

IN THE COURT OF DR.VISHAL GOGNE:
SPECIAL JUDGE (PC ACT) CBI-24
(MP/MLA CASES), RADC

CNR No.DLCT11-000301-2025
ECIR/15/HIU/2021
CC No. 14/2025
U/s 3,4 read with section 70 of PMLA 2002

The Assistant Director of Enforcement,
Directorate of Enforcement
Room No.311, 2nd Floor, B-Block, Pravartan Bhawan
Dr. A.P.J Abdul Kalam Road, New DelhiComplainant

Vs.

1. Smt. Sonia Gandhi @ Edvige Albina Antonia Maino
R/o 10, Janpath,
New Delhi-110001 ...Proposed accused No.1
2. Sh. Rahul Gandhi
R/o 10, Janpath,
New Delhi-110001 ...Proposed accused No.2
3. Sh. Suman Dubey
Director in M/s Young Indian
R/o 125, Panchsheel Park
New Delhi-110017 ...Proposed accused No.3
4. Sh. Sam Pitroda @ Sh. Satyan Gangaram Pitroda
AKA Satyanarayan Gangaram Pitroda,
Director in M/s Young Indian
R/o 301, Trinity Lane, Oak Brook
Illinois 60523 USA ...Proposed accused No.4

5. **M/s Young Indian Company (registered under section 25 of Companies 1956 corresponding to Section 8 of Companies Act, 2013)**
Represented by its Directors Smt. Sonia Gandhi and Shri Rahul Gandhi, registered office at 5A, Herald House, Bahadur Shah Zafar Marg New Delhi-11002 ...Proposed accused No.5
6. **M/s Dotex Merchandise Pvt. Ltd Registered office at Aakash Deep 5 Lower Rawdon Street, Flat No.3, 4th Floor, Kolkata-700020, through its authorised representative (AR) ...Proposed accused No.6**
7. **Sh. Sunil Bhandari S/o Sh. R R Bhandari R/o Upohar Apartment, Panchami Flat-1702, 2052 Chak Garia, Kolkata-700094 ...Proposed accused No.7**

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Date of Order : 16.12.2025

ORDER

1. This order decides the question of cognizance upon the present complaint filed by the Directorate of Enforcement (*hereafter referred as ED*), alleging therein the commission of the offence of money laundering, defined under section 3 and made punishable under section 4, read with section 70 of the Prevention of Money Laundering Act, 2002 (*in short, the PMLA*).

A. Summary of the allegations

2. The ED has alleged the commission of money laundering by the accused persons in relation to the scheduled offences *inter*

alia cheating and criminal conspiracy. The proposed accused in the present proceedings are Smt. Sonia Gandhi-(A-1), Sh. Rahul Gandhi-(A-2), Sh. Suman Dubey-(A-3), Sh. Sam Pitroda-(A-4), Young Indian-(A-5), M/s Dotex Merchandise Private Limited-(A-6) and Sh. Sunil Bhandari-(A-7).

3. It is asserted at the outset by the ED that these proposed accused were actually and knowingly involved in the process or activity connected with proceeds of crime derived or obtained by way of criminal activity relating to the scheduled offences of cheating and criminal conspiracy which led to the fraudulent takeover of the properties worth more than Rs. 2000 crores of Associated Journals Limited (*hereinafter referred as AJL*), a public unlisted company, by a private company viz. Young Indian (*hereafter referred as YI*) beneficially owned by Smt. Sonia Gandhi and Sh. Rahul Gandhi, for a paltry sum of Rs. 50 lakhs only.

Background and Case Overview:

4. The ED presented the background and overview of the case in the following manner:

(i) The investigation in the present case was stated to have stemmed from an order dated 26.06.2014 rendered by the Id. Metropolitan Magistrate-02 (MM-02), Patiala House Courts, New Delhi whereby cognizance was taken on a private complaint filed by Dr. Subramanian Swamy in the year 2013 against Smt.

Sonia Gandhi, Sh. Rahul Gandhi, Sh. Motilal Vohra, Sh. Oscar Fernandes, Sh. Suman Dubey, Sh. Sam Pitroda and M/s Young Indian alleging commission of offences under section 403, 406 & 420 read with section 120(B) of IPC, 1860. Vide the said order, process was issued against Smt. Sonia Gandhi, Sh. Rahul Gandhi, Sh. Motilal Vohra, Sh. Oscar Fernandes, Sh. Suman Dubey, Sh. Sam Pitroda and Young Indian.

(ii) During ongoing proceedings in the said complaint case, two of the accused in the predicate offence Shri Motilal Vohra and Sh. Oscar Fernandes passed away on 21.12.2020 and 13.09.2021 respectively.

(iii) The main allegation in the said complaint instituted by Dr. Subramanian Swamy was that in the year 2010, the above named accused entered into a criminal conspiracy to usurp the assets of a public unlisted company (AJL) worth Rs. 2000 crore by Young Indian, a private company, for just Rs. 50 lakhs, wherein Smt. Sonia Gandhi and Sh. Rahul Gandhi together held 76% of shares.

(iv) The investigation by the ED purportedly covered the affairs of the principal officers of AJL, YI and key office bearers of the All India Congress Committee (AICC) who allegedly orchestrated a scheme to usurp the properties worth Rs 2000 crores (approx.) of AJL and thereby converted public money to personal use. The scheme of fraud was allegedly executed by Young Indian purchasing from AICC the right to recover the loan of Rs. 90.21 crores (given by AICC to AJL) for a paltry sum of Rs. 50 lakhs. The AJL simultaneously converted the outstanding

loan of Rs. 90.21 crore into 9.02 crore equity shares of face value Rs. 10 each in favour of Young Indian, thereby allegedly defrauding the shareholders of AJL on one hand and also the public donors of AICC by dishonestly inducing AICC to forego its valuable right to recover Rs.90 Crore advanced to AJL.

Scheduled Offence:

5. The scheduled offence upon which the present prosecution under section 3, read with section 4 PMLA, is purportedly predicated was stated to have arisen in the following manner:

(i) The ED has cited the order passed by Id. MM dated 26.06.2014 wherein the Id. MM observed that Young Indian was created as a sham or a cloak to convert public money to personal use or as a special purpose vehicle for acquiring control over Rs. 2000 Cr. worth of assets of AJL and the accused persons allegedly acted in consortium with each other to achieve the said nefarious purpose. The circumstance of the court having issued summons to all accused, alleging commission of offences under section 403, 406 & 420 read with section 120B of IPC, has been relied upon by the ED as the foundational basis for its own investigation relating to the proceeds of crime generated from the scheduled offences (section 420 and 120B IPC).

(ii) The prosecution complaint further highlighted that the order passed by the Id. MM on 24.06.2014 was challenged by the accused persons before the Hon'ble High Court of Delhi under

section 482 Cr.P.C. The Hon'ble High Court refused to interfere with the Trial Court proceedings. When the accused therein filed a SLP in the Hon'ble Supreme Court of India against the order dated 07.12.2015 passed by the Hon'ble High Court of Delhi, the Hon'ble Apex Court, vide order dated 12.02.2016, refused to interfere with the decision of the Hon'ble High Court. It is the assertion of the ED that the order taking cognizance in the scheduled offence has attained finality.

(iii) The present prosecution complaint sought to encapsulate the allegations made by Dr. Swamy by citing the following excerpt from the order of the Ld. MM dated 26.06.2014:

It is allegedly by the complainant that the AJL owned real estate worth more than Rs. 2000 Crores in its balance sheet. Informal estimates put this value at Rs. 5000 crores. Against this, AJL owned an amount of just over Rs. 90 crores to the Congress Party for zero interest unsecured loans. Besides this, it had very little other liability. The balance of real estate of AJL left over even after paying of the Rs. 90 crores plus loan due to the Congress Party, actually belongs to AJL's thousand plus shareholders. Big and small shareholders of AJL had contributed approximately Rs. 89 lacs to AJL's capital at different times when the Rupee was valued more than 100 times its present value. If AJL's shares or real estate had been sold by bid and auction and the proceeds distributed to them, hundreds of shareholders would have received back sums equivalent to several thousand times the amount invested by them originally. Also, the Congress Party would have got back the loan with interest from the year 2008. This is because of the huge appreciation in the value of real estate owned by the AJL. But in the present scenario, not only the Congress party did not get back the loan advanced by it to AJL but

the control over the 2000 crores worth of assets also got transferred to YI whose 76% of shareholding vests with accused No.1 & 2 i.e. Smt. Sonia Gandhi and Sh. Rahul Gandhi and the remaining shareholding of 24% vests in accused No.3 & 4 i.e. Sh. Moti Lal Vohra and Sh. Oscar Fernandes.

(iv) It was further asserted that while Dr. Subramanian Swamy had deposed as CW-1 during the course of pre-summoning evidence so as to reiterate his allegations, a Chartered Accountant, namely R Venkatesh, had deposed as CW-2 to lend support to the allegations made by Dr. Swamy.

(v) The observations in the order dated 26.06.2014 in the context of the first scheduled offence in question viz. section 420 IPC were cited by the ED as under:

In the instant case, by the publication of objects of the Indian National Congress through the official website or otherwise, the Congress party induced public persons to contribute to the said party by way of donations/membership fees/funds etc. The party also got exemption from tax as it was formed with the objectives of advancement of the process of democracy. However, the office bearers of the Congress party by advancing an interest free loan to a Public Ltd. Company (AJL) which is a company involved in a commercial activity, infact

appear to have defrauded the large no.of persons who contributed by way of donations/fees etc. to the Congress Party as the money extended as loan was never given for the said purpose and neither the tax benefits were given for any such purpose. They appear to have cheated the state exchequer as well

by claiming tax exemptions by showcasing the objectives for which the donations, etc. were sought by the Congress from the people and diverting those funds to commercial purposes.

(vi) The observations in the order dated 26.06.2014 with respect to the second scheduled offence in question i.e. section 120B IPC were also cited in the present complaint as under:

In the instant case, the chain of circumstances appears to give rise to a conclusive or irresistible inference of an agreement between the accused persons to commit the offences as alleged in a pre-planned manner. Though the language in the documents is shrouded in ambiguity but it is not difficult to understand that the control over public money/assets appear to have been cleverly transferred to the hands of the few by creating a company (YI) for this purpose.

6. The proceedings in the said complaint are reported to presently be under a stay by orders of the Hon'ble High Court of Delhi dated 22.02.2021 after Dr. Swamy had been partly cross examined.

7. The ED has represented the scheduled offences emerging from the order dated 26.06.2014 to be the basis for the present investigation under the PMLA. After citing the definition of the 'proceeds of crime' under section 2(1)(u) PMLA, the present complaint has recorded the following articulation:

(d) Reading the aforesaid definition, it clearly shows that the property must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. In the present

case, the scheduled offence alleged in the complaint is section 420 r.w.s 120B, which are scheduled offences. It is not necessary that a scheduled offence is committed only if an FIR is registered. Cognizance of the scheduled offences by a competent court in a private complaint means that the scheduled offence in the present -cases exists. The definition also does not require registration of an FIR as a pre-requisite for conducting investigation under the PMLA 2002. Further the omission of the proviso to Section 17 by the Finance Act 2 of 2019 and also deletion of proviso to Section 18 are indicators of the fact that registration of an FIR is not mandatory for invoking of provisions of PMLA 2002.

Proceedings by other agencies against Young Indian:

8. The prosecution complaint cited the investigation by the Income Tax (IT) Department to build its own allegations relating to money laundering by the presently proposed accused.

(i) It was alleged that upon investigation by the IT department in the year 2017, huge tax evasion of more than Rs. 414 crores was found in the hands of Young Indian by having allegedly acquired the properties of AJL in an illegal manner and without disclosing the fair market value. The Assessment Order dated 27.12.2017 was cited by the ED to assert that important office bearers of AICC (namely Mrs. Sonia Gandhi, Mr. Rahul Gandhi, Late Motilal Vora, Late Oscar Fernandes and AJL) had devised the scheme involving pre-ordinate artificial and fraudulent steps to takeover AJL. The objective of the scheme was alleged to be two fold – firstly to obtain valuable benefits embodied in

business assets of the AJL and secondly to not pay any tax on business income of earning such benefit.

(ii) It was further stated in the complaint that the challenge to the said assessment order before the CIT-(A) by Young Indian, was dismissed vide order dated 06.12.2018. Consequently, Young Indian preferred an appeal before the Income Tax Appellate Tribunal (ITAT), New Delhi and the Hon'ble ITAT vide order dated 31.03.2022 remanded the matter back to the Assessing Officer (AO) on certain grounds. The matter was re-examined by the AO and re-assessment on all the issues, which had been set aside, was completed on 06.01.2023 vide order under section 143(3)/147 of the Income Tax Act 1961, re-assessing the income of Young Indian at Rs. 398.02 Cr. However, Young Indian again filed an appeal before the Ld. CIT-(A) against the re-assessment order and the matter is currently pending before the Ld. CIT-(A).

(iii) The investigation conducted under the PMLA by the ED has been represented as being independent of the proceedings under the Income Tax Act. The ED has asserted that several material evidences have been gathered which demonstrate the commission of the offence of money laundering by the accused persons.

Investigation by the ED

9. The present prosecution complaint states that as the offences under section 420 and 120B of IPC 1860 mentioned in the cognizance order dated (26.06.2014) are scheduled offences

under the PMLA, an investigation under the PMLA was initiated upon assigning of a distinct no. viz. ECIR/15/HIU/2021 on 30.06.2021 by the Directorate of Enforcement, Headquarters Investigation Unit.

10. The investigation by the ED revealed that Young Indian was effectively controlled by Sh. Rahul Gandhi and Smt. Sonia Gandhi since they together held 76% of shares through an allegedly well thought out conspiracy. It is alleged that firstly, Young Indian was incorporated on 23.11.2010 and then the entire shareholding of AJL (along with its assets) was transferred to Young Indian by assigning it a Rs.90 crore loan (given by AICC to AJL) for only Rs. 50 lacs.

11. The complaint at hand presents the various amounts discovered and investigated during investigation in two distinct categories viz. amounts not alleged to be the proceeds of crime and amounts alleged to be the proceeds of crime. The averments of the ED regarding these two categories are detailed as under.

Amounts not alleged to be proceeds of crime

12. The investigation by the ED reported certain donations, rent and revenue through advertisements in the hands of Young Indian as well as AJL. These amounts have not been portrayed as the proceeds of crime in the prosecution complaint and the investigating officers from the ED confirmed this status of these three categories of amounts upon query from the court. The said

amounts were detailed as under:

(i) The investigation by the ED purportedly revealed that Young Indian received donations/contributions to the tune of Rs. 18.12 crore approx. from various persons/entities during the period 2017-18 which were not found to be genuine. The purpose of collecting these bogus donations was allegedly the discharge of the income tax demand of M/s Young Indian, arising out of the income tax assessment order dated 27.12.2017 wherein tax was levied on the benefit accrued to Young Indian on account of the aforesaid acquisition of AJL shares by Young Indian. The ED has asserted that this tax demand would have otherwise fallen on the majority shareholders and beneficial owners of Young Indian i.e. Smt. Sonia Gandhi and Sh. Rahul Gandhi. It was the assessment of the ED that the accused have been continuing to indulge in the offence of money laundering by using Young Indian as an instrument to generate further proceeds of crime.

(ii) The present complaint further alleges that AJL also collected bogus advance rent to the tune of Rs. 38.41 crore during the period 2017-18. The rent received was found to be fake, as no rent agreements existed. On inquiry from the concerned entities, it was found that the money was transferred to AJL on instructions of senior Congress leaders without there being any actual commercial transaction. The complaint again asserted that the accused had used the AJL to indulge in the offence of money laundering as the AJL is under the control and management of Young Indian as an instrument to generate further

proceeds of crime.

(iii) Lastly, the AJL was claimed to have received revenue of Rs. 29.45 crore from advertisements published in its newspapers during the period 2017-18 to 2020-21. The ED maintained that investigation had revealed Rs. 15.86 crore to have been claimed to be received from various Congress affiliated bodies and rest of the amount i.e. Rs. 13.59 crore was received from other entities. The persons/entities whose names were mentioned in the ledgers of advertisements were summoned by the ED and they purportedly stated that they had paid these amounts on instructions of the Congress leaders and some of them even deposed that the money was paid to seek protection from the Congress Leaders in the course of their regular business. Most of the advertisements given were, according to the ED, not commensurate with business purposes of the donors as these advertisements were mostly in the form of congratulatory messages/birthday wishes to the top leaders of the Congress party.

Amounts alleged to be proceeds of crime

13. The proceeds of crime, allegedly acquired by M/s Young Indian in the form of equity shares of AJL, immovable properties of AJL and rental income thereof were described and quantified in the prosecution complaint in the following manner (reproduced in *toto* from the complaint):

- i) Shares of AJL obtained by Young Indian: @ Rs. 10 per share totaling to Rs. 90.21 crore.
- ii) Underlying value of the shares of AJL: The real value of the shares of AJL is based on its assets. The assets in AJL are immovable properties. The underlying object of the conspiracy was to illegally obtain the underlying assets of the AJL by the beneficial owners of Young Indian. Therefore, these immovable properties valued at Rs. 755 crores are also Proceeds of crime as per the fair market value ascertained by the District Valuation Officer of the Income Tax Department and adopted in the income tax assessment of Young Indian.
- iii) Accretion on the Proceeds of Crime (POC): The properties have been rented out. The rent generated from the properties after they were obtained from the criminal activity relating to the scheduled offence for the period 2010-11 to 2022-23 is Rs. 142.67 crore which are direct proceeds of crime.

14. Upon query from the court, the Id. ASG preferred the valuation of the immovable properties of the AJL at Rs. 755 crores over the larger figure of Rs. 2000 crores mentioned in the earlier portion of the complaint.

15. The complaint also presented a tabular representation of the alleged proceeds of crime as under:

Total POC

(I) Shares of AJL with Young Indian	Rs. 90.21 cr.
(II) Immovable properties of AJL	Rs. 755.15 cr.
(III) Rent received by AJL since taking over of its control by Young Indian	Rs.142.67 cr.
Total	Rs. 988.03 crore

16. The prosecution complaint further depicts a more detailed and granular representation of the investigation conducted under the PMLA as under.

Searches and Seizures

17. As part of its investigation, the ED conducted search operations under section 17 of the PMLA, 2002 across 21 locations during the investigation period from i.e. 2021-2024. During the course of searches, several incriminating documents and evidences concerning bogus transactions linked with money laundering activities were recovered.

18. Also, during the course of search actions, cash amounting to Rs. 51.1 lakhs and various incriminating documents were seized. Apart from this, 13 watches worth of Rs. 32.9 lakhs and jewellery of Rs. 70.22 lakhs were also seized during the search action.

Provisional Attachment Order

19. The complaint states that to secure the proceeds of crime and to prevent the accused from dissipating the same, the properties of AJL valued at Rs. 751,91,28,140/- have been attached vide PAO no. 27 /2023 dated 20.11.2023 and same has been confirmed by the AA vide OC 2121/2023 dated 10.04.2024. An appeal has been made by AJL & Young Indian before Appellate Tribunal against the order dated 10.04.2024 passed by AA, which proceedings are underway in the Tribunal.

20. The investigation by the ED has further involved the recording of the statements of various persons, including the Principal Officer of M/s AJL and M/s Young Indian under section 50 of the PMLA. Documents relating to income tax assessment orders and ownership of various immovable property were also obtained by the ED from various authorities. The investigation has also involved collection of multiple account opening forms, statements of accounts and other documents regarding M/s AJL and M/s Young Indian alongwith associated entities.

21. The investigation into the affairs of the various entities involved in the present case and the chronology of the dates and events, where acts constituting money laundering were allegedly committed, are best represented through the following table contained in the complaint.

Sr. No.	Date	Particular
1	02.04.2008	Publication of newspaper was closed in Associated Journals Limited (AJL) and VRS was offered to all employees and the same was accepted on 02.04.2008.
2	08.05.2010	Letter from Director, AJL to Treasurer AICC that loan given by AICC cannot be repaid, since AJL's publication has been suspended and it has no regular income. Note: Even after this letter AJL receives a further loan of Rs. 1.35 crore from AICC during the period 19.08.2010 to 15.12.2010 aggregating to Rs. 90.21 crore.
3	17.06.2010	Sh. Oscar Fernandes, a close associate of Smt. Sonia Gandhi and Member of AICC appointed as Director of AJL.
4	01.09.2010	Resolution passed by the Board of Directors of AJL to shift the Registered Office of AJL from Lucknow to Delhi.
5	23.11.2010	Young Indian (YI), a section 25 company, was incorporated by Sh. Suman Dubey and Sh. Satyanarayan Gangaram Pitroda with a share capital of Rs. 5 lacs. Note: Authorized Share Capital: 5,000 shares of Rs.100/- each valued at Rs.5 Lacs. Paid-up Share Capital: 1100 shares of Rs.100 each valued at Rs.1,10,000. The following were the two initial shareholders- (i) Sh. Sam Pitroda :: 550 shares [having face value of Rs.100 each] (ii) Sh. Suman Dubey :: 550 shares [having face value of Rs.100 each]

6	13.12.2010	Sh. Rahul Gandhi was appointed as Director of the Young Indian.
7	19-12-2010	Letter of Young Indian to AJL demanding repayment of loan or convert it into equity.
8	21.12.2010	Sh. Suman Dubey and Sh. Sam Pitroda, Director of the Young Indian were also appointed Directors of AJL.
9	21.12.2010	AJL issues a notice for EGM and purportedly passes a special resolution to increase share capital for the purpose of issuing shares to Young Indian in consideration of extinguishment of the loan amount due to Young Indian, to issue shares to Young Indian in lieu of loan of Rs. 90,21,68,980/- on 21-12-2010 before even the actual assignment of loan by AICC to Young Indian.
10	28.12.2010	Deed of assignment by which INC/AICC assigns the right to recover Rs. 90.21 Crore from AJL, to Young Indian for a consideration of Rs. 50 lakhs. In other words Young Indian purchases "right to recover" Rs. 90.21 crore for a consideration of Rs. 50 Lacs.
11	21.01.2011	<p>The EGM of AJL was held on 21.01.2011 at Kesar Bagh, Lucknow to increase the authorized capital of AJL from Rs. 1,50,00,000 (divided into 10,00,000 equity shares of face value Rs. 10 each and 50,000 preference shares of Rs. 100 each) to Rs. 100,50,00,000 (divided into 10,00,00,000 equity shares of face value Rs. 10 each and 50,000 preference shares of Rs. 100 each).</p> <p>Out of the total subscribed share capital of Rs. 91.14 crore, it was decided at the EGM to issue shares worth Rs. 90.21 crore (i.e. 99% of the total subscribed share capital) to Young Indian in lieu of loan assigned to it by AICC.</p>

12	22.01.2011	<p>Smt. Sonia Gandhi, Sh. Motilal Vora and Sh. Oscar Fernandes were appointed as Directors of Young Indian.</p> <p>Fresh allotment of shares:</p> <p>1. Sonia Gandhi becomes share holder getting 1900 shares [38%] @ Rs.100/- each.</p> <p>Fresh Allotment of Shares= 1350</p> <p>Sh. Suman Dubey transferred = 550 shares</p> <p>2. Rahul Gandhi was a director since 13.12.2010. Became a shareholder of 1900 shares [38%]@ Rs.100/- each.</p> <p>3. Motilal Vora became a share-holder getting 600 shares [12%]@ Rs.100 each.</p> <p>4. Oscar Fernandes became a shareholder getting 600 shares [12%]@ Rs.100 each.</p> <p>Fresh shares allotted = 50 shares.</p> <p>Sh. Sam Pitroda transferred= 550 shares</p>
13	15.02.2011	<p>Young Indian claimed receiving loan of Rs. 1 crore from a Kolkata based shell company Dotex Merchandise Pvt. Ltd which was subsequently utilized to make payment of Rs. 50 lakhs to AICC towards purchase/assignment of loan of Rs. 90.21 crore recoverable from AJL.</p>
14	26.02.2011	<p>The AJL allotted 90,21,68,980 shares to the Young Indian in lieu of assignment of alleged loan of Rs. 90.21 crore to the Young Indian for Rs. 50 lakhs.</p>
15	01.03.2011	<p>Young Indian paid Rs. 50 lacs to the AICC for assignment of loan of Rs. 90.21 crore.</p>
16	09.01.2013	<p>Complaint filed by Sh. Subramanian Swamy at MM Patiala House Courts, New Delhi.</p>
17	26.06.2014	<p>Cognizance of the offence u/s 403, 406, 420 r/w 120B of IPC taken by the Ld. Court and process u/s 204 IPC was issued.</p>
18	30.06.2021	<p>ECIR/15/HIU/2 021 recorded by ED.</p>

19	Aug/Sep 2022 and 2024	Searches conducted by ED at various locations.
20	20.11.2023	Provisional Attachment Order No. 27 /2023 attaching properties worth Rs. 751.9 Cr including immovable properties of AJL issued by ED.
21	10.04.2024	Confirmation of OC 2121/2023 by Ld. AA.

22. The investigation regarding the principal entities is next summarised.

M/s Associated Journal Ltd (AJL)

23. The role of AJL was essentially represented as a publishing house (unlisted public company) incorporated on 20.11.1937 with its registered office at Herald House, 5-A, Bahadur Shah Zafar Marg, New Delhi. The office of the company was earlier situated in Lucknow. It was then shifted from Lucknow to Delhi vide Resolution passed on 01.09.2010.

24. AJL was publishing a newspaper namely National Herald in English language. The publication of newspapers was closed and VRS was offered to all employees in 2008.

25. After closure of its publishing activities in 2008-09, AJL was left with no commercial activity and generated rental income from immovable properties. Details of the rental income of the AJL from 2002 to 2011 were filed with the complaint.

26. The authorized share capital of AJL was Rs. 1.5 Crore till 2011 which was divided into 50,000 preferential shares worth Rs.

100 each and 10,00,000 equity shares worth Rs. 10 each. The AJL had 1057 equity shareholders in 2010.

27. On 17.06.2010, Shri Oscar Fernandes , a close associate of Smt. Sonia Gandhi and member of AICC was appointed as Director and resolution was passed by the Board of Directors of AJL to shift the office from Lucknow to Delhi.

28. AJL issued a notice for EGM dated 21.12.2010 (signed by Shri Motilal Vohra) for convening an EGM to increase authorized share capital and transfer of shares in favour of Young Indian. Thereafter, pursuant to the notice issued, Extra Ordinary General Meeting (EGM) was held on 21.01.2011 and the authorized share capital of the company was increased to Rs. 100.5 Crore, divided into 10,00,00,000 equity shares having face value of Rs. 10 and 50,000 preferential shares worth Rs. 100 each.

29. Around 2016, after investigation was initiated by various government agencies, the company relaunched its news operations through a digital platform to purportedly show that it is still engaged in publishing of newspapers. It is claimed by AJL that their regular business activities include:

i. Printing and publishing newspapers in English and Hindi Language and publishing news on three websites. Their newspapers are National Herald (on Sunday) in English language and Navjivan (on Sunday) in Hindi language.

Websites published by AJL as claimed by them are:

<https://www.nationalheraldindia.com>. in English

<https://www.navjivanindia.com> Hindi

<https://www.qaumiawaz.com>. Urdu languages respectively;

ii. Leasing of the company' s properties on rent.

30. The list of Directors of AJL during the material period F.Y. 2010-11 and their current status was represented as under:

Sr.	Name	Position in AJL	Current Status
1.	Lt. Motilal Vohra	Chairman and Managing Director since 22.03.2002 till 21.12.2020	Passed away
2.	Lt.Oscar Fernandes	Director since 17.06.2010 till 13.09.2021	Passed away
3.	Sh. Satyanarayan Gangaram Pitroda @ Sam Pitroda	Director since 21.12.2010	Director
4.	Shri Suman Dubey	Director since 21.12.2010	Director

M/s Young Indian (YI)

31. Young Indian is stated to be a private company limited by guarantee, incorporated on 23 November 2010 with a capital of Rs. 5 lakh and with its registered office at SA, Herald House, Bahadur Shah Zafar Marg, New Delhi. The company was granted license as a non-profit company under section 25 of the Companies Act, 1956 on 18.11.2010 to promote the object of the nature as specified in section 25(1)(a) of the Companies Act, 1956.

32. The founding directors and shareholders of Young Indian are Mr. Suman Dubey and Mr. Sam Pitroda, holding 550 shares each out of total authorized shares of 5000.

33. The complaint states that on 13 December 2010, Sh. Rahul Gandhi was appointed director of Young Indian while Smt. Sonia Gandhi joined the board of directors on 22 January 2011. Thereafter, fresh allotment of shares of Young Indian took place with Smt. Sonia Gandhi and Shri Rahul Gandhi becoming majority shareholders of Young Indian by holding 76% of its total shares in the following manner:

- a) Sonia Gandhi became share holder getting 1900 shares [38%] @ Rs.100/- each. (Fresh Allotment of Shares= 1350 and Sh. Suman Dubey transferred = 550 shares).
- b) Rahul Gandhi was a director since 13.12.2010. Became a shareholder of 1900 shares [38%]@ Rs.100/- each.
- c) Motilal Vora became a share-holder getting 600 shares [12%] @ Rs.100 each.
- d) Oscar Fernandes became a shareholder getting 600 shares [12%] @ Rs.100 each. Fresh shares allotted = 50 shares and Sh. Sam Pitroda transferred = 550 shares.

34. The details of the shareholders and directors of the company during Financial Year 2010-11 and the current position were depicted through the following table in the complaint:

TABLE 7

S. No.	Name	Position in YI & No. of shares held	Current position**
1	Smt. Sonia Gandhi	Director since	Director

		22.01.2011 -1900 shares (38%)	
2	Shri Rahul Gandhi	Director since 13.12.2010 -1900 shares (38%)	Director
3	Lt. Motilal Vohra	Director since 22.01.2011 -600 shares (12%)	Passed away
4	Lt. Oscar Fernandes	Director since 22.01.2011 -600 shares (12%)	Passed away
5	Shri Satyanarayan Gangaram Pitroda @ Sam Pitroda	Director since 23.11.2010 -held 550 shares but transferred it to Shri Oscar Fernandes	Director
6	Shri Suman Dubey	Director since 23.11.2010 -held 550 shares but transferred it to Shri Motilal Vohra	Director

35. As per its Memorandum of Association, the main object of the company was:

To inculcate in the mind of India's youth commitment to the ideal of a democratic and secular society for its entire populace without any distinction as to religion, caste or creed and to awaken India's youth to participate in activities that may promote the foregoing objective in any manner whatsoever including, without limitation, participating in all democratic activities through open and transparent electoral process, so as to conform to the ideals of the founding fathers of India. Mahatma Gandhi Pandit Jawaharlal Nehru.

36. The complaint asserted that the controversy surrounding M/s Young Indian was that the loan of Rs. 90.21 crore was assigned by AICC to M/s Young Indian through an initial agreement dated 18.12.2010 for only Rs. 50 lakhs, whereas AJL had assets of hundreds of crore on its own name during that time. On the very next day, i.e. 19.12.2010, M/s Young Indian wrote a letter to AJL to repay the loan of Rs. 90 crore assigned to it by AICC or convert this loan into equity shares and transfer them to M/s Young Indian.

37. Thereafter, on 28.12.2010, an assignment deed was signed between Young Indian and AICC without making AJL a party to transfer the loan in favour of Young Indian.

38. The complaint next asserts that in June 2010, Sh. Oscar Fernandes, a close associate of Smt. Sonia Gandhi and Member of AICC was appointed as Director of AJL and on 21.12.2010 Sh. Suman Dubey as well as Sh. Sam Pitroda, (Directors of the Young Indian) were also appointed as Directors of the AJL.

39. On 21.12.2010, the Board of AJL passed a Special Resolution to increase the share capital of AJL from 1.5 crore to Rs. 100.5 crores (divided into 10 crore equity shares of Rs. 10 each and 50,000 preference shares of Rs. 100 each).

40. Thereafter, on the basis of resolution passed by AJL, an Extraordinary General Meeting (EGM) was organized on 21.01.2011 at Kesar Bagh, Lucknow and the decision to increase the shareholding of AJL was passed along with the issuance of 9.02 crore equity shares to M/s Young Indian in lieu of the

assignment of AJL's debt of Rs. 90.21 crore. It is alleged that none of the actual shareholders of AJL had attended the EGM. The decision to increase the share capital of AJL and transfer 99% of its equity shares to M/s Young Indian was taken by only 07 shareholders who together 0.00005% shares of AJL. This EGM was presided over by Sh. Motilal Vohra, who at that point of time was the Chairman and Managing Director of AJL, Treasurer of AICC and Director at M/s Young Indian.

41. In February 2011, Young Indian received a loan of Rs.1 crore from a Kolkata based entity namely M/s Dotex Merchandise Private Limited and out of which Rs. 50 Lacs were transferred to AICC for the assignment of loan. The present complaint has depicted Dotex as a 'paper entity'.

42. The ED has alleged that the above facts clearly show that M/s Young Indian was incorporated only to fraudulently acquire the properties of AJL worth thousands of crores. And that this was noted by Ld. MM Patiala House Courts in her Order dated 26.06.2014 to the effect that M/s Young Indian was infact created as a sham entity to convert the properties of AJL to personal use or as a special purpose vehicle for acquiring control over Rs. 2000 Crore worth of Assets of AJL. The ED highlighted that the order further states that since the accused persons had allegedly acted in concert with each other to achieve the said nefarious design, there were sufficient grounds for proceeding against all of them.

43. The shareholding of Young Indian, as on 31.03.2024, was reflected through the following table in the complaint:

S. No.	Name	Position in YI & No. of shares held	Current position**
1	Smt. Sonia Gandhi	Director since 22.01.2011 -1900 shares (38%)	Director
2	Shri Rahul Gandhi	Director since 13.12.2010 -1900 shares (38%)	Director
3	Lt. Motilal Vohra	Director since 22.01.2011 -600 shares (12%)	Date of Demise 21.12.2020 (shares not transferred or allotted)
4	Lt. Oscar Fernandes	Director since 22.01.2011 -600 shares (12%)	Date of Demise 13.09.2021 (shares not transferred or allotted)

44. The ED next observed that even after the demise of Sh. Motilal Vohra and Sh. Oscar Fernandes in 2020 and 2021 respectively, their shares in Young Indian have remain un-allotted till date and that this was reflective of the hegemony and absolute control of the beneficial owners of the company i.e. A-1 and A-2.

45. The ED has next alleged that M/s Young Indian was created as a Section 25 company (not for profit company) to avoid payment of any taxes and acquire the huge real estate

assets. However there was no such charitable activity in the company, there were no expenses towards its declared charitable activities during the several years of its existence, the company only acquired majority shareholding in another company, it took loans from an entry provider shell entity actively entering into money laundering activities, it used these funds for its acquisitions, and no funds were actually spent on the so called charitable activities. Thus, there was purportedly no intention of performing any charitable activity.

46. The complaint further asserted that Young Indian had not disclosed the majority acquisition of the company AJL in its books of account and conspired to hide the material information in its financial statements.

47. It was the concluding allegation of the ED with respect to Young Indian that the conversion of debt and transfer of almost the entire equity of AJL to Young Indian has caused wrongful loss to the original shareholders of AJL as they would have benefited had the assets of the company been used to discharge the loan liability and to revive the company.

All India Congress Committee (AICC)

48. The AICC is not an accused in the present complaint. While the proposed accused persons had contended that the complaint had wrongly equated the AICC with the Congress Party, the court proceeds on the *prima facie* use of the term

‘AICC’ interchangeably with the expression ‘Congress Party’ in the present complaint. The varied use of these terms is not an acceptance, by the court, of any argument pertaining to their respective status in law or their positioning in the allegations.

49. The complaint states that the AICC is the central decision making body of the Indian National Congress.

50. The details of the important office bearers of AICC and their close associates during the material period of 2010 – 2011 were reflected in the following table in the complaint:

Table 9

S. No.	Name	Position/association
1	Mrs. Sonia Gandhi	President
2	Mr. Rahul Gandhi	General Secretary
3	Mr. Motilal Vohra	Treasure
4	Mr. Oscar Fernandes	Long standing officer bearer and General Secretary
5	Mr. Satyanarayan Gangaram Pitroda @ Sam Pitroda	Close associate of Mrs. Sonia Gandhi & Mr. Rahul Gandhi
6	Mr. Suman Dubey	Close associate of Mrs. Sonia Gandhi & Mr. Rahul Gandhi

51. The ED maintains that upon advancement of loans to the AJL between 2002 to 2011, a total outstanding loan of Rs. 88,86,68,976/-was recoverable by the AICC from the AJL. However, on 08.05.2010, a director of the AJL, namely Vishwa Bandhu Gupta, wrote to the Treasurer of the AICC specifying

that since the publication of the AJL had been suspended and it had no regular income, the loan could not be repaid to the AICC. The complaint finds it to be a suspicious circumstance that the AICC still proceeded to provide a further loan of Rs. 1,35,00,000/- to the AJL between 19.08.2010 to 15.12.2010 so as to aggregate a total loan of Rs. 90.21 crores. It was also found suspicious that the entire loan was assigned to the Young Indian for a sum of Rs. 50,00,000/- by the AICC.

52. The ED contended that this circumstance reflected the active involvement of the office bearers of the AICC in usurping the properties of the AJL in favour of Young Indian.

53. The ED is of the assertion that since the AICC is a political party of which the funds are sourced from the public, it was prohibited from lending to a business entity and that the persons heading the affairs of the AICC thereby cheated the members of the public when Young Indian was controlled by persons occupying key managerial posts in the AICC.

M/s Dotex Merchandise Pvt. Ltd.

54. The complaint has alleged that the Income Tax (IT) Department, in its Order u/s 143 (3) read with section 147 of the IT Act, 1961 dated 30.03.2016 for A.Y 2010-11, in the case of M/s Dotex Merchandise Pvt. Ltd, held that M/s Dotex was registered in 1994 as a paper/shell entity engaged in the activity of providing accommodation entries. This order assessed a sum

of Rs. 30.20 crores received by Dotex as unexplained cash credit under section 61 of the IT Act.

55. The ED has alleged that out of this unexplained cash, Rs. 1 crore was transferred by Dotex to Young Indian on 24.12.2010.

56. This transaction was assessed by the IT Dept. vide Order dated 27.12.2017 as unexplained cash credit under section 68 of the IT Act 1961, in the hand of Young Indian for the AY 2011-12. This Assessment Order was appealed against by Young Indian to CIT(A), which dismissed the appeal of Young Indian vide order 06.12.2018.

57. The amount of Rs. 1 crore is sought to be associated with Young Indian upon the allegation that out of the tainted cash received in its bank account, M/s Dotex extended a loan of Rs. 1 Crore to M/s Young Indian on 24.12.2010 vide Cheque no: 565106 dated 24.10.2010 which was further used in payment of Rs. 50 lakhs to AICC in lieu of assignment of loan of Rs. 90.21 Crore of AJL.

58. The prosecution complaint has articulated the 'process or activity' connected with the proceeds of crime unraveled during the investigation as a chain of circumstances. These are reproduced from the complaint as under:

(A) Incorporation of Y.I.:

Young Indian a section 25 company was incorporated on 23 November 2010 with Authorized Share Capital of Rs. 5 lakh and with its registered office at N-125, Panchsheel Park, New Delhi (it is to be noted that this address is the residential address of

Sh. Suman Dubey who was the founder member /Director of the company) as mentioned in 'Certificate of Incorporation' before shifting to its new registered address SA,Herald House Bahadur Shah Zafar Marg Delhi 110002.

(B) Appointment of common persons in AICC, AJL and Young Indian:

- Sh. Oscar Fernandes, General Secretary in AICC was appointed as Director of AJL 17.06.2010. He was made director in Young Indian on 22.01.2011.
- Lt. Motilal Vohra, then Treasurer of AICC and MD of AJL was made Director of Young Indian on 22.01.2011.
- Sh. Rahul Gandhi, then General Secretary of AICC was appointed as Director of Young Indian on 13 December 2010.
- Sh. Suman Dubey and Sh. Sam Pitroda were close associates of Congress Party and the Directors in Young Indian. They were appointed as Directors in AJL on 21.12.2010 (as above).

After these appointments, the position of office bearers in three entities namely, AICC, AJL and Young Indian is as under:

Table 10

Name of the Person	AICC	AJL	Young Indian
Sh. Motilal Vohra	Treasurer	Managing Director	Director
Sh. Oscar Fernandes	General Secretary	Director	Director

Smt. Sonia Gandhi	President		Director
Sh. Rahul Gandhi	General Secretary		Director
Sh. Suman Dubey		Director	Founder, shareholder & Director
Sh. Sam Pitroda		Director	Founder, shareholder & Director

(C) Assignment of Loan by AICC to Young Indian:

As a part of criminal conspiracy, loan of Rs. 90.21 crore owed to AICC by AJL was assigned to Young Indian for an amount of Rs. 50 lakhs only. Investigation conducted under PMLA has revealed that this assignment of loan to Young Indian was done with criminal intent as the following pertinent questions relating with the assignment of loan were neither answered nor substantiated with requisite documents.

59. Based on the statements of key office bearers of AJL, YI and the AICC as well as its analysis of the various purportedly unanswered questions along with the material collected during investigation, the ED has delineated the role of each proposed accused in the present offence punishable under section 4 PMLA. The various proposed accused are sought to be incriminated on the basis of acquisition, possession as well as use of the proceeds of crime within the meaning of section 3 PMLA.

60. It is asserted with respect to Smt. Sonia Gandhi (proposed accused no.1) that as the AICC President and Director in Young

Indian when the transactions pertaining to the allegedly fraudulent take-over of AJL through Young Indian were executed, she is complicit in commission of the scheduled offence as well as the resultant generation of the proceeds of crime.

61. Similarly, it is asserted with respect to Sh. Rahul Gandhi (proposed accused no.2) that as the then General Secretary of the AICC and one of the Directors in Young Indian and shareholder holding 38% of its equity and 76% shares along with his mother (proposed accused no. 1) when the AJL was taken over by Young Indian, he too is liable to be seen as being involved in the commission of the scheduled offence and the resultant generation of the proceeds of the crime.

62. As the then Directors in Young Indian, Sh. Suman Dubey (proposed accused no.3) and Sh. Sam Pitroda (proposed accused no.4) are also projected to be complicit in commission of the scheduled offence as well as the generation of the proceeds of crime.

63. Being the alleged direct beneficiary of the majority shares of the AJL and, in the assessment of the ED, also being the beneficiary of the immovable properties of the AJL, the complaint has portrayed M/s Young Indian (proposed accused No.5) as being guilty of receiving the proceeds of crime. The complaint also contends that by virtue of section 70 PMLA, proposed accused no.1 to 4, being the Directors and in control of accused no.5, stand vicariously incriminated with the offence of

money laundering.

64. Proposed accused No.6 (Dotex Merchandise Pvt. Ltd) and one of its directors namely Sh. Sunil Bhandari (proposed accused no.7) are alleged to have knowingly assisted in the process and activity connected with the proceeds of crime and are equally sought to be coloured with money laundering.

65. The complainant next asserted that by virtue of section 70 PMLA, proposed accused no.7, as the director of accused no.6, is vicariously incriminated as an accused for the offence of money laundering committed by Dotex Merchandise Pvt. Ltd.

B. Submissions on behalf of ED

66. Mr. S.V Raju, Ld. ASG, appearing on behalf of the ED submitted at the outset that any doubts regarding sanction for prosecution under section 218 BNSS must be dispelled as none of the Members of Parliament (proposed accused No. 1 and 2) were public servants within the contemplation of the said provision and the acts ascribed to them were not in discharge of official duty either.

67. This submission from the Ld. ASG shall not be detaining the court for any measure of discussion as no objections were raised (with respect to sanction for prosecution) by any of the proposed accused persons.

68. The allegations in the complaint were reiterated, in detail, by the Ld. ASG in seeking cognizance from this court upon the present complaint. It was prayed that all accused were liable to

be summoned with reference to their respective roles in the allegedly fraudulent take over of the immovable assets of AJL. It was argued that the transfer of shares in consequence of the offence of cheating, coupled with the underlying value of these shares in the form of the assets of AJL as well as the generation of rent from these properties, thoroughly satisfied the definition of 'proceeds of crime' under section 2(1)(u) of the PMLA.

69. It was next agitated by the Ld. ASG that cognizance was required to be considered in a limited template of disclosure of the ingredients of the offence under section 3 PMLA and that the degree of scrutiny entailed at this stage was much narrower than consideration upon charge. The Ld. ASG thereby pleaded a lower threshold of scrutiny for purpose of cognizance than consideration upon charge. The submission on behalf of the ED essentially was that the court could not examine disputed questions of fact or any defence projected by the proposed accused at the stage of cognizance. As an allied submission, it was asserted by the Ld. ASG that elaborate reasons were not required to be rendered by the court when deciding the question of cognizance and summoning of accused persons.

70. It was submitted with respect to the maintainability of the present complaint that a scheduled offence could arise either from a FIR, a statutory complaint made by a public servant or a private complaint. The submissions of the Ld. ASG with respect to maintainability on the above grounds shall be addressed in greater detail in the discussion to follow in the present order.

71. Reliance was placed by the ED upon the following decisions to canvas support for its arguments :

- (i) *Vijay Madanlal Choudhary vs Union of India, 2022 SCC OnLine SC 929.*
- (ii) *U.P Pollution Control Board vs. Dr. Bhupendra Kumar Modi (2009) 2 SCC 147 (Para 23).*
- (iii) *Chandra Deo Singh vs. Prokash Chandra Bose (1964) 1 SCR 639 (Para 8).*
- (iv) *Nagawwa vs. V.S Konjalgi (1976) 3 SCC 736*
- (v) *Shivjee Singh vs. Nagendra Tiwary & Ors. (2010) 7 SCC 578 (Para 16 and 18).*
- (vi) *Manharibhai Muljibhai Kakadia vs. Shaileshbhai Mohanbhai Patel (2012) 10 SCC 517.*
- (vii) *Order dated 26.06.2014 passed by Ld. Metropolitan Magistrate, Patiala House Courts, New Delhi.*
- (viii) *Hon'ble Delhi High Court dated 07.12.2015 in CRL. MC 3332/2014, 3333/2014, 3335/2015, 3336/2014 & 2156/2015.*
- (ix) *Supreme Court order dated 12.02.2016 in SLP no.1024/2016 find against the order dated 07.12.2015 passed by Hon'ble Delhi High Court.*
- (x) *State of Orissa vs. Debendra Nath Padhi (2005) 1 SCC 568 (Para 8,18 and 23).*
- (xi) *Yogesh Mittal vs. Enforcement Directorate, 2018 SCC OnLine Del 6565 (Paras 24 and 25).*
- (xii) *Prasad Shrikant Purohit vs State of Maharashtra (2015) 7 SCC 440 (Paras 71 to 78).*
- (xiii) *Kanti Bhadra Shah & Anr. vs State of West Bengal (2000) 1 SCC 722.*

C. Submissions on behalf of the proposed accused

72. Dr. A.M. Singhvi, ld. Sr. counsel on behalf of proposed accused no. 1 challenged the jurisdiction of the ED in having commenced investigation towards money laundering in the

absence of a FIR for the predicate offence. Reference was extensively made to the reports of the Financial Action Task Force (FATF) concerning India to support these contentions. Besides, reliance was placed upon the decision in ***Vijay Madanlal Chaudhary*** to support the contention that the registration of a FIR qua the scheduled offence was a *sine qua non* for prosecution under the PMLA. These contentions shall be addressed at greater length at a later stage in this order.

73. The following decisions were cited on behalf of proposed accused No.1:

- (i) ***Samdeep Varghese Vs. Directorate of Enforcement***
Case No. CIC/SS/A/2011/001780, Order dated November 8, 2013
- (ii) ***V.R. Seenivasan Vs. Directorate of Enforcement***
(File No: CIC/DIREN/A/2023/100537
- (iii) ***Dhanalakshmi & Anr. vs. The Enforcement Director***
(W.P. No. 15189 of 2024, order dated 14.08.2024)
- (iv) ***Vijay Madanlal Choudhary Vs. Union of India***
(2023) 12 SCC 1
- (v) ***Dr. Jaya Thakur vs. Union of India and Ors.***
(2023) 10 SCC 276
- (vi) ***State of Maharashtra vs. Lalit Somdatta Nagpal***
(2007) 4 SCC 171
- (vii) ***State of Gujarat vs. Mansukhbhai Kanjibhai Shah***
(2020) 20 SCC 360
- (viii) ***Sajjan Singh vs. State of Punjab***
1963 SCC Online SC 48

74. Mr. R.S. Cheema, the Id. Senior Counsel on behalf of proposed accused no. 2, apart from reiterating the submissions made by Dr. Singhvi in the context of the canvassed threshold requirement of a FIR in the predicate offence for initiation of

proceedings qua section 3, PMLA, agitated that the ED had omitted the placement of material documents regarding the predicate offence, including the statements of the relevant office bearers of the Congress Party, before the court. The Id. Senior Counsel implored the court to be mindful of the three options available when a fresh chargesheet or complaint is taken up for consideration *inter alia* taking cognizance, dismissing the complaint or directing the filing of relevant material.

75. It was strongly agitated that the prosecution complaint infact created the possibility of two versions wherein the inferences drawn by the prosecution relating to alleged money laundering were equally counter balanced by the alternate proposition viz the innocence of the proposed accused on account of the bonafide nature of the transactions between ideologically alligned entities. The Id. Senior Counsel elaborated upon his submissions by portraying the relationship between the AJL and the Congress Party as ideological and not commercial in nature and by agitating that the allegation of generation of proceeds of crime was untenable when the assets of the AJL remained within its ownership and control.

76. The additional argument on behalf of proposed accused no. 2 was that in the absence of the transfer of any amount or financial benefit to the said respondent and the majority of the properties of the AJL being on lease rather than being owned by it, proceeds of crime could not have come into existence within the meaning of the PMLA.

77. Reference was made by the Id. Senior counsel to section 25 of the Companies Act to content that the shareholders of such a company were not entitled to any dividend and that the very probability of creation of proceeds of crime was therefore ruled out. It was further agitated that the complaint from Dr. Swamy was riddled with inaccuracies and a lack of understanding of the structure of the AICC. Proposed accused no. 2 was rather represented to be only one of the 11 General Secretaries of the Congress Party and therefore not in charge of the affairs of the AICC in the relevant time frame pertaining to the allegations.

78. Besides, the Id. Sr. Counsel argued that it was permissible for political parties to undertake various business activities.

79. The Ld. Sr. counsel relied upon the following decisions on behalf of proposed accused No.2:

- (i) Order dated 02.05.2022 passed in the present case by this Hon'ble Court.*
- (ii) Kushal Kumar Agarwal Vs. Directorate of Enforcement Criminal Appeal No. 2749 of 2025, Hon'ble Supreme Court*
- (iii) N. Sridhar Vs. State of A.P., 2013 SCC Online AP1287*
- (iv) R. Madhavan Pillai Vs. Rajendran Unnithan (decided on 03.03.2025 Civil Appeal No. (S) 3530-3531 of 2025 arising out of S.L.P. (Civil) No (S) 2987-2988/2025)*
- (v) Gorav Kathuria Vs. Union of India 2016 SCC Online P&H 3248*
- (vi) Bacha F. Guzdar vs. Commissioner of Income Tax, Bombay (1954) 2 SCC 563*
- (vii) Vodafone International Holdings BV vs. Union of India and Anr. (2012) 6 SCC 613*

*(viii) Bharatiya Janta Party vs. Bharatiya Janta Party
(I.T.A. No. 1184/Delhi 1999)*

*(ix) Election Commission of India order dated 06.11.2012 in
response to Dr. Subramanian Swamy's representation.*

80. Mr Sushil Bajaj, the Id. Counsel for proposed accused no. 3 sought to de-couple the scheduled offence from the proceeds of crime by submitting that the existence of a scheduled offence would not necessarily lead to the generation of the proceeds of crime within the meaning of section 2(1)(u) of the PMLA. Further, that while the purportedly cheated persons were the shareholders of the AJL and the donors to the Congress Party, none of these donors had been examined as witnesses by the ED. Moreover, the Id. Counsel argued, the Congress Party and the AJL not being named as accused was a circumstance disfavouring the notion of any of the donors of the party or the shareholders of the AJL having been cheated. The use of its own funds by a political party was canvassed to be within its sovereign domain.

81. It was contented that no specific role was ascribed to proposed accused no. 3 and that his mere status as a Director in the AJL and Young Indian was inadequate to find him culpable even for the limited purpose of cognizance and summoning.

82. The next contention on behalf of proposed accused no. 3 was that the transactions between AJL and the Congress Party were designed to revive publications by the former and were not of a commercial hue.

83. Much like the preceding proposed accused, it was agitated that on account of the properties remaining in the hand of the AJL and mostly being leasehold in nature, description as well as quantification of the proceeds of crime on the basis of the market value of these properties was misplaced.

84. Similar to the other proposed accused, it was the contention on behalf of proposed accused no. 3 too that with the control of the properties as well as the rent relating to the properties of the AJL continuing to vest with the AJL, the proceeds of crime never came into existence. The Id. counsel also pointed out that none of the rental income of the AJL had gone to the hand of respondents no. 1 to 5.

85. It was lastly submitted that exculpatory statements collected by the ED during the stage of investigation had been excluded from the complaint.

86. Mr. Kuber Bodh, Id. Counsel for proposed accused no. 4 relied on the decision in *Bacha F. Guzdar Vs. Commissioner of Income Tax Bombay (1954) 2 SCC 563* to argue that while a shareholder may acquire a right in the profits of the company, no interest in the assets of the company accrued to such shareholder. It was thus argued that none among proposed accused no. 1 to 5 had acquired any interest or ownership in the immovable assets of AJL. The possibility of generation of proceeds of crime, through the underlying value of the shares of AJL in the hands of Young Indian, was therefore denied by the Id. Counsel.

87. It was further argued that the prescription by the ED that the AJL ought to have liquidated some of its assets to repay the loan to the AICC, rather than transferring its shares to Young Indian, was an unwarranted interference and judgment upon the internal affairs of the AJL by the ED.

88. The Id. Counsel strongly opposed the assertion of the ED that proposed accused no. 4 was a close aide of proposed accused no. 1 and 2. The role of proposed accused no. 4 in the public domain, especially relating to technology, telecom and in advising various national governments was cited as the basis for his entirely professional association with the Young Indian.

89. The Id. counsel placed reliance on the following decisions:

- (i) *Razorpay Software Private Limited Vs. Union of India 2024 SCC OnLine Kar 23*
- (ii) *Bacha F.Guzdar vs. Commissioner of Income Tax Bombay (1954) 2 SCC 563.*

90. In his submissions, Mr. Madhav Khurana, Id. Senior Counsel for proposed accused no. 5, firstly argued against the maintainability of a prosecution under the PMLA only on the basis of a complaint filed by a private person under section 200 Cr.P.C. It was further argued that there had never been the acquisition of any proceeds of crime by Young Indian. Infact, even the valuation of the immovable assets of AJL was sought to be related back to the original dates of allotment of such properties which range from 1962 to 2005. Reliance was placed upon section 2(1)(zb) PMLA to contend that value of such

properties would necessarily be relatable to the date of acquisition.

91. In consonance with the other respective counsels, reliance was equally placed on the decision in *Bacha F. Guzdar* to deny any interest or ownership of the Young Indian in the assets of AJL.

92. Besides, the Id. Senior Counsel challenged the locus of the ED to question the commercial wisdom of either a political party or a company to deal with its funds or share. It was equally agitated that the proposed accused could not be precluded from arguing against the merits of the summoning order in the scheduled offence as a basis for generation of proceeds of crime only because the summoning order may have been sustained in appeal. The foundational facts were portrayed as being capable of challenge in any prosecution under the PMLA.

93. The Id. Sr. counsel relied upon the following decisions in support of his contentions:

- (i) *Vijay Madanlal Chaudhary vs. Union of India 2022 SCC Online SC 929.*
- (ii) *Vodafone International Holdings BV vs. Union of India (2012) 6 SCC 613.*
- (iii) *Commissioner of Income Tax vs. Excel Industries Limited (2014) 13 SCC 459.*
- (iv) *Rakesh Brijal Jain & Ors. vs. State of Maharashtra & ors. 2025 SCC Online.*
- (v) *Central Warehousing Corporation vs. Adani Ports and Special Economic Zone Limited & Ors. (2022) 15 SCC 110.*
- (vi) *Harsh Dahiya & Anr. vs. State of Punjab & Ors. 2019 SCC Online P&H 2184.*

(vii) Devender Goyal and Ors Vs. CBI & Anr. 20243 SCC Online Del 4990.

94. In his arguments on behalf of proposed accused no. 6, Mr. Pramod Kumar Dubey, Id. Senior Counsel firstly exhorted the court to recognise the wider ambit of section 223 BNSS as being contemplative of hearing any proposed accused also on the question of summoning and not merely on the aspect of cognizance. It was argued that under the scheme of the BNSS, cognizance must now be understood as being qua the offender and not the offence.

95. It was submitted with respect to the allegations against proposed accused no. 6 that the summoning order of the Id. MM dated 26.06.2014 was deficient in supporting a prosecution relating to money laundering when no FIR was registered qua the predicate offence. It was argued that when the amount cheated from the donors of the Congress Party or the shareholders of the AJL was unclear, the ED could not have manufactured a predicate offence.

96. The Id. Senior Counsel further submitted that proposed accused no. 6 was not even a part of the summoning order and could therefore not be included within the ambit of money laundering. In effect, it was argued, the ED could not have travelled beyond the scope of the complaint by implicating proposed accused no. 6.

97. The amount of Rs. 1 crore given by proposed accused no. 6 to Young Indian was denied to be the proceeds of crime and it

was pointed out that the said amount did not even form part of the three categories of proceeds of crime alleged by the ED. The Id. Senior Counsel challenged the description of proposed accused no. 6 as an accommodation entry provider when it was infact a registered NBFC. The Id. Senior Counsel next submitted that when the predicate offence had manifestly arisen, even in terms of the allegations, after the said loan of Rs. 1 crore was given, it was far fetched for the ED to have implicated Dotex in the allegations relating to generation of proceeds of crime. The loan was portrayed as a legitimate transaction which had been repaid, with interest, by Young Indian.

98. The arguments on behalf of proposed accused no. 6 placed him in the time frame much prior to the alleged offence of money laundering. The Id. Senior Counsel argued that a loan given for business purposes could not be speculated to be any measure of assistance towards generation of proceeds of crime.

99. The allegations of conspiracy were equally sought to be controverted on the submission that the concept of a criminal conspiracy was inapplicable to the PMLA as section 3 is a stand alone offence with independent ingredients.

100. In support of his various contentions, the Id. Sr. Counsel for proposed accused No.6 cited the following decisions:

- (i) *Prasad Shrikant Purohit vs. State of Maharashtra (2015) 7 SCC 440.***
- (ii) *Dilawar Singh vs. Parvinder Singh (2005) 12 SCC 709.***
- (iii) *State of Punjab vs. Devans Modern Breweries Ltd. And Anr. (2004) 11 SCC 26.***

- (iv) *Delhi Race Club (1940) Ltd. Vs. State of U.P. (2024) 10 SCC 690.*
- (v) *Pepsi Foods Ltd. Vs. Special Judicial Magistrate, (1998) 5 SCC 749.*
- (vi) *State of Karnataka vs. L. Muniswamy (1977) 2 SCC 699.*
- (vii) *Vijay Madanlal Choudhary vs. Union of India, 2022 SCC Online SCC 929.*
- (viii) *Razorpay Software Pvt. Ltd. vs. Union of India, Crl. WP No. 10329 of 2023.*
- (ix) *Anbazhagan vs. State 2023 SCC Online SC 857.*
- (x) *Pritam Kaur vs. Deputy Directorate of Enforcement, 2017 SCC Online.*
- (xi) *S.R. Sukumar vs. S. Sunaad Raghuram (2015) 9 SCC 609.*

101. Ms Sowjhanya Shankaran, Id. Counsel for proposed accused no. 7, firstly denied the jurisdiction of the ED to proceed with a prosecution relating to section 3 only on the basis of a complaint by a private person and agitated that in the absence of a link between the predicate offence and the proceeds of crime, an accused could not be summoned for the later offence. Further, that if the ED was indeed bound to accept the construction upon section 420 placed by the Id. MM in the summoning order dated 26.06.2021, the agency could not travel beyond such predicate offence. It was argued that in the absence of any nexus of proposed accused no. 7 with the complaint filed by Dr. Subramanian Swamy under section 200 Cr.P.C., he could not be summoned qua section 4 PMLA either. Essentially, proposed accused no. 7 was cited as having no nexus with either the donations to the Congress Party or the alleged cheating of the shareholders of the AJL.

102. It was agitated that the ED could not recreate a predicate offence upon its own convenience. It was also argued that the foundational facts required to incriminate accused no. 7 in the context of section 70 PMLA had not been substantiated in the prosecution complaint at hand and that no role was ascribed to him by the ED in relation with the shares, underlying value of the properties or the rent received by AJL.

103. The following decisions were referred by the ld counsel for proposed accused No.7 in support of her arguments:

- (i) **Vijay Madanlal Choudhary vs. Union of India, 2022 SCC Online SCC 929.**
- (ii) **Jayram Vinayak Deshpande vs. ED (2024 SCC Online Bom 684).**
- (iii) **S.C. Jayachandra vs. ED (2020 SCC Online Kar 5019)**
- (iv) **Amandeep Singh vs. ED (2017 SCC Online P&H 188).**
- (v) **Chandrama Prasad vs. State of Bihar (Supreme Court order dated 02.02.2004 passed in Crl. A. 569/2024).**
- (vi) **Bhagwan Bhagat vs. ED (Supreme Court order dated 12.02.2024 passed in Crl. A. 3392-93/2024).**
- (vii) **R. Vishwanathan vs. ED (Madras High Court judgement dated 04.02.2021 passed in Crl. O.P. No. 21530 of 2017; SLP dismissed by Supreme Court on 04.04.2022).**
- (viii) **Prakash Industries vs. Union of India (2023 SCC Online Del 336).**
- (ix) **Ashish Singh vs. State (Madras High Court judgment dated 10.05.2023 passed in Crl. O.P. No. 30980 of 2019).**
- (x) **Vadilal Panchal vs. Dattatraya Dulaji Gha Digaonkar & Anr. (1960 SCC Online SC 79).**
- (xi) **Arvind Kejriwal vs. ED (2024 SCC Online 1703).**
- (xii) **Razorpay Software Pvt. Ltd. vs. Union of India 2024 SCC Online Kar 23.**
- (xiii) **Padmanabhan Kishore (2022) 19 SCC 612.**

D. Discussion and reasons

104. A question of law has engaged the court as a pivotal determinant of the question of cognizance. The subject for interrogation is whether the registration of a FIR for the scheduled offence is a threshold requirement for investigation and consequent prosecution under the PMLA. This question of law is determinative of the power of the Special court to take cognizance of the offence of money laundering, defined under section 3 and punishable under section 4 PMLA. This order turns on the findings upon this issue.

I. FIR for the scheduled offence as a threshold requirement for investigation and consequent prosecution under the PMLA

Submissions on behalf of the proposed accused

105. Dr. A.M. Singhvi, the ld Sr. counsel on behalf of proposed accused No.1 had canvassed, as the centre piece of his arguments, that for want of the registration of a FIR in the predicate offence, the Directorate of Enforcement lacked the foundational instrument needed for conferring jurisdiction to investigate and launch prosecution concerning the offence under section 4 PMLA. It was asserted that the existing provisions of

the statute, coupled with the report submitted by the ED to the Financial Action Task Force (FATF) and the stance taken by the ED before other judicial fora converged to convey the indispensability of a FIR in the predicate offence as the *sine qua non* for initiating an investigation and prosecution under the PMLA.

106. The relevant provisions of the PMLA cited by the Ld. Sr. Counsel on behalf of A-1 were section 5(1) PMLA and Rule 3 (2) of The Prevention of Money-Laundering (Forms, Search and Seizure or Freezing and the Manner of Forwarding the Reasons and Material to the Adjudicating Authority, Impounding and The Period of Retention) Rules, 2005 (*hereafter referred as the Rules*).

107. Dr. Singhvi argued that whilst the immediate subject of section 5 was attachment of property involved in money laundering and Rule 3 pertained to the procedure relating to a search for the proceeds of crime, both provisions offered insights into the approach of the PMLA towards the requirement of registration of a FIR in the predicate offence. The Ld. Sr. counsel elaborated upon his submissions to cite the first Proviso to section 5(1) as contemplating two foundational pre-requisites for prosecution of an offence under the PMLA. These modalities were canvassed from the circumstance of the first Proviso referring to the non maintainability of an order of attachment unless a report under section 173 Cr. PC had previously been forwarded or a complaint by a person authorised to investigate

the scheduled offence was already in existence. It was argued that if these two circumstances are the only scenarios which may enable an order of attachment relating to the proceeds of crime, the FIR in the predicate offence necessarily emerges as an indispensable and foundational instrument for commencing consequential investigation qua the proceeds of crime under the PMLA.

108. Essentially, the twin (alternate) foundational requirements of a police report or a complaint by an investigating officer for attachment proceedings to ensue was sought to be extrapolated as a requirement also for initiation of investigation itself under the PMLA through registration of an ECIR.

109. Since the proviso to Rule 3 (2) of the Rules similarly permits a search with respect to the proceeds of crime only after a report has been forwarded to a Magistrate under section 157 Cr. PC or a complaint has been filed before a Magistrate by a person authorised to investigate the scheduled offence, this rule was also projected, by Dr. Singhvi, as a continuity of the legislative approach towards the foundational requirement of a police investigation (through a FIR) in the predicate offence before any search or attachment could be effected with respect to the proceeds of crime.

110. It had been contended by Dr. Singhvi that the PMLA had been rather unhappily drafted and also been subjected to multiple amendments which often conveyed dissonance between various provisions. Yet, it was argued, the initiation of investigation of

an offence (Section 4) under the PMLA was still founded on the predicate requirement of a scheduled offence being registered through a FIR.

111. Similar submissions on the requirement of a FIR being registered for the scheduled offence were advanced by Mr. R S Cheema, Id. Senior counsel, Mr. Sushil Bajaj, Id. counsel, Mr. Kuber Bodh, Id. counsel, Mr. Madhav Khurana, Id. Senior counsel, Mr. Pramod Kumar Dubey, Id. Senior counsel and Ms. Sowjhanya Shankaran, Id. counsel on behalf of proposed accused no.2 to 7 respectively and are not being depicted here for the sake of brevity.

112. Dr. Singhvi and the respective counsels for the other proposed accused hence canvassed a similar objection to the taking of cognizance upon the present prosecution complaint. The respective counsels decried both – the ECIR and the prosecution complaint - as lacking jurisdictional basis for want of a FIR concerning the allegations made by Dr. Subramanian Swamy. It was similarly prayed that this court may decline cognizance by rejecting the complaint filed by Dr. Swamy under section 200 Cr. PC and the consequent order upon cognizance (as well as summoning) rendered by the Ld. MM on 26.06.2014 as a jurisdictional conferment of power upon the ED to investigate the present allegations of money laundering.

Submissions on behalf of the ED

113. Mr. S. V Raju, the Id. ASG had rather contended on behalf of the ED that taking of cognizance by the Special Court upon a prosecution complaint filed by the ED was governed by section 210 BNSS (*previously section 190 Cr. PC*) which permitted cognizance of an offence being taken upon a complaint, including any complaint filed by a person authorised under any special law. It was the assertion of the Ld. ASG that this court was mandated to consider section 210 BNSS in conjunction with the principal provision relating to trial of a complaint case *inter alia* section 223 BNSS (*previously section 200 Cr.PC*) and therefore consider cognizance *de hors* any other provision of the PMLA.

114. The Id. ASG further contended that any bar upon cognizance could only be governed by the constraining provisions under the BNSS viz sections 215, 217, 218, 219, 220, 221 and 222 (*previously sections 195, 196, 197, 198, 198A, 198B and 199 Cr. PC respectively*). It was pointed out that none of these provisions created a bar upon the taking of cognizance of a complaint concerning an offence under a special statute (presently the PMLA). The requirement for a FIR qua the scheduled offence was sought to be disassociated from the legislative scheme governing cognizance upon a complaint instituted under the PMLA. The Id ASG portrayed the objections raised by Dr. Singhvi to the taking of cognizance by this court in

the absence of a FIR in the predicate offence to be beyond the scheme of cognizance under the BNSS.

115. The reliance by Dr. Singhvi on the first proviso to section 5(1) and the proviso to Rule 3(2) was opposed by the Ld. ASG with the assertion that these provisions must be read only with reference to the subject and context of the same. The Ld. ASG argued that the proviso to each of these provisions only created certain pre requisites in the scenario of attachment of property and search for proceeds of crime respectively. It was submitted that in the absence of any explicit bar (under the PMLA) upon this court from taking cognizance upon a prosecution complaint in the absence of a FIR concerning the scheduled offence, such an impediment could not be read into the taking of cognizance only by reliance upon unrelated provisions. The ld. ASG submitted that section 44, which governed the taking of cognizance by a Special Court upon a complaint made by the ED with respect to the offence under section 3, did not create any foundational requirement for a FIR to be registered with respect to the scheduled offence.

116. The ld. ASG rather referred to amendments to sections 17 and 18 of the PMLA to canvass that a FIR in the predicate offence was not the sole prerequisite for initiation of investigation qua section 4 PMLA.

117. A reference was made by the Ld. ASG to the omission of the respective and similar provisos to sections 17 and 18 PMLA by the Finance (No.2) Act, 2019. It was pointed out that the

provisos relating to a prior forwarding of a report under section 157 Cr. PC to a Magistrate or filing of a complaint by a person authorised to investigate the scheduled offence, had been similarly deleted by the deliberate act of Parliament. This amendment was represented to be reflective of the conscious de-linking of a formal FIR in the scheduled offence from the conducting of any search and seizure under the framework of the PMLA. It was argued that the initiation of an investigation by the ED through its own ECIR and the taking of cognizance by the Special Court upon a prosecution complaint being filed could therefore not be curtailed only by reliance upon the first proviso to section 5(1) and the similar proviso to Rule 3(2) of the Rules.

118. The Id. ASG maintained that the first proviso to section 5(1) and the proviso to Rule 3(2) of the Rules govern only the subjects in respective consideration viz attachment of property involved in money laundering and search of premises to uncover proceeds of crime. It was agitated that the requirements of these two provisions could not subserve an unintended purpose viz. the requirement of a FIR in the predicate offence as a foundational condition for permissibility of an investigation by the ED into the proceeds of crime.

119. In continuation of his articulation with respect to the above provisions of the PMLA, the Ld. ASG submitted that a summoning order from a Magistrate, upon a private complaint, was at a pedestal even higher than a FIR on account of the *prima facie* probity of the allegations pertaining to the predicate offence

having found judicial acceptance. The summoning order dated 26.06.2014 passed by the Ld. MM, Patiala House Courts on the complaint instituting by Dr. Subramanian Swamy under section 200 Cr.PC was projected, by the Ld. ASG, as a preliminary judicial determination of the disclosure of cognizable offences, including the predicate offence (section 420 IPC). It was thus the argument on behalf of the ED that a complaint by a public person, upon which cognizance has been taken and summons been issued to the accused persons therein, in relation to a predicate offence, was equivalent to a FIR in conferring cause and jurisdiction upon the ED to investigate the offence punishable under section 4 PMLA by registering an ECIR.

120. The ED and the respective counsels for the proposed accused alike relied on the decision in *Vijay Madanlal* to canvass their own interpretation of the existence or otherwise of a threshold requirement for a FIR in the predicate offence as a condition for investigation under the PMLA.

Analysis by the court

121. The court has considered these submissions with great deliberation. The scheme of the BNSS (and commensurate provisions of the Cr.PC), the provisions as well as rules under the PMLA and the international framework of the Financial Action Task Force (FATF), subscribed by India, have been considered. The various amendments to the relevant provisions of the PMLA

have also been examined by the court in the narrow conspectus of the projected 'threshold requirement' for a FIR concerning the scheduled offence, as canvassed by the proposed accused and denied by the ED.

122. As a prefatory comment, it is to be observed that all statutes are subject firstly to literal interpretation and then, if required, to other rules of interpretation. The words contained in various provisions of a statute must not only be given their ordinary meaning but the provisions should also be read as a whole to imbibe the letter and spirit of any particular statute. Needless to add, a special statute, which takes precedence over a general statute, must be read first and foremost in terms of its own provisions and terminologies and not in terms of the general statute. Again, guidance towards gauging the scope and import of any particular provision of a statute, and more so a special statute, may be drawn from the statement of its objects and reasons. In any scenario of interpretation, the avoidance of unreasonable and absurd outcomes is the soul of the interpretation of statutes.

123. The court is contemplative of the above template while addressing the varying interpretations offered by the ld. respective counsels with respect to the purported threshold requirement of a FIR in the predicate offence for investigation and prosecution to be ignited under the PMLA.

124. The provisions of the PMLA pertaining to arrest, search, seizure, attachment, confiscation, investigation, prosecution and

all other proceedings under the Act are governed by the Cr.PC (now the BNSS) by virtue of section 65 of the said Special Act. Hence, cognizance of any complaint filed by the ED under section 44 and 45 of the Act, alleging therein the commission of the offence of money laundering, defined under section 3 and punishable under section 4, would indeed be governed by section 210 of the BNSS (section 190 under the Cr. PC) as asserted by the Ld. ASG on behalf of the ED. Besides, the decisions in *Tarsem Lal vs Directorate of Enforcement Jalandhar Zonal Office 2022 INSC 434* and *Yash Tuteja Vs. Union of India 2024 INSC 301* have affirmed that a complaint before the Special Court under the PMLA shall be governed by sections 200 to 205 Cr. PC.

125. Yet, it is not the power of this court to take cognizance *per se* upon a complaint under section 210 BNSS or the jurisdiction of this Special Court to take cognizance, in terms of section 223 BNSS, of a complaint (filed under section 44(1)(b) PMLA) which is in contention at present. The question seeking redressal is not so rudimentary as a challenge to the unquestionable power and jurisdiction of the Special Court to take cognizance of an offence under section 3 PMLA. It is rather the permissibility, in law, of the ED commencing investigation (through an ECIR) and subsequently filing a prosecution complaint in the absence of a FIR qua the scheduled offence (predicate offence) which is the projected infirmity in the jurisdiction of the ED to institute the present complaint.

126. The court thus comprehends the issue at hand to be a challenge, raised by the proposed accused, to cognizance being taken by this court on the grounds that the investigation itself commenced without jurisdiction, the consequent prosecution complaint was also without jurisdiction and the court is equally deprived of the jurisdiction to take cognizance on account of the above lapses in law.

127. The critical exercise for the court is to therefore determine whether any provision of the PMLA (or the statutory mandate thereby) hurdles the jurisdiction of the ED in commencing investigation into allegations relatable to section 3 in the absence of a FIR qua the scheduled offence and thereby places a consequential bar on the taking of cognizance by this court under section 210 read with section 223 BNSS.

128. The court finds the question of jurisdictional entitlement of the ED to commence an investigation and file a prosecution complaint *sans* a FIR relating to the scheduled offence to be capable of determination with reference to multiple metrics, each being material in its own right and more so in conjunction with each other. These yardsticks are identified, for purpose of convenient discussion upon the universe of arguments advanced by both parties, as under:

- (i) Investigative potential of a FIR.
- (ii) Statutory provisions of the PMLA concerning investigation of a scheduled offence.
- (iii) The law as laid down in *Vijay Madanlal Chaudhary* with

respect to the requirement of a FIR in the predicate offence.

- (iv) Objects of the PMLA and the FATF reports.
- (v) Stance of the ED before various authorities with respect to the requirement of a FIR in the scheduled offence.
- (vi) Consistent view of the ED with respect to the requirement of a FIR in the scheduled offence of the present proceedings.
- (vii) Non-registration of a FIR upon the present scheduled offence by the CBI.

129. The various incidents of investigation consequent upon a FIR are highlighted at the outset.

(i) Investigative potential of registration of a FIR.

130. It is the well considered assessment of the court that the registration of a FIR carries distinct, accentuated and wider consequences or incidents in investigation than the proceedings upon a complaint case under section 223 BNSS.

131. The FIR clothes the investigating officer with not only power to effect arrest of the accused persons in cognizable offences but also to perform searches of various properties and secure evidence through the statements of various witnesses. The evidence so collected is subjected to a plethora of forensic and other expert analyses as well as opinions. The specialised

investigating agencies like the CBI or the ED also do often resort to issuance of look out circulars for suspects or accused persons. The nature of investigation in offences with elevated gravity, complexity or legislative mandate (like the PMLA) also bring the investigating officers into a continuous interface with the concerned courts or Special Courts. A host of permissions relating to search warrants and handwriting or other investigative requirements are placed for sanction from the competent courts. It is upon this entire basket of functions of an investigating agency that a chargesheet (or a closure report as the case may be) comes to be filed before the appropriate courts by the investigating officer. These investigations are quite often conducted in conjunction with other law enforcement agencies and such information sharing is infact mandated as a special provision (section 66) in the present special legislation (PMLA).

132. The incidents of a FIR are therefore dyed in a deeper hue and upon a wider canvas than a complaint by a public person before a Judicial Magistrate under section 223 BNSS (previously section 200 Cr. PC).

133. Such complaints by public persons bring forth a limited spectrum or volume of evidence and an even more constricted tool kit for facilitating investigation of the allegations.

134. A complainant like Dr Subramanian Swamy may ordinarily be in possession of material or evidence available only in the public domain. It is certainly beyond the ordinary means of a public person, even as a prominent public functionary like

Dr Swamy, to be seeking opinions from authorised government laboratories or experts. When seen in the powerless status of inability to effect arrest, search or seizure, a complainant (public person) before a Judicial Magistrate under section 223 BNSS pales in comparison with even an ordinary investigating officer of the petty offences under the penal provisions.

135. The capacities of a public person are certainly non-existent in the more dire comparison with the information sharing, technical investigation and manpower capacities of specialised agencies like the CBI or the ED. A complainant venturing under section 223 BNSS is again a blip in the geographical, inter-state, inter-agency and international reach of state investigation agencies.

136. In effect, a complainant under section 223 BNSS cannot conduct any investigation akin to the police or other investigating agencies.

137. Even the power of inquiry available to a Magistrate under section 225 BNSS (previously section 202 Cr. PC) is minuscule in comparison with the investigation mechanisms available with law enforcement agencies, as detailed above. Infact, the power under section 225 Cr. PC is only in the context of postponement of issuance of process for summoning an accused. Notwithstanding the power of the Magistrate to direct investigation even by a police officer, the scope and capacities of such an inquiry are insignificant when compared with an investigation by a law enforcement agency.

138. Besides, the Magistrate is not empowered to direct investigation by a particular agency and can therefore not pass directions, for instance, to the CBI.

139. In view of the severe incapacities of even a Magistrate towards evidence collection, the court is unable to accept the contention of the Id. ASG that a summoning order from a Magistrate, upon a private complaint, is at a pedestal even higher than a FIR on account of the *prima facie* probity of the allegations pertaining to the predicate offence having found judicial acceptance. The Magistrate is not an investigating officer, in letter or in spirit. The summoning of accused persons upon pre-summoning evidence is not a superior exercise only because it emanates from a court. The touchstone is rather the investigative potential of the two authorities. Here, the investigation related powers and capacities of the investigating officer from a law enforcement agency far exceeds those of the Magistrate.

140. For want of a better expression, the court would observe that a complaint case and the incidents of a FIR are chalk and cheese in their contribution to evidence collection and meaningful trial. The complex and layered allegation set of economic offences or financial frauds is certainly not amenable to trial as a complaint case.

141. It is precisely for this widely accepted distinction that most complaints under the erstwhile section 200 Cr.PC have sought directions from the Magistrate under section 156(3) Cr. PC for

registration of a FIR and consequent police investigation. A predominant proportion of complainants under section 200 Cr. PC (now section 223 BNSS) ultimately seek the registration of a FIR.

142. This being the scenario even for the general penal statutes like the IPC (now the BNS), the gulf between the consequences of investigation into scheduled offences (which may generate proceeds of crime) by a law enforcement agency and assertion only through pre-summoning evidence by a complainant under section 200 Cr. PC is even wider. The court is therefore able to find much merit to the submission on behalf of the proposed accused that the investigation of a predicate offence by a law enforcement agency must, even on ordinary standards of reading the consequences of a FIR versus a complaint case, be a *sine qua non* for commencement of investigation by the ED with respect to section 4 PMLA.

143. The court finds, on a broader plane of understanding the nature of scheduled offences which become the progenitor of the proceeds of crime, that it is investigation upon a FIR alone which would create the foundational framework and unearth the evidence as well as complex linkages between various accused and transactions for the ED to then pursue the proceeds of crime so generated. A complaint by a public person is entirely beyond the prudent contemplation of a specialised agency tasked with discovering the proceeds of crime. Since the ED is mandated to detect criminal activity related to the scheduled offence, such

criminal activity may most appropriately be first investigated by the investigating officer of the scheduled offence.

144. The court finds the investigative potential of a FIR regarding the scheduled offence to be qualitatively superior to the proceedings of a complaint case under section 200 Cr. PC (now section 223 BNSS). Such potential alone posits a FIR in the scheduled offence to be a foundational requirement for an investigation into money laundering under section 3 read with section 4 PMLA.

(ii) Statutory provisions of the PMLA concerning investigation of a scheduled offence.

145. Having noted the commonly understood distinction between a complaint case and the institution of investigation upon a FIR, as well as the qualitative superiority of the later, the court would turn its scrutiny to the more particular statute in question viz the PMLA.

146. The provisions in issue are the first proviso to section 5(1), the proviso to Rule 3 (2) of the Rules and the similarly omitted provisos to sections 17 and 18 of the Act.

147. These are reproduced below:

Section 5(1)

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 the 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.

Rule 3(2)

Provided that no search under sub-section (1) of section 17 of the Act shall be conducted unless a report has been forwarded to a Magistrate under section 157 of the Code of Criminal Procedure, 1973 (2 of 1974) or a complaint has been filed before a Magistrate or a court by a person authorised to investigate the scheduled offence for taking cognizance of such scheduled offence;

148. A statute must be presumed to have used certain terms and phrases with deliberation and with awareness of the import of any such term or phrase. The statute must clearly be presumed to convey similar significance, meaning or import of such terms and phrases across usage throughout the statute. It is therefore the

understanding of this court that in its contemplation of the investigation of a scheduled offence, the PMLA envisages either a FIR or a complaint filed by a person authorised to investigate the offence mentioned in the schedule. There is no reason for the court to depart from the literal meaning of any expression in a statutory provision unless any of the exceptions to the rule of literal interpretation are justified or at least agitated.

149. Infact, the ED has not pleaded at all that the two scenarios used in the first proviso to section 5 and the proviso to Rule 3(2) should be read as conveying anything other than a FIR or filing of a complaint by an IO. Both these provisions permit only twin scenarios.

150. The first scenario is a pre existing report under section 173 Cr. PC. (which would follow only if a FIR is registered) and forwarding of a report under section 157 Cr. PC to the Magistrate (which would again be occasioned only if a FIR has been registered).

151. The second scenario, again similarly evident from the first proviso to section 5(1) and the proviso to Rule 3(2), is that a complaint ought to have been filed by a person authorised to investigate the offence mentioned in the schedule. Since a public person, who may yet be entitled to institute a complaint under section 223 BNSS is not authorised to investigate any scheduled offence, this expression does also exclusively manifest the role only of an investigating agency (through its investigating officer) in the scheme of investigation and prosecution of the predicate

offence highlighted by the PMLA.

152. In the present origin of the allegations, a public person, namely Dr. Subramanian Swamy, instituted the complaint under section 200 Cr. PC. He is not a person authorised to investigate the offence mentioned in the schedule (section 420 IPC) and consequently not the investigating officer of a scheduled offence within the contemplation of the PMLA in the only provisions which provide guidance towards legislative intent regarding the authority to institute a complaint under the PMLA. Being a special provision, the legislative intent derived from relatable provisions (first proviso to section 5(1) and proviso to Rule 3(2)) shall override the general legislation (section 223 BNSS). While a public person may yet institute a complaint relating to the scheduled offence, such person shall not satisfy the only available description of the status of a complainant (qua a scheduled offence) under the scheme of the PMLA. After all, it is not every complaint under section 200 Cr. PC (pertaining to the scheduled offence) which may throw up the specter of money laundering. The investigation into the proceeds of crime would be occasioned when investigation upon a FIR unearths such a scheduled offence and collects the critical mass of evidence for suspecting criminal activity generative of the proceeds of crime.

153. Undoubtedly, section 5 pertains to attachment of property involved in money laundering while Rule 3(2) relates to the procedure for the search towards uncovering the proceeds of crime. These two provisions do not pertain to the power and

jurisdiction of the ED *per se* to investigate allegations relatable to section 3 PMLA. Yet, the legislature cannot envisage every prospective question of law which may arise in the interpretation of a statute. Any silence or ambiguity in a legislation must be clarified by seeking guidance from its existing provisions and their ordinary meaning.

154. The court would highlight here the necessary import of the meaning of proceeds of crime under section 2(1)(u) of the Act. The said provision reads as under:

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

155. This definition, read from an investigation perspective, could mean only the unearthing of property which had been derived from criminal activity relating to a scheduled offence. It is towards the seizure and consequent attachment of such proceeds of crime that the PMLA has drafted multiple provisions. These two provisions (first proviso to section 5(1) and proviso to rule 3(2)) contain the legislative intent regarding the foundational requirements for such searches and seizures. The foundational requirements are limited to either a FIR or a complaint filed by an investigating officer empowered to investigate the predicate offence. Thus, the investigation into proceeds of crime, as defined under section 2(u), can draw guidance from within the

statute *inter alia* the proviso to section 5(1) and the proviso to rule 3(2). These two provisions draw an explicit connect between a search or seizure of the proceeds of crime and the previous registration of a FIR qua the scheduled offence.

156. Resultantly, these beacons from within the PMLA are more prescient in shining light on the intent of the PMLA towards the threshold requirement for a FIR in the scheduled offence than sections 210 and 223 BNSS. The last two provisions, from the general legislation, are only relatable to the power to take cognizance and the procedure for a complaint case respectively. There is no intent in these provisions from the BNSS to discuss any underlying nexus between an offence in a statute (the scheduled offences enumerated in the PMLA) and a consequential offence (Section 4, PMLA).

157. The court is convinced that if direct counsel is forthcoming from within the special statute (PMLA), there is no occasion to widen the net by reading non helpful provisions from the general statute (Sections 190 and 200 Cr.PC, now sections 210 and 223 BNSS respectively).

158. The court would address a key submission made by the Ld. ASG in this context. It had been argued that by way of amendment, a similar proviso in sections 17 and 18 had been omitted. It was argued that the necessity for a FIR or even a complaint by an investigating officer had been effaced from material provisions of the legislation and that the continued existence of these two provisions in other parts of the statute

(first proviso to section 5(1) and proviso to Rule 3(2)) could not serve as indication of legislative intent any more.

159. The court would record that the omission of the respective and similar provisos to sections 17 and section 18 must be seen in the context of the continuation of the first proviso to section 5 which was not omitted.

160. At the same time, the second proviso to section 5(1) also continues to be on the statute book as under:

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:

161. The amendment for bringing in the second proviso was evidently to permit attachment of property involved in money laundering where non attachment would frustrate the proceedings under the Act. The omission of the respective provisos to sections 17 and 18 is therefore only a continuation of the legislative intent in protecting the imminent frustration of the proceedings under this Act.

162. Yet, it is significant that the legislature has not displaced the first proviso to section 5(1) and also the similar proviso to

rule 3(2) of the Rules from the statutory framework. Thus, the court is presented with a composite understanding arising from the first two provisos of section 5. The reasonable construction of these two provisos is that ordinarily an order of attachment shall not be made unless a report has been forwarded to a Magistrate under section 173 Cr. PC or a complaint has been filed by a person authorised to investigate the scheduled offence. This safeguard shall be ignored only if the authorised official from the ED records in writing that the proceedings under the Act would be vitiated if attachment is not made immediately.

163. It begs no emphasis that the exception must not define the rule. The second proviso is only an exception to the first proviso. Consequently, the understanding regarding the twin requirements of the first proviso are the norm and not the exception. The norm, in the context of the attachment (under section 5(1)) and indeed even for seizure (effectuated under Rule 3(2)) is that either a FIR or a complaint by an investigating officer should be in existence for investigation to be conducted by the ED. The only available approach of the PMLA towards the FIR in the predicate offence is available from section 5(1) and Rule 3(2) and must therefore be adhered to as guidance by the court.

164. This assessment is rendered more stark by the absence, in the PMLA, of even a whiff of a complaint regarding the scheduled offence being filed by a public person. This legislation is not intended to be implemented in any measure by private persons. It is apparently for this reason that the provisos to

section 5(1) and Rule 3(2) (as well as the omitted provisos to section 17 and 18) only contemplated a complaint by a person authorised to investigate the scheduled offence. None other than an investigating officer from a law enforcement agency was under the contemplation of the PMLA even when the scenario of a complaint (under section 200 Cr. PC) was to be indicated in the Act. The Act scrupulously avoids the entry by a public person, as a complainant, into the investigative mechanisms.

165. The court concludes that the guidance from the statutory provisions under the PMLA is in favour of a FIR being registered for the scheduled offence as the jurisdictional trigger for the ED to commence investigation pertaining to section 3 by registration of an ECIR and to then file a prosecution complaint. The complaint by a public person under section 223 Cr.PC, even if it discloses a scheduled offence, shall not create jurisdiction in the ED to commence investigation regarding proceeds of crime arising from such scheduled offence. Consequentially, the prosecution complaint filed before a court in the absence of a FIR pertaining to the scheduled offence is not capable of being taken cognizance of.

166. For reason of the above finding having been rendered by the court, the present prosecution complaint, based as it is on a complaint under section 200 Cr. PC regarding a scheduled offence, filed by a public person(Dr Subramanian Swamy) and not a preceding FIR regarding the scheduled offence, is not capable of being taken cognizance of.

167. The discussion, at this point necessitates reference to the decision in *Vijay Madanlal Chaudhary*.

(iii) The law as laid down in *Vijay Madanlal Chaudhary* with respect to the requirement of a FIR in the predicate offence.

168. The pre-requisite of a FIR being registered for a investigation to be conducted under the PMLA emerges from the following observations in *Vijay Madanlal Chaudhary*.

109. 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 that 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 the definition clause “proceeds of crime”, as it obtains as of now. (emphasis supplied)

.....

*158. As per the first proviso, in ordinary situation, no order of provisional attachment can be issued until a report has been forwarded to a Magistrate under Section 173 of the 1973 Code in relation to the scheduled offence, 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. It further provides that a similar report or complaint has been made or filed under the corresponding law of any other country. **In other words, filing of police report or a private complaint in relation to the scheduled offence had been made a precondition for issuing an order of provisional attachment. (emphasis supplied)***

.....

*162. As a matter of fact, prior to amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. **We must hasten to add that the nuanced distinction must be kept in mind that to initiate “prosecution” for offence under Section 3 of the Act registration of scheduled offence is a prerequisite, but for initiating action of “provisional attachment” under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually***

frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including prevent and regulate the commission of offence of money-laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. (emphasis supplied)

.....

163. In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond appropriately to such information, the authorised officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act. (emphasis supplied)

.....

382.8 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.

169. The decision in ***Vijay Madanlal Chaudhary*** was explicit in finding that the scheduled offence must necessarily be registered with the jurisdictional police. The Apex Court also emphasised that there existed a distinction between the basis for prosecution and the basis for provisional attachment. It was clarified that for initiating prosecution for the offence defined under section 3, registration of a scheduled offence was a pre-requisite but for initiating action of provisional attachment under section 5, a pre-registered criminal case in connection with the scheduled offence was not necessary. Thus, one facet of the manner in which the criminal case comes to be registered *inter alia* the FIR is not a subject of any contention or dispute even between the ED and the proposed accused persons.

170. The Ld. respective counsels, however, jostled competing arguments with respect to the use of the term “complaint” and “private complaint” in the above excerpts of the decision in *Vijay Madanlal Chaudhary*.

171. The court shall decide this issue with respect to two principles. Firstly, a decision of the Apex Court shall be an authority only upon the question which it decides and not the issue beyond its contemplation. While discussing and highlighting the necessity of a complaint before the appropriate forum, the issue in discussion was the proceeds of crime and the non permissibility of an assumptory approach towards the proceeds of crime as well as the commission of a scheduled offence. It was in this context that the court held that the scheduled offence must be registered with the jurisdictional police or may be pending enquiry by way of complaint before the competent forum. Similarly, while reiterating that the filing of a police report or a private complaint in relation to the scheduled offence had been made a pre-condition for issuing an order of provisional attachment, the court was still seized with the question of provisional attachment and not the meaning of a ‘complaint’ or ‘private complaint’.

172. Infact, the said observations reproduced the first proviso to section 5 to state that no order for provisional attachment can be issued until a report has been forwarded to a Magistrate under section 173 of the Cr. PC in relation to the scheduled offence or a complaint has been filed by a person authorised to investigate the

offence mentioned in that schedule. It was only as a continuation and apparent para phrasing of the contents of proviso (1) of the first proviso to section 5 that the Apex Court recorded as under:

158.....In other words, filing of police report or a private complaint in relation to the scheduled offence had been made a precondition for issuing an order of provisional attachment

173. Hence, this court finds no departure from the ordinary and literal meaning of the twin requirements in the proviso to section 5(1) through the decision ***Vijay Madanlal Chaudhary***. Since the first proviso to section 5 PMLA was quite the focus of discussion, the decision must be presumed to have used the terms ‘complaint’ and ‘private complaint’ in the sense which they are used in the first proviso to section 5 PMLA

174. The second principle which this court would rely upon in deciding the import of the observations in ***Vijay Madanlal Chaudhary*** (with respect to the ‘complaint’ or ‘private complaint’) is that the meaning of a statutory term, finding mention in a judicial decision, must be deciphered from the reading of the statute itself. Since the decision in ***Vijay Madanlal Chaudhary*** did not discuss or lend any alternate meaning to the expression used in section 5(1) of the PMLA, the court can have recourse only to a literal meaning of the same. Hence, the court records unequivocally that the meaning of the terms ‘complaint’ or ‘private complaint’, used in ***Vijay Madanlal Chaudhary***, is to be understood as a complaint “filed by a person authorised to

investigate the offence” mentioned in the schedule to the act. In other words, it is only the complaint by an investigating officer from a law enforcement agency and not a complaint by a public person which is in the contemplation of the PMLA.

175. Consequently, the argument of the Id ASG that the decision in *Vijay Madanlal Chaudhary* places a complaint by a public person at par with a FIR concerning the scheduled offence does not find acceptance with this court.

176. As a logical corollary of the decision in *Vijay Madanlal Chaudhary* having declared a FIR or complaint in the predicate offence to be a pre requisite for investigation to be commenced with respect to the proceeds of crime under the PMLA, such a complaint shall have to be understood as a complaint by an investigating officer and not a public person.

177. For this reason too, the complaint by Dr Subramanian Swamy and the resultant summoning order dated 26.06.14 do not confer authority upon the ED to have commenced investigation through an ECIR in the present allegations and to then have filed the present prosecution complaint.

(iv) Objects of the PMLA and the FATF reports

178. In determining the enabling environment for enactment of the PMLA 2002 and the international framework for triggering an investigation under the PMLA, the court would draw upon two vital instruments. The first such indication is the Introduction

as well as the Statements of Objects and Reasons of the PMLA while the second vital instrument is the report (s) of the Financial Action Task Force (FATF) concerning India.

179. The Introduction and relevant Statement of Objects and Reasons of the PMLA are reproduced below:

INTRODUCTION

Money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. To obviate such threats international community has taken some initiatives. It has been felt that to prevent money-laundering and connected activities a comprehensive legislation is urgently needed. To achieve this objective the Prevention of Money-laundering Bill, 1998 was introduced in the Parliament. The Bill was referred to the Standing Committee on Finance, which presented its report on 4th March, 1999 to the Lok Sabha. The Central Government broadly accepted the recommendation of the Standing Committee and incorporated them in the said Bill along with some other desired changes.

STATEMENT OF OBJECTS AND REASONS

It is being realised, world over, that money-laundering poses a serious threat not only to the financial systems of countries, but also to their integrity and sovereignty. Some of the initiatives taken by the international community to obviate such threat are outlined below:—

(a) the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, to which India is a party, calls for prevention of laundering of proceeds of drug crimes and other connected activities and confiscation of

proceeds derived from such offence.

(b) the Basle Statement of Principles, enunciated in 1989, outlined basic policies and procedures that banks should follow in order to assist the law enforcement agencies in tackling the problem of money laundering.

(c) the Financial Action Task Force established at the summit of seven major industrial nations, held in Paris from 14th to 16th July, 1989, to examine the problem of money-laundering has made forty recommendations, which provide the foundation material for comprehensive legislation to combat the problem of money laundering. The recommendations were classified under various heads. Some of the important heads are—

(i) declaration of laundering of monies carried through serious crimes a criminal offence;

(ii) to work out modalities of disclosure by financial institutions regarding reportable transactions;

(iii) confiscation of the proceeds of crime;

(iv) declaring money-laundering to be an extraditable offence; and

(v) promoting international co-operation in investigation of money laundering.

(d) the Political Declaration and Global Programme of Action adopted by United Nations General Assembly by its Resolution No. S-17/2 of 23rd February, 1990, inter alia, calls upon the member States to develop mechanism to prevent financial institutions from being used for laundering of drug related money and enactment of legislation to prevent such laundering.

(e) the United Nations in the Special Session on countering World Drug Problem Together concluded on the 8th to the 10th June, 1998 has made another declaration regarding the need to combat money laundering. India is a signatory to this declaration.

180. Without adding to the above words of the statute, this court would only highlight that money laundering has been addressed through this special legislation in deference to multiple international conventions, instruments and actions which mandate both – the prevention of money laundering and legal mechanisms to criminalise such activities as well as to confiscate the proceeds of crime. Pertinently, the Objects and Reasons of the Act make a generous reference to the recommendations of the FATF. The Statement of Objects and Reasons of an Act being the primary instrument for reading its intent, the court is emphasising the need for conscious and mindful attention to these Objects and Reasons.

181. The above preface of the PMLA dovetails into the recommendations of the FATF concerning India. Since these reports are part of an international regulatory framework of which India is a party, judicial notice of the contents of these reports can be taken by the court at any stage, including the stage of cognizance. Indeed, the legal status and contents of these reports or their admissibility at this stage were not disputed by the ED either during the course of arguments.

182. Since the court is primarily addressing the question of maintainability of a prosecution complaint under the PMLA upon the scheduled offence being agitated through a complaint by a public person under section 200 Cr.PC rather than a FIR registered qua the scheduled offence, this order would restrict itself to the reports of the FATF in light of this aspect only.

FATF Report 2010

183. The FATF report of the vintage 2010 which is titled “Mutual Evaluation Report, Anti-Money Laundering and Combating the Financing of Terrorism, India” identified the implementation and effectiveness related challenges of PMLA in the following manner:

168. The linkage and interaction of the ML offence with a specific predicate criminality is historically very tight in the Indian AML regime. The concept of stand-alone money laundering is quite strange to the practitioners, who cannot conceive pursuing money laundering as a sui generis autonomous offence. Some interlocutors were even of the (arguably erroneous) opinion that only a conviction for the predicate criminality would effectively satisfy the evidential requirements. As said, this attitude is largely due to the general practice in India to start a ML investigation only on the basis of a predicate offence case. Even if the ML investigation since recently can run concurrently with the predicate offence enquiry, there is no inter agency MOU or arrangement to deal with evidentiary issues between the various agencies in investigating predicates and ML offences. Also, the way the interaction between the law enforcement agencies is presently structured carries the risk that ML prosecutions could be delayed while the other predicate offence investigation agencies try to secure convictions.

184. The remedial action undertaken by the Indian authorities was then recorded in the following manner:

174. Effectiveness concerns are primarily raised by the total absence of any ML conviction, although the NDPS Act is already in effect since 2 October 2001 and the PMLA since 1 July 2005. At the time of the on-site visit only 6 prosecutions were underway, with the first proceedings starting in 2008. This also means case law yet has to be developed on the correct interpretation and implementation of the law, particularly on the evidentiary requirements. The Indian authorities expect a significant improvement in this regard now that (1) the mechanism for sharing of information between the Directorate of Enforcement and the LEAs investigating the scheduled offences has been institutionalised, and (2) the 2009 amendment of PMLA allows ML investigations to be initiated immediately after the registration of a predicate offence by the LEA, facilitating parallel and simultaneous investigations by the Directorate of Enforcement into the offence of money laundering. (Emphasis supplied).

185. It is visible that for a length of time, the primary challenge perceived in the context of investigation towards money laundering in India was the registration of a predicate offence and the want of agreement between the respective agencies regarding investigation of predicate offences and money laundering offences as well as the evidentiary issues *inter se*. It was this challenge which was addressed by the Indian authorities through the amendments to the PMLA whereby the money laundering investigation could be initiated after registration of a predicate

offence by the LEA (Law Enforcement Agency).

186. Notably, as highlighted above from the FATF Report, 2010, this amended eco-system was for facilitating parallel and simultaneous investigations by the law enforcement agency and the ED into the respective offences viz the predicate offence and the ML offence.

187. Two developments are quite apparent here. Firstly, the FATF identified the necessity felt by the Indian authorities for the registration of a predicate offence and its investigation by a law enforcement agency for initiating a PMLA investigation. Secondly, the remedial steps by way of amendment of the PMLA enabled parallel investigation by the LEA and the ED in their respective domains. Therefore, this court can reach no conclusion other than finding a predicate offence, registered through a FIR to be the *sine qua non* for initiating investigation under the PMLA. The constant reference to LEA (in the FATF Report) indicates that such predicate offences would be investigated only by State agencies.

188. It is trite to observe here that an individual complainant can never be construed to be a LEA. Individual complaints made by private persons to the State agencies would necessarily have to be acted upon by the LEA to justify the only reading which the FATF report is capable of.

189. The envisioning of the registration of a predicate offence, with a LEA as the investigative mechanism for the same, by the FATF report for India unfailingly finds expression through

existing provisions in the PMLA and which have been discussed in the preceding part of this order. These provisions are the first proviso to section 5(1) and the proviso to Rule 3(2) of the Rules. These two provisos contemplate either investigation upon a FIR or a complaint filed by a person authorised to investigate the offence mentioned in the schedule to this Act. Both scenarios contemplate the role of a law enforcement agency and not a public person instituting a complaint under section 200 Cr. PC (now section 223 BNSS). Even the omitted provisos to section 17 and section 18 were similar in content.

190. The second striking facet of the FATF report is that there is an equal, if not greater emphasis on ‘investigation’ of the predicate offence (parallely with the money laundering offence). The LEA can not reach any finding regarding the predicate offence without investigation of the predicate offence. Countless complaints filed by the ED qua section 3 PMLA rely on chargesheets of the scheduled offences. The evidence collected by other LEAs forms a necessary part of any investigation by the ED.

191. Again, an individual complainant, as Dr. Subramanian Swamy is before the Ld. MM since the year 2014, is fundamentally incapable of conducting ‘investigation’ within the meaning of either the FATF report, the then prevailing Cr.PC, the now prevalent BNSS or any statute concerning penal offences.

192. As a necessary digression, the court would stress here that it is not the locus of an individual complainant to institute a

complaint under section 200 Cr. PC (now section 223 BNSS) which is in contention. It is rather the maintainability of PMLA proceedings (qua section 3) upon such a complaint by a public person which is the foundational question under consideration. Therefore, the right or locus of Dr. Swamy to have instituted a complaint under section 200 Cr. PC is not to be conflated with the question of maintainability of the present ED complaint. It is not a scenario either where the court is considering the possibility of a person being left remediless. The individual complainant in question (Dr. Swamy) duly availed the remedy under section 200 Cr.PC before the Ld. MM but the same does not translate into the inevitable maintainability of a complaint by the ED qua section 3 PMLA before the Special Court.

193. The import of the FATF report essentially is that a measure of investigation is a pre-condition for institution of proceedings under the PMLA. While the LEA tasked with investigation may ordinarily remain ahead of the ED in investigation, the mere registration of the FIR is itself an event which commences investigation. It is this bare minimum milestone which is expected to be crossed by the LEA before the ED can institute its own investigation qua section 3 read with section 4 PMLA. In this overarching framework of the FATF, an individual complainant akin to Dr. Swamy can neither be seen as a LEA capable of recording a FIR nor is he an investigating officer from a LEA who can investigate such predicate offence.

194. Also, in the highly specialised and niche domain of investigating national or international money laundering, individual complaints by citizens against any entity may yet be maintainable for purpose of pursuing complaints under section 200 Cr. PC (now section 223 BNSS) but lack the mandate or wherewithal to interact with the specialised agency dealing with money laundering viz the ED.

195. Moreover, such individual complainants lack any particular mandate to deal with evidentiary issues in coordination with the ED. The narrow domain of individual complaints regarding predicate offences is necessarily *de hors* the machinery provisions under the PMLA viz search and seizure under section 17 PMLA as well as attachment proceedings under section 5 PMLA. By necessary implication, individual complaints qua predicate offences do not serve as the contemplated investigative exercise under the FATF regime.

196. The court would reiterate its understanding of the general incidents of an FIR, as discussed at the inception of the present analysis, to state that investigation upon a FIR is in a league unattainable by a complainant under section 223 BNSS (previously section 200 Cr. PC). A FIR is material not as an entry in a register but as the progenitor of material steps in investigation.

FATF Report 2024

197. The emphasis on the investigative potential of predicate offences and the investigation related capacities of Law Enforcement Agencies was further maintained in the FATF Report of the year 2024 for India. The relevant excerpts from the said report are reproduced below:

237. The role of LEAs conducting parallel financial investigations appropriately and comprehensively, and nodal officers at LEAs identifying and communicating potential cases to the ED, are important parts of the chain in India ensuring that ML cases are taken up for investigation based on the ML risks and threats. The process in India for logging new investigations through the First Information Report (FIR)⁸⁶, and conclusion of investigations through the Final Form Report (or 'Charge Sheet')⁸⁷, provides nodal officers with information associated with the case that they rely on to determine whether cases should be submitted to the ED, as these reports include parameters such as the details of the suspect, details of the property stolen or involved (with the final form including property attached) and its value.

238. In terms of the quality and extent of financial investigations, LEAs demonstrated good knowledge of financial investigation tools and techniques in interviews during the onsite. In addition, LEAs and State Police are attaching (seizing) significant quantities of proceeds (see IO.8), indicating that they are seeking to identify assets as part of their predicate investigations.

However, there are indications that LEAs, including the State Police, may not always be conducting their proactive parallel financial investigations to the fullest, for example the more limited outreach by LEAs such as the NCB to the FIU (see IO.6) and based on interviews during the onsite. While LEAs and State Police are guided by SOPs on financial investigations, there was no indication that there was a uniform understanding across authorities on the minimum level of financial investigations that are required beyond attaching (freezing) assets identified upon lodging of the FIR and to what level of sophistication financial investigations should be pursued for different cases. India's efforts to continue building capacity and skills amongst LEAs and State Police conducting parallel financial investigations would have a positive corresponding effect on the subsequent detection of ML.

Table 3.9 Predicate Offences Registered (FIRs) 2018-23

<i>Crime types</i>	<i>Nos of Predicate Offences Registered</i>	<i>Offences with proceeds, as indicated based on the FIR lodged</i>
<i>Fraud and forgery</i>	<i>1 063 988</i>	<i>180 517</i>
<i>Murder</i>	<i>417 062</i>	<i>41 593</i>
<i>Illicit arms trafficking</i>	<i>321 330</i>	<i>92 975</i>
<i>Illicit trafficking in stolen goods</i>	<i>223 999</i>	<i>55 964</i>
<i>Robbery/theft</i>	<i>209 718</i>	<i>92 201</i>
<i>Drug trafficking</i>	<i>172 855</i>	<i>41 892</i>
<i>Extortion</i>	<i>120 289</i>	<i>10 119</i>

<i>Human trafficking/migrant smuggling</i>	<i>29 018</i>	<i>2 550</i>
<i>Counterfeiting/ piracy of goods</i>	<i>15 151</i>	<i>2 697</i>
<i>Terrorism/TF</i>	<i>17 911</i>	<i>1 813</i>
<i>Environmental crime</i>	<i>8 948</i>	<i>4 069</i>
<i>Smuggling</i>	<i>5 238</i>	<i>5 238</i>
<i>Counterfeiting currency</i>	<i>6 815</i>	<i>1 162</i>
<i>Kidnapping</i>	<i>4 049</i>	<i>657</i>
<i>Sexual exploitation</i>	<i>3 575</i>	<i>1 494</i>
<i>Insider trading and market manipulation</i>	<i>12</i>	<i>12</i>

Source: NRA based on information from FIRs

239. Guidance for the ED on which ML cases should be investigated in India is provided in a technical circular, (see below), which is informed by the NRA. ED provides regular training to nodal and other officers that are involved in the identification of potential cases for ML investigation to help them detect predicate activity that is most likely to result in ML cases being investigated by the ED. Nodal officers draw on these, using their judgment to identify the cases that they believe warrants the initiation of an ML investigation by ED. When this activity is detected by nodal officers, these cases are referred to ED through the 'direct referral mechanism' and multi-agency forums - the MACs and SMACs. Conversely, if the ED conducts a ML investigation

that it has proactively investigated, and identifies a predicate offence, it will also share the information and relevant evidence with the appropriate LEA through the nodal officer to investigate the predicate offence. Direct referrals therefore serve as a two-way flow of information between ED and LEAs to identify potential ML cases and uncover underlying predicate offences.

198. This report evidently notices the role of Nodal Officers at various law enforcement agencies in identifying and communicating potential cases to the ED. The particular observation in the report regarding Nodal Officers relying on information related to the case for selecting cases to be submitted to the ED is quite significant. The apparent sequence of registration of offences is the registration of a FIR by a LEA followed by the registration of a FIR relating to money laundering. A minimum level of financial investigation by the LEA has been found apposite by the FATF report. There also does exist a two way flow of information between the ED and the LEA to identify potential money laundering cases and underlying predicate offences.

199. In this ecosystem, an individual complainant can neither investigate nor coordinate with ED as a two way referral. Such work has necessary confidentialities and protocols which would curtail the scope of any coordination between ED and individual complaints. Certainly, the ED, as an investigation agency dealing with the proceeds of crime, cannot be training or involving individual complainants like Dr. Swamy akin to 'Nodal Officers'

or 'LEAs' in terms of the FATF report.

200. Such improbabilities are the apparent reason why the ED was possibly loathe to register an ECIR on the complaint of Dr. Swamy since 2014. The relevant notings from the case diaries of the present investigation, inspected by the court, are a testament to the acceptance, by the ED, of the non viability of the individual complaint (by Dr. Swamy) as the basis for initiating a PMLA investigation. It is indeed an acceptance in consonance with the FATF Reports. In effect, recording of a FIR and some measure of investigation by a LEA are consistent not only with the scheme, provisions and tenor of the PMLA but also the prevalent order of things under the FATF regime in the Indian law enforcement context.

ED Annual Report

201. The existential connect of a money laundering investigation with a predicate offence investigated by a law enforcement agency is also manifest from the most recent annual report of the ED, available on its web site (<https://enforcementdirectorate.gov.in/>) wherein the case selection guidelines include a reference to the effect that "weekly monitoring of platforms like CCTNS and CBI portals ensures timely detection of predicate offenses. The officers analyze this information to determine the presence of money laundering, categorizing cases into various types".

202. While discussing the criteria for recording ECIRs, the report states that “since the ED investigation follows predicate agency investigation, there would be a time gap of few years between the identification of fraud and commencement of investigation”.

203. The tenor of this report too reveals in no uncertain terms that the ED relies on the investigation by the law enforcement agencies to record the ECIR and further its own investigation relating to money laundering. The approach of the ED, evidenced from the FATF reports, its own annual report and its consistent stand before various authorities confirms that the agency has always considered investigation of an offence under the PMLA to be dependent upon recording of a FIR and consequent investigation of predicate offences by another LEA.

204. Yet, in the present instance and that too after a long wait of seven years since receiving the complaint from Dr. Swamy as well as the order of the Ld. MM dated 26.06.2014, the ED proceeded to record the ECIR (on 30.06.2021) solely on the strength of the summoning order upon the complaint case. The consistency of a long held view regarding the requirement of a FIR in the predicate offence as a trigger for PMLA investigation was ruptured by the ED in instituting the present prosecution complaint *sans* such a FIR.

205. While the Ld. ASG did maintain that other investigations had been similarly commenced by the ED upon individual complaints by private citizens in predicate offences, the question

here is not the maintainability of a PMLA complaint upon statistics (which too are minimal). The real highlight is the consistent recognition, by the ED, of the intrinsic nexus between investigation of the predicate offence by a competent authority and the use of material collected during such investigation for purposes of initiating and bolstering the ED investigation itself. An individual complainant is unable to liaison with the premier agency tasked with tackling money laundering for apparent reasons of locus, capacity, confidentiality and coordination.

206. To summarise, the objects of the PMLA and the FATF reports unambiguously recognise the FIR in the predicate offence as the basis for an investigation relating to money laundering under the PMLA.

(v) Stance of the ED before various authorities with respect to the requirement of a FIR in the scheduled offence.

207. It does also appear from the approach of the ED before other authorities that the said agency has itself maintained that investigation concerning money laundering cannot be initiated unless the FIR is registered by the concerned law enforcement agency. The court would cite the proceedings dated 08.11.2013 before the CIC in *Sandeep Varghese Vs. Directorate of Enforcement Case No.CIC/SS/A/2011/001780* where the assertion of the ED was noted as under:

5. *The Respondents inform that an enquiry is being conducted against said company, namely, M/s Jay PolyCham Pvt. Ltd., for violation of FEMA based on some information received from Customs Department. However, no enquiry/investigation is being conducted against said company regarding money laundering in the absence of FIR. According to him, it is for the law enforcement agency e.g. police to register an FIR in such cases. The Directorate of Enforcement cannot initiate investigation for money laundering unless the FIR is registered by law enforcement agency in such cases.*

208. Again, in *V R Seenivasan Vs. CPIO File No.CIC/DIREN/A/2023/100537*, where the proceedings in issue were an appeal under the RTI,the response of the ED, in the context of the said proceedings dated 14.08.2024, was as under:

The Respondent submitted that their organisation is exempted from the purview of the RTI Act, 2005 as per Section 24 r/w the Second Schedule of the Act and no allegation of corruption or violation of human rights was justified. Hence no information can be provided as per the Act. He further informed the bench that registration of FIR is mandatory for a case made under PMLA and in the instant case, since the Appellant has not filed any FIR, cognizance under PMLA cannot be taken.

209. The above two excerpts reflect the range of continuity of the stand taken by the ED from 2013 to as recently as 2024. The ED has apparently been consistent in canvassing the non maintainability of investigation under the PMLA where the FIR

has not been registered qua the predicate offence.

210. As discussed over the better part of this order, the qualitative superiority of FIR based investigation, the statutory framework of the PMLA and the reports of the FATF, the import of the respective proviso to section 5(1) and Rule 3(2) of the Rules, the decision in *Vijay Madanlal Chaudhary* and the consistency of stance taken by the ED are all in convergence towards a position of the law which predicates investigation qua money laundering upon a FIR being first registered in relation to the scheduled offence.

(v) Consistent view of the ED with respect to the requirement of a FIR in the scheduled offence of the present proceedings.

211. This brings the court to key observations on account of the inspection of the case diaries (*in camera*) and in the presence of the investigating officer of the ED. The case diaries revealed that a complaint dated 04.07.2014, citing the summoning order of the Ld. MM dated 26.06.2014, was filed by complainant Dr. Subramanian Swamy with the Director of Enforcement.

212. The complainant informed the ED that upon his complaint dated 09.01.2013, the Id. MM had issued summons to seven accused persons. These persons included Smt. Sonia Gandhi, Sh. Rahul Gandhi, Sh. Motilal Vohra, Sh. Oscar Fernandes, Sh. Suman Dubey, Sh. Sam Pitroda and M/s Young Indian (YI). The complainant attached a copy of the said order and also reported

the allegations made by him against the accused persons. He alleged that the subject matter of the complaint was various criminal offences including forgery, cheating, misappropriation and criminal breach of trust by the accused persons against the Congress Party and the AGL. The complainant then detailed the allegations pertaining to the loan given by the Congress Party to the AGL and the subsequent transfer of the shares of AGL to Young Indian.

213. The specific prayer of the complainant through his complaint letter dated 04.07.2014 to the ED was that in view of the purported involvement of powerful political personalities of the country, an investigation under the PMLA be commenced. He also prayed that all the purportedly tainted properties of the AGL be attached.

214. A preliminary observation may be made here by the court. The ED has framed the present prosecution complaint as being occasioned by the summoning order dated 26.06.2014. While it is duly disclosed in the prosecution complaint that the summoning order was rendered upon proceedings initiated through a complaint filed by Dr. Subramanian Swamy in 2013 against the accused persons, the existence of this separate complaint dated 04.07.2014 ,made directly by Dr. Subramanian Swamy to the ED, was not disclosed in the prosecution complaint.

215. A perusal of the entries in the case diaries and the complaint dated 04.07.2014 reveals that it was only upon

receiving the complaint dated 04.07.2014 from Dr. Swamy that the ED came to the knowledge of the summoning order dated 26.06.2014. The present prosecution complaint from the ED is therefore, in effect, based on the complaint made by Dr. Swamy not only before the Ld. MM on 09.01.2013 but also the separate complaint made by him to the ED on 04.07.2014. Essentially, the complaint by a public person viz Dr. Swamy had formed not only the basis of the proceedings in the predicate offence but is also very much the incipient content of the complaint under section 4 PMLA before this court.

216. It is, however, the internal discussion and stance of the ED, as evident from the case diaries, which throws light on the perception of the agency towards the requirement of a FIR for the predicate offence. This institutional view of the ED is supplemental to the assessment of the question of law confronting this court.

217. In discussing the preceding metrics, the court has found that a FIR is vastly more capable a basis for investigation; that the PMLA envisages either a FIR or a complaint by a person authorised to investigate the scheduled offence and that the decision in *Vijay Madanlal Chaudhary* has also underscored the necessity of a FIR being registered qua the predicate offence. The court has discussed and recorded that the decision in *Vijay Madanlal Chaudhary* cannot be read as countenancing a complaint by a public person (under section 200 Cr. PC) as facilitative of the jurisdiction of the ED to investigate a PMLA

offence. It has further been found by the court that the objects of the PMLA and the FATF reports unambiguously recognise the FIR in the predicate offence as the basis for an investigation relating to money laundering under the PMLA. Lastly, the court has noticed that the ED has consistently agitated before other authorities that investigation concerning money laundering cannot be initiated unless the FIR is registered by the concerned law enforcement agency.

218. The findings by this court upon these facets find acceptance and continued adherence by the ED in the present investigation between 2014 and 2021. Without needing to record every detail of the case diaries which were inspected by the court, it is only expressed that the opinion of the law officers at various levels of hierarchy within the Enforcement Directorate between 2014 to 2021 was that no predicate offence was disclosed only from the summoning order dated 26.06.2014 passed by the Ld. ACJM, Patiala House Courts upon the complaint relating to the scheduled offence filed by Dr. Subramanian Swamy. The existing technical circular of the ED having been considered, the consensus within the agency was that the recording of a FIR was not advisable.

219. Infact, as early as on 28.07.2014, the ED dispatched a letter to the CBI intimating that on perusal of the complaint (dated 04.07.2014) of Dr. Subramanian Swamy, it appeared that no predicate offence for initiating investigation under the PMLA appeared to have been made out as there was no mention of any

FIR in the complaint. The ED also forwarded a copy of the complaint from Dr. Swamy to the CBI for appropriate action. The ED thus remained contented with directing a discreet enquiry and sharing information with other agencies.

220. Subsequently, on 03.09.2015, the Director of the ED wrote a letter to the Director of the CBI enclosing the complaint from Dr. Swamy alongwith the order of the MM dated 26.06.2014. The letter requested the CBI to take necessary action, if deemed fit.

221. On the very next day i.e. 04.09.2015, Dr. Swamy also wrote to the Director, CBI complaining about the allotment of land on concessional terms to the accused persons at Bahadurshah Zafar Marg, New Delhi. He sought action under section 13(1)(d) of the Prevention of Corruption Act. This complaint dated 04.09.2015 from Dr. Swamy to the CBI was directed against Sonia Gandhi, Rahul Gandhi, Moti Lal Vohra, Oscar Fernandes, Suman Dubey and Sam Pitroda.

222. A technical circular of the ED dated 26.08.2015 had, in the mean while, recorded that registration of ECIRs, merely on the basis of a FIR, shall not serve the purpose of the PMLA. The circular thus advised that in order to register the ECIR, even the scheduled offence cases where the competent court had taken cognizance of the schedule offence and issued process against the accused persons, must be assessed.

223. The ED, however, still did not register any FIR (ECIR) against the persons named in the complaint by Dr. Subramaian

Swamy on 04.07.2014. The ECIR eventually came to be registered by the ED only on 30.06.2021 upon immediately preceding legal opinion rendered to the agency.

224. The court has highlighted the above observations from the case diaries to record that the ED was itself unconvinced of a prosecution under the PMLA being maintainable in the absence of a FIR in the predicate offence. The law officials of the agency doubted the maintainability of a ECIR only upon cognizance by a Magistrate in a complaint case relating to the scheduled offence. Although it is indeed the prerogative of the investigation agency to engage in discussion within its hierarchy and seek legal opinion, the existence of consistency towards one approach does lend support to the conventional interpretation *inter alia* a FIR in the predicate offence as a necessary condition for investigation to follow under the PMLA.

225. The court finds the ED to have acted, up until 30.06.2021, in confirmity and continuity of its understanding that the investigation under the PMLA, upon the allegations made by Dr Swamy, would be commenced only upon a FIR being registered qua the scheduled offence and not upon the cognizance (and summoning order) on a complaint by a public person (Dr. Swamy).

226. Notwithstanding the right of the ED to receive fresh legal opinion, as it did immediately before recording the ECIR on 30.06.2021, the consistency of seven years in not so recording a ECIR is more in consonance with the primacy of investigation of

offences through a FIR, the import of the provisions under the PMLA, the FATF observations and the decision in *Vijay Madanlal Chaudhary*.

227. Thus, the consistency of the file notings available in the case diary of the present investigation in citing the absence of a FIR in the scheduled offence as the reason for advising against the registration of a ECIR on the allegations made by Dr. Subramanian Swamy is consistent with the similar stance taken by the ED before other authorities over the last decade and more.

228. The considered non registration of the ECIR by the ED for seven long years despite a complaint by Dr. Subramanian Swamy and the existence of the summoning order in the scheduled offence from way back in the year 2014 was undoubtedly in step with the CBI which too was cognizant, of the complaints by Dr. Swamy, from the year 2014 itself. The two agencies were apparently in consonance. Notably, the CBI has remained equally circumspect till date. The approach of the CBI is significant and is discussed next.

(vi) Non registration of a FIR upon the present scheduled offence by the CBI.

229. The CBI is the premier investigating agency tasked with preliminary enquiries and/or investigation (through a FIR/RC) into a host of complex and grave economic offences. Its investigations invariably form the bedrock of ED complaints

before Special courts dealing with PMLA matters. The ED, infact, routinely obtains copies of CBI chargesheets relating to scheduled offences from the Special courts prior to preparing and filing its own prosecution complaints.

230. Apparently, the CBI was in the know of the allegations made by Dr. Swamy from at least 28.07.2014 when the first letter was sent from the ED to the CBI alongwith the complaint dated 04.07.2014 made by Dr. Swamy (to the ED). As highlighted earlier, the inspection of the case diaries of the ED by this court indicates that Dr. Swamy did also subsequently make an independent complaint to the CBI in the year 2015 regarding the same allegations. Yet, the CBI evidently decided against recording a FIR (RC) upon these allegations.

231. The court may stress that it is not the prerogative and professional opinion reached by the CBI which is of concern to the court. The CBI was well within its competency in refraining from registration of a FIR. The inescapable consequence of the decision of the CBI, however, is that the FIR in the predicate offence has not come to be registered by the CBI at any time in the eleven years from 28.07.2014 till date. It is to be reasonably concluded that the reticence of the CBI to record a FIR in the scheduled offence weighed with the ED in not recording a ECIR either, at least till 30.06.2021. Coupled with the legal opinion, discussed and accepted at the highest levels of the ED between 2014 to 2021, against the advisability of a ECIR in the absence of a FIR in the predicate offence, the conservative approach of the

CBI must necessarily have governed the attitude of the ED in taking a similar approach.

232. The court finds the approach of the ED towards the particular allegations made by Dr. Swamy to have been cognizant of the necessity of a FIR by a law enforcement agency viz. the CBI as a jurisdictional foundation for the investigation under the PMLA. There is no doubt that there existed a long lasting consensus between the CBI and the ED regarding the non advisability of the registration of a FIR by either agency. The deference of the ED to the CBI was, however, abandoned when it went ahead with recording an ECIR relating to money laundering on 30.06.2021 when no FIR (with the CBI or any other LEA) existed in relation to the scheduled offence.

233. Upon first having shared information with the CBI in the year 2014 and then having waited for seven years for the CBI to act, the ED simply inverted the template of money laundering being consequential to the predicate offence by recording its own ECIR on 30.06.2021. This act was not a mere expression of the independent nature of the ED as an agency to probe proceeds of crime. It rather reflected a unilateral over reach of the other law enforcement agency viz. the CBI on one hand and an ill advised out pacing of the scheme of the PMLA itself. The PMLA perceives the scheduled offence to be recorded and commenced for investigation as the first step and the probe into money laundering as the second step. Perhaps, the ED should have stayed as staid as the CBI.

234. The approach of these two agencies for seven long years, while not determinative *per se* of the position in law, was certainly a continuation of the conventional approach which later came to be reiterated in *Vijay Madanlal Chaudhary inter alia* a FIR in the scheduled offence being a pre requisite for investigation into the proceeds of crime.

235. The court concludes upon a conjoint assessment of the findings qua the seven metrics identified at the inception of this discussion that :

(a) An investigation and the consequent prosecution complaint pertaining to the offence of money laundering, defined under section 3 and punishable under section 4 PMLA, is not maintainable in the absence of a FIR for the offence mentioned in the schedule to the Act.

(b) An investigation pertaining to the offence of money laundering is not maintainable on the basis of a complaint under section 200 Cr.PC (now section 223 BNSS) and consequent order of cognizance as well as summoning when such complaint has been filed by a public person.

(c) Since the present prosecution complaint pertaining to the offence of money laundering is founded on cognizance and summoning order upon a complaint under section 200 Cr.PC filed by a public person namely Dr. Subramanian Swamy and not upon a FIR, cognizance of the present complaint is impermissible in law.

II. Subsequent FIR by the EOW (during the pendency of the present proceedings)

236. The court would notice a development which occurred subsequent to the hearing of arguments on the aspect of cognizance and while this court was engaged in the inspection of the case diaries of the ED.

237. It emerged from the inspection of the latest entries in the case diary that the ED had shared an information, dated 04.09.2025, under section 66 (2) PMLA with the EOW, Delhi Police, pertaining to the complaint filed by Dr. Subramanian Swamy with the Ld. MM and the consequent summoning order dated 26.06.2014. The ED also informed the EOW regarding the present prosecution complaint pertaining to section 3 read with section 4 PMLA. Consequently, the PS: EOW, Delhi, proceeded to register a FIR dated 03.10.2025 under sections 120B/403/406/420 IPC against the following accused persons:

- (i) Smt. Sonia Gandhi
- (ii) Sh. Rahul Gandhi
- (iii) Sh. Suman Dubey
- (iv) Sh. Sam Pitroda
- (v) Young Indian
- (vi) Dotex Merchandise Pvt. Ltd
- (vii) Sh. Sunil Bhandari
- (viii) Associated Journals Ltd
- (ix) Unknown others

238. Since the present complaint by the ED before this court has pleaded the contents of the said summoning order dated 26.06.2014 as the predicate offence and the contents of the summoning order (as well as other allegations) have now been registered as a FIR by the EOW on information shared by the ED with the EOW, the court found it fit to raise certain queries upon the ED which were answered by the Ld. ASG.

239. On account of the queries having arisen from the contents of the case diaries, which is within the prerogative of the court to examine, the said clarifications were sought *in camera* and notice was not required to be given to the proposed accused for the same.

240. The Ld. ASG was asked to clarify regarding the repercussion, if any, of the said FIR upon the aspect of cognizance upon the present complaint. The Ld. ASG was specifically asked to clarify whether the FIR registered by the EOW on 03.10.2025 was to be pleaded, by the ED, as the predicate offence in its own right.

241. The Ld. ASG submitted in the negative regarding both queries and asserted that the said FIR and any consequent action upon it, either by the EOW or the ED, is only a prospective exercise and of no bearing to the present question of cognizance and that cognizance may be considered by this court upon the prosecution complaint already filed. It was specifically stated with respect to the second query that the FIR by the EOW is not

being pleaded as the predicate offence in the present complaint. It was, however, also submitted by the Ld. ASG that the ED reserves the right to conduct or continue investigation regarding the allegations and also reserves the rights available under the PMLA, including section 44 (1) Explanation (ii) which pertains to the right to file a subsequent complaint in respect of further investigation.

242. In view of the above clarifications and the fact that the EOW and the ED have the right to independently examine and investigate the allegations in the said FIR, as also consequent information so obtained, there is no occasion for the court to interject in the said prerogative of the two agencies. Any observation by the court on the circumstances and effect of the registration of such a FIR may equally impinge on the rights of any person made a part of the said investigation.

243. Since it has been specifically asserted by the ED that the said FIR dated 03.10.2025 is not being pleaded as the basis of the predicate offence qua the present complaint, the present prosecution complaint is liable to be considered for cognizance solely with reference to the averments made therein.

244. Hence, the court has consciously and after due deliberation, decided the question of cognizance in this order without reference to either the circumstance of the ED sharing information with the EOW under section 66(2) PMLA or the EOW having thereby recorded the FIR after arguments were heard on the aspect of cognizance. The contents of the said FIR,

which are largely in overlap with the present complaint, have not been considered by this court.

245. The court had expressed at the inception of the discussion on the aspect of cognizance that this order turns on the findings upon a question of law as to whether the registration of a FIR for the scheduled offence is a threshold requirement for investigation and consequent prosecution under the PMLA. The court had laid out that this question of law is determinative of the power of the Special Court to take cognizance of the offence of money laundering, defined under section 3 and punishable under section 4 PMLA.

246. In view of the findings by this court against the maintainability of the present prosecution complaint for reason of non registration of a FIR in the predicate offence, the question of cognizance is capable of adjudication solely with reference to this finding on a question of law and has been decided in this narrow conspectus.

247. Cognizance upon the present complaint is liable to be declined.

248. Since a question of law has governed the above order declining cognizance, the court is not required to address the merits of the allegations. Hence, the court is not inclined to address the other arguments advanced by the proposed accused persons which pertain to mixed questions of law and fact or questions solely relatable to facts.

249. There is an additional reason which must be recorded by the court for not rendering any expression on the merits of the allegations.

250. The ED is evidently conducting further investigation on the allegations, as evident from its sharing information under section 66(2) PMLA with the EOW, Delhi which has resulted in registration of a FIR by the EOW on 03.10.2025. The continuing investigation by these two agencies may lead to uncovering of additional evidence or accused. Since the present order has declined cognizance solely on a question of law related to jurisdiction of the ED and therefore also the jurisdiction of this court, the present order does not efface either the existing allegations or curtail further investigation.

251. The present investigation by the EOW (upon the scheduled offence) and the possibility of further investigation by the ED (in light of the investigation by the EOW) makes it imprudent for the court to render any *prima facie* finding qua the existing allegations.

252. The court is equally mindful that the information under section 66(2) PMLA and the FIR by the EOW are both developments which occurred after arguments and the defence had been unraveled by the proposed accused persons during the course of submissions on the question of cognizance. Any further investigation or prosecution complaint from the ED may again require similar arguments to be made. For this reason too, it would be imprudent for the court to decide, even for the purpose

of cognizance, any of the mixed questions of law and fact or fact emerging from the submissions of the proposed accused.

253. Also, in view of the dual role of the Special Court as both – the court of original jurisdiction/trial as well as the court with powers akin to Magisterial supervision and function in relation to the investigation - it is incumbent upon this court to stay its hand in expressing an opinion on merits when further investigation is underway.

254. In sum, it has now become pre mature and imprudent for the court to decide the submissions made by the ED as well as the proposed accused in relation to the merits of the allegations, especially so when cognizance is liable to be declined on a pure question of law. Other arguments possibly live to fight another day.

III. Summary of discussion and findings.

255. The discussion in the present order is summarised as under:

(i) The court finds the investigative potential of a FIR regarding the scheduled offence to be qualitatively superior to the proceedings of a complaint case under section 200 Cr. PC (now section 223 BNSS). Such potential alone posits a FIR in the scheduled offence to be a foundational requirement for an investigation into money laundering under section 3 read with section 4 PMLA.

(ii) The guidance from the statutory provisions under the PMLA is in favour of a FIR being registered for the investigation of a scheduled offence as the jurisdictional trigger for the ED to commence investigation pertaining to section 3, read with section 4 PMLA, by registration of an ECIR and to then file a prosecution complaint.

(iii) The law as laid down in *Vijay Madanlal Chaudhary* designates a FIR in the predicate offence as the *sine qua non* for investigation into allegations of money laundering under the PMLA.

(iv) The objects of the PMLA and the FATF reports unambiguously recognise the FIR in the predicate offence as the basis for an investigation relating to money laundering under the PMLA.

(v) The requirement of a FIR in the scheduled offence has been the consistent stance of the ED before various authorities.

(vi) The requirement of a FIR in the scheduled offence of the present allegations has been the consistent view of the ED prior to the ECIR being recorded on 30.06.2021.

(vii) Despite receiving the complaint made by Dr. Subramanian Swamy and the consequent summoning order in the year 2014, the CBI has refrained from registering a FIR in relation to the alleged scheduled offence till date. However, the ED went ahead with recording an ECIR relating to money laundering on 30.06.2021 when no FIR(with the CBI or any other LEA) existed in relation to the scheduled offence.

256. The findings in this order are recorded below:

(a) An investigation and the consequent prosecution complaint pertaining to the offence of money laundering, defined under section 3 and punishable under section 4 PMLA is not maintainable in the absence of a FIR for the offence mentioned in the schedule to the Act.

(b) An investigation pertaining to the offence of money laundering is not maintainable on the basis of a complaint under section 200 Cr.PC (now section 223 BNSS) and consequent order of cognizance as well as summoning when such complaint has been filed by a public person.

(c) Since the present prosecution complaint pertaining to the offence of money laundering is founded on cognizance and summoning order upon a complaint under section 200 Cr.PC filed by a public person namely Dr. Subramanian Swamy and not upon a FIR, cognizance of the present complaint is impermissible in law.

(d) Cognizance upon the present complaint being liable to be declined on a question of law, other arguments relating to the merits of the allegations are not required to be adjudicated.

(e) In view of the ongoing further investigation by the ED in consequence of the FIR registered by the EOW, Delhi on 03.10.2025, it is now pre mature and imprudent for the court to decide the submissions made by the ED as well as the proposed accused in relation to the merits of the allegations.

257. Cognizance of the offence defined under section 3 and punishable under section 4, read with section 70 PMLA in the present complaint is declined.

258. The complaint is dismissed.

**Announced in the open court
on 16.12.2025**

**Dr. Vishal Gogne
Special Judge (PC Act) CBI-24
(MPs/MLAs Cases), RADC
New Delhi**