IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-11-2025

CORAM

THE HONOURABLE MR JUSTICE S. M. SUBRAMANIAM
AND
THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

CRL.R.C.No. 629 of 2025
and
Crl.M.P.Nos.10173 and 10174 of 2025

Ashok Kumar Sharma
S/o.Chandanamal, Parasuram Nagar,
Dharm Stup Ke Pass, Ward No.18,
Churu, Rajasthan - 331001.

Petitioner

Vs

The Assistant Director,
Directorate of Enforcement,
Government of India,
Chennai Zonal Officer-1,
Having Office at 2nd and 3rd Floor,
Murugesa Naicker Complex,
No.84, Greams Road,
Chennai - 600 006.

Respondent

PRAYER: Criminal Revision filed under Section 438 and 442 of BNSS, 2023 praying to call for the records and set aside the order dated 28.10.2024 passed by the XII Additional Special Judge for CBI Cases in Crl.M.P.No.3081 of 2024 in Spl.CC No.8 of 2022, consequently discharge the petitioner/accused from all offences charged in the complaint in Spl.CC No.8 of 2022 pending on the file before the XII Additional Special Judge for CBI Cases, Chennai.

For Petitioner:	Mr.Rahul M Shankhar
For Respondent:	Mr. N Ramesh, Special Public Prosecutor for ED Cases.

ORDER

(Order of the Court was made by S.M.Subramaniam J.)

Under assail is the order dated 28th October 2024 passed in Crl.M.P.No.3081 of 2024 in Special C.C.No.8 of 2022 in ECIR/CEZO-I/03/2019 on the file of XII Additional Court for CBI Cases, Chennai.

2. Petitioner is accused No.4 in Special CC.No.8 of 2022. Petition under Section 227 of Cr.P.C has been instituted to discharge petitioner/ A4 from Special CC.No.8 of 2022. On registration of FIR No.RC-16(E)/2018, dated 31.08.2018 by CBI for alleged offence under Sections 120-B read with 406, 420, 468 and 471 IPC, Enforcement Directorate registered ECIR and launched investigation under Prevention of Money Laundering Act (hereinafter referred to as "PMLA.").

3. Allegation in the predicate offence is that during April 2015 and March 2016 accused persons have entered into criminal conspiracy to fraudulently avail Letters of Credit from Corporation Bank, Kellys Branch, Chennai. (Now Union Bank of India) by submitting false invoices/ documents to the Bank and in order to cause wrongful loss to the Bank. CBI filed final report and this criminal case is numbered as C.C.No.2453 of 2021. The petitioner/A4 is not arraigned as accused in predicate office. He has been implicated only in the PMLA case.

4. In this background, learned counsel for petitioner would mainly contend that period of alleged offence are confined to April 2015 and March 2016. Therefore materials relied on by Enforcement Directorate for implicating the petitioner as an accused cannot be sustained. When CBI has investigated fixing the period during which alleged offence occurred, Enforcement Directorate cannot expand the period for widening investigation under PMLA. Since allegations set out in the complaint are beyond the period confined by CBI in predicate offence, the petitioner is entitled for discharge. Petitioner has not been arraigned as an accused in the charge sheet filed by CBI in predicate offence. When genesis for prosecution has been extinguished against the petitioner, petitioner is entitled to be discharged. Enforcement Directorate cannot engage in roving enquiry beyond its jurisdiction.

5. To substantiate above ground, petitioner would submit that allegation regarding concealment of proceeds of crime through purchase of properties in his name with the aid of Anil Kumar Ojha/ A1 would fall beyond the period stipulated by CBI in predicate offence, since said properties were purchased in the year 2011, beyond check period fixed by CBI in predicate offence. That apart, purchase of said properties would not fall under the allegation of fraudulent transaction. Learned counsel for the petitioner relied on judgment of the Hon'ble Supreme Court in ***Pavana Dibbur Vs. The Directorate of Enforcement*** reported in ***2023 INSC 1029.***

6. To oppose the contention raised by petitioner, learned Special Public Prosecutor for Enforcement Directorate would submit that during the year 2000-2001, petitioner joined SLO Group in Chennai at M/s.Shri Mahalakshmi Metal & Scrap Processing Pvt Ltd., (Family business of Anil Kumar Ojha's father). He was appointed as the Director of said Company. As directed, he admitted preparing fake bills/ challans (on A1's instructions) for LC's and stock statements submitted to Corporation Bank. No actual goods movement; inflated receivables enabled excess DP/ limits which resulted in wrongful gain to the tune of Rs.201.88 Crore. The amount were diverted for purchase of 40 properties. Only in the year 2014, he resigned as Director and returned to Rajasthan by claiming that he has no further involvement post resignation.

7. CBI registered FIR against SLO entities/ promoter for Rs.201.88 Crore Bank fraud, based on the scheduled offence, Enforcement Directorate records ECIR under PMLA. Enough materials are collected to prosecute the petitioner. Offence under Section IPC and PMLA are distinct and different and not depending on each other. For registering ECIR under PMLA scheduled offence is required, but investigation are conducted independently by Enforcement Directorate. Investigations are not dependent on predicate offence, but Enforcement Directorate is empowered to enlarge the scope of investigation in view of recording scheduled offence of money laundering. The said position has been settled by the Hon'ble Supreme Court of India in the case of ***Vijay Madanlal Choudhary vs._Union of India*** reported in ***2023 (12) SCC 1.*** The scope of discharge under Section 227 of Cr.P.C cannot be expanded by the Courts, so as to appreciate the entire evidence or documents. If sufficient grounds are available to the satisfaction of Court, then alone discharge of accused is to be considered.

8. Let us first consider the final report filed by CBI in CC.No.2453 of 2021. Relevant paragraphs of the final report are extracted hereunder:

> ***14.*** *Investigation revealed that M/s.SLO Industries Limited represented by Shri.Anil Kumar Ojha (A-2) approached then Corporation bank, Kelly's Corner Brachy, Chennai (Now Union Bank of India) and was initially sanctioned with term loan of Rs.2,95 Crs. CC(Hyp.) of R.1,75 Crores and LC limit of Rs.1.75 crores during September 2003*

by the bank for settling up M.S.Ingot manufacturing unit with the capacity of 6 Tonnes. Subsequently, the above limits sanctioned to the borrower company were reviewed renewed from time to time and enhanced till 2014 from Rs.6.45 crores in the year 2003 to Rs.205.10 crores in the year 2014 (CC Limit of Rs.130.00 crores, LC/BG limit of Rs.71.00 crores and Term loan of Rs.4.10 crores). The last enhancement of limits was in Aug, 2013 and the same limits were renewed in Nov 2014.

28. *Investigation revealed that M/s.SLO Industries Limited diverted working capital loan funds (Cash Credit limit) since the year 2010-11 and acquired 39 properties in the name of M/s.SLO Industries Limited and one property in the joint name of the company and Smt.Mamta Sharma wife of Shri.Arun Kumar Sharma (A-3) in violation of sanction terms. The accused company mis-utilised the loan funds other than the purpose for which loan sanctioned. The accused acquired immovable properties from the loan funds and resorted to cheat the lender bank.*

29. *Investigation also revealed that, the borrower company dishonesty and fraudulently diverted working capital* *funds of Rs.5.32 crores to M/s.Aran Steels Private Limited (sister concern of A-1) for acquiring property situated at Zamin Pallavaram, Chennai and subsequently, this property was mortgaged to the bank for availing enhancement of CC limit from Rs.80 crores to Rs.130 crores and LC limit from Rs.56 crores to Rs.71 crores during Aug, 2013.*

32. *Through such concerted acts of omission and commission cooperatively undertaken by the accused persons A-2, A-3, A-9, A-11 in furtherance of the criminal conspiracy to defraud the then Corporation Bank by availing loans on the basis of false / fraudulent methods intended to deceive and wrongly induce the lender banks to continue such facility, had, upon receipt of such loaned money, diverted the same for investments, personal use(s) through their associate companies and there by derived unlawful wrongful gain to the extent of Rs.201.88 crores (outstanding as on 31.07.2018) and caused corresponding wrongful losses of like amount to the then Corporation bank.*

9. No doubt, petitioner has not been arraigned as accused by CBI in predicate offence. Therefore, it would be necessary to examine the alleged involvement of petitioner in money laundering case. In this regard complaint filed under Sections 44 and 45 of the PMLA on 17.03.2022 needs to be examined. Involvement of petitioner/A4 in the complaint filed under the PMLA can be culled out from the following paragraphs of the complaint filed by Enforcement Directorate:

3. BRIEF SUMMARY OF CAUSE OF ACTION UNDER THE PREVENTION OF MONEY LAUNDERING ACT, 2002.

The complainant submits that the condition precedent to investigate the offence of money laundering by the Complainant/ Directorate of Enforcement, either there should be a FIR or Police Report under Section 173 of the Cr.P.C or a Complaint, in respect of schedule offence under the PMLA, 2002. The PMLA, 2002 is an Act to prevent money laundering and to provide for confiscation of property derived or obtained directly or indirectly from or involved in any process or activity connected to process of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property. Since, Sections 120B, 420 and Sections 471 of the Indian Penal Code, being the schedule offence under the Prevention of the Money

Laundering Act, 2002, enquiries were initiated under the PMLA against, the accused persons after recording brief facts of the case in ECIR/CEZO-1/03/2019 dated 03.07.2019.

7. <u>Investigation by Enforcement Directorate, Chennai Zonal Office – 1.</u>

7.1 *Certain offences committed by the said entities through their representatives and the said individuals in the CBI FIR mentioned above were covered under the list of Scheduled offences of Section 2(1)(x) & (y) of the PMLA and prima-facie the persons accused in the said FIR appeared to have committed an offence of money laundering under Section 3 of the PMLA. Hence, an Enforcement Case Information Report No.ECIR/CEZP-I/03/2019 was recorded on 03.07.2019 to investigate the offences under Sections 120B read with 420 & 471 of IPC and substantive offences under the provisions of the PMLA, 2000.*

7.2 *S.L.O. Industries Limited (CIN-27320TN2003PLC051231), hereinafter referred to as SLO, is an unlisted public company, incorporated on 17 July, 2003, having registered office at 447/265, 2nd Floor, Poonammallee High Road, Aminjikarai, Chennai – 600 029, and is into* *manufacturing of MS Bars, MS Flats, MS Rounds, MS Squares, MS Angles, MS Channels & beams. Details of Directors and their date of appointment are tabulated below:-*

Sr. No.	*Name of the Director*	*Date of Appointment*	*Date of Resignation*
1.	Anil Kumar Ojha	17-07-2003	-
2.	Arun Kumar Sharma	17-07-2003	01-04-2016
3.	Ashok Kumar Sharma	17-07-2003	18-07-2014
4.	Rakesh Kumar Sharma	01-04-2009	-
5.	Arangannal Deppalakhmi	21-02-2015	-

It is pertinent to mentioner here that Shri Arun Kuamr Sharma and Shri Ashok Kumar Sharma are brothers and Shri Anil Kumar Ojha is their Brother-in-law (Jija).

<u>7.6 PROCEEDS OF CRIME:-</u>

From the investigation it was found that Shri Anil Kumar Ojha, Director of M/s.SLO Industries Ltd. have divertd funds from the CC 50001, Corporation Bank, Kelly's Corner Branch account to buy the following immovable properties in the name of the company/ family members/ relatives. It clearly shows that the property purchased from the bank LC's by siphoning/ diversion of funds to buy immovable properties. The following tabular column reveals that the payments were *paid to the land owner from the SLO Industries through cheque payment of the M/s.SLO Industries Ltd., account.*

(H) <u>SCHEDULE OF PROPERTY : SHRI ASHOK KUMAR SHARMA</u>

Sl. No	*Document No. and Date*	*Schedule of the Property*	*Held in the Name of*	*Value of the property as per the Document*	*Guideline value of the property (in Rs.)*
1.	2012000188 10.01.2012	One old Shop measuring at 198 sq. ft and 1st floor constructed area at Ward No.17 Churu.Rajasthan.	Ashok Kumar Sharma	557000	1573600
2.	2014001213 19.02.2014	Land measuring 27.6 sq. meter, at Ward No.17 Churu.Rajasthan.	Ashok Kumar Sharma	474000	1260750
TOTAL				10,31,000	28,34,350

7.8.3 *Shri Ashok Kumar Sharma, Director (17-17-2003-18-07-2014) of SLO vide his statement dated 21-09-2020, interalia, stated that he came to Chennai during 2000-2001 to work with Anil Kumar Ojha's father in his company, M/s.Shri Mahalakshmi Metal & Scrap Processing Pvt. Ltd., which was into Rolling Mill business. He used to take care of the workers, handle loading & unloading of goods. The factory* *was situated at Tiruvottiyur, Chennai. Later, the factory was closed and a new company, M/s.SLO Industries Limited was established whose factory is at Ponneri, Thiruvallur. He was made one of the Directors of the company by Shri Anil Kumar Ojha. But he was only a namesake Director since he was not involved in any of the administrative or financial decision making of the company. Shri. Anil Kumar Ojha used to decide and take all the important decisions. He resigned from the company in the year 2012 and left for his hometown chur, Rajasthan. He used to get salary of Rs.15000/-. He was also not aware of the major vendors/ clients of M/s.SLO Industries Limited. He bought a property at Shastri Market, Churu with the help of financial assistance from Shri Anil Kumar Ojha. He used to make fake bills, challans as per the instructions of Shri Anil Kumar Ojha with the help of different agents as and when instructed by Shri Anil Kumar Ojha and there were no movement of goods. He also helped Shri Anil Kumar Ojha in sending money/ funds to various shell companies and also used funds for the purpose not meant to be used for.*

7.8.11 *Shri Ashok Kumar Sharma in his statement dated 21.09.2021 interalia, stated that whatever he had stated in his statement dated 21.09.2020, the same were true and* *correct and was a voluntary statement given by him; that presently he was based in Churu Rajasthan running a dormitory there which was in his father's name; that he was director in SLO group but he resigned and went to Rajasthan; that he had joined SLO group in the year 2000 as Shri Anil Kumar Ojha was his brother-in-law (Jija) and hence, on his request, he had joined the group; that time around Bajrangbali Trading company was already closed and after six months of his joining, Shri Mahalakshmi Metal & Scrap processing company Pvt. Ltd. which was a rolling mill was also closed; that he had purchased two properties in Rajasthan whose documents were already given to ED earlier and that both these properties were purchased with the help of Shri Anil Kumar Ojha; that other than those two properties, he did not have any property; that he had neither seen any gate register maintained in the factory premises of SLO industries Ltd. nor had seen having entry of movements of incoming/ outgoing goods; that he did not know about the properties owned by SO Buildcon in Rajasthan but he was aware that his brother-in-law (Anil Kumar Ojha) had purchased some lands in Jaipur; that he did not know in whose name those lands were taken.*

9.4 *Shri Ashok Kumar Sharma, Director of SLO Industries Ltd for the period from 17-07-2003 to 18-07-2014 and he was made one of the Directors of the company by Shri Anil Kumar Oiha and that he was merely a namesake Director and he was not involved in any of the administrative or financial decision making of the company. He admitted that he used to make fake bills, challans as per the instructions of Shri Anil Kumar Ojha with the help of different agents as and when instructed by Shri Anil Kumar Ojha and there were no movement of goods. He also helped Shri Anil Kumar Ojha in sending money/ funds to various shell companies and also used funds for the purposes not meant to be used for. Two properties, one old Shop measuring at 198 sq.ft and 1st floor constructed area at Ward No. 17 Churu. Rajasthan having guideline value of Rs. 15,73,600/- and a land measuring 27.6 sq. meter, at Ward No. 17 Churu. Rajasthan having guideline value of Rs. 12,60,750/- were purchased by him and when asked as to how he purchased these two properties, he did not explain his source of fund and merely stated that these two properties were purchased with the help of his brother in law (Jija) Shri Anil Kumar Ojha. As these two properties acquired by him, was found to be derived from proceeds of crime, and hence both properties were attached vide*

Provisional Attachement Order No. 02/2020 dated 06.10.2020. He, by his acts and omission, acted as conduit in facilitating Shri Anil Ojha in diverting the fund, in generation of fake bills and also allowing and in acquiring tainted properties in his name. He was the director of the borrower company and hence in doing so misused his position and have indulged and actually involved in the money laundering activity connected with the proceeds of crime derived by them, including its concealment, possession, acquisition, use and claiming and projecting the same as untainted properties and thus committed the offence of money laundering under Section 3 of PMLA, 2002 and have guilty of offence of money laundering under Section 2(1)(p) read with section 3 of the PMLA, 2002, punishable under section 4 of the said Act, read with section 70 of PMLA, 2002.

10. The above stated paragraphs in the complaint filed by the Enforcement Directorate would be sufficient to form an opinion that materials are available against petitioner/ A4 to conduct trial.

11. Regarding grounds raised that Enforcement Directorate cannot expand the scope of investigation beyond charge contemplated by CBI in predicate offence, it would be relevant to consider the provisions of the PMLA. Explanation (ii) to Section 3 of the PMLA states that *"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."*

12. Section 2(u) of PMLA defines *"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."* Therefore, definition of *"proceeds of crime"* would clarify that investigation need not be restricted for the period as stipulated in predicate offence. Money laundering is stand alone offence and the investigations are independent and not dependent on the investigation in predicate offence.

13. For further clarity Explanation clause to Section 44 has been inserted for removal of doubts. Explanation (i) denotes that *"the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial; "*

14. In view of the above provision investigation, complaint (charge sheet) and trial under PMLA is independent and shall not depend upon any orders passed in predicate offence case. Therefore, contention of petitioner that investigations are to be restricted by Enforcement Directorate based on the predicate offence investigation is unacceptable. Money laundering investigation if confined based on predicate offence, predicate offence investigation, objective of PMLA will be defeated. Money laundering is causing injury to the economic development of our great Nation. It significantly impact economic policy and its sustainability. That apart, money laundering are being done through various modes and experts investigation into the said offence is of paramount importance. Thus, investigation are being conducted through experts from various fields to trace the money laundering offence. Any restriction in investigation of money laundering offence would defeat the spirit of PMLA.

15. A holistic reading of the provisions under PMLA would be sufficient to arrive a conclusion that offence of money laundering is a standalone offence and investigations, filing of complaint, trial are independent and not depend on the investigation, trial in predicate offence case. PMLA is a code by itself and contemplates procedures to be followed for registering case, filing complaint, conducting trial and dispose of the cases. Thus comparison between predicate offence and money laundering offence in the matter of adherence of procedures contemplated under PMLA would not arise at all. An accused in predicate offence need not be an accused in PMLA case, so also an accused in PMLA case need not be an accused in predicate offence case. Since the offence of money laundering is distinct and different procedures contemplated under PMLA are to be scrupulously followed while conducting investigation, filing complaint, trial etc.,

16. Petitioner in the present case is not an accused in predicate offence case, but an accused in PMLA case. Thus, the arguments advanced on behalf of the petitioner in comparison with the predicate offence is unsustainable. For reasons stated in the aforementioned paragraphs, this Court concur with the reasoning and decision rendered by the trial Court in the impugned order and consequently, the impugned order stands confirmed. Crl.R.C.No.629 of 2025 stands **dismissed**. Consequently, the connected miscellaneous petitions stand closed.

(S.M.SUBRAMANIAM J.) (MOHAMMED SHAFFIQ J.)
07-11-2025

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Index : Yes / No
Neutral Citation : Yes / No

To

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