

THE HONOURABLE SRI JUSTICE M. LAXMAN

CRIMINAL PETITION No.634 OF 2021

ORDER:

1. This petition is filed under Section 482 of the Criminal Procedure Code, 1973 (Cr.P.C) seeking to quash the proceedings in file No.ECIR/HYZO/36/2020 on the file of the Directorate of Enforcement, Hyderabad.

2. The present Enforcement Case Information Report (for short, 'ECIR') was registered on the basis of registration of FIR No.12/2019, dated 10.04.2019, registered by Economic Offences Wing of Bhopal, for the offences under Sections 420, 468, 471 and 120-B of the Indian Penal Code, 1908, Section 66 of the Information Technology Act, 2000 and Section 7 of the Prevention of Corruption (Amendment) Act, 2018 read with Section 13 (2) of the Prevention of Corruption Act, 2018.

3. The sum and substance of the case of the Enforcement Directorate is that there was unauthorised access to the e-tenders issued on Madhya Pradesh e-Procurement Portal. The said e-Procurement Portal is maintained by Madhya Pradesh State Electronics Development Corporation, M/s.Antares Systems Limited, Bangalore and M/s.Tata Consultancy Services. The contract was given for five years to maintain and operate the said

portal. The above companies are accountable for security of e-procurement portal.

4. While so, on the allegations of tampering of e-tenders, a preliminary enquiry was conducted, wherein it was found that e-tender Nos.91, 93 and 94 for total amount of Rs.1769 crores of M.P.Water Corporation were tampered and the price bids of M/s.GVPR Engineers Limited (tender No.91), M/s.The Indian Hume Pipe Company Limited (tender No.93) and M/s.JMC Project India Limited (tender No.94) were changed. Similarly, various other tenders of different Government Departments were also tampered and the price bids of specific applicant companies were changed. As a result, those companies became lowest bidders and their tenders were accepted, thereby such companies have got undue benefit. The details of tampered tenders are as follows:

- (i) 2 tenders vide Nos.49985 & 49982 of PWD totalling to Rs.13.46 crore were tampered and changed to price bid of M/s.Ramkumar Narwani.
- (ii) Tender No.49813 of Rs.15 crore of Project Execution Unit was tampered and changed to price bid of M/s.Sorathia Velji Ratna & Co., Vadodara, Gujarat.
- (iii) Tender No.786 for Rs.7.86 crore of M.P. Road Development Corporation was tampered and changed to price bid of M/s.Madhav Infra Projects, Gujarat.
- (iv) Tenders vide Nos.10030 & 10044 for total amount of Rs.1135 crore was tampered and changed to price bid of M/s.Max Mantena Micro JV, Hyderabad (Rs.1030 crore) and M/s.Sorathia Velji Ratna & Co.

5. The contents of ECIR further disclose that the beneficiary companies used the digital certificates of tender opening authority of concerned department to make unauthorised access by obtaining their user ID No.P.T_4 on IP address - 27.60.163.98 & 27.60.185.14. The mobile number linked to the said IP addresses was of Vinay Chaudhary, Marketing Director of M/s. Osmo I.T. Solutions Private Limited. Apart from that, the digital signature certificates made by e-mudra registering authority of the concerned departments i.e., Sumeet Gowalkar, Sushil Kumar Sahu, Ratnesh Jain and Kiran Sharma were also used for tampering. Such openings were done in pursuance of criminal conspiracy by all stakeholders involved in the process.

6. The Enforcement Directorate probed into e-tenders of Madhya Pradesh Government from 2016 onwards and they suspected generation of crime proceeds of Rs.80,000 crores. On the basis of said material, the present ECIR was registered for the offence under Section 3 r/w Section 4 of the Prevention of Money Laundering Act, 2002 (for short, 'PML Act').

7. The contents of ECIR further disclose that the Economic Offences Wing of Bhopal has registered FIR, completed investigation and filed two charge sheets charging the officials of M/s. Osmo I.T. Solutions and some of the Government officials.

The concerned trial Court, on the basis of the said charge sheet conducted trial and acquitted all the accused. As of now, there is no appeal against the acquittal order and the acquittal order attained finality. The entire investigation which culminated into filing charge sheet for the scheduled offences is with reference to e-tenders, which are detailed in para No.4.

8. The investigation and charge sheet do not refer to larger investigation as projected by the Enforcement Directorate which suspected that the tampering was done in respect of various other e-tenders to a tune of Rs.80,000 crores from 2016 onwards. The said suspicion is not materialised till today and no scheduled offences were registered by the competent authority to investigate into such scheduled offences. Apart from the same, no complaint has been lodged by the Enforcement Wing of the Enforcement Directorate. They only suspect that tampering was done in respect of various e-tenders to a tune of Rs.80,000 crores from 2016 onwards, for which, Enforcement Directorate is entitled to avail civil and criminal remedies under the PML Act. Neither fresh FIR was issued nor any further investigation was conducted into the offence of tampering of tenders from 2016 onwards, so as to proceed with civil and criminal remedies under the PML Act

relating to crime proceeds. In the above background of facts, the present criminal petition is filed by the petitioner seeking quash.

9. The contention of the learned counsel for the petitioner is that the petitioner's company participated in Tender No.10030, which is worth of Rs.1030 crores and the participating company was joint venture M/s. Max Manthena Micro JV, Hyderabad. The tenders were submitted by the representatives of the joint ventures, who were authorized to take care of the tender process and other related matters. The petitioner herein is only the Director of M/s.Max Manthena, which is one of the two joint venture companies and they jointly nominated the authorized persons to participate in the tender process. At the most, if any offence is alleged to have been committed, it must be by the representatives, who were authorized to participate in the bids and in the tender process, who are responsible for the same. But, the petitioner cannot be prosecuted unless there is generation of crime proceeds, which are in the possession of the petitioner.

10. It is further contended that the entire proceedings under the PML Act shall be based on the final reports filed in the scheduled offence or the complaint which would *prima facie* make out commission of scheduled offence as well as generation of funds. In the absence of such final report, initiation of

proceedings based on suspicion is untenable and cannot be sustained.

11. It is his further contention that ECIR is equivalent to FIR and such proceedings cannot be continued forever based on suspicion, unless there is *prima facie* material exists with regard to commission of offence. In fact, the petitioner is Director of M/s. Manthena Construction Private Limited and he is unconcerned with the tender process.

12. The further contention is that the entire claim of involvement of the M/s. Max Manthena Micro JV, is based on the deposit of amount to the credit of M/s.Arna Infra represented by Aditya Tripathi, who in turn allegedly paid the amount to influence the officials of M/s.OSMO I.T. Solutions and others i.e., accused Nos.1 to 3 by depositing the amount into the account of M/s.OSMO I.T. Solutions. Basing on such deposit, allegations were made that the Joint Venture Company used the services of Aditya Tripathi to influence upon accused Nos.1 to 3 to tamper the e-tender floated by the Joint Venture Company, so as to claim the allotment of e-tender filed by them. The said accused persons were acquitted by the concerned trial Court. The acquittal demonstrates the absence of commission of scheduled offence and

generation of crime proceeds. Therefore, continuation of alleged proceedings is abuse of process of law.

13. Learned counsel for the petitioner lastly contended that the triggering point for initiation of civil and criminal proceedings under the PML Act is commission of scheduled offence and generation of crime proceeds. It is contended that in the present case, though scheduled offence has allegedly been committed as referred in the FIR which results in allotment of tender to the Joint Venture Company and its participation in the tender process, but contract was not assigned to the Joint Venture Company and no amounts were received from the Government. This fact indicates the absence of generation of crime proceeds. Therefore, the issuance of ECIR and the criminal proceedings are without jurisdiction and same shall not be continued, more particularly in the light of the acquittal of the accused. In support of his contention the learned counsel for the petitioner relied upon the decisions in (i) Vijay Madanlal Chowdary V. Union of India¹, (ii) State of Punjab V. DAVinder Pal Singh Bhullar ², (iii) Parvathi Kollur V. State represented by Directorate of Enforcement³, (iv) Indrani Patnaik V. Enforcement Directorate⁴,

¹ 2022 SCC OnLine SC 929

² 2011 (14) SCC 77

³ CrI.Appel No.1254 of 2022 in SLP (CrI)No.4258 of 2021

⁴ WP (C) No.368 of 2021

(v) M/s. Jagati Publication Limited V. Enforcement Directorate⁵,
 (vi) B. Shangmugaum V. Karthik Dasari⁶, (vii) Amrbish Singh
 Ahulwalla V. The Assistant Director, Directorate Enforcement,
 Chennai⁷, (viii) Selvi Pushpam Appala Naidu V. Directorate of
 Enforcement⁸, (ix) Glaxten Grace V. The State represented by
 the Assistant Director, Directorate of Enforcement⁹, (x) M/s.
 Nik Nish Retail Ltd. V. Assistant Director, Directorate of
 Enforcement¹⁰, (xi) Directorate of Enforcement V. M/s.
 Obulapuram Mining Company Pvt. Ltd.¹¹, (xii) Rashmi Metalinks
 Limited V. Enforcement Directorate¹², (xiii) M/s. Prakash
 Industries V. Directorate of Enforcement¹³, (xiv) EMTA Coal Ltd.
 V. Dy. Director, Directorate of Enforcement¹⁴, (xv) Smt. Urmila
 Devi V. The State (NCT of Delhi)¹⁵, (xvi) Sunil Kumar V. State¹⁶,
 (xvii) Suresh Chowdary V. Sate of Bihar¹⁷, (xviii) O.P.Malhotra
 V. The State¹⁸ and (xix) Central Bureau of Investigation V.
 Akhilesh Singh¹⁹.

⁵ CR. Petition No.1072 of 2021

⁶ 2022 SCC Online Mad 4417

⁷ CrI.R.C.No.971of 2022

⁸ CrI.O.P.No.2279 of 2019 dt.12.09.2022

⁹ CrI.O.P.No.19364 of 2022 dt. 19.09.2022

¹⁰ CRR.No.2752 of 2018 dt.28.11.2022

¹¹ CrI.A.No.1269 of 2017

¹² 2022 SCC Online Cal 2316

¹³ W.P.(C) 14999/2021

¹⁴ W.P.(C) 3821/2022

¹⁵ 2006 (3) JCC 1642

¹⁶ 81 (1999) DLT 197

¹⁷ (2003) 4 SCC 128

¹⁸ 2005 (2) JCC 1108

¹⁹ (2005) 1 SCC 478

14. The learned counsel representing Enforcement Directorate has contended that the acquittal of accused for scheduled offence has no bearing on the present proceedings. According to him, there is no need to mention the name of the accused in the FIR and the main requirement is commission of scheduled offence and generation of crime proceeds. In the present case, the allegations clearly prove that there is commission of scheduled offence and generation of crime proceeds. Therefore, the proceedings cannot be quashed against the petitioner since *prima facie* case is made out from the ECIR. In support of his contentions, he relied upon the decisions in (i) CBI V. Thommandru Hannah Vijayalakshmi alias T.H.Vijayalakshmi²⁰, (ii) N. Dhanraj Kochar V. The Director, Directorate of Enforcement²¹, (iii) Anoop Bartaria V. Deputy Director, Enforcement Directorate²² and (iv) Directorate of Enforcement V. Padmanabhan Kishore²³.

15. Before, I deal with the contentions of learned counsel for both sides, it is apt to refer to certain provisions of the PML Act. The PML Act prescribes two remedies in respect of crime proceeds i.e., Civil and Criminal proceedings. To invoke such remedies, twin requirements must exist. First requirement is Commission of

²⁰ 2021 SCC OnLine SC 923

²¹ Cr.L.O.P.No.SR 46376 of 2021

²² SLP (Cr.) No.2397-2398 of 2019

²³ 2022 SCC OnLine SC 1490

Scheduled Offence and second requirement is generation of Crime Proceeds therefrom.

16. It is apt to refer to Section 2 (u) of the PML Act which defines "proceeds of crime", Section 3 of the PML Act which defines money laundering and Section 4 contemplate punishment for offence under Section 3 and they read as under:

"Section 2: Definitions:-

(a) to (t) xxx

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation:- For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence."

Section 3: Offence of Money laundering:-

Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the [proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.

Explanation:- For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is

actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property; or
- (f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

“Section 4: Punishment for money-laundering:-

Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine.

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

17. A reading of above provisions and explanations, it is crystal clear that proceeds of crime include not only property derived or obtained from the scheduled offence, but also any property which may directly or indirectly derived or obtained as a result of any criminal activity of schedule offence.

18. To constitute offence of money laundering, there must be generation of property derived or obtained, directly or indirectly as a result of criminal activity relatable to the schedule offence.

19. A reading of Section 3 of the PML Act, it is clear that the person accused of offence under this Act must be involved directly or indirectly or attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in any processes or activities connected with the proceeds of crime which includes concealment or possession or acquisition or use or projecting or claiming as untainted property in any manner whatsoever.

20. Section 4 of the PML Act provides two different punishments for the offence of money laundering based on gravity of scheduled offence. One category of punishment is minimum punishment, shall not be less than three years, but which may extend to seven years. In other category, the punishment prescribed is not less than three years, but which may extend to ten years.

21. Section 5 of the PML Act empowers provisional attachment of property involved in the offence, which reads as under:

"Section 5 : Attachment of property involved in money-laundering:-

(1)Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe the reason for such

belief to be recorded in writing, on the basis of material in his possession, that—

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter,

he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed:

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973 (2 of 1974), or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:

Provided further that, notwithstanding anything contained in first proviso, any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money-laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

Provided also that for the purposes of computing the period of one hundred and eighty days, the period during which the proceedings under this section is stayed by the High Court, shall be excluded and a further period not exceeding thirty days from the date of order of vacation of such stay order shall be counted.;

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, along with the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (3) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation.— For the purposes of this sub-section, “person interested”, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.”

22. Section 8 of the PML Act empowers provisional attachment of property involved in the offence, which reads as under:

“Section -8: Adjudication.

(1) and (2).....

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and

record a finding to that effect, whereupon such attachment or retention or freezing of the seized or frozen property or record shall:-

(a) continue during investigation for a period not exceeding three hundred and sixty-five days or the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be;

and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58B or sub-section (2A) of section 60 by the Special Court;

23. A glance of above provisions, they show that even for provisional attachment, there must be a final report under Section 173 of Cr.P.C in respect of scheduled offence or a complaint, which is lodged by the person authorized to investigate for the scheduled offence under the PML Act before the Magistrate or Court for taking cognizance. Such prescription is intended to have sufficient material with Magistrate or Court for taking cognizance for the scheduled offence under the PML Act. The only exception is existence of reason to believe on the basis of material in possession of Director or his authorized person not below rank of Deputy Director, that the property involved in money-laundering is not immediately attached and that the non-attachment of the property is likely to frustrate any proceeding under this Act. In

such circumstances, he can attach provisionally without final report or complaint.

24. Further, after passing the provisional attachment, the proceedings must be referred to adjudicating authority for adjudication under Section 8 of the PML Act either to confirm or reject provisional attachment order. The adjudicating authority with due notice to the affected parties shall pass final order giving finding whether any property is involved in money-laundering or not and confirm the provisional attachment, if such property is involved in money laundering and not released the attachment. Such final order of confirmation of attachment will last for one year, if the investigation is pending or during pendency of proceedings relating to any offence under the PML Act before Special Court and shall terminate with passing of confiscation order by special court trying offence under the PML Act and attains finality. This condition demonstrate speedy conclusion of investigation.

25. The language used for initiating civil proceedings under this Act suggest that to deprive property of a person even temporarily pending adjudication by adjudicating authority, final report under Section 173 Cr.P.C must be filed for scheduled offence or a complaint from authorized investigating officer of scheduled

offence before Magistrate or Court authorized to take cognizance. The only exception is need of immediate attachment to prevent frustration of proceedings under the PML Act. The authorities cannot make exception as rule.

26. Sections 16, 17 and 18 of the PML Act enable the authorities to conduct survey, search of premises and person and seizure of any record or property on basis of information or material in their possession having reasons to believe (shall record in writing) commission of money laundering, possession of crime proceeds, records relating to money laundering and possession of property relating to scheduled crime.

27. If any seizure is effected after survey, search of premises and person, such officer shall forward a copy of the reasons so recorded along with material in his possession to the adjudicating authority. Such officer is also obligated to make an application before the adjudicating authority within a period of 30 days from the date of seizure for retention of any record or property seized.

28. Prior to omission of proviso, search of a person is prohibited unless final report is filed under Section 173 of Cr.P.C. for scheduled offences referred in clause (a) of proviso before court competent to take cognizance of scheduled offence. For clause

(b) proviso, filing final report under Section 173 of Cr.P.C. or a complaint by the investigating officer, who is competent to do investigation for taking cognizance for scheduled offence under the PML Act.

29. Originally, the framers of law are conscious of importance of right to property, right to privacy of a person and personal liberty. To take away such rights, certain safeguards were incorporated in the original act. One of the safeguards is filing of final report under Section 173 of Cr.P.C or a complaint from investigating officer, who is competent to do investigation for taking cognizance for scheduled offence. Safeguards provided for deprivation of right to property and right not to be searched of person are expressly stated under Section 5 (1) (a) & (b) proviso and Section 18(9) of the PML Act. Provision of safeguards for protection of right to liberty can be inferred from safeguards provided under proviso to Section 18(9) of the PML Act. Originally, the officers under the PML Act have no power to attach property provisionally or to touch the person even for search of person without filing of final report under section 173 of Cr.P.C or a complaint for scheduled offence.

30. An amendment is brought to Section 5(1)(b) second proviso by way of Act 20 of 2015, dated 14-5-2015, whereunder, an

exception is created to certain designated officers to attach property provisionally without final report or complaint for immediate necessity to prevent frustration of proceedings under this Act. Omission of proviso to Section 18(9) of the PML Act by amendment removed the obstacle for search of person without final report under Section 173 of Cr.P.C. for scheduled offence, but such implicit requirement still exists for depriving personal liberty of an individual.

31. The investigation was done by the Economic Offences Wing of Bhopal and they filed two final reports charge-sheeting the accused, who are relating to tender No.10030 of the petitioner's joint venture company. The material on record shows that the joint venture company has floated the tenders, but not M/s.Max Mantena Group, in which the petitioner is a Director. Some persons were authorised by the joint venture company to participate in the tender process. Therefore, if anything mischievous act has been done in the tender process, it must have done by the concerned authorised persons, but not the petitioner in his individual capacity, unless it is shown that the petitioner has a role in the commission of scheduled offence with specific *mens rea*. In the two charge-sheets, there is no reference of the name of the petitioner. In fact, there is no need of such mention.

However, the main Accused Nos.1 to 3 were prosecuted and ultimately, they were acquitted. Such judgment of acquittal has attained finality.

32. The entire foundation for implicating the entity of joint venture company is that by taking the services of M/s.Arni Infra, represented by Aditya Tripathi, the joint venture company had influenced accused Nos.1 to 3 by paying bribe and got the tampering done. The foundation for the prosecution is based on deposit of amounts from M/s.Max Mantena to Aditya Tripathi i.e., M/s.Arni Infra, and he in turn, deposited Rs.10 lakhs to M/s. Osmo I.T. Solutions Private Limited, represented by accused No.1. Accused No.1 was prosecuted based on the deposit of Rs.10 lakhs relating to tender of the joint venture company. The concerned trial Court has not believed that the amount which was deposited with M/s. Osmo I.T. Solutions Private Limited was for the execution of offence of tampering and ultimately, the accused were acquitted.

33. FIR No.12/2019 was issued by Economic Offences Wing of Bhopal in the year 2019 and ECIR was registered in the year 2020. However, till date, no material has been brought on record or a fresh FIR has been issued relating to the schedule offence covering the allegation of tampering of e-tenders from 2016, as projected

by the Enforcement Directorate in the present impugned ECIR. The jurisdiction to proceed under the provisions of the PML Act would only arise when there is existence of *prima facie* material for taking cognizance either on the basis of report under Section 173 of Cr.P.C., or based on the complaint. When such material is available, the offence triggers for the predicate offence under the PML Act, and then the authorities would get jurisdiction to deal with civil and criminal proceedings under the PML Act.

34. In the present case, the offence for which the FIR was issued was ended in acquittal of the prime accused. The allegation against the present petitioner is that the joint venture company has conspired with Aditya Tripathi and M/s. Osmo I.T. Solutions Private Limited and digital certificate holders i.e., accused Nos.1 to 3 for tampering the e-tenders and succeeded in tampering the e-tenders and getting the contracts. However, the fact remains that accused Nos.1 to 3 were acquitted and in fact, entire tender process was cancelled and no crime proceeds were generated in favour of the joint venture company, including the petitioner herein. When crime proceeds were not generated or such crime proceeds did not come into possession of the petitioner, the authorities have no jurisdiction to continue the proceedings under the PML Act. The authorities cannot justify the

continuation of proceedings in spite of acquittal of main accused on the ground that there were previous tampering of e-tenders based on the suspicion, which action amounts of abuse of process.

35. In this regard, it is apt to refer to two decisions of the Apex Court, in which the Apex Court has considered the concept of crime proceeds and lack of evidence and unable to collect incriminating material to produce such material even after lapse of several years to prove its case beyond reasonable time has been taken as one of the grounds to quash proceedings, which decisions are (i) **Vijay Madanlal Choudhary V. Union of India**²⁴ and (ii) **J.Sekar V. Directorate of Enforcement**²⁵.

36. The relevant portion in **Vijay Madanlal Choudhary's** case (supra) reads as under:

"250. The other relevant definition is "proceeds of crime" in Section 2(1)(u) of the 2002 Act. This definition is common to all actions under the Act, namely, attachment, adjudication and confiscation being civil in nature as well as prosecution or criminal action. The original provision prior to amendment vide Finance Act, 2015 and Finance (No. 2) Act, 2019, took within its sweep any property (mentioned in Section 2(1)(v) of the Act) derived or obtained, directly or indirectly, by any person "as a result of" criminal activity "relating to" a scheduled offence (mentioned in Section 2(1)(y) read with Schedule to the Act) or the value of any such property. Vide Finance Act, 2015, it further included such property (being proceeds of crime) which is taken or held outside the country, then the property equivalent in value held within the country and by further amendment vide Act 13 of 2018, it also added property which is abroad. By further amendment vide Finance (No. 2) Act, 2019, Explanation has been added which is

²⁴ MANU/SC/0924/2022

²⁵ MANU/SC/0596/2022

obviously a clarificatory amendment. That is evident from the plain language of the inserted Explanation itself. The fact that it also includes any property which may, directly or indirectly, be derived as a result of any criminal activity relating to scheduled offence does not transcend beyond the original provision. In that, the word "relating to" (associated with/has to do with) used in the main provision is a present participle of word "relate" and the word "relatable" is only an adjective. The thrust of the original provision itself is to indicate that any property is derived or obtained, directly or indirectly, as a result of criminal activity concerning the scheduled offence, the same be regarded as proceeds of crime. In other words, property in whatever form mentioned in Section 2(1)(v), is or can be linked to criminal activity relating to or relatable to scheduled offence, must be regarded as proceeds of crime for the purpose of the 2002 Act. It must follow that the Explanation inserted in 2019 is merely clarificatory and restatement of the position emerging from the principal provision [i.e., Section 2(1)(u)].

251. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act - so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity

constitutes offence of money-laundering under Section 3 of the Act.

252. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act.

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.

282. Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

283. Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.

284. In other words, the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of "proceeds of crime". Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime, action under the Act can be taken forward for attachment and confiscation of proceeds of crime and until vesting thereof in the Central

Government, such process initiated would be a standalone process."

37. The relevant portion in J. Sekar's case (supra) reads as under:

"20. As discussed above, looking to the facts of this case, it is clear by a detailed order of acceptance of the closure report of the Schedule offence in RC MA1 2016 A0040 and the quashment of two FIRs by the High Court of the Schedule offence and of the letter dated 16.5.2019 of I.T. Department and also the observations made by the Adjudicating Authority in the order dated 25.2.2019, the evidence of continuation of offence in ECR CEZO 19/2016 is not sufficient. The Department itself is unable to collect any incriminating material and also not produced before this Court even after a lapse of 5½ years to prove its case beyond reasonable doubt. From the material collected by the Agency, they themselves are prima facie not satisfied that the offence under PMLA can be proved beyond reasonable doubt. The argument advanced by learned ASG regarding pendency of the appeal against the order of Adjudicating Authority is also of no help because against the order of the Appellate Authority also, remedies are available. Thus, looking to the facts as discussed hereinabove and the ratio of the judgments of this Court in Radheshyam Kejriwal (supra) and Ashoo Surendranath Tewari (supra), the chance to prove the allegations even for the purpose of provisions of PMLA in the Court are bleak. Therefore, we are of the firm opinion that the chances to prove those allegations in the Court are very bleak. It is trite to say, till the allegations are proved, the Appellant would be innocent. The High Court by the impugned order has recorded the finding without due consideration of the letter of the I.T. Department and other material in right perspective. Therefore, in our view, these findings of the High Court cannot be sustained."

38. A reading of the above two decisions, it is clear that only such a property which is derived or obtained directly or indirectly as a result of criminal activity can alone be regarded as crime proceeds. *Sin quo non* for determination of existence of assets of criminal proceeds, first and foremost requirement is commission of scheduled offence. There must be some reasons to believe on

the basis of material in his possession in order to trigger the offence under the PML Act. The words reason to believe cannot arise from mere suspicion, gossips or rumours. In order to arrive at conclusion to believe, there must be some material to suggest formation of conclusion. The reasons to believe must be founded on sufficient material and it is not on the basis of suspicion, but on the basis of some evidence.

39. Initially, own case of the Enforcement Directorate in ECIR is with regard to generation of crime proceeds out commission of scheduled offence in FIR No.12/2019, dated 10.04.2019, registered by Economic Offences Wing of Bhopal, which ultimately, unproved. Later, they suspect commission of similar kind of e-tenders tampering from 2016 onwards. By saying so, they projected huge amounts relating to allotment of work. There is no evidence with regard to existence of such tampering so as to have some foundation to claim existence of reasons to believe with regard to crime proceeds.

40. In the said background of facts and circumstances, continuation of ECIR proceedings against the petitioner amounts to abuse of process of law which cannot be allowed. If this is allowed it would amount to perpetuation of injustice to the

petitioner. Therefore, present proceedings are liable to be quashed.

41. In the result, the Criminal Petition is allowed and the proceedings in No.ECIR/HYZO/36/2020 on the file of the Directorate of Enforcement, Hyderabad, are hereby quashed. Miscellaneous petitions, if any, pending shall stand closed.

Date: 08.08.2023
TJMR

M.LAXMAN, J