$~14 to 16

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 10th January, 2023

\+ **W.P.(C) 3821/2022 and CM APPL. 11325/2022, 37473/2022**

EMTA COAL LIMITED & ORS. ..... Petitioners

Through: Mr. Abhimanyu Bhandari, Ms. Kartika Sharma & Ms. Vanshita Gupta, Advocates (M-9811666704)

versus

THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT ..... Respondent

Through: Mr. Anupam S Sharma, Special Counsel - ED with Ms. Harpreet Kalsi, Mr. Prakarsh Airan, Mr. Abhishek Batra and Mr. Ripudaman Sharma, Advocates. (M:9958944855)

15 WITH

\+ **W.P.(C) 12437/2022 and CM APPL. 37384/2022**

EMTA COAL LIMITED & ORS. ..... Petitioners

Through: Mr. Abhimanyu Bhandari, Ms. Kartika Sharma & Ms. Vanshita Gupta, Advocates.

versus

THE DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT & ANR. ..... Respondents

Through: Mr. Anupam S Sharma, Special Counsel - ED with Ms. Harpreet Kalsi, Mr. Prakarsh Airan, Mr. Abhishek Batra and Mr. Ripudaman Sharma, Advocates.

16 AND

\+ **W.P.(C) 14530/2022 and CM APPL. 44427/2022**

SUJIT KUMAR UPADHAYA & ORS. ..... Petitioners

Through: Mr. Siddharth Aggarwal, Sr. Advocate with Mr. Krishna Datta Multani, Mr. Parangat Pandey, Ms. Arshiya Ghosh & Mr. Shaunak Dutta, Advocates (M-9999997189)

versus

DIRECTORATE OF ENFORCEMENT THROUGH DEPUTY DIRECTOR ..... Respondent

Through: Mr. Anupam S Sharma, Special Counsel - ED with Ms. Harpreet Kalsi, Mr. Prakarsh Airan, Mr. Abhishek Batra and Mr. Ripudaman Sharma, Advocates.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.

2. At the outset, ld. Counsels for the parties unanimously state that there is no conflict in this Bench hearing these writ petitions.

3. These are three writ petitions challenging provisional attachment orders being 01/KLZ0-I/2022 dated 14th February, 2022, 17/KLZO-I/2022 dated 20th June, 2022, issued by the Directorate of Enforcement (ED) under section 5 of the Prevention of Money Laundering Act, 2002 *(hereinafter 'PMLA')* and all consequent proceedings arising therefrom against the following Petitioners:

Writ Petition Number	Petitioners
W.P.(C) 3821/2022 & W.P.(C) 12437/2022	• M/s Emta Coal Limited • Shri Ujjal Kumar Upadhaya • Mrs. Sangeeta Upadhaya
W.P.(C) 14530/2022	• Mr. Sujit Kumar Upadhaya • Mr. Dev Jyoti Upadhaya • Ms. Neeta Upadhaya • Ask Family Trust • M/s Midwest Hospital and Medical Institute Pvt. Ltd. • M/s Pacific Mines and Construction

	Pvt. Ltd. ● M/s Panorama Country Club Resorts Pvt. Ltd. ● M/s Ujjal Transport Agency

4. The background of the matters is that vide judgment dated 24th September, 2014 passed in ***Manohar Lal Sharma v. Principal Secretary, & Ors. (2014) 9 SCC 614,*** the Supreme Court had de-allocated and cancelled various captive coal blocks which were allocated to West Bengal State Electricity Board (*hereinafter 'WBSEB'*) and West Bengal Power Development Corporation Ltd. (*hereinafter 'WBPDCL').*

5. An FIR being RC 2202015 E 0013 dated 22nd September, 2015 was registered by the Central Bureau of Investigation (*hereinafter 'CBI')* under Section 120-B IPC read with Section 420 of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 against Petitioner No.1 in ***W.P(C) 3821/2022*** and ***W.P.(C) 12437/2022*** - EMTA, through its partners/ directors as also officials of the WBPDCL, WBSEB and other unknown persons.

6. Enforcement Case Information Reports (*hereinafter 'ECIRs'*) dated 12th January, 2016 and 9th February, 2016 were registered against the various parties on the basis of the FIR, on the ground that it showed commission of scheduled offences under the PMLA.

7. Investigation was conducted by the CBI in the FIR and the CBI filed closure report no. 2/2021 dated 8th January, 2021 in the said matter before the Trial Court, which was trying the offences under the said FIR. The said closure report was considered by the Trial Court which, after hearing the parties, accepted the closure report vide order dated 25th July, 2022. The

relevant portions of the said order are set out herein below:

> *"10.15 From the abovementioned facts and circumstances, it is concluded that during the course of investigation, no evidence could be gathered to prove prima-facie commission of offence u/s 120 B r/w 420 IPC r/w 13(2) r/w 13(1) (d) of the PC Act, 1988 against officials of West Bengal Power Development Corporation Ltd, West Bengal State Electricity Board, M/s Eastern Mineral Trading Agency, M/s Bengal EMTA Coal Mines Ltd, its directors, unknown public servant(s) or any other person(s).*
> *11. Hence, this Closure Report has been filed.*
> ***OPINION OF THE COURT***
> *12. I have heard Sh. V.K. Sharma, Ld. ALA for CBI. I have gone through the closure report as well as the relevant documents including case diaries.*
> *13. Sh. VK. Sharma, Ld. ALA has also acknowledged the handicaps during investigation and has submitted that the closure report may be accepted. He also pointed out that there were no guidelines applicable to allocation of coal blocks through Govt. Dispensation Route (GDR) when the allocations were made.*
> *14. The complainant of this case Sh. Himanshu Bahuguna, Dy. SP, EO-II, CBI was also called by notice. His statement has also been recorded and he has left it to the court to decide it on merits of the case.*
> *15. The investigation has been concluded on the basis of the available records/documents. Various important documents could not be obtained by the Investigating Officer despite his best efforts. The documents are missing. This has been a genuine handicap in the investigation.*
> *16.* ***From the available record/documents, it cannot be ascertained that there was any criminality in allocation of coal blocks and/or their mining. Further, it cannot be ascertained that there was any foul play in formation of JV company namely BECML.*** *As already mentioned in the beginning, this*

case pertains to allocation of coal blocks through GDR some of which were allotted way back in 1995. There appears to be no chance of getting the relevant documents. The recording of statements of various officials has also not yielded any results.

17. The allocation of coal blocks to PSUs of WB Govt. by MoC, Govt. India has already been cancelled by the Hon'ble Supreme Court vide its judgment dt. 24.09.2014 [(2014) 9 SCC 614]. The manner of processing the request of PSUs of WB Govt. is not ascertainable as relevant documents are not available. ***From the documents that are available, responsibility for any offence for allocating the coal blocks cannot be fixed. Further, the irregularities regarding aspect of mining the coal mines or price of the coal is somewhat secondary issue. It does not help in solving the main issue i.e. criminality in allocation of coal blocks.*** *Even otherwise, documents qua that aspect are also not completely available. As far as observations regarding selection of JV partner in the CAG Report are concerned, it has been rightly noted by the IO that the guidelines/circulars/rules taken note of by CAG were not applicable during the relevant period as the same were issued much later and thus no fault can be found in the said exercise.*

18. This court concurs with the conclusion of the Investigating Officer.

19. ***In view of the above discussion, the closure report is hereby accepted.*** *File be consigned to Record Room."*

8. In the meantime, the Enforcement Directorate, in view of the FIR which was filed and the ECIRs, has passed the impugned provisional attachment orders dated 14th February, 2022 and 20th June, 2022 under section 5 of the PMLA attaching various properties and assets belonging to the Petitioners. The said provisional attachment orders are under challenge in the present cases.

9. At the time when ***W.P.(C) 3821/2021*** was filed, the CBI having filed the closure report, the proceedings pursuant to the attachment order dated 14th February, 2022 were stayed by this Court on 7th March, 2022. The said order reads as under:

> *"**CM APPL. 11326/2022 (for exemption)***
> *Allowed, subject to all just exceptions.*
> *The application shall stand disposed of.*
> ***W.P.(C) 3821/2022 & CM APPL. 11325/2022***
> *Notice shall issue to the respondent. Since Mr. Mahajan, learned CGSC represents the said respondent, let a counter affidavit be filed on this writ petition within a period of four weeks.*
> *The Court takes note of the submission of learned counsel who assails the Provisional Order of Attachment and asserts that the said order fails to record any satisfaction with regard to the likelihood of the alleged tainted assets being dissipated. Additionally, it is brought to the notice of the Court that the criminal investigation which was initiated pursuant to the FIR lodged by the CBI has resulted in that investigating agency itself submitting a closure report. The matter requires consideration.*
> *Till the next date of listing, there shall be stay of further proceedings pursuant to the impugned O.A of 14 February 2022 bearing no. 01/KLZ0-I/2022.*
> *List again on 18.04.2022."*

10. In view of the stay granted in ***W.P.(C) 3821/2021***, the Court vide order dated 29th August, 2022, also stayed further proceedings under section 8 of the PMLA in ***W.P.(C) 12437/2022***. The said order reads as under:

> *"**W.P.(C) 3821/2022 and CM No. 37473/2022 (direction) and W.P.(C) 12437/2022, CM No. 37384/2022 (stay)***
> *Learned counsel representing the Enforcement Directorate prays for and is granted time to file a supplementary counter affidavit bearing in mind the*

> *fresh disclosures that have been made. Additionally, a counter affidavit may be filed on or before the next date fixed in connected W.P.(C) 12437/2022.*
> *The Court takes note of the submission of Mr. Bhandari, learned counsel appearing for the petitioner who contends that once the closure report has come to be accepted by the competent court, further proceedings under the Prevention of Money Laundering Act 2002 [2002 Act] would not sustain bearing in mind the decision rendered by this Court in* ***Prakash Industries Limited & Anr. vs. Directorate of Enforcement*** *[2022 SCC OnLine Del 2087] as well as by three learned Judges of the Supreme Court in* ***Vijay Madan Lal Chaudhary & Ors. vs. Union of India & Ors.*** *[2022 SCC OnLine SC 929]. The Court notes that the petitioner has already been accorded interim protection in W.P.(C) 3821/2022. Matter requires consideration.*
> ***For the reasons aforenoted, there shall be stay of further proceedings under Section 8 of the 2002 Act pursuant to the impugned O.C. No. 1772/2022 dated 14 July 2022 in W.P.(C) 12437/2022.***
> *List on 06.12.2022. The date of 23.01.2023 shall stand cancelled."*

11. In ***W.P.(C) 14530/2022***, a statement was made by ED on 18th October, 2022 that it has no objection to the Petitioner being granted the permission to operate the bank account which formed the subject matter of the provisional attachment orders dated 14th February, 2022, and 20th June, 2022, subject to the condition that they shall maintain a balance at all time which was standing on the date of freezing.

12. The submission today on behalf of the Petitioners is that in view of the recent decisions of the Supreme Court and this Court, the provisional attachment orders in question would no longer survive as the Petitioners

have been discharged in the scheduled/ predicate offence. It is submitted by ld. Counsels that a closure report filed by the CBI has been accepted by the Trial Court in respect of the predicate offence and no criminal charges are now pending against the Petitioners. Hence, the Petitioners pray for quashing of provisional attachment orders impugned before the Court.

13. To substantiate their arguments Mr. Aggarwal, ld. Senior Counsel and Mr. Bhandari, ld. Counsels appearing for the Petitioners, have heavily relied upon the following decisions:

- ***Vijay Madanlal Choudhary v. Union of India & Ors., 2022 SCC OnLine SC 929***
- ***Prakash Industries v. Directorate of Enforcement, 2022 SCC OnLine Del 2087***

14. It is submitted on the strength of the above two decisions that once the scheduled offence itself has come to an end resulting in discharge or acquittal and no proceedings are pending against the Petitioners, the attachment orders cannot continue in view of the fact that Section 3 of the PMLA contemplates that a predicate offence is a necessary precondition for any assets to be considered as *'proceeds of crime'*. Various paragraphs of ***Vijay Madanlal Choudhary (supra)*** are placed before this Court in support of this submission. It is thereafter submitted that post the judgment in ***Vijay Madanlal Choudhary (supra),*** the Supreme Court has, accepted this proposition in –

i. ***Parvathi Kollur v. Enforcement Directorate*** *[Criminal Appeal No. 1254/2022, decided on 16th August, 2022]****,***

ii. ***Adjudicating Authority v. Shri Ajay Kumar Gupta & Ors.*** *[Criminal Appeal Nos. 391-392/2018, decided on 2nd December, 2022]****,***

iii. ***Directorate of Enforcement v. M/s Obulapuram Mining Company Pvt. Ltd*** *[Criminal Appeal No.1269/2017, decided on 2nd December, 2022]*.

The ratio of ***Vijay Madanlal Choudhary (supra)*** has been followed in the abovementioned cases and the Supreme Court has quashed the ECIRs in the respective matters.

15. It is the further submission on behalf of the Petitioners that the reasons given in the order accepting the closure report would have no bearing on whether the attachment can continue or not. The attachment cannot continue indefinitely and since the Trial Court has already accepted the closure report and has closed the criminal complaints against the Petitioners in the predicate offence, the impugned attachment orders deserve to be quashed.

16. On the other hand, Mr. Sharma, ld. Counsel appearing for the Enforcement Directorate relies upon paragraphs 281, 290 and 295 of the ***Vijay Madanlal Choudhary (supra)*** judgment to argue that irrespective of whether the predicate offence exists or not, unless and until the Trial Court comes to a conclusion that the assets are not proceeds of crime, the attachment orders can continue and the ED can in fact file an independent complaint in such a case. On a query from the Court as to whether there is even a single case where a separate complaint has been registered under the PMLA by the ED without a predicate offence having existed, the ld. Counsel submits that this could be the first case.

17. It is further submitted by Mr. Sharma, ld. Counsel that the Trial Court while passing the order accepting the closure report has not arrived at a conclusion that there was no criminality involved in the conduct of the

Petitioners and hence the Court ought not to quash the attachment orders.

18. This Court has heard ld. Sr. Counsel, ld. Counsels for the parties and considered the matters. In ***Vijay Madanlal Choudhary (supra),*** the Supreme Court has in categorical terms held that for the existence of 'proceeds of crime' under Section 2(1)(u) of the PMLA, the existence of a criminal complaint pending enquiry and/or trial would be necessary. Further, if the person in question has been finally discharged or acquitted of the scheduled/predicate offence, there can be no offence of money laundering against the said person. The relevant paragraphs of the judgment in ***Vijay Madanlal Choudhary (supra)*** are set out 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.

xxx xxx xxx

290. As a matter of fact, prior to amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 of the Act registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including prevent and regulate the commission of offence of money laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond

appropriately to such information, the authorised officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act.

xxx xxx xxx

295. As aforesaid, in this backdrop the amendment Act 2 of 2013 came into being. Considering the purport of the amended provisions and the experience of implementing/enforcement agencies, further changes became necessary to strengthen the mechanism regarding prevention of money-laundering. ***It is not right in assuming that the attachment of property (provisional) under the second proviso, as amended, has no link with the scheduled offence. Inasmuch as Section 5(1) envisages that such an action can be initiated only on the basis of material in possession of the authorised officer indicative of any person being in possession of proceeds of crime. The precondition for being proceeds of crime is that the property has been derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence.*** *The sweep of Section 5(1) is not limited to the accused named in the criminal activity relating to a scheduled offence. It would apply to any person (not necessarily being accused in the scheduled offence), if he is involved in any process or activity connected with the proceeds of crime. Such a person besides facing the consequence of provisional attachment order, may end up in being named as accused in the complaint to be filed by the authorised officer concerning offence under Section 3 of the 2002 Act.*

xxx xxx xxx

300. The procedural safeguards provided in respect of provisional attachment are effective measures to protect the interest of the person concerned who is being proceeded with under the 2002 Act, in the following manner as rightly indicated by the Union of India:

xxx xxx xxx

> *xiii. However, under Section 8(6) if the Special Court on the conclusion of the trial finds that no offence of money-laundering has taken place or the property is not involved in money-laundering it will release the property which has been attached to the person entitled to receive it.*

xxx xxx xxx

307. ***It is unfathomable as to how the action of confiscation can be resorted to in respect of property in the event of his acquittal or discharge in connection with the scheduled offence.*** *Resultantly, we would sum up by observing that the provision in the form of Section 8 (4) can be resorted to only by way of an exception and not as a rule. The analogy drawn by the Union of India on the basis of decisions of this Court in Divisional Forest Officer v. G.V. Sudhakar Rao , Biswanath Bhattacharya , Yogendra Kumar Jaiswal v. State of Bihar , will be of no avail in the context of the scheme of attachment, confiscation and vesting of proceeds of crime in the Central Government provided for in the 2002 Act.*

xxx xxx xxx

467. In light of the above analysis, we now proceed to summarise out conclusion on seminal points in issue in the following terms:

xxx xxx xxx

> *(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity*

> *connected with such property, which constitutes the offence of money-laundering.* ***The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.***"

19. The judgment in ***Prakash Industries v. Directorate of Enforcement (supra)*** given by a ld. Single Judge of this Court, passed prior to the judgment of the Supreme Court in ***Vijay Madanlal Chaudhary (supra),*** takes a similar view that offence of money laundering cannot be a standalone offence. The relevant portion of the said judgment reads as under:

> *"44. The first issue which merits consideration is the question of the provisions of the Act being interpreted as creating a stand-alone and independent offence. This issue assumes significance in the facts of the present case especially since the proceedings relating to the first chargesheet stand quashed. As this Court construes the provisions of the Act it is manifest that an offence of money laundering is founded on the commission of a predicate offence. The issue which arises is what would be the consequential impact, if any, of a predicate offence and proceedings in relation thereto coming to be quashed or even compounded and the accused discharged.* ***In the considered opinion of***

this Court once it is found by the competent authority that a predicate offence is either not evidenced or on facts it is held that no offence at all was committed, proceedings under the Act would necessarily have to fall or be brought to a close. *The Court bears in mind the language of Section 3 of the Act which links the activities and processes of money laundering to proceeds of crime. Section 2(1)(u) creates an indelible link between property derived or obtained and criminal activity relating to a scheduled offence. It is only when it is found that a person has derived property as a result of criminal activity that the offence of money laundering can be said to have been committed. Absent the element of criminal activity, the provisions of the Act itself would not be attracted. The offence of money laundering is essentially aimed at depriving persons of the fruits and benefits that may have been derived or obtained from criminal activity. However, once it is found that a criminal offence does not stand evidenced, the question of any property being derived or obtained therefrom or its confiscation or attachment would not arise at all and in any case, proceedings if initiated under the Act would be wholly without jurisdiction or authority. The Court notes that the issue of whether proceedings under the Act would survive even after the acquittal of a person in proceedings relating to the predicate offence was duly answered by a learned Judge of the Court in Rajiv Chanana v. Dy. Director, Directorate of Enforcement. The relevant paragraphs are extracted hereinbelow:—*

> *18. The suggestion of the learned ASG that an attachment order under Section 5 of the PMLA would survive an acquittal of the concerned person for the alleged crime, is unsustainable. It was argued by the learned ASG that acquittal of the person after trial of a scheduled office would not release the order of attachment under PMLA till the trial for an offence under Section 3 of the*

> *PMLA is completed. This contention is based on an erroneous assumption that a trial for an offence of "money laundering" under the PMLA would survive. One is hard pressed to imagine how a trial for an offence of money laundering can continue where the fundamental basis - the commission of a schedule offence - in this case offence under Section 307 IPC - has been found to be disproved.*
> *19.* ***It necessarily follows that the attachment of a property is liable to be vacated if the existence of a scheduled offence is negated. Clearly, attachment of proceeds of crime cannot continue if the alleged scheduled offence is not established after trial.*** *Given the scheme of the PMLA, attachment of property (proceeds of crime) must be lifted if it is found that the scheduled offence, on the basis of which attachment was effected, does not exist. In absence of a scheduled offence, the question of existence of any proceeds thereof, do not arise."*

20. Subsequent to the judgment of the Supreme Court in ***Vijay Madanlal Choudhary (supra)***, the ld. Division Bench of this Court, in ***Harish Fabiani and Ors. v. Enforcement of Directorate and Ors., 2022 SCC OnLine Del 3121*** has also taken a similar view. The relevant portion of the said judgment is set out below:

> *"22. The Hon'ble Supreme Court has been clear and categorical in its reasoning as evident from the para extracted above. The undeniable sequitur of the above reasoning is that firstly, authorities under the PMLA cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed; secondly, the scheduled offence must be registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum;* ***thirdly, in the***

> ***event there is already a registered scheduled offence but 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 quashing of the criminal case of the scheduled offence, there can be no action for money laundering against not only such a person but also any person claiming through him in relation to the property linked to the stated scheduled offence****. In other words no action under PMLA can be resorted to unless there is a substratum of a scheduled offence for the same, which substratum should legally exist in the form of a subsisting (not quashed) criminal complaint/inquiry or if it did exist the accused has since been discharged or acquitted by a Court of competent jurisdiction."*

21. The order of the Supreme Court in ***Parvathi Kollur (Supra)*** sought to be relied upon by the Petitioner is also relevant wherein the Court in no ambiguous terms has reiterated that closure of the proceedings under the PMLA is the natural consequence of the acquittal/discharge in the predicate offence. The relevant portion of the said judgment reads as under:

> *"The result of the discussion aforesaid is that the view as taken by the Trial Court in this matter had been a justified view of the matter and the High Court was not right in setting aside the discharge order despite the fact that the accused No. 1 had already been acquitted in relation to the scheduled offence and the present appellants were not accused of any scheduled offence.*
>
> *In view of the above, this appeal succeeds and is allowed. The impugned judgment and order dated 17.12.2020 is set aside and the order dated 04.01.2019 as passed by the Trial Court, allowing discharge application of the appellants, is restored"*

22. A perusal of the orders passed in ***Parvathi Kollur (supra)*** as also in

the other three judgments referred above leaves no matter of doubt in the mind of the Court that if there is an acquittal/ discharge or a closure report has been filed in the predicate offence, the ECIR would not stand and the same would be liable to be quashed. For example, in ***Adjudicating Authority v. Shri Ajay Kumar Gupta & Ors. (supra)***, there was acquittal in the predicate offence. In view of the said fact, the Supreme Court was of the view that the appeal filed by the Adjudicating Authority (PMLA) would not survive. The said order reads as under:

> *"Issue notice which is accepted by learned counsel for the respondent.*
>
> *Learned Solicitor General fairly states that since the proceedings before this Court arise from an order of attachment and there is acquittal in respect of predicate offence, the proceedings really would not survive.*
>
> *In view of the aforesaid, the appeals filed by the Adjudicating Authority (PMLA) do not survive and are accordingly disposed of.*
>
> *The trial Court record be sent back to the trial Court."*

23. Similarly, in ***Directorate of Enforcement v. M/s Obulapuram Mining Company Pvt. Ltd. (supra)***, closure report had been accepted by the Trial Court *qua* the predicate offence. The Supreme Court was again of the view that proceedings under PMLA will not survive and the Court proceeded to quash the ECIR. The said order reads as under:

> *"Issue notice which is accepted by the learned counsel for the State.*
>
> *Learned Solicitor General fairly states that since there is a closure report in respect of the predicate offence which has been accepted, the present proceeding will not survive and consequently the ECIR*

No. CEZO/01/2017 stands quashed.

The application along with the Special Leave Petition stand disposed of."

24. In the facts of the present case, the Trial Court, in the complaint case which was pending before it, has clearly come to a conclusion that the closure report deserves to be accepted and no criminality is ascertainable as the documents in respect thereof were not available.

25. In view of the settled legal position in ***Vijay Madanlal Choudhary (supra)*** and the subsequent decisions and orders thereafter, the impugned attachment orders dated 14th February, 2022 and 20th June, 2022 as also the ECIRs are quashed.

26. All the petitions are allowed in these terms. All pending applications are also disposed of.

27. No orders as to cost.

PRATHIBA M. SINGH
JUDGE

JANUARY 10, 2023/*Rahul/SK*
(corrected & released on 16th January, 2023)