th floor Jeevan Deep Building
Parliament Street, New Delhi-1100. **Non-applicants.**

Shri D.V.Chauhan, Senior Counsel assisted by Shri Chaitanya Barve, Advocate for the Applicants.
Shri Anil Singh, Additional Solicitor General (Senior Counsel) assisted by Shri Kartik Shukul, Shri Aditya Thakkar, Shri Raghav Tiwari, and Shri S.S.Bhist, Advocates for the Non-applicants..

CORAM : URMILA JOSHI-PHALKE &
NANDESH S.DESHPANDE, JJ.

CLOSED ON : 15/10/2025
PRONOUNCED ON : 11/11/2025

JUDGMENT (Per : Urmila Joshi-Phalke)

1. By this application, the applicants seeks following reliefs:

(i) Quash and set side the chargesheet filed in Enforcement Case Information Report ECIR bearing No.ECIR/NGSZO/01/2024 registered by Directorate of Enforcement, Sub-Zonal

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Office, Nagpur for the offence punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 relied upon Documents (RUD) before the Sp.Court (PMLA) Nagpur in Criminal Case No.1/2024.

(ii) grant stay to the proceedings arising out of ECIR bearing No.ECIR/NGSZO/01/2024 registered by Directorate of Enforcement, Sub-Zonal Office, Nagpur for the offence punishable under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 pending before the SPL Court PMLA Nagpur in Criminal Case No.1/2024.

(iii) Grant stay to the order dated 30.9.2024 passed by Chairperson Adjudicating Authority Delhi Enforcement Directorate in PAO

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No.02/2024 and Original Complaint
No.2317/2024.

(iv) Quash the proceedings pending before the
Chairperson Adjudicating Authority Delhi
Enforcement Directorate in PAO NO.02/2024
and Original Complaint No.2317/2024.

(v) The Hon'ble Court may kindly release all
the bank accounts which are seized by the ED
in the present proceedings or specifically one
savings bank account NO.80410082137 of
standard chartered bank at Civil Lines having
an amount of Rs.6 lakhs 45 thousand balance
remaining.

(vi) Quash the order of court of SPL PMLA
Court Nagpur taking cognizance of the case

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vide order dated 23.7.2024 in Criminal Case No.1/2024.

(vii) Allow the application.

(viii) Grant any other relief which this Hon'ble Court deems fit and proper in the facts and circumstances of the case in the interest of justice.

2. The ECIR was registered on the basis of predicate offences registered against the applicants vide FIR No.11200048233307 dated 20.9.2023 under Sections 195, 323, 341, 342, 506(2), 389, 120-B of the IPC and schedule offence vide FIR No.11191067240040 dated 4.3.2024 under Sections 406, 419 and 420 of the IPC and under Section 66-B of the Information Technology Act, 2000 at Valsad and Ahmedabad Police Stations respectively.

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3. As per the investigating agency, the schedule offence was investigated by the competent police authorities and it revealed that the applicants are involved in money laundering of the proceeds of crime and, therefore, investigation was carried out by the Enforcement Directorate (the ED). It revealed during the investigation that the applicant No.1 - Laxmi Narain s/o Chandrup Singh Kaushik played vital role who while discharging duty as employee in the Welspun India Limited, a textile section exercised *de facto* control over two entities namely (1) Shachi Imports and Exports Pvt.Ltd. and (2) Textile Professional LLP and laundered the financial benefits received by him by defrauding M/s.Welspun India Limited. The documents seized and statements of witnesses including statement of applicant No.1 under Section 50 of the Prevention of Money Laundering Act, 2002 (PMLA) and statements of his

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associates, co-partners and business counterparts substantiated the facts.

4. From the evidence gathered, it revealed that applicant No.1 hatched the conspiracy and defrauded M/s.Welspun India Limited through various means and utilized companies viz. M/s.Shachi Imports and Exports Pvt.Ltd. and M/s.Textile Professional LLP for layering proceeds of crime. It further revealed that invoices were raised in the name of Textile Professional LLP thereby layering transactions, siphoned the amounts routing the same to M/s.Shachi Imports and Exports Pvt.Ltd. and parts of the funds were transferred abroad. Thus, prima facie material revealed shows that involvement of the applicants in offence under Sections 3 and 4 read with Section 70 of the PMLA. Hence, ECIR/NGSZO/01/2024 was registered against the applicants.

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5. The present application is preferred by the applicants under Section 482 of the Code of Criminal Procedure/Section 528 of the BNSS on the ground that the applicants cannot be prosecuted under two predicate offences by using the provisions of the PMLA. First Offence bearing Crime No.239/2013 cannot be considered for invocation of the provisions of the PMLA because Section 120-B of the IPC stands alone and cannot be resorted by the ED for registration of ECIR. The applicants have not earned anything or generated any proceeds of crime out of the second predicate offence. Perusal of the FIR would reveal that all the allegations levelled in the report are baseless and engineered with an intention to implicate the applicants by the ED in connivance with M/s.Welspun India Limited. The ECIR was registered on the basis of first two predicate offences. In the entire scheme of PMLA, there is no enabling

provisions which permits the ED to amend the ECIR. There is no prima facie material to make out the offence to initiate the proceeding under the provisions of PMLA and, therefore, the ECIR deserves to be quashed and set aside.

6. Heard learned Senior Counsel Shri D.V.Chauhan for the applicants. He submitted that applicant No.1 has impeccable professional track record and has worked in several countries with utmost honesty and integrity. There has never been any complaints against the applicants in his entire career. The applicant No.1 was working in the field of textile industry since more than three decades and also worked in several countries on different posts. In the year 2005, he returned to India and worked initially with Abhishek Industrial Limited as Vice President. In the month of May 2006, he joined Spentex Industries Limited on the post of

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President (Textile Operations). The main crux which led to the registration of the crime and scheduled offences is as joining of applicant No.1 as Director and Business Head with M/s.Welspun India Limited in the month of July 2018. During employment with M/s.Welspun India Limited, he came across the computer system for tracing fibers in textile processes from cotton till final product. The said process and its trademark were pretended as “Weltrak”. The said patent track was invented by its CEO and Joint Managing Director Mrs.Deepali Goenka and partly implemented by M/s.Welspun India Limited as the said company was caught by its customer i.e. for defrauding its customers in India and on international platform. In order to cover up the same, M/s.Welspun India Limited developed a computer system for tracing fiber in textile processes from cotton till the final product, the said process monitoring system was submitted as a

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patent to the US Patent and Trademark Department and the said was approved on 7.11.2017 and same was trademarked as “Weltrak”. On the basis of the said “Weltrak”, M/s.Welspun India Limited and Welspun USA entered into a settlement agreement with the Class Counsels and the Court at US Illinois approved the said settlement agreement on 28.10.2019 with an injunctive relief and safe harbor mandating the company to ensure that its “Weltrak” is fully implemented and products which are labelled as Egyptian or PIMA are fully traceable till the fiber stage is up to fields in Egypt and America. The applicant were unaware of the said implementation from the date of his joining till 30.10.2019 i.e. the date on which the settlement agreement was shared with him along with a mandate that a monthly/quarterly audit would be carried out for ensuring the implementation of “Weltrak”. Getting aware

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of the same, the applicant formed a team and studied the contents of the said patent and verified the details to the utter shock of the applicant, the said patent was neither correctly drafted nor the same was implemented in the company. Being a responsible employee, he intimated the said fact to the superior i.e. CEO, Managing Director and Director (Finance). The copy of the said communication is also filed on record. He immediately received a call from the Director (Finance) followed by a call from CEO seeking explanations as to why the applicant put these facts in black and white. The said fact revealed that the patent was only a camouflage to continue to cheat and deceit and not a real attempt to correct things at the company. Thereafter, he was pushed to pass on price benefits to Welspun Flooring Limited which was not within law. Being a law abiding citizen, he has not kept mum and again sought his intervention to

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correct the content of the patent and its implementation. However, higher officials of the company were not in favour of the applicant and, therefore, he resigned from the said company vide communication dated 22.11.2019. Thus, the applicant has blown the whistle. Though he intimated, there was no response from the investigation committee. The applicant was taking due follow up from the committee in order to report its findings, but there was absolutely no response and, therefore, he reported the matter to the Ministry of Corporate Sectors. As the applicant has not kept mum and was following the above said issue, he received a legal notice dated 8.12.2020 from the company thereby threatening him of filing a defamation suit against him in order to silence him.

7. In order to put him under pressure and to insist him to withdraw from his stand, Welspun India Limited after more than two years of his resignation with

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the help of its ex-employees registered the offences against the applicant under Sections 342, 348, 406, 504, 506(2) and 120-B of the IPC at Vapi Police Station, Gujarat alleging that the applicant was involved in illegal activities during his employment in the company. The said offence is treated as first predicate offence by the ED for impleading the accused in the instant crime. After registration of the offence against the applicant, the management of the company left no stone unturned to defame the applicant. The applicant filed a suit seeking damages for defamation against the company before learned CJSD, Nagpur. The said suit is still pending. Another crime was registered against the applicant at Vapi Police Station, Gujarat for the offences punishable under Sections 195, 120-B, 323, 341, 342, 389, and 506 (2) of the IPC on the basis of report lodged by one Samir Desai, an employee of Welspun Company who claimed to

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be one of the witnesses in first predicate offence inter alia alleging that on 12.9.2023 the applicant has sent some unknown persons to him not to adduce evidence against the applicant. The said crime to the extent of Section 389 of the IPC is treated as second scheduled offence for the purpose of ECIR. The applicant was arrested in the said offence. Subsequent to that, IT raid was conducted on 30.9.2023 and the applicant's residence and some documents are seized from his house.

8. Learned Senior Counsel for the applicants further submitted that an attempt was made to portray that the applicant is involved in the process of money laundering by opening several bank accounts, but from the bare perusal of the documents on record it would reveal that the accusations against the applicants are false and baseless. The base of the said allegations is only on the basis that he maintained several bank

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accounts and fixed deposits which are not disclosed in his ITR and thus notice under Section 51 of the Black Money Act was issued against him. He has already explained by his notice reply to the ED. The applicant had also disclosed the foreign accounts and fixed deposits in his ITR for Assessment Year 2023-2024. The genesis of the present crime and two predicate crime are registered against him wherein he has already been released on bail. In fact, essential ingredients of Section 389 of the IPC on the basis of which further proceeding under the PMLA is initiated itself are not made out as there was no actual delivery of the property. Therefore, prima facie case is not made out against the applicant. The offence under Section 120-B of the IPC cannot be treated as stand alone offence in the absence of any other scheduled offence being committed for the purpose of prosecution under the PMLA. Thus, there is no predicate

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crime. He further submitted that every monetary transaction between the two business entities does not necessarily amount to money laundering unless money involved is proceeds of crime. The transactions took place between M/s.Textile Professional LLP and various firms are genuine transactions. The ED has made false allegations in the complaint. The applicant has never received any amount in cash. All the entries which the ED has claimed cash transaction are actually RTGS/NEFT transactions which are received for valid accountable source. The applicant has also raised his grievance before the Standard Chartered Bank on 11.9.2024.

9. Thus, the entire charges are levelled against the applicant without any material on record on the basis of false and baseless allegations. The very genesis of the nature of prosecution lies on foreign bank accounts and fixed deposits held by the applicant and not disclosed in

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his ITR. However, the said account was opened by the applicant in the year 1999 during his employment in the said countries and undisputably, the scheduled/predicate offences came to be registered in the year 2022-2023. Thus, there is no nexus between the opening of the said accounts and the predicate offences and, therefore, the said foreign account cannot be termed as “proceeds of crime” under the PMLA.

10. Learned Senior Counsel for the applicants also invited our attention to definition of “proceeds of crime” and submitted that proceeds of crime is a basic requirement for exercising powers under the PMLA which is absent here. Thus, there being no predicate crime and accordingly proceeds of crime on this ground alone only the criminal complaint and RUD need to be quashed and set aside. He further submitted that it is well settled provision of law that every irregular transaction, if any,

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would not necessarily come under the ambit of PMLA, for such transactions, there are other enactments like Income Tax Act and Black Money Act etc.. The main ingredient to invoke, stringent provisions of the PMLA is existence of the predicate offence and proceeds of crime accumulated from the said offence. However, in the present case, perusal of the chargesheet would reveal that the investigation agency has miserably failed to bring on record a single material suggesting the same and, therefore, in absence of the said necessary ingredient, no offence as alleged can be made out against the applicant. He submitted that considering the entire material, no prima facie case is made out and, therefore, the application deserves to be allowed.

11. In support of his contentions, learned Senior Counsel for the applicants placed reliance on following decisions:

(1) Anand Kumar Mohatta and anr vs. State (NCT of Delhi), Department of Home and anr, reported in (2019)11 SCC 706;

(2) South Indian Bank Ltd., rep. by its Chief Manager Jily Hanah Eapen vs. Directorate of Enforcement, rep. by Deputy Director of Enforcement and others, reported in 2024 SCC OnLine Ker 3936;

(3) Writ Petition No.612/2023 (Amar S.Mulchandani vs. Directorate of Enforcement, thr.its Deputy Director and ors) and other connected matter decided by this court on 29.8.2024;

(4) State of Haryana and ors vs. Bhajan Lal and ors, reported in 1992 Supp (1) SCC 335;

(5) Pavana Dibbur vs. Directorate of Enforcement, reported in 2023 SCC OnLine SC 1586;

(6) Vijay Madanlal Choudhary and ors vs. Union of India and ors, reported in 2022 SCC OnLine Sc 929;

(7) Isaac Isanga Musumba and ors vs. State of Maharashtra and ors, reported in (2014)15 SCC 357, and

(8) V.Senthi Balaji vs. Deputy Director, Directorate of Enforcement, reported in 2024 SCC OnLine SC 2626.

12. The said application is resisted by the non-applicants on the ground that the ECIR was registered on the basis of the scheduled offences relating to a well planned conspiracy hatched by applicant No.1 by defrauding M/s.Welspun India Limited through various means for his own benefits. The scheduled offence was investigated by the competent police authorities and subsequently, the non-applicants took up the investigation under PMLA into the laundering of the proceeds of the crime generated from the said offence. By exercising the powers conferred under Sections 17 and 50 of the PMLA, search and seizure proceedings, statements of relevant witnesses were recorded by which prominent role of the applicant No.1 was revealed. The material gathered against the applicant No.1 is not confined to documentary seizures alone, but is fortified

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by his own statements recorded under Section 50 of the PMLA as well as statements of his associates, co-partners and third party business counterparts. The collective reading of these statements and documents established that the applicant No.1 was controlling mind directing divergent of funds through layer transactions involving the aforesaid entities. The *modus operandi* which stands revealed is that invoices were raised in the name of Textile Professional LLP while the actual material originated from Matoshri Magasvargiya Shetkari Sutgirni Maryadit thereby layering transaction to distance the flow of funds from their true sources. The proceeds of such transactions were then routed to Shachi Imports and Exports Pvt.Ltd. and part of the funds was transferred abroad as reflected in the correspondence and written replies of the accused applicant himself.

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13. Heard learned Additional Solicitor General Shri Anil Singh for the non-applicants. He has submitted his notes of submissions. He orally submitted that there were two FIRs which are already registered prior to the recording of the ECIR. The Vapi Police Station had registered two FIRs vide No.1200048220239 dated 8.1.2022 under Sections 342, 348, 406, 408, 504, 506, and 120-B of the IPC. A chargesheet bearing No.391/2022 was filed in connection with the said offence 22.11.2022 against the applicant No.1 and one Mr.Mahendra Rathi, the Vide President (Cotton Procurement). It revealed during the investigation of the said crime that the applicant No.1 along with Mr.Mahendra Rathi committed offence against the company by procuring low quality MECH-1 Cotton for their economic and financial benefits. The another crime bearing No.11200048233307 dated 20.9.2023 under

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Sections 120-B and 389 of the IPC was registered against the applicant No.1. As per the said FIR registered at Vapi Police Station, one Mr.Sameer Desai alleged that the applicant No.1 is engaged in threats and extortion and by engaging some persons threatened him to withdraw himself as a witness from the case against the applicant No.1 and demanded Rs.10.00 lacs from him. The another FIR bearing registration No.11191067240040 dated 4.3.2024 against applicant No.1 under Sections 406, 419 and 420 of the IPC and under Section 66-B of the Information Technology Act by Cyber Crime Police, Ahmedabad. The complaint was filed by one Bhumik Dave and employees of M/s.Welspun Limited against the applicant No.1 for illegally obtaining highly confidential company data. As per the said FIR, it is alleged by the complainant that the applicant No.1 had illegally and dishonestly for his own personal benefits directly or

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through his personal entities being applicant Nos.3 and 4 lured the employees of M/s.Welspun Company by means to gain their trust and get sensitive documents containing M/s.Welspun Company proprietary information from them. The applicant No.1 subsequently leaked this confidential information to the rival companies of M/s.Welspun with an intention to cause loss to the company. Thus, the applicant No.1 was in criminal activities in relation to M/s.Welspun Company and, therefore, the ECIR was amended to add third FIR. From the FIRs it shows that the main allegations that the well planned systematic conspiracy was hatched by the applicant No.1 by defrauding M/s.Welspun India Limited through various means for his own financial benefits and his accomplices. He got benefited through leaking of company's confidential proprietary information causing financial loss to the M/s.Welspun Company, causing

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financial loss through misuse of his position within the company through the procurement of low quality MECH-1 Cotton, diverting the business of M/s.Welspun Company by misrepresenting and misleading its various vendors by claiming that companies are his personal entity in which he was partner were subsidiaries of the M/s.Welspun Company Limited. Thus, the financial kickbacks and other benefits are availed by him from the proceeds of the crime. During the investigation, a raid was conducted at the applicant's residence and some documents are seized. Thus, considering *prima facie* material, the application deserves to be rejected.

14. Learned Additional Solicitor General for the non-applicants further submitted that seven grounds are raised in the application. However, the said grounds are not made out by the applicants. The reliefs sought by the applicants are not maintainable. The reliefs regarding

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quashing of the ECIR and the complaint are also not maintainable as cognizance has already been taken by the court by order dated 23.7.2004. He further submitted that during the course of the investigation, statement of Shri Anand Kulkarni, former employee of M/s.Welspun India Limited; statement of Shri Bhumik Dave, employee of M/s.Welspun India Limited; and statement of Shri Lalit Mahajan, authorized representative of M/s.Welspun India Limited, were recorded which disclose that the applicant No.1 took charge of raw cotton procurement, he introduced new vendors from the Maharashtra, Telangana, Andhra Pradesh, and Karnataka and replaced the superior cotton with lower grade cotton falsely presenting prices and represented that there is only difference of Rs.5/- to Rs.10/- per kilogram. Whereas, price gap was about Rs.44/- per kilogram. He purchased cotton at large scale

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and diverted the unsuitable cotton from Ring Spinning to lower value Open-end Spinning and forced the firm to repurchase Shankar Cotton to meet commitments of the supplier and thereby caused loss to M/s.Welspun Company. The statements of Shri Samir Desai, Shri Mahendra Rathi, and Shri Prakash Patnayak were also recorded and it revealed that multiple employee of M/s.Welspun India Limited along with persons who were employed by the applicant No.1 were involved in the conspiracy which was hatched for his own financial benefits. The statements of applicant No.1, Shri Akash Agrawal, Auditor of M/s.Shachi Imports and Exports Pvt.Ltd., applicant No.2 who is wife of the applicant No.1 also disclose the manner in which the activities are carried out by the applicant No.1. Neither the applicant No.1 nor his Auditor Akash Agrawal could produce the documents to show that the financial transactions which

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he entered into was shown in the record maintained by the entities of which he is a partner. The statements show that the financial control of M/s.Shachi Imports and Exports Pvt.Ltd.; M/s.Textile Professional LLP, and M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit was under the control of applicant No.1 who has utilized these firms for layering the proceeds of crime. Thus, during the investigation, the entire correspondence which was obtained from the applicant No.1 prima facie shows his involvement and modus operandi shows that invoices were raised in the name of M/s.Textile Professional LLP while actual material regenerated from M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit thereby layering the transaction to distance the flow of funds from their true sources. The proceeds of such transactions were then routed to M/s.Shachi Imports and Exports Pvt.Ltd. and part of the funds was transferred abroad.

15. In support of his contentions, learned Additional Solicitor General for the non-applicants placed reliance on the following decisions:

(1) Sheonandan Paswan vs. State of Bihar and ors, reported in (1987)1 SCC 288;

(2) Directorate of Enforcement vs. Niraj Tyagi and ors, reported in (2024)5 SCC 419;

(3) Pradeep Nirankarnath Sharma vs. Directorate of Enforcement and anr, 2026 SCC OnLine SC 560;

(4) Anil Vasant Rao Deshmukh vs. Directorate of Enforcement, thr.its Director and ors, reported in 2021 SCC OnLine Bom 3641;

(5) Vijay Madanlal Choudhary vs. Union of India, reported in 2022 SCC OnLine SC 929;

(6) Vijayraj Surana vs Assistant Director, Enforcement Directorate, Writ Petition No.14782/2024 along with other petitions decided by the Madras High Court on 28.8.2024

(7) Sh.Anup Kumar Singh vs. The Deputy Director Directorate of Enforcement, Hyderabad, reported in 2019 SC (Raj) 1385;

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(8) Pawan Insaa vs. Directorate of Enforcement decided by the Punjab and Haryana High; and

(9) Abhishek Singh vs. Ajay Kumar and ors, SLP (Cri.) No.480/2025 decided by the Supreme Court on 5.6.2025.

16. The present application is preferred by the applicants for quashing of the ECIR.

17. Before entering into the merits of the application, it is necessary to see principles which required to be taken into consideration for quashing of the FIR/ECIR.

18. Perusal of Section 482 of the Code/Section 528 of the BNSS, there is nothing in the words of these Sections which prohibit the exercise of powers of the court to prevent the abuse of process of court or miscarriage of justice. The scope of exercise to be carried out by the court while adjudicating such an application

for quashing is also well established. At this stage, the court is only to look to the prima facie possibility of the offence having been committed.

19. In the case of **Central Bureau of Investigation vs. Aryan Singh etc., reported in (2023)18 SCC 399**, the Hon'ble Apex Court laid down cardinal principle of law that while exercising the powers under Section 482 of the Code, the court is not required to conduct a mini trial. What is required to be considered is whether any sufficient material is available to proceed further against the accused for which the accused is required to be tried or not.

20. In the case of **Rajeev Kourav v. Baisahab (Smt.) and ors, reported in (2022)3 SCC 317**, also the Hon'ble Apex Court held that it is no more res integra that exercise of power under Section 482 CrPC to quash a

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criminal proceeding is only when an allegation made in the FIR or the charge-sheet constitutes the ingredients of the offence/offences alleged. Interference by the High Court under Section 482 CrPC is to prevent the abuse of process of any court or otherwise to secure the ends of justice. It is settled law that the evidence produced by the accused in his defence cannot be looked into by the court, except in very exceptional circumstances, at the initial stage of the criminal proceedings. It is trite law that the High Court cannot embark upon the appreciation of evidence while considering the petition filed under Section 482 CrPC for quashing criminal proceedings. It is clear from the law laid down by this Court that if a prima facie case is made out disclosing the ingredients of the offence alleged against the accused, the Court cannot quash a criminal proceeding.

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21. Section 482 of the Code saves inherent powers of this court. The said provision with the power to make such orders as may be necessary to give effect to any order under the Code or to prevent the abuse of process of any court or otherwise to secure the ends of justice. A reading of the said Section itself is sufficient to comprehend the extent and scope of powers vested in the High Courts. Any orders passed under the provisions of the Code be given its full effect by issuing appropriate orders under Section 482 of the Code. The scope of power under Section 482 is not limited or constricted by the court or nature of the order under challenge. Even an administrative order can be quashed in exercise of the powers under Section 482 of the Code, if it is required to give effect to an order issued under the Code, or if it is necessary to secure the ends of justice.

22. The Hon'ble Apex in the case of **Pepsi Foods Ltd. vs. Judicial Magistrate, reported in (1998) 5 SCC 749** has observed that the powers conferred on the High Courts under Articles 226 and 227 of the Constitution and under Section 482 of the Code have no limits and only restriction is that more the power more the due care and caution is to be exercised while invoking such powers.

23. The Hon'ble Apex Court in the case of **State of Haryana and ors vs. Bhajan Lal and ors** *supra* laid down the principles to exercise the inherent powers under Section 482 of the code which can be exercised by this Court either to prevent abuse of process of any court or otherwise to secure the ends of justice which can be summarized as follows:

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(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or complaint and the evidence

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collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

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(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

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24. In the light of the above well settled legal principles, the present application is required to be decided.

25. Before entering into the merits of the case, a reference of the relevant provisions is required to be taken into consideration.

26. The definition of the scheduled offence given under Section 2(y) of the PMLA which states that "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.

27. The predicate offence is the initial underlying criminal act that generates illicit proceeds which are then

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used in a subsequent crime morel suitably money laundering.

28. The Act also defines proceeds of crime. Section 2(u) which states that “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.

The Explanation given under the said Section is that for 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

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obtained as a result of any criminal activity relatable to the scheduled offence.

29. Section 3 of the PMLA deals with offence of money-laundering that 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

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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.

30. Thus, the offence of money laundering, as per definition in Black's Law Dictionary is, "the act of transferring illegally obtained money through legitimate people or accounts so that its original source cannot be traced.

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31. Another material provision is Section 50 of the PMLA which deals with powers of authorities regarding summons production of documents and to give evidence etc.

32. Reverting back to the facts of this case, it is no doubt true that the commission of scheduled offence is prerequisite and sine-qua-non for initiating investigation under the PMLA which is a special enactment to prevent money laundering and to provide for confiscation of the property derived or obtained directly or indirectly from or involved in any process or activity connected to proceeds of crime including its concealment, possession or acquisition or use and projecting or claiming it as untainted property.

33. The ED recorded ECIR based on crimes registered vide Crime No.1200048220239 under Sections

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342, 348, 406, 408, 504, 506, and 120-B of the IPC, a chargesheet bearing No.391/2022 registered under Sections 114, 120-B, 342, 348, 406, 408, 504, and 506 of the IPC against applicant No.1 and one Mr.Mahendra Rathi and another crime is registered vide Crime No.11200048233307 dated 20.9.2023 under Sections 389 and 120-B of the IPC and FIR No.1119106740040 dated 4.3.2024 under Sections 406, 419, and 420 of the IPC and under Section 66B of the Information Technology Act by the Cyber Crime Police Station, Ahmedabad. These crimes are registered at Vapi and Valsad Police Stations and Cyber Crime Police Station, Ahmedabad respectively.

34. As far as FIR No.11191067240040 dated 4.3.2024 is concerned, the same registered on the basis of report filed one Bhumik Dave, an employee of M/s.Welspun Company against the applicant No.1 for

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illegal obtaining highly confidential company data. As per the allegations in the FIR, the applicant No.1 had illegally and dishonestly for his own personal benefits directly or through his personal entities being applicant Nos.3 and 4 lured the employees of M/s.Welspun Company and by gaining their trust obtained sensitive documents of the company and and leaked the said confidential information to the competitors company for the purposes of causing loss to the company. Considering the allegations in the third FIR which was in relation to the criminal activity conducted by the applicants more particularly applicant No.1 in relation to M/s.Welspun Company, the ECIR was amended to add third FIR.

35. Thus, it can be seen that in the FIRs the main allegations are that the well planned systematic conspiracy was hatched by the applicant No.1 by

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defrauding M/s.Welspun India Limited to various means for his own financial benefits and his accomplices.

36. On going through the material collected during the investigation, by recording the statements of various witnesses, in exercise of powers conferred under Sections 17 and 50 of the PMLA, it revealed that the statement of one Anand Kulkarni, former employee of M/s.Welspun India Limited states that new vendors are known to the applicant No.1 for making one cotton which was of low quality. Previously, the cotton was purchased locally from Gujarat, but he hailing from Maharashtra utilized his own connections to introduce new vendors, in return, he received financial kickbacks while M/s.Welspun India Limited suffered loss. The statement of Bhumik Dave, employee of M/s.Welspun India Limited, was recorded under Section 50 of the PMLA, on the basis of whose statement Crime

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No.11191067240040 was registered disclosing that initially the applicant No.1 was head and later incharge of cotton procurement repeatedly violated company policies and ethics concealing his own competing business M/s.Shachi Imports and Exports Pvt.Ltd. and M/s.Textile Professional LLP, refusing to sign his employment agreement and using his position to recruit associates and introduced new cotton vendors from the Maharashtra without justification. He shifted procurement from the superior Shankar Cotton, Gujarat to inferior MECH-1 Cotton (Maharashtra/Andhra Pradesh) fixing prices higher than market rates, causing quality problems and losses and receiving kickbacks that led to an estimated Rs.40.00 crores loss to M/s.Welspun Company. After resigning abruptly in November 2019, he conspired with competitor company and through his NGO (Textile Consumer Foundation) spread the rumor that Welspun

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patented hygro cotton process was fraud and also issued threatening letters to the vendors, leaked the confidential information and sought to damage Welspun Export business for rivals benefits. Perusal of his statements shows that while joining Welspun Company, the applicant No.1 has not disclosed regarding on going personal business despite it was mandatory to disclose the same. He deliberately did not sign employment agreement with the company. His statement further shows his actions revealed that he was acting in a bad faith and motivated to cause harm to the company. While joining the company, he suppressed the facts and failed to disclose anything about his business M/s.Shachi Imports and Exports Pvt.Ltd. wherein he is Director, Promoter of M/s.Textile Professional LLP wherein he is designated partner. Both of his business are in business competing with the business of company wherein he was serving.

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There was a clear conflict which was not disclosed by the applicant No.1. His statement further disclosed that by using his position, the applicant No.1 pressurized the other employees to urgently recruit Mahendra Rathi in Cotton Procurement Department though there was no vacancy at that time. It was later revealed that Mahendra Rathi was colleague of the applicant No.1 in his previous organization. The statement also shows that the applicant No.1 introduced 24 new cotton vendors mostly from Maharashtra Region without providing the test and obtained inferior quality of cotton from them by ignoring higher quality cotton of Shankar Cotton and caused loss to the Welspun Company. This statement of said Bhumik Dave alleges that the applicant No.1 has engaged services of Mahendra Rathi by appointing him by using his position in the company. The statement of Mahendra Rathi is also recorded who substantiates the said

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allegations and stated that after the applicant No.1 had joined M/s.Welspun India Limited, he informed him as to the job opportunities in M/s.Welspun India Limited. As per his instructions, he has attended interview in M/s.Welspun India Limited at corporate office, Mumbai and was elected and posted at Vapi Plant as Vice President (Cotton Purchase). In Vapi Plant of M/s.Welspun India Limited, his role was only to purchase the cotton. Upon instructions of the applicant No.1, new vendors were introduced to supply MECH-1 Cotton to M/s.Welspun India Limited. As a result, 1200 raw cotton of MECH-1 was procured. Upon test being conducted by total quality management team, it was revealed that the quality of cotton procured was of low quality. It was also informed that the applicant No.1 was tampering with the test result to ensure that the low quality cotton gets cleared for production. The MECH-1 cotton was

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procured from the vendors as suggested by the applicant No.1. He specifically stated that he was only following instructions of applicant No.1. He was aware that the quality of MECH-1 Cotton was inferior to that of Shankar variant of raw cotton. The decision to shift from Shankar variant cotton to MECH-1 variant of cotton was of the applicant No.1. He was in the company for two months.

37. Besides the statements of these two witnesses, statement of Lalit Mahajan, an authorized representative of M/s.Welspun India Limited was recorded under Section 50 of the PMLA who also stated that after the applicant No.1 took charge of Raw Cotton Procurement, he introduced new vendors from Maharashtra, Telangana, Andhra Pradesh, and Karnataka and replaced the superior cotton with Lower Grade MECH-1 falsely presenting the price gap of Rs.5/- to Rs.10/- whereas real gap was about Rs.44/- per kilogram. By purchasing 1200

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raw cotton of MECH-1 of inflated prices, diverting this unsuitable cotton from ring spinning to lower value open end spinning and forcing the firm to repurchase from Shankar Cotton to meet supply commitments. The Welspun suffered loss about Rs.6.75 crores, Rs.6.95 crores and Rs.23.24 crores respectively. The negative propaganda and representation were followed in link by applicant No.1's NGO which caused loss to the Welspun Company. The estimated value of the loss was Rs.121.77 crores revenue loss. His statement further revealed that there was deliberate conspiracy on part of the applicant No.1 for personal gain taking kickbacks from the competitors, leaking confidential information and diverting the business while falsely portraying his own firms M/s.Textile Professional LLP and M/s.Shachi Imports and Exports Pvt.Ltd. as Welspun subsidiaries and

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channeling the illicit proceeds into them. These statements reveal in RUD-3.

38. The statements of Samir Desai and Prakash Patnayak disclose regarding illegal activities of the applicant No.1 due to which Welspun Company suffered loss and the applicant No.1 received kickbacks from the competitors. Not only the statements of these witnesses but also statements of the applicant No.1 himself and his Auditor Shri Akash Agrawal disclose that M/s.Shachi Imports and Exports Pvt.Ltd. deals with trading of cotton yarns and fibers. The company did not have any manufacturing unit except the registered address of the company i.e. Flat No.10D, Tapovan Complex, Somalwada, Nagpur, the company did not have any other branches and only one employee Shri Dilip Vyas. The applicant No.1 as well as his Auditor failed to produce relevant documents to show the source of income

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received by the applicant or the profits received by the applicant by running the said companies. Even, the Auditor was not aware of the logistics of M/s.Shachi Imports and Exports Pvt.Ltd.. The statement of Shri Akash Agrawal shows that Shri Dilip Vyas was the only employee who used to supply the shares and the sale containing the details of sales/purchases, credit note, debit note, invoices of sale purchases and expenses and bank account statements. His statement though shows that he used to maintain accounts of both the entities, he could not produce the data pertaining to M/s.Shachi Imports and Exports Pvt.Ltd. before the investigating agency. It further reveals from his statement that entries made in the books of M/s.Shachi Imports and Exports Pvt.Ltd. with respect to M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit, one Vijaykumar Kedia had conducted the audit for the entries pertaining to

M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit based on the documents submitted by the applicant No.1 through Shri Dilip Vyas, but he could comment on the genuineness of the said transactions.

39. Thus, from the investigating papers, it reveals that invoices were raised in the name of M/s.Textile Professional LLP while actual material originated from M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit and the amount was siphoned by showing it flows from their true source. The proceeds of such transactions were then routed to M/s.Shachi Imports and Exports Pvt.Ltd.. The statement of Shri Dilip Vyas also confirms the applicants direction in issuing non-genuine invoices and makes it clear abundantly clear that the applicant was involved in the activities connected with the proceeds of crime.

40. The documentary evidence and the statements recorded by the authorities, at this stage, prima facie, show involvement of the applicants.

41. Though learned Senior Counsel Shri D.V.Chauhan for the applicants vehemently submitted that the applicant No.1 is involved in the said business since long prior to joining M/s.Welspun India Limited, concealing his involvement in the business that he is running M/s.Shachi Imports and Exports Pvt.Ltd. and M/s.Textile Professional LLP and deals with similar business. The inability of the applicant to submit relevant documents and his admission that he has not shown huge amounts in his Income Tax Returns is sufficient to draw an inference, at this stage, regarding his involvement in the illegal activities supported by various statements of the witnesses.

42. The statements of the witnesses, even the statement of the applicant No.1 recorded under Section 50 of the PMLA and various documents, show *modus operandi* who was found responsible for various illegal activities and causing loss to M/s.Welspun India Limited.

43. The PMLA was enacted to deal with issue of money laundering and for its prevention, by providing for attachment of the proceeds of crime, its adjudication and its confiscation, by setting up the agencies and mechanism for combating as it posed serious threat to financial situation of the nation. The validity and interpretation of certain provisions of PMLA and the procedure followed by the ED while enquiring into/investigating the offence under the PMLA, as being violative of the Constitutional mandate was placed before the Three-Judge Bench of the Hon'ble Apex Court in the case of **Vijay Madanlal Choudhary and ors vs. Union of**

India and ors *supra* which relied by both the sides and various concerns as regards provisions and its implementation. Paragraph No.455 of the said decision is reproduced as under:

“455. Needless to underscore that the 2002 Act is intended to initiate action in respect of money-laundering activity which necessarily is associated with the property derived or obtained by any person, directly or indirectly, as a result of specified criminal activity. The prosecution under this Act is not in relation to the criminal activity per se but limited to property derived or obtained from specified criminal activity. Resultantly, the inclusion of criminal activity which has been regarded as non-cognizable, compoundable or minor offence under the concerned legislation, should have no bearing to answer the matter in issue. In that, the offence of money-laundering is

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an independent offence and the persons involved in the commission of such offence are grouped together as offenders under this Act. There is no reason to make distinction between them insofar as the offence of money-laundering is concerned. In our opinion, therefore, there is no merit in the argument under consideration.”

The difference between the ECIR and FIR is also dealt upon in this judgment and for perusal, paragraph Nos.456 and 457, are reproduced as under:

“456. As per the procedure prescribed by the 1973 Code, the officer in-charge of a police station is under an obligation to record the information relating to the commission of a cognizable offence, in terms of Section 154 of the 1973 Code. There is no corresponding provision in the 2002 Act requiring registration of offence of money-laundering. As noticed earlier,

the mechanism for proceeding against the property being proceeds of crime predicated in the 2002 Act is a *sui generis* procedure. No comparison can be drawn between the mechanism regarding prevention, investigation or trial in connection with the scheduled offence governed by the provisions of the 1973 Code. In the scheme of 2002 Act upon identification of existence of property being proceeds of crime, the Authority under this Act is expected to inquire into relevant aspects in relation to such property and take measures as may be necessary and specified in the 2002 Act including to attach the property for being dealt with as per the provisions of the 2002 Act. We have elaborately adverted to the procedure to be followed by the authorities for such attachment of the property being proceeds of crime and the follow-up steps of confiscation upon confirmation of the provisional attachment

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order by the Adjudicating Authority. For facilitating the Adjudicating Authority to confirm the provisional attachment order and direct confiscation, the authorities under the 2002 Act (i.e., Section 48) are expected to make an inquiry and investigate. Incidentally, when sufficient credible information is gathered by the authorities during such inquiry/investigation indicative of involvement of any person in any process or activity connected with the proceeds of crime, it is open to such authorities to file a formal complaint before the Special Court naming the concerned person for offence of money-laundering under Section 3 of this Act. Considering the scheme of the 2002 Act, though the offence of money-laundering is otherwise regarded as cognizable offence (cognizance whereof can be taken only by the authorities referred to in Section 48 of this Act and not by jurisdictional police)

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and punishable under Section 4 of the 2002 Act, special complaint procedure is prescribed by law. This procedure overrides the procedure prescribed under 1973 Code to deal with other offences (other than money-laundering offences) in the matter of registration of offence and inquiry/investigation thereof. This special procedure must prevail in terms of Section 71 of the 2002 Act and also keeping in mind Section 65 of the same Act. In other words, the offence of money-laundering cannot be registered by the jurisdictional police who is governed by the regime under Chapter XII of the 1973 Code. The provisions of Chapter XII of the 1973 Code do not apply in all respects to deal with information derived relating to commission of money-laundering offence much less investigation thereof. The dispensation regarding prevention of money-laundering, attachment of proceeds of crime and

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inquiry/investigation of offence of money-laundering upto filing of the complaint in respect of offence under Section 3 of the 2002 Act is fully governed by the provisions of the 2002 Act itself. To wit, regarding survey, searches, seizures, issuing summons, recording of statements of concerned persons and calling upon production of documents, inquiry/investigation, arrest of persons involved in the offence of money-laundering including bail and attachment, confiscation and vesting of property being proceeds of crime. Indeed, after arrest, the manner of dealing with such offender involved in offence of money-laundering would then be governed by the provisions of the 1973 Code as there are no inconsistent provisions in the 2002 Act in regard to production of the arrested person before the jurisdictional Magistrate within twenty-four hours and also filing of the complaint before the Special Court

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within the statutory period prescribed in the 1973 Code for filing of police report, if not released on bail before expiry thereof.

457. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the

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

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the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.”

44. As The Prevention of Money Laundering Act, 2002 being enacted to prevent money-laundering, has provided for a wider scope as this offence takes place when, any person directly or indirectly attempts to indulge or knowingly assist 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 projects or claims it as an untainted property. A person is guilty of the offence of money laundering in all the above situations. A person is also guilty of money-laundering if he is found to have directly or indirectly attempted to indulge or knowingly

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assisted a party or is actually involved in concealment or possession, acquisition, use and projecting it as untainted property or claiming it to be so.

45. The statement of the applicant No.1 and documents on record itself show that the applicant No.1 was not only involved in causing loss to M/s.Welspun India Limited but also he created false documents and the amounts are not shown the ITR. It is further evident that he is involved in manipulating financial/book of accounts of his bogus entities M/s.Shachi Imports and Exports Pvt.Ltd. and M/s.Textile Professional LLP thereby laundering the proceeds of crime.

46. The applicant Nos.1 and 2 were Directors of M/s.Shachi Imports and applicant No.1 was also partner of M/s.Textile Professional LLP. Though he stated that invoices and original records of the company were kept at

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his residence, while tally data and accounts were maintained externally through professionals and thereby conceded the financial and operational control of the entities rested with him. The statement of his Auditor Shri Akash Agrawal shows that M/s.Shachi Imports and Exports Pvt.Ltd. was involved in only trading initially importing polyster staple fibers from China and later from 2018 buying and selling cotton fibers and yarn within India with no manufacturing units and branches other than its Nagpur registered offence and just one employee. He further stated that he is unable to explain rise in turnover between 2018-19 and 2021-22 as to the large operations functioned with a single swab employed by the applicants and thereby merely spread sheets and bank statements were forwarded to the Auditor and the Auditor without verifying genuineness, maintained the

record. Therefore, there is a doubt regarding genuineness of the said transaction itself.

47. The statement of Shri Narayan Kapse, Manager of M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit also shows that his role was to oversee the workers. He submitted that the Chairman of M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit had handed over all the mills financial and production responsibilities to M/s.Textile Professional LLP without any written agreement and that the mill was actually run by Shri Wasudev Warade and the applicant No.1 with all its financial records kept at M/s.Textile Professional LLP premises.

48. From the above statement, it reveals that the financial control of M/s.Shachi Imports and Exports Pvt.Ltd., M/s.Textile Professional LLP, and M/s.Matoshri

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Magasvargiya Shetkari Sutgiri Maryadit was under applicant No.1 who has utilized these firms for layering proceeds of crime.

49. The statement of another employee, Mrs.Archana Rothe of Shri Gajanan Sahakari Sutgiri Limited, also discloses that the applicant No.1 through M/s.Textile Professional LLP engaged in fraudulent dealing that caused heavy financial losses and ultimately closure of their mill. The applicant No.1 and his associates alleged submitted inflated invoices, supplied poor quality cotton and on demand to replace it, removed the defective raw cotton without providing any replacement due to which loss was caused to the mill and resultantly it was closed down.

50. The statement of Maheshwari Gourao, proprietor of Rangoli Yarns recorded during investigation

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throws further light on the *modus operandi* of the applicant No.1 who stated that Shri Wasudev Warade represented both textile professionals M/s.Shachi Imports and Exports Pvt.Ltd. and M/s.Textile Professional LLP. However, the invoices were often raised in the name of M/s.Textile Professional LLP while actual material was supplied by M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit which shows that the applicant No.1 through his associate Shri Wasudev Warade used M/s.Textile Professional LLP as billing entity while supplies originated from M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit bill thereby layering the transactions and concealing true source of funds.

51. From the statements of Yogesh Nimbonia and Ram Setex it shows that the applicant No.1 was involved in manipulating financial and book of accounts of his bogus entities. The applicant No.1 furnished details of

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multiple bank accounts held by himself and his wife and his control over entities and also placed on record his written submissions from which it reveals that invoices were raised in the name M/s.Textile Professional LLP while the actual material originated from M/s.Matoshri Magasvargiya Shetkari Sutgirni Maryadit and proceeds of such transactions were then routed to M/s.Shachi Imports and Exports Pvt.Ltd. and part of the funds were transferred abroad.

52. Thus, the complexity of the issue involving multiple issues and facts and the transactions entered appear to be not genuine one and rigorous investigation is carried out by the authorities.

53. At this stage, the material involves a serious allegation, discovery of incriminating financial records at his residence and on going tracing of funds through

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various entities which show prima facie case against the applicants.

54. Admittedly, the scheduled offences are registered against the applicants vide FIR No.11200048233307 under Sections 195, 323, 341, 342, 506(2), 389, 120-B of the IPC and vide FIR No.11191067240040 under Sections 406, 419 and 420 of the IPC and under Section 66-B of the Information Technology Act, 2000 at Valsad and Ahmedabad Police Stations respectively. The quashing proceeding in respect of the scheduled offences is still pending in Gujarat High Court.

55. Section 420 of the IPC being included as scheduled offence in the Schedule to the PMLA. The ECIR was registered by considering the said scheduled offence.

56. The pronouncement of the Hon'ble Apex Court in the case of **Vijay Madanlal Choudhary and ors vs. Union of India and ors** *supra* has demonstrated and purpose of object of the PMLA by stating that it is not limited to punishment for offence of money laundering, but it also provides measures for prevention of money laundering and for attachment of proceeds of crime which are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds under the PMLA.

57. Admittedly, a link between the scheduled offence defined under Section 2(1)(y) of the PMLA with "proceeds of crime" is required to be established.

58. In the present case, sufficient material is on record to show link between the scheduled offence and

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the proceeds of crime. The property derived or obtained as a result of criminal activity relating to an offence termed as a “scheduled offence” is regarded as a tainted and dealing or layering such property, in any manner, attracts the offence of money laundering.

59. The offence under Section 3 of the PMLA depends on illegal gain of property as a result of criminal activity relating to scheduled offence and is concerning the process of activity connected with such property which constitutes the offence of money laundering.

60. Thus, the statements of various witnesses and documents on record sufficiently show that there is live link between the scheduled offence and the ECIR.

61. Learned Senior Counsel Shri D.V.Chauhan for the applicants raised grounds that due to the dispute between the applicants and the management of the

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Welspun, the applicants are falsely implicated in the alleged offence.

Whereas, learned ASG Shri Anil Singh for the non-applicants submitted that by that reason, the application for quashment of the FIR cannot be allowed. He placed reliance on the decision in the case of **Sheonandan Paswan vs. State of Bihar and ors** *supra* wherein it is held that political motivation or vendetta could not possibly a valid ground withdrawal of the prosecution.

62. Even considering the entire material collected during the investigation, it sufficiently shows involvement of the applicants in the alleged crime and, therefore, the contentions of learned Senior Counsel for the applicants that the applicants are falsely implicated due to rift

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between the management and the applicants are not sustainable.

63. Learned Senior Counsel for the applicants also submitted the offence under Section 120-B of the IPC cannot be treated as stand alone offence in absence of any other scheduled offence being committed for the purposes of prosecution under the PMLA.

64. Now, Section 120-B of the IPC is included in Part-A of the Schedule, even if allegation is of making criminal conspiracy to commit an offence, which is not part of the schedule, the offence becomes the scheduled offence. Thus, the offence of dishonest misappropriation of property or criminal breach of trust, the offence under Section 120-B of the IPC of conspiracy to commit offences under Section 420 of the IPC or any other offences will become a scheduled offence. The legislative intent from

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the definition of the scheduled offence under clause (y) of sub-section (1) of Section 2 of the PMLA is that every crime which may generate proceeds of crime need not be a scheduled offence and, therefore, only certain specific offences have been included in the schedule. Section 3 would be invoked by simply applying Section 120-B of the IPC when there is material to show that there is conspiracy to commit an offence. The object is to punish those involved in conspiracy to commit a crime though they may not have committed any overt act that constitutes the offence. The conspiracy is an agreement between the accused to commit an offence. The punishment provided under Section 120-B of the IPC becomes evidence that it is not aggravated offence. It only fixes principle of vicarious liability. The said aspect is also considered by the Hon'ble Apex court in the case of **Pavana Dibbur vs. Directorate of Enforcement**,

reported in 2023 SCC OnLine SC 1586 wherein it is observed that the offence punishable under Section 120-B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the schedule.

65. The offences registered against the applicants under Sections 389 read with 120-B of the IPC are scheduled offences. The another crime registered against the applicants under Sections 419 and 420 of the IPC is also scheduled offence.

66. The condition precedent for existence of “proceeds of crime” is the existence of “scheduled offence. On this aspect, the Hon’ble Apex Court in the case of **Vijay Madanlal Choudhary** *supra* held that, “tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal

activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in

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relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now”.

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

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Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence - except the proceeds of crime derived or obtained as a result of that crime.

67. Admittedly, the ECIR is based on the subject FIR as it contained an accusation against the applicants that the applicant No.1 has hatched conspiracy and defrauded M/s.Welspun India Limited through various means and utilized companies M/s.Shachi Imports and Exports Pvt.Ltd. and M/s.Textile Professional LLP for layering proceeds of crime. It further revealed that invoices were raised in the name of M/s.Textile Professional LLP thereby layering transactions, siphoned the amounts, routing the same to M/s.Textile

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Professional LLP and part of the funds was transferred abroad.

68. Section 420 of the IPC being included as a scheduled offence in the Schedule of PMLA, the subject ECIR was registered by taking into consideration the offence punishable under Section 420 of the IPC as well as the offences under Sections 120-B, 195, 323, 341, 342, 389, and 506 of the IPC. The chargesheet bearing No.391/2022 registered under Sections 114, 120-B, 342, 348, 406, 408, 504, and 506(2) of the IPC was also considered while registering the ECIR. It was thus seen from the FIR that the main allegations are that a well planned systematic conspiracy was hatched by the applicant No.1 and he got benefited through leaking of confidential proprietary information, causing financial loss to Welspun Company, causing financial loss to misuse of his position within the company through procurement

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of low quality raw material, diverting the business of Welspun Company also by misrepresenting and misleading its various vendors of the company. The stand taken by the ED, supported by various statements of the witnesses, is sufficient to conclude that the ECIR registered against the applicants cannot be quashed and the registration of the offences vide FIR No.1200048220239 dated 8.1.2022 under Sections 342, 348, 406, 408, 504, 506(2), and 120-B of the IPC, chargesheet bearing No.391/2022 registered under Sections 114, 120-B, 342, 348, 406, 408, 504, and 506(2) of the IPC, and FIR No.11200048233307 under Sections 195, 323, 341, 342, 506(2), 389, and 120-B of the IPC and FIR No.11191067240040 under Sections 406, 419 and 420 of the IPC and under Section 66-B of the Information Technology Act, 2000 would constitute scheduled offences. The investigation carried out by the

ED on the basis of the scheduled offences sufficiently shows involvement of the applicants in the alleged offences and, therefore, a prima facie case is already made out.

69. In view of the law laid down by the Hon'ble Apex Court, while considering applications for quashing of FIRs, powers under Section 482 of the Code cannot be exercised when allegations made in the FIR or chargesheet constitute ingredients of the offence/offences alleged. Interference by this court under Section 482 of the Code is to prevent the abuse of process of any court or otherwise to secure ends of justice. The defence of the accused cannot be looked into by the court except in very exceptional circumstances at the initial stage of criminal proceeding. Even, this court cannot conduct a mini trial by appreciating the evidence while considering petition filed under Section 482 of the Code and, therefore, at this

stage, what is to be looked into is, whether the evidence collected by the investigating agency is sufficient to make out a case against the accused triable.

70. By applying the said principle as above, there is an ample material against the applicants and, therefore, the application deserves to be rejected and the same is **rejected** accordingly.

Application stands **disposed of**.

(NANDESH S.DESHPANDE, J.)

(URMILA JOSHI-PHALKE, J.)

!! BrWankhede !!

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