



CRL MP NO. 17844 of 2024 IN CRL.A.NO.98 C
IN THE HIGH COURT OF JUDICATURE AT MADRAS



DATED: 02-01-2025

CORAM

THE HONOURABLE MR JUSTICE S.M. SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

CRL MP NO.17844 of 2024

IN

CRL A NO.98 of 2024

Shri.K.Anwar Hussain
S/O.M.Kader Meeran, AP-118, 4th Street, Anna Nagar, West
Extension, Chennai - 600 101.

Appellant(s)

Vs

State Represented By The Deputy Director,
Directorate Of Enforcement, Government Of India, Ministry Of
Finance, Department Of Revenue, 2nd And 3rd Floor, C Block,
Murugesu Naicker Complex, No.84, Greaves Road, Chennai - 600
006.

Respondent(s)

For Appellant(s):

Mr. M.Ravi For Dr.C.Manickam

For Respondent(s):

Mr. AR.L.Sundaresan, Addl.Solicitor General Of India, Assisted
By Mr.N.Ramesh, Spl.Public Prosecutor For Ed.

ORDER

(Order of the Court was made by the Hon'ble S.M.Subramaniam,J.)

The miscellaneous petition on hand has been instituted under Section 528 of Bharatiya
Nagarik Suraksha Sanhita, 2023 (for short "BNSS") (corresponding to Section 482 of
the Code of Criminal Procedure). The relief sought for in the miscellaneous petition is



to defer the hearing of PMLA CrI.A.No.98 of 2024 against C.C.No.24 of 2016 in view of the outcome of the appeal in CrI.A.No.50 of 2024 filed against C.C.No.36 of 2011.

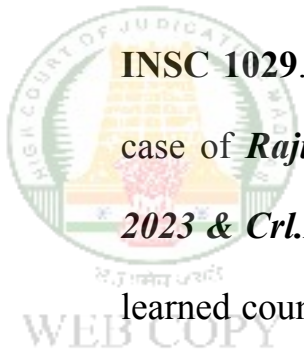
FACTUAL MATRIX:

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2. A criminal case under the provisions of Prevention of Corruption Act was registered against the petitioner in C.C.No.36 of 2011 and the petitioner was convicted by the trial Court. An appeal was preferred in CrI.A.No.50 of 2024, which is pending on the file of this Court. Based on the predicate offence, the Enforcement Directorate recorded ECIR and initiated proceedings under the Prevention of Money-laundering Act in C.C.No.24 of 2016. The Special Court for PMLA conducted trial and convicted the petitioner under the PMLA. Challenging the said judgment of conviction, the petitioner preferred CrI.A.No.98 of 2024, which is pending before this Court.

3. Mr.M.Ravi, learned counsel appearing on behalf of the petitioner would mainly contend that the acquittal in scheduled offence would be a ground to seek exoneration from the PMLA offence. In other words, in the event of acquittal in the scheduled offence case, the petitioner is entitled to get acquittal in the PMLA case. Therefore, the criminal appeal filed against the scheduled offence in CrI.A.No.50 of 2024 is to be disposed of at the first instance, failing which prejudice will be caused to the petitioner, who is the appellant in the PMLA appeal in CrI.A.No.98 of 2024.

4. To substantiate his arguments, he relied on the judgment of the Supreme Court of India in *Vijay Madanlal Choudhary v. Union of India and others* reported in 2022 *SCC OnLine SC 929*. Mr.Ravi relied on the subsequent judgment of the Supreme Court in the case of *Pavana Dibbur v. Directorate of Enforcement* reported in 2023



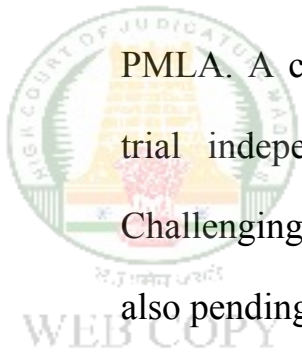
INSC 1029. The Delhi High Court also decided the issue as per the petitioner case of *Rajiv Channa v. Union of India (Miscellaneous Appeal (PMLA) No.13 of 2023 & Crl.M.A.No.8497 of 2015 dated 08.04.2024)*. Relying on the above judgments, learned counsel for the petitioner states that Section 3 of PMLA deals with the offence of money laundering. Proceeds of crime being an essential ingredient for invoking the provisions of PMLA, in the event of grant of acquittal in the scheduled offence under the Prevention of Corruption Act, the Enforcement Directorate cannot proceed and therefore there is a chance of success in the appeal filed against the judgment of conviction in the PMLA case.

5. The learned Additional Solicitor General of India opposed by stating that the proposition mooted out on behalf of the petitioner is unacceptable, in view of the fact that the trial in scheduled offence is unconnected with the trial in the PMLA case. Both are distinct and different. Each one is not dependant on the other. The offence under PMLA is standalone after recording of ECIR and filing of complaint under Section 45 of PMLA. That apart, the judgments relied on have no application, since the facts in the present case are distinguishable. Thus the petition is to be rejected.

6. We have considered the arguments as advanced between the parties to the lis on hand.

7. The facts undisputed are that the scheduled offence has been registered against the petitioner under the provisions of the Prevention of Corruption Act and the trial Court convicted the petitioner. The petitioner preferred an appeal in Crl.A.No.50 of 2024, which is pending. The Enforcement Directorate recorded ECIR and launched

investigation by following the procedures as contemplated under the provisions of



PMLA. A complaint was filed before the competent Special Court. After con
trial independently, the trial Court convicted the petitioner under the PMLA.
Challenging the said judgment, the petitioner preferred CrI.A.No.98 of 2024, which is
also pending.

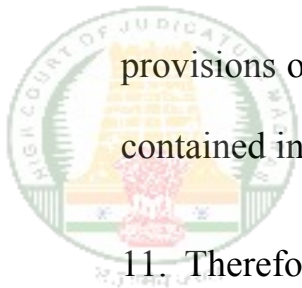
MAINTAINABILITY:

8. Question arises whether the present petition is maintainable or not? Further, the criminal appeal filed against the conviction in PMLA case is to be kept in abeyance till the disposal of the criminal appeal filed against the conviction in scheduled offence case?

DISCUSSIONS:

9. Let us examine the scope of Section 528 of BNSS (corresponding to Section 482 of the Code of Criminal Procedure, 1973). The section states that nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. The provisions of BNSS (erstwhile Cr.P.C) have to be considered in the context of the provisions of the PMLA. Section 65 of PMLA speaks about the Code of Criminal Procedure, 1973 to apply. Accordingly, “the provisions of the Code of Criminal Procedure, 1973 (presently BNSS) shall apply, insofar as they are not inconsistent with the provisions of this Act to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act.”

10. Section 71 of PMLA provides the Act to have overriding effect. Accordingly, “the
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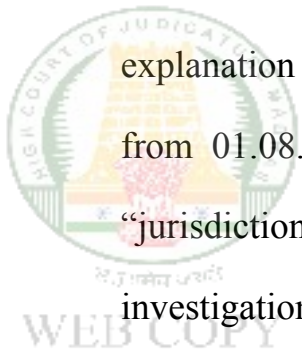


provisions of this Act shall have effect notwithstanding anything inconsistent th
contained in any other law for the time being in force.”

11. Therefore, the application of BNSS (erstwhile Cr.P.C.) is limited as far as the PMLA is concerned. PMLA is a Code in itself and the procedures contemplated are distinct and different from that of the procedures contemplated under the BNSS. It is needless to state that the Special Act will prevail over the general procedures contemplated under the BNSS. When the special enactment provides certain procedures to be followed in the manner, the said procedures are to be followed in *stricto sensu* for the purpose of conducting trial and to deal with the offence under the provisions of the said enactment, presently PMLA.

12. Section 3 deals with the offence of money-laundering. The scope of offence of money-laundering is wider enough to cover mere possession, acquisition, use, projecting as untainted property or claim as untainted property in any manner whatsoever. The explanation clause inserted by the Finance Act, 2019 with effect from 01.08.2019 in Section 3 would clarify the wider scope of the offence of money-laundering. Therefore, the scheduled offence in the present case, Prevention of Corruption Act, is a source for initiation of proceedings under the PMLA. But once the ECIR is recorded and investigation is launched by the Enforcement Directorate, the offence becomes standalone and the Enforcement Directorate is bound to file a complaint akin to that of a charge sheet for the purpose of prosecuting the offenders of money-laundering.

13. Pertinently, Section 44 speaks about offences triable by Special Courts. Explanation to Section 44 was inserted by the Finance Act, 2019 with effect from 01.08.2019. The



explanation to Section 3 and the explanation to Section 44 were inserted with effect from 01.08.2019. Explanation was inserted for removal of doubts. It clarifies that “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.” Therefore, the PMLA offence is standalone, but commences with procedures, namely, recording of ECIR and filing of complaint under Section 45 of the PMLA.

PMLA IS A SUI-GENERIS LEGISLATION:

14. Prevention of Money Laundering Act, 2002 is a special enactment, enacted with a specific purpose and object i.e., to track and investigate the cases of money-laundering. This Act is a complete Code in itself with all in-built mechanisms to deal with proceeds of crime. **The primary focus of the legislation is “Proceeds of Crime” with respect of scheduled offences mentioned in the Act.**

15. After investigation of the crime, the respondent Department has to investigate into whether the offence, as enunciated under Section 3 of PMLA, has been committed or not, and the adjudication, prosecution and trial under PMLA is independent of the scheduled offence. Respondent is the notified Investigative Authority for PMLA only, and not for the scheduled offence. Both the proceedings are independent in nature according to the scope of the Act and also the dictum of Hon'ble Apex Court in ***Vijay Madanlal Choudhary*** case cited supra. The said paragraph is reiterated below:

“269... From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an



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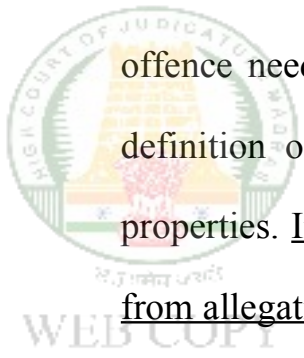
*independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. 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 derived or obtained as a result of that crime - except the proceeds of crime derived or obtained as a result of that crime.***

16. In a case where based on the scheduled offence Enforcement Directorate initiated PMLA proceedings, conducted investigation, identified “proceeds of crime” and filed statutory complaint under Sections 44 and 45, then it is to be construed as **Standalone Process** within the parameters laid down by the Hon'ble Apex Court in the case of *Vijay Madanlal*.

SECTION 3 OF PMLA IS A STANDALONE PROVISION:

17. When the facts stand as it is, let us now consider the spirit of the discussions made by the Hon'ble Supreme Court regarding the scope of Section 3 of PMLA. The discussion about Section 3 of PMLA commences from paragraph 263 of *Vijay Madanlal's* judgment.

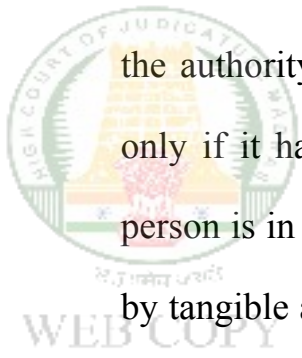
18. Importantly, in paragraph 281 of *Vijay Madanlal's* case cited supra, the question discussed is, whether the offence under Section 3 is a standalone offence. The observations reveal that the property must qualify the definition “proceeds of crime” under Section 2(1)(u) of PMLA. All or whole of the crime property linked to scheduled



offence need not be regarded as proceeds of crime, but all properties qualify definition of “proceeds of crime” under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the Court of law that **the crime property in the concerned case has been rightfully owned and possessed by him**, such a property by no stretch of imagination can be termed as crime property as ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) of PMLA. The deeper sense expressed by the Hon'ble Supreme Court would amplify that in the event of acquittal of a person concerned or being absolved from the allegations of criminal activities, such properties are excluded from the definition of proceeds of crime, if such properties has been rightfully owned and possessed.

19. In paragraph 282 of *Vijay Madanlal's* judgment, it is clarified that the authority of the Authorized Officer under PMLA to prosecute any person for offence of money-laundering gets triggered only if there exists “proceeds of crime” within the meaning of Section 2(1)(u) of PMLA and further it is involved in any process of criminal activity. All the undisclosed properties cannot be construed as proceeds of crime. Though it may attract tax provisions, it would not fall under the definition of proceeds of crime under Section 2(1)(u) of PMLA. Importantly, if the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer partake the colour of proceeds of crime under Section 2(1)(u) of the Act enabling him to take further action under the PMLA.

20. Significantly, in paragraph 284 of *Vijay Madanlal's* judgment, it is reiterated that

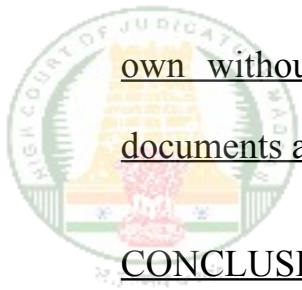


the authority under PMLA, is to prosecute a person for offence of money-lau only if it has reason to believe, which is required to be recorded in writing that the person is in possession of “ Proceeds of Crime”. Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process. Therefore, the live link between the scheduled offence and PMLA proceedings would be relevant for initiation of proceedings under PMLA. The Hon'ble Supreme Court elaborately considered initiation of PMLA proceedings, for which it is a pre-condition that a scheduled offence is to be registered.

ECIR CANNOT BE EQUATED WITH FIR:

21. The ground of quashment of FIR to quash the ECIR cannot be taken as a matter of principle or as an automatic ground for quashing the ECIR due to the unique distinction between the FIR and ECIR. Further, FIR cannot be equated with an ECIR. The scheduled offence is quintessential for initiation of proceedings and recording of ECIR, but both the offences cannot be placed on the same footing. PMLA proceedings are distinct and the said Act is a complete Code in itself, whereas scheduled offences are tried under other laws. When two documents are different and distinct in their own nature, a combined reading and implication cannot be adduced to them.

22. ECIR is born from FIR, but once the ECIR is born, the umbilical cord that connects the ECIR with FIR loses its relevance and the ECIR becomes an independent document in itself. Consequently, a new life in the form of ECIR emerges, which can breath on its



own without the support of FIR. So, the FIR and ECIR become two documents and both tend to take shape on its own, independent of each other.

CONCLUSION:

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23. Section 24 of PMLA speaks about burden of proof. In the present case, the burden of proof lies on the petitioner. Since he failed to discharge the burden of proof under Section 24 before the trial Court, the case ended with an order of conviction. Therefore, the appeal is preferred and it is for him to conduct the appeal independently without reference to the conviction made under the Prevention of Corruption Act in the scheduled offence. Since the scope of scheduled offence, nature of offence and the trial conducted are distinct and different and further the offence of money-laundering under Section 3 of PMLA and the nature of trial conducted by the Special Court are distinct and different, the relief as such sought for in the present petition to defer the hearing of the criminal appeal in PMLA case, would fall beyond the scope of the provisions of PMLA and more specifically, Section 44 explanation clause in clear terms hold that the offence of money-laundering is distinct and the trial under PMLA is unconnected with the trial in the scheduled offence. That being so, the relief sought for stands rejected and consequently, the criminal miscellaneous petition is dismissed.

(S.M.SUBRAMANIAM J.) (M.JOTHIRAMAN J.)

02-01-2025

SS



To

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