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CRL A Nos. 979, 980 & 987 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON
24.02.2026

PRONOUNCED ON
17.04.2026

CORAM

THE HON'BLE MR JUSTICE C.V. KARTHIKEYAN

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

CRL A Nos. 979, 980 & 987 of 2022

CRL.A.No. 979 of 2022

N.Ajmal Khan
S/o.Nainar Mohammed, No.1, Fathima Nagar,
Second St, Saramedu, Karumbukadai,
Coimbatore 641008.

..Appellant(s)

Vs

State By:
The Assistant Director
Directorate of Enforcement, Government of India,
Ministry of Finance, Department of Revenue, 2nd
and 3rd Floor, Murugesu Naicker Complex. No.84
Greens Road, Chennai 600006. (Crime No.ECIR
01 of 2012)

..Respondent(s)

Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C., to call for the records and set aside the conviction and sentence imposed against the appellant on 04.08.2022, in CC No.48 of 2016, on the file of the Principal Special Judge for CBI Cases (VIII Additional City Civil Court), Chennai and acquit the appellant and thus render justice.

For Appellant(s):

Mr.R.John Sathyan
Senior Counsel
Assisted by Mr.P.Pugalendhi



For Respondent(s):

Mr.P.Sidharthan,
Special Public Prosecutor for Directorate of
Enforcement Cases

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CRL.A.No. 980 of 2022

B.Purushothaman

S/o. A.Balakrishnan, No.1/7-B, Kanagalakshmi
Nagar, Vellalore, Coimbatore. 641 111.

..Appellant(s)

Vs

Assistant Director, Chennai
Directorate of Enforcement,
Government of India, Ministry of Finance
Department of Revenue, 2nd and 3rd Floor,
Murugesu Naicker Complex, No.84, Greaves Road,
Chennai. 600006.(ECIR No.01/2012)

..Respondent(s)

Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the conviction and sentence imposed on the appellant by the learned Principal Special Judge for CBI Case (VIII Additional City Civil Court) Chennai in CC.No.48 of 2016 by a Judgement dated 04.08.2022 by allowing this appeal and thus render justice.

For Appellant(s): Mr.K.Balasubramaniam

For Respondent(s): Mr.P.Sidharthan,
Special Public Prosecutor
for Directorate of Enforcement Cases

CRL.A.No. 987 of 2022

1. A.M.Kaja Hussain
S/o.Muthalif
2. K.K.Reshma
W/o.A.M.Kaja Hussain



..Appellant(s)

Vs

Assistant Director,
Directorate of Enforcement, Government of India,
Ministry of Finance, Department, of Revenue, 2nd
and 3rd Floor, Murugesu Naicker Complex, No.84,
Greens Road, Chennai - 600 006 ECIR No.01 of
2012.

..Respondent(s)

Prayer:- Criminal Appeal filed under Section 374 of Cr.P.C., to set aside the conviction and sentence imposed on the appellants by the Learned Principal Special Judge for CBI CASES VII ADDITIONAL CITY CIVIL COURT CHENNAI IN C.C.NO.48 of 2016 by a judgment dated 04.08.2022 by allowing this Appeal.

For Appellant(s): Mr.A.M.Rahamath Ali

For Respondent(s): Mr.P.Sidharthan,
Special Public Prosecutor
for Directorate of Enforcement Cases

COMMON JUDGMENT

(Judgment of the Court was delivered by K.Kumaresh Babu J.)

These Appeals arise out of a common judgment of conviction that had been made against the appellants for their involvement in the offences covered under the Provisions of Money Laundering Act, 2002 (herein after referred to as the “PMLA Act”). As a consequence, these Appeals were taken up together with the consent of the learned counsels appearing on either side.



2. The case of the prosecution is that the appellants in connivance with each other had committed an offence under Section 420 r/w. 120 IPC for which criminal cases had been registered against them. It is the case of the prosecution that the first accused had floated firms with the help of the third accused and had cheated various people who had filed complaints for commission of the scheduled offences and of the sale proceeds, properties were acquired making the sale proceeds tainted money, thereby committing an offence under Section 3 of the PMLA Act. The appellants/ accused have all been convicted and the same is in challenge before us.

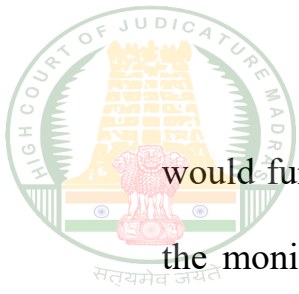
3. Heard Mr.R.John Sathyan, learned Senior Counsel assisted by Mr.P.Pugalenth, learned counsel appearing on behalf of the appellant in Crl.A.No.979 of 2022, Mr.K.Balasubramaniam, learned counsel appearing on behalf of the appellant in Crl.A.No.980 of 2022, Mr.A.M.Rahamath Ali, learned counsel appearing on behalf of the appellant in Crl.A.No.987 of 2022 and Mr.P.Sidharthan, learned Special Public Prosecutor for Directorate of Enforcement Cases appearing on behalf of the respondent(s) in all Appeals.

4. Learned Senior Counsel appearing on behalf of the appellant/ first accused would submit that the entire prosecution under the PMLA Act is on the surmise that the complainants in the respective First Information Report upon which an ECIR had been registered had been duped and cheated. He would



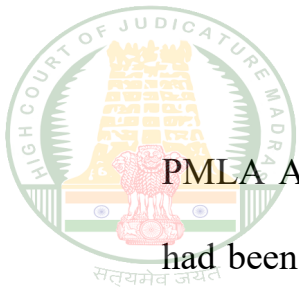
submit that the complainants on whose complaints the FIRs came to be registered and form part of Exs.P1 to P10 were never examined either by the Authorities under the PMLA Act nor were marched as witnesses before the Trial Court to drive home the presumption that the appellants have committed the scheduled offences for initiation of proceedings under the PMLA Act. He would submit that four witnesses were examined, of whom PW1 was the Investigating Officer and PW2 to 4 were the purchasers of the properties from the appellants. According to him, the ingredients for an offence under Section 3 had not been made out.

5. Firstly, he would submit that the scheduled offence itself had not been proved, much less the proceeds of such scheduled offences had also not been brought about by the Investigating Officer. Marching evidences through PW 2 to 4 who are the purchasers of the properties also did not bring about the purchase of such property by using tainted money by projecting the same to be untainted. He would vehemently contend that when the proceeds arising out of the crime has not been brought on record, it would be of no consequence to hold that the properties sold to PW 2 to 4 were purchased out of tainted money. He would further submit that in none of the predicate offence, the appellants who are accused there had been convicted. He would bring it to the notice of this Court that in one of the predicate offence, the accused had been acquitted as there was no concrete proof that he had committed the predicated offence. He



would further submit that the Court below erred in coming to a conclusion that the monies that were used to purchase the properties sold to PW2 to 4 were purchased from the proceeds of the crime by concluding the same to be tainted money on the assumptions and presumptions based upon the evidence of PW1, who is the Investigating Officer. He would submit that the investigation under the PMLA Act and further criminal proceedings by a Court of Sessions followed the well established proceedings under the Criminal Procedure Code. He would submit that in the course of investigation, Directors had been vested with the powers under Section 50 Sub-Section(1)(a) to (f) and such powers vested thereunder are powers equated to the Powers of a Civil Court, under the Provisions of CPC.

6. He would further submit that Sub-Section 2 also envisages powers to issue summons whose attendance is considered necessary to give evidence or produce records during the course of such investigation with the Director, Additional Director, Joint Director, Deputy Director or the Assistant Director. He would vehemently contend that the powers to issue summons to various Officers cannot be clothed with powers under Sub Section (1) which can only be exercised by the Director. Therefore, he would submit that the statements that have been recorded by the PW1 who was holding the post of Assistant Director at the time of investigation cannot fall within the statements that is to be recorded by the respondent under Sub-Section (1) of Section 50 of the



PMLA Act and therefore, the Court ought to have rejected the statements that had been recorded by the PW1. Even assuming that such statements have been validly recorded by a Director, for the simple reason that such statements recorded during the investigation without examining the authors of such statement in the trial before a Sessions Court cannot be relied upon by the Court to hold that the accused have all committed an offence to be convicted under the Provisions of the Act. Hence, he seeks indulgence of this Court to the order impugned herein.

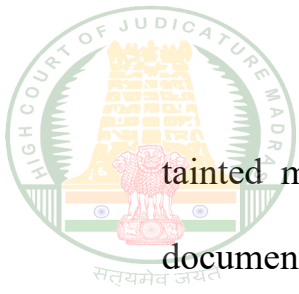
7. Learned counsels appearing on behalf of the appellants in the other Appeals had, adopting the arguments of the learned Senior Counsel, would further submit that the link between the appellants and the first accused have not been substantiated by any independent material evidence and therefore, they ought not to have been roped in as accused for the offence under PMLA Act. This aspect has been clearly over-looked by the Trial Court while passing the order of conviction.

8. The learned Standing Counsel appearing on behalf of the respondent would submit that the first accused had purchased goods from various mills on the promise to part with a consideration, which was supported by the issuance of cheques without having any sufficient funds in his bank accounts. Such goods received by him were sold to various third parties with the active



connivance of third and fifth accused. The sale proceeds of such sale without being utilised to honour the commitment to the suppliers had been shared among them. Hence, such proceeds which had been utilised to purchase the properties in their names and in the name of other accused form part of the tainted money substantiating the offence under Section 3 of the PMLA Act. He would submit that the first accused had given a statement before PW1/ Investigating Officer under Section 50 of the PMLA Act admitting to the offence and utilisation of the sale proceeds in purchasing the property and distribution of such proceeds along with third and fifth accused. When such statements have been made before the Investigating Officer, which is protected by the Statute and having the status of judicial recording of fact, the first accused cannot be allowed to resile from such statement.

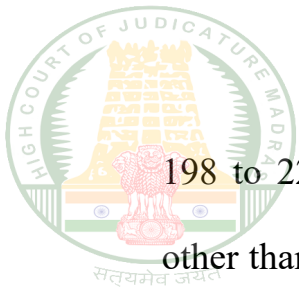
9. He would submit that similarly, the second accused, who deceased during the trial and who is the mother of the first accused had also given a statement which would lead only to a conclusion that the admission made by the first accused stood corroborated. He would further submit that the third accused had also given a statement which was also marked as an exhibit during the trial and the sale of the property by them had also been substantiated by the evidences of PW2 to 4. He would submit that an analysis of the evidences of PW2 to 4 along with Exs.P35 to 37 would conclusively prove that the properties that had been sold in their favour had been purchased by the accused using the



tainted money. They have also not substantiated by cogent evidence, either documentary or oral to drive home the theory that the said properties were purchased from known source of income. Hence, he would contend that it is evidently clear that the properties have been purchased from unknown source of income which would only mean that the properties have been purchased by them using tainted money for the offences committed by the first accused for which the predicate offences had been registered against him.

10. Drawing strength from the provisions of Section 22 to 24 of the Act, he would submit that a presumption has been statutorily embodied in respect of the properties found in possession of a person in the course of an enquiry under the PMLA Act and such presumption should unless, the contrary is proved, be arising only out of the proceeds of the crime, whereby the offence of money laundering is projected. Therefore, he would submit that the accused, who are the appellants before this Court cannot be heard to say that the purchase of the properties did not arise out of the proceeds of the crime.

11. With respect to the submissions of the learned Senior Counsel, with regard to Section 50 of the PMLA Act, he would submit that the said Provision vests the powers with the Authorities to issue summons and record evidences. He would further submit that Sub-Section 4 of Section 50 also envisages that such proceedings to be a judicial proceedings within the meaning of Sections



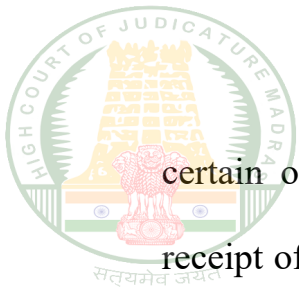
198 to 220 of IPC, only to desist the Authorities from acting in any manner other than the manner in which such acts is to be carried out by the Authorities.

He would also draw strength from Sub-Section 5 of Section 50 of the PMLA Act to contend that the Authorities can also inform and retain in custody any records produced before him in any proceedings under this Act and hence, would submit that the Investigating Officer, who was the Assistant Director is also empowered to record evidence, collect documents by enforcing attendance of the persons from whom the evidence is required to be recorded and to produce the records.

12. That apart, he would submit that recording of evidence is deemed to be recorded under the Provisions of Civil Procedure Code which would itself make the statement recorded to be a statement recorded during the course of a judicial proceedings and therefore, there is no necessity to re-examine the witnesses before the Sessions Court of whose statement had been recorded by the Investigating Officer. Hence, he prays this Court to dismiss these Criminal Appeals.

13. We have considered the submissions made by the learned counsels appearing on either side and perused the materials available on record.

14. The primordial basis upon which the complaints have been initiated for the offences under the PMLA Act is that the predicate offence and that



certain of the properties have been purchased and that the accused were in receipt of monies that arise out of commission of such offence and that the said money which is the proceeds of crime had been used to purchase the properties.

15. The proceeds of crime as defined under Section 2(1)(u) had been considered by the Hon'ble Apex Court in the judgment of ***Vijay Madanlal Chowdry and Others Vs Union of India and others*** reported in **2022 INSC 757** and the Hon'ble Apex Court had held that to be a proceeds of crime, the property must be derived or obtained directly or indirectly as a result of a criminal activity relating to the scheduled offence. It had also held that possession of unaccounted property acquired by a legal means may be actionable for tax violation but cannot be read as proceeds of crime unless the concerned legislation has been appended to the schedule of the Act. It could also be seen that the Hon'ble Apex Court had also indicated that the properties subsequently purchased from the income that has been derived from the proceeds of crime can also be regarded as tainted money. In that context, it would be useful to refer to the relevant paragraphs which are extracted hereunder:-

“....31.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



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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.**

32. 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



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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 relating 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. 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.

33. 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



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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.”**

16. Similarly, dealing with Section 3 of the Act, the Hon’ble Apex Court reading the same in conjunction with Section 2(1)(u) had held that the offence is dependant on the wrongful and illegal acquisition of monies which arises out of a criminal activity relating to the scheduled offence. It had further held that existence of an undisclosed income irrespective of the volume of the proceeds of crime as defined under Section 2(1)(u) would get attracted only if the property had been derived and obtained as a result of criminal activity relating to the said offence. It had further held that therefore, to proceed under Section 3



of the Act, the proceeds of crime is quintessential ingredient. For better appreciation, the relevant paragraph is extracted hereunder:-

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“ 52. The next question is : Whether the offence under Section 3 is a stand-alone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money laundering. The property must qualify the definition of “proceeds of crime” under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the 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 case concerned has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a court of competent jurisdiction. It is well within the jurisdiction of the court concerned trying the scheduled offence to pronounce on that matter.

53. Be it noted that the authority of the authorised officer under the 2002 Act to prosecute any person for offence of money



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laundering gets triggered only if there exist proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. **Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of “proceeds of crime” under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence.** It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police [under Section 66(2) of the 2002 Act] for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

54. Even though the 2002 Act is a complete code in itself, it is only in respect of matters connected with offence of money laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) PMLA is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.

55. In other words, the authority under the 2002 Act is to prosecute a person for offence of money laundering 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



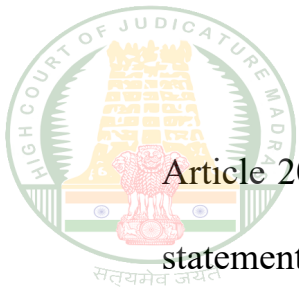
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belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a stand-alone process.”

17. Dealing with Section 50 of the Act vis-a-vis Article 20(3) of the Constitution of India, the Hon'ble Apex Court had analysed Section 50 and after referring to various previous judgments, had noted that the power entrusted to the designated official under the Act though had been couched as an investigation, in effect is an enquiry to ascertain the relevant facts to facilitate initiation or pursuing with an action relating proceeds of crime. It had also been specifically held by the Hon'ble Apex Court that such power vested with the official is only for conducting enquiry into the matters for ascertaining the existence of proceeds of crime, involvement of persons in the process of executing such crime and to initiate action against such persons including seizure, attachment and confiscation of the property which would eventually vest with Central Government. The Hon'ble Apex Court had further held that initiation of summons under the said Provision is not an investigation for initiating prosecution in respect of crime of money laundering as such.

18. Further, the Hon'ble Apex Court had held that a statement that is recorded after formal arrest by the official concerned, the consequences of



Article 20(3) and Section 25 of the Evidence Act can come into play and such statement being recorded being in the nature of a confession shall not be proved against him. Further, the power under Section 48 of the Act was held to empower the Authorities to resort to attachment of the proceeds of crime and for which the power of search, seizure and arrest had also been envisaged. For better appreciation, the relevant paragraphs are extracted hereunder:-

“ 152. By this provision, the Director has been empowered to exercise the same powers as are vested in a civil court under the 1908 Code while trying a suit in respect of matters specified in sub-section (1). This is in reference to Section 13 of the 2002 Act dealing with powers of Director to impose fine in respect of acts of commission and omission by the banking companies, financial institutions and intermediaries. From the setting in which Section 50 has been placed and the expanse of empowering the Director with same powers as are vested in a civil court for the purposes of imposing fine under Section 13, is obviously very specific and not otherwise.

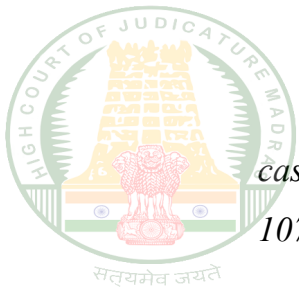
153. Indeed, sub-section (2) of Section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summons to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression “proceeding” in the earlier part of this judgment and held that it applies to proceeding



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before the adjudicating authority or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summons to any person. We fail to understand as to how Article 20(3) would come into play in respect of process of recording statement pursuant to such summons which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of Section 50 of the 2002 Act. The criticism is essentially because of sub-section (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of Sections 193 and 228IPC. Even so, the fact remains that Article 20(3) or for that matter Section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being compelled to be a witness against himself. This position is well established. The Constitution Bench of this Court in *M.P. Sharma* [*M.P. Sharma v. Satish Chandra*, (1954) 1 SCC 385 : 1954 SCR 1077 : AIR 1954 SC 300] had dealt with a similar challenge wherein warrants to obtain documents required for investigation were issued by the Magistrate being violative of Article 20(3) of the Constitution. This Court opined that the guarantee in Article 20(3) is against “testimonial compulsion” and is not limited to oral evidence. Not only that, it gets triggered if the person is compelled to be a witness against himself, which may not happen merely because of issuance of summons for giving oral evidence or producing documents. Further, to be a witness is nothing more than to furnish evidence and such evidence can be furnished by different modes. The Court went on to observe as follows : (*M.P. Sharma*



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case [M.P. Sharma v. Satish Chandra, (1954) 1 SCC 385 : 1954 SCR 1077 at p. 1088 : AIR 1954 SC 300, para 10] , SCC p. 398, para 11)

“11. Broadly stated the guarantee in Article 20(3) is against “testimonial compulsion”. It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in Article 20(3) is “to be a witness”. A person can “be a witness” not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (see Section 119 of the Evidence Act) or the like. “To be a witness” is nothing more than “to furnish evidence”, and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. So far as production of documents is concerned, no doubt Section 139 of the Evidence Act says that a person producing a document on summons is not a witness. But that section is meant to regulate the right of cross-examination. It is not a guide to the connotation of the word “witness”, which must be understood in its natural sense i.e. as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the courtroom. The phrase used in Article 20(3) is “to be a witness” and not to “appear as a witness”. It follows that the protection afforded to an accused insofar as it is related to the phrase “to be a witness” is not merely in respect of testimonial compulsion in the courtroom but may well extend to compelled testimony



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previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case.

.....

159. In the context of the 2002 Act, it must be remembered that the summons is issued by the authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the adjudicating authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the adjudicating authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the adjudicating authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for



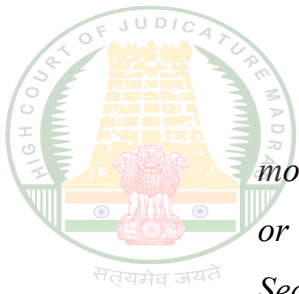
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prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.

.....

163. We are conscious of the fact that the expression used in Section 2(1)(na) of the 2002 Act is “investigation”, but there is obvious distinction in the expression “investigation” occurring in the 1973 Code. Under Section 2(h) of the 1973 Code, the investigation is done by a “police officer” or by any person (other than a Magistrate) who is authorised by a Magistrate thereby to collect the evidence regarding the crime in question. Whereas, the investigation under Section 2(1)(na) of the 2002 Act is conducted by the Director or by an authority authorised by the Central Government under the 2002 Act for the collection of evidence for the purpose of proceeding under this Act. Obviously, this investigation is in the nature of inquiry to initiate action against the proceeds of crime and prevent activity of



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money laundering. In the process of such investigation, the Director or the authority authorised by the Central Government referred to in Section 48 of the 2002 Act is empowered to resort to attachment of the proceeds of crime and for that purpose, also to do search and seizure and to arrest the person involved in the offence of money laundering. While doing so, the prescribed authority (Director, Additional Director, Joint Director, Deputy Director or Assistant Director) alone has been empowered to summon any person for recording his statement and production of documents as may be necessary by virtue of Section 50 of the 2002 Act. *Sensu stricto*, at this stage (of issuing summons), it is not an investigation for initiating prosecution in respect of crime of money laundering as such. That is only an incidental matter and may be the consequence of existence of proceeds of crime and identification of persons involved in money laundering thereof. The legislative scheme makes it amply clear that the authority authorised under this Act is not a police officer as such. This becomes amply clear from the speech of the then Finance Minister delivered in 2005, which reads thus:

“Sir, the Money-Laundering Act was passed by this House in the year 2002, and number of steps have to be taken to implement it. Sir, two kinds of steps were required. One was to appoint an authority who will gather intelligence and information, and the other was an authority to investigate and prosecute. This Act was made to implement the political declaration adopted by the Special Session of the UN General Assembly in 1999. Section 1(3) of the Act stipulates that the Act will come into force on such date as the Central Government may by notification appoint. While we were examining the question of notifying the Act, I found that there was certain lacunae in the Act. I regret to say that not enough homework had been done in the definitions, and in the division of responsibility and



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authority. So, in consultation with the Ministry of Law, we came to the conclusion that these lacunae had to be removed. Broadly, the reasons for the amendment are the following.

*Under the existing provisions in Section 45 of the Act, every offence is cognizable. **If an offence is cognizable, then any police officer in India can arrest an offender without warrant. At the same time, under Section 19 of the Act, only a Director or a Deputy Director or an Assistant Director or any other officer authorised, may arrest an offender. Clearly, there was a conflict between these two provisions. Under Section 45(1)(b) of the Act, the Special Court shall not take cognizance of any offence punishable under Section 4 except upon a complaint made in writing by the Director or any other officer authorised by the Central Government. So, what would happen to an arrest made by any police officer in the case of a cognizable offence? Which is the court that will try the offence? Clearly, there were inconsistencies in these provisions.***

They have now been removed. We have now enabled only the Director or an officer authorised by him to investigate offences. Of course, we would, by rule, set up a threshold; and, below that threshold, we would allow State police officers also to take action.

*The second anomaly that we found was that the expression “**investigation officer**” and the word “**investigation**” occur in a number of sections but they were not defined in the Act. Consequently, one has to go to the definition in the Criminal Procedure Code and that Code provides only “**investigation by a police officer or by an officer authorised by a Magistrate**”. So, clearly, there was a lacuna in not enabling the Director or the Assistant Director under this Act to investigate offences. That has been cured now.*

....

What we are doing is, we are inserting a new Section



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2(n)(a) defining the term, “investigation”; making an amendment to Sections 28, 29 and 30, dealing with tribunals; amending Sections 44 and 45 of the Act to make the offence non-cognizable so that only the Director could take action; and also making consequential changes in Section 73. I request Hon'ble Members to kindly approve of these amendments so that the Act could be amended quickly and we could bring it into force.”

(emphasis supplied)

From this speech, it is more than clear that the intention of Parliament was to empower the prescribed authority under Section 48 including the class of officers appointed for the purposes of this Act to investigate the matters falling within the purview of the Act and in the manner specified in that regard. By inserting Section 45(1-A) in the 2002 Act vide Amendment Act 20 of 2005, was essentially to restrict and explicitly disable the police officer from taking cognizance of the offence of money laundering much less investigating the same. It is a provision to restate that only the authority (Section 48) under this Act is competent to do investigation in respect of matters specified under the 2002 Act and none else. This provision rules out coextensive power to local police as well as the authority authorised. As aforementioned, the officer specifically authorised is also expected to confine the inquiry/investigation only in respect of matters under this Act and in the manner specified therein.”

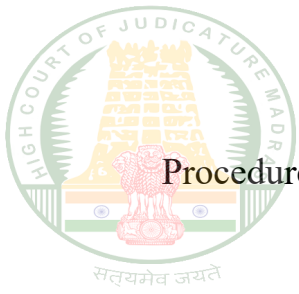
19. At this juncture, we are also required to note that Section 50 of the Act had been dealt on with the arguments that were made with regard to treating the authorities under the Act as Police Officers or not.



20. Chapter-II of the Act makes the activity of money laundering an offence and Section 4 prescribes the punishment for such offence. Chapter-III deals with the attachment, adjudication and confiscation of the properties. Chapter-VII deals with constitution of Special Courts for offences triable under the Act. Thus the Act provides a process of adjudication for attachment of properties and for prosecution of the offenders.

21. The adjudication starts when an order of provisional attachment made under Section 5 or ***under Section 17(4), when on search of persons it had been found that such person have in his possession, ownership or control any records of proceeds of crime which would be useful for the proceedings under the Act and had been seized for its retention*** or under Section 18(10) for retention of record or property that is seized under Section 18(1) of the Act and that on such applications, the adjudicating authority is empowered to proceed further for confirmation of such provisional attachment, freezing or retention. Such order of attachment made under Section 8 would be subjected to the conclusion of trial or subject to the appeal before the Appellate Tribunal under the Act.

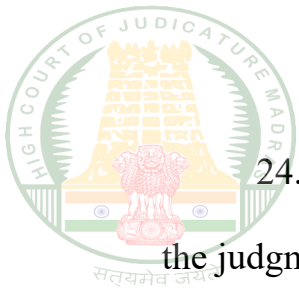
22. A prosecution of the offender under the Act kicks off by presenting a complaint by an authorised authority before the Special Court. Such prosecution is a trial by a Court of Sessions and the Provisions of the Code of Criminal



Procedure, 1973 applies for such trial.

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23. Chapter V vests the authorities under the Act, the power of search, seizure and arrest in furtherance to the objects of the Act. Under Chapter 8, the authorities under the Act for achieving such purpose have also been indicated under Section 48. The Section 49 empowers the Central Government for appointment of such persons whom it thinks fit to be the authorities for the purpose of the Act. Section 50 adumbrates the powers to such authorities. Sub-Section 1 of Section 50 enumerates the powers that had been vested with a Director to be a power as vested in a Civil Court under the Code of Civil Procedure. Sub-section 2 vests power with the Director and other authorities under Section 48 to issue summons requiring attendance of any persons whom they consider necessary to give evidence or to produce records during the course of such investigation / proceedings under the Act. Sub-section 4 envisages that the proceedings under Sub-section 2 & 3 to be deemed to be a judicial proceedings within the meaning of Sec.193 and Sec.228 of the IPC which are the Provisions treating certain acts by the Investigating officer to be an offence under IPC. Thus the authorities under the Act are empowered for carrying out an investigation for taking necessary action against the properties by following the adjudicatory process and against the offenders by initiating prosecution by way of filing a complaint.



24. It is relevant to note at this juncture that the Hon'ble Apex Court, in the judgment extracted above had clarified that the word '*investigation*' that had been employed in the Act would only mean to be an enquiry conducted by the authorities under the Act. While dealing with Section 50 of the Act, the Hon'ble Apex Court in the aforesaid judgement extracted *supra* had circumscribed the powers that had been vested there under to be limited to the process of identifying the proceeds of crime and the offenders involved. The procedure contemplated under Section 8 is a procedure which is summary in nature, whereas in respect of a prosecution of an offence, the same is to be tried as an offence before a Court of Sessions and that the offence as described under Section 3 of the Act is a triable offence.

25. A conjoint reading of the Statute and also its interpretation by the Hon'ble Apex Court of the same, would draw us to the following conclusions:

- a) For an offence under Section 3 of the Act, proceeds of crime as defined under Section 2(1)(u) would have to be identified.
- b) Such proceeds of crime ought to have arisen only from the commission of the scheduled offences.
- c) When proceeds of crime has been identified onus is on



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the holder to rebut the same.

d) Authorities can conduct enquiry to identify the proceeds of crime and the offenders.

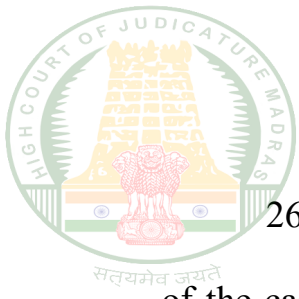
e) To secure the proceeds of crime, attachment of the same can be made which stems to adjudicatory proceedings and further appeal making the attachment a finality.

f) Authorities can also file a complaint before the Special Court for prosecuting the offender to be punished under Section 4 for offence under Section 3 of the Act.

g) On completion of trial, if the offender is convicted, the attached property stand confiscated to the Union Government, if otherwise stands released.

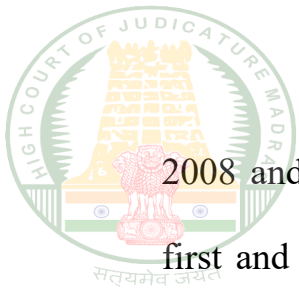
h) The authorities under the Act cannot be police officers.

i) The power of investigation is only a power to conduct enquiry to identify the proceeds of crime and the offenders based upon the statements recorded under the Act.



26. Based upon our conclusions as *supra*, we proceed to analyse the facts of the case to find out the correctness of the conviction imposed by the Court below. Even though, the learned Senior Counsel appearing for the appellants had contested the recording of evidence by the Investigating Officer who was in the rank of an Assistant Director by claiming to have not been vested with power under Section 50(1) of the Act, which had also been answered to by the learned Standing Counsel, we are not inclined to dwell upon the said issue as in the present case it would be an unnecessary exercise and leave it open to be agitated in an appropriate case.

27. The offences under PMLA Act against the accused had been filed based upon the complaints and the FIR registered there upon which have been marked as Exs.P1 to P10. Under Ex.P1 to 10 the complaints and the FIR pertaining to supply of goods by the complainants for which they have not been paid consideration and that the accused has cheated the said complainants. Ex.P11/ ECIR would show that there has been a source of information from the City Crime Branch, Coimbatore in respect of the offences committed by the accused which is covered under the scheduled offences under the PMLA Act. A confession statement given by the first accused before the Police had also been a reason for initiation of ECIR. It has also been brought on record that the FIR registered under Ex.P5 had culminated into a calender case in CC.No.797 of



2008 and the same had ended in acquittal of the accused therein who are the first and the third accused in the PMLA case. The said order of acquittal had also been exhibited as Ex.D2.

28. The prosecution had marched four witnesses of whom PW1 is the Investigating Officer and PW2 to 4 were purchasers of properties from the accused. PW1, the Investigating Officer through whom 43 documents were exhibited includes the statement recorded from PW2 to 4. It is to be noted that the Investigating Officer had not enquired with any of the complainants under Exs.P1 to P10. That apart, they have also not identified any of the persons through whom the goods that were received from the complainants was sold.

29. A complaint had been filed by PW1 before the Special Court for prosecuting the accused for the offence of money laundering on the basis of the statements that it had recorded of the accused and PW2 to 4 who are the purchasers of the property. Except Exs.P1 to P10, no materials had been placed on records to the predicate offence, particularly the statements of the complainants, to drive home the fact that there has been an alleged commission of offence, nor there has been any statements recorded of the persons to whom the property that had been the subject matter of offence sold to prove that there has been parting of consideration, of the properties which were the subject



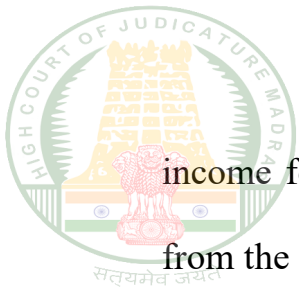
matter of the FIRs and that such monies had been used for the purposes of purchase of properties by the accused.

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30. In this context, it would be useful to note that the Hon'ble Apex Court in the aforesaid judgment as extracted above had categorically held that such statements could only be used to either identify the proceeds of crime and the offenders. As noted above, the prosecuting agency had failed to prove that on the basis of the alleged schedule offences, that there has been proceeds of crime by sale of the goods delivered by the complainants to the accused by particularly leading in any evidence whatsoever as required under the trial of a session case as adumbrated in Chapter-XVIII of Cr.P.C.

31. It is to be noted that a confession given by an accused would also have to be distinctly substantiated by corroboration through independent witnesses such as the facts relating to the existence of proceeds of crime. The crucial link between the commission of the offence and proceeds of crime upon which such proceeds of crime had been utilised to purchase the property had not been proved beyond any doubt to fasten the offence under Section 3 of the Act on the accused.

32. Further, in paragraph 31 of the above judgment, the Hon'ble Apex Court has held that just because the accused have not accounted the source of



income for the purchase of property, which had been purchased by PW2 to 4 from the accused, a presumption of offence under Section 3 of the Act could not be made and thus the *onus* to discredit the same by the accused does not arise.

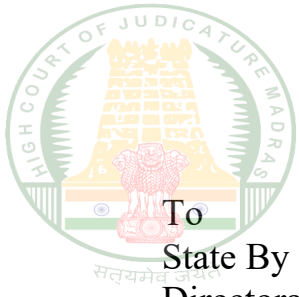
The appellants have been held guilty only based upon their statements before the Investigating Officer and their disability to substantiate the source of income for purchase of properties by them which have been sold to PW2 to 4. The Trial Court had considerably erred in holding that the appellants have committed offence under Section 3 based upon the aforesaid statements. In such an event, we are of the considered view that the Trial Court had wholly erred in convicting the appellants for the offences under the Provisions of the Act.

33. For the aforesaid reasons, the impugned order of conviction stands set aside and the complaint filed by the complainants are dismissed and the appellants are acquitted of the offences under Section 3 of the PMLA Act and the bonds if any they had executed also stands discharged. The fine amounts paid, if any, are to be refunded. Consequently, connected miscellaneous petitions are also closed. However, there shall be no order as to costs.

(C.V.K.,J.) (K.B.,J.)
17.04.2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No

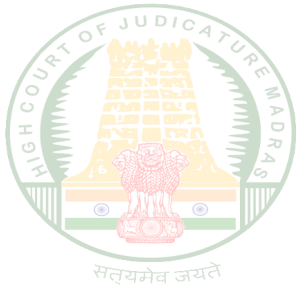
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To

State By The Assistant Director
Directorate Of Enforcement, Government Of India,
Ministry Of Finance, Department Of Revenue, 2nd
And 3rd Floor, Murugesu Naicker Complex. No.84
Greaves Road, Chennai 600006. (crime No.Ecir 01
Of 2012)

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CRL A Nos. 979, 980 & 987 of 2022



**C.V.KARTHIKEYAN, J.
AND
K.KUMARESH BABU, J.**

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A Pre-delivery order made in

CRL A Nos. 979, 980 & 987 of 2022

17.04.2026