



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

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**Judgment reserved on: 06 March 2024**  
**Judgment pronounced on: 08 April 2024**

+ MISC. APPEAL(PMLA) 13/2023 & CRL.M.A. 8497/2015  
(Stay)

RAJIV CHANNA

..... Appellant

Through: Mr. Vikas Pahwa, Sr. Adv.  
alongwith Mr. Prabhav Ralli, Mr.  
Namisha Jain, Mr. Siddhart  
Singh, Mr. Kushal Gupta and  
Mr. Aaditya Shukla, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC.

+ MISC. APPEAL(PMLA) 14/2023

JEEVAN KUMAR

..... Appellant

Through: Mr. Vikas Arora and Ms.  
Radhika Arora, Advs.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC.

+ MISC. APPEAL(PMLA) 15/2023, CM APPL. 10124/2024  
CM APPL. 10125/2024 (Ex.) & CRL.M.A. 11204/2015 (Stay)



M/S N.R. MERCHANT PVT.LTD.

..... Appellant

Through: Mr. Vikas Arora and Ms.  
Radhika Arora, Advs.

versus

DEPUTY DIRECTOR DIRECTORATE OF ENFORCEMENT  
& ORS

..... Respondent

Through: Mr. Anurag Ahluwalia, CGSC  
for R-1.

Mr. B. Badrinath and Mr. Dhruv  
Bhardwaj, Advs. for Intervenor.

**CORAM:**

**HON'BLE MR. JUSTICE YASHWANT VARMA**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR**

**KAURAV**

## **J U D G M E N T**

### **PURUSHAINDRA KUMAR KAURAV, J.**

1. The appellants have preferred the instant appeals under Section 42 of the Prevention of Money Laundering Act, 2002 [“PMLA, 2002”] assailing the common order dated 09.03.2015, passed by the Appellate Tribunal, PMLA, New Delhi [“the Appellate Tribunal”] in FPA-PMLA-169/DLI/2011, FPA-PMLA-167/DLI/2011 and FPA-PMLA-168/DLI/2011, whereby, the first appeals of the appellants against the confirmation order dated 04.02.2011 passed in OC No.66/2010, arising from the provisional attachment order [“PAO”] No.6/2010 dated 09.09.2010 in ECIR/07/DZ/2008 under the provisions of PMLA, 2002, were dismissed by the Appellate Tribunal.



## DESCRIPTION OF APPELLANTS

2. The appellant-Jeevan Kumar [in Misc. Appeal (PMLA) 14/2023] is stated to have been allegedly involved in an illegal racket of kidney transplantation and had allegedly committed various offences including the offences punishable under Section 307 of the Indian Penal Code, 1860 [**“IPC”**] and Sections 18, 19 and 20 of the Transplantation of Human Organs Act, 1994 [**“TOHO Act, 1994”**]. Since the alleged offences constituted a scheduled offence under PMLA, 2002, the PAO was passed against the appellant-Jeevan Kumar.

3. It is also alleged that the money belonging to the appellant-Jeevan Kumar was invested into the properties developed by the appellant-Rajiv Channa [in Misc. Appeal (PMLA) 13/2023] *albeit* he was not made an accused in the predicate offence i.e., the FIR/ Regular Case (**“RC”**) registered by the CBI. Since the appellant-Rajiv Channa was alleged to have been involved in projecting the income of the appellant-Jeevan Kumar as untainted property, it led to the passing of the PAO.

4. In Misc. Appeal (PMLA) 15/2023, the appellant-M/S N.R. Merchant Pvt. Ltd. is alleged to have purchased the subject property being Plot No. 77, allotted to M/s Anchal Paper (P) Ltd. / Shri. Raghuvinder Singh in Eco Tech, Greater NOIDA (UP), from M/s Anchal Paper Products Pvt. Ltd., which had earlier entered into an agreement to sell with the appellant-Jeevan Kumar. It is the case of the respondent that the said property was allegedly bought by the appellant-Jeevan Kumar using the proceeds of crime and on the basis of the said



fact, the PAO was passed. However, the said agreement to sell *qua* the property attached is stated to have been cancelled and the concerned property was subsequently alleged to have been sold to the appellant-M/S N.R. Merchant Pvt. Ltd. Though the name of the appellant-M/S N.R. Merchant Pvt. Ltd. does not find mention in the PAO, however, it is aggrieved as it purchased the said property at a later point of time, allegedly being unaware about the attachment proceedings.

5. *Vide* aforesaid PAO dated 09.09.2010, the following properties and bank accounts came to be attached *qua* the appellants mentioned below:-

<b>Appellant's Name</b>	<b>Properties attached</b>	<b>Bank accounts attached</b>
1. Jeevan Kumar	<p>i. Residential premises at EC-II, C-102, Essel Tower Complex, Gurgaon (Haryana).</p> <p>ii. Plot No. 77, allotted to M/s Anchal Paper (P) Ltd., / Shri. Raghuvinder Singh in Eco Tech, Greater NOIDA (UP).</p>	<p>i. 094-061306-006, HSBC Bank, 24, Barakhamba Road, New Delhi</p> <p>ii. S.B, A/c No. 90832010022176, Syndicate Bank, Hotel Janpath, New Delhi</p> <p>iii. 002101043278, ICICI Bank, Gurgaon</p>



2. Rajiv Channa	i. Security paid to Jammu Development Authority amounting to Rs. 30 lakh for development of commercial site measuring 11.2 kanals at B.C. Road Jammu allotted to M/s S.S.R. Infra Projects Pvt. Ltd. by the Jammu Development Authority, Jammu.  ii. B-153, East of Kailash, New Delhi (IInd & IIIrd Floor in the name of Ruchi Channa w/o Rajiv Channa)	i. 5-905844-228, City Bank, Nehru Place Branch, New Delhi.  ii. 0-803306-222, City Bank, Nehru Place Branch, New Delhi.  iii. 0-1940020000174, Kotak Mahindra Bank, Panchsheel Park Branch  iv. 0-194201000005, Kotak Mahindra Bank, Panchsheel Park Branch
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6. On account of similitude of facts and questions of law involved in the present appeals, the same are being decided by this common judgment.

### **FACTUAL MATRIX**

7. The facts which are necessary for disposal of the present appeals are that on 25.01.2008, a written complaint was filed at PS Palam Vihar, Gurgaon which was registered as FIR No.27/2008 against the appellant-Jeevan Kumar and others for offences punishable under Section 420 of the IPC and Sections 18/19 of the TOHO Act, 1994.



8. On 08.02.2008, the investigation in the abovementioned FIR was entrusted to the CBI and in pursuance of the same, a case being RC/1(E)/08/CBI/EOU-VII/ND was registered under Section 120B read with Sections 326, 342, 417, 465, 473, 307 and 506 of the IPC and Sections 18, 19 and 20 of the TOHO Act, 1994 against various persons, including the appellant-Jeevan Kumar.

9. After conclusion of investigation, the chargesheet was filed by the CBI on 29.04.2008 and consequently, a regular case was registered as CBI Case No.7 of 2008. The trial was conducted by the Court of ASJ/Special Judge (CBI), Panchkula, Haryana ("**the Trial Court**").

10. On 12.05.2008, an Enforcement Case Investigation Report [**"ECIR"**] bearing no. ECIR/07/DZ/2008 was registered by the Delhi Zonal Office of Directorate of Enforcement [**"ED"**] under Section 3/4 of PMLA, 2002. In this ECIR, the appellant-Jeevan Kumar was framed as an accused alongwith other persons. The said case was premised on the ground that the appellant-Jeevan Kumar had committed various offences, including offence punishable under Section 307 of the IPC, which is a scheduled offence under Paragraph 1 of Part B of the Schedule appended to PMLA, 2002.

11. Thereafter, on 09.09.2010, PAO No.6/2010 was passed in ECIR/07/DZ/2008, whereby, various properties of all the appellants herein were attached, prohibiting further alienation. The concluding paragraphs of the order dated 09.09.2010 read as under:-

“15. AND WHEREAS from the Investigation conducted so far under PMLA, 2002, it is revealed that illegal kidney transplantation was the



main source of income for Dr. Jeevan Kumar, The money so generated by him was none other than proceeds of crime. By investing the tainted money (Proceeds of crime) so earned in purchase of these properties, Dr. Jeevan Kumar was projecting the same to be untainted property. Investigation. made so far further revealed that some of the properties were financed by banks but the installments towards repayment to the bank (principal as well as interest) were being paid by Dr. Jeevan Kumar out of said proceeds of crime. Even though Jeevan Kumar made deposits in his bank accounts and tried to show the money as untainted. The payments / made by Dr. Jeevan Kumar to the concerned persons / sellers / banks, are part of proceed of crime as Dr. Jeevan Kumar was not having any other source of income except from illegal transplantations of kidney's, I, therefore, have reason to believe that Dr. Jeevan Kumar has committed an offence of "money laundering" as defined under section 3 of the PMLA, These properties and bank A/c's are infact proceeds of crime and thus they are liable for attachment under the PMLA. If, these properties are not alleged forthwith, they are likely to be concealed/transferred/sold or dealt with in any manner by Dr. Jeevan Kumar himself or through his wife Smt. Pooja Singhal @ Pooja Kumar.

16. NOW THEREFORE, I hereby order Provisional Attachment of the properties / bank accounts mentioned below and further order that the same shall not be transferred, disposed, parted with or otherwise dealt with in any manner, whatsoever, until or unless specially permitted to do so by the undersigned. Relied upon documents are mentioned in Annexure "A".

12. A complaint under Section 5(5) of PMLA, 2002 was subsequently preferred by the ED on 05.10.2010 before the Adjudicating Authority under PMLA, 2002 seeking adjudication and confirmation of the abovementioned PAO. On 04.02.2011, the Adjudicating Authority confirmed the PAO No.6/2010 in OC No.66/2010.

13. In March 2011, the appellants preferred statutory appeals being FPA-PMLA-169/DLI/2011, FPA-PMLA-167/DLI/2011 and FPA-



PMLA-168/DLI/2011 against the abovementioned confirmation order, before the Appellate Tribunal under PMLA, 2002.

14. On 24.04.2012, charges were framed against the appellant-Rajiv Channa under Sections 3 and 4 of PMLA, 2002 in ECIR/07/DZ/2008, wherein, he pleaded not guilty and claimed trial.

15. In the meantime, on 22.03.2013, in CBI Case No.7/2008, the Trial Court acquitted the appellant-Jeevan Kumar from all the charges. The said decision remained unchallenged and has attained finality.

16. Subsequently, *vide* judgment dated 15.01.2024, this Court in Crl. M.C. No.1622/2013 quashed the ECIR bearing no. ECIR/07/DZ/2008 alongwith all the consequential proceedings arising therefrom. The relevant paragraph of the said decision is reproduced as under:-

“13. In view of the aforesaid legal position, the complaint filed by the respondent/ED and the consequential proceedings cannot survive. Considering that the co-accused Dr. Jeevan Kumar has been acquitted by the trial court *vide* judgment dated 22.03.2013 and that the said judgment has not been challenged till date, there can be no offence of money laundering under section 3 of PMLA against the petitioner. **Accordingly, the ECIR bearing no. ECIR/7/DZ/2008 is quashed along with all consequential proceedings arising therefrom stated to be pending before the concerned court.**”

17. Additionally, on 15.01.2024 itself, *vide* a separate judgment in Crl. Rev. P. No.438/2012, the order on charge dated 24.12.2012 *qua* the appellant-Rajiv Channa under Sections 3 and 4 of PMLA, 2002 also came to be quashed by this Court.

## **SUBMISSIONS**





18. Mr. Vikas Pahwa, learned senior counsel appearing for the appellants, firstly submitted that when the appellant-Jeevan Kumar has already been acquitted in the predicate offence on merits *vide* a detailed judgment dated 22.03.2013, there is no reason to sustain the attachment of properties of the appellants. He submitted that as per the prosecution complaint dated 02.07.2011, the allegation against the appellants is that of laundering the proceeds of crime, generated by the appellant-Jeevan Kumar, and the same is the solitary link attempted to be established by the respondent between the commission of the scheduled offence and derivative money laundering offence. He, therefore, contended that the acquittal of the appellant-Jeevan Kumar breaks the entire chain leading to other appellants and also negates the subsistence of the “proceeds of crime” as defined under section 2(1)(u) of PMLA, 2002. He further submitted that when no proceeds of crime were found to have been generated in the first place, then there does not arise a question of laundering the same. According to him, in the absence of “proceeds of crime”, the attachment of properties under Section 5(5) of PMLA, 2002 is unjustifiable and *dehors* the settled position of law.

19. The second limb of the submission of the learned senior counsel was that the appellants-Rajiv Channa and M/S N.R. Merchant Pvt. Ltd. were never arrayed as an accused in the FIR registered by the CBI i.e., RC/1(E)/08/CBI/EOU-VII/ND and thus, they had no role or link with the generation of alleged proceeds of crime or the scheduled offence in question.



20. The third prong of the submission advanced by the learned senior counsel was that *vide* separate judgments dated 15.01.2024, this Court in Crl. M.C. No.1622/2013 and Crl. Rev. P. No.438/2012, quashed the ECIR bearing No. ECIR/07/DZ/2008 alongwith all the consequential proceedings arising therefrom and the charge framed against the appellant-Rajiv Channa *vide* order dated 24.04.2012, respectively. He, therefore, submitted that in light of the quashing of the prosecution complaint, all the proceedings in furtherance of prosecution, including attachment would also not sustain and are therefore, liable to be quashed. He relied upon the decision of the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary v. Union of India**, [2022 SCC OnLine SC 929] to substantiate his arguments.

21. With respect to the appellant-M/S N.R. Merchant Pvt. Ltd., it is urged that the said appellant is a *bonafide* purchaser of the property being Plot No. 77, allotted to M/s Anchal Paper (P) Ltd., / Shri. Raghuvinder Singh in Eco Tech, Greater NOIDA (UP), which has been alleged to be earlier bought by the appellant-Jeevan Kumar allegedly using the proceeds of crime. It has been contended that the appellant-Jeevan Kumar has no connection with the instant property and in any case, since he had already been acquitted of the predicate offence, there is no rationale to affirm the attachment proceedings *qua* the subject property.

22. *Per contra*, Mr. Anurag Ahluwalia, learned Central Government Standing Counsel appearing for the respondent, while bringing the attention of this Court to the order dated 10.02.2023, passed by the



Hon'ble Supreme Court in SLP (Crl.) Diary No.42315/2022 titled as **Directorate of Enforcement v. Gagan Deep Singh** made a limited submission that the issue whether proceedings under PMLA, 2002 would survive upon acquittal/discharge of the accused in a scheduled offence is still pending before the Hon'ble Supreme Court. He, therefore, contended that in light of the fact that the issue involved herein is pending consideration before the Hon'ble Supreme Court, the hearing of the present matter be deferred awaiting the outcome of the said proceedings.

23. In rejoinder submissions, learned senior counsel for the appellants vehemently opposed the submissions made by the learned counsel for the respondent and submitted that merely on the pretext of pendency of the Special Leave Petition, without there being any order of stay, the proceedings in the instant appeal cannot be deferred. On this aspect, he has placed reliance on the decision of the Hon'ble Supreme Court in the case of **Union Territory of Ladakh and Others v. Jammu & Kashmir National Conference and Another** [2023 SCC OnLine SC 1140].

24. We have heard the learned counsels appearing on behalf of the parties and perused the record.

### **ANALYSIS**

25. Section 42 of PMLA, 2002 empowers any person aggrieved by a decision or order of the Appellate Tribunal to file an appeal to the High



Court within the prescribed period of sixty days from the date of communication of the decision or order of the Appellate Tribunal to him on any question of law or fact arising out of such order.

26. Though the present appeals have been preferred under Section 42 of PMLA, 2002 on a number of questions of law, the solitary issue which requires our consideration is whether acquittal of the accused i.e., Jeevan Kumar from the predicate offence and quashing of criminal proceedings mentioned above *qua* the appellant-Rajiv Channa, shall also lead to the cessation of the attachment proceedings.

27. It is significant to primarily refer to Section 2 of PMLA, 2002 which defines various words and expressions appearing in the said Act. According to Section 2(1)(p) of PMLA, 2002, the expression “money-laundering” has the meaning assigned to it in Section 3 of the said Act which deals with the “offence of money-laundering”. Section 3 of PMLA, 2002 stipulates that “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”.

28. Thus, for the commission of an offence of money laundering, the essential preconditions which emerge from the aforesaid provisions are that *firstly*, it requires an involvement in any process or activity connected with the proceeds of crime; and *secondly*, projection of the same as untainted property.



29. Clause (u) of subsection (1) of Section 2 of PMLA, 2002 defines “proceeds of crime”, which reads as under:

“**Section 2(1)(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.”

30. Thus, the proceeds of crime allude to any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence. It may also include the value of any such property or in cases where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad. The Explanation to Section 2(1)(u) of PMLA, 2002 further clarifies that the proceeds of crime would 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 consequence of any criminal activity pertaining to the scheduled offence.

31. Section 2(1)(y) of PMLA, 2002 defines “scheduled offence” to mean (i) offences specified under Part A of the Schedule; or (ii) offences specified under Part B of the Schedule if the total value



involved in such offences is one crore rupees or more; or (iii) offences specified under Part C of the Schedule.

32. Section 5 of PMLA, 2002 deals with the attachment of property involved in money laundering, which is reproduced as under:-

**“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;

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33. Having examined the bare provisions dealing with the proceeds of crime, scheduled offence and attachment of property involved in money laundering, it is apposite to advert to the judicial pronouncements which squarely answer the issue which has arisen for consideration in the cases at hand. In *Vijay Madanlal Choudhary (supra)*, the Hon’ble Supreme Court explicated the meaning and intent of Section 2(1)(u) read with Section 3 of PMLA, 2002 and held as under:-

“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.**

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281. The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of “proceeds of crime” under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of “proceeds of crime” under Section 2(1)(u) will necessarily be crime properties. **Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and *ex-consequenti* proceeds of crime within the meaning of Section 2(1)(u) as it stands today.** On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the



concerned Court trying the scheduled offence to pronounce on that matter.

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

...

(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. **If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or anyone claiming such property being the property linked to stated scheduled offence through him.**

[Emphasis supplied]

34. In **Pavana Dibbur v. The Directorate of Enforcement**, Criminal Appeal No.2779 of 2023 decided on 29 November 2023, the Hon'ble Supreme Court held as follows:-

“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.”

35. A similar view was taken in the case of **Parvathi Kollur v. State** [2022 SCC OnLine SC 1975], wherein, while affirming the discharge order of the Trial Court and setting aside the High Court order, the Hon’ble Supreme Court held as under:-

“5. Thereafter, the Trial Court, by its judgment and order dated 04.01.2019, allowed the application and discharged the appellants from the offences pertaining to the Act of 2002 while observing that occurrence of a scheduled offences was the basic condition for giving rise to “proceeds of crime”; and commission of scheduled offence was a pre-condition for proceeding under the Act of 2002.

6. Aggrieved by the said discharge order, the Directorate preferred a revision petition before the High Court. The High Court proceeded to set aside the discharge order while observing that the allegations made in the complaint and the material produced, prima facie, made out sufficient ground for proceeding against the appellants for offences under the Act of 2002.

7. Learned counsel for the appellants has contended that the issue as involved in this matter is no more *res integra*, particularly for the view taken by a 3-Judge Bench of this Court in the case of *Vijay Madanlal Choudhary v. Union of India* decided on 27.07.2022 where, the consequence of failure of prosecution for the scheduled offence has been clearly provided in the following terms:

“187. ....(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal



complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.”

8. Learned ASG appearing for the respondent, in all fairness, does not dispute the above position of law declared by this Court.

**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.**

10. In view of the above, this appeal succeeds and is allowed. The impugned judgment and order dated 17.12.2020 is set aside and the order dated 04.01.2019 as passed by the Trial Court, allowing discharge application of the appellants, is restored.”

[Emphasis supplied]

36. In **Nik Nish Retail Ltd. v. Assistant Director, Enforcement Directorate** [2022 SCC OnLine Cal 4044], the Calcutta High Court, while dealing with a case where the FIR in respect of the predicate offence was quashed on the basis of settlement has held that the proceedings initiated under PMLA, 2002 provisions cannot stand in isolation in the absence of any scheduled offence. The relevant paragraph of the said decision reads as under:-

“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.”



37. Notably, the ED preferred a Special Leave Petition against the judgment in *Nik Nish Retail Ltd. (supra)*, however, the same came to be rejected by the Hon'ble Supreme Court *vide* order dated 14.07.2023 in SLP (Crl.) Diary No.24321/2023. The Court, while making a reference to the decision in *Vijay Madanlal Choudhury (supra)* observed as follows:-

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

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

The Special Leave Petition is accordingly disposed of.”

38. The Telangana High Court in **Manturi Shashi Kumar v. Director, Directorate of Enforcement**, [2023 SCC OnLine TS 1098] has also quashed a complaint under Section 3 of the PMLA, 2002 on the grounds of the accused being discharged/acquitted of the scheduled offence. The relevant observations of the said judgment are set out below:-

“28. Thus, according to Supreme Court, the offence under Section 3 of PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. If the person is finally discharged or acquitted of the scheduled offence or the criminal case against him is quashed by the court, there can be no offence of money laundering against him or anyone claiming such property being the property linked to the scheduled offence. It is immaterial for the purpose of PMLA whether acquittal is on merit or on composition.”



39. This Court, in the case of **Prakash Industries Ltd. v. Directorate of Enforcement** [2022 SCC OnLine Del 2087], has taken a view that once it is found that a criminal offence does not stand evidenced, the question of any property being derived or obtained therefrom or its confiscation or attachment would not arise at all. The relevant paragraph of the said decision reads as under:-

“9. This Court thus comes to the definite conclusion, that while the offense of money laundering may have been correctly described as a stand-alone offense in the sense of being a condition precedent for an allegation of money laundering being raised, that in itself would not infuse jurisdiction in proceedings that may be initiated under the Act even after a competent court has come to hold that no criminal offense stands committed or situations where the primary accused is discharged of the offense or proceedings quashed. When the offense of money laundering is described as a stand-alone offense, all that is sought to be conveyed is that it is to be tried separately in accordance with the procedure prescribed under the Act. It is evident from a reading of the Act that while the commission of a predicate offense constitutes the trigger for initiation of proceedings under the Act, the offense of money laundering must be tried and established separately. **However, the Court finds itself unable to hold that a charge of money laundering would survive even after the charges in respect of the predicate offense are quashed or the accused is discharged upon the competent court finding that no offense is made out.** The predicate offense does not merely represent the trigger for a charge of money laundering being raised but constitutes the very foundation on which that charge is laid. **The entire edifice of a charge of money laundering is raised on an allegation of a predicate offense having been committed, proceeds of crime generated from such activity and a projection of the tainted property as untainted. However, once it is found on merits that the accused had not indulged in any criminal activity, the property cannot legally be treated as proceeds of crime or be viewed as property derived or obtained from criminal activity.**”

[Emphasis supplied]



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.

41. A bare perusal of the facts of the present case would show that the Trial Court had already acquitted the appellant-Jeevan Kumar of all the charges framed against him *vide* judgment dated 22.03.2013 and the same has remained unchallenged by the respondent. Therefore, his acquittal in the scheduled offence breaks the entire chain leading to the other appellants. Moreover, this Court, *vide* judgment dated 15.01.2024, had quashed the ECIR bearing no. ECIR/07/DZ/2008 alongwith all the consequential proceedings arising therefrom, and the charge framed *qua* the appellant-Rajiv Channa *vide* order dated 24.04.2012. Thus, a necessary corollary would be that all the



proceedings in furtherance of prosecution, including attachment, would also fall and are therefore, liable to be quashed.

42. So far as the contention raised on behalf of the respondent regarding the deferment of the adjudication of the present case in light of the issue being *sub judice* before the Hon'ble Supreme Court in the case of *Gagan Deep Singh (supra)* is concerned, we do not find any merit in the argument of the respondents. The said order can neither expressly nor impliedly be construed to be any kind of stay on adjudication of the present proceedings. Further, this issue is no longer *res-integra* and in this context, we may allude to a judgment of the Hon'ble Supreme Court in the case of *Union Territory of Ladakh (supra)*, relevant paragraph of which is extracted hereunder for reference:

"35. We are seeing before us judgments and orders by High Courts not deciding cases on the ground that the leading judgment of this Court on this subject is either referred to a larger Bench or a review petition relating thereto is pending. **We have also come across examples of High Courts refusing deference to judgments of this Court on the score that a later Coordinate Bench has doubted its correctness. In this regard, we lay down the position in law. We make it absolutely clear that the High Courts will proceed to decide matters on the basis of the law as it stands.** It is not open, unless specifically directed by this Court, to await an outcome of a reference or a review petition, as the case may be. It is also not open to a High Court to refuse to follow a judgment by stating that it has been doubted by a later Coordinate Bench. In any case, when faced with conflicting judgments by Benches of equal strength of this Court, it is the earlier one which is to be followed by the High Courts, as held by a 5-Judge Bench in *National Insurance Company Limited v. Pranay Sethi*, (2017) 16 SCC 6805. The High Courts, of course, will do so with careful regard to the facts and circumstances of the case before it."



[Emphasis supplied]

43. Thus, we find that the attachment proceedings in the present case are unsustainable as the appellants cannot be said to be involved in any activity connected with the proceeds of crime.

### **CONCLUSION**

44. In view of the aforesaid, the judgment and final order dated 09.03.2015 is, hereby, set aside. Further, the confirmation order dated 04.02.2011 passed in OC No. 66/2010 alongwith the order in PAO No. 6/2010 dated 09.09.2010, in ECIR/7/DZ/2008 under PMLA, 2002 are also quashed.

45. Accordingly, we allow the instant appeals and dispose of the pending applications.

**PURUSHAINDR KUMAR KAURAV, J.**

**YASHWANT VARMA, J.**

**APRIL 08, 2024/priya**