**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

(i) CRM-M-51250-2023 (O&M)

Sikandar Singh

..... Petitioner

Versus

Directorate of Enforcement and another ..... Respondents

(ii) CRM-M-37710-2023 (O&M)

Dharam Singh Chhoker and another

..... Petitioners

Versus

Directorate of Enforcement and another ..... Respondents

Reserved on 15.12.2023
Pronounced on: 26.02.2024

CORAM : HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Ashok Aggarwal, Senior Advocate with
Mr. Hari Pal, Mr. Mukul Aggarwal and
Mr. Shrenik Jain, Advocate
for the petitioner in CRM-M-51250-2023.

Mr. Vikram Chaudhari, Senior Advocate
with Mr. Hargun Sandhu, Advocate
for the petitioners in CRM-M-37710-2023

Mr. S.V.Raju, Additional Solicitor General of India with
Mr. J.S.Lalli, Deputy Solicitor General,

Mr. Lokesh Narang & Mr. Shobit Phutela,Senior Panel Counsel, for the respondents-Enforcement Directorate

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VIKRAM AGGARWAL, J

CRM-47079-2023, CRM-47080-2023 & CRM-47985-2023 in CRM-M-51250-2023 and

CRM-35285-2023 CRM-35305-2023 CRM-35308-2023 CRM-48105-2023 in CRM-M-37710-2023

Since the main petitions are being decided, the present applications have been rendered infructuous and are disposed of as such.

CRM-M-51250-2023 & CRM-M-37710-2023

1. The instant petitions shall be decided by way of a common judgment as the relief sought in both the petitions is identical. The petitioners have knocked the doors of this Court praying for the following substantive relief:-

> 1. Quash the ECIR/GNZO/20/2021 and all consequential proceedings arising therefrom as the same does not sustain the test of law, equity or justice in the sake of the Orders dated 05.07.2023 (Annexure P-13) passed by this Hon'ble Court in CRM-M No.3823 of 2021 thereby setting at naught the directions issued by the Chief Judicial Magistrate, Gurugram on 07.01.2021 in exercise of jurisdiction under Section 156 (3) Cr.P.C. for the registration of FIR (scheduled/predicate offence in the present case) and thereby rendering the said FIR No.11 dated 14.01.2021 (Annexure P-10) under Section 406, 420, 467, 468, 471, 120-B IPC, 1860 registered at Police Station Sushant Lok (i.e. scheduled/predicate offence) to be rendered non-est;

terminated and unworthy of being acted upon for any purpose whatsoever;

2. Quash the order dated 29.09.2023 (Annexure P-23) passed by Special Judge, Gurugram in CRM-627-2023, vide which arbitrarily and illegally non bailable warrants of arrest has been issued against the petitioner'

3. Quash the summons dated 28.07.2023 & 08.08.2023 (Annexures P-17 & P-18) and all subsequent summons issued to the petitioner as the same are wholly untenable in law;

4. Quash and set aside the action of the respondents in carrying out absolutely illegal, unwarranted and unjustified searches and seizures at the residential house etc. of the petitioners at Gurugram;

5. Stay all further proceedings arising out of ECIR/GNZO/20/2021, during the pendency of this Hon'ble Court.

6. Stay the operation and execution of the impugned warrants of arrest issued against the petitioners vide order dated 29.09.2023 (Annexure P-23) passed by Special Judge, Gurugram, during the pendency of this Hon'ble Court;

7. Pass such other order(s) or direction(s) as this Hon'ble Court may deem fit in the peculiar facts and circumstances of the case in favour of the petitioner.

It would be essential to mention that in CRM-M-37710 of 2023, quashing of the order dated 29.09.2023 has not been sought, for, at the time of filing of the said petition, the order (ibid) had not been passed.

FACTUAL MATRIX

2. The facts, germane to the issue in hand, are being extracted from

CRM-M-51250-2023.

3(i) One Neeraj Chaudhary submitted two complaints bearing Nos.486 of 2020 & 487 of 2020 (Annexures P-5 & P-6) in the Court of Chief Judicial Magistrate, Gurugram under Section 200 of the Code of Criminal Procedure (for short 'Cr.P.C.') read with Section 156(3) Cr.P.C. seeking directions for registration and investigation of the complaints (ibid) at Police Station Sushant Lok, Gurugram, under Sections 120-B, 406, 420, 467, 468, 471 IPC. The petitioners Sikandar Singh and Vikas Chhoker were arraigned as accused in the said complaints apart from 13 other persons by name and other accused, if found involved after investigation. Broadly, the allegations were that the petitioners and other persons named in the complaint alongwith other unnamed persons were in construction business and had duped the investors after having obtained licence to develop a housing project in Sector 68, Gurugram which also had been obtained on submission of forged and fabricated documents. It was alleged that about 3000 investors had been left high and dry and a wrongful loss of around one thousand crores had been caused. Allegations were also of furnishing of fake bank guarantees, collaboration agreement, special power of attorney etc.

3(ii) Vide order dated 07.01.2021 (Annexures P-7 & P-8), the Court of the Chief Judicial Magistrate, Gurugram exercising powers under Section 156 (3) Cr.P.C. issued a direction to the police to register FIRs. FIR Nos.10 & 11 dated 14.01.2021 were thereafter registered at Police Station Sushant Lok, Gurugram, under Sections 120-B, 406, 420, 467, 468, 471 IPC (Annexures P-9 & P-10).

3(iii). Aggrieved by the orders dated 07.01.2021, passed by the Court of the Chief Judicial Magistrate, Gurugram, directing registration of FIRs, CRM-M-3823-2021 and CRM-M-3826-2021 titled as "Ashok Punia alias Ashok Kumar and others versus State of Haryana and another" (Annexures P-11 & P-12), were preferred before this Court. Initially, vide orders dated 27.01.2021 (Annexures P-11 & P-12), a Single Bench of this Court stayed the operation of the orders dated 07.01.2021 as also the further proceedings in the consequential FIRs .

3(iv). CRM-M-3832-2023 & CRM-M-3826-2023 were finally decided by a Single Bench of this Court vide judgments/orders dated 05.07.2023 (Annexures P-13 & P-14) wherein the Court of the Chief Judicial Magistrate was directed to pass a fresh order after due application of mind. All other questions raised in the petitions were left open. In the meantime, the respondents recorded ECIR No.GNZO/20/2021 on 16.11.2021 (hereinafter referred to as 'the ECIR') against M/s Sai Aaina Farms Private Limited and others for scheduled offences under Sections 120-B, 420, 467 and 471 IPC.

4(i). The primary issue raised in the present petitions is that once the basic order passed on the complaint filed under Section 156(3) Cr.P.C. had been set aside, the FIRs would cease to be in operation and would be rendered nullity. Further, once there was no scheduled offence, no offence under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the PMLA') would remain. It is also the case of the petitioners that once, vide order dated 27.01.2021, the operation of the orders dated 07.01.2021, passed on the complaint filed under Section 156(3) Cr.P.C. and further

proceedings in the consequential FIRs had been stayed, the ECIR could not have been registered.

4(ii). The respondent-ED is alleged to have raided the house of the petitioners on 25.07.2023 in their absence when only women members were present. A representation dated 26.07.2023 (Annexure P-15) was also submitted by the counsel for the petitioners protesting against the said search/raid. Certain documents were seized during the said raid as per the 'Panchnama' (Annexure P-16).

REPLY

5(i). The petitions have been opposed by the respondents-ED by way of separate replies, though on the same lines.

5(ii). Certain preliminary submissions have been made. It has been averred that the investigation and inquiry against the petitioners was only at the initial stage. The petitioners cannot be said to be aggrieved of the same and, therefore, the petitions are pre-mature. Reference has been made to paragraph 457 of the judgment of the Hon'ble Apex Court in the case ***Vijay Madanlal Choudhary and Others Vs. Union of India and Others', 2022 SCC OnLine SC 929.*** It has been averred unlike an FIR, there is no requirement of formally registering an ECIR. An ECIR is an internal document created by the department before initiating penal action and there is no requirement to furnish a copy thereof to the accused unlike the provisions of Section 154 Cr.P.C. where the copy of an FIR is to be provided to the accused

5(iii). It has been averred that at the stage of issuance of summons etc.,

the petitioners cannot even be said to be accused and, therefore, the petitions would not be maintainable.

5(iv). It has been averred that it is settled law that non-bailable warrants can be issued by a Magistrate under Section 73 Cr.P.C. even during investigation for his production in aid of the Investigating Agency. It has been averred that despite issuance of multiple summons, the petitioners have not cooperated and have not appeared before the respondents.

5(v). It has been averred that home-buyers fund have been siphoned off in the garb of loan to group companies in which the petitioners were directors and the said proceeds of crime have been used for personal gains as a result of which, the offence of money laundering, prima facie, stands committed.

5(vi). Giving the factual background and the reply on merits, it has been averred that the petitioners Dharam Singh Chhoker and his two sons namely Sikandar Singh and Vikas Kumar Chhoker are said to be the promoters of M/s Sai Aaina Farms Private Limited (presently M/s Mahira Infratech Private Limited) (hereinafter referred to as 'the Company'). Infact, the companies promoted by the Chhoker family are known by the name "Mahira Group". The said group is stated to be dealing majorly in Real Estate/construction projects. The Company is said to be one of the shell companies under the group.

5(vii). The Company had undertaken a project of constructing flats in Sector 68, Gurugram under the Affordable Group Housing project to construct 1500 flats in an area of about 10 acres. The project was slated to

be completed by 2021-22.

5(viii). It has further been averred that Rs.360/- crores are stated to have been deposited by 1500 prospective buyers. The construction work, however, was extremely slow and the Company missed the promised deadline despite having received substantial payment from the buyers.

5(ix). In January 2021, a complaint was lodged at Police Station Sushant Lok with allegations of cheating and forgery against the Company. Accordingly, an FIR No.11 dated 14.01.2021 was registered under Sections 120-B, 420, 467, 468, 471 IPC. The major allegation was that the Company had submitted fake bank guarantees to the Director, Town & Country Planning, Haryana (hereinafter referred to as 'the DTCP') multiple times for obtaining licences in respect of the housing project.

5(x). The respondents-Directorate of Enforcement (in short 'the respondents-ED') also came to examine the FIR and accordingly ECIR No.GNZO/20/2021 dated 16.11.2021 (hereinafter referred to as 'the ECIR') was recorded against the Company and other persons.

5(xi). In internal investigations conducted by the DTCP, it was found that the Company had submitted fake/forged bank guarantees. Accordingly, the licence issued to the Company for development of the project in Sector 68, Gurugram was cancelled on 09.05.2022.

5(xii). The DTCP office initiated a complaint to register an FIR under Section 10 of the Haryana Development and Regulation of Urban Areas Act, 1975 (hereinafter referred to as 'the 1975 Act') and the relevant provisions of IPC against the Company. Other companies of the Mahira Group were also

black-listed by the DTCP. Another FIR No.0175 dated 18.05.2022 was registered by the Gurugram Police under Section 10 of the 1975 Act and subsequently Sections 120-B, 201, 420, 467, 468, 471 IPC were also added.

5(xiii). These developments led to huge protest by the buyers. Order of cancellation of the licence was, therefore, passed by the DTCP and a direction was issued to the Company to complete the project within a period of 06 months from 05.09.2022 and to hand over the possession of the flats to the allottees. Despite this, the deadline was missed and the project remained incomplete.

5(xiv). Apart from the FIRs referred to above, other FIRs were also registered against various companies and the Mahira Group which were also taken on record by the Directorate of Enforcement in the ECIR since the promoters directors were common and the respondents-ED intended to investigate with regard to inter-mingling of proceeds of crime and there being a larger conspiracy. Apart from the FIRs, several complaints were also received from home buyers.

5(xv). The respondents-ED, during its inquiry in the ECIR detected siphoning off of funds by diverting by non-intended purposes to group companies/personal accounts and also by reflecting bogus expenditure/personal expenditure to give inflated figures. It was found that the bogus expenditure reflected in the accounts was received back in cash.

5(xvi). The Income Tax Department also conducted search operations on the Mahira Group which also came under the scrutiny of the respondents-ED. As per the respondents-ED, the amount of money laundering ran into

hundreds of crores.

5(xvii). The promoters of the group namely Dharam Singh Chhoker, Sikandar Singh and Vikas Kumar Chhoker were subjected to inquiries and were issued summons. They are stated to have appeared before the respondents-ED but are alleged to have given evasive answers with a view to suppress material facts.

5(xviii). A survey action under Section 17 of the PMLA was also conducted by the respondents-ED. It was found that the entities on whom the said surveys were conducted accepted that they had returned cash to Mahira Group for a small commission of 3-4 percent or could not produce any documentary evidence for supply of goods.

5(xix). The petitioners are stated to have remained absent during further inquiry and despite repeated summons issued by the respondents-ED, the petitioners did not appear.

6. Before proceeding further, It would be essential to mention that vide order dated 26.10.2023, the Court of Chief Judicial Magistrate, Gurugram, passed a fresh order in compliance of the directions issued by a Single Bench of this Court on 05.07.2023 (Annexures P-13 & P-14) and again allowed the application filed under Section 156 (3) Cr.P.C. and directed the Station House Officer of Police Station Sushant Lok, Gurugram to conduct proper investigation in the FIRs registered earlier. Still further, though, during the course of arguments, it was pointed out that even the order dated 26.10.2023 has been challenged again and that the matter having been heard by a Single Bench of this Court, the judgment stands reserved for

pronouncement. After arguments in the present case had been heard by us and judgment had been reserved, the judgment has now been pronounced on 16.01.2024 vide which CRM-M-56495-2023 and CRM-M-56496-2023 titled as 'Aditya Beri and another versus State of Haryana and another have been allowed and the order dated 26.10.2023 has been set aside.

ARGUMENTS (PETITIONERS)

7(i). We have heard Sh. Ashok Aggarwal, learned Senior Counsel, who represented the petitioner Sikandar Singh, Sh. Vikram Caudhary, Senior Counsel, who represented the petitioners Dharam Singh Chhoker and Vikas Kumar Chhoker and Sh. S.V. Raju learned Additional Solicitor General of India who represented the respondents-ED.

7(ii). It was strenuously urged by learned Senior Counsel representing the petitioners that the action of the respondent-ED in registering the ECIR after order dated 27.01.2021 having been passed and continuing with the proceedings after the order dated 07.01.2021 having been set aside by the Single Bench of this Court vide order dated 05.07.2023 is illegal, arbitrary and *de hors* the settled law and accordingly the said ECIR deserves to be quashed.

7(iii). Detailed reference was made by learned Senior Counsel to the order dated 27.01.2021 passed by a Single Bench of this Court vide which the operation of the order dated 07.01.2021, passed by the Chief Judicial Magistrate, Gurugram had been stayed alongwith further proceedings in the consequential FIRs. It was submitted that once the operation of the

impugned orders and further proceedings in the consequential FIRs had been stayed the ECIR could not have been registered and the registration of the same despite the said orders cannot sustain.

7(iv). It was further submitted that once the order dated 07.01.2021, passed by the Chief Judicial Magistrate was quashed on 05.07.2023 and the Chief Judicial Magistrate was called upon to pass a fresh order, the FIRs would also be deemed to have been quashed as the FIRs had been registered in compliance of the order passed by the Court of Chief Judicial Magistrate on 07.01.2021 and once the FIRs would be not in existence, the ECIR would also go since in the absence of a scheduled offence, no offence under the PMLA can be said to have been committed. Reference was made to the averments made by the respondents-ED in the reply submitted in the present petitions that the FIRs and their contents were examined by the ED after their registration and accordingly the ECIR was registered. It was submitted that once the proceedings had been stayed, the respondents-ED could not have examined the contents of the FIRs and consequently, could not have registered the FIR on 16.11.2021. Stress was laid upon the point that an offence under the PMLA is not a stand alone offence and the same would have to be predicated by an FIR. It was submitted that once the foundational order passed by the Chief Judicial Magistrate had been stayed, no further proceeding could have been conducted.

7(v). It was submitted that even if the matter is examined on merits, there are no proceeds of crime. Reference was made to paragraph 281 of the judgment rendered by the Hon'ble Apex Court in the case of ***Vijay Madanlal***

Choudhary and Others Vs. Union of India and Others', 2022 SCC OnLine SC 929. It was submitted that the offence under Section 3 of the PMLA is dependent upon illegal gain of property as a result of criminal activity relating to a scheduled offence. It was submitted that the authorities under the PMLA cannot prosecute any person on notional basis or on the assumption that a scheduled offence had been committed, unless it is so registered with the jurisdictional police and/or is pending inquiry/trial before the competent forum. It was submitted that if the accused is finally discharged/acquitted of the scheduled offence, there can be no offence of money laundering against him.

7(vi). It was further submitted that in any case, the Court below had no authority to issue non-bailable warrants to procure the presence of the petitioners once the order passed on the complaint filed under Section 156 (3) Cr.P.C. had been quashed and the non-bailable warrants would, therefore, be not sustainable. It was submitted that Section 73 Cr.P.C. would not empower a Court to issue non-bailable warrants in the aid of investigation.

7(vii). Reference was also made to the provisions of Section 154 Cr.P.C. and it was submitted that the provisions are not identical and that it cannot be said that the FIR was registered under Section 154 Cr.P.C. Learned Senior counsel submitted that the FIRs in question had been registered in pursuance to the order passed by the concerned Court under Section 156 (3) Cr.P.C. which is entirely different from Section 154 Cr.P.C. which gives power to the police to register an FIR once a cognizable offence is disclosed.

7(viii). In so far as the petitioner Dharam Singh Chhoker is concerned, it

was submitted that he had spent his entire life in his constituency and had no knowledge about the nature of business or transaction carried out in the Company of which the elder son of Dharam Singh Chhoker namely Sikandar Singh was the principal shareholder and was managing the affairs. It was submitted that though both Dharam Singh Chhoker and Vikas Kumar Chhoker remained directors in one or more companies for a short duration, the same was largely for taxation purposes and they had not handled the conduct of any business much less being aware of the nature of transactions being carried out. Learned Senior counsel vehemently submitted that the impugned action of registration of ECIR and subsequent issuance of non-bailable warrants etc. is completely illegal and deserves to be quashed. In support of their contentions on various issues as noticed in the preceding paragraphs, reliance was placed upon the judgments in ***'Vijay Madanlal Choudhary and Others Vs. Union of India and Others', 2022 SCC OnLine SC 929, 'Parvathi Kollur Vs. State by Directorate of Enforcement', 2022 Online SC 1975, Criminal Appeal Nos.391-392 of 2018 titled as 'Adjudicating Authority (PMLA) Vs. Shri.Ajay Kumar Gupta and Others', decided on 02.12.2022, Criminal Appeal No.1269 of 2017 titled as 'Directorate of Enforcement Vs. M/s Obulapuram Mining Company', decided on 02.12.2022, WP (Crl) No.408 of 2022 titled as 'Harish Fabiani and Others Vs. Enforcement Directorate and Others,, decided on 26.09.2022, WP (C) No.3821 of 2022 titled as 'Emta Coal Limited and Others Vs. The Deputy Director, Directorate of Enforcement', decided on 10.01.2023, Criminal Writ Petition No.4037 of 2022 titled as 'Naresh Goyal***

Vs. The Directorate of Enforcement and another, decided on 23.02.2023, CRLMC No.3059 of 2019 titled as 'Debendra Kumar Panda Vs. Union of India and Others', decided on 13.01.2023, CRR No.2752 of 2018 titled as M/s Nik Nish Retail Ltd. And Another Vs. Assistant Director, Enforcement Directorate, Government of India and Others', decided on 28.11.2022, Writ Petition No.10854 of 2020 titled as 'S. Jagathrakshakan Vs. The Deputy Director, Directorate of Enforcement, decided on 01.11.2022,'State of Punjab Vs. Davinder Pal Singh Bhullar', (2011) 14 SCC 770, 'State Through CBI Vs. Dawood Ibrahim Kaskar and Others' 'Gurjeet Singh Johar Vs. State of Punjab and Another', 2019 SCC OnLine P&H 2606, 'Narayan @ Narayan Sai @ Mota Bhagwan Vs. State of Gujarat', 2014 (5) GLR 4165 and ***'Raghuvansh Dewanchand Bhasin Vs. State of Maharashtra and another', (2012) 9 SCC 791.***

ARGUMENTS (RESPONDENTS)

8(i). Per contra, Sh. S.V.Raju, Addl. Solicitor General of India opposed the petitions with equal vehemence. It was submitted that the FIRs in question had been registered on the basis of cognizable offences having been committed and not solely on the directions issued by the Court of Chief Judicial Magistrate. Reference in this regard was made to the police proceedings in the concerned FIRs. It was submitted that even if, the FIRs were registered in pursuance to the order passed on the complaint under Section 156 (3) Cr.P.C., it cannot be said that the FIRs had been set aside or quashed merely because the Court concerned was asked to pass a fresh order on the complaint under Section 156 (3) Cr.P.C. It was submitted that there

was a prayer to quash the FIRs in the petitions filed before this Court but the Single Bench of this Court, taking a conscious decision, did not quash the FIRs but simply directed the Court of the Chief Judicial Magistrate to pass a fresh order on the complaint under Section 156 (3) Cr.P.C. giving reasons. In essence, it was submitted that mere setting aside of an order passed on the complaint under Section 156 (3) Cr.P.C. would not mean that the FIRs had been quashed. Reference was made to the provisions of Section 154 Cr.P.C. and it was submitted that once a cognizable offence is disclosed, an FIR had to be registered. Reference was made to a decision of this Hon'ble Supreme Court in ***Lalita Kumari versus Government of U.P. and others 2014 AIR (Supreme Court) 187 and State of West Bengal and others versus Swapan Kumar Guha and others 1982 AIR (Supreme Court) 949***. Specific reference was made to paragraph 120 of the judgment in the case of ***Lalita Kumari versus Government of U.P. and others*** (supra) wherein it had been mandated that an FIR should be registered once a cognizable offence had been disclosed. It was submitted that once the prayer to quash the FIRs had not been acceded to by the Single Bench, it would be deemed to have been declined.

8(ii). It was submitted that out of three reliefs sought by the petitioners before the Single Bench, the Single Bench in its judgment dated 05.07.2023, granted only one relief and did not grant the remaining two reliefs. It was submitted that the said judgment has attained finality as it was not challenged further. It was submitted that under the circumstances, the petitioners would be precluded from raising the said arguments before this Court in the present

petitions.

8(iii). In so far as the order dated 07.01.2021 is concerned, it was submitted that further proceedings in the FIRs were stayed which in essence would mean that the police would not investigate the FIRs any further but the same would not preclude the Directorate of Enforcement from Registering an ECIR since the offence of money laundering is an independent offence and registration of ECIR could not be construed to be proceedings in the FIRs. It was submitted that even FIRs, once registered could go only if no cognizable offence was disclosed. It was reiterated that merely because the order passed on the complaint under Section 156 (3) Cr.P.C. had been set aside, it would not mean that the FIRs also stood quashed. It was submitted that predicate offence did not arise out of the order dated 07.0l.2021 but arose out of the FIRs and once the FIRs were in existence, the ECIR could very well have been registered. It was submitted that the present petitions infact seek review of the order dated 05.07.2023 which would not be permissible. Sh. S.V. Raju learned Additional Solicitor General of India submitted that pursuant to the orders dated 05.07.2023, the matter was considered afresh by the trial Court and order dated 26.10.2023 was passed allowing the complaint under Section 156 (3) Cr.P.C. It was submitted that even in the said order, the Court of Chief Judicial Magistrate, Gurugram did not issue any direction to register FIRs afresh and instead simply directed the police to investigate the FIRs which had already been registered properly. It was also submitted that even this order stands challenged by the petitioners, arguments in the same had already been heard by a Single Bench and judgment had been reserved.

(These petitions have been decided in the interrugnum, as has been mentioned in the preceeding paragraphs).

8(iv). It was also submitted that apart from the FIRs in question, there are a number of other FIRs against the petitioners. Reference was made to the list of FIRs referred to in paragraph 27 of the reply submitted by the respondents-ED. It was contended that the ECIR was investigating even offences in the FIRs and not only in the FIRs which were the subject matter of the present dispute. Reference was made to the findings recorded in paragraph 457 of the judgment of the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Others Vs. Union of India and Others*** (supra).

8(v). It was further submitted that quashing of an ECIR cannot be sought without appending a copy of the ECIR and accordingly the prayer would not be maintainable.

8(vi). It was contended by Sh. S.V. Raju learned Additional Solicitor General of India that both the petitions are even otherwise pre-mature. Since the petitioners had only been summoned by the respondents-ED, no further action could have been taken. It was submitted that the respondents-ED had to follow the procedure laid down under the PMLA and the apprehensions expressed by the petitioners were devoid of merit. It was also submitted that the issuance of non-bailable warrants is completely legal because of non-appearance of the petitioners in pursuance of the summons issued to them. It was submitted that the non-bailable warrants were issued in accordance with the settled law permitting the same. In support of his contentions, learned counsel placed reliance upon the judgments of Hon'ble Supreme Court of

India in ***'Vijay Madanlal Choudhary and Others Vs. Union of India and Others', 2022 SCC OnLine SC 929, Gautam Kundu vs. Directorate of Enforcement (2015) 15 SCC 1, 'P. Chidambaram Vs. Directorate of Enforcement', (2019) 9 SCC 24, 'Dr. Manik Bhattacharya Vs. Ramesh Malik and Others', 2022 SCC Online SC 1465, 'Directorate of Enforcement Vs. Aditya Tripathi', 2023 SCC Online SC 619, 'Y. Balaji Vs. Karthik Desari and Another', 2023 SCC Online SC 645, 'Siddharth Mukesh Bhandari Vs. State of Gujarat', 2022 SCC Online SC 952, Criminal Original Petition No.19880 of 2022 titled as 'P. Rajendran Vs. The Assistant Director, Directorate of Enforcement', decided on 14.09.2022, 'Radha Mohan Lakhotia Vs. Deputy Director, PMLA, Directorate of Enforcement', 2010 SCC Online Bom 1116, 'J. Sekar Vs. Union of India and Others', 2018 SCC Online Del 6523, Siddharth Mukesh Bhandari Vs. State of Gujarat', 2022 SCC Online SC 952, 'Union of India Vs. Padam Narain Aggarwal and Others', (2008) 13 SCC 305, SLP (Crl.) No.9092/2022 titled as 'Vijay Kumar Gopichand Ramchandani Vs. Amar Sadhuram Mulchandani and Others', decided on 05.12.2022, 'The King Emperor Vs. Khawaja Nazir Ahmad', AIR 1945 PC 18, 'Dukhishyam Benupani, Asst. Director, Enforcement Directorate (FERA) Vs. Arun Kumar Bajoria', (1998) 1 SCC 52, WP (Crl.) No.109/2013 titled as 'Kirit Shrimankar Vs. Union of India and Others', 'Commissioner of Customs, Calcutta and Others Vs. M/s M.M. Exports and Another', (2010) 15 SCC 647, 'C.M. Raveendran Vs. Union of India', 2020 SCC Online Ker 7555, 'Virbhadra Singh and Another Vs. Enforcement Directorate and Another',***

2017 SCC Online Del 8930, WP (Crl) No.2392/2021 titled as 'Raghav Bahl Vs. Enforcement Directorate, Ministry of Finance', decided on 23.01.2023, SLP (Crl.) No. 4212-4213 of 2019 titled as 'State of Gujarat Vs. Choodamani Parmeshwaran Iyer and Another', decided on 17.07.2023, 'Special Director Vs. Mohd. Gulam Ghouse', AIR 2004 SC 1467, 'Raj Kumar Shivhare Vs. Assistant Director, Directorate of Enforcement and Another', (2010) 4 SCC 772, State Bank of Travancore Vs. Mathew K.C.', (2018) 3 SCC 85, 'Genpact India Private Limited Vs. Deputy Commissioner of Income Tax and Another', 2019 SCC Online SC 1500, LPA 381/2023 titled as 'RBL Bank Ltd. Vs. Directorate of Enforcement and Others', decided on 26.04.2023, WP (C) 17784/2022 titled as 'Sanjay Jain (In JC) Vs. Directorate of Enforcement', decided on 04.01.2023, WP (C) 11661/2022 titled as 'Rui Chuang Technologies Pvt. Ltd. Vs. Directorate of Enforcement and Another', decided on 08.08.2022, WP (C) 10382/2022 titled as 'Vivo Mobile India Pvt. Ltd. Vs. Directorate of Enforcement', decided on 28.03.2023, 'Rai Foundation Thr. Its Trustee Mr. Suresh Sachdev Vs. The Director, Directorate of Enforcement and Others' 2015 SCC OnLine Del 7626, 'Rose Valley Hotels and Entertainments Ltd. Vs. The Secretary, Department of Revenue, Ministry of Finance and Others, 2015 SCC Online Del 10111 and ***State of Bihar Vs. P.P. Sharma, IAS and another', 1992 Supp (1) SCC 222.***

8(vii). It was submitted that gross economic offences had been committed by the petitioners and more than Rs.100 crores had been siphoned off by them.

ARGUMENTS IN REBUTTAL

9 (i). In rebutting the arguments advanced on behalf of the respondents, learned Senior counsel reiterated their arguments. Reverting to the FIRs, it was submitted that the contents of the FIRs were a verbatim reproduction of the complaint which shows that the FIRs had been registered only in pursuance to the order passed on the complaint under Section 156 (3) Cr.P.C. and not under Section 154 Cr.P.C. Learned Senior counsel referred to the provisions of Sections 154, 156 (3), 190 and 200 Cr.P.C. and tried to draw out the distinction between the procedures and processes laid down under the said provisions. It was also submitted that petitioner Dharam Singh Chhoker had neither been associated in the companies in question nor had been a share holder. He had not been arrayed as an accused in the private complaint as also in the complaint under Section 156 (3) Cr.P.C. It was submitted that there was no allegation against the petitioner Dharam Singh Chhoker and accordingly proceedings against him cannot continue.

9(ii). It was also submitted that once he was not an accused in the FIRs Nos.10 & 11 dated 14.01.2021 and once the ECIR had been registered on the basis of these FIRs, there would be no predicate offence. In so far as petitioner Dharam Singh Chhoker is concerned, the ECIR, therefore, would not be in a position to sustain qua him.

ANALYSIS AND FINDINGS

10. We have given our thoughtful consideration to the arguments addressed by learned counsel for the parties. The numerous and voluminous judgments relied upon by both sides as also the voluminous pleadings have

been perused.

11. It is common knowledge that of late, economic offences, which strike at the very economy of a country have spiralled. Scams running into hundreds and thousands of crores of rupees no longer surprise the common citizen as they seem to have become a norm. Litigation pertaining to these disputes are consuming substantial time of the Courts. Where there is an illegality, the same has to be struck down. At the same time, frivolous and luxury litigation needs to be discouraged. It is for the Courts to separate the grain from the chaff with a view to ensure that whereas the rights of citizens are not harmed, litigation also does not flood the Courts. We shall now proceed to test the arguments advanced by both sides on the aforesaid touchstone.

12(i). The first argument that once the operation of the impugned order dated 07.01.2021, passed by the Chief Judicial Magistrate, Gurugram and further proceedings in the consequential FIRs Nos.10 & 11 dated 14.01.2021 respectively had been stayed, the ECIR could not have been recorded, is devoid of merit. It has been held by the Hon'ble Apex Court in the case of ***Vijay Madanlal Choudhary and Others Vs. Union of India and Others*** (supra) that there is no necessity to formally register an ECIR unlike the registration of an FIR. It was held that the ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with the process or activity connected with proceeds of crime. It was also held that there is no necessity to furnish a copy of the same to the accused. It was also held 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. It was held that the process of 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. It was further held that the involvement in any one of such process or activity connected with the proceeds of crime would constitute an offence of money laundering and the same otherwise would have 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.

12(ii). Even otherwise, the orders dated 27.01.2021 had stayed the operation of the orders dated 07.01.2021 and further proceedings in the consequential FIRs. The ECIR was not recorded on account of orders dated 07.01.2021 having been passed. No doubt, FIR Nos.10 & 11 were being investigated in the ECIR but it is the categoric stand of the respondents that apart from these two FIRs, there are a number of other FIRs against the petitioners which are being investigated in the ECIR in question. Details of such FIRs have been given in the reply itself and these FIRs are FIR No.175/2022 dated 18.05.2022, registered under Section 120-B, 201, 420, 467, 468, 471 IPC and Section 10 of the Haryana Development and Regulation of Urban Areas Act, FIR No.0151 dated 31.05.2023 & the FIR No.0152 dated 01.06.2023, both registered under Sections 420, 467, 468, 471 IPC, at Police Station Rajendra Park, Gurugram, and FIR No.0151 dated

05.07.2022, registered under Sections 120-B, 420, 467, 468, 471 IPC, at Police Station Sushant Lok, Gurugram. Merely because these FIRs were registered subsequently would not make a difference as presently, they are being investigated in the ECIR.

12(iii). Going further, stay of proceedings in the FIRs would, at best, mean no further investigation in the FIRs during operation of the interim order but cannot be stretched to mean that even an ECIR could not have been recorded. It would be essential to notice here that at the relevant time i.e. when the orders dated 27.01.2021 were passed, there was no ECIR and accordingly there was no stay order with regard to the ECIR. The same was recorded much later in November, 2021 and in the considered opinion of this Court, there was no bar to record the said ECIR. Still further, the Enforcement Directorate was nowhere in the picture, in the complaints or in the petitions filed before this Court when the orders dated 07.01.2021 were challenged. That being so, the respondent-Enforcement Directorate was not bound by the orders dated 27.01.2021.

12(iv). It has been categorically held by the Hon'ble Supreme Court of India in the case of ***Dr. Manik Bhattacharya vs. Ramesh Malik and others*** (supra) that a restraint order passed in a criminal matter would not affect proceedings under the PMLA especially once the Enforcement Directorate was not a party to the same and also because the offence of money laundering is an independent offence wherein, an accused would have independent remedies in case of violation of the statutory provisions. In that case, certain orders were passed by a Division Bench of High Court of Calcutta in a

controversy relating to allegations of illegalities in recruitment of primary school teachers through the Teacher's Eligibility Test, 2014. Several directions were given against Dr. Bhatacharya including a direction to the CBI to start his interrogation and in case of non-cooperation, to arrest him. The matter reached the Hon'ble Apex Court and the Hon'ble Apex Court, vide its order dated 27.09.2022, directed that no coercive steps would be taken against Dr. Bhatacharya. He was, however, arrested on 10.10.2022 by the Enforcement Directorate. The contention that in view of the order passed by the Hon'ble Apex Court, he could not have been arrested was rejected by the Hon'ble Apex Court holding as under:-

> "3. Learned Counsel for the petitioner had mentioned before us on 12th October 2022 that the petitioner was arrested on 10th October 2022 by the Enforcement Directorate. These two IAs were filed on 12th October 2022 itself, being I.A. No.154274 of 2022 for impleading the Directorate of Enforcement as a party-respondent to the present Special Leave Petitions and I.A. No.154275 of 2022 for declaring the arrest of the petitioner as illegal**. Such arrest was made by the Enforcement Directorate on the basis of Enforcement Case Information Report under No.KLZO-II/19/2022 (ECIR).**
>
> 4. We heard the above two applications on 18th October 2022. Mr. Mukul Rohtagi, learned Senior Counsel for the petitioner argued that when the latter was under the protective cover of the order passed by this Court, his arrest by the Enforcement Directorate was illegal, being in violation of that Order of this Court. His submission has been that the protection granted by this Court was in relation to a particular offence and the Enforcement Directorate had arrested him in relation to the same offence, which was unwarranted.
>
> 5. Mr. Tushar Mehta, learned Solicitor General appeared in these matters on behalf of the Enforcement Directorate and his submission is that in the Writ Petitions, out of which the present proceedings arise, Enforcement Directorate was not a party. The

Order of this Court, giving interim protection to the petitioner from coercive steps, was based in the backdrop of the direction of the Single Judge issued on CBI to investigate into the allegations of irregularities pertaining to the recruitment of primary teachers and observations of the Single Judge that CBI could interrogate the petitioner and also arrest him in case of his non-cooperation. His case is that the Enforcement Directorate had initiated an independent investigation into money-laundering allegations based on the aforesaid ECIR against one Chandan Mondal @ Ranjan and unknown office bearers of the West Bengal Board of Primary Education and others.

6. In an affidavit filed on behalf of the Enforcement Directorate affirmed by one Devranjan Mishra on 17th October 2022, a copy of the remand application of the Enforcement Directorate has been annexed. We find in this application, there is broad reference to the allegations which are being investigated by the CBI. Enforcement Directorate's case, however, is that various incriminating documents were seized during the course of the search conducted at the premises of the petitioner and evidence has surfaced as regards the role of the petitioner in money-laundering activities and proceeds of crime.

7. **We cannot hold that arrest of the peittioner by the Enforcement Directorate illegal as the issue of money-laundering or there being proceeds of crime had not surfaced before the Single Bench of the High Court. Before us, however, it had been brought to our notice by Mr. Rohatgi in course of hearing on the question of interim order passed in the instant special leave petitions, that the petitioner had been cooperating with investigation by the Enforcement Directorate and the CBI. While testing the legality of an arrest made by an agency otherwise empowered to take into custody a person against whom such agency considers subsistence of prima facie evidence of money-laundering, we do not think a general protective order directed at another investigating agency could have insulated the petitioner from any coercive action in another proceeding started by a different agency, even if there are factual similarities vis-a-vis the allegations. Under the Prevention of Money-Laundering Act, 2002 ("2002 Act"), money-laundering is an independent offence and in the event there is any allegation of the Enforcement Directorate having acted beyond**

jurisdiction of their act of arrest is not authorized by law, the petitioner would be entitled to apply before the appropriate Court of law independently. But that question could not be examined in a Special Leave Petition arising from the proceedings in which the question of Money Laundering were not involved.

8. In the present Special Leave Petitions, having regard of this scope and nature of the proceedings, we are not inclined to go into the legality of the question of invoking the provisions of the 2002 Act in arresting the petitioner. We are also satisfied that the order restraining coercive action being taken against the petitioner passed by us on 27th September 2022, which we have still directed to continue, did not operate to prevent the Enforcement Directorate from carrying on with their investigation into the allegations under the 2002 Act.

9. For the reasons that we have stated above, we are not inclined to add the Enforcement Directorate as a party in the present petitions. The grievance of the petitioner against the Enforcement Directorate would have to be ventilated independently before the appropriate forum. We do not accept the argument of the petitioner that his arrest was illegal because of the interim order passed by us. We make it clear that we have not delved into the question of legality of the petitioner's arrest or initiation of proceeding against him under the 2002 Act."

13(i). The second argument that once, vide orders dated 05.07.2023, the Chief Judicial Magistrate, Gurugram had been directed to pass a fresh order on the complaint filed under Section 156 (3) Cr.P.C., the orders dated 07.01.2021 would be deemed to have been set aside and the consequential FIRs would become non-est and would be deemed to have been quashed or set aside is also devoid of merit. At the first blush, the argument does seem to be attractive. Ordinarily, it is true that once the very foundation goes, the super-structure or the subsequent proceedings would have to go. However, before we arrive at such a conclusion, it would be appropriate to refer to the

findings recorded by the Single Bench vide orders dated 05.07.2023. If one peruses the orders dated 05.07.2023 (Annexures P-13 & P-14), the very first paragraph lays down as to what had been prayed for by the petitioners therein. Paragraph 1 of the said judgment dated 05.07.2023 (Annexure P-13), passed in CRM-M-3823-2021 states as under:-

> **"The petitioners have preferred this petition under Section 482 Cr.P.C. for quashing of complaint No.486/2020 dated 17.12.2020 (Annexure P-20) titled 'Neeraj Chaudhry vs. M/s Sai Aaina Farms Private Limited & others', order dated 07.01.2021 (Annexure P-25) passed by the Chief Judicial Magistrate, Gurugram directing registration of FIR against the petitioners and consequential FIR bearing No.11 dated 14.01.2021 under Sections 120-B, 406, 420, 467, 468, 471 IPC, Police Station Sushant Lok, Gurugram (Annexure P-26) alongwith all consequential proceedings arising out from there being illegal and without jurisdiction. The petitioners have also prayed for stay of further proceedings in the aforesaid FIR."**

13(ii) A bare perusal of the aforesaid shows that petitioners, apart form laying challenge to the order dated 07.01.2021 had also sought quashing of the complaints filed by Neeraj Chaudhry as also the consequential FIR Nos.10 & 11 dated 14.01.2021 alongwith all consequential proceedings arising therefrom.

13(iii). The Single Bench, after hearing both sides, only arrived at one conclusion that the order dated 07.01.2021 needed to be revisited by the concerned Court. It was categorically held that the Court did not wish to

comment anything on the merits of the case and left all issues open at that stage. The Single Bench also held that it did not wish to opine anything on the merits of the case lest it may prejudice the case of the parties. It was held that since the order dated 07.01.2021 appeared to be non-speaking in the light of the legal requirements, the Chief Judicial Magistrate would pass a fresh order strictly in accordance with law exhibiting due application of mind. The relevant paragraphs are extracted herein below for the facility of reference:-

> [28]. After hearing learned counsel for the parties, this Court finds that the impugned order dated 07.01.2021 passed by the Chief Judicial Magistrate, Gurugram needs **to be revisited by the Court itself as the same is non-speaking with reference** to the legal requirements arising from the parameters as laid down in ***Shri Subhkaran Lubharka and Anr.***; ***Priyanka Srivastava***; ***Babu Venkatesh and others*** and ***Amit Joshi's*** cases (supra). **This Court does not wish to comment anything on merits of the case and all issues are left open at this stage except to remand this case to the Court of Chief Judicial Magistrate with a direction to pass fresh order in view of mandatory requirement of law and also to consider the stand taken by the respondent No.2 with reference to any policy provincial/provisional order No.1/2017 issued by the office of Commissioner of Police, Gururam in respect of functioning and supervision of the Economic Offence Wing.**
>
> [29]. The Chief Judicial Magistrate shall independently consider the submissions of the petitioners as well as that of the respondent No.2 in accordance with law without being influenced by any statement of fact recorded in this order. Needless to say that the order of **the Chief Judicial Magistrate must exhibit the application of mind as required under**

Section 156(3) Cr.P.C. in the light of the judgments discussed in the preceding part of the order.

[30]. **At this stage, this Court does not wish to opine anything on merits of the case, lest it may prejudice the case of the parties.** The impugned order dated 07.01.2021 passed by the Chief Judicial Magistrate, Gurugram appears to be nonspeaking in the light of legal requirement for that the Chief Judicial Magistrate shall **be under legal obligation to reconsider the issue afresh strictly in accordance with law and thereafter pass speaking order exhibiting due application of mind after grasping the facts of the case and law on the subject with reasoned order. All other grounds are still left open.**

[31]. In view of aforesaid, this petition is disposed of. All other civil misc. applications, if pending are also disposed of accordingly."

13(iv). This order was not challenged any further and has thus become final qua the parties. This order would not be open to interpretation by this Court in these proceedings. A relief was categorically prayed for and the same was declined and even if it had not been declined, it would be deemed to have been declined once it was not granted. No doubt, now, vide judgment dated 16.01.2024, a Single Bench while deciding CRM-M-56495-2023, titled as 'Aditya Beri and another versus State of Haryana and another', has held the FIRs to be a nullity. However, the effect of that order, if it becomes final, also cannot be taken note of in the current proceedings for the challenge in these proceedings is to the ECIR and the issuance of summons and non-bailable warrants.

13(v). Still further, a perusal of the vernacular of the FIRs (Annexures P-9 & P-10) reveals that the FIRs had not been registered only in view of the directions issued by the Chief Judicial Magistrate, Gurugram but it is also mentioned in the police proceedings that a perusal of the complaint reveals commission of offences punishable under Sections 406, 420, 467, 468, 471, 120-B IPC. It would, therefore, be incorrect to even suggest that once the order under Section 156 (3) Cr.P.C. had been set aside, the FIRs would be deemed to have been quashed/rendered nullity.

13(vi). The judgment in the case of ***'State of Punjab Vs. Davinder Pal Singh Bhullar'*** (supra) would not come to the aid of the petitioners. There the issue before the Hon'ble Apex Court was whether the High Court can pass an order on an application entertained after final disposal of the criminal appeal or even suo-motu particularly in view of the provisions of Section 362 Cr.P.C. and as to whether, the High Court, in exercise of its inherent jurisdiction under Section 482 Cr.P.C. can ask a particular investigating agency to investigate a case following a particular procedure which is not in consonance with the statutory provisions of Cr.P.C. It was in this context that the Hon'ble Apex Court held that once the orders under challenge were a nullity, the very birth of the FIR which is a direct consequence of the said orders would not have any lawful existence**.** It was also held that if the initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. This judgment was dealing with a particular situation and would not apply to the facts of the present case for the reasons mentioned

hereinbefore.

14(i). The 3rd argument that non-bailable warrants could not have been issued in aid of investigation is also devoid of merit. Firstly, it has come on record that the petitioners had not been cooperating with the respondents and that while they initially appeared in pursuance to the notices issued, they gave evasive answers and now they have not been appearing in pursuance to the summons/notices issued by the respondents. If this argument was to be accepted, an Investigating Agency, be it the jurisdictional police, the Enforcement Directorate, CBI or any other agency would have no remedy if an accused chose not to cooperate with the investigation. It cannot be accepted that an Investigating Agency would be rendered without any remedy. Even otherwise, it is now well settled that an accused can very well be summoned or his presence can be compelled by way of non-bailable warrants by the Court at the instance of the Investigating Agency. The only safeguard which has been laid down is that after the non-bailable warrants are executed, the accused cannot be produced before the Investigating Agency but he has to be produced before the Court which shall, thereafter, proceed in accordance with law.

14(ii). The judgments relied upon by learned counsel for the petitioners as also by learned counsel representing the respondents precisely lay down this very proposition.

14(iii). In the case of ***State Through CBI Vs. Dawood Ibrahim Kaskar and Others*** (supra), the CBI had moved an application before the designated

Court praying for issuance of non-bailable warrants of arrest against the accused to initiate further proceedings in the matter to apprehend them and/or to take further action to declare them as proclaimed offenders. These applications came to be rejected by the designated Court. It was held by the designated Court that there was no provision which entitled the Investigating Agency to seek for and obtain aid from the Court for the same. It was held that presence could be compelled only to face the trial but no process could be issued in aid of investigation under Section 73 Cr.P.C. The matter reached the Hon'ble Apex Court. After examining the matter, the Hon'ble Apex Court held that Section 73 Cr.P.C. gave the power to a Magistrate to issue warrants of arrest and that too during investigation. Reference was made to Section 73 Cr.P.C. and Section 155 Cr.P.C. The Hon'ble Apex Court then examined as to whether such issuance of warrants could be for production of such a person before the police in aid of investigation. This, the Hon'ble Apex Court held could not be done and it was held that the warrants could be issued for appearance before the Court only and that thereafter it was for the Court to decide as to whether detention is to be given or not. The relevant observations and findings of the Hon'ble Apex Court in the said judgment are extracted as under:-

> 12. **The moot question that now requires to be answered is whether a Court can issue a warrant to apprehend a person during investigation for his production before police in aid of the Investigating Agency.** While Mr. Ashok Desai, the learned Attorney General who appeared on behalf of CBI, submitted that Section 73 coupled with Section 167 of the Code bestowed upon

the Court such power, Mr. Kapil Sibal, who appeared as amicus curie (the respondents did not appear inspite of publication of notice in newspaper) submitted that Court had no such power. To appreciate the steps of reasoning of the learned counsel for their respective stands it will be necessary to refer to the relevant provisions of the Code and TADA relating to issuance of processes.

Xxx xxx xxx xxx

21. Apart from the above observations of the Law Commission, from a bare perusal of the Section (quoted earlier) **it is manifest that it confers a power upon the class of Magistrates mentioned therein to issue warrant for arrest of three classes of person, namely, (i) escaped convict, (ii) a proclaimed offender, and (iii) a person who is accused of a non-bailable offence and is evading arrest.** If the contention of Mr. Sibal that Section 204 of the Code is the sole repository of the Magistrate's power to issue warrant and the various Sections of part 'B' of Chapter VI including Section 73 only lay down the mode and manner of execution of such warrant a Magistrate referred to under Section 73 could not - and would not - have been empowered to issue warrant of arrest for apprehension of an escaped convict, for such a person cannot come within the purview of Section 204 as it relates to the initiation of the proceeding and not to a stage after a person has been convicted on conclusion thereof.

22. **That Section 73 confers a power upon a Magistrate to issue a warrant and that it can be exercised by him during investigation also, can be best understood with reference to Section 155 of the Code.** As already noticed under this Section a police officer can investigate into a non-cognizable case with the order of a Magistrate and may exercise the same powers in

respect of the investigation which he may exercise in a cognizable case, except that he cannot arrest without warrant. If with the order of a Magistrate the police starts investigation into a non-cognizable and non-bailable offence, (like Sections 466 or 467 (Part I) of the Indian Penal Code) and if during investigation the Investigating Officer intends to arrest the person accused of the offence he has to seek for and obtain a warrant of arrest from the Magistrate. If the accused evade the arrest, the only course left open to the Investigating Officer to ensure his presence would be to ask the Magistrate to invoke his powers under Section 73 and thereafter those relating to proclamation and attachment. In such an eventuality, the Magistrate can legitimately exercise his powers under Section 73, for the person to be apprehended is 'accused of a non-bailable offence and is evading arrest.'

23. **Another factor which clearly indicates that Section 73 of the Code gives a power to the Magistrate to issue warrant of arrest and that too during investigation is evident from the provisions of part 'C' of Chapter VI of the Code, which we have earlier adverted to.** Needless to say the provisions of proclamation and attachment as envisaged therein is to compel the appearance of a person who is evading arrest. **Now, the power of issuing a proclamation under Section 82 (quoted earlier) can be exercised by a Court only in respect of a person 'against whom a warrant has been issued by it'. In other words, unless the Court issues a warrant the provisions of Section 82, and the other Sections that follow in that part, cannot be invoked in a situation where in spite of its best efforts the police cannot arrest a person under Section 41. Resultantly, if it has to take the coercive measures for the apprehension of such a person it has to approach the Court to issue warrant of arrest under Section 73; and if need be to**

invoke the provisions of part 'C' of Chapter VI. [Section 8(3) in case the person is accused of an offence under TADA].

24. Lastly, we may refer to Section 90, which appears in part 'D' of Chapter VI of the Code and expressly states that the provisions contained in the Chapter relating to a summon and warrant, and their issue, service and execution shall, so far as may be, apply to every summons and every warrants of arrest issued under the Code. Therefore, when a Court issues a warrant of arrest, say under Section 155 of the Code, any steps that it may have to subsequently take relating to that warrant of arrest can only be under Chapter VI.

25. Now that we have found that Section **78** of the Code is of general application and that in course of the investigation a Court can issue a warrant in exercise of power thereunder to apprehend, *inter alia*, a person who is accused of a non-bailable offence and is evading arrest, we need answer the related question as to **whether such issuance of warrant can be for his production before the police in aid of investigation. It cannot be gainsaid that a Magistrate plays, not infrequently, a role during investigation, in that, on the prayer of the Investigating Agency he holds a test identification parade, records the confession of an accused or the statement of a witness, or takes or witnesses the taking of specimen handwritings etc. However, in performing such or similar functions the Magistrate does not exercise *judicial* discretion like while dealing with an accused of a non-bailable offence who is produced before him pursuant to a warrant of arrest issued under Section 73. On such production, the Court may either release him on bail under Section 439 or authorise his detention in custody (either police or judicial) under Section 167 of the Code. Whether the Magistrate, on being moved by**

the Investigating Agency, will entertain its prayer for police custody will be at his sole discretion which has to be judicially exercised in accordance with Section 167(3) of the Code. Since warrant is and can be issued for appearance before the Court only and not before the police and since authorisation for detention in police custody is neither to be given as a matter of course nor on the mere asking of the police, but only after exercise of judicial discretion based on materials placed before him, Mr. Desai was not absolutely right in his submission that warrant of arrest under Section 73 of the Code could be issued by the Courts solely for the production of the accused before the police in aid of investigation.

26. On the conclusions as above we allow these appeals, set aside the impugned order and direct the **Designated Court to dispose of the three miscellaneous applications filed by CBI in accordance with law and in the light of the observations made herein before."**

14(iv). This view was reiterated by the Delhi High Court in '***Ottavio Quattrocchi Vs. CBI*** (supra). Relying upon the judgment of the Hon'ble Apex Court in ***State Through CBI Vs. Dawood Ibrahim Kaskar and Others*** (supra), it was held by the Delhi High Court that the Special Judge was justified and within his jurisdiction in having issued non-bailable warrants of arrest during the course of investigation. In the present case also, no fault can be found with the order dated 29.09.2023 (Annexure P-23) which has been impugned by the petitioners and by way of which non-bailable warrants were ordered to be issued. The order is a well reasoned and speaking order and it

nowhere directs the production of the petitioners before the Investigating Agency. It goes without saying that once the warrants are executed, the respondent-ED would be bound by the provisions of law be that the PMLA or the Cr.P.C. The other judgments relied upon by the petitioners, therefore, would be of no aid to them.

15. Even otherwise, interference in investigation/inquiry has been frowned upon repeatedly by the Hon'ble Apex Court. Reference in this regard can be made to the judgment in the case of ***Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and Others*** (supra). It was held that a blanket interim order affects the powers of the investigating agency to investigate cognizable offences and that such orders should not be passed. In the considered opinion of this Court, interference at this stage with issuance of non-bailable warrants etc. is, therefore, not called for.

16. As regards the argument that petitioner Dharam Singh Chhoker had never been the director and, therefore, no proceedings could have been issued against them, the same is also devoid of merit. The argument that since Dharam Singh Chhoker was not arraigned as an accused in the complaints submitted by Neeraj Chaudhry, no proceedings could have been issued against him is also devoid of merit. Still further, once there were other FIRs pending against the petitioners, it cannot be said that there were no proceeds of crime and, therefore, no offence of money laundering, as defined under Section 3 of the PMLA, can be said to have been committed. All these issues have been dealt with by the Hon'ble Apex Court in the case of ***Pavana Dibbur versus Directorate of Enforcement (Criminal Appeal No.2779 of***

2023 decided on 29.11.2023) wherein it was held as under:-

11. Section 3 of the PMLA reads thus:

> **"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."

12.On a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence. Clause (u) of sub-section (1) of Section 2 of the PMLA defines "proceeds of crime", which reads thus:

> "2. Definition - (1) In this Act, unless the context otherwise requires, -
>
> (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;
>
> **Explanation.-**For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence."

13. Clause (v) of sub-section (1) of Section 2 of the PMLA defines "property" to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled

offence. The explanation clarifies that the proceeds of crime include property, not only derived or obtained from 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. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime. Thus, the existence of "proceeds of crime" is sine qua non for the offence under Section 3 of the PMLA.

14. Clause (x) of sub-section (1) of Section 2 of the PMLA defines "schedule". Clause (y) thereof defines "scheduled offence", which reads thus:

> **"2. Definition -** (1) In this Act, unless the context otherwise requires, -
>
> (y) "scheduled offence" means-
>
> (i) the offences specified under Part A of the Schedule; or
>
> (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or
>
> (iii) the offences specified under Part C of the Schedule."

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 the case of Vijay Madanlal Choudhary1. In paragraph 253 of the said decision, this Court held thus:

> "253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as

proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

(underline supplied)

16. In paragraphs 269 and 270, this Court held thus:

"269. 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.

270. 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."

(underline supplied)

17. Coming back to Section 3 of the 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 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of 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 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary1 supports the above conclusion.

The conditions precedent for attracting the offence under Section 3 of the 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 of the 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 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the chargesheets filed in the scheduled offences deserves to be rejected.

17. A perusal of the aforesaid judgment shows that even if one of the petitioners was not shown to be an accused, he could be prosecuted under the PMLA so long as the scheduled offence exists. The scheduled offence, as already mentioned in the preceding paragraphs, is not only in FIR Nos.10 &

11 dated 14.01.2021 but also in other FIRs referred to therein. It is also clear from a perusal of the aforesaid judgment that since there were other FIRs also, proceeds of crime cannot be ruled out and, therefore, it cannot be said that no offence of money laundering can be said to have been committed. As has been observed in the preceding paragraphs, the case is only at the stage of investigation and nothing can be said conclusively at this stage. The reality would emerge only once the concerned Investigating Agencies conclude the investigation/inquiry.

As a result of the aforesaid discussion and for the reasons recorded hereinbefore, we find the petitions to be devoid of merit and accordingly, the same are dismissed.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

26.02.2024
mamta

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No