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IN THE SUPREME COURT OF INDIA

CIVIL ORIGINAL JURISDICTION

DINESH MAHESHWARI; J., SUDHANSHU DHULIA; J.

WRIT PETITION (CIVIL) NO. 368 OF 2021; NOVEMBER 03, 2022

INDRANI PATNAIK & ANR. *versus* ENFORCEMENT DIRECTORATE & ORS.

Prevention of Money-Laundering Act, 2002; Section 3 - When the accused stand discharged of the scheduled offence, there could arise no question of they being prosecuted for illegal gain of property as a result of the criminal activity relating to the alleged scheduled offence.

For Petitioner(s) Mr. Maninder Singh, Sr. Adv. Ms. Nandini Gore, Adv. Mr. Naveen Kumar, Adv. Ms. Sonia Nigam, Adv. Mr. Karanveer Singh Anand, Adv. Mr. Yash Dubey, Adv. Mr. Nitesh Bhandari, Adv. Mr. Prabhat Kumar Rai, Adv. Mr. Prabhas Bajaj, Adv. M/S. Karanjawala & Co., AOR

For Respondent(s) Mr. Tushar Mehta, SG Mr. Suryaprakash V. Raju, ASG Mr. Zoheb Hussain, Adv. Mr. Kanu Aggarwal, Adv. Mr. Sugghosh Subramanyam, Adv. Ms. Preeti Rani, Adv. Mr. Shantanu Sharma, Adv. Ms. Sairica S. Raju, Adv. Mr. Mukesh Kumar Maroria, AOR Mrs. Kirti Renu Mishra, AOR Ms. Apurva Upmanyu, Adv.

ORDER

Learned senior counsel for the petitioners has referred to the Judgment delivered by this Court in the case of *Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.* decided on 27.07.2022, wherein the consequence of failure of prosecution for the scheduled offence has been provided in the following terms;-

“187.(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.”

Learned senior counsel has submitted that in the present case, prosecution of the petitioners in relation to the scheduled offence, on which the proceedings under the Prevention of Money-laundering Act, 2002 (PMLA) were based, have already come to an end with the petitioners having been discharged from V.G.R. Case No. 59 of 2009(T.R. Case No. 80 of 2011) by the order dated 27.11.2020, as passed by the High Court of Orissa in Criminal Revision No. 831 of 2018. Learned counsel would submit that in the given state of facts and the law declared by this Court, there cannot be any prosecution for the alleged offence of money-laundering in relation to the said offence for which, the petitioners have already been discharged.

Learned Additional Solicitor General appearing for the respondents though has not disputed the order dated 27.11.2020 passed by the High Court, discharging the petitioners from the scheduled offence but has submitted that he has not received further instructions as to whether the prosecuting agency has challenged the said order or not.

The record as it stands today, the petitioners stand discharged of the scheduled offence and therefore, in view of the law declared by this Court, there could arise no question of they being prosecuted for illegal gain of property as a result of the criminal activity relating to the alleged scheduled offence.

That being the position, we find no reason to allow the proceedings against the petitioners under PMLA to proceed further.

However, taking note of the submissions made by the learned Additional Solicitor General and in the interest of justice, we reserve the liberty for the respondents in seeking revival of these proceedings if the order discharging the petitioners is annulled or in any manner varied, and if there be any legitimate ground to proceed under PMLA.

Subject to the observations and liberty foregoing, this petition is allowed while quashing the proceeding in Complaint Case No. 05 of 2020 dated 10.01.2020 pending in the Court of Sessions Court, Khurdha at Bhubaneswar cum Special Court under the Prevention of Money-laundering Act, 2002.

All pending applications also stand disposed of.

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