THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

+ WRIT APPEAL No.107 of 2023

% Date: 19.04.2023

Manturi Shashi Kumar and another.

... Appellants

v.

$ The Director, Directorate of Enforcement,
Government of India, Ministry of Finance
Department of Revenue, 3rd Floor, Shankar Bhavan,
Basheerbagh, Hyderabad – 500 004,
And others.

... Respondents

! Counsel for the appellants : Mr. Vedula Srinivas,
Learned Senior Counsel,
Representing Ms. K.Jayasree.

^ Counsel for the respondents : Mr. V.Ramakrishna Reddy

< GIST:

➢ HEAD NOTE**:**

? CASES REFERRED:

1. MANU/TL/1492/2022
2. 2022 SCC OnLine SC 929

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE SRI JUSTICE N. TUKARAMJI

WRIT APPEAL No.107 of 2023

JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. Vedula Srinivas, learned Senior Counsel representing Ms. K.Jayasree, learned counsel for the appellants and Mr. V.Ramakrishna Reddy, learned counsel for the Enforcement Directorate i.e., the respondents.

2. This appeal is directed against the order dated 17.10.2022 passed by the learned Single Judge dismissing W.P.No.45712 of 2018 filed by the appellants as the writ petitioners.

3. Appellants had filed the related writ petition seeking a direction to the respondents, more particularly to respondent No.2, to release the property from attachment.

4. As per the case of the appellants as projected in the writ affidavit, appellant No.1 was arrayed as accused No.1

in F.I.R.No.369 of 2009 registered before the Patancheru Police Station under Sections 120B, 420, 423, 468 and 471 of the Indian Penal Code, 1860 (IPC). Following investigation carried out by the police, charge sheet was filed in the Court of Additional First Class Judicial Magistrate, Sangareddy, which upon cognizance was registered as C.C.No.319 of 2010. Following registration of the criminal case, ECIR/02/HZO/2010/1915 was registered under the Prevention of Money Laundering Act, 2002 (briefly, 'the PMLA' hereinafter) by the Enforcement Directorate. Thereafter, provisional attachment order No.06/2016 dated 30.12.2016 was passed by respondent No.2 provisionally attaching the following properties of the appellants:

(i) 80 guntas of land Sy.No.151/A, registered vide document No.5196/2009, dated 30.06.2009 with SRO, Sangareddy (R.O) in the name of Shri Manturi Shashi Kumar.

(ii) 19 guntas of land at Sy.No.122/A, registered vide document No.1019/2015, dated 26.02.2015 with SRO,

Sadasivpet in the name of Smt. Manturi Swapna, W/o. Shri Manturi Shashi Kumar.

(iii) 18 guntas of land at Sy.No.122/A5, registered vide document No.2749/2015, dated 27.02.2015 with SRO, Sadasivpet in the name of Smt. Manturi Swapna, W/o. Shri Manturi Shashi Kumar.

(iv) 90 square yards of land of Plot No.8B and 9B Part at Sy. No.727, Opp. PSML, residential area Sadasivpet Municipal Limits, Medak District registered vide document No.436/2009, dated 13.02.2009 with SRO, Sadasivpet in the name of Smt. Manturi Swapna, W/o. Shri Manturi Shashi Kumar.

5. Thereafter respondent No.2 filed original complaint under Section 5(5) of PMLA against appellants and others. After the provisional attachment order, adjudicating authority passed order dated 25.02.2017 confirming the provisional attachment order made by respondent No.2.

6. According to the appellants, while C.C.No.319 of 2010 was pending on the file of learned Additional Judicial First Class Magistrate, Sangareddy, the case was referred to Lok Adalat and on compromise reached between

appellants and the *de facto* complainant – P.Sudheer Reddy, order dated 20.03.2018 was passed discharging appellant No.1 from the criminal case besides closure of C.C.No.319 of 2010.

7. Appellants informed respondent No.2 about closure of C.C.No.319 of 2010 on 01.05.2018 and requested the said authority to release the properties from attachment. However, no decision was taken by respondent No.2 and the attached properties continued to remain under attachment. In the circumstances, appellants filed the related writ petition seeking the relief as indicated above.

8. The writ petition was contested by the respondents by filing counter affidavit. Stand taken in the counter affidavit was that acquittal in predicate offence would have no bearing or effect in the investigation or trial under PMLA, as PMLA deals only with the offence of money laundering. It was stated that complaint as contemplated under PMLA has already been filed before the Court of

Metropolitan Sessions Judge, Hyderabad, and upon cognizance being taken, the same has been registered as S.C.No.342 of 2018. Reference was made to the provisions of the Prevention of Money Laundering (Restoration of Property) Rules, 2016, more particularly to Rule 3-A thereof, whereafter it was contented that Special Court is empowered to order restoration of properties attached under sub-section (1) of Section 5 of PMLA.

9. Learned Single Judge after considering the rival pleadings and submissions made at the Bar observed that in the present case, C.C.No.319 of 2010 has ended in acquittal by way of compromise and not on merit. If exoneration in adjudication proceedings is on technical grounds and not on merit, prosecution may continue. Declining to grant any relief to the appellants, learned Single Judge however granted liberty to the appellants to approach the designated court for release of property by way of an application under Rule 3-A of the Prevention of Money Laundering (Restoration of Property) Rules, 2016,

with the further observation that it was for the designated court to take a decision in the matter. Consequently, the writ petition came to be dismissed vide the order dated 17.10.2022.

10. Aggrieved, the present appeal has been filed.

11. On 16.02.2023 this Court while issuing notice, passed the following order:

> Heard Mr. Vedula Srinivas, learned Senior Counsel for the appellants.
>
> Appellants had filed the related writ petition for setting aside of the attachment of properties following closure of C.C.No.319 of 2010.
>
> Learned Single Judge held that acquittal of the appellants in C.C.No.319 of 2010 was on compromise; it was not on merit.
>
> Learned Senior Counsel submits that when the predicate offence is no longer there, in view of closure of the criminal case on acquittal, continuing with the attachment of property under the Prevention of Money Laundering Act, 2002 by taking the view that the

attached properties are proceeds of crime cannot be sustained.

Issue notice.

Mr. V.Ramakrishna Reddy, learned counsel waives notice for all the respondents.

Considering that only pure question of law is involved and that respondents had already filed counter-affidavit before the learned Single Judge, filing of fresh counter-affidavit is not required. An endeavour may be made to hear the matter on the returnable date.

12. Learned Senior Counsel for the appellants has referred to Section 320 of the Code of Criminal Procedure, 1973 (Cr.P.C), more particularly to sub-section (8) thereof and submits that compounding of an offence under Section 320 Cr.P.C would have the effect of acquittal of the accused. When the criminal case has ended in closure with the acquittal of the appellants, there is no predicate offence against the appellants. That being the position, continuing with attachment of the property would not be justified. Learned Senior Counsel has placed reliance on a

Single Bench decision of this Court in **Jagati Publications Ltd. v. Enforcement Directorate**[1] and submits therefrom that existence of scheduled offence and proceeds of crime being the property derived or obtained as a result of criminal activity relating to the scheduled offence are conditions precedent not only for initiating prosecution under PMLA but also for continuation thereof. He, therefore, submits that learned Single Judge fell in error in rejecting the prayer of the appellants by holding that acquittal of appellants was on compromise and not on merit.

13. On the other hand, Mr. V.Ramakrishna Reddy, learned counsel for the respondents submits that appellants, instead of approaching the designated court constituted under PMLA by filing necessary application under Rule 3-A of the Prevention of Money Laundering (Restoration of Property) Rules, 2016, had approached this Court by filing a writ petition for release of the property

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from attachment. He submits that even under Section 8(6) and (7) of PMLA, it is the Special Court which has the mandate to consider an application for release of attached property. He further submits that appellants have filed a criminal petition before this Court under Section 482 Cr.P.C, being Crl.P.No.13439 of 2018, for quashing of proceedings in S.C.No.342 of 2018. Instead of pursuing the criminal petition, appellants have filed the related writ petition which was rightly not entertained by the learned Single Judge.

14. Submissions made by learned counsel for the parties have received the due consideration of the Court.

15. Facts in the present appeal lie within a narrow compass. As already noted above, appellant No.1 was an accused in the criminal case for offences which are considered as predicate offences under PMLA. In view thereof, a case was registered under PMLA following which the properties mentioned above were provisionally

attached. Subsequently, the provisional attachment was confirmed by the adjudicating authority whereafter complaint was lodged before the designated court based on which S.C.No.342 of 2018 has been registered.

16. In the meanwhile, in view of the settlement arrived at between the *de facto* complainant and appellant No.1, the criminal court referred the matter to Lok Adalat and when the matter was settled in Lok Adalat, the criminal court discharged appellant No.1 vide order dated 20.03.2018 leading to closure of the criminal case as well. It was thereafter that appellants had moved the respondents for release of the attached properties. Finding no response, the related writ petition came to be filed. Learned Single Judge took the view that the criminal case i.e., C.C.No.319 of 2010 has ended in acquittal of appellant No.1 by way of compromise and not on merit. Therefore, he declined to invoke the writ jurisdiction and relegated the appellants to the forum of the designated court for release of the attached property by filing application under Rule 3-A of

the Prevention of Money Laundering (Restoration of Property) Rules, 2016.

17. Section 320 Cr.P.C deals with compounding of offence. As per sub-section (1), the offences punishable under various sections of IPC specified in the table under the said sub-section may be compounded by the persons mentioned therein. As per sub-section (2), the offences punishable under various sections of IPC specified in the table mentioned therein may, with the permission of the court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the table.

18. There is no dispute that the sections under which appellant No.1 was prosecuted are compoundable under Section 320 Cr.P.C. Sub-section (8) thereof clearly says that composition of an offence under Section 320 Cr.P.C shall have the effect of an acquittal of the accused with whom the offence has been compounded. Therefore, when

the criminal case i.e., C.C.No.319 of 2010 was closed by the criminal court upon being compounded through the medium of Lok Adalat, it had the effect of acquittal of appellant No.1.

19. Section 3 of PMLA deals with the offence of money laundering. It says that whoever 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 the offence of money laundering.

20. The expression "proceeds of crime" is defined under Section 2(1)(u) of PMLA to mean, 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 with the country or abroad. As per the Explanation, it has been 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 related to the scheduled offence.

21. Thus the expression "proceeds of crime" is intrinsically related to a scheduled offence. It must be derived as a result of criminal activity relatable to a scheduled offence.

22. Before we deal with the decision of the Supreme Court in **Vijay Madanlal Choudhary v. Union of India**[2], we may briefly advert to the Prevention of Money Laundering (Restoration of Property) Rules, 2016, on which much reliance has been placed by Mr. V.Ramakrishna Reddy, learned counsel for the Enforcement Directorate. From the title of the said rules itself it is evident that the

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said rules have been framed for the purpose of restoration of property attached and confiscated in the course of proceedings under PMLA. While Rule 3 deals with the manner of restoration of confiscated property, Rule 3-A deals with manner of restoration of property during trial. As per sub-rule (1), the Special Court, after framing of the charge may decide an application that may be moved for restoration of property attached under sub-section (1) of Section 5 or seized or frozen under Section 17 or Section 18 of PMLA prior to confiscation by public notice in newspapers etc., so as to enable claimants having a legitimate interest in such property to establish their claims. As per sub-rule (2) of Rule 3-A, if the property referred to in sub-rule (1) is insufficient to meet the loss suffered by the claimant as a result of the offence of money laundering, the Special Court may pass an order of restoration of property directing the Central Government to auction such property and disburse on a pro-rata basis in accordance with the share of loss suffered by each

claimant. While sub-rule (3) deals with the limitation period for lodging such a claim, sub-rule (4) mandates the Special Court to give an opportunity of hearing to the owner of the property before deciding on restoration.

23. From the scheme of Rule 3-A of the Prevention of Money Laundering (Restoration of Property) Rules, 2016, what is discernible is that this provision is primarily meant for a claimant to seek restoration of property which he had lost as a result of the predicate offence leading to proceeds of crime and consequently the offence of money laundering. This provision may not be applicable in a case where the predicate offence itself has been closed on being compounded under Section 320 Cr.P.C.

24. We may now deal with the decision of the Supreme Court in **Vijay Madanlal Choudhary** (supra). Supreme Court dealt with the expression "proceeds of crime" in the following manner:

> **251.** The "proceeds of crime" being the core of the ingredients constituting the offence of money-

laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act — so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while

> reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.

25. Thereafter, Supreme Court observed that it is only such property which is derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence that can be regarded as proceeds of crime. Authorities under PMLA 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 before the competent forum. Supreme Court held as follows:

> **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.

26. In the said decision, Supreme Court also posed the question as to whether the offence under Section 3 is a standalone offence? Answering this question, Supreme Court held that offence under Section 3 is dependent on

the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Authorised officer under PMLA gets the authority to prosecute any person for the offence of money laundering only if there exists proceeds of crime within the meaning of Section 2(1)(u) of PMLA. Even though the PMLA is a complete code in itself, it is only in respect of matters connected with the offence of money laundering and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of PMLA is quintessential. Absent existence of proceeds of crime, the authorities under PMLA cannot step in or initiate any prosecution. Supreme Court held as follows:

> **281.** The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to

scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and *ex-consequenti* proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.

282. Be it noted that the authority of the Authorised Officer under the 2002 Act to prosecute any person for offence of money-laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act and further it is involved in any process or activity. Not even in a case of existence of undisclosed income and irrespective of its volume, the definition of "proceeds of

crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police (under Section 66(2) of the 2002 Act) for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.

283. Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.

284. 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 standalone process.

27. Finally, in paragraph 467, Supreme Court summarised its conclusion on various points. In paragraph 467(d), Supreme Court concluded as under:

> 467. In the light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:-
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> *** *** *** ***
>
> (v) (d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the

> jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being the property linked to stated scheduled offence claiming him.

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

29. This decision was examined in detail by a Single Bench of this Court in **Jagati Publications Ltd.** (supra).

After analysing the above decision of the Supreme Court, this Court held that the expression "proceeds of crime" which is the very essence of the offence of money laundering needs to be construed strictly. 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. Thereafter, this Court held that if a person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by a court of competent jurisdiction, there can be no offence of money laundering against him or anyone claiming such property being the property linked to the stated scheduled offence through him. Summing up the position, Single Bench of this Court held that existence of scheduled offence and proceeds of crime being the property derived or obtained as a result of criminal activity relating to the scheduled offence are *sine qua non* for not only initiating prosecution under PMLA, but also for continuation thereof. In the

absence of these two conditions, the Special Court dealing with the offence under PMLA would not be competent to pronounce on the guilt or otherwise of the person concerned accused of money laundering.

30. Adverting to the facts of the present case, it is evident that upon closure of the criminal case and acquittal of appellant No.1 on discharge, there is no scheduled offence against the appellants. In the absence of any crime, question of any proceeds of crime would not arise.

31. We are, therefore, of the view that learned Single Judge had erred in refusing to grant relief to the appellants by taking the view that acquittal of the appellants was on compromise and not on merit and relegating the appellants to the forum of the designated court. When there is no crime because of closure of the criminal case involving the predicate offence, continuation of attachment of the properties of appellants would not be justified.

32. In the circumstances, we allow this writ appeal by setting aside the order of the learned Single Judge dated 17.10.2022. Resultantly, W.P.No.45712 of 2018 is also allowed by directing the respondents to release the properties of the appellants from attachment.

Miscellaneous applications pending, if any, shall stand closed. However, there shall be no order as to costs.

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UJJAL BHUYAN, CJ

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N. TUKARAMJI, J

19.04.2023

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vs