CRM-M-39214-2020

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-39214-2020
Reserved on: 16.04.2024.
Pronounced on: 29.04.2024.

Chetan Gupta ...Petitioner

Versus

Directorate of Enforcement and others …Respondents

CRM-M-30807-2021

Ashwajit Singh ...Petitioner

Versus

Directorate of Enforcement and others …Respondents

CRM-M-30808-2021

Kamal Kumar Verma ...Petitioner

Versus

Directorate of Enforcement and others …Respondents

CORAM: HON'BLE MR. JUSTICE ANOOP CHITKARA

Present: Mr. Vikram Chaudhri, Sr. Advocate (through V.C.) with
Ms. Hargun Sandhu, Advocate and
Mr. S.S. Saron, Advocate
for the petitioner(s).

Mr. S.V. Raju, Sr. Adv., Addl. Solicitor General of India (through V.C.) with
Mr. Arvind Moudgil, Sr. Counsel- Government of India
Mr. Shahil Rangra, Advocate
Mr. Zoheb Hossain, Special Counsel- ED (through V.C.)
Mr. Naveen Kumar, Advocate and
Ms. Bhawna Gandhi, Legal Consultant (through V.C.)
for respondent No.1- ED.

Mr. Sukhdev Singh, A.A.G., Punjab.

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CRM-M-39214-2020

ANOOP CHITKARA, J.

ECIR No.	Dated	Sections
JLZO/01/2013	-	Section 3 r/w 4 of Prevention of Money Laundering Act, 2002 [PMLA]

Predicate offence	Dated	Police Station	Sections
FIR No.5	23.03.2007	Vigilance Bureau, Ludhiana	409, 420, 465, 467, 471, 201, 120-B IPC and 7, 8,9, 13(1) (c), 13(1) (d) r/w 13(2) and 14 of PC Act, 1988

1. All these petitions, CRM-M No.39214 of 2020, CRM-M No.30807 of 2021 and CRM-M No.30808 of 2021 are being disposed of by this common order.

2. Aggrieved by registration of ECIR captioned above under 'The Prevention of Money-Laundering Act, 2002' [PMLA], based on a predicate offence, which now stands closed, the petitioner has come up before this Court under Section 482 CrPC mainly with the following prayer: -

> *"(a) Quash ECIR NO. JLZO/01/2013 registered by the Respondent No.1 Directorate of Enforcement for an offence under Section 3 read with Section 4 of Prevention of Money Laundering Act, 2002 ('PMLA') and all consequential proceedings arising therefrom including: -*
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> *i) Show Cause Notice dated 05.08.2020 (Annexure P-25) purportedly issued under Section 63(3) PMLA for alleged violation of Section 63(2)(c) thereof.*
>
> *ii) Summon(s) dated 13.08.2020 & 15.10.2020 (Annexure P-27 and P-29) purportedly issued under Section 50(2) and (3) of PMLA;*
>
> *iii) Communication dated 09.11.2020 (Annexure P-31) issued by the Respondent No.1 ED informing the petitioner that the respondent No.1 ED has decided to pass an order under Section 63 of the PMLA."*

3. I have heard counsel for the parties and have gone through the record. The submissions, counter submissions, and their analysis are being answered para-wise.

4. Petitioner's stand is being taken from following sub paras of para no.3 of the petition which reads as follows: -

> *"(3.1) FIR No. 5 dated 23.03.2007 was registered by Respondent No.3 Vigilance Bureau, Ludhiana under Section 409,*

420, 465, 467, 471, 201, 120-B of IPC and Section 7, 8, 9, 13(1) (c), 13(1)(d) read with Section 13(2) and 14 of the Prevention of Corruption Act, 1988 pertaining to alleged payment of illegal gratification in the setting up and development of Ludhiana City Centre passed by Improvement Trust, Ludhiana (LIT) in the year 1999. Copy of FIR No. 5 dated 23.03.2007 is annexed herewith as ANNEXURE P-1.

(3.2) While treating the said FIR registered by Vigilance Bureau, Ludhiana as scheduled offence, impugned ECIR No.JLZO/01/2013 was registered by ED, Jalandhar against the Petitioner etc. for alleged commission of offence under Section 3 read with Section 4 of PMLA in the year 2013.A copy of the said ECIR has not been supplied to either the Petitioner or the court concerned.

(3.3) The record now reveals that though, initially a challan in terms of Section 173(2) of Cr.P.C. was filed on 12.12.2007 against various accused including the Petitioner however, subsequently, Supplementary Challan/Cancellation Report in terms of Section 173(8) of Cr.P.C was filed by the SSP, Vigilance Bureau, Ludhiana on 11.08.2017 before the Learned Special Judge (Vigilance), Ludhiana.

(3.4) During the course of investigations, the ED had been issuing various summons in purported exercise of powers under Section 50 (2) & (3) of PMLA.

(3.9) As stated above, on 11.08.2017, Respondent No.2 Vigilance Bureau, Ludhiana through its SSP filed a Supplementary Challan/Cancellation Report under Section 173(8) of Cr.P.C. before the Learned Special Court (Vigilance), Ludhiana/Learned Trial Court which was seized of the matter pertaining to the FIR No. 5/ Scheduled Offence. In the said Supplementary Challan/Cancellation Report, it was clearly stated that no substantive evidence or fact came on record to prove any offence as alleged.

(3.17) Thus, vide order dated 27.11.2019, petitioner etc. had been discharged in the scheduled offence alleged to have been

> *committed by him, on the basis of which the ECIR in question was registered by the respondent ED. Therefore, the proceedings initiated against the petitioner under the PMLA were rendered non-est."*

5. The petitioner's grievance is that despite such closure, the Enforcement Directorate continued to call the petitioner, and it would be relevant to refer to para 3.25 of the petition, which reads as follows: -

> *"(3.25) Petitioner is now in receipt of impugned communication F. No. ECIR/JLZO/01/2013/AD (GS)/3317 dated 09.11.2020 issued by the Respondent ED rejecting the detailed reply dated 20.08.2020 given by the Petitioner to Show Cause Notice dated 05.08.2020. Vide the impugned Communication dated 09.11.2020, the Respondent ED has categorically stated that "it has been decided to pass an order in the matter" asked the Petitioner to appear/cause appearance through authorised representative before the Assistant Director (the Respondent) on 24.11.2020 or 25.11.2020 at 12:00 PM for personal hearing. Respondent ED has also specified that this would be last and final opportunity given to the Petitioner to cause appearance before it for personal hearing failing which "further proceedings shall be ex-parte". Copy of impugned Communication bearing F. No. ECIR/JLZO/01/2013/AD(GS)/3317 dated 09.11.2020 is annexed as ANNEXURE P-31".*

6. Aggrieved by the action of the Enforcement Directorate not to close the proceedings and to continue summoning him, the petitioner had come up before this Court under Section 482 CrPC mainly because, as per the scheme of PMLA, the offense under Section 3 of PMLA is interlinked, intertwined, and interwoven with the scheduled offense and therefore, the offense or investigations under PMLA have no independent existence. The occurrence of a scheduled offense resulting in the generation of 'proceeds of crime' has to be established before any investigation under PMLA can even commence, and therefore, there is a direct & inextricable link between the 'proceeds of crime' contemplated under the PMLA and scheduled offense.

7. Mr. Vikram Chaudhri, Ld. Sr. Advocate argued that in the instant case, not only has the petitioner been discharged in the Scheduled Offence, but the Learned Trial Court has also accepted the Supplementary Report/Closure Report dated 11.08.2017 under

Section 173(8) of Cr.P.C., which shows that the prosecution did not dispute the lack of substance in the accusation. Thus, in the absence of the commission of a scheduled offense in the present case, the question of the generation of proceeds of crime and subsequent laundering thereof can never arise. The bare definition of the proceeds of crime under Section 2(1)(u) of PMLA postulates the deriving of proceeds from any activity relating to a scheduled offense. Therefore, the offenses under PMLA can only exist with the predicate/scheduled offense being alive and pending. When the primary Investigating Agency investigating scheduled/Predicate Offence has concluded that no offense has been committed and no proceeds of crime have been generated, the question of ED proceedings under PMLA can never arise.

8. The petitioners' counsel further submitted that a cumulative reading of the provisions would leave no doubt that the offenses under PMLA depend on the Scheduled/Predicate Offences. Offenses under PMLA are, thus, equivalent to a child in the womb of a mother, and once the scheduled/predicate offense ceases to exist, the survival of the child cannot be countenanced. Once the principal/predicate offense that falls under the Schedule of PMLA has failed to establish any offense or 'proceeds of crime,' the question of the independent continuation of an investigation by the ED will not arise. Given the scheme and objects of the PMLA, the absence of a scheduled offense renders non-existent and without foundation both "proceeds of crime," hence the very offense of money laundering. Therefore, the very applicability and operation of the PMLA, which depends upon a scheduled offense, or the predicate offense as mentioned, would also be non-est where the accused has been discharged from the predicate/scheduled offense. In such circumstances, the continuation of investigations & serving of summons/communication under Section 50 or 63 is untenable & grossly violative of the petitioner's fundamental rights under Articles 14, 19, and 21 of the Constitution. The ECIR, the subsequent show cause notice dated 05.08.2020, summons dated 13.08.2020 and 15.10.2020, and communication dated 09.11.2020, and any/all such similar notices/summons issued by the Respondent have been rendered illegal, absent jurisdiction, as nullity in law and hence liable to be quashed by this Hon'ble Court.

9. The Enforcement Directorate’s stand is that there can be no objection to proceedings initiated strictly in terms of the provisions of PMLA. The petitioner is only trying to escape from the clutches of Law, and due to his malafide intention, he had not cooperated at all with the Enforcement Directorate by not appearing before it as provided by the PMLA. The petitioner must give his statements and documents to the Enforcement Directorate to show his innocence first to avoid further proceedings under

the Prevention of Money Laundering Act, 2002. However, the petitioner has consistently failed to do so. Several summons have been sent to the petitioner on various occasions, as admitted by the petitioner in his petition, and the petitioner has avoided appearing before the Authority on one or the other pretext for more than five years. To bring a PMLA Case to a logical conclusion, the only way provided in Law is the preparation of a report by the Investigation Officer of the case, which should be submitted before the Ld. Special PMLA Court for consideration. To prepare such a report, section 44 of the Act, the Investigating Officer must investigate the case in all respects to enable the PMLA Court to exercise its jurisdiction consciously and judiciously. Thus, concluding the investigations independently by the Respondent No. 1 Directorate of Enforcement is a necessary legal condition to bring the money laundering case to a Logical Conclusion. No foregone conclusion can be arrived at this nascent stage, and the possibility of a closure report cannot be ruled out without any investigation under PMLA. The petitioner is thus legally bound to cooperate with the Directorate of Enforcement as provided under the PMLA.

10. Mr. S.V. Raju, Sr. Adv., Addl. Solicitor General of India, Ld. Counsel for respondent No.-1 ED has filed a reply and opposed the petition and submitted that the petition filed by the petitioner is at a very premature stage as the proceedings initiated under PMLA are at the initial stage of the adjudication, i.e., the summoning of the accused and production of documents and evidence, etc. He further submitted that ECIR is an internal document and cannot be quashed like FIR under CrPC, 1973. He further stated that quashing an ECIR complaint or proceedings at an initial stage is neither desirable nor legally permissible as the proceedings have been initiated strictly as per the provisions of PMLA.

11. The E.D.'s counsel's further contentions are that the petition filed under section 482 of Cr. P.C. is not permissible for the reliefs as claimed in the petition. The ends of justice would be better served if the process under PMLA were allowed to be completed. The entire thrust of the argument, as mentioned in detail in the rejoinder filed by the petitioner, is that once there is an acquittal in the scheduled offense, that ipso facto would entail the closure /quashing of all the proceedings initiated under the Prevention of Money Laundering Act, 2002. Such a general proposition of Law is not only against the very purpose and scheme of enactment of PMLA but is also legally unsustainable given the express provisions of the PMLA. If the petitioner's legal proposition is accepted, it would amount to a strike of Section 44 (d) (i) of the PMLA without its legality having been examined in detail by this Hon'ble Court. It is relevant to mention here that the vires of Section 44 (d) (i) can only be challenged in a civil writ

petition under Article 226 of the Constitution of India and not in a petition under Section 482 of Cr. P.C. It is submitted that Section 44 of the PMLA encompasses the provisions for offenses that Special Courts can try. Section 44(1)(b) of the PMLA talks about submitting a 'Closure Report' upon conclusion of the investigation. It states that if no offense of money laundering can be determined after investigation, the Authority shall submit a Closure Report' before the Special Court. It assists in closing cases where the investigation was completed, and no offense was found.

12. An analysis of the submissions noted above, the application of the provisions of PMLA, and its scope in the light of the judicial precedents would lead to the following outcome.

13. It would be relevant to refer the appropriate provisions of 'The Prevention of Money-Laundering Act, 2002' [PMLA]

14. [S. 3 PMLA]. 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][1] 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.][2]

15. [S.2(p) PMLA]. "money-laundering" has the meaning assigned to it in section 3.

16. [S. 2(u) PMLA]. "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

[1] Subs. by Act 2 of 2013, s. 3, for "proceeds of crime and projecting" (w.e.f. 15-2-2013).
[2] Ins. by Act 23 of 2019, s. 193 (w.e.f. 1-8-2019).

> [or where such property is taken or held outside the country, then the property equivalent in value held within the country][3] [or abroad][4];
>
> [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;][5]

17. [S. 4 PMLA]. 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 ***[6]:

> 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.

18. [S. 2(y) PMLA]. "scheduled offence" means—

> (i) the offences specified under Part A of the Schedule; or
> (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
> (iii) the offences specified under Part C of the Schedule.

19. It would be appropriate to also refer to the relevant judicial precedents that are applicable in the given facts.

20. In Vijay Madanlal Chaudhary v. Union of India, 2022 SCC OnLine SC 929, a three-member bench of Supreme Court holds:

> [457]. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money-laundering, analogy cannot be drawn from the provisions of 1973 Code, in regard to registration of offence of money-laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money-laundering. Considering the mechanism of inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law. There is force in the stand taken by the ED that

[3] Ins. by Act 20 of 2015, s. 145 (w.e.f. 14-5-2015).
[4] Ins. by Act 13 of 2018, s. 208 (w.e.f. 19-4-2018).
[5] Ins. by Act 23 of 2019, s. 192 (w.e.f. 1-8-2019).
[6] The words "which may extend to five lakh rupees" omitted by Act 2 of 2013, s. 4 (w.e.f. 15-2-2013).

> ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 2002 Act requiring Authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.

21. After that a Division Bench of Madras High Court in N. Dhanraj Kochar and others v. Director Directorate of Enforcement and others, 2022 SCC OnLine Mad 8794, observed as under: -

> "[9]. …It is to be borne in mind that an ECIR is not registered under the Code of Criminal Procedure and it is not akin to an FIR, which is registered under Section 154 CrPC and sent to the jurisdictional Magistrate in terms of Section 157 CrPC.
>
> [14]. Thus, viewed from any angle, the registration of an ECIR by the officers of the Enforcement Directorate, cannot be a subject matter of judicial review under Section 482 CrPC."

22. Similarly, in Jitendra Nath Patnaik v. Enforcement Directorate Bhubaneswar, CRLMC No.2891 of 2023, Orissa High Court observed as under: -

> "…….. [9]. As can be seen, the ECIR is an internal document created by the Department before initiating penal action or prosecution against the person involved with process or activity connected with the proceeds of crime. In other words, registration of ECIR is not akin to launching of prosecution, which can only be done by way of lodging a complaint under Section 44 of the PML Act. Thus, a document or an act, which is administrative in nature, cannot partake the nature of criminal prosecution so as to attract judicial review.
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> [12]. From the conspectus of the analysis made hereinbefore, this Court is of the considered view that the act of registration of ECIR against the petitioner and the investigation/enquiry said to be in progress on such basis are not amenable to judicial review by this Court in exercise of its inherent power under Section 482 of Cr.P.C.. Further, the present motion, which is at a stage when the investigation/enquiry initiated on the basis of the ECIR registered against the petitioner has not culminated in lodging of a complaint under Section 44 of the PML Act, is premature. In view of such finding, the contentions raised by the parties touching upon merits of the case are not required to be gone into
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> [13]. In the result, the CRLMC is dismissed being not maintainable in the eye of law."

23. A Single Bench of this Court in Pawan Insaa vs Directorate of Enforcement, Government of India, Chandigarh Zonal Office, Chandigarh, 2024:PHHC:049512 holds as under: -

> "[6] ….. It is crucial to note that an ECIR is not registered under the Cr.P.C., unlike a First Information Report (FIR), which is mandatorily registered under Section 154 of the Cr.P.C., and subsequently forwarded to the Illaqa Magistrate as per the provisions of Section 157 of the Cr.P.C.. Additionally, there exists no legal obligation to provide a copy of the ECIR to an accused, and the absence of such provision does not in any manner impinge upon any constitutional or statutory rights of a person. Thus, an ECIR is an administrative document prepared by the officers of the ED. It precedes the commencement of the prosecution against individuals involved in the offence of money laundering, which in turn is governed by special statute i.e. PMLA.
>
> [7]. This Court unhesitatingly concurs with the contentions made by the learned counsel for the respondent-ED that the ECIR is an internal administrative document of the ED. Consequently, in the considered opinion of this Court, since the ECIR precedes the stage of criminal prosecution and proceedings, it thus falls outside the purview of the inherent jurisdiction conferred upon this Court by Section 482 of the Cr.P.C. Therefore, the prayer of the petitioner for quashing of the ECIR under Section 482 of the Cr.P.C. cannot be entertained.
>
> [8]. Though the learned senior counsel for the petitioner has emphatically argued that mere technicalities should not come in the way of entertaining the instant petition under Section 482 Cr.P.C. keeping in view the amplitude of the powers conferred upon this Court, however, it cannot be over-emphasized that the powers of this Court are not unbridled and can be exercised under Section 482 Cr.P.C. only to give effect to any order under the Cr.P.C.; or to prevent abuse of the process of any Court; or to secure the ends of justice in relation to a criminal proceeding. Since the ECIR is not a statutory document under the Cr.P.C. and thus, cannot be equated to initiation of any criminal proceeding, aforementioned argument advanced by the learned senior counsel cannot be accepted as it would result in this Court exceeding its jurisdiction under Section 482 Cr.P.C."

24. A perusal of the judgments passed by a Division Bench of Madras High Court in N. Dhanraj Kochar, 2022 SCC Online Mad 8794; and by Orissa High Court in Jitendra Nath Patnaik v. Enforcement Directorate Bhubaneswar, CRLMC No.2891 of 2023; and by this Court in Pawan Insaa v. Directorate of Enforcement, 2024:PHHC:049512, clearly points out that in these cases quashing of ECIR was sought, whereas in the present case, the petitioner is not only seeking quashing of ECIR but also all consequent proceedings. There is no legal bar that restricts the powers of this Court under section 482 CrPC by

ignoring the prayers to quash ECIR but to consider the remaining prayers to quash the complaint as well as all subsequent proceedings.

25. In Pavana Dibbur v. The Directorate of Enforcement, Criminal Appeal No.2779 of 2023 decided on 29 November 2023, Hon'ble Supreme Court holds: -

> [16]. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the chargesheets filed in the scheduled offences deserves to be rejected."

26. In Parvathi Kollur v. State [2022 SCC OnLine SC 1975] Hon'ble Supreme Court holds: -

> [9]. The result of the discussion aforesaid is that the view as taken by the Trial Court in this matter had been a justified view of the matter and the High Court was not right in setting aside the discharge order despite the fact that the accused No. 1 had already been acquitted in relation to the scheduled offence and the present appellants were not accused of any scheduled offence.

27. In Yash Tuteja v. Union of India, 2024 INSC 301 [Writ Petition (Criminal) No.153 of 2023, decided on 08.04.2024], the Hon'ble Supreme Court holds as under: -

> "[4]. …In paragraph 15 of the decision in the case of Pavana Dibbur, this Court held that:
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> > "The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence."
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> Therefore, in the absence of the scheduled offence, as held in the decision mentioned above of this Court, there cannot be any proceeds of crime within the meaning of clause (u) of sub- Section (1) of Section 2 of the PMLA. If there are no proceeds of crime, the offence under Section 3 of the PMLA is not made out. The reason is that existence of the proceeds of crime is a condition precedent for the applicability of Section 3 of the PMLA.

[6]. The only mode by which the cognizance of the offence under Section 3, punishable under Section 4 of the PMLA, can be taken by the Special Court is upon a complaint filed by the Authority authorized on this behalf. Section 46 of PMLA provides that the provisions of the Cr.PC (including the provisions as to bails or bonds) shall apply to proceedings before a Special Court and for the purposes of the Cr.PC provisions, the Special Court shall be deemed to be a Court of Sessions. However, sub-section (1) of Section 46 starts with the words "save as otherwise provided in this Act." Considering the provisions of Section 46(1) of the PMLA, save as otherwise provided in the PMLA, the provisions of the Code of Criminal Procedure, 1973 (for short, Cr. PC) shall apply to the proceedings before a Special Court. Therefore, once a complaint is filed before the Special Court, the provisions of Sections 200 to 204 of the Cr.PC will apply to the Complaint. There is no provision in the PMLA which overrides the provisions of Sections 200 to Sections 204 of Cr.PC. Hence, the Special Court will have to apply its mind to the question of whether a prima facie case of a commission of an offence under Section 3 of the PMLA is made out in a complaint under Section 44(1)(b) of the PMLA. If the Special Court is of the view that no prima facie case of an offence under Section 3 of the PMLA is made out, it must exercise the power under Section 203 of the Cr.PC to dismiss the complaint. If a prima facie case is made out, the Special Court can take recourse to Section 204 of the Cr. PC.

[7]. In this case, no scheduled offence is made out the basis of the complaint as the offences relied upon therein are not scheduled offences. Therefore, there cannot be any proceeds of crime. Hence, there cannot be an offence under Section 3 of the PMLA. Therefore, no purpose will be served by directing the Special Court to apply its mind in accordance with Section 203 read with Section 204 of the Cr.PC. That will only be an empty formality.

[9]. Hence, we pass the following order:

(i) Writ Petition (Crl.) Nos.153/2023 and 217/2023 are disposed of;

(ii) The complaint based on ECIR/RPZO/11/2022, as far as the second petitioner (Anwar Dhebar) in Writ Petition (Crl.) No.208/2023 is concerned, is hereby quashed. The Writ Petition is, accordingly, partly allowed;

(iii) The complaint based on ECIR/RPZO/11/2022, as far as the petitioner (Arun Pati Tripathi) in Writ Petition (Crl.) No.216/2023 is concerned, is hereby quashed. The Writ Petition is, accordingly, allowed;

(iv) There will be no order as to costs; and

> (v) Pending applications, including those seeking impleadment, are disposed of accordingly.
>
> [10]. At this stage, the learned ASG stated that, based on another First Information Report, which, according to him, involves a scheduled offence, criminal proceedings under the PMLA are likely to be initiated against the petitioners. It is not necessary for us to go into the issue of the legality and validity of the proceedings that are likely to be initiated at this stage. Therefore, all the contentions in that regard are left open to be decided in appropriate proceedings."

28. In Indrani Patnail and another v/s Enforcement Directorate and others, Writ Petition (Civil) No.368 of 2021, the Hon'ble Supreme Court holds as under: -

> "…… [4]. The record as it stands today, the petitioners stand discharged of the scheduled offence and therefore, in view of the law declared by this Court, there could arise no question of they being prosecuted for illegal gain of property as a result of the criminal activity relating to the alleged scheduled offence.
> [5]. That being the position, we find no reason to allow the proceedings against the petitioners under PMLA to proceed further.
> [6]. However, taking note of the submissions made by the learned Additional Solicitor General and in the interest of justice, we reserve the liberty for the respondents in seeking revival of these proceedings if the order discharging the petitioners is annulled or in any manner varied, and if there be any legitimate ground to proceed under PMLA.
> [7]. Subject to the observations and liberty foregoing, this petition is allowed while quashing the proceeding in Complaint Case No.05 of 2020 dated 10.01.2020 pending in the Court of Sessions Court, Khurdha at Bhubaneswar cum Special Court under the Prevention of Money-laundering Act, 2002".

29. In Naresh Goyal vs Directorate of Enforcement, 2023 SCC OnLine Bom 2121, a Division Bench of Bombay High Court observed as under: -

> "[19]. …Although, the learned counsel for the respondent No.1-ED tried to impress upon this Court that the ECIR is a private internal document and not at par with an FIR, as such is not required to be quashed, the said submission was not pressed, when the learned senior counsel for the petitioner in both the petitions showed a copy of the order passed by the Apex Court in the case of Obulapuram Mining Company Pvt. Ltd. (supra). In the said case, the learned Solicitor General appearing for the appellant- ED made a statement that since the proceedings before the Court (Apex Court) arose from an order of attachment and there is acquittal in respect of the predicate offence, the ED proceeding really would not survive."
>
> [21]. As noted above, admittedly there is no scheduled offence as against the petitioner in both the petitions, in view of the closure report filed by the police, which was accepted by

> the Courts as stated aforesaid. There being no predicate offence i.e. scheduled offence, the impugned ECIR registered by the respondent No.1- ED will not survive and as such the said ECIR will have to be quashed and set aside."

30. In Nik Nish Retail Ltd. and another v. Assistant Director, Enforcement Directorate, Govt. of India, 2022 SCC OnLine Cal 4044, Calcutta High Court observed,

> [34]. The quashing of FIR of regular case automatically created a situation that the offences, stated and alleged in the FIR has no existence; thus the "Scheduled Offence" has also no existence after quashing of the FIR. When there is no "Scheduled Offence", the proceeding initiated under the provisions of Prevention of Money Laundering Act, 2002 cannot stand alone.

31. In Debendra Kumar Panda v. Union of India and Others, CRLMC No.3059 of 2019, Orissa High Court observed,

> [12]. …In the plain language, if the foundation does not exist, how the edifice can survive. In other words, when the predicate offence fails, the foundation having been demolished, the superstructure is to fall and crumble.

32. In Rajiv Channa v. Union of India, Misc Appeal (PMLA) 13 of 2023, decided on 08 April 2024, a Division Bench of Delhi High Court observed,

> [40]. A sequitur of the abovementioned judicial pronouncements would make it sufficiently clear that since the appellant-Jeevan Kumar has already been acquitted of the scheduled offence, there can be no action for money-laundering against the other appellants in relation to the property linked to the stated scheduled offence. An inference can plausibly be drawn from the legal maxim sublato fundamento cadit opus which means that upon removal of the foundation, the work collapses. Thus, the plain and literal interpretation of Section 2(1)(u) read with Section 3 of PMLA, 2002 which has been enunciated in Vijay Madanlal Choudhary (supra) and reiterated by the Hon"ble Supreme Court in Pavana Dibbur (supra) and by this Court in Prakash Industries (supra), suggests that if the elementary foundation i.e., the scheduled offence is itself removed, consequential proceedings emanating therefrom shall also fall.

33. In the light of the judicial precedents referred to above, coupled with the given facts, this court reasons as follows:

34. The full form of ECIR is the "Enforcement Case Information Report," and the full form of the FIR is the "First Information Report." The difference between the two is that ECIR is a term given to itself by the Enforcement Directorate through some administrative order, whereas, to the contrary, FIR is a creation of a statute under Section 154 CrPC, 1973. Given this statutory origin, it is mandatory to register FIR when an offense discloses the commission of the cognizable offense. On the contrary, when the Enforcement Directorate starts an inquiry based on some predicate offense, they

decide to assign an ECIR to an inquiry/investigation at some point in the given stage. For this reason, the courts have usually quashed the FIR, which would automatically cancel all subsequent proceedings. Since ECIR is not a condition precedent for starting an investigation or inquiry/inquiry by the Enforcement Directorate and is only an internal record of the department, its quashing would serve no purpose whatsoever. However, it would not imply that if one of the prayers made by the accused also includes quashing of ECIR, then the Courts will not look at other prayers like quashing of complaint and quashing of further proceedings or any other proceedings pending before the Enforcement Directorate. If such a view is taken, then it would give untrammeled arbitrary powers to the Enforcement Directorate to continue and keep pending the inquiry/investigation against the accused under the pretext or disguise that even if an accused has been acquitted in the predicate offense, a decision is yet to be taken regarding the filing of a complaint against acquittal or such appeal is pending, or even when they do not find any evidence against the accused, at that stage, instead of absolving them, they continue to sit over the inquiry/investigation which would have unparalleled bearing on the accused mental health.

35. The proceedings under PMLA are always subservient and secondary to the primary proceedings under some principal criminal offense, which is termed the predicate offense. If the violations of the main criminal penal provisions are mentioned in the PMLA schedules, only then the Enforcement Directorate can inquire into such scheduled penal offenses against the persons who have laundered the money, including or excluding the persons named as accused in the primary offense. The following example will clear the concepts. Let's take an example of a wall and its plaster. First, a wall is required, and only then can it be plastered and in the absence of the wall, the plaster cannot be applied, and if the wall is broken, the plaster would automatically break off because it cannot stand on its own. The predicate offense is that wall only on which the plaster of the scheduled offense of PMLA can be applied. No wall no plaster. Similarly, for any prosecution under scheduled offense, the requirement of a predicate offense is the sine qua non. The Enforcement Directorate has no jurisdiction to enter the foray without any primary penal offense. Further, if the predicate offense results in the filing of a closure report or the accused is discharged by the concerned Court or results in acquittal, then it would imply that the wall has broken, and with it will also go the plaster if it has been put on it.

36. It would be relevant to extract Section 65 of PMLA Act which reads as follows:-

> “65. Code of Criminal Procedure, 1973 to apply.- The provisions of the Code of Criminal Procedure, 1973 (2 of 1974) shall apply, insofar as they

> are not inconsistent with the provisions of this Act, to arrest, search and seizure, attachment, confiscation, investigation, prosecution and all other proceedings under this Act."

37. A plain and simple reading of Section 65 clarifies that after arrest, Code of Criminal Procedure would apply to the investigation, prosecution and all other proceedings under PMLA Act.

38. Another significant factor which needs consideration is that when after registering the investigation by assigning it as ECIR number, subsequently, the Investigator does not find evidence to proceed further or appreciation of evidence collected by them does not point towards accused's involvement but towards their absolution, in such a situation they might be closing their ECIR. Similarly, once a closure report is filed before the concerned Court, in such closure report, the fundamental prayer to the concerned Court is to accept the closure report which would eventually led to closure of ECIR. Given above, coupled with Enforcement Directorate's stand that ECIR is an internal document because it has no statutory force and cannot be equated with FIR on the face of it is blowing hot and cold.

39. The petitioners have been acquitted in the primary predicate offense in the present case. Consequently, secondary evidence, i.e., the offense being prosecuted by the Enforcement Directorate, would also go automatically. Thus, the complaint filed by the Enforcement Directorate has to be closed along with consequential proceedings. Once the complaint is closed, the Enforcement Directorate can keep such records in their ECIR record because if, later on, such closure, charge, or acquittal is reversed, the objection can be reopened.

40. In Directorate of Enforcement v. Pratap Singh Tiwari & Anr., SLP (Crl) Diary No(s). 19609/2023, Hon'ble Supreme Court observed,

> We are not inclined to interfere with the impugned order and, therefore, the special leave petition is dismissed. However, we clarify that in case the appeal preferred in the predicate offence is allowed and the respondents are convicted, the petitioner would be entitled to seek revival of the proceedings in question.

41. Given the above, the proceedings initiated by the ED against the petitioners of the petitions mentioned above arising out of the ECIR detailed in para no.2 are closed, with the liberty to revive, in the following terms. This flexibility allows for the potential reversal of an acquittal of the predicate offense, enabling the Enforcement Directorate to file a fresh complaint. The delay in filing such a complaint is deemed to be excluded, considering the time consumed in a reversal of such a decision. The Directorate of Enforcement may also seek a review/recall of this order if any review petition pending

before the Hon'ble Supreme Court is allowed, changing the legal basis affecting this order. It is further clarified that in such a situation, the present order closing the proceedings shall become redundant and inconsequential given Section 362 r/w 482 CrPC provisions. Petitions allowed. All pending applications, if any, stand disposed of.

(ANOOP CHITKARA)
JUDGE

29.04.2024
Jyoti Sharma

Whether speaking/reasoned	YES
Whether reportable	YES