IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.Nos.14782, 14786 & 14787 of 2024
and
W.M.P.Nos.16016 to 16024 of 2024

Vijayraj Surana ... Petitioner in all W.Ps.

Vs.

Assistant Director,
Enforcement Directorate,
Chennai I Zonal Office,
Nos.3 & 4, Murugesa Naicker Office Complex
84, Greams Road, Thousands Light,
Chennai 600 006 ... Respondent in all W.Ps

Prayer in W.P.No.14782 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records of the respondent in ECIR/CEZO-1/37/2020 dated 25.09.2020 and quash all the proceedings arising therefrom as far as the petitioner is concerned

since the predicate offence in FIR No.RC0782020E0005 dated 08.09.2020 registered by CBI, Bangalore was already quashed by the Hon'ble Karnataka High Court in Crl.P.No.5333 of 2023 vide order dated 15.04.2024.

Prayer in W.P.No.14786 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records of the respondent in ECIR/CEZO-1/05/2019 dated 27.12.2019 and quash all the proceedings arising therefrom as far as the petitioner is concerned since the predicate offence in FIR No.11/2019 dated 01.11.2019 registered by CBI, Bangalore was already quashed by the Hon'ble Karnataka High Court in Crl.P.No.5333 of 2023 vide order dated 15.04.2024.

Prayer in W.P.No.14787 of 2024: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari to call for the records of the respondent in ECIR/CEZO-1/42/2020 dated 24.12.2020 and quash all the proceedings arising therefrom as far as the petitioner is concerned since the predicate offence in FIR No.RC 078 2020 E0006 dated 08.10.2020 registered by CBI, Bangalore was already quashed by the Hon'ble Karnataka High Court in Crl.P.No.4006 of 2024 vide order dated 25.04.2024.

For Petitioner in all WPs	: Mr.T.R.Ragavacharyulu and Mr.M.R.Venkatesh, for Mr.G.Guruprasath
For Respondent in all WPs	: Mr.A.R.L.Sundarasan. ASGOI Assisted by Mr.N.Ramesh, Special Public Prosecutor for ED

COMMON ORDER

(Order of the Court is made by *S.M.SUBRAMANIAM, J.*)

Table of Contents

Under assail are the proceedings of the Enforcement Directorate in ECIR Nos.CEZO-I/05/2019 dated 27.12.2019, CEZO-I/37/2020-dated 25.09.2020 and CEZO-I/42/2020 dated 24.12.2020.

I. FACTUAL MATRIX:

2. The crux of the allegations against the petitioner under Prevention of Money Laundering Act, 2002, [hereinafter referred as 'PMLA'] complaint are that they have obtained loans from IDBI Bank to the tune of Rs.1301.76 Crores and Rs.1495.76 Crores from the same IDBI Bank and from the SBI Bank, Rs.1188.56 Crores. The loan borrowed by the said companies have facilitated mis-appropriation, manipulation of books of accounts through fictitious accounts and conversion of property of SIL by way of No.(1) Capital advances to potentially related party, (2) Sales and purchase with potentially related properties (3) bilateral transactions with properties related amongst themselves.

3. Thereafter, the petitioner and the company for the purpose of routing of funds borrowed money from one Mr.Gowtham Raj Surana to the tune of Rs.33,09,80,860/- for Global Industries, Rs.14,53,95,350/- for Prince

Enterprises and Rs.20,47,69,749/- for Supreme Corporation. Totally, Rs.68,11,45,959. Similarly, from Mr.Shantilal Surana, a total sum of Rs.62,65,19,112/- was borrowed from the above 3 companies, namely, for Global Industries, Prince Enterprises, and for Supreme Corporation. The similar transaction was done in the name of Mr.Vijayraj Surana to the tune of Rs.74,65,14,732 /- and in the name of Mr.Dinesh Chand Surana to the tune of Rs.80,99,23,739/-.

4. Thereafter, during the course of investigation, the properties acquired by M/s Karwalal and Company has been attached vide Provisional Attachment Order No.09/2022, dated 01.08.2022, as it been derived from proceeds of crime and confirmed by Adjudicating Authority vide order dated 27.01.2023 (O.C.No.1800/2022). The petitioner was also made as a defendant in the impugned proceedings in O.C.No.1887 of 2023 because the properties in possession of Mrs.Alka Surana, w/o. Mr.Vijayraj Surana (defendant No.7 in the OC No.1887 of 2023) and Mr.Mitesh Surana S/o. Mr.Vijayraj Surana (defendant 20 in the OC No.1887 of 2023) have been attached vide provisional Attachment order No.17/22 date 26.12.2022 on the reasonable belief that the same had been acquired out of the proceeds of crime generated out of the commission of offences by the company, wherein Mr.Vijayraj Surana was

promoters, Managing Director of M/s.Surana Corporation Limited and Director in other firms. Against the said order of Adjudicating Authority, the petitioner has filed an appeal before the Tribunal bearing No.6363/2023. With reference to the above allegations, the Enforcement Directorate formed an opinion that the offence of money laundering under Section 3 of PMLA is present.

II. CONTENTIONS OF THE PETITIONER:

5. The factual matrix as narrated by the petitioner would reveal that 3 companies, namely, M/s.Surana Industries Limited, M/s.Surana Power Limited, M/s.Surana Corporation Limited were incorporated and petitioner is a shareholder. Central Bureau of Investigation (CBI) seized gold stock of 400.47 Kgs, (approximately INR 150 Crores, during the relevant point of time) at showroom of Surana Corporation Limited one of the group companies on 20.06.2012. CBI filed charge sheet on 03.08.2013 and registered FIR on 16.09.2013 to investigate the mode of import of the gold stock and retained the seized gold. Serious Fraud Investigation agency registered complaint under Section 212(6) of Companies Act against M/s.Surana Industries Limited and 14 Group Companies on 28.03.2019. In February 2020, CBI handed over 296 Kgs gold to SBI as per the order of NCLT, Chennai. However, missing of 104 kgs

of Gold was not reported to NCLT, Chennai by liquidator or SBI or CBI till August 2020. The petitioner claims to be the whistle blower for missing of 104 kgs of gold. He provided information regarding missing of gold and at that point of time the Enforcement Directorate registered the impunged ECIR on 27.12.2019, 25.09.2020 and 24.12.2020.

6. The learned counsel for the petitioner Mr.T.R.Ragavacharyulu, would mainly contend that the High Court of Karnataka quashed the FIR registered by CBI against the petitioner with reference to the scheduled offence on 15.04.2024. The CBI preferred an appeal before the Hon'ble Supreme Court of India, which is pending. Since the FIR has been quashed, the scheduled offence is not in existence and consequently, the petitioner is entitled to be exonerated from PMLA proceedings. The legal position has been well enumerated and reiterated in paragraph 467(iv)(d) by the Hon'ble Supreme Court in the case of ***Vijay Madanlal Choudhary vs. Union of India and others***[1]**,** It is contended that the Apex Court in ***Vijay Mathanlal's*** case held that the authorities under PMLA 2002 cannot prosecute any person on notional basis or on the assumption that the scheduled offence has been committed unless it is so registered with the jurisdictional police and/or pending

1. 2022 SCC online SC 929

enquiry/trial including by way of criminal complaint before the competent forum. In the present case, the scheduled offence has been quashed against the petitioner. Mere pendency of an appeal before Hon'ble Supreme Court would not extend any protection to the ECIR, which is impugned in the present writ proceedings. The position has been further clarified by the Apex Court that in the event of restoration of FIR by the Apex Court, the ECIR would also stand restored and that being the legal position, the present writ petitions are to be considered.

7. Secondly it is stated that the supplementary complaint filed under 44(1)(b)(ii) and 45 of the PMLA 2002 for the offence under Section 3 of PMLA is unsustainable, since it was not filed by following due procedures. Though Section 447 of the Companies Act has been inserted in the schedule to PMLA, the same cannot be invoked in isolation in view of the fact that the original FIR has been quashed and further the Enforcement Directorate has not conducted any investigation for the purpose of prosecuting the petitioner under Section 447 of the Companies Act. In order to sustain the above grounds, the learned counsel for the petitioner relied on paragraph 253 and 467(iv)(d) of ***Vijay Madanlal's*** case cited supra.

III. REPLY BY RESPONDENT:

8. The learned Additional Solicitor General of India, Mr.A.R.L.Sundaresan, would strenuously oppose by stating that ECIR is not a statutory document and an official document maintained by the Enforcement Directorate for continuing their investigation and the ECIR has been filed based on the FIR registered under the scheduled offence. Therefore, ECIR per se would not provide cause for institution of writ proceedings under Article 226 of the Constitution of India.

9. The directions issued by the Apex Court in ***Vijay Madanlal's*** case cited supra, more specifically, 467(v)(d) must be read in conjunction with the principles laid down in the said case in Paragraph Nos. 281 to 284 and 349. The conclusion arrived at paragraph 467 by the Apex Court cannot be read in isolation so as to quash the ECIR. The findings, principles and the scope elaborately considered by the Hon'ble Supreme Court are to be taken into consideration with reference to the grounds raised by the petitioner.

10. The learned Additional Solicitor General would further contend that the process under PMLA was construed as standalone process. Once the

scheduled offence is traced out and ECIR is filed, investigation commences and a complaint has been filed under Section 44 and 45 of PMLA. Therefore, the writ petition would be pre-mature since quashment of FIR has been challenged by the CBI before the Hon'ble Supreme Court of India, which is pending. The Enforcement Directorate in the present case has filed a supplementary prosecution complaint, wherein the proceeds of crime has been elaborately enumerated by the Enforcement Directorate in paragraph 3.2 of the Additional complaint. Thus, the writ petition is to be rejected.

11. The learned Additional Solicitor General relied on an order in the case of ***N.Dhanraj Kochar and others vs. The Director, Directorate of Enforcement, New Delhi***[2]**,** wherein it is ruled that ECIR cannot be the subject matter of judicial review under Section 482 of Cr.P.C.

IV. DISCUSSIONS:

A) LEGAL GROUNDS ON WHICH FIR PERTAINING TO THE SCHEDULED OFFENCE WAS QUASHED:

12. The petitioner mainly contended that the respondent cannot proceed under PMLA in view of the quashment of predicate offence in FIR No.11/2019

2. Crl.O.P.No.SR.46376 of 2021 dated 27.01.2022

dated 01.11.2019 by the Karnataka High Court vide order dated 15.04.2024. The relevant order portion is reiterated as under;

> *"(iii) The impugned proceedings in FIR No.11/2019 dated 01.11.2019 registered by the CBI, BSFB, Bangalore insofar as it relates to the petitioner in Crl.P.No.5354/2023 is hereby quashed.*
> *Further Para-31 of the said order dated 15.04.2024 is reiterated below-*
>
> *31. The Central Government in relation to the same allegation against the petitioner and other accused by order dated 9.4.2019 entrusted investigation to the SFIO, and the SFIO after investigation submitted a report, and thereafter, filed a complaint before the Special Court established under Section 435 of the Act, 2013. Therefore, the SFIO alone has jurisdiction to try the offences alleged against the petitioners.*

13. The undisputed facts between the parties are that the FIR has been registered on 09.09.2022 by the Central Bureau of Investigation (CBI) under Section 120(B) read with Sections 420, 467, 468, 471 read with Sections 13(2), 13(1) (d) of Prevention of Corruption Act, 1988. Based on the scheduled offence, Enforcement Case Information Report (ECIR) was registered and the

investigation was commenced. It is not in dispute that complaint under Sections 44 and 45 of PMLA has been filed. Thereafter, supplementary complaint was also filed invoking Section 447 of the Companies Act, 2013 on 12.06.2024. The FIR was challenged before the High Court of Karnataka. The High Court quashed the FIR on the ground that the investigation pertaining to the same allegation against the petitioner and other accused was entrusted to the Serious Fraud Investigation Office (SFIO), and the SFIO after investigation submitted a report and thereafter filed a chargesheet / complaint before the Special Court and the same is pending before XV Additional City Civil Court, Chennai. Therefore, the Court quashed the FIR No.11/2019 dated 01.11.2019 on the ground that SFIO alone has jurisdiction to try the said offences.

B) SCHEDULED OFFENCE OF SECTION 447 OF THE COMPANIES ACT, 2013 IS STILL PENDING AGAINST THE PETITIONER:

14. It is pertinent to note that in respect of other accused persons, the FIR in predicate offence is still in force. And it is also to be noted that the SFIO complaint still stands good. This SFIO complaint was registered on 28.03.2019 much before registration of FIR by the CBI on 01.11.2019 and ECIR on 27.12.2019. Meanwhile, the CBI has preferred an Appeal against the FIR quash order passed in favour of the petitioner. In the time limit before the FIR was

quashed, the Enforcement Directorate investigation process was conducted and a supplementary complaint was filed in the year 2024.

15. From the above facts, it is clear that the High Court of Karnataka quashed the FIR and not the SFIO complaint. Therefore, the scheduled offence under Section 447 of the Companies Act, 2013 still stands good against the companies namely M/s.Surana Industries Limited, M/s.Surana Power Limited, M/s.Surana Corporation Limited. Section 447 of the Companies Act, 2013 is also one of the scheduled offence under Part A of the schedule to PMLA. To elaborate further Section 2(y) of the PMLA, 2002 reads as under;

> "***2(y) "Scheduled Offence"*** *means- (i) the offences specified under Part A of the Schedule; or (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or (iii) the offences specified under Part C of the Schedule."*

16. During the pendency of a Serious Fraud Investigation Office (SFIO) proceeding, which is scheduled offence, it gives jurisdiction to the Enforcement Directorate to investigate the matter and the ECIR cannot be stated to be without a predicate offence.

17. Therefore, the proceedings under section 447 of the Companies Act, 2013 is a scheduled offence under PMLA, 2002. It is not disputed that already chargesheet / complaint has been filed under Section 447 of the Companies Act, 2013 on 09.09.2022 and the same is pending before the XV Additional City Civil Court, Chennai. Further, it is submitted that the Petitioner was arrested by SFIO and is under judicial custody from 02.08.2022.

18. Therefore, the action of Respondent Department does not stand vitiated as the predicate offence under Section 447 of the Companies Act, 2013 is still pending and not quashed. Therefore the prayer of quashing of the ECIR and all subsequent proceedings appears to be misplaced one.

C) PMLA IS A SUI-GENERIS LEGISLATION:

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

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

> *"269... From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an* ***independent offence regarding the process or activity connected with the proceeds of crime*** *which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering.* ***This offence otherwise has nothing to do with the criminal activity relating to a scheduled***

offence derived or obtained as a result of that crime ***-*** *except the proceeds of crime derived or obtained as a result of that crime."*

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

D) SECTION 3 OF PMLA IS A STANDALONE PROVISION:

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

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

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

24. In paragraph 282 of ***Vijay Madanlal's*** judgment, it is clarified that the authority of the Authorized Officer under PMLA to prosecute any person for offence of money laundering gets triggered only if there exists "proceeds of crime" within the meaning of Section 2(1)(u) of PMLA and further it is involved in any process of criminal activity. All the undisclosed properties cannot be construed as proceeds of crime. Though it may attract tax provisions,

it would not fall under the definition of proceeds of crime under Section 2(1)(u) of PMLA. Importantly, if the offence so reported is a scheduled offence only in that eventuality, the property recovered by the authorised officer partake the colour of proceeds of crime under Section 2(1)(u) of the Act enabling him to take further action under the PMLA.

25. Significantly, in paragraph 284 of ***Vijay Madanlal's*** judgment, it is reiterated that the authority under PMLA, is to prosecute a person for offence of money 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 belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central Government, such process initiated would be a standalone process. Therefore, the live link between the scheduled offence and PMLA proceedings would be relevant for initiation of proceedings under PMLA. The Hon'ble Supreme Court elaborately considered initiation of PMLA proceedings, for which it is a pre-condition that a scheduled offence is to be registered.

E) ECIR CANNOT BE EQUATED WITH FIR:

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

27. ECIR is born from FIR, but once the ECIR is born, the umbilical cord that connects the ECIR with FIR losses its relevance and the ECIR becomes an independent document in itself. Consequently, a new life in the form of ECIR emerges, which can breath on its own without the support of FIR. So, the FIR and ECIR become two different documents and both tend to take shape on its own, independent of each other.

28. "Proceeds of Crime" is the focal point for an ECIR, whereas

scheduled offence is dealt with under the FIR. Further reliance is also placed with the aid of judgments delivered by the Hon'ble Supreme Court of India in the case of ***Vijay Madanlal Choudhary vs. Union of India and Others*** cited supra and ***Rajinder Singh Chada vs. Union of India***[3]. Both these judgments have noted the distinction between FIR and ECIR. More so, ECIR is treated as an internal document.

29. In **Vijay Madanlal's** case (supra), the relevant portion to support this contention is as extracted below;

> *"**457.** Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be*

3. W.P. (CRL) 562/2023 & CRL.M.A. 5126/2023

used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the Accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard."

30. Further, in the case of ***Rajinder Singh Chada vs. Union of India***

cited supra, the Delhi High Court held as follows;

> *"32... Since the ECIR has not been equated with a FIR and has been held to be an internal document, there cannot possibly be a restriction to bringing on record on any subsequent scheduled offence registered by way of an FIR alleged to have been committed in respect of the same transaction which was the subject matter of such ECIR.*
>
> *34 ...It is clarified that since this Court is of the opinion that the ECIR, as explained in Vijay Madanlal Choudhary (supra) cannot be equated with an FIR and as per the stand of the department, the same is only for administrative purposes, there is no impediment in taking the third FIR on record which related to the same project forming the basis for registration of the first two FIRs, resulting in initiation of the impugned ECIR."*

31. **When there are findings arrived at independently in both the FIR and ECIR, can the Court completely disregard those findings and bring the proceedings to an unjustified end just because one of the proceedings was quashed on procedural / technical grounds without due impetus to the substantive grounds?** This question requires an in-depth consideration.

F)DELIBERATIONS ON THE PRINCIPLE OF AUTOMATIC QUASHING OF ECIR ONCE FIR STANDS QUASHED:

32. It shocks the conscience of the Court that in recent cases involving money laundering, a certain pattern has emerged, whereby, the FIR quashed through minor technical glitches or procedural irregularities and with that as a ground they seek for quashing of ECIR also. The wordings in the final summary portion of the ***Vijay Madanlal's*** judgment in paragraph 467 (5)(d) is used in isolation without due consideration to the judgment as a whole to wriggle away from the clutches of PMLA. The wordings in ***Vijay Madanlal's*** case cannot be accorded a narrow meaning by relying only on the summarisation towards the end of the judgment, but the observations in various paragraphs and the findings made therein must be read in tandem to extract its true essence. At the outset, this Court would clarify that we are neither attempting nor intending to rewrite the ***Vijay Madanlal's*** judgment. This Court is merely restraining from a pick and choose application of the principle established in ***Vijay Madanlal*** case and rather, is for the complete harmonious application of the judgment as a whole in letter and spirit. Any application of principle, even if in its literal form paves way for injustice, then the Court is

allowed to take a detour to expound the law in such a way which serves the cause of justice. If the principles of automatic quashment of ECIR is adopted arithmetically, the very purpose and objective of PMLA is defeated.

33. This point of contention in the present Petition falls within the contours of the judgement rendered by the Hon'ble Supreme Court in ***Vijay Madanlal*** case. The ***Vijay Madanlal*** case extensively dealt with the validity of different provisions in the PMLA, 2002. The observations made in the Paragraph No.281 relevant to the case on hand is extracted below:

> *"281. The next question is: whether the offence under Section 3 is a standalone 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 concerned case 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 concerned Court trying the scheduled offence to pronounce on that matter."*

34. A blanket application of the observations made in the aforementioned judgement will not advance the object set out under the PMLA, 2002 and in turn will defeat its primary object. The ***Vijay Madanlal*** case is a binding precedent for all Courts below. And on careful application of the judgement, analysing on a case to case basis, the output shall defer for each case and not render the same result.

35. Every case is marinated with different facts and circumstances and the application of law should not only meet the ends of Justice, but should also further the object behind the statute. The principles in ***Vijay Madanlal*** is set out clear with respect to proceeds of crime under PMLA, 2002, as under;

> *"281. .....In the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today.."*

36. The Court's observations above hold that where a person is acquitted or absolved of a criminal activity relating to a scheduled offence and on establishing in a Court of law that the crime property is in legitimate ownership, such property cannot be termed as crime property and in consequence the PMLA offences loses its significance. Hence, to warrant a quashing of the ECIR, mere quashing of the FIR on technical grounds by itself does not make the ECIR liable to be quashed. That is not the observations set out in the ***Vijay***

Madanlal case. **Rather in proceedings pertaining to the quashing of the FIR in a scheduled offence, the Court must have dealt with not mere procedural irregularities, but something more in the nature of substantive grounds.**

37. The exact wordings of the Court culls out the object. That the accused person should have been acquitted or absolved from the allegations of criminal activity relating to the scheduled offence and that the crime property should be rightfully owned and possessed by him. So the essence of the observations made herein is that the accused person should be exonerated from the charges levelled against him.

38. Though there are multiple grounds for quashing an FIR, and in one of the many grounds an FIR can be quashed, when it comes to proceedings pertaining to quashing the ECIR, the Court must examine the grounds based on which FIR concerning the scheduled offence was quashed and after careful examination on a case to case basis, if the FIR was quashed on substantive grounds of absence of *prima facie* offence and not mere procedural irregularities, then the ECIR loses its significance and is liable to be quashed. Since the scheduled offence itself is not made out, then automatically no predicate offence can hold good in the ECIR. However, if the FIR was quashed

purely on technical grounds or procedural irregularities, then it is to be understood that mere quashing of the FIR does not absolve the accused under the PMLA proceedings and inturn cannot collapse the predicate offence in the PMLA proceedings.

39. Further, when the PMLA proceedings is set in motion and *prima facie* findings are already made, including completion of filing of chargesheet, then an FIR quashed after this stage cannot be a viable ground to quash the ECIR also. More so, the PMLA requires the presence of a scheduled offence to initiate proceedings under the Act. So it also becomes a mandate that the grounds on which scheduled offence was quashed is thoroughly examined before rendering the PMLA offence ineffective.

40. This Court is not venturing into the grounds of quashing an FIR as the principles pertaining to the same has already been laid down elaborately by the Hon'ble Supreme Court. But the rationale here is to cull out the level of bearing that a quashed FIR has on an proceedings challenging the ECIR. This Court feels that all cases where FIR is quashed shall not automatically become a ground for quashing an ECIR. Instead a case to case analysis is a pre requisite for deciding on the sustenance of an ECIR. To put it in comprehensive terms,

When the Court in an FIR quash proceedings has not delved into the merits of the offence, but rather found technical errors on the face of it, then the Court directs the quashing of the said FIR. The accused then goes on to challenge the ECIR by placing reliance on the said FIR Quash order to quash the ECIR also. But a reading of relevant paragraphs in the ***Vijay Madanlal's*** case clearly showcases that this is not the object behind the said judgement. The final summarisation, when read in tandem with the observations set out in paragraphs of the judgement and also keeping in line with **the explanation to Section 44 of the PMLA, 2002**, this Court comes to the irresistible conclusion that cases where FIR pertaining to the scheduled offence is quashed it does not automate the exoneration of the accused from the predicate offence. Rather FIR quashes on grounds of mere technicalities or procedural irregularities in the FIR, cannot by itself form a basis to grant an automatic quash of ECIR. Also in the aforementioned instance, there needs to be a case to case examination of the offence registered under the PMLA before the offence is rendered ineffectual.

41. Hence, the moot point for consideration whether all cases where FIR has been quashed can pave way for quashing of ECIR? This Court feels that each case must be tested on its own, in consonance with the ***Vijay madanlal***

judgement and a blanket application of the principle without due regard to the facts of each and every case shall render both the judgement and the object of the PMLA ineffective.

G)IMPLICATIONS OF AUTOMATIC QUASHING OF ECIR BASED ON FIR QUASH:

42. In cases as such where on initiation of PMLA proceedings, *prima facie* proceeds of crime has been traced, there arises a pertinent question as to whether this Court can stall such proceedings inspite of preliminary findings of the existence of proceeds of crime. The conscience of this Court is directed towards delivery of justice and though the FIR of scheduled offence stands quashed, it is merely on technicalities without analysing the merit of the scheduled offence. Hence, **when "proceeds of crime" is traced in a parallel investigation by the Enforcement Directorate, this gives rise to another question that, once proceeds of crime is *prima facie* unearthed can ECIR be quashed on the ground that FIR was quashed. This clearly is an unjustified approach**.

43. In the present case, the FIR against the petitioner alone was quashed by the Karnataka High Court, whereas the FIR against the other accuseds are

still pending. The FIR No.11/2019 dated 01.11.2019 registered by the CBI was quashed on the ground of want of jurisdiction. Since for the same offence the investigation was handed over to the SFIO, whereby the SFIO conducted the investigation and filed a complaint / chargesheet before the Special Court, which is still pending.

44. Due to the above development, since the SFIO was already entrusted with the investigation by the Central Government vide order dated 09.04.2019 on the same set of allegations, the present FIR registered by the CBI was quashed by the High Court citing the aforementioned reason. Hence, it is amply clear that the High Court has quashed the FIR only on the ground that another Investigating Agency is seized off the matter. The Court has not dealt with the allegations nor tested the merits of the offences charged in the FIR. The Court restricted itself only to the ground of want of jurisdiction. Hence the FIR was quashed purely on this **technical or procedural issue and not on substantive grounds** and has not made any findings as to the offences or the *prima facie* allegations in the FIR. Therefore, the quashing of the FIR shall not warrant an automatic quashing of ECIR. All the more, the predicate offence under Section 447 of the Companies Act, 2013, which is also a scheduled offence under the PMLA still stands good and requires further investigation. Therefore, in view of

the above ECIR is not liable to be quashed.

V. CONCLUSION:

45. Hence, we have arrived at an irresistible conclusion that the petitioners have not made out any case for quashing of ECIR filed by Enforcement Directorate. However, the Trial Court shall proceed uninfluenced by the observations if any made on factual aspects and decide the issues based on documents and evidence available on record and by following the due process.

46. Accordingly, the Writ Petitions are dismissed. No cost. Consequently, connected Miscellaneous Petitions are closed.

[S.M.S., J.] **[V.S.G., J.]**

28.08.2024

Index: Yes/No
Speaking/Non-speaking order

mrp/Jeni

To

1. The Assistant Director,
   Enforcement Directorate,
   Chennai I Zonal Office,
   Nos.3 & 4, Murugesa Naicker Office Complex
   84, Greams Road, Thousands Light,
   Chennai 600 006

2. The Public Prosecutor.
   High Court, Madras.

S.M.SUBRAMANIAM, J.
AND
V.SIVAGNANAM, J.

mrp/Jeni

W.P.Nos.14782, 14786 & 14787 of 2024

28.08.2024