2023:DHC:8429

$~

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

Reserved On: 05th October, 2023
Pronounced On: 24th November, 2023

\+ W.P.(CRL) 562/2023 & CRL.M.A. 5126/2023 (Stay)

RAJINDER SINGH CHADHA ..... Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate with Mr. Giriraj Subramanium, Mr. Akhilesh Talluri, Mr. Joy Banerjee, Mr. Ravi Pathak, Mr. Simarpal Singh Sawhney, Ms. Urvashi Singh and Mr. Siddhant Juyal, Advocates.

versus

UNION OF INDIA MINISTRY OF HOME AFFAIRS THROUGH ITS CHIEF SECRETARY & ANR. ..... Respondents

Through: Mr. Amit Tiwari, Senior Panel Counsel for R-1/Union of India.
Mr. Zoheb Hossain, Special Counsel for R-2/Directorate of Enforcement with Mr. Vivek Gurnani and Mr. Kartik Sabharwal, Advocates.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973 ('CrPC') seeks primarily the following prayer:

> "i. Pass a writ/order/direction in the nature of certiorari thereby issuing direction to quash and set aside all proceedings and actions

taken pursuant to the Enforcement Case Information Report bearing number ECIR/09/HIU/2019 dated 27.06.2019."

Background

2. Briefly stated, the facts of the case, relevant for adjudication of the present petition are as under:

i. Two FIRs, i.e., FIR No. 16/2018 dated 24.01.2018 and FIR No. 49/2021 dated 12.03.2021 were registered under Sections 420/406/120B of the Indian Penal Code, 1860 ('IPC') at PS Economic Offences Wing ('EOW'). The said FIRs were registered against the persons accused therein, including the petitioner and arose out of a similar set of facts and circumstances.

ii. In both the FIRs, the respective complainants, *inter-alia*, alleged that despite payment of monies in 2006-07, they did not receive possession of flats, as was promised by accused company M/s Uppal Chadha Hi-Tech (hereinafter referred to as the 'company'). It was alleged that in his capacity as a Director of the said firm, the petitioner was responsible for siphoning of the funds collected from the complainants.

iii. During the pendency of the respective trials in FIRs No. 16/2018 and 49/2021, the accused persons therein settled the dispute with the respective complainants amicably.

iv. In FIR No. 16/2018, the accused persons moved an application for compounding under Section 320 of the CrPC before the learned Trial Court, which was allowed *vide* order dated 19.11.2019 passed by Sh. Deepak Sherawat, Chief Metropolitan Magistrate, South-East, Saket

and the accused persons were accordingly acquitted for offences under Sections 406/420/120B of the IPC.

v. FIR No. 49/2021 was quashed by a coordinate bench of this Court, *vide* order dated 22.12.2022 passed in CRL.MC. 7083/2022 titled 'Uppal Chadha Hi Tech Developers Pvt. Ltd. & Ors. v. State & Ors.'.

vi. The present ECIR was lodged on 26.07.2019 by the Directorate of Enforcement/respondent no. 2 ('the department') against M/s Uppal Chadha Hi-Tech, Harmandeep Singh, Gurjit Singh Kochar, Kritika Gupta, Rajinder Singh Chadha – the petitioner and other unknown persons.

vii. After the ECIR was lodged, the department carried out a search and seizure on 18.11.2022 under Section 17(1) of the Prevention of Money Laundering Act, 2002 at the office and residential premises of the petitioner. Various phones, documents, digital records and cash was seized. Follow-up searches were conducted on 19.11.2022, 22.11.2022 and 09.12.2022. Pursuant to the search and seizure, the department filed an application under Section 17(4) of the PMLA for retention of records and digital devices seized on 18.11.2022, 19.11.2022, 22.11.2022 and 09.12.2022.

viii. A show-cause notice under Section 8(1) of the PMLA, alongwith recording of reasons dated 21.12.2022 was issued by the Adjudicating Authority to the petitioner, for filing of a written response, on or before 09.02.2023, as to why the department's application under Section 17(4) of the PMLA should not be allowed.

Submissions of behalf of the Petitioner/Rajinder Singh Chadha

3. Learned Senior Counsel appearing on behalf of the petitioner submitted that the basis of the present ECIR, i.e., the predicate offences in FIRs No. 16/2018 and 49/2021 now stand compounded and quashed, respectively. As a consequence of that, the jurisdictional fact which formed the basis of the department's investigation has now come to an end and hence, the ECIR and the subsequent proceedings cannot continue any longer. Attention of this Court was drawn to the application under Section 17(4) of the PMLA filed on behalf of the department, wherein it has been clearly stated that the ECIR in question was registered on account of FIRs No. 16/2018 and 49/2021. It was submitted that it is thus clear, that the ECIR was initiated on account of the aforesaid two FIRs, which no longer exist and therefore, the ECIR cannot continue either. In support of the said argument, learned Senior Counsel for the petitioner placed reliance on the following judgments:

i. Vijay Madanlal Choudhary & Ors. v. Union of India & Ors., 2022 SCC OnLine SC 929.
ii. Harish Fabiani and Ors. v. Enforcement Directorate & Ors., 2022 SCC OnLine Del 3121.
iii. Naresh Goyal v. The Directorate of Enforcement, Judgment dated 20.02.2023 passed by the Hon'ble High Court of Bombay in Criminal Writ Petition No. 4037 of 2022.
iv. Prakash Industries Limited v. Union of India and Ors., 2023:DHC:481.
v. Parvathi Kollur and Anr. v. State by Directorate of Enforcement, Order dated 16.08.2022 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1254/2022.

vi. Directorate of Enforcement v. M/s Obulapuram Mining Company, Order dated 02.12.2022 passed by the Hon'ble Supreme Court in Criminal Appeal No. 1269/2017.

vii. EMTA Coal v. Deputy Director, Directorate of Enforcement, 2023/DHC/000277.

viii. M/s Nik Nish Retail and Anr. v. Assistant Director, Enforcement Directorate, Government of India and Ors., 2022 SCC OnLine Cal 4044.

ix. Manturi Shashi Kumar v. ED, 2023 SCC OnLine TS 1098.

x. Arun Kumar and Ors vs. Union of India and Others, (2007) 1 SCC 732.

3.1. Reliance was placed on **Vijay Madanlal Choudhary and Ors. v. Union of India, (*supra*),** and in particular, the following paragraphs thereof:

> "**253.** 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 can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding

the express language of definition clause "proceeds of crime", as it obtains as of now.

***

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.

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

******* ******* *******

(v)

******* ******* *******

(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."

3.2. Learned Senior Counsel submitted that in **Naresh Goyal (*supra*),** it was held as under:

"11. Although, the learned counsel for the respondent No. 1 – ED tried to impress upon this Court that the ECIR is a private internal document and not at par with an FIR, and as such is not required to be quashed, the said submission was not pressed, when the learned senior counsel for the petitioner in both the petitions showed a copy of the order passed by the Apex Court in the case of ***M/s. Obulapuram Mining Company Pvt. Ltd. (supra)***. In the said case, the learned Solicitor General appearing for the appellant – ED made a statement that since the proceedings before the Court (Apex Court) arose from an order of attachment and there is acquittal in respect of the predicate offence, the ED proceeding really would not survive.

*** *** ***

13. As noted above, admittedly there is no scheduled offence as against the petitioner in both the petitions, in view of the closure report filed by the police, which was accepted by the Courts as stated aforesaid. There being no predicate offence i.e. scheduled offence, the impugned ECIR registered by the respondent No.1 – ED will not survive and as such the said ECIR will have to be quashed and set aside."

3.3. Reliance was placed on a judgment of the Hon'ble High Court of Calcutta in **Nik Nish Retail (*supra*)** and in particular, on the following paragraph thereof:

"**34.** The quashing of FIR of regular case automatically created a situation that the offences, stated and alleged in the FIR has no existence; thus the "Scheduled Offence" has also no existence after quashing of the

FIR. When there is no "Scheduled Offence", the proceeding initiated under the provisions of Prevention of Money Laundering Act, 2002 cannot stand alone."

It was further submitted that the aforesaid judgment in **Nik Nish Retail (*supra*)** was carried in appeal before the Hon'ble Supreme Court and was not interfered with. The said **Special Leave Petition (Criminal) Diary No. 24321/2023** titled **'Assistant Director Enforcement Directorate v. M/s Nik Nish Retail Ltd. & Ors.'** was disposed of by the Hon'ble Supreme Court *vide* order dated 14.07.2023 in the following terms:

"In paragraph 187 (v)(d) of the decision in the case of *Vijay Madanlal Chowdhury & Ors. v. Union of India & Ors.* (2022) SCC OnLine SC 929, it is held that even if predicate offence is quashed by the Court of competent 1 jurisdiction, there can be no offence of money laundering against the accused.

Appropriate proceedings can be always filed by the concerned parties for challenging the order by which predicate offence was quashed. If the said order is set aside and the case is revived, it will be always open for the petitioner to revive the proceedings under the Prevention of Money Laundering Act, 2002.

The Special Leave Petition is accordingly disposed of.

Pending application also stands disposed of."

3.4. In support of his contentions, learned Senior Counsel drew the attention of this Court to **Arun Kumar (*supra*),** wherein it has been held as under:

"**74.** A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority wrongly assumes the existence of such fact, the order can be questioned by a writ of *certiorari*. The underlying principle is that by

erroneously assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess.

75. In *Halsbury's Laws of England*, it has been stated:

> "Where the jurisdiction of a tribunal is dependent on the existence of a particular state of affairs, that state of affairs may be described as preliminary to, or collateral to the merits of, the issue. If, at the inception of an inquiry by an inferior tribunal, a challenge is made to its jurisdiction, the tribunal has to make up its mind whether to act or not and can give a ruling on the preliminary or collateral issue; but that ruling is not conclusive."

76. The existence of jurisdictional fact is thus *sine qua non* or condition precedent for the exercise of power by a court of limited jurisdiction."

Submissions on behalf of Respondent No.2/Directorate of Enforcement

4. *Per contra,* learned Special Counsel for the department submitted that on the basis of the complaints filed by the investors of the company, the EOW registered FIRs no. 16/2018 under Sections 420/406/120B of the IPC against the company and its Directors, including the petitioner. On the basis of the aforesaid FIR, the department recorded ECIR/09/HIU/2019 on 27.06.2019. It was further pointed out that initially, in the FIR, there were 20 complainants/victims, however, at the time of filing of chargesheet, there were 60 more complainants and as per the petitioner, they had settled the dispute only with 61 out of aforesaid 80 complainants. It was pointed out that so far as regarding compounding of offences is concerned, in the order dated 19.11.2019 passed by the learned Magistrate compounding FIR No. 16/2018, it has been recorded that the petitioner had undertaken to settle the dispute with the remaining complainants as well. It was further pointed out that thereafter, fresh complaints were received and the EOW registered another

FIR No. 49/2021 dated 12.03.2021 and the said FIR was also taken on record in the existing ECIR/09/HIU/2019. Thereafter, the petitioner approached this Court seeking quashing of FIR No. 49/2021 and the same was allowed by a coordinate bench of this Court *vide* order dated 22.12.2022 passed in CRL.MC. 7083/2022.

5. It was submitted on behalf of the department that as per the chargesheet dated 14.02.2022, filed by the EOW in FIR No. 49/2021, there were a total of 77 complainants and the petitioner had only settled the dispute with 55 complainants. It was further pointed out that there are 22 more complainants/victims with whom the petitioner has not settled the dispute. It was further submitted that 79 complaints are still pending before RERA, Uttar Pradesh against the company.

6. It was further pointed out that during the pendency of the present petition, on the basis of the complaint received from one Ms. Shobhna Gupta, FIR No. 55/2023 dated 10.07.2023 was registered against the aforesaid company and its Directors under Sections 409/420/120B of the IPC at PS EOW. The said FIR No. 55/2023 is stated to have been made on the basis of similar allegations as in the previous FIRs. It was further pointed that the aforesaid FIR was taken on record for further investigation in the already opened ECIR/09/HIU/2019, which is the subject matter of the present petition.

7. Learned Special Counsel for respondent further submitted that the petitioner was one of the Directors in the companies – M/s UCHDPL, Chadha Infrastructure Developers Pvt. Ltd. and M/s Wave Infratech Pvt. Ltd. An amount of Rs. 175.95 crores is stated to have been transferred to Chadha

Infrastructure Developers Pvt. Ltd. and Rs. 87.02 crores has been transferred to M/s Wave Infratech Pvt. Ltd. It was submitted that the petitioner was a director in the companies Chadha Infrastructure Developers Pvt. Ltd. as well as M/s Wave Infratech Pvt Ltd at the time of transfer of funds. It was pointed out that the petitioner is ultimate beneficiary and had a significant role in the activities connected with money laundering including possession and diversion of funds.

8. In support of his contentions, learned Special Counsel placed reliance on **Vijay Madanlal Choudhary (*supra*)** and in particular, the following paragraphs thereof:

> "**461.** It is true that the ED Manual may be an internal document for departmental use and in the nature of set of administrative orders. It is equally true that the accused or for that matter common public may not be entitled to have access to such administrative instructions being highly confidential and dealing with complex issues concerning mode and manner of investigation, for internal guidance of officers of ED. It is also correct to say that there is no such requirement under the 2002 Act or for that matter, that there is nothing like investigation of a crime of money-laundering as per the scheme of 2002 Act. The investigation, however, is to track the property being proceeds of crime and to attach the same for being dealt with under the 2002 Act. *Stricto sensu*, it is in the nature of an inquiry in respect of civil action of attachment. Nevertheless, since the inquiry in due course ends in identifying the offender who is involved in the process or activity connected with the proceeds of crime and then to prosecute him, it is possible for the department to outline the situations in which that course could be adopted in reference to specific provisions of 2002 Act or the Rules framed thereunder; and in which event, what are the options available to such person before the Authority or the Special Court, as the case may be. Such document may come handy and disseminate information to all concerned. At least the feasibility of placing such document on the official website of ED may be explored.
>
> *** *** ***

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 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.

*** *** ***

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

*** *** ***

(xviii)(a) In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime…."

9. Learned Special Counsel for the department further submitted that since the inquiries/investigation under PMLA culminate into a complaint and the same being a complaint case, at this stage, raising an argument that ECIR is to be quashed because some of the FIRs are compromised, is pre-mature since the scheduled offence continues to exist. It was submitted that once the inquiry/investigation is concluded and the respondent files a complaint, the petitioner can avail of his remedies under the CrPC.

10. Learned Special Counsel submitted that as on the present day, even if there exists a single complainant, who is aggrieved by the accused company and its directors, the two conditions laid down by the Hon'ble Supreme Court in **Vijay Madanlal Choudhary (*supra*)** for closing the PMLA proceedings, cannot be satisfied. The said two conditions are as under:

> "**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."

(emphasis supplied)

11. It was further contended on behalf of the department that it is a well settled principle that the offence of money laundering is an independent offence. Reliance in support of the said contention was placed on:

i. Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors 2022 SCC OnLine SC 929.

ii. Judgment dated 12.05.2023 passed by the Hon'ble Supreme Court in ED vs Aditya Tripathi, Criminal Appeal No. 1401/2023.

iii. P. Rajendran vs. Directorate of Enforcement – Judgment dated 14.09.2022 passed by the Hon'ble Madras High Court in Criminal Original Petition No. 19880 of 2022.

iv. J. Sekar vs. Union of India & Ors. 2018 SCC OnLine Del 6523.

v. Radha Mohan Lakhotia vs. Directorate of Enforcement 2010 SCC OnLine Bom 1116.

vi. Dr. Manik Bhattacharaya vs. Ramesh Malik & Ors. – SLP (C) 16325/2022.

12. It was submitted that the petitioner, during the course of arguments has heavily placed reliance on the judgement of **Nik Nish Retail (*supra*)**, but the same is misplaced, as the facts of the said case were that a full and final settlement was entered between the Bank and Group of Companies, and the same was duly complied with. In the present case, the hard-earned money of innocent home-buyers was at stake, and the company i.e., M/s UCHDPL

failed to settle the matter with every complainant, rather new FIRs by aggrieved home-buyers continued to be filed like the FIR 55/2023.

13. Similarly, it was submitted that in the relied upon judgement of **Manturi Shashi Kumar (*supra*)**, the Hon'ble Court observed - *"In the meanwhile, in view of the settlement arrived at between the de facto complainant and appellant No. 1, the criminal court referred the matter to Lok Adalat and when the matter was settled in Lok Adalat, the criminal court discharged appellant No. 1 vide order dated 20.03.2018 leading to closure of the criminal case as well."* However, in the present case it is an admitted fact that the petitioner/accused persons have not settled the matter with all the complainants, which is evident from the facts that on 10.07.2023 the EOW on the basis of a complaint received from one Mrs. Shobhna Gupta registered a FIR bearing No. 55/2023 against M/s Uppal Chadha Hi Tech Developers Ltd (M/s UDCHDPL), Manpreet Singh Chadha, Harmandeep Singh Kandhari, Rajiv Gupta, Ginni Chadha, Sanjeev Jain, Rahul Chauhan and others.

14. Learned Special Counsel further submitted that the petitioner has placed reliance on the judgement of Hon'ble High Court of Karnataka in Mantri Developers and Ors. vs. DOE in Writ Petition 20713 of 2022, however the same has no bearing on the present case as the scheduled offence exists till date. In the present case the scheduled offences took place pursuant to which multiple FIRs were registered, some of which were settled by the accused. However fresh complaints were filed against the same accused, and on basis of that fresh FIR No. 55/2023 was filed registered *qua* the same project and same company, which is still in existence.

15. It was further contended on behalf of the department that the argument of the petitioner that FIR No. 55/2023 cannot be added to the existing ECIR, and the department should record an additional ECIR is against the scheme of the PMLA. In this regard it was submitted that the entire PMLA does not mention or define the term 'ECIR' and the same is an internal departmental document for administrative purposes.

16. It was submitted that the scheme of the PMLA is that when a scheduled offence exists, and if there exist *prima facie* proceeds of crime, the department is statutorily empowered to commence an "inquiry". Further, for inquiry under the Act, neither an FIR nor an ECIR is required.

17. Therefore, it was submitted that the judgements relied upon on behalf of the petitioner are not applicable to the present case, for the reason that in all the cited judgements, either pursuant to a settlement there was a complete quashing of the predicate offence and nothing survived, or there was a clean acquittal in the predicate offence, unlike the peculiar facts of the present case.

Rejoinder on behalf of the Petitioner/Rajinder Singh Chadha

18. In rejoinder, learned counsel for the petitioner submitted that the argument raised by the learned Special Counsel for the department that investigation of the department can be quashed only if a person is finally absolved is not tenable in view of the precedents cited hereinabove, i.e., **Nik Nish Retail (*supra*)**, which has been confirmed by the Hon'ble Supreme Court *vide* order dated 14.07.2023 and in **Manturi Shashi Kumar (*supra*)** where it has been held in Para 28 that *'it is immaterial for the purpose of PMLA whether acquittal is on merit or composition'*.

19. The second limb of arguments raised by the learned Special Counsel for respondent to the effect *"that possibility of commission of scheduled offence cannot be ruled out"* is also not tenable in view of the observation made by the Hon'ble Supreme Court in **Vijay Madanlal (*supra*)** at Para 467 (v)(d) that "*the authorities under the 2002 act cannot prosecute any person on a notional basis or on the assumption that a scheduled offence has been committed"*. It was submitted that the stand taken by the department is contrary to the aforesaid proposition since it is seeking to justify continuing an investigation on a notional basis that there exists a possibility of commission of a scheduled offence.

20. It was submitted that the third limb of the department's argument that the investigation in the impugned ECIR must be kept active on the basis of FIR No. 55/2023 dated 10.07.2023 registered at PS EOW is misplaced as a predicate offence is a jurisdictional fact which permits the department to carry out an investigation under the PMLA. Reliance was placed on a judgment dated 14.12.2022 passed by the Hon'ble High Court of Karnataka, Principal Bench at Bengaluru in **WP No. 20713/2022** titled **'Mantri Developers Pvt. Ltd. v. Directorate of Enforcement'**, wherein it was held that because the predicate offence is a jurisdictional fact, if the investigation in the predicate offence is stayed, the investigation in the PMLA offence should also be stayed.

21. Reliance was further placed on **Arun Kumar (*supra*)** wherein it has been held that *'a jurisdictional fact is a fact which **must exist before** a court, tribunal or an authority assumes jurisdiction over a particular matter.'*. Similarly, reliance was placed on **Badrinath v. Government of Tamil Nadu,**

(2000) 8 SCC 395 and on **State of Kerala v. Puthenkavu N.S.S. Karayogam, (2001) 10 SCC 191** wherein the Hon'ble Supreme Court has observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

22. Lastly, it was submitted that the final limb of argument of the department that it can commence an investigation is an existing ECIR without the existence of predicate offence is fallacious. Reliance was placed on a judgment of a coordinate bench of this Court in **Prakash Industries (*supra*)** wherein it has been held that *'what needs to be emphasized is that while the adoption of peremptory measures by the ED may be justified and are so sanctioned by the Act, it would be incorrect to construe those powers as the ED alone being entitled to adjudge or declare that a predicate offence stands committed'*.

23. It was further submitted that the power of the department to investigate/enquire without registration of scheduled offence is an emergency power which can only be exercised at a preliminary stage and that too subject to the respondent ensuring the registration of a scheduled offence.

Analysis and Findings

24. Heard learned counsel for the parties and perused the record.

25. The proposition of law, as advanced by learned Senior Counsel for the petitioner is not in dispute. In absence of a predicate offence, there can be no offence of money laundering and as per the judgment of the Hon'ble Supreme Court in **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors., 2022 SCC OnLine SC 929**, such prosecution will not be maintainable. In

absence of a 'scheduled offence', criminal proceedings initiated under the PMLA cannot survive. In the present case, the two FIRs, i.e., FIR No. 16/2018 dated 24.01.2018 and FIR No. 49/2021 dated 12.03.2021 registered at PS EOW, have been compounded and quashed, respectively, on the ground of compromise. It is pertinent to note that the State has not challenged the aforesaid orders on the ground that the matter was not settled with all the complainants. It is also noted that the remaining complainants, if any, have also not challenged the aforesaid orders on the ground that settlement was not arrived at with them.

26. For the purpose of adjudication of the present petition, the following dates are relevant:

i. **24.01.2018 –** FIR No. 16/2018 under Sections 420/406/120B of the IPC is registered at PS EOW against the accused persons, including the petitioner.

ii. **27.06.2019 –** Impugned ECIR/09/HIU/2019 is registered by the departments on the basis of the scheduled offences in FIR No. 16/2018.

iii. **19.11.2019** – The learned Trial Court allows an application under Section 320 of the CrPC moved on behalf of the accused persons for compounding of FIR No. 16/2018 registered at PS EOW based on an amicable settlement arrived at between the parties and acquitted the accused persons.

iv. **12.03.2021 –** FIR No. 49/2021 under Sections 420/406/120B of the IPC is registered at PS EOW against the accused persons, including the petitioner. Consequently, the said FIR is taken on record in the existing ECIR/09/HIU/2019.

v. **18.11.2022** – The department carries out search and seizure in terms of Section 17(1) of the PMLA.

vi. **19.11.2022, 22.11.2022 and 09.12.2022** – The department carries out follow-up searches and seizures.

ix. **15.12.2022** – An application under Section 17(4) of the PMLA is moved by the department for retention of records and digital devices seized on 18.11.2022, 19.11.2022, 22.11.2022 and 09.12.2022.

x. **21.12.2022 –** A show-cause notice under Section 8(1) of the PMLA was issued by the Adjudicating Authority to the petitioner, for filing of a written response to the department's application under Section 17(4) of the PMLA.

vii. **22.12.2022** – FIR No. 49/2021 is quashed by a coordinate bench of this Court.

viii. **10.07.2023** – FIR No. 55/2023 is registered at PS EOW under Sections 409/420/120B of the IPC and taken on record in impugned ECIR/09/HIU/2019.

27. Thus, in the aforesaid peculiar facts of the case, the issue before this Court is whether the department is justified in continuing with the investigation/proceedings in the impugned ECIR/09/HIU/2019, which was initially registered on the basis of scheduled offences in FIR No. 16/2018 and thereafter continued on the basis of FIR No. 49/2021, by taking on record scheduled offences in FIR No. 55/2023 registered at PS EOW on 10.07.2023 based on similar allegations as in the earlier FIRs, especially in view of the fact that scheduled offences in the first two FIRs stood compounded/quashed?

28. It is pertinent to note that the aforesaid FIRs were registered at the instance of investors who were aggrieved by the non-completion of a project by the company. A perusal of the aforesaid list of dates reflect that although the impugned ECIR was registered initially on the basis of scheduled offences registered *vide* FIR No. 16/2018 dated 24.01.2018 which stood compounded *vide* order dated 19.11.2019, the second FIR No. 49/2021 which was registered on 12.03.2021 was taken on record in the impugned ECIR by the department and the proceedings continued under the same. The department chose not to register a separate ECIR, but took on record the scheduled offences registered *vide* FIR No. 49/2021 in the same ECIR, *inter-alia*, on the ground that it related to the same transaction and involved the same accused persons. The fact that FIR No. 49/2021 was taken on record by the department in the present ECIR despite an order of compounding and acquittal was not challenged by the petitioner.

29. Hon'ble Supreme Court in **Vijay Madanlal Choudhary *(supra)*** has held that there is no corresponding provision to Section 154 of the CrPC in the PMLA requiring registration of an offence of money laundering. While observing the same, the Hon'ble Supreme Court held as under:

> "**457....**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...."
>
> (emphasis supplied)

30. In the aforesaid context, it is pertinent to refer to a reference decided by a learned division bench of this Court in **State v. Khimji Bhai Jadeha, 2019 SCC OnLine Del 9060**, wherein, *inter-alia*, the following question of law was considered:

> "a. Whether in a case of inducement, allurement and cheating of large number of investors/depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction or all such transactions can be amalgamated and clubbed into a single FIR by showing one investor as complainant and others as witnesses?"

Answering the aforesaid question, the learned Division Bench of this Court held as under:

> "**61.** The practice followed by the Delhi Police/State of registering a single FIR on the basis of the complaint of one of the complainants/victims, and of treating the other complainants/victims merely as witnesses, even otherwise, raises very serious issues with regard to deprivation of rights of such complainants/victims to pursue their complaints, and to ensure that the culprits are brought to justice. Firstly, the other complainants/victims cannot be merely cited as witnesses in respect of the complaint of one of the victims on the basis of which the FIR is registered. They may not be witnesses in respect of the transaction forming the basis of the registration of the case. In a situation where hundreds of persons claim that they have been cheated by the same accused at different locations and at different points of time by adoption of the same *modus operandi*, it is unthinkable and unlikely that all the complainants/victims - who are cited as witnesses, would be witnesses to the single transaction in relation to which FIR is registered. They may, at the most, be witnesses only to establish the conspiracy - which is an allied offence, but unless there is a charge framed in respect of the specific act of cheating - to which each of the Complainant/victim is subjected, it may not be permissible to cite such other complainants/victims as witnesses to prove the act of cheating relating to them. Mere citing a large number of complainants/victims only as witnesses would also deny them the right to file their protest petitions in

> the eventuality of a closure report being field by the police in respect of the complaint on the basis of which FIR was registered, or the Magistrate not accepting the final report/charge-sheet and discharging the accused. (See *Bhagwat Singh* v. *Commissioner of Police*, (1985) 2 SCC 537 : AIR 1985 SC 1285). Their right to oppose, or to seek cancellation of bail that the accused may seek in relation to their particular transaction would also be denied. If the accused enters into a settlement/compromise with the complainant on whose complaint the FIR stands registered, and he chooses not to diligently participate in the trial, the complaints of other victims may go unaddressed. Thus, the practice adopted by the State/Delhi Police, and which is sought to be defended by them, is clearly erroneous and not sustainable in law.
>
> *** *** ***
>
> **63.** Thus, our answer to Question (a) is that in a case of inducement, allurement and cheating of large number of investors/depositors in pursuance to a criminal conspiracy, each deposit by an investor constitutes a separate and individual transaction. All such transactions cannot be amalgamated and clubbed into a single FIR by showing one investor as the complainant, and others as witnesses. In respect of each such transaction, it is imperative for the State to register a separate FIR if the complainant discloses commission of a cognizable offence.?"

The aforesaid judgment was challenged before the Hon'ble Supreme Court in **SLP (Crl.) No. 9198/2019** titled **'The State (NCT) of Delhi v. Khimji Bhai Jadeja'** and was stayed *vide* order dated 25.11.2019.

31. The significance of the aforesaid judgment is with respect to the scheme of the CrPC, and in particular, Section 154 of the said Code. As pointed out hereinabove, Hon'ble Supreme Court, in **Vijay Madanlal Choudhary (*supra*)** has clearly carved out a distinction between an ECIR under the PMLA and an FIR under the provisions of the CrPC. The Hon'ble Supreme Court accepted the statement of the dpeartment that the ECIR is an 'internal document' created by them. The ECIR in the present case was registered on a *prima facie* satisfaction for commission of offence under

Section 3 of the PMLA. The department, by way of the present ECIR, was not investigating the case of home-buyers/investors in respect of the allegations in the first two FIRs but with respect to alleged 'proceeds of crime' generated from commission of the alleged scheduled offences in the FIR registered at the instance of the home-buyers/investors. There is no dispute with regard to the fact that the third FIR, i.e., FIR No. 55/2023 also relates to the same project which was the subject matter of the two previous FIRs. In the present factual context, even if separate FIRs are registered at the instance of separate home-buyers/ investors, each of the said FIRs cannot be considered as a separate cause of action for registration of different ECIRs.

32. The stand taken by the department in the written submissions filed by learned Special Counsel is that *'The argument of the petitioner that FIR 55/2023 cannot be added to the existing ECIR, and ED should record an additional ECIR is against the scheme of the PMLA Act. In this regard it is submitted that the entire PMLA Act does not even mention the term 'ECIR', that ECIR is an internal departmental document for administrative purposes'.* In view thereof, as stated hereinbefore, the third FIR in the present case relates to the commission of a 'scheduled offence' in respect of the complainant therein, but for the purposes of an investigation under the PMLA, it would be the part of the same ECIR which related to investigation pertaining to 'proceeds of crime' under the PMLA in the previous FIRs. Needless to state, the Hon'ble Supreme Court, in **Vijay Madanlal Choudhary (*supra*)**, has categorically held that the offence under PMLA is an independent offence. Since the ECIR has not been equated with an 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.

33. The proposition of law laid down in judicial precedents relied upon by learned Senior Counsel for the petitioner is not in dispute. In the said cases, the 'scheduled offence' was quashed or compounded in all respects. In the present case, 'scheduled offences' by way of the third FIR still exist. It is pertinent to note that even in an FIR being investigated by the local police involving multiple complainants, compounding with some of them will not be a ground for quashing of the said FIR. However, partial compounding/quashing is permissible.

34. In so far as the submission of learned Senior Counsel with respect to the issue of the 'jurisdictional fact' is concerned, it is noted that during the pendency of the impugned ECIR, the registration of a third FIR with respect to 'scheduled offences' gives jurisdiction to the department to investigate by taking the said third FIR on record. The authorities cited by learned Senior Counsel for the petitioner are distinguishable with respect to the facts of the present cases. For the sake of repetition, it is noted that after the third FIR was taken on record, the impugned ECIR cannot be stated to be without a predicate offence. The issue before the Court, as explained hereinabove, is whether the investigation in the impugned ECIR can continue on the basis of registration of the third FIR. 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. This, however, cannot *ipso facto* have any bearing on the legitimacy of the investigation or proceeding in the ECIR with respect to the 'scheduled offences' in the first two FIRs. Reliance is placed on **Vijay Madanlal Choudhary (*supra*)**, wherein it has been held as under:

> "**467.** In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:—
>
> *** *** ***
>
> **(v)**
>
> *** *** ***
>
> **(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."

In light of the aforesaid judgment of the Hon'ble Supreme Court and in view of the judgments relied upon by learned Senior Counsel for the petitioner, the principle that can be culled out is that a 'scheduled offence', after an FIR has been quashed, cannot exist and therefore, if there is no 'scheduled offence', there can be no offence of money laundering with

respect to the same. Thus, in the considered opinion of this Court, in the present case, there can be no prosecution under the PMLA with respect to the 'scheduled offences' in the first two FIRs, i.e., FIR No. 16/2018 and FIR No. 49/2021 registered at PS EOW.

35. More recently, a coordinate bench of this Court, in **Nayati Healthcare and Research NCR Pvt. Ltd. and Ors. through its Authorised Representative Sh. Satish Kumar Narula & Ors. v. Union of India Ministry of Home Affairs through its Standing Counsel & Anr., 2023:DHC:7542**, while relying upon **Vijay Madanlal Choudhary (*supra*)** and **Nik Nish Retail (*supra*)**observed and held as under:

> "13. The Telangana High Court in Manturi Shashi Kumar (supra) has also quashed a complaint under Section 3 of the PMLA on the grounds of the accused being discharged/acquitted of the scheduled offence. The relevant observations of the said judgment are set out below:-
>
> > *"28. Thus, according to Supreme Court, the offence under Section 3 of PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. If the person is finally discharged or acquitted of the scheduled offence or the criminal case against him is quashed by the court, there can be no offence of money laundering against him or anyone claiming such property being the property linked to the scheduled offence. It is immaterial for the purpose of PMLA whether acquittal is on merit or on composition."*
>
> 14. In view of the aforesaid legal position, the present complaint filed by the ED and the proceedings arising therefrom cannot survive. Considering that the FIR has been quashed by this court and that it has not been challenged till date, there can be no offence of money laundering under section 3 of the PMLA against the petitioners.
>
> 15. Accordingly, the present petition is allowed and the ECIR bearing No.ECIR/51/DLZO-II/2021 and proceedings arising therefrom are

quashed. Consequently, the Look Out Circular issued against the petitioners in respect of the aforesaid ECIR also stands quashed.

36. In view of the aforesaid discussion and in the peculiar facts and circumstances of the case, ECIR/09/HIU/2019 dated 27.06.2019 cannot be quashed in view of registration of FIR No. 55/2023 dated 10.07.2023 under Sections 409/420/120B of the IPC at PS EOW as this would constitute 'scheduled offences' legitimizing the existence of the said ECIR. However, since 'scheduled offences' in FIR No. 16/2018 dated 24.01.2018 under Sections 420/406/120B of the IPC and FIR No. 49/2021 dated 12.03.2021 under Sections 420/406/120B of the IPC, registered at PS EOW have been compounded and quashed, respectively, the department cannot initiate or continue any proceeding including investigation in connection with the said two FIRs. Accordingly, the proceedings undertaken with respect to the said two FIRs *qua* the present petitioner in the present ECIR stand quashed.

37. The petition is accordingly partly allowed and disposed of.

38. Pending applications, if any, also stand disposed of.

39. Judgment be uploaded on the website of this Court, *forthwith.*

AMIT SHARMA
JUDGE

NOVEMBER 24, 2023/*sn*