BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on:14.03.2025
Delivered on: 21.03.2025

CORAM:

THE HONOURABLE **DR.JUSTICE G.JAYACHANDRAN**

AND

THE HONOURABLE **MS.JUSTICE R.POORNIMA**

Crl.R.C(MD)Nos.128 and 129 of 2025
and
Crl.M.P(MD)Nos.1308 and 1309 of 2025

Shri N.Karthikeyan ... Petitioner/Petitioner/ Accused No.1 in Crl.R.C(MD)No.128/25

Smt.Anitha ... Petitioner/Petitioner/ Accused No.1 in Crl.R.C(MD)No.129/25

-Vs-

Assistant Director,
Directorate of Enforcement,
Chennai Zonal Office-II
4th Floor, Shastri Bhavan,
No.26, Haddows Road,
Chennai-600 006. ...Respondent/Respondent/ Complainant in both Crl.R.Cs

COMMON PRAYER: Criminal Revision Petitions are filed under Section 438 r/w 442 of BNSS, 397 r/w 401 of Cr.P.C, against the order dated 30.12.2024 made in Crl.M.P.Nos.4228 and 4229of 2024 in C.C.No.4 of 2024 by the II Additional District Court (CBI Cases) Madurai.

For Petitioners :Mr.M.Sricharan Rangarajan,
Senior Counsel for
Mr.A.Mohamed Haneef

For Respondent : Mr.AR.L.Sundaresan
Additional Solicitor General of India,
assisted by Mr.K.Govindarajan,
Deputy Solicitor General of India

COMMON ORDER

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

These two Criminal Revision Petitions are filed by the husband and wife, who are the accused in C.C.No.04 of 2024 before the II Additional District Court (CBI) Cases, Madurai.

2.The Enforcement Directorate is the prosecuting Agency, the complaint is under Sections 44 and 45 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as PMLA), for commission of money laundering as defined under section 3 of PMLA, punishable under section 4 r/w 8(5) of PMLA, 2002. Thiru.N.Karthikeyan, the petitioner in Crl.R.C.No.128 of 2025 is a public servant, viz., the Regional Transport Officer (RTO) in the Transport Department, Government of Tamilnadu. Smt. Anitha, the petitioner in Crl.R.C No.129 of 2025 is the wife of Karthiikeyan. The Directorate of Vigilance and Anti-Corruption(DV&AC) conducted surprise search of the residence of the petitioners and had registered a case in Cr.No.07 of 2021 on 23.03.2021 for offence under Section 13(1)(b) r/w 13(2) of Prevention of Corruption Act, for acquiring and possessing assets disproportionate to the known source of income. The said case is still under investigation. Final report is yet to be filed by DV&AC.

3.The said FIR in Cr.No.07 of 2021 registered by the DV & AC is the scheduled offence, which has triggered the registration of ECIR/ CEZO-II/01/2022 dated 31.01.2022 against these petitioners by the Directorate of Enforcement. After completion of investigation against these two petitioners, complaint was filed by the Assistant Director, ED – Chennai Zone –II, under Sections 44 and 45 of PMLA, 2002. The complaint is taken cognizance by the Special Court notified to PMLA case and assigned C.C.No. 04 of 2024.

4.To discharge them, petitions filed before the Special Court on the ground that, after registration of the scheduled offence by DV&AC, on 23.03.2021, alleging that the Public Servant during th check period between 01.01.2013 and 19.01.2019 had acquired assets disproportionate to the known source of his income. Even after a lapse of 4 years, the investigation not completed and final report not filed. However, based on the FIR registered by DV&AC., the Enforcement Directorate registered ECIR conducted an enquiry, recorded statements under Section 50 of PMLA. The petitioner co-operated with the enquiry to the fullest extend and provided necessary documents to show the source of income for acquiring assets. Despite proper explanation regarding the source of income for acquiring the properties, the Enforcement Directorate proceeded with provisional attachment of the properties vide proceedings P.A.O.No.08 of 2022 dated 30.12.2022 on the premise that they were acquired from the proceeds of crime. The adjudicating Authority forfeited the properties, vide order dated 14.06.2023 and against the order of forfeiture, the petitioners had preferred an Appeal before the Appellate Authority and the same is pending. Meanwhile, the ED had filed the complaint and proceeding to try the petitioners after framing of charges. Since, there is no progress in the investigation of the scheduled offence, which may even end in dropping action, the trial Court cannot frame a charge under PMLA without proof regarding proceeds of crime and laundering of the said proceeds of crime.

5.The trial Court holding that the offence under PMLA is a distinct and different from the scheduled offence, hence, the in- completion of investigation in the scheduled offence, shall have no bearing on the ED case, declined to accept the contention of the petitioners that final report in FIR.No.07 of 2021 registered by DV&AC not yet filed. The Appellate Authority has not yet disposed the appeal against the forfeiture of the properties and in view of the dictum laid in ***Vijay Madanlal case and M/s Bharat Cement Corportion case***, they must be discharged from ECIR.

6.The Learned Senior Counsel for the revision petitioners submitted that the reasoning of the trial Court in the impugned order is against law and judicial pronouncements. The offence under PMLA cannot have independent existence without reference to a scheduled offence. Unless there is a proof that in the scheduled offence, there were proceeds of crime and that proceeds been prima facie found to have held or used by any person for converting it into an untainted money through a process, the ingredient of sections 2(y) and 2(1)(u) of PMLA will not get attracted. Referring the relevant portions in the judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary –vs- Union of India (2022 Onlin SC 929)*** and the judgment of the ***Telegana High Court in M/s Bharathi Cements Corporation –vs- Directorate of Enforcement*** reported in ***2022 SCC OnLine TS 3559***, contented that a combined reading of the provisions of law and the judicial interpretations, proceeding with the PMLA case without the scheduled offence reach its logical end will be contrary to the well established tenets of law, as observed by the Court in ***M/s Bharathi Cements Corporation case(cited supra)***.

7.In response, the Leaned Additional Solicitor General Mr. ARL. Sunderesan, submitted that, no doubt the SLP preferred by the ED against the judgment of Telugana High Court in ***M/s Bharathi Cement case*** was withdrawn, but the observation in the said judgment does not lend any support to the case of the petitioners who seek discharge. In ***Vijay Madanlal case*** the Hon'ble Supreme Court had categorically held that, only in case of quash/discharge/acquittal in the scheduled offence will have a adverse bearing on the ECIR under PMLA. Otherwise, as observed in ***M/s Bharathi Cements Corporation case***, the trial in PMLA offence to proceed. The pause awaiting the ultimate pronouncement/decision of the special court trying the scheduled offence will arise only at the stage of pronouncing judgment in the PMLA and not earlier, filing complaint, framing of charge and examination of witnesses must go without any hindrance. The pause in PMLA case cannot be at any stage prior to pronouncement of judgement or if the accused in scheduled offence is acquitted not on merits but on technical reason. Since the offence under PMLA is distinct and independent offence, mere registeration of FIR for scheduled offence by the jurisdiction police alone is required to trigger PMLA case. Thereafter, the offence under PMLA being standalone offence, the trial in PMLA has to proceed and reach its finality. In fact, 'any person' who is found to have dealing with the proceeds of crime in the process or activities of laundering can be held liable under PMLA. Such person need not even be an accused in the scheduled offence. For such person, the pendency or outcome of the scheduled offence is irrelevant. While so, discharge of the petitioners on the ground that the investigation in scheduled offence is not yet completed is untenable.

8.The submissions of the Learned Senior Counsel on behalf of the petitioners and the Learned Additional Solicitor General on behalf of Directorate of Enforcement considered carefully. The provisions of the PMLA and the judicial pronouncements relied were given due consideration.

9.The holistic reading of the provisions of PMLA would indicate that the scheduled offence is prerequisite condition for initiation of proceedings under PMLA. Once proceedings initiated under PMLA by recording ECIR, the investigation and offence of money laundering become independent. Para 269 in ***Vijay Madanlal case,*** the Hon'ble Supreme Court has held as below:-

> Para 269: " *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. 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".

10.In this context, it is also relevant to refer the Judgment of the Hon'ble Supreme Court in ***Pavana Dibbur -vs- Enforcement Directorate***: where it is held that, an accused in the **PMLA case,** who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under **PMLA** so long as the scheduled offence exists.

11.Regarding the reference to the judgment in ***Bharathi Cement case*** and the withdrawal of the SLP by ED and the pendency of the review petition in ***Vijay Madanlal case*** as well as the pendency of the SLP in ***Martin –vs- Directorate of***

Enforcement, it is suffice to state that the observation of the Hon'ble Supreme Court in ***Vijay Madanlal case*** in paragraphs 467(5)(d) and 469 holds the field.

Observation in ***Bharathi Cement Corporation*** is considered to ascertain whether it speaks about discharge in PMLA case anywhere.

> *35. From the above, the position which emerges is that existence of scheduled offence and proceeds of crime being the property derived or obtained as a result of criminal activity relating to the scheduled offence are sine qua non for not only initiating prosecution under PMLA, but also for continuation thereof. In the absence of these two conditions, the Special Court dealing with the offence under PMLA would not be competent to pronounce on the guilt or otherwise of the person concerned accused of money laundering.*
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> *36. Thus, on a thorough consideration of all aspects of the matter, impugned order dated 11.01.2021 is hereby quashed. Further, it is directed that though the trial relating to the offence of money laundering can proceed independent of the trial of scheduled offence, nonetheless as the outcome of the trial for scheduled offence would have a definite bearing on the outcome of the trial for the offence of money laundering, it would be in the interest of justice if the Special Court trying the offence of money laundering while independently proceeding with the trial, may, however take a pause and await the ultimate pronouncement/decision of the*

Special Court trying the scheduled offence. Otherwise, as has been pointed out by the Supreme Court in Vijay Madanlal Choudhary (supra), it may lead to a paradoxical result if the concerned person is later on acquitted of the scheduled offence while convicted of the offence of money laundering under PMLA at an earlier point of time. This would not only be paradoxical but contrary to well established tenets of law as well.

We find the above observation does not indicate the 'pause' mentioned to be understood as 'discharge'.

12.Thus, the law as it stands on date, which may change after the outcome of the review petition and the SLP filed in ***Martin –vs- Directorate of ED***., is in tune with the submission made by the Additional Solicitor General on behalf of the Enforcement Directorate. Discharge of the accused in PMLA, case awaiting for the outcome of the scheduled offence in neither supported by law or judicial pronouncement. The ***Bharathi Cement Case*** only indicate a pause of the PMLA case till the disposal of the scheduled offence. It does not mean the accused in PMLA has to be discharged, if the final report in scheduled offence is not filed.

13.It may not be out of contest, to refer two other judgments, one by the Delhi High Court and another by the Division Bench of this Court, which had considered the prayer of the accused in PMLA case to stay the case till the case under P.C Act comes to its logical end been authoritatively declined.

14.In ***Shri Anand Kumar Kapur -vs- Union of India & Ors.,***(Indian Kanoon/Org.doc/16238/484), the learned Judge og Delhi High Court had observed that,

> *“27........ Considering the aforesaid observations of the Hon'ble Apex Court, and the fact that Section 13 of PC Act is a scheduled offence under PMLA,which has not been declared as unconstitutional or violative of any fundamental right by any court of law, this Court is of the opinion that the contention raised on behalf of petitioner that trial Court proceedings in this case should be stayed since continuation of the same would amount to double jeopardy is also devoid of any merit.......”*

This is a case where the petitioner already found guilty of scheduled offence and appeal against conviction pending.

15.In ***S.Durga Prasad -vs- Assistant Director*** (Indian Kanoon/Org/doc/6812/696) when it was pleaded by the revision petitioner/accused in PMLA case to defer the trial of the PMLA case till the disposal of the scheduled offence case, the Division Bench of this Court following its earlier judgment in ***Assistant Director(PMLA), ED -vs-Asoka Anand***, held that,

> *".......16.Any attempt to increase the longevity of PMLA trial at ano circumstances be encouraged by the Courts. The offences under PMLA is not dependant on the predicate offence after filing of the compliant under Section 45 PMLA. The trial must go on, as it is clarified in explanation (I) to Section 44(1) of PMLA. Therefore, we direct the Special Court to proceed with the PMLA trial and conclude the same as expeditiously as possible."......*

16.Hence, we hold that it is consistently been held by the Courts across the country, that the trial in PMLA case cannot be deferred stayed or discharged citing case of scheduled offence to reach its logical end. The only exception to this general rule is in case the scheduled offence ends in acquittal/discharge/quash. In anticipation of such a result in the schedule offence, the accused in PMLA cannot seek for stay or discharge. Therefore, the Criminal Revision Petitions stand dismissed. Consequently, connected miscellaneous petitions are closed.

[G.J., J.] & [R.P., J.]

.03.2025

NCC : Yes / No
Index : Yes / No
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To

1.Assistant Director,
Directorate of Enforcement,
Chennai Zonal Office-II
4th Floor, Shastri Bhavan,
No.26, Haddows Road,
Chennai-600 006.

2.The Additional Public Prosecutor,
Madurai bench of Madras High Court,
Madurai.

DR.G.JAYACHANDRAN, J.

AND

R.POORNIMA, J.

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