IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.01.2025

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

Crl.R.C.No.103 of 2025

Directorate of Enforcement,
Government of India,
Ministry of Finance, Department of Revenue,
No.16, Greams Road, BSNL Building, Tower II,
3rd Floor, Thousand Lights West,
Thousand Lights, Chennai 600 006 ... Petitioner

Vs.

1. Indian Bank,
   Stressed Assets Management Branch,
   No.55, Ethiraj Salai,
   Chennai 600 008.

2. S. Galeel Rahman @ Khaleel,
   S/o. Shri. Sulaiman,
   Managing Partner of M/s.Nafisa Overseas,
   Flat No.601, Tower 33, North Town Apartments,
   Stephenson Road, Perambur, Chennai.

3. Sirajuddin,S/o. Sulaiman,

Partner of M/s.Nafisa Overseas
No.73/1A3, 1/209A, Kannamedu Industrial Estate,
Valayampet, Vaniyambadi 635 751

4. M/s. Nafisa Overseas,
represented by Partners,
S.Galeel Rahman and Sirajuddin,
29, 1st floor, Wuthucattan Street,
Periamet, Chennai 600 003.

5. M/s. Safa Leathers,
represented by S. Galeel Rahman,
S/o. M.B.Sulaiman,
29, 1st floor, Wuthucattan Street,
Periamet, Chennai 600 003.

6. Tomy G. Poovattill,
S/o. late George T.Poovattil,
T-2, Malees Apartments, 3rd floor,
No.46/26, Taylor Estate, 2nd street,
Kodambakkam, Chennai -24

7. M/s. Fatima Enterprises,
rep. by Prop. Sehama,
Flat No.61, Tower 33,
North Town Apartments,
Stephenson Road, Perambur,
Chennai600 012.

8. M/s. Sun Overseas, rep. by Prop.
Mr. V. Rajan, 1056, CAN Road,
Konamedu, Vaniyamabadi 635 751 ... Respondents

PRAYER: Criminal Revision Case has been filed under section 438 & 442 of BNS

2023 to call for the original records and set aside or expunge the finding/observation made by the ld. Special Court in para 10 of the order dated 26.11.2024 in Crl.M.P.N.6789/2024 in Spl.C.C.No.14 of 2022 that proceeds of crime does not include such assets of value equivalent to proceeds of crime derived persons involved in money laundering and that properties which were purchased by accused persons before the occurrence of crime would not come under the definition of " proceeds of crime" in Section 2(U) of Prevention of Money Laundering Act 2002.

For Petitioner	:	Mr. P. Sidharthan
For Respondents	:	Mr.T. Sunder Rajan, for R1
		R2 to R8 given up

ORDER

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

Under assail is the order of the learned Principal Sessions Judge for CBI Cases / designated Court under Prevention of Money Laundering Act 2002/VIII Additional City Civil Court, Chennai dated 26.11.2024 in M.P.No.6789 of 2024 in Spl.C.C.14/2022 in ECIR No.3/CEZO/Z-II/2018.

2. The learned counsel Mr.T.Sundar Rajan, takes notice for the first

respondent, Indian Bank and made a submission that the bank has no serious objection for clarifying the observations made by the Special Court in paragraph no.10 of the order impugned.

3. In respect of other respondents 2 to 8, the revision petitioner/Directorate of Enforcement has given up and respondents 2 to 8 have already expressed no objection regarding the petition filed by the Indian Bank before the Special Court. Therefore, no notice was ordered to the respondents 2 to 8.

4. The short issue raised in the present criminal revision petition is that the Special Court has erroneously made an observation in paragraph 10 of the order impugned regarding the interpretation of Section 2(u) of Prevention of Money Laundering Act 2022 (herein after referred as "PMLA"). The portion of the said paragraph 10 sought to be removed by the petitioner herein reads as under:

> *" 10. Petitioner is the victim of crime committed by the accused persons and suffered monitory loss, due to gross-default committed by the accused persons. The properties attached by the respondent no.1/Enforcement Directorate cannot be termed as proceeds of crime, as they were*

purchased long back before availing the loan facilities from the petitioner/Bank. The 1st respondent/Enforcement Directorate relied on the definition of proceeds of crime under Section 2(u) of PMLA and justified the attachment claiming that proceeds of crime includes such assets of value equivalent to proceeds of crime derived by such person involved in money laundering. This view taken by the Enforcement Directorate is totally against the decision of the Hon'ble Supreme Court in ***"Vijay Madanlal Chowdhary and others /vs/ Union of India"*** *-2022 SCC online SC 929. However, in this case, the properties mortgaged with the petitioner/Bank are given as security for the loan facilities availed by the accused. If the borrower of secured loan commits default, then, the Bank has to invoke SARFAESI Act to bring the properties for auction. Actually, the Enforcement Directorate has to find out the trail of proceeds of crime to ascertain where the said money has gone, instead of attaching the immovable securities given to the Bank. These properties were purchased by the accused persons long back before availing the loan facility from the* *bank and the same will not come under the definition of proceeds of crime. "*

5. The facts in nutshell reveals that the accused availed loan facility from the claimant bank (first respondent) and had created hypothication over the stocks and movable properties and also created an equitable mortgage of the properties in favour of the claimant bank as a security for the loan facilities.

6. The accused committed gross default in servicing and repayment of the accounts. The claimant/first respondent bank had taken proceedings under SARFAESI Act and issued a demand notice dated 08.04.2015 and took symbolic possession of the properties on 08.08.2015, 10.08.2015 and 13.08.2015. When an audit and investigation of accounts was conducted by the Vigilance Department of the respondent bank, the fraud committed by the accused 1 to 4 was revealed in the Vigilance Department Report dated 25.02.2015 and 26.04.2015. It was found that the balance sheets of the said concerns were fabricated, sales shown to be inflated, closing stocks and book debts were exaggerated and owned funds were forged.

7. The credit facilities were availed by the accused 1 to 4 in collusion and

criminal conspiracy with the accused no.5/respondent no.6, namely, Mr.Tomy Poovattil, who was then Branch Manager of Indian Bank, Guindy Branch. The availed facilities were utilised for round tripping of funds and exaggerated turnovers and stock statements were shown for availing further credit limits.

8. The 5th accused Branch Manager was dismissed from service. The respondent bank had lodged a complaint with CBI on 26.10.2015 and FIR No. RCMA1 2015 A 0043 dated 30.10.2015 was registered under Section 120(B) r/w.420 of IPC and Section 13(2) r/w.13(1)(d) of Prevention of Corruption Act. A charge sheet was filed by the CBI on 27.07.2016 and pending as C.C.No.20 of 2016.

9. On the basis of the said FIR of CBI, the Enforcement Directorate recorded ECIR on 28.03.2018 and launched investigation under PMLA. During the course of investigation, the Enforcement Directorate has provisionally attached the scheduled properties vide their PAO No.02/2020 dated 28.08.2020 by duly recording the reasons for such attachment. The provisional attachment order dated 28.08.2020 passed by the Enforcement Directorate was followed by the original

complaint dated 17.09.2020 before the Adjudicating Authority under Section 45 of PMLA. The Adjudicating Authority confirmed the provisional attachment vide his order dated 25.02.2021 and allowed O.C.No.1343/2020. The Enforcement Directorate has initiated the criminal investigation against Mr. Galeel Rahman and others and filed a prosecution complaint before the Special Court for PMLA. The Court took cognizance of the matter and trial commenced and about to be completed. Under these circumstances, the Indian Bank filed Crl.M.P.No.6789 of 2024 under second Proviso of Section 8(8) of PMLA under Rule3-A of PMLA(Restoration of Property) Amendment Rules 2019 to order restoration and release of the schedule mentioned properties in the petition.

10. While adjudicating the issues, the Special Court made an observation in paragraph 10 interpreting Section 2(u) of PMLA. The grievance of the revision petitioner is that the scope of section 2(u) has been narrowed down by the Special Court, which would cause prejudice to the investigation in the present case as well as in other cases, which are all pending before the Enforcement Directorate. The Special Court relied on paragraph 295 and 296 of the judgment in the case of ***Vijay Madanlal Chowdhary and others /vs/ Union of India- 2022 SCC online SC 929***.

11. The revision petitioner would submit that the other paragraphs are not referred by the Special Court, which resulted in wrong interpretation of the scope of Section 2(u) of PMLA.

12. Mr. Sidharthan, learned Special Public Prosecutor, appearing on behalf of the Enforcement Directorate would draw the attention of this Court with reference to the interpretation given by the Hon'ble Supreme Court in ***Vijay Madanlal's*** case. In paragraph 298 of the judgment, Section 2(u) of PMLA interpreted as under:

> *" 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;*

13. The definition under Section 2(U) are wider enough to cover the properties involved in criminal activity and also the properties equivalent to the value of the same. The different phrases in the definition clause would unambiguously portray that any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a schedule offence or the

value of the any such property. In the context of value of any such property, the Hon'ble Supreme Court in ***Vijay Madanlal's Case*** in paragraph 298 clarifies as follows:

> *" 298. It was also urged before us that the attachment of property must be equivalent in value of the proceeds of crime only if the proceeds of crime are situated outside India. This argument, in our opinion, is tenuous. For, the definition of "proceeds of crime" is wide enough to not only refer to the property derived or obtained as a result of criminal activity relating to a scheduled offence, but also of the value of any such property. If the property is taken or held outside the country, even in such a case, the property equivalent in value held within the country or abroad can be proceeded with. The definition of "property" as in Section 2(1)(v) is equally wide enough to encompass the value of the property of proceeds of crime. Such interpretation would further the legislative intent in recovery of the proceeds of crime and vesting it in the Central Government for effective prevention of money laundering"*

14. The above interpretation of the Hon'ble Supreme Court in para 298 would remove the doubt regarding the interpretation of Section 2(u) of PMLA. It is clearly stated that the definition of ***" proceeds of crime" is wide enough to not***

only refer to the property derived or obtained as a result of criminal activity relating to a schedule offence, but also of the value of any such property."

15. Thus, the Special Court has not considered the interpretation of Section 2(u) as stated by the Hon'ble Supreme Court of India in paragraph 298 of ***Vijay Madanlal's*** Case. Thus, the observations made in the order impugned regarding the definition and interpretation of Section 2(u) of PMLA is running counter to the wider interpretation amplified in para 298 in ***Vijay Madanlal's*** case. The definition under Section 2(u) of PMLA in itself would be sufficient to understand that the value of the property also may be taken into consideration by the Enforcement Directorate while invoking the powers to attach the properties.

16. Accordingly, the findings/observations made by the Special Court in para 10 of the order dated 26.11.2024 in Crl.M.P.No.6789 of 2024 in Spl.C.C.No.14 of 2022 is expunged and consequently, the present Criminal Revision Case stands allowed. No costs.

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

22.01.2025

Index : Yes/No
Speaking Order : Yes/No
Neutral Citation : Yes/No

mrp

To

1. Indian Bank,
   Stressed Assets Management Branch,
   No.55, Ethiraj Salai,
   Chennai 600 008.

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

mrp

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