

IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
Appellate Side

Present:

The Hon'ble Justice Ajay Kumar Gupta

C.R.R. 914 of 2018

With

CRAN 2/2023

Enforcement Directorate through D.N. Poddar, Deputy Director

Versus

Papia Rozario & Anr.

For the Petitioner/E.D. : Ms. Debjani Roy, Adv.

For the Opposite Parties : Mr. Manjit Singha, Adv.
Mr. Arkaprabho Roy, Adv.
Mr. S.B. Mal, Adv.
Mr. S. Pattanayak, Adv.

Heard on : 24.11.2025

Judgment on : 21.01.2026

Ajay Kumar Gupta, J.:

1. The instant Criminal Revisional application has been preferred by the Enforcement Directorate through its Deputy Director under Sections 397, 401 & 482 of the Code of Criminal Procedure, 1973 (in short Cr.P.C.) read with Section 47 of the Prevention of Money Laundering Act, 2002 (in short 'PMLA'), challenging the correctness, legality and propriety of the order dated 15.12.2017 passed by the Learned Special (CBI) Court No. 1, Calcutta and Special Court of PMLA, Calcutta in ML Case No. 02 of 2013 (Enforcement Directorate through Sh. D.N. Poddar, Deputy Director Vs. Papiya Rozario & Anr.).
2. By the said order, the Learned Special Court discharged the accused persons, namely, Papiya Rozario and Stanley Indrajit Rozario, from the case directing return of the articles confiscated and seized from them upon allowing their petition under Section 227 of the Code.

FACTS OF THE CASE:

3. The brief facts, essential for the purpose of disposal of this case, are as follows:-
 - a. One Gangaram Kariwal filed a complaint under Section 156(3) of Cr.P.C. before the Learned Additional Chief Metropolitan Magistrate, Kolkata, alleging commission of the offence of fraud, cheating and encashing the redemption proceeds of the Mutual

Fund by opening an account producing forged/fabricated documents at the Axis Bank by the suspects named therein.

- b.** Pursuant to the direction passed by the Learned Magistrate, a case was registered, being Jorasanko P.S. Case No. 60 dated 24.03.2009 under Sections 120B/409/419/465/467/468/471 and 474 of the Indian Penal Code (in short 'IPC') against the accused persons, namely, 1. Papiya Rozario, 2. Branch Manager, Axis Bank Limited, 3. S. Mukherjee, Officer, Axis Bank Limited, 4. S. Choudhury, Officer, SS No. S-978, Axis Bank Limited, 5. Branch Manager, Axis Bank Limited, and 6. Authorised Signatory, Axis Bank Limited, Salt Lake Branch.
- c.** Subsequently, the investigation was transferred to the Anti-Fraud Section, DD, Kolkata Police, Lal Bazar. After completion of the investigation, the charge sheet, being no. 364 dated 16.08.2012 has been submitted against the opposite party no. 1, along with opposite party no. 2, though, the latter's name was not in the FIR.
- d.** The Detective Department, Kolkata Police, forwarded a copy of the FIR along with other relevant documents against the accused persons to the Enforcement Directorate (in short 'ED'). The ED, after scrutinising the entire documents meticulously, found prima facie materials against the accused persons under the provisions of PMLA and thereby registered ECIR/25/KOL/2009/PMLA dated

21.12.2009, since, besides the penal offences, section 467 of IPC was a scheduled offence under PMLA. Thereafter, investigation and inquiry were initiated.

- e.** After completion of the enquiry, a complaint was filed under Section 45 of the PMLA before the Designated Court for taking cognizance and issuance of process for commission of offences under Section 3 and punishable under Section 4 of the PMLA, 2002. Accordingly, cognizance was taken and the Court duly issued process.
- f.** On 28.06.2017 and on 31.07.2017, the accused persons filed applications under Sections 227/228 of the Code and supplementary applications for their discharge, suggesting that there were no grounds to frame a charge and praying to be discharged.
- g.** On 15.12.2017, the Learned Special Court concluded that the opposite party nos. 1 and 2 were entitled to be discharged from the case as section 467 was not a scheduled offence when the alleged crime had been committed by the accused persons, and directed the attached property to be returned. The said application was then allowed by the Learned Court.
- h.** The Learned Special Court (CBI) No. 1 and Special Court under the PMLA, Calcutta examined allegations against the accused relating

to cheating, forgery, and alleged laundering of proceeds derived from a scheduled offence. The Court noted that the complaint attributed a specific role to the accused in inducing the elderly complainant to invest, fabricating documents, opening bank accounts, diverting funds for personal gain, and allegedly projecting tainted money as untainted through purchase and sale of immovable property.

- i.** Upon analysis, the Court held that the existence of a scheduled (predicate) offence is a sine qua non for initiation and continuation of proceedings under the Prevention of Money Laundering Act. Without the commission of a scheduled offence, no “proceeds of crime” can arise, and consequently, provisions such as section 5(1) PMLA relating to attachment cannot be invoked. If the scheduled offence itself is negated or not legally sustainable, the very foundation of proceedings under the Act disappears.
- j.** The Court further emphasized that the PMLA is a penal statute and, in view of Article 20(1) of the Constitution, has no retrospective or retroactive operation. The 2009 amendment to the PMLA, which came into force on 1 June 2009, operates purely prospectively. Therefore, offences committed prior to the relevant provisions or their inclusion as scheduled offences cannot attract prosecution or attachment proceedings under the Act.

k. It was also observed that where the alleged predicate offence is not established, the basis of attachment ceases to exist, and further proceedings under the Act would be untenable. The Court held that, in the absence of a sustainable scheduled offence and considering the prospective operation of the 2009 amendment, continuation of the proceedings would amount to an abuse of the process of law.

l. The Learned Court further observed that, "Clearly, no proceedings under this Act can be initiated or sustained in respect of an offence, which has been committed prior to the Act coming into force and strictly speaking that the Act has got no retrospective operation".

m. The Learned Court further observed that, "Going through the bare Notification there is no hesitation to hold that the Amendment of PML Act in 2009 has got its effective value in the prospective sense and that is on and from 1.6.2009 and as such there cannot be any sense to take in any effective value before such enforcement of that Amendment of the Act in 2009".

n. The Petitioner herein contends that the Special Court failed to consider that the two proceedings, one being Jorasanko P.S. Case No. 60 dated 24.03.2009 under Sections 120B/409/419/465/467/468/471 and 474 of IPC, and another

by the ED, were independent of each other, depended on two separate enquiries, and the complaints were under two separate acts/provisions. Therefore, the offence has a separate scope and effect. It is also alleged that the Trial Court further failed to consider that the complaint filed by the ED was under Section 3 as punishable under Section 4 of the PMLA, and that the case is based on a continuing offence and not merely on the basis of a penal provision of the IPC or the scheduled offence at all or date of commission of offence of scheduled offence.

- o. The special court has also failed to consider that a case, initiated by the ED on the basis of a specific provision under the PMLA, does not require the consideration that the act had not been enacted at the time of commission of the offence under the IPC. The proceeds of a crime, under the PMLA, are based on the offence committed by the accused persons under the scheduled offence as mentioned in the PMLA. An accused should not be allowed to be discharged only on the ground that the offence under Section 467 of IPC was included in the PMLA after alleged commission of offences under IPC or after registration of FIR. Hence, this Revisional application.

ARGUMENTS ON BEHALF OF THE PETITIONER:

4. Learned counsel appearing on behalf of the Enforcement Directorate submitted that the learned Trial Court erred in holding that no proceedings under this Act can be initiated or sustained in respect of an offence, which has been committed prior to the Act coming into force and strictly speaking, the said Act has no retrospective operation.
5. Learned counsel further submitted that the Enforcement Directorate had lodged a complaint against the accused persons under Section 3 and punishable under Section 4 of the PMLA in the year 2013, which is a separate and independent offence from the offence punishable under the IPC. Two proceedings have been initiated against the accused persons, firstly, at Jorasanko P.S., Case No. 60, dated 24.03.2009, under Sections 120B/409/419/465/467/468/471, and 474 of the IPC, and secondly, under Section 3 and punishable under Section 4 of the PMLA. Both the offences were given by separate penal provision under two separate statute. Therefore, there is no bar either of the act for simultaneously trial of the offence complained of in the said two cases. Furthermore, Section 467 is the scheduled offence under the PMLA. It is true that the offence committed by the accused persons from January, 2008 to 17th March, 2009. However, the offence under PMLA is a continuing offence of proceeds of crime.

There is no particular date that can be considered to initiate such proceeding after thorough enquiry, and upon collection of materials. In course of enquiry, it came to the light that the proceeds of crime had been handled and converted to their use by the accused persons for acquiring movable and immovable properties and that conversion of proceeds of crime for their use are continuing offence as such, the question of retrospective effect does not apply in this case. Since all the accused persons are involved to convert the proceeds of crime under tainted property. Therefore, the order impugned is otherwise bad in law or not sustainable in law in view of the judgment passed by the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary Vs. Union of India**¹.

6. The learned counsel has further relied upon particularly paragraph nos. 132 to 138 to support of her contention as under:-

“132. The Explanation as inserted in 2019, therefore, does not entail in expanding the purport of Section 3 as it stood prior to 2019, but is only clarificatory in nature. Inasmuch as Section 3 is widely worded with a view to not only investigate the offence of money laundering but also to prevent and regulate that offence. This provision plainly indicates that any (every) process or activity connected with the proceeds of crime results in offence of money laundering. Projecting or claiming the proceeds of crime as untainted property, in itself, is an attempt to indulge in or being involved in money laundering, just as knowingly concealing, possessing, acquiring or using of proceeds of crime, directly or indirectly. This is reinforced by the statement presented along with the Finance Bill, 2019 before Parliament on 18-7-2019 as noted above [See paras 119 to 121 of this judgment.].

¹ 2022 SCC OnLine SC 929.

133. *Independent of the above, we have no hesitation in construing the expression “and” in Section 3 as “or”, to give full play to the said provision so as to include “every” process or activity indulged into by anyone, including projecting or claiming the property as untainted property to constitute an offence of money laundering on its own. The act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money laundering. In other words, it is not open to read the different activities conjunctively because of the word “and”. If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily frustrated by the simple device of one person possessing proceeds of crime and his accomplice would indulge in projecting or claiming it to be untainted property so that neither is covered under Section 3 of the 2002 Act.*

134. *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.*

135. *Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds*

of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in the Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

136. As mentioned earlier, the rudimentary understanding of “money laundering” is that there are three generally accepted stages to money laundering, they are:

136.1. Placement : which is to move the funds from direct association of the crime.

136.2. Layering : which is disguising the trail to foil pursuit.

136.3. Integration : which is making the money available to the criminal from what seem to be legitimate sources.

137. It is common experience world over that money laundering can be a threat to the good functioning of a financial system. However, it is also the most suitable mode for the criminals to deal in such money. It is the means of livelihood of drug dealers, terrorist, white-collar criminals and so on. Tainted money breeds discontent in any society and in turn leads to more crime and civil unrest. Thus, the onus on the Government and the people to identify and seize such money is heavy. If there are any proactive steps towards such a cause, we cannot but facilitate the good steps. However, passions aside we must first balance the law to be able to save the basic tenets of the fundamental rights and laws of this country. After all, condemning an innocent man is a bigger misfortune than letting a criminal go.

138. On a bare reading of Section 3, we find no difficulty in encapsulating the true ambit, given the various arguments advanced. Thus, in the conspectus of things it must follow that the interpretation put forth by the respondent will further the purposes and objectives behind the 2002 Act and also adequately address the recommendations and doubts of the international body whilst keeping in mind the constitutional limits. It would, therefore, be just to sustain the argument that the amendment by way of the Explanation has been brought about

only to clarify the already present words, “any” and “including” which manifests the true meaning of the definition and clarifies the mist around its true nature.”

ARGUMENTS ON BEHALF OF THE OPPOSITE PARTIES:

7. Learned counsel appearing on behalf of the opposite parties filed written notes of arguments and further submitted that Learned Court below was right in discharging the accused person/opposite parties. The Learned Trial Court was right to hold that the proceedings cannot be made maintainable against the Opposite parties.
8. The alleged offence in the instant proceeding was not a scheduled offence as per the PMLA 2002 and even if Section 467 of the IPC, is to be considered, the ingredients of the charge-sheet and the provisions of Section 45 of the PMLA should satisfy the ingredients specifically to attract Section 467 in order to attract the impugned proceeding.
9. Even if the written statement dated 22.02.2011 recorded under section 50 PMLA is taken in its entirety, with regard to the version of Papiya Rozario, it does not attract the scheduled offence of Section 467 of the IPC.
10. Even if the written statement dated 22.02.2011 recorded under section 50 PMLA is taken in its entirety, with regard to the statement of Sri Ganga Ram Kariwal, the complainant in the police FIR, it does not attract the scheduled offence of Section 467 of the IPC as the allegation only involves with regard to the fraudulency of opening of

bank account which fails to attract the offence of Section 467 of the IPC.

11. Even if the written statement of Stanley Rozario is taken in its entirety, it fails to attract the ingredient of Section 467 IPC as it only illustrates with regard to the purchase of the alleged tainted property.
12. With regard to the letters dated 26.05.2011, to verification of the documents, the allegations pertained are omnibus and vague in nature, which fail to satisfy the essentialities and the provisions with regard to Section 467 of the IPC, could not be inserted. The entire allegation of Section 467 of the IPC, is on the basis of the version of the complaint, which is omnibus in nature. The entire investigation, which is based on the police report/charge-sheet of Jorasanko PS Case being 60 of 2009 does not illustrate the ingredient of Section 467 of the IPC or how the same is being attracted.
13. If the alleged offence of Section 467 IPC could not be attracted, no other offence has relevance with regard to the instant PMLA case as the section 467 was not scheduled offences at that point of time, when the proceedings under PMLA initiated against the accused persons.
14. That the impugned judgement relies in the case of ***M/S obalapuram Mining Company Pvt. Ltd. V Joint Director. Directorate of***

Enforcement, Government of India and Ors.² is now pending for disposal in a batch matter proceeding in SLP (Cri) 4466 of 2017.

15. As pointed in the judgement of **Sharif Ahmed and Another v State of UP and Another**³, *"Our attention has been drawn to the format prescribed for the State of Uttar Pradesh, which by column 16 requires the investigating officer to state brief facts of the case. In addition, the State of Uttar Pradesh has issued a circular dated 19.09.2023, which refers to an earlier circular bearing No. 59 of 2016 dated 20.10.2016, and states that the investigation provisions contained in the Code and the police regulations with reference to Section 173 of the Code are not being consistently complied with and followed by the investigating officers and the supervising officers. The need to provide lead details of the offence in the chargesheet is mandatory as it is in accord with paragraph 122 of the police regulations. Similar directions were issued on 09.09.2022 following the direction of the High Court of Judicature at Allahabad that brief narration of the material collected during investigation, which forms the opinion of the investigating officer, should be mentioned in the chargesheet."*
16. It is trite law that Forgery is sine-qua-non of offences under sections 467, 468 and 471 IPC. Preparation of false document or false electronic record or part thereof is condition precedent for offence of forgery. Making of false document is defined under section 464 IPC. The said section 464 demonstrates that a person is said to have made false document if; (a) he executed a document claiming to be someone

² ILR 2017 KAR 1846

³ 2024 INSC 363

else or authorized by someone else; or (b) he altered and tempered a document; or (c) he obtained a document by practicing deception or from a person not in control of his faculties. The basic ingredients of forgery are (1) the making of a false document or part of it and (2) such making should be with such intention as is specified in the section, viz, (a) to cause damage or infringe to (i) the public, or (ii) any person; or (b) to support any claim or title; or (c) to cause any person to part with property, or (d) to cause any person to enter into an express or implied contract; or (e) to commit fraud or that fraud may be committed.

17. Thus, no ingredient of Section 467 of IPC is put to be demonstrated with proper documents and if no offence under Section 467 of IPC exists, then there can be no case with regard to PMLA in the instant proceeding as the other offences are not scheduled offences and merely Section 467 of IPC cannot be added just to attract the provisions of Section 467 of IPC.

18. Learned counsel has placed reliance on the following judgments in support of his submission as under:-

*i. Sudershan Singha Wazir Vs. State (NCT of Delhi) and Ors.*⁴;

⁴ 2025 INSC 281;

*ii. M/s Obulapuram Mining Company Pvt. Ltd. Vs. Joint Director, Directorate of Enforcement, Government of India & Ors.*⁵.

FINDINGS AND ANALYSIS OF THIS COURT:

- 19.** Having heard the arguments and submissions made by the learned counsels appearing on behalf of the respective parties and upon perusal of impugned order of discharge, the principal issue that arises for consideration in the instant case is whether the Learned Special Court was justified in discharging the accused on the ground that section 467 of the IPC was not a scheduled offence at the time of commission of the alleged crime under IPC, and that the PMLA, 2002 has no retrospective application.
- 20.** Before deciding the issue involved in the present case, this court shall firstly ascertain whether the offence punishable under Section 467 of the IPC is a scheduled offence or not and when it was included in the PMLA.
- 21.** The PMLA was enacted to prevent the laundering of proceeds of crime, to deprive offenders of the benefits derived from criminal activity, to protect the integrity of the financial system, and to fulfil India's international obligations in combating money-laundering and related economic offences.

⁵ ILR 2017 KAR 1846;

- 22.** Section 467 of IPC was not originally incorporated as a scheduled offence under the PMLA, which was enacted in the year 2002. It was only introduced in the Amendment of 2009, which came into force on 1st June, 2009.
- 23.** The relevant paragraphs from **Vijay Madanlal Chowdhury Case (Supra)** is stipulated herein below to understand the scope of PMLA in the present facts and circumstances of this case as under:

“97. Even the Preamble to the Act reinforces the background in which the Act has been enacted by Parliament being commitment of the country to the international community. It is crystal clear from the Preamble that the Act has been enacted to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering and for matters connected therewith or incidental thereto. It is neither a pure regulatory legislation nor a pure penal legislation. It is an amalgam of several facets essential to address the scourge of money laundering as such. In one sense, it is a sui generis legislation.

98. As aforesaid, it is a comprehensive legislation dealing with all the related issues concerning prevention of money laundering, attachment of proceeds of crime, adjudication and confiscation thereof including vesting of it in the Central Government, setting up of agencies and mechanisms for coordinating measures for combating money laundering and also to prosecute the persons indulging in the process or activity connected with the proceeds of crime. While considering the challenge to the relevant provision(s) of the 2002 Act, we cannot be oblivious to the objects and reasons for enacting such a special legislation and the seriousness of the issues to be dealt with thereunder including having transnational implications. Every provision in the 2002 Act will have to be given its due significance while keeping in mind the legislative intent for providing a special

mechanism to deal with the scourge of money laundering recognised world over and with the need to deal with it sternly.

105. *The other relevant definition is “proceeds of crime” in Section 2(1)(u) of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide the Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property [mentioned in Section 2(1)(v) PMLA] derived or obtained, directly or indirectly, by any person “as a result of” criminal activity “relating to” a scheduled offence [mentioned in Section 2(1)(y) read with Schedule to the Act] or the value of any such property. Vide the Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relatable to scheduled offence does not transcend beyond the original provision. In that, the word “relating to” (associated with/has to do with) used in the main provision is a present participle of word “relate” and the word “relatable” is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e. Section 2(1)(u)].*

106. *The “proceeds of crime” being the core of the ingredients constituting the offence of money laundering, that expression needs to*

be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person “as a result of” criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, “as a result of” criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the case (crime) concerned, it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the tax legislation concerned prescribes such violation as an offence and such offence is included in the Schedule to the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person “as a result of” criminal activity relating to the scheduled offence concerned. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money laundering under Section 3 PMLA.

107. *Be it noted that the definition clause includes any property derived or obtained “indirectly” as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the “property” which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of the Explanation added in 2019 to the definition of the expression “proceeds of crime”, it would inevitably include other property which may not have been derived or obtained*

as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to “any property” including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching up to the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition of “proceeds of crime”. The definition of “property” also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences.

108. *In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property if purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of the 2002 Act.*

109. *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 that 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 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 the definition clause “proceeds of crime”, as it obtains as of now.

Section 3 of the 2002 Act

122. Coming to Section 3 of the 2002 Act, the same defines the offence of money laundering. The expression “money laundering”, ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, Section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money laundering. This is amply clear from the original provision, which has been further clarified by insertion of the Explanation vide Finance (No. 2) Act, 2019. Section 3, as amended, reads thus:

“3. Offence of money laundering.—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 [Substituted by Act 2 of 2013, Section 3, for “proceeds of crime and projecting” [w.e.f. 15-2-2013, vide S.O. 343(E), dated 8-2-2013].] [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.

[Inserted by the Finance (No. 2) Act, 2019, Section 193 (w.e.f. 1-8-2019).] [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 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.]”

124. *This section was first amended vide Act 2 of 2013. The expression “proceeds of crime and projecting” was substituted by the expression “proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming”. We are not so much concerned with this change introduced vide Act 2 of 2013. In other words, the provision as it stood prior to amendment vide Finance (No. 2) Act, 2019 remained as it is. Upon breaking-up of this provision, it would clearly indicate that—it is an offence of money laundering, in the event of direct or indirect attempt to indulge or knowingly assist or being knowingly party or being actually involved in “any process or activity” connected with the proceeds of crime. The latter part of the provision is only an elaboration of the different process or activity connected with the proceeds of crime, such as its concealment, possession, acquisition, use, or projecting it as untainted property or claiming it to be as untainted property. This position stands clarified by way of Explanation inserted in 2019.*

125. *If the argument of the petitioners is to be accepted, that projecting or claiming the property as untainted property is the quintessential ingredient of the offence of money laundering, that would whittle down the sweep of Section 3. Whereas, the expression*

“including” is a pointer to the preceding part of the section which refers to the essential ingredient of “process or activity” connected with the proceeds of crime. The Explanation inserted by way of amendment of 2019, therefore, has clarified the word “and” preceding the expression “projecting or claiming” as “or”. That being only clarificatory, whether introduced by way of the Finance Bill or otherwise, would make no difference to the main original provision as it existed prior to the 2019 Amendment.

126. *Indeed, there has been some debate in Parliament about the need to retain the clause of projecting or claiming the property as untainted property. However, the Explanation inserted by way of amendment of 2019 was only to restate the stand taken by India in the proceedings before FATF, as recorded in its 8th Follow-Up Report (Mutual Evaluation of India) June 2013 under heading “Core Recommendations”. This stand had to be taken by India notwithstanding the amendment of 2013 vide Act 2 of 2013 (w.e.f. 15-2-2013) and explanation offered by the then Minister of Finance during his address in Parliament on 17-12-2012 as noted above [See paras 111 to 118 of this judgment.] . Suffice it to note that the municipal law (Act of 2002) had been amended from time to time to incorporate the concerns and recommendations noted by the international body.”*

- 24.** It is not a dispute that the FIR dated 24.03.2009 was registered for offences under sections 120b/409/419/465/467/468/471/and 474 of the IPC, and that, upon receipt of the FIR and relevant materials, the ED registered an ECIR on 21.12.2009 and proceeded to investigate the offence of money-laundering under section 3 of the PMLA and complaint was filed before the designated Court in the year 2013. It is equally undisputed that section 467 of IPC stood included as a scheduled offence under Part A of the Schedule to the PMLA by

virtue of the 2009 Amendment, which came into force on 1st June, 2009.

25. The Learned Special Court proceeded on the premise that since the alleged acts constituting forgery and cheating were committed prior to the inclusion of Section 467 IPC in the Schedule, the very foundation of the PMLA proceedings stood vitiated, rendering both prosecution and attachment unsustainable. This Court finds such reasoning to be contrary to the settled exposition of law laid down by the Supreme Court in ***Vijay Madanlal Choudhary (supra)***.
26. The Hon'ble Supreme Court in ***Vijay Madanlal Choudhary (supra)*** has authoritatively clarified that the offence under Section 3 of the PMLA is not dependent merely on the date of commission of the scheduled offence, but on the existence of "proceeds of crime" and the continuing involvement of the accused in any process or activity connected with such proceeds, including concealment, possession, use, or projection as untainted property. The Hon'ble Court has further held that money-laundering is a continuing offence, so long as the tainted property is enjoyed, possessed, or projected as untainted after the Act or the relevant amendment comes into force. Relevant paragraphs of the judgment have been set out hereinabove.
27. In the present case, the allegations levelled in the complaint filed by the Enforcement Directorate do not confine themselves to the mere

commission of the predicate offence. On the contrary, the complaint attributes a specific and continuing role to the accused persons in fabricating documents, opening bank accounts, diverting funds, and thereafter projecting and claiming the proceeds of crime as untainted by routing the same through banking channels and acquisition of immovable property. These allegations, if taken at face value at the stage of charge, clearly disclose post-scheduled-offence and post-amendment laundering activity, thereby attracting the rigour of Section 3 of the PMLA.

- 28.** The Learned Special Court erred in holding that the PMLA proceedings were wholly dependent upon the date of commission of scheduled offence and that, in the absence of a concluded finding on the predicate offence, no action under the PMLA could lie. The Supreme Court has unequivocally held that the PMLA proceedings are independent and distinct, and that while the existence of a scheduled offence is a sine qua non for the offence of money-laundering, a conviction in the scheduled offence is not a prerequisite for initiation or continuation of proceedings under the PMLA. What is required is the existence of material indicating that the property in question is derived or obtained as a result of criminal activity relating to a scheduled offence.

- 29.** The prosecution is not predicated upon retrospectively criminalising the acts constituting forgery under Section 467 IPC. Rather, the proceedings are founded upon the allegation that after Section 467 was included in the Schedule, the accused continued to possess, use, and project the proceeds derived from such offence as untainted property. Such application of the Act does not offend Article 20(1) of the Constitution, as clarified in ***Vijay Madanlal Choudhary (Supra)***, since the penal consequence attaches to the continuing laundering activity and not to the past commission of the predicate offence per se.
- 30.** The attachment of property under Section 5(1) of the PMLA was also erroneously set aside on the assumption that attachment proceedings are purely penal in nature. The Supreme Court has categorically held that attachment and confiscation proceedings under the PMLA are civil and preventive measures, intended to deprive the offender of the benefits of crime, and are not rendered invalid merely because the scheduled offence predates the enactment or amendment, so long as the proceeds of crime subsist and are traceable.
- 31.** Viewed in this light, the conclusion of the Learned Special Court that continuation of the proceedings would amount to an abuse of the process of law, is legally unsustainable. The Court failed to appreciate the distinct scope, object, and operation of the offence of money-

laundering, and erroneously conflated the date of commission of the scheduled offence with the commission of the offence under Section 3 of the PMLA.

32. Accordingly, this Court is of the considered view that the discharge of the accused was founded on an incorrect understanding of the statutory scheme of the PMLA and runs contrary to the binding ratio of ***Vijay Madanlal Choudhary (Supra)***. At the stage of consideration of discharge, the allegations disclose sufficient material to prima facie indicate continuing laundering activity after the inclusion of Section 467 IPC as a scheduled offence, warranting a full-fledged trial.
33. The reliance placed by the learned counsel for the opposite parties in the case of ***M/s Obalapuram Mining Company (Supra)***, is not considered as a persuasive precedent since the said judgment has been challenged by the ED and is pending consideration before the Supreme Court, and in any event, cannot prevail over the subsequent authoritative pronouncement of the Supreme Court in ***Vijay Madanlal Choudhury (Supra)***.
34. This Court further concurs with the ratio laid down in ***Vijay Madanlal (Supra)***, particularly the principle that the offence of money-laundering is a continuing offence so long as the proceeds of crime are possessed, used, or projected as untainted property. The date of commission of the scheduled offence is, therefore, not

determinative. The continuation of laundering activity or the enjoyment of proceeds of a crime after the enforcement of the Act or the relevant amendment, is of utmost importance.

- 35.** Consequently, **CRR No. 914 of 2018** is **allowed**. **CRAN 2 of 2023** along with all connected applications, if any, are also disposed of.
- 36.** The Order dated 15.12.2017 passed by the Learned Special (CBI) Court No. 1, Calcutta and Special Court of PMLA, Calcutta in ML Case No. 02 of 2013, whereby the accused persons were discharged and directed the return of the articles confiscated and seized from them upon allowing their petition under Section 227 of the Code stands set aside. The Trial Court is requested to proceed with the proceedings in accordance with law independently and take to its logical conclusion.
- 37.** Let a copy of this Judgment be sent to the Learned Trial Court for information.
- 38.** Interim order, if any, stands vacated.
- 39.** Case diary, if any, be returned to the learned counsel for the State.
- 40.** All parties shall act on the basis of a server copy of this judgment duly downloaded from the official website of this Court.

- 41.** Urgent photostat certified copy of this Judgment, if applied for, is to be given as expeditiously to the parties on compliance of all legal formalities.

(Ajay Kumar Gupta, J)

P. Adak (P.A.)