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

steps in as soon as proceeds of crime-prima facie no offence made out.

Application allowed. (E-9)

List of Cases cited:

1. Y. Balaji Vs Kartik Desari & anr.: 2023 SCC OnLine SC 645

2. Vijay Madan Lal Chaudhari Vs U.O.I. & ors.: (2023) 12 SCC 1 2022 SCC OnLine SC 929

(Delivered by Hon'ble Subhash Vidyarthi, J.)

1. Heard Sri Purnendu Chakravarti, Sri Ritvik Rai and Sri Aviral Raj Singh, the learned counsel for the applicant and Sri Kuldeep Srivastava, the learned counsel for the respondent - Directorate of Enforcement (which will hereinafter be referred to as 'the E.D.').

2. By means of the instant application filed under Section 482 Cr.P.C., the applicant has prayed for quashing of a complaint dated 16.09.2017 filed by the Directorate of Enforcement against the applicant, the cognizance and summoning order dated 02.04.2018 and the entire proceedings of Sessions Case No. 123 of 2023, under Section 3 & 4 of the Prevention of Money Laundering Act, 2002 in the Court of Special Judge (C.B.I.), Court No. III, Lucknow, qua the applicant.

3. Briefly stated, facts of the case are that initially on 27.12.2008, the Chief Regional Manager, Indian Overseas Bank, Zonal Office, Lucknow sent a complaint to the Superintendent of Police, C.B.I., Bank Securities and Frauds Cell, New Delhi complaining about certain fraudulent transactions and stating that : -

"It would thus be clear from the above that the functioning of the Branch during the tenure of Shri. A.K. Dutta was anything but proper. The investigation report also gives clear indications that Shri. Vijay Kumar Jaiswal was inclined to use all his means, fair and mostly unfair, to have his ways and that Shri. A.K. Dutta was willing to co-operate with him even at the cost of exposing the Bank to huge risks and losses. Some of the contents of the investigation report detailed below point to undesirable and criminal acts on the part of the duo.

• Handing over signed Bankers Cheques to M/s. Shiva Distributors / M/s. Vinayak Distributors without debiting their a/c, or without accounting for the BCs in the books of the Bank.

• Erasure of the counter-signature of Shri. A.K. Dutta on the Bankers Cheque for Rs. 40 lakhs issued favouring 'Reliance Communications Infrastructure Ltd.', before presentation of the cheque to the clearing house and returned by the Branch on 05.10.2006.

• Sanction of a CC limit of Rs. 40 lakhs to M/s. Vinayak Distributors after erasing the subjects' request for limit of Rs. 25 lakhs only.

• The above acts of Shri. Vijay Jaiswal and Shri A.K. Dutta clearly smack of criminality and it is evident that Shri. A. K. Dutta had abused his powers to confer undue pecuniary gains on Shri. Vijay Kumar Jaiswal and other unknown persons. Their activities have not only caused wrongful loss of a mammoth size to our Bank, but also pose direct threats to the lives and limbs of the staff members of the Branch/Bank. The Involvement of some other outsiders also cannot be ruled out. The fraudulent transactions put through by Shri. Dutta has been assessed at Rs. 852.61 lakhs, as per details provided In the Annexure enclosed. This amount does not Include the likely loss of Interest/

commission/exchange incomes to the Bank on a/c. undue excesses/ credits provided in certain a/cs and the excess amount of charges claimed on a/c, of cash remittances, as detailed in the foot note of the Annexure. These accounts have become NPA on 01.04.2008 & suits have been filed in DRT Lucknow on 28.05.2007 except M/s. Kritarth Communications.

We therefore request you to register a regular case against Shri. Vijay Kumar Jaiswal, (Proprietor: M/s. Shiva Distributors), Shri. A.K. Dutta, then Senior Manager, Varanasi Cantonment Branch (presently under suspension) and other unknown, persons who are involved in conspiring against the Bank to perpetrate the fraud, cause a thorough and in-depth investigation, bring the culprits to book and initiate further action according to law."

4. On 06.02.2009, the Superintendent of Police, C.B.I., Bank Securities and Frauds Cell, New Delhi endorsed on the complaint that the facts stated in it prima facie disclose commission of offences punishable under Sections 120-B read with 420, 468, 471 I.P.C. and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988 and substantive offences thereunder on the part of (1) Sri A. K. Dutta, the then Senior Manager, Indian Overseas Bank, Varanasi and (2) Sri Vijay Kumar Jaiswal, Proprietor of M/s Shiva Distributors, Varanasi and (3) other unknown persons.

5. On 06.02.2009 itself, F.I.R. No. RCBD1/2009/E/0003 was lodged at Police Station C.B.I/Bank Securities and Fraud Cell, New Delhi under Sections 120-B, 420, 468 and 471 I.P.C. and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 and substantive offences thereunder against - (1) Sri A. K. Dutta, the then Senior Manager, Indian Overseas Bank, Varanasi and (2) Sri Vijay Kumar Jaiswal, Proprietor of M/s Shiva Distributors, Varanasi and (3) other unknown persons, on the basis of the aforesaid complaint dated 27.12.2008

6. After investigation, a charge-sheet was submitted on 10.06.2010 for the offences under Section 120-B read with Section 420, 477-A, 201 IPC and Section 13(2) read with 13(1)(c) and (d) of Prevention of Corruption Act and substantive Offences thereof against six persons – (1) Ashok Kumar Dutta, the then Senior Manager, Indian Overseas Bank, Cantt., Varanasi, (2) Vijay Kumar Jaiswal, (3) Vishnu Prabhakar, the then Assistant Manager, Indian Overseas Bank, Cantt., Varanasi (the applicant), (4) Vivek Ballabh Chaturvedi, the then Senior Manager, Indian Overseas Bank, Cantt., Varanasi (5) Jay Shree Jaiswal, wife of Vijay Kumar Jaiswal and (6) Rishi Mohan. The charge-sheet states that undue facilities were granted by A. K. Dutta to Vijay Kumar Jaiswal and the accesses were not reported in the monthly returns by A. K. Duta, Vishnu Prabhakar and Vivek Ballabh Chaturvedi, as per the guidelines of the bank. The firm was enjoying O.C.C. limit of 40 lakh and accesses that were allowed in the account of the firm were more than Rupees 1 Crore. The account became highly irregular after September 17, 2005. The C.C. limit of the firm was enhanced of Rs.90 lakhs and thereafter the accused persons further allowed accesses in the account of the firm and banker's cheques were issued to M/s Shiva Distributors without receipt of any consideration. The trial instituted on the basis of the aforesaid charge-sheet is still pending.

7. On 19.05.2010, the Directorate of Enforcement registered ECIR/1/VCI/ 2010 against (1) Sri A. K. Dutta and (2) Sri Vijay

Kumar Jaiswal only. After investigation, on 16.09.2017 the Directorate of Enforcement filed Complaint No. 1 of 2018 in the Court of Special Judge, PMLA, Allahabad against six persons - (1) Vijay Kumar Jaiswal, (2) Ashok Kumar Dutta, (3) Vishnu Prabhakar, (4) Vivek Ballabh Chaturvedi, (5) Rishi Mohan and (6) Jay Shree Jaiswal. On 02.04.2018, the Court passed an order summoning the accused persons to face the trial. Presently the trial is pending in the Court of Special Judge C.B.I. Court No. 3 / Special Judge PMLA, Lucknow

8. The applicant has been granted anticipatory bail by means of an order dated 24.07.2023 passed by this Court in Anticipatory Bail Application No. 954 of 2023. The learned Counsel for the parties have informed the Court that the trial Court has framed Charges on the last date during pendency of this application.

9. The applicant has sought quashing of the proceedings under the Prevention of Money Laundering Act (which will hereinafter be referred to as 'PMLA') on the ground that the only allegation leveled against the applicant in the complaint filed by the Directorate of Enforcement is that the applicant has violated the provisions of Section 3 of PMLA by knowingly assisting the other accused persons in generation of proceeds of crime. The learned counsel for the applicant has submitted that the applicant is already facing prosecution for the scheduled offences instituted on the allegation that he has participated in commission of offence through which the proceeds of crime have been generated by the co-accused Vijay Kumar Jaiswal. He has submitted that providing assistance in generation of proceeds of crime does not make out the offence of money laundering under PMLA. He has placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Vijay Madan Lal Chaudhari Vs. Union of India and Others**: (2023) 12 SCC 1 = 2022 SCC OnLine SC 929.

10. *Per contra*, Sri Kuldeep Srivastava, the learned counsel for the ED has submitted that acquisition of proceeds of crime and providing assistance in acquisition of proceeds of crime are included in the definition of money laundering contained in Section 3 of the PMLA. He has placed reliance upon the following passage from the judgment of the Hon'ble Supreme Court in the case of **Y. Balaji Vs. Kartik Desari and Another**: 2023 SCC OnLine SC 645: -

"100. ...The argument that the mere generation of proceeds of crime is not sufficient to constitute the offence of money-laundering, is actually preposterous. As we could see from Section 3, there are six processes or activities identified therein. They are, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; and (vi) claiming as untainted property. If a person takes a bribe, he acquires proceeds of crime. So, the activity of "acquisition" takes place. Even if he does not retain it but "uses" it, he will be guilty of the offence of money-laundering, since "use" is one of the six activities mentioned in Section 3."

11. In reply to the aforesaid submission, the learned counsel for the applicant has submitted that generation of proceeds of crime and acquisition of proceeds of crime are different and distinct things. The applicant is alleged to have assisted in generation of proceeds of crime and not in acquisition of proceeds of crime.

12. The offence of money laundering is defined in Section 3 of the PMLA, which is as follows: -

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

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

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

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

13. Section 3 of the PMLA has been interpreted by a Bench consisting of three Hon'ble Judges of the Hon'ble Supreme Court in the case of **Vijay Madan Lal Chaudhari** (Supra) in the following manner: -

"124. This section was first amended vide Act 2 of 2013. The expression "proceeds of crime and projecting" was substituted by the expression "proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming". We are not so much concerned with this change introduced vide Act 2 of 2013. In other words, the provision as it stood prior to amendment vide Finance (No. 2) Act, 2019 remained as it is. Upon breaking-up of this provision, it would clearly indicate that—it is an offence of money laundering, in the event of direct or indirect attempt to indulge or knowingly assist or being knowingly party or being actually involved in "any process or activity" connected with the proceeds of crime. The latter part of the provision is only an elaboration of the different process or activity connected with the proceeds of crime, such as its concealment, possession, acquisition, use, or projecting it as untainted property or claiming it to be as untainted property. This position stands clarified by way of Explanation inserted in 2019.

* * *

128. To put it differently, the section as it stood prior to 2019 had itself incorporated the expression "including", which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money laundering. If the

interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 PMLA and also will be in disregard of the view expressed by FATF in connection with the occurrence of the word "and" preceding the expression "projecting or claiming" therein.

* * *

132. The Explanation as inserted in 2019, therefore, does not entail in expanding the purport of Section 3 as it stood prior to 2019, but is only clarificatory in nature. Inasmuch as Section 3 is widely worded with a view to not only investigate the offence of money laundering but also to prevent and regulate that offence. This provision plainly indicates that any (every) process or activity connected with the proceeds of crime results in offence of money laundering. Projecting or claiming the proceeds of crime as untainted property, in itself, is an attempt to indulge in or being involved in money laundering, just as knowingly concealing, possessing, acquiring or using of proceeds of crime, directly or indirectly. This is reinforced by the statement presented along with the Finance Bill, 2019 before Parliament on 18-7-2019 as noted above [See paras 119 to 121 of this judgment.] .

133. Independent of the above, we have no hesitation in construing the expression "and" in Section 3 as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone, including projecting or claiming the property as untainted property to constitute an offence of money laundering on its own. The act of projecting or claiming proceeds of crime to be untainted property presupposes that the person is in possession of or is using the same (proceeds of crime), also an independent activity constituting offence of money laundering. In other words, it is not open to read the different activities conjunctively because of the word "and". If that interpretation is accepted, the effectiveness of Section 3 of the 2002 Act can be easily frustrated by the simple device of one person possessing proceeds of crime and his accomplice would indulge in projecting or claiming it to be untainted property so that neither is covered under Section 3 of the 2002 Act.

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 the Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.

136. As mentioned earlier, ***the rudimentary understanding of "money laundering" is that there are three generally accepted stages to money laundering, they are:***

136.1. Placement : which is to move the funds from direct association of the crime.

136.2. Layering : which is disguising the trail to foil pursuit.

136.3. Integration : which is making the money available to the criminal from what seem to be legitimate sources.

* * *

147. We may also note that argument that removing the necessity of projection from the definition will render the predicate offence and money laundering indistinguishable. This, in our view, is ill founded and fallacious. This plea cannot hold water for the simple reason that the scheduled offences in the 2002 Act as it stands (amended up to date) are independent criminal acts. ***It is only when money is generated as a result of such acts that the 2002 Act steps in as soon as proceeds of crime are involved in any process or activity****. Dealing with such proceeds of crime can be in any form — being process or activity. Thus, even assisting in the process or activity is a part of the crime of money laundering. We must keep in mind that for being liable to suffer legal consequences of one's action of indulging in the process or activity, is sufficient and not only upon projection of the ill-gotten money as untainted money. Many members of a crime syndicate could then simply keep the money with them for years to come, the hands of the law in such a situation cannot be bound and stopped from proceeding against such person, if information of such illegitimate monies is revealed even from an unknown source.*

148. The next question is : Whether the offence under Section 3 is a stand-alone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money laundering. The property must qualify the

definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act.

* * *

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

14. **Y. Balaji Vs. Kartik Desari and Another**: 2023 SCC OnLine SC 645 is a judgment rendered by a Bench consisting of two Hon'ble Judges of the Hon'ble Supreme Court. One of the two questions involved in the case before the Two-Judge Bench was:-

"Question 1: Whether without identifying the proceeds of crime or a property representing the proceeds of crime and without identifying any process or activity connected to proceeds of crime as required by Section 3, which constitute the foundational/jurisdictional fact, ED can initiate an investigation and issue summons?"

15. The relevant facts of that case relevant for answering the above mentioned question are that three FIRs were lodged alleging that the accused had committed offences included in the Schedule by taking illegal gratification for providing appointment to several persons in the Public Transport Corporation. In one case it was alleged that a sum of more than Rs. 2 Crores had been collected and in another case a sum of Rs. 95 lakhs had been collected. In this factual background, the Hon'ble Supreme Court held that: -

*"100. ...****It is this bribe money that constitutes the 'proceeds of crime' within the meaning of Section 2(1)(u). It is no rocket science to know that a public servant receiving illegal gratification is in possession of proceeds of crime. The argument that the mere generation of proceeds of crime is not sufficient to constitute the offence of money-laundering, is actually preposterous.*** *As we could see from Section 3, there are six processes or activities identified therein. They are, (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting as untainted property; and (vi) claiming as untainted property.* ***If a person takes a bribe, he acquires proceeds of crime. So, the activity of "acquisition" takes place. Even if he does not retain it but "uses" it, he will be guilty of the offence of money-laundering, since "use" is one of the six activities mentioned in Section 3.***

101. The FIRs for the predicate offences identify all the three components of Section 3, namely, (i) persons; (ii) process; and (iii) product. Persons accused in the FIRs are those who have indulged in the process or activity. The illegal gratification that they have taken, represents the proceeds of crime. The (i) acquisition of such illegal gratification in the first instance; (ii) the possession of the tainted money before putting it to use; and (iii) today projecting it as untainted money, is the process or activity in which the accused have indulged. The corruption money represents the proceeds of crime."

16. In the aforesaid factual background, the Hon'ble Supreme Court held in **Y. Balaji** (Supra): -

"97. If the main part of Section 3 is dissected with forensic precision, it will be clear that Section 3 addresses itself to three things (we may call them 3 'P's) namely, (i) person; (ii) process or activity; and (iii) product. Insofar as persons covered by Section 3 are concerned, they are, (i) those who directly or indirectly attempt to indulge; or (ii) those who knowingly assists; or (iii) those who are knowingly a party; or (iv) those who are actually involved. Insofar as process is concerned, the Section identifies six different activities, namely (i) concealment; (ii) possession; (iii) acquisition; (iv) use; (v) projecting; or (vi) claiming as untainted property, any one of which is sufficient to constitute the offence. Insofar as product is concerned, Section 3 identifies "proceeds of crime" or the property representing the proceeds of crime as the product of the process or activity.

98. Out of the three things that Section 3 addresses, namely (i) person; (ii) process; and (iii) product, the first two do not require any interpretation or definition. The third aspect namely "product", which Section 3 refers to as "proceeds of crime" requires a definition and hence it is defined in Section 2(1)(u) as follows:-

"2. Definitions. (1) In this Act, unless the context otherwise requires,-

XXX XXX XXX

(u) "proceeds of crime" means any property derived 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; JO

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

* * *

100. All the three FIRs allege that the accused herein had committed offences included in the Schedule by taking illegal gratification for providing appointment to several persons in the Public Transport Corporation. In one case it is alleged that a sum of more than Rs. 2 crores had been collected and in another case a sum of Rs. 95 lakhs had been collected. It is this bribe money that constitutes the 'proceeds of crime' within the meaning of Section 2(1)(u). ***It is no rocket science to know that a public servant receiving illegal gratification is in possession of proceeds of crime.*** *The argument that the mere generation of proceeds of crime is not sufficient to constitute the offence of money-laundering, is actually preposterous. As we could see from Section 3, there are six processes or activities identified therein. They are,* ***(i)*** *concealment;* ***(ii)*** *possession;* ***(iii)*** *acquisition* ***(iv)*** *use;* ***(v)*** *projecting as untainted property; and* ***(vi)*** *claiming as untainted property. If a person takes a bribe, he acquires proceeds of crime. So, the activity of "****acquisition****" takes place. Even if he does not retain it but "****uses****" it, he will be guilty of the offence of money-laundering, since "use" is one of the six activities mentioned in Section 3.*

101. The FIRs for the predicate offences identify all the three components of Section 3, namely, ***(i)*** *persons;* ***(ii)*** *process; and* ***(iii)*** *product. Persons accused in the*

FIRs are those who have indulged in the process or activity. The illegal gratification that they have taken, represents the proceeds of crime. The ***(i)*** *acquisition of such illegal gratification in the first instance;* ***(ii)*** *the possession of the tainted money before putting it to use; and* ***(iii)*** *today projecting it as untainted money, is the process or activity in which the accused have indulged. The corruption money represents the proceeds of crime.*

102. Therefore, all the arguments as though there are no foundational facts or jurisdictional facts, are simply aimed at hoodwinking the Court." (Emphasis added in original)

17. It appears that although the judgment rendered by a Bench consisting of three Hon'ble Judges in the case of **Vijay Madan Lal Chaudhari** (Supra) was placed before the two Judge Bench which decided **Y. Balaji** (Supra), the scope of definition of money laundering given by the Hon'ble Supreme Court in **Vijay Madan Lal Chaudhari** (Supra) has not been dealt with in the judgment passed in the case of **Y. Balaji**. In **Vijay Madan Lal Chaudhari** (supra) the Hon'ble Supreme Court has considered various provisions of PMLA and has interpreted the same and has laid certain principles of law based on the interpretation of the provision of PMLA. **Y. Balaji** (supra) has been decided on the basis of peculiar facts and circumstances of that case noted above.

18. It is settled law that a precedent is to be read keeping in view the background in which the case was decided. In Y. Balaji the accusation against the accused persons was of having taken the bribe and thus generated proceeds of crime by this. The Hon'ble Supreme Court held that taking bribe amounts to acquisition of proceeds of crime.

19. In the present case, there is no allegation against the applicant that he had generated or acquired any proceeds of crime. The only allegation against the applicant is that he has assisted in generation of crime and thereby violated the provision of Section 3 of Prevention of Money Laundering Act. The allegation against the applicant in the case relating to the scheduled offence is that in the monthly returns he did not report accesses made by A. K. Dutta in granting undue facilities to Vijay Kumar Jaiswal and thus he did not follow the guidelines of the bank.

20. In **Parasa Raja Manikyala Rao v. State of A.P.:** (2003) 12 SCC 306, the Hon'ble Supreme Court held that: -

"9. Each case, more particularly a criminal case, depends on its own facts and a close similarity between one case and another is not enough to warrant like treatment because a significant detail may alter the entire aspect. In deciding such cases, one should avoid the temptation to decide cases (as said by Cordozo) by matching the colour of one case against the colour of another. To decide, therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive."

21. As per the law laid down in **Vijay Madan Lal Chaudhary** (Supra), the process or activity of money laundering can be indulged in only after the property is derived or obtained as a result of a scheduled offence. The fundamental stages of "money laundering" are – (1) Placement: which is to move the funds from direct association of the crime, (2) Layering: which is disguising the trail to foil pursuit and (3) Integration: which is making the money available to the criminal from what

seems to be legitimate sources. There is no allegation in the complained filed by ED that the applicant was involved in any of the aforesaid activities. It is only when money is generated as a result of such acts that PMLA steps in as soon as proceeds of crime are involved in any process or activity but in the present case, the applicant is not alleged to have been involved in any process or activity after generation of the proceeds of crime.

22. A person can be prosecuted under PMLA only if the ED has reason to believe that the person is in possession of proceeds of crime, which belief is supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the proceeds of crime. In the present case, there is no allegation that the applicant has at any point of time been in possession of any proceeds of crime.

23. The applicant is already facing trial for the scheduled offence since the year 2010 and the learned counsel for the parties have informed that in that case also merely charges have been framed till date and no prosecution witness has been examined. The case lodged by the Directorate of Enforcement was initiated by lodging the ECIR in the year 2010, the complaint was filed in the year 2017, charges have been framed in the year 2025 and further proceedings are yet to take place. It appears that neither the case relating to the scheduled offence instituted by the CBI nor the case relating to PMLA instituted by the ED could make any substantial progress during the past 1½ decade.

24. In view of the foregoing discussion, I am of the considered view that the facts of the present case where the only allegation against the applicant is of providing assistance in generation of the proceeds of crime and he is not alleged to have been involved in any process or activity after generation of the proceeds of crime or to have at any point of time been in possession of any proceeds of crime, do not even prima facie make out the offence of money laundering defined under Section 3 of the Prevention of Money Laundering Act. In these circumstances, continuance of the proceedings under PMLA against the application would only amount to his persecution.

25. Accordingly, the application filed under Section 482 Cr.P.C. is ***allowed***. The complaint dated 16.09.2017 filed by the Directorate of Enforcement against the applicant, the cognizance and summoning order dated 02.04.2018 and the entire proceedings of Sessions Case No. 123 of 2023, under Section 3 & 4 of the Prevention of Money Laundering Act, 2002 in the Court of Special Judge (C.B.I.), Court No. III, Lucknow, against the applicant only, are quashed.

(2025) 5 ILRA 1027
ORIGINAL JURISDICTION
CRIMINAL SIDE
DATED: ALLAHABAD 08.05.2025

BEFORE

THE HON'BLE ARUN KUMAR SINGH DESHWAL, J.

Crl. Misc. Application U/S 528 BNSS No. 14448 of 2025

Furkan S/o Akhtar Ali & Ors. ...Applicants
Versus
State of U.P. & Anr. ...Opp. Parties

Counsel for the Applicants: