

the investors but they were returned by the banks unpaid. The company showed forged title deeds of lands whereas the Company owned no land. The Directors of the Company have diverted the investors money to other related Companies and used the same for acquiring of movable / immovable assets in the name of close relatives of the Directors.

4. On 08.03.2021, the Directorate of Enforcement registered ECIR/LKZO/12/2021 against five persons, including the applicant and her husband Ajit Kumar Gupta, stating that it appeared to be expedient to make inquiries against the accused persons regarding illegal earnings, which may be proceeds of crime i.e. tainted money earned out of the criminal activities under Sections 120-B, 323, 406, 409, 419, 420, 467, 468, 470, 471, 504, 506, 505(1)(B) I.P.C. out of which 120-B, 419, 420, 467 and 471 I.P.C. are scheduled offences under para-1 of part A of the Scheduled appended to the PMLA. The proceeds of crime generated thus appear to have been utilized by the accused persons for acquisition of various movable / immovable assets to project the same as untainted property, which is an offence under Section 3 of the PMLA, 2002.

5. After investigation, the Directorate of Enforcement filed a complaint in the Court of Special Judge, Anti Corruption, C.B.I. (W), Lucknow against five persons, including the applicant and her husband Ajit Kumar Gupta and three Companies -(i) M/s Anee Bullion & Industries Pvt. Ltd., (ii) M/s Anee Commodity Brokers Pvt. Ltd. & (iii) M/s Investors Anee Securities Pvt. Ltd.

6. The allegations against the applicant are that she is an Indian Foreign Service

Officer of 2006 Batch working with the Ministry of External Affairs, Government of India. She knowingly colluded and assisted her husband through her influential position in establishing the credibility of the ponzi schemes. She being a highly educated senior Officer of Government of India, used her position actively and knowingly in assisting her husband Ajit Kumar Gupta in establishing the credibility of Anee Group Of Companies to lure the investors by participating in various functions organized by Ajit Kumar Gupta and his Companies. Due to her active involvement in raising funds by canvassing in the various functions organized by Ajit Kumar Gupta and his Companies, she was referred as the first lady of the Anee Group of Companies. In this way, she knowingly aided and abetted her husband in commission of the scheduled offences and generation of proceeds of crime to the tune of Rs.44.44 crores.

7. Further, the applicant was found to be involved in assisting her husband in layering and concealment of proceeds of crime by being the recipient of proceeds of crime generated out of commission of the scheduled offence from the Companies of her husband Ajit Kumar Gupta, which was subsequently utilized for acquisition of immovable properties in her own name. The applicant purchased a house in Virat Khand, Gomti Nagar, Lucknow from Mrs. Sikha Tiwari Rs.35 Lakhs out of the sale consideration have been paid by M/s Anee Bullion Traders Pvt. Ltd. The aforesaid property purchased for Rs.4.45 crores has been sold by the applicant for Rs.1.56 crores and she is in possession of Rs.11 lakhs earned as profit which has been derived directly from the proceeds of crime.

8. The investigation has revealed that the applicant has assisted her husband Ajit Kumar Gupta in concealment of proceeds of crime to the tune Rs.76 lakhs which she

received in her account from Anee Group of Companies and she used this money of the investors for making payments to Lucknow Development Authority for changing the land use of a property situated at Gomti Nagar, Lucknow. However, this could not be accomplished and Lucknow Development Authority refunded Rs.76 Lakhs to the bank account of the applicant on 24.11.2020.

9. The complaint states that thus, it is clear that the applicant actively and knowingly assisted her husband Ajit Kumar Gupta in acquisition, possession, layering, concealment and utilization of proceeds of crime to the tune of Rs.2.03 crores and, therefore, she has committed the offence of money laundering as defined under Section 3 and punishable under Section 4 of PMLA, 2002.

10. The applicant was made an accused in 12 cases relating to the scheduled offences but after investigation, her name has not been included in the charge-sheet submitted in respect of any of those 12 cases.

11. Submission of the learned counsel for the applicant is that the Investigating Officer has concluded the investigation in respect of the scheduled offence and a charge-sheet has been submitted which does not include the applicant's name. The applicant stands absolved of all the charges under the case relating to the scheduled offence. Therefore, the applicant cannot be prosecuted for the offence of money laundering under Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the PMLA').

12. The learned counsel for the applicant has relied upon a decision of the

Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary and Ors. v. Union of India and Ors.**: (2022) SCC OnLine SC 929, wherein the Hon'ble Supreme Court held that: -

“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.”

13. Learned counsel for the applicant has also relied upon a decision rendered by a Single Judge Bench of Delhi High Court

in **Enforcement Directorate v. Gagandeep Singh**: 2022 SCC OnLine Del 514, wherein a Single Judge Bench of Delhi High Court held that: -

“30. The offence of money laundering, however, is not to be appreciated in isolation but is to be read with the complementary provisions, that is, the offences enlisted in the Schedule of the Act. The bare perusal of the abovementioned provisions of the PMLA establishes the prerequisite relation between the commission of scheduled offences under the PMLA and the subsequent offence of money laundering. The language of Section 3 clearly implies that the money involved in the offence of money laundering is necessarily the proceeds of crime, arising out of a criminal activity in relation to the scheduled offences enlisted in the Schedule of the Act. Hence, the essential ingredients for the offence of Section 3 of the PMLA become, first, the proceeds of crime, second, proceeds of crime arising out of the offences specified in the Schedule of the Act and third, the factum of knowledge while commission of the offence of money laundering. In the present matter, at the initial stage of proceedings, the respondents were charged for offences under Sections 21/25/29 of the NDPS Act and Sections 420/468/471/120-BIPC, however, the learned Additional Sessions Judge, Amritsar, observed that material produced before the court as well as the allegations made against the respondents were largely made upon suspicion. Though certain material, properties and cash, were recovered and attached/seized but the fact that such properties were obtained through proceeds of crime of drug trafficking could not be established.

31. In view of the observation that the no scheduled offence was made out

against the respondents, this Court finds that an investigation and proceedings into the PMLA could not have been established against them at the first instance.”

14. This judgment has been challenged by the Directorate of Enforcement by filing **SLP (Crl.) Diary No.42315 of 2022**. The Hon’ble Supreme Court was pleased to issue notice of the petition on 10.02.2023 and the SLP is still pending.

15. The learned Counsel for the applicant has relied upon two more decisions rendered by a Single Judge Benches of Hon’ble Delhi High Court in **Jeevan Kumar v. Dy. Directorate of Enforcement**: (2024) SCC OnLine Delhi 271 and **Directorate of Enforcement v. Akhilesh Singh**: (2024) SCC OnLine Delhi 3051 wherein the proceedings under the PMLA were quashed on the ground that the petitioner had been acquitted by the trial Court in the trial relating to the Scheduled offence. In **Akhilesh Singh** (Supra), it was held that: -

“28. The position thus, emerging from the aforesaid decisions is that the scheduled offence and the proceeds of crime generated therefrom is the very foundation for the offence of Money Laundering Once a person Is discharged or acquitted from the scheduled offence, the very foundation gets knocked out and the charge of Money Laundering will not survive as there will be no proceeds of crime. Concomitantly, the properties attached under the PMLA cannot legally be treated as proceeds of crime or be viewed as property derived or obtained from criminal activity.”

16. The learned Counsel for the applicant has also placed reliance upon the

following passages from an dated 13.04.2023 passed by a Division Bench of Madras High Court in **Hemal Mehta versus the Directorate of Enforcement:** Writ Petition No.10901 of 2023: -

“8. It appears that the writ petitioner’s name was subsequently included as accused No.10 on the basis of another report in April 2019 in Crime No.39 of 2019. It was thereafter, the writ petitioner filed CrI.O.P.No. 15869 of 2019 before this Court, to quash the FIR on various grounds. This Court was pleased to order stay of investigation in Crime No.39 of 2019 insofar as the writ petitioner is concerned.

9. However, it is the grievance of the writ petitioner that he has received summons from the respondent herein under the provisions of the Prevention of Money Laundering Act, 2002, to appear before the respondent on 09.01.2023 based on the impugned proceedings.

* * *

14. The learned senior counsel appearing for the writ petitioner relied upon the Judgment of the Hon’ble Supreme Court in **Vijay Madanlal Choudhary and others Vs Union of India and others** reported in (2022) SCC OnLine SC 929, wherein, the Hon’ble Supreme Court in Paragraph No.467 (v)(d), has held as follows:-

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

(v) (a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation

inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word “and” preceding the expression projecting or claiming as “or”; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression “and” occurring in Section 3 has to be construed as “or”, to give full play to the said provision so as to include “every” process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.

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

offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.”

15. *The learned senior counsel appearing for the writ petitioner referred to the averments made in FIR No.39 of 2019 dated 02.02.2019 and pointed out that the petitioner’s name is neither referred as an accused nor as one involved in the offences namely Section 120-B read with Sections 420 and 471 of the Indian Penal Code, 1860. The learned senior counsel further pointed out that even in the impugned proceedings dated 23.03.2020, the petitioner’s name is not found anywhere.*”

17. He has submitted that the aforesaid decision of Madras High Court was challenged before the Hon’ble Supreme Court in **SLP (Crl.) Diary No.28128 of 2023** and it was dismissed as withdrawn by means of the following order passed on 18.09.2023 :-

“Shri S. V Raju, learned ASG submits that the FIR on predicate offence has been quashed on 10.05.2023. In such circumstances, the petition becomes infurctuous. The special leave petition is dismissed as withdrawn as having become infurctuous.

Learned ASG also wants this Court to observe that in this event quashing order is subsequently overturned by a superior forum, his client would have the right to revive the proceedings. We do not make any comment in that regard except Mr. Raju’s client shall be entitled to take such steps in such situation as may be permissible under the law.”

18. However, what the learned Counsel for the applicant did not point out, was that the order dated 13.04.2023 passed

by the Madras High Court is merely an interim order staying the proceedings against the petitioner for the reasons recorded in paragraph 24 of the order: -

“since the writ petitioner is not one of the accused in the case registered for the offences punishable Sections 120-B, 420 and 471 under the Indian Penal Code, 1860, we are unable to justify prosecution of the writ petitioner as a person involved in the commission of the offence of money laundering under the provisions of the Prevention of Money Laundering Act, 2002. 25.”

19. The increasing tendency of citing irrelevant orders has compelled the Court to verify the order from the web site of Hon’ble Madras High Court, which revealed the Writ Petition in which the interim order dated 13.04.2023 relied upon by the learned Counsel for the applicant was passed, already stands allowed way back on 12.12.2023 for the following reasons: -

*“4.This Court has, in similar cases, expressed its view that the proceedings under PMLA Act cannot proceed further once the FIR on predicate offence is quashed. The law is well settled by the larger Bench of the Hon’ble Supreme Court in the case of **Vijay Madanlal Choudhary and others v. Union of India and others** reported in **(2022) SCC Online SC 929**, wherein, it is ruled as follows :*

“467. ... (v)(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002

Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending 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 moneylaundering against him or any one claiming such property being the property linked to stated scheduled offence through him.”

5. This view has also been approved by Hon'ble Supreme Court in several cases. Even in the order produced before this Court, the Hon'ble Supreme Court had occasion to observe that nothing survives once the FIR on predicate offence has been quashed. In such circumstances, this Court finds no reason to keep all the matters pending.

6. Hence, all these writ petitions are allowed and the impugned proceedings of the respondent in ECIR/CEZO-I/17/2020, dated 23.03.2020, is quashed. No costs. Consequently, connected miscellaneous petitions are closed.”

20. Citing an interim order passed by another High Court in a case which already stands decided long ago, does not reflect well upon the quality of professional assistance rendered by Sri Tushar Agarwal and Sri Aishwarya Pratap Singh, learned counsel for the applicant.

21. The tendency to multiply the number of judgments cited does not serve the interests of justice, as it results in wastage of precious time of the Court, which can be utilized to decide numerous other pending matters. This Court has time

and again requested the learned Counsel to be precise and concise in their submissions and to refrain from citing irrelevant or unnecessary judgments.

22. Per contra, Shri Rohit Tripathi, the learned counsel for the Directorate of Enforcement has relied upon a decision of the Hon'ble Supreme Court in the case of **Pavana Dibbur v. Directorate of Enforcement**, (2023) 15 SCC 91, wherein the Hon'ble Supreme Court has held that: -

“15. The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1]. In para 109 of the said decision, this Court held thus:

“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 definition clause “proceeds of crime”, as it obtains as of now.” (emphasis in original and supplied)

16. In paras 134 and 135, this Court held thus : (Vijay Madanlal Choudhary case)

“134. From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

135. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of

crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence, or if we may say so, the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31-7-2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.” (emphasis supplied)

17. Coming back to Section 3 PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. **For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or**

*knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 PMLA. To give a concrete example, the offences under Sections 384 to 389 IPC relating to “extortion” are scheduled offences included in Para 1 of the Schedule to PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money-laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in para 135 of the decision of this Court in *Vijay Madanlal Choudhary [Vijay Madanlal Choudhary v. Union of India, (2023) 12 SCC 1]* supports the above conclusion. The conditions precedent for attracting the offence under Section 3 PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 PMLA.*

18. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the

complaint under Section 3 PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned Senior Counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the charge-sheets filed in the scheduled offences deserves to be rejected.”

23. Therefore, the correct legal position which comes out from a reading of **Vijay Madanlal Chaudhary** (Supra) and **Pavana Dibbur** (Supra), is that the offence of money laundering under Section 3 of PMLA is independent of the scheduled offence through which the proceeds of crime were generated. In case all the persons accused of commission of the scheduled offence are exonerated or discharged or acquitted, it would imply that no scheduled offence was committed. Without the scheduled offence having been committed, there would be no proceeds of crime generated from the scheduled offence. In these circumstances, there can be no ‘money laundering’ of the ‘proceeds of crime’. However, if numerous persons are accused of commission of the scheduled offence and one or some of them, but not all of them, are exonerated / discharged or acquitted, it cannot be said that the scheduled offence has not been committed or that the proceeds of crime have not been generated. In such a

situation, if the prosecution against some other accused person(s) is going on in respect of a scheduled offence, even if a person is not named as an accused in the scheduled offence or if he / she has been exonerated / discharged in respect of the scheduled offence, it will not create a bar against his / her prosecution under the PMLA, if there is material to proceed against him / her for prosecution under the PMLA.

24. Having considered the aforesaid facts and circumstances of the case, in the light of the aforesaid cases, I am of the considered view that although the applicant's name has not been included in the charge-sheet submitted by the Investigating Officer regarding commission of the scheduled offence, the complaint filed by the Directorate of Enforcement categorically states that besides aiding and abetting her husband in commission of the scheduled offence and generation of proceeds of crime, the applicant is also involved in assisting her husband Ajit Kumar Gupta in layering and concealment of the proceeds of crime. She has been a recipient of the proceeds of crime. Some part of the proceeds of crime have been transferred to the applicant's bank account, some part of the proceeds of crime have been used for purchasing immovable properties in the name of the applicant and some part has been used for conversion of land use of the property purchased in the name of the applicant. Therefore, even if the applicant's involvement in commission of scheduled offences through which the proceeds of crime were generated, has not been established, the allegation that the applicant is involved in concealment and laying the proceeds of crime and that she has utilized the proceeds of crime, still needs to be investigated.

25. Therefore, I am of the view that although the applicant has been absolved of all the charges regarding commission of the scheduled offence, she still has to face prosecution for the offence of money laundering which is a standalone offence and which is independent and distinct from the scheduled offence.

26. The application under Section 528 BNSS lacks merit and the same is hereby **dismissed**.

27. It is clarified that this Court has not examined the merits of the allegation and any observation made in this order will not affect the trial.

(2025) 5 ILRA 1017

ORIGINAL JURISDICTION

CRIMINAL SIDE

DATED: LUCKNOW 01.05.2025

BEFORE

THE HON'BLE SUBHASH VIDYARTHI, J.

Application U/S 482 No. 5057 of 2024

Vishnu Prabhakar		...Applicant
	Versus	
Union of India		...Opp.Party

Counsel for the Applicant:

Purnendu Chakravarty, Alok Kumar Singh, Ankit Kumar Pandey, Ashutosh Verma, Aviral Raj Singh, Dhruv Kumar Singh, Palash Banerjee, Ritwick Rai, Vaibhav Tiwari

Counsel for the Opp. Party:

Kuldeep Srivastava

No allegation against the applicant that he had generated or acquired any proceeds of crime-only allegation is that he has assisted in generation of money -it is only when money is generated as a result of such acts that PMLA