IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.08.2022

DATE OF DECISION : 01.09.2022

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.Nos.12159, 18209 & 18213 of 2022

B.Shanmugam .. Petitioner in W.P.No.12159 of 2022

R.V.Ashok Kumar .. Petitioner in W.P.No.18209 of 2022

V.Senthil Balaji .. Petitioner in W.P.No.18213 of 2022

-vs-

Karthik Dasari
Deputy Director
Directorate of Enforcement
Ministry of Finance through its Deputy Director
Chennai-II Zonal Office
Chennai 600 006 .. Respondent in all the W.P's

W.P.No.12159 of 2022 is filed under Article 226 of The Constitution of India, praying for issuance of a Writ of Certiorari, to call for the entire records in connection with the ECIR/MDSZO/21/2021 issued by the respondent and quash the same as illegal, unconstitutional, non est in the eye of law.
(Prayer amended vide order of Court dated 11.08.2022 made in WMP No.20092 of 2022 in WP No.12159 of 2022)

W.P.No.18209 of 2022 is filed under Article 226 of The Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the entire records in connection with the summon No.PMLA/ SUMMON/CEZO2/2022/125 issued by the respondent dated 29.04.2022 in F.No.ECIR/MDSZO/21/2021 and quash the same as illegal, unconstitutional, non est in the eye of law and consequently declare the investigation in ECIR/MDSZO/21/2021 as illegal and unconstitutional.

W.P.No.18213 of 2022 is filed under Article 226 of The Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records in connection with the summon No.PMLA/ SUMMON/CEZO2/2022/126 issued by the respondent dated 29.04.2022 in F.No.ECIR/MDSZO/21/2021 and quash the same as illegal, unconstitutional, non est in the eye of law and consequently declare the investigation in ECIR/MDSZO/21/2021 as illegal and unconstitutional.

For Petitioners :: Mr.Sriram Panchu
Senior Counsel for
Mr.K.S.Arivazhagan
in W.P.No.12159 of 2022

Mr.Aryama Sundaram
Senior Counsel assisted by
Fr.Xavier Arulraj
Senior Counsel for
Mr.N.Bharanikumar
in W.P.No.18209 of 2022

Mr.Sidharth Luthra
Senior Counsel assisted by
Mr.S.Prabhakaran
Senior Counsel for
Mr.N.Bharanikumar
in W.P.No.18213 of 2022

For Respondent :: Mr.R.Sankaranarayanan
Additional Solicitor General
assisted by
Mr.S.Sasikumar
Special Public Prosecutor
for Enforcement Directorate

COMMON ORDER

T.RAJA, J.
AND
K.KUMARESH BABU, J.

1.(i) Mr.B.Shanmugam, the petitioner in Writ Petition No.12159 of 2022 has approached this Court under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorari, to call for the entire records in connection with the ECIR/MDSZO/21/2021 issued by the respondent and quash the same as illegal, unconstitutional, non est in the eye of law.

(ii) Mr.R.V.Ashok Kumar, the petitioner in Writ Petition No.18209 of 2022 has approached this Court under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus, calling for the entire records in connection with the summon No.PMLA/ SUMMON/CEZO2/2022/125 issued by the respondent dated 29.04.2022 in F.No.ECIR/MDSZO/21/2021 and quash the same as illegal,

unconstitutional, non est in the eye of law and consequently declare the investigation in ECIR/MDSZO/21/2021 as illegal and unconstitutional.

(iii) Mr.V.Senthil Balaji, the petitioner in Writ Petition No.18213 of 2022 has approached this Court under Article 226 of the Constitution of India seeking for issuance of a Writ of Certiorarified Mandamus, calling for the entire records in connection with the summon No.PMLA/ SUMMON/CEZO2/2022/126 issued by the respondent dated 29.04.2022 in F.No.ECIR/MDSZO/21/2021 and quash the same as illegal, unconstitutional, non est in the eye of law and consequently declare the investigation in ECIR/MDSZO/21/2021 as illegal and unconstitutional. Since the issues raised are common in all the writ petitions, they were heard together and are disposed of by this common order.

2. Mr.Sriram Panchu, learned Senior Counsel appearing for the petitioner in Writ Petition No.12159 of 2022 pleaded that Mr.B.Shanmugam has been in the field of Desktop Publishing (DTP from 1991 in the name and style of “Soft Point Inc” and providing services of manpower towards the recruitment in private, Government and non-Governmental

organizations for the jobless youths, on goodwill and on minimum consultation charges. In the year 2014, when the Department of Transport of the State of Tamil Nadu announced the recruitment process, the petitioner informed one Rajkumar and other people about the vacancies existed then and the requisite qualification to participate in the selection process. Based on the said information, Mr.Rajkumar introduced Mr.Arulmani, the de-facto complainant in FIR No.344 of 2018. Again Mr.Arulmani introduced about 13 people for the valid services to be provided by the petitioner, for which the petitioner collected consultation charges from the said Arulmani, the de-facto complainant. When the candidates who had participated in the selection process were unable to get the jobs, for the reason that the Department has chosen meritorious candidates who secured more marks than the unsuccessful candidates, they insisted the said Arulmani to return the consultation charges, for which the petitioner refused saying that the consultation charges are part and parcel of his profession. When the petitioner denied the return of consultation charges, a dispute arose between the de-facto complainant and the petitioner. After sometime, the petitioner and the de-facto complainant had settled the dispute for repayment of

consultation charges in the year 2019. In the meanwhile, since the petitioner in Writ Petition No.18213 of 2022 left the ruling party and joined the opposition party, due to the political rivalry in intra party dispute and when the de-facto complainant had no intention to proceed with the alleged crime, since there was harmony and peace among the parties, due to political vendetta, FIR came to be registered, based on which, to the shock and surprise of the petitioner, he has received the summons of appearance from the Special Court. Subsequently, a charge sheet in C.C.No.8591 of 2019 was filed on 12.04.2019 before the Special Metropolitan Magistrate for trial of CCB and CBCID Cases, Egmore. Thereafter, the said C.C.No.8591 of 2019 was transferred to the Additional Special Court for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and re-numbered as C.C.No.25 of 2021 on 07.04.2021, that was challenged by the petitioner and the de-facto complainant before the High Court in Criminal Original Petition No.13374 of 2021. Considering the facts and circumstances of the case that the de-facto complainant, accused and victims have jointly compromised the issue, the accused pleaded to the High Court to quash the

entire proceedings, since the matter has been mutually and amicably settled among them. A supporting affidavit has also been filed by the de-facto complainant and 13 victims who were also arrayed as witnesses to the calendar case and the High Court, to secure the ends of justice, following the principles set out by the Apex Court in the judgment in *State of Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335*, quashed the entire proceedings in C.C.No.25 of 2021 vide order dated 30.07.2021 passed in Criminal Original Petition No.13374 of 2021, on the premise that if the trial is allowed to proceed, the parties/witnesses may turn hostile and they would report that there was no such occurrence etc. In the meanwhile, another final report was filed by the CCB, Chennai in C.C.No.24 of 2021 on 18.03.2021 showing the petitioner as Accused No.2, though there was no allegation or complaint against him. A mere perusal of the final report would reveal that the statements and findings are entirely false, contrary to the truth and fabricated for the reasons best known to the CCB, Chennai. A similar complaint lodged by one Mr.Devasagayam against various others was registered in Crime No.441 of 2015 dated 25.10.2015. But when the First Information Report does not involve the petitioner herein

in any manner, as he was unconnected to the entire dispute, the CCB, Chennai filed the final report in C.C.No.24 of 2021 showing the petitioner as Accused No.2. But there was no allegation or complaint and not even a statement against the petitioner. In the meanwhile, one witness R.B.Arunkumar filed a petition for further investigation in C.C.No.3627 of 2017, wherein also it has been stated that the petitioner was not connected to the occurrence, though specific complaints were raised against others in C.C.No.24 of 2021. The de-facto complainant Mr.Devasagayam also filed Criminal Original Petition No.15122 of 2021 seeking for de novo investigation, on the ground that the investigation culminated in the final report in C.C.No.24 of 2021 dated 18.03.2021 is contrary to the complaint of the de-facto complainant and this Court had granted interim stay of further proceedings in C.C.No.24 of 2021 observing that a prima facie case has been made out on the faulty and motivated investigation in C.C.No.24 of 2021. In the meanwhile, the petitioner received summons dated 19.08.2021 from the office of the Deputy Director, Enforcement Directorate, Madurai Sub Zonal Office in connection with ECIR/MDSZO/21/2021. Immediately the petitioner appeared before them

on 07.09.2021 and co-operated with the inquiry. But he was lodged inside a room and forced to give motivated statements. After few months, the petitioner received another summon dated 22.02.2022 to appear before them on 03.03.2022 and a further notice dated 04.03.2022 was issued directing him to appear on 10.03.2022. When the petitioner and his Auditor appeared and furnished various documents, they were unable to proceed and it has been finally argued that when the proceedings in C.C.No.25 of 2021 were also quashed by this Court in Criminal Original Petition No.13374 of 2021 vide order dated 30.07.2021 and the proceedings in C.C.No.19 of 2020 have been stayed until further orders by this Court in Criminal Revision Case No.224 of 2021 vide order dated 18.04.2022 and the proceedings in C.C.No.24 of 2021 have also been stayed until further orders by this Court in Criminal Original Petition No.15122 of 2021 vide order dated 01.10.2021, there is no basis for proceeding against the petitioner under the Prevention of Money-laundering Act, because the Hon'ble Supreme Court in *Vijay Madanlal Choudhary and others v. Union of India and others, 2022 (10) SCALE 577* has held that in the absence of proceeds of crime, the authorities under the Prevention of Money-laundering Act cannot step in or

initiate any prosecution, therefore, the writ petition deserves to be allowed, by quashing the impugned proceedings.

3. Mr.Aryama Sundaram, learned Senior Counsel appearing for the petitioner in Writ Petition No.18209 of 2022 pleaded at the outset that his client's case is squarely covered by the judgment of the Hon'ble Supreme Court in *Vijay Madanlal Choudhury and others case* (*supra)* in his favour, again proceeding further contended that Mr.R.V.Ashok Kumar is the brother of Mr.V.Senthil Balaji, who was the former Transport Minister during the period from 2011 to 2015. As his brother left the ruling party and joined the opposition party, to wreak political vendetta and due to political rivalry to fix him, to settle the political scores, allegations were levelled against the petitioner that he received money for appointment of Drivers and Conductors in the Transport Department through the other accused in the calendar cases. Due to the dispute cropped up in this regard, Mr.Devasagayam, Mr.Arulmani and Mr.V.Ganesh Kumar filed criminal cases, which came to be registered by the Central Crime Branch, Chennai for the alleged offence under Sections 406, 420 read with 34 of IPC in FIR

No.441 of 2015; for the offence under Sections 406, 420 and 506(i) of IPC in FIR No.298 of 2017 and for the offence under Sections 406, 420 & 506(i) of IPC in FIR No.344 of 2018, respectively. Consequent to the registration of the above First Information Reports, investigation agency proceeded with the investigation and the final reports were filed on various dates. So far as the petitioner is concerned, he was arrayed as Accused No.2 only in Crime No.344 of 2018 for the offence under Sections 406, 420 & 506(i) of IPC. One of the co-accused, Mr.B.Shanmugam challenged the final report filed in C.C.No.25 of 2021 before this Court in Criminal Original Petition No.13374 of 2021, however, the matter was settled amicably between the de-facto complainant and the other accused. After entering into a memorandum of compromise with the de-facto complainant, Mr.K.Arulmani filed an affidavit in Criminal Original Petition No.13374 of 2021 stating that the case was proceeded with an intention to settle the political scores. The proceedings in C.C.No.25 of 2021 were also quashed by this Court vide order dated 30.07.2021 in Criminal Original Petition No.13374 of 2021, on the ground that the parties had entered into a compromise and amicably settled the matter among themselves. Therefore,

the impugned proceedings initiated by the respondent are vexatious and non est in the eye of law and liable to be declared as illegal and arbitrary. When there is no predicate or scheduled offence against the petitioner and when the scheduled offence which becomes essential and fundamental to initiate proceedings under the Prevention of Money-laundering Act was quashed, consequently the proceedings under the Prevention of Money-laundering Act cannot survive, hence, the summon issued under Section 50 of the Prevention of Money-laundering Act is not legally sustainable, therefore the same is liable to be quashed.

4. Mr.Aryama Sundaram, placing reliance on a three-Judge Bench decision of the Apex Court in the case of *Arun Kumar and others v. Union of India and others, (2007) 1 SCC 732*, argued that a jurisdictional fact must exist before a Court assumes jurisdiction over a particular matter. If the jurisdictional fact does not exist, the Court, authority or officer cannot act. If a Court wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari, therefore, 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. When three jurisdictional facts are missing in the cases on hand, namely, (a) scheduled offence; (b) criminal activity and proceeds of crime i.e., the links/nexus between the crime and the proceeds, it is a well established legal position that the existence of jurisdictional fact is a sine qua non or condition precedent for the exercise of power by a Court of limited jurisdiction. In the cases on hand, when none of the jurisdictional facts had been established by the respondent, the issuance of the impugned proceeding calling upon the petitioner to appear for inquiry is non est in the eye of law. Mr.Aryama Sundaram again pleaded that when three criminal cases were registered in Crime No.441 of 2015 dated 29.10.2015, Crime No.298 of 2017 dated 09.09.2017 and Crime No.344 of 2018 dated 13.08.2018 by the Central Crime Branch, Chennai, which culminated in the proceedings under C.C.No.24 of 2021, C.C.No.19 of 2020 and C.C.No.25 of 2021 respectively before the Additional Special Court for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, the proceedings in C.C.No.25 of 2021 were quashed by this Court in Criminal Original Petition No.13374 of 2021 vide order

dated 30.07.2021 and in respect of the proceedings in the other two calendar cases in C.C.No.19 of 2020 and C.C.No.24 of 2021, the same have been stayed until further orders by this Court in Criminal Revision Case No.224 of 2021 vide order dated 18.04.2022 and in Criminal Original Petition No.15122 of 2021 vide order dated 01.10.2021 respectively, therefore, as per the ratio laid down by the Apex Court in *Arun Kumar and others v. Union of India and others, (2007) 1 SCC 732,* the existence of jurisdictional fact being a sine qua non or condition precedent for the exercise of power by the Court, the impugned summons shall be liable to go, as the respondent cannot proceed without there being any basis or foundation.

5. Mr.Sidharth Luthra, learned Senior Counsel appearing for the petitioner in Writ Petition No.18213 of 2022, reiterating the background facts of the case as projected by Mr.Aryama Sundaram, stated that since the petitioner came out from the then ruling party, the First Information Reports started coming in and he was not named in the First Information Reports. Only after the supplemental charge sheet was filed, he was shown as Accused No.1 for the offence under Sections 420, 120B of IPC and Sections

7 and 13(1) of the Prevention of Corruption Act. When the ECIR was registered on 29.07.2021, the Department did not have any material against the petitioner to bring him under the PMLA, because the Department itself has moved an application on 08.11.2021 seeking for production of First Information Reports etc. The request for furnishing unmarked documents were refused by the trial Court, as against which the respondent came to the High Court. The High Court in Criminal Original Petition Nos.5725 to 5727 of 2022 by order dated 30.03.2022 permitted the Enforcement Directorate to peruse the documents and take notes thereof. Aggrieved by this order, when one M.Karthikeyan (A3) in C.C.No.24 of 2021 filed a Special Leave Petition, this order was stayed by the Hon'ble Supreme Court in SLP(Crl.)(Diary) No.9957 of 2022 and the same is also pending in view of the stay granted by the Supreme Court. When the Hon'ble Supreme Court felt that there shall be tangible and credible evidence to proceed under the Prevention of Money-laundering Act, without there being any such evidence, the summons under Section 50 of the Act cannot be issued to the petitioner. Even the application dated 08.11.2021 made by the Department before the trial Court to produce the document would show that they did not

have any document. Therefore, when the respondent had no material, without making any predicate offence, the ECIR cannot be registered on 29.07.2021. In any event, as mentioned already, out of three calendar cases, the proceedings in one calendar case were quashed and the proceedings in two other calendar cases have been stayed, therefore, during the currency of order of stay, the impugned summons cannot be legally maintainable. Taking support from the judgment of the Apex Court in the case of *State of Punjab v. Davinder Pal Singh Bhullar and others, (2011) 14 SCC 770,* Mr.Luthra submitted that if a foundation is being removed, structure/work falls. In the cases on hand, as canvassed already, the proceedings in one of the calendar cases came to be quashed and the proceedings in the remaining two calendar cases have been stayed by this Court, besides, when there are no fundamental jurisdictional facts, the proceeds of crime and links are not even available, the legal maxim *sublato fundamento cadit opus,* meaning thereby that foundation being removed, structure/work falls, comes into play in the present cases.

6. Mr.Luthra, referring to paragraphs 107, 108 & 109 of the said judgment explained that it is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. Adding further, it was argued that in *Badrinath v. Government of Tamil Nadu, (2000) 8 SCC 395* and *State of Kerala v. Puthenkavu N.S.S. Karayogam, (2001) 10 SCC 191,* the Apex Court 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. Similarly in *Mangal Prasad Tamoli v. Narvadeshwar Mishra, (2005) 3 SCC 422,* he pleaded that the Apex Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside. Similarly, in the cases on hand, once the basis of the proceeding is quashed/gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is equally applicable to judicial, quasi-judicial and administrative proceedings also.

7. Mr.R.Sankaranarayanan, learned Additional Solicitor General appearing for the respondent argued that the present writ petitions are not maintainable, for the reason that they are highly premature, because, as per Section 50 of the Prevention of Money-laundering Act, the petitioners cannot be said to be aggrieved persons by mere issuance of summons. Since the CCB, Chennai had invoked the provisions which are scheduled offences as specified under paragraph-1 and paragraph-8 of Part-A of the Schedule appended to Prevention of Money-laundering Act, on a prima facie view that the petitioners had acquired proceeds of crime as defined under Section 3 of the Prevention of Money-laundering Act by commission of scheduled offence and subsequently layered/secreted the proceeds of crime and also projected the same as untainted, an Enforcement Case Information Report bearing No.ECIR/MDSZO/21/2021 dated 29.07.2021 was recorded by the respondent Department and thereafter investigation under the provisions of PMLA was initiated. As a part of investigation, the respondent Department, invoking Section 54(f) of the Prevention of Money-laundering Act, 2002, had even approached the CCB, Chennai with written communications dated 17.03.2021, 30.03.2021 and 08.09.2021 seeking copies of the documents

seized by them. But the Police failed to respond to any of the request made by the Department. Therefore, the respondent Department later on approached the Additional Special Court for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai in Crl.M.P.Nos.20053, 20054 and 20055 of 2021 against C.C.No.25 of 2021, C.C.No.19 of 2020 and C.C.No.24 of 2021 respectively, under Rule 210 of the Criminal Rules of Practice, 2019 for furnishing the certified copies of FIR, the statements of witnesses recorded under Section 161(3) and 164 of Cr.P.C., final report filed by the CCB, Chennai under Section 173(2) of Cr.P.C., copies of the data recorded in digital evidences, relied upon documents and the copies of e-mail correspondences recovered during the course of investigation by the CCB, Chennai. The Additional Special Court partially allowed the petitions in its order dated 09.11.2021 by granting the certified copies of FIR, the statements of witnesses recorded under Section 161(3) and 164 of Cr.P.C., and the final report filed by the CCB, Chennai under Section 173(2) of Cr.P.C., however, the trial Court declined to grant the certified copies of the unmarked documents. Therefore, the respondent Department approached the High Court with Criminal

Original Petition Nos.5725 to 5727 of 2022 seeking a direction to the Additional Special Court to grant the certified copies of the unmarked documents. After hearing the cases, the High Court, by order dated 30.03.2022, setting aside the order passed by the trial Court, allowed the Enforcement Directorate to inspect the records under Rule 237(1) and to take extracts and notes of the contents of the documents which they require. However, the said order of the High Court was challenged by one M.Karthikeyan (A3) in C.C.No.24 of 2021, before the Supreme Court in SLP (Crl.) Diary No.9957 of 2022 and the Hon'ble Supreme Court in its order dated 19.04.2022 granted interim stay of operation of the order of the High Court.

8. Coming to the judgment of the Apex Court in the case of *Vijay Madanlal Choudhary and others v. Union of India and others*, *2022 (10) SCALE 577,* learned Additional Solicitor General argued that the Hon'ble Apex Court also has held against the petitioners that the non-supply of ECIR copy in a given case cannot be faulted, because the ECIR cannot be equated with that of First Information Report that is mandatorily required as

per the provisions of the 1973 Code. However, coming to the ratio laid down by the Apex Court in *Vijay Madanlal Choudhary and others (supra)*, Mr.Sankaranarayanan fairly conceded that the Apex Court in paragraph 187(v)(d) has held that 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. Therefore, in the present cases, since the High Court in its order dated 30.07.2021 passed in Criminal Original Petition No.13374 of 2021 filed by one of the petitioners had quashed the proceedings in C.C.No.25 of 2021 on the file of the Additional Special Court for Trial of Cases related to Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, the respondent Department will not proceed against the persons named in C.C.No.25 of 2021 alone are concerned. However, so far as the orders of stay granted in respect of the proceedings in C.C.No.19 of 2020 and C.C.No.24 of 2021 are concerned, the respondent Department can proceed against the accused therein, for the simple reason that the offence under Section 3 of the Prevention of Money-

laundering Act is an independent and standalone offence, hence, the respondent is unaffected by the orders of stay. Explaining further, the learned Additional Solicitor General argued that the degree of proof of the scheduled offence and the offence of money-laundering are altogether different, as the Prevention of Money-laundering Act is a special statute, casting a burden on the person charged with the offence of money-laundering to prove that such proceeds of crime are untainted. On this basis, learned Additional Solicitor General pleaded that the offence under the Prevention of Money-laundering Act is a standalone offence, therefore, the summons issued under Section 50 of the Prevention of Money-laundering Act have to be obeyed and it cannot be questioned before this Court. Again taking support from the judgment of the Apex Court in *Union of India and another v. Kunisetty Sathyanarayana, (2006) 12 SCC 28*, Mr.Sankaranarayanan submitted that no writ will lie against the charge sheet or show cause notice. Since the Apex Court has held that a writ will lie when some right of any party is infringed and a mere show cause notice or charge sheet does not infringe the right of any one, these writ petitions are liable to be dismissed.

9. In reply, Mr.Aryama Sundaram, learned Senior Counsel argued that the Prevention of Money-laundering Act is draconian and misusing the provisions of the Act against the petitioner in W.P.No.18209 of 2022, the respondent issued summons after summons to him asking for details of immovable properties, jewels, bank accounts, etc. In this case, Section 50(1) would not at all apply, as the petitioner cannot be summoned to give evidence. When the details sought for by the Department were furnished like Aadhar and PAN card, final summons issued under Section 50(2) & (3) for the mandatory personal appearance of the petitioner are without any legal authority. The petitioner has appeared once and his Auditor has appeared twice and seven summons have been issued totally. When the underlying offence in C.C.No.25 of 2021 has been quashed by this Hon'ble High Court in Criminal Original Petition No.13374 of 2021 on 30.07.2021, there are no proceeds of crime, yet to say the petitioner is an accused, is highly unfair and unlawful. Referring to para-18 and also para-31(iv) of the counter affidavit, Mr.Aryama Sundaram pleaded that the Prevention of Money-laundering Act has been used as a fishing expedition without any basis against the petitioner, as the Supreme Court has recently observed

that there should be a reason to believe and some material should be there to suspect to believe. The respondent has informed the Court moving an application dated 08.11.2021 stating that there is no material, hence, they should be furnished with all the documents including unmarked documents, failing which their investigation against the petitioners will be paralysed. When the respondent does not have any material, they cannot collect any evidence under Section 50 of the Prevention of Money-laundering Act, especially, when Section 50 is an innocuous provision asking for the personal appearance which can only be for giving evidence. Referring to pages 21 & 22 of the counter affidavit (paras 34 & 35), learned Senior Counsel stated that the statement did not disclose the proceeds of crime or the link with the proceeds of crime to connect the petitioner when the underlying case in C.C. No.25 of 2021 has been quashed.

10. Arguing further, learned Senior Counsel argued that there should be a scheduled offence and there should be a live proceedings viz., stage of preliminary inquiry, stage of registration of FIR, stage of first charge sheet and stage of trial. All are part of existence of scheduled offence. But if the

same are quashed and closed, there is no live proceedings. In none of the cases, there is any proceeds of crime. In the case of the petitioner, there is no live crime, because it has been quashed. Referring to paras 53 to 55 of the Supreme Court judgment in Vijay Madanlal Choudhary and others, at page 297 of the paperbook, he finally referred to the ratio decidendi at page 533, para 187(iv)(d). Concluding his reply, Mr.Aryama Sundaram summed up as follows:-

(1) So far as the petitioner is concerned, on the strength of the judgment of the Supreme Court in *Vijay Madanlal Choudhary and others*, merely on the ground that when the underlying offence is quashed, there cannot be any offence of money laundering.

(2) The other three grounds are common with everybody else. According to him, there are no proceeds, leave alone proceeds of crime, atleast they should have proceeds. But there are no proceeds, therefore, the second essential fact is also missing for invoking the jurisdiction.

(3) They should identify the proceeds and have reason to believe that there are proceeds of crime. In these cases, they have not identified the proceeds, leave alone for linking / reason to believe.

(4) In the cases on hand, the Department themselves say that they had no material on the date of initiation of proceedings. Proceedings have been initiated on 29.07.2021. Para-5 of the counter affidavit admits that the crime was registered on 29.07.2021, but they did not have the copies of documents to initiate proceedings, as only on 08.11.2021 in the application moved before the Additional Special Court, they sought for copies of documents. Therefore, the initiation of proceedings on 29.07.2021 was bad in law.

(5) The respondent has stated that today they have no material. If they have no material, they had no proceeds of crime as to cause a link, therefore the summon issued under Section 50 is bad and has to be quashed, as it is colourable exercise of power and also violative of the petitioners' rights under Art.20(2). In the absence of any material, as per para 54 of the judgment of the Supreme Court in Vijay Madanlal Choudhary and others, they cannot step in under the Prevention of Money-laundering Act. Therefore, the ECIR proceedings themselves are without authority of law, especially, in the case of the petitioner, the underlying offence has been quashed.

11. Heard learned counsels appearing for the parties and perused the materials available on record.

12. The petitioners in all the writ petitions were issued with summons on various dates to appear before the respondent. It is also not disputed by the respondent that the petitioners have either appeared in person or through their authorised representatives. It is pertinent to note that the respondent initiated proceedings in F.No.ECIR/MDSZO/21/2021 pursuant to the First Information Reports in Crime Nos.298 of 2017, 441 of 2015, 344 of 2018, which have been assigned C.C.No.19 of 2020, C.C.No.24 of 2021 and C.C.No.25 of 2021 respectively. Mr.Sidharth Luthra, learned Senior Counsel had submitted that the proceedings in respect of C.C.No.25 of 2021 have been quashed by this Court in Criminal Original Petition No.13374 of 2021 vide order dated 30.07.2021. He had also submitted that the proceedings in C.C.No.19 of 2020 have been stayed until further orders by virtue of the order dated 18.04.2022 passed in Criminal Revision Case No.224 of 2021. He has also brought to our notice that another proceedings in C.C.No.24 of 2021 also have been stayed by virtue of the order dated 01.10.2021 passed in Criminal Original Petition No.15122 of 2021. The said facts have not been disputed by Mr.R.Sankaranarayanan, learned Additional Solicitor General appearing on behalf of the respondent.

13. We have also gone through the judgment of the Hon'ble Apex Court in *Vijay Madanlal Choudhary and others, 2022 (10) SCALE 577*, which has dealt with the validity of the Prevention of Money-laundering Act in extenso. The Hon'ble Apex Court, while dealing with the powers of the authority to proceed against a person under the Prevention of Money-laundering Act, has categorically held that when a person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by a Court of competent jurisdiction, then, there can be no offence of money-laundering against that person. This ratio also has been subsequently followed by the Supreme Court in *Parvathi Kollur and another v. State by Directorate of Enforcement, 2022 LiveLaw (SC) 688.* For better appreciation, paragraph 187(v)(d) of the judgment of the Apex Court in *Vijay Madanlal Choudhary and others,* is extracted as follows:-

> "187. 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 inquiry/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."

(emphasis supplied)

14. As stated supra, it is an admitted fact by the counsels appearing on either side that the proceedings in C.C.No.25 of 2021 have been quashed. The above legal position is no longer res integra, in the light of the judgment mentioned supra, therefore, agreeing to the said proposition, Mr.R.Sankaranarayanan, learned Additional Solicitor General has fairly conceded that the respondent Department would not proceed against the

persons in C.C.No.25 of 2021. Accordingly, we record his statement that the respondent-department will not proceed against the persons in C.C.No.25 of 2021. But, however, learned Additional Solicitor General argued that the benefit of the order of quash cannot be extended to the orders of stay granted in two other cases, as they should come for inquiry responding to the summons issued under Section 50. He also submitted that the orders of stay granted by this Court in respect of the proceedings in C.C.No.19 of 2020 and C.C.No.24 of 2021 will not enure to the petitioners, for the reason that if the cases are allowed to be kept pending, then there are every chances of the persons involved in the offence of money-laundering to erase the evidence. On the contrary, the learned Senior Counsels appearing for the petitioners vehemently contended that when the proceedings have been stayed, that too, in quash petition and criminal revision, and if finally the said cases are allowed, and in the meanwhile, if the respondent is allowed to proceed and take any coercive steps against the petitioners protected by the orders of stay, the prejudice caused to the petitioners cannot be effaced and it would cause severe hardship and irreparable loss to them. Mr.Sidharth Luthra, learned Senior Counsel,

persuading us to drive home his point, relied upon an order passed by a learned single Judge of the Calcutta High Court in WPA No.17454 of 2022 dated 10.08.2022 (*M/s Rashmi Metaliks Limited and another v. Enforcement Directorate and others),* holding that during the subsistence of the order of stay, the respondent Department cannot initiate any action.

15. What is the effect of a stay order?

The effect of an order of stay means that the operation of the impugned order is stayed or stands stalled as if the impugned order does not exist. Therefore, to bring the parties to the proceedings from taking further action in relation to the subject matter pending the final adjudication, stay order is granted in the interest of both parties. During the currency of stay order, if any proceedings are permitted to go on and in the meanwhile, if any damage has been caused to the reputation or the goodwill of the parties, the same cannot be compensated. Whereas if the Department waits for the final outcome of the proceedings, no prejudice would be caused to them. In all these cases, the admitted case of the respondent Department is that the ECIR has been initiated based on the three First Information Reports in

Crime Nos.441 of 2015, 298 of 2017, 344 of 2018, which culminated in the proceedings in C.C.No.24 of 2021, C.C.No.19 of 2020 and C.C.No.25 of 2021 respectively and the proceedings in C.C.No.25 of 2021 culminating from Crime No.344 of 2018 have been quashed. The calendar cases arising out of the other two First Information Reports have been stayed. As stated supra, since the ECIR itself was only on the basis of the said three First Information Reports, when the proceedings pursuant to the said First Information Reports have been stayed by the High Court, whether the ECIR, which is also pursuant to the First Information Reports, can be proceeded with, is a question that stares at open. Our considered answer is in the negative.

16. Because, it is not the case of the respondent that apart from the above three First Information Reports, there are other materials based upon which they have initiated the proceedings under the Prevention of Money-laundering Act. Hence, in our view, when the calendar cases which culminated from the said two First Information Reports also have been stayed, the respondent Department should also refrain itself from

proceeding any further, as it is their admitted case that the summons issued to the petitioners are pursuant to the initiation of ECIR based upon the three First Information Reports.

17. Learned Senior Counsels appearing for the petitioners in extenso argued that there is no jurisdictional facts to initiate the proceedings under the Prevention of Money-laundering Act. According to them, the following jurisdictional facts have to be there for initiating proceedings under the Prevention of Money-laundering Act.

Firstly, there must be predicate/scheduled offence.

Secondly, there must be a criminal activity.

Thirdly, there must be proceeds of crime which is quintessential to connect the first and second i.e. Scheduled offence and criminal activities.

According to them, except for the three First Information Reports indicating commission of scheduled offence, there is no document or pleading on the side of the respondent to substantiate that there are proceeds of crime as per Section 2(1)(u) of the Prevention of Money-laundering Act

and that proceeds had a link with the scheduled offence. According to them, out of three calendar cases, one has been quashed and two Calendar Cases have been stayed. Therefore, in the eye of law, firstly, there is no scheduled offence as per section 2(y) of the Prevention of Money-laundering Act, 2002 as on this date for the respondent to proceed under the said Act.

18. On the contrary, Mr.R.Sankaranarayanan, learned Additional Solicitor General strenuously contended that it is true that the proceedings have been stayed, but that does not mean the offence has been wiped out. Till it is quashed by a competent Court or the person is discharged or acquitted, the offence continues to be alive and the respondent has the authority to proceed under the Act.

19. Let us see what is the jurisdictional fact to be taken into account by a Court before assuming jurisdiction over a particular matter. The Hon'ble Supreme Court explaining the above facts in *Arun Kumar and others v. Union of India and others, (2007) 1 SCC 732,* has held as follows:-

"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."

Further, the Apex Court in the case of *State of Punjab v. Davinder Pal Singh Bhullar and others, (2011) 14 SCC 770*, has held that if a foundation is being removed, structure/work falls.

20. A mere perusal of the above judgment clearly shows that the existence of jurisdictional fact is a condition precedent for the exercise of power by a Court of limited jurisdiction. Therefore, in the cases on hand, when there is no cause of action, since the proceeding in one of the calendar cases was quashed by the order dated 30.07.2021 in Criminal Original Petition No.13374 of 2021 and the proceedings in two other calendar cases have been stayed by this Court, there is no jurisdictional fact or cause of action for the respondent/department to initiate any proceedings during the period of order of stay operating against the two FIRs. Viz. C.C.No.19/2020 and C.C.No.24 of 2021.

21. Secondly, as already held by us, when the basis, namely, the proceedings which culminated through the First Information Reports had been stayed, the respondent should await the result of such proceedings before continuing any further under the Prevention of Money-laundering Act. It is the further case of the learned Additional Solicitor General that the Hon'ble Supreme Court in *Vijay Madanlal Choudhary and others* has held that the summons issued to the individual is to collect factual evidence as regards to the offence of money-laundering. It is his further case that only after concluding such inquiry, the authorities under the Prevention of Money-laundering Act could proceed any further as provided under the Act, that is, after ascertaining the proceeds of crime and its nexus with the scheduled offence. Till the First Information Report is quashed, the scheduled offence continues to be alive.

22. In our view, the grant of stay of any particular proceedings would amount to eclipsing the proceedings initiated. An order of stay is interim in nature pending the final proceedings. The Hon'ble Apex Court in *State of*

*Haryana and others v. Bhajan Lal and others, 1992 Supp (1) SCC 335*, in paragraph-5 stated thus:

> "Everyone whether individually or collectively is unquestionably under the supremacy of law. Whoever he may be, however high he is, he is under the law. No matter how powerful he is and how rich he may be."

Therefore, the Apex Court has given the guidelines to be followed by the Courts while exercising the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code that where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not constitute any offence or make out a case against the accused, based on which, when the orders of stay are granted, the parties to the proceedings bound by the rule of law, should abide by the orders of stay. In this background, when the learned Additional Solicitor General appearing for the respondent fairly conceded that in view of the order of quash passed in Criminal Original Petition No.13374 of 2021 dated 30.07.2021, the respondent Department would not proceed against the accused therein, the same analogy would

equally apply to the other cases, where orders of stay granted are operating against the C.C.No.19/2020 and C.C.No.20 of 2020 based on which the ECIRs are recorded and summons are issued till the cases are decided. Therefore, the impugned proceedings/summons do not have any legal sanctity. Interim order of stay granted will be subject to the final orders in the main proceedings, after which the eclipse would also wane away. In such circumstances, we are not inclined to enter upon the merits and de-merits of the proceedings initiated by the Department, as it is at the stage of budding. It may either blossom into a full flower or wither away. Hence, we leave open all the questions that are raised on the merits and de-merits of the proceedings initiated by the respondent, to be dealt with in appropriate proceedings.

23. Generally, the summons are issued for appearance of a party on a particular date. If a party does not appear on the given date, fresh summons demanding the appearance of the person have to be issued. In the present cases, in view of the reasonings and the findings as stated supra, the last of the summons issued to the petitioners for their appearance on 09.05.2022

have elapsed. Therefore, as we have concluded that in view of the quashing of the proceedings in C.C.No.25 of 2021 and staying of the proceedings in C.C.No.19 of 2020 & C.C.No.24 of 2021 as highlighted above, the scheduled offence for the present is eclipsed, suspended or stop operating during the period of stay, the respondent Department has to await the finality of the said proceedings. Needless to mention, if the proceedings in C.C.No.19 of 2020 and C.C.No.24 of 2021 are quashed pursuant to the orders in the applications filed by the respective persons to quash the proceedings, in which event, the respondent cannot step in or initiate any proceedings under the Prevention of Money-laundering Act, as held by the Hon'ble Supreme Court in *Vijay Madanlal Choudhary and others* and in *Parvathi Kollur and another v. State by Directorate of Enforcement, 2022 LiveLaw (SC) 688* cited supra. Therefore, the respondent is hereby refrained from proceeding any further pursuant to the impugned proceedings in ECIR/MDSZO/21/2021, till the disposal of the Criminal Revision Case No.224 of 2021, Criminal Original Petition No.15122 of 2021 and the SLP (Crl) Diary No.9957 of 2022 (SLP (Crl) No.3841 of 2022).

24. In the light of the above directions, the writ petitions are allowed. Consequently, W.M.P.Nos.11607, 13488, 17546, 17547, 17552, 17553 of 2022 are closed. However, there is no order as to costs.

Speaking/Non speaking order (T.R.,J.) (K.B.,J.)

Index : yes 01.09.2022

ss

To

1. The Deputy Director
   Directorate of Enforcement
   Ministry of Finance
   Chennai-II Zonal Office
   Chennai 600 006

T.RAJA, J.

and

K.KUMARESH BABU, J.

ss

Order in

W.P.Nos.12159, 18209 & 18213 of 2022

01.09.2022