



W.P.Nos.33459 to 33468 of 2023

W.P.Nos.33459 to 33468 of 2023

WEB CO S.S.SUNDAR, J.
AND
SUNDER MOHAN, J.

(Order of the Court was made by S.S.SUNDAR, J.)

All the above writ petitions are filed by the State Government along with the Additional Chief Secretary to Government, Water Resources Department and the District Collectors concerned. Writ Petition Nos.33459, 33460, 33461, 33462 & 33467 of 2023 are filed by the State Government and two others to quash the respective impugned summon issued to the District Collector of Vellore District, Trichy District, Karur District, Thanjavur District and Ariyalur District, requiring the appearance of the respective District Collectors to give evidence and produce records as indicated in the annexure, in connection with the investigation/proceedings under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the “PMLA, 2002”), by the Assistant Director of Enforcement, Chennai, in exercise of his powers under sub-sections (2) & (3) of Section 50 of the PMLA, 2002.



W.P.Nos.33459 to 33468 of 2023

2. The common prayer in the writ petitions in W.P.Nos.33463, 33464,

WEB CO

33465, 33466 & 33468 of 2023 is for a declaration that the power of the respondent, so far as it relates to investigation, enquiry etc., of an offence of money laundering in relation to the predicate offence arising out of and within the territorial limits of a State, without the consent of the concerned State, is violative of basic structure of federalism and separation of powers and therefore such enquiry, investigation etc., by the respondent can be carried out only at the request of the State Agencies/State Government or by the directions of the Constitutional Courts. The petitioners in the first set of five writ petitions are the petitioners in the second set of five writ petitions.

3. Pending disposal of the first set of writ petitions concerning the impugned summons issued to the respective District Collectors, the petitioners have prayed for interim stay of operation of the impugned summons issued to the concerned District Collector of the five Districts, who are shown as the third petitioner in each of the writ petitions.

4. We have heard Mr.Dushyant Dave, learned Senior Counsel assisted



W.P.Nos.33459 to 33468 of 2023

WEB COPY

by Mr.Amit Anand Tiwari, learned Additional Advocate General for the petitioners in W.P.Nos.33459 to 33463 of 2023, Mr.R.Shunmugasundaram, learned Advocate General assisted by Mr.K.M.D.Muhilan, Ms.A.G.Shakeenaa for the petitioners in W.P.Nos.33464 to 33468 of 202 and Mr.AR.L.Sundaresan, learned Additional Solicitor General assisted by Mr.N.Ramesh, learned Special Public Prosecutor (Enforcement Directorate) for the respondent in all the writ petitions.

5. Mr.Dushyant Dave, learned Senior Counsel, while challenging the constitutionality of the impugned proceedings, made several submissions, particularly for the purpose of granting interim order, referring to the following grounds raised in the writ petitions:-

(i) Under the garb of exercising powers under the PMLA, 2002, the authorities acting under it cannot initiate action in matters wherein they have no jurisdiction. The impugned proceedings are therefore vitiated on account of malice in law, as they have taken action for collateral, oblique and improper purposes in order to pressurize and to demoralize the State administration with an oblique motive.



W.P.Nos.33459 to 33468 of 2023

WEB COPY

(ii) In view of the fact that the impugned summon is without jurisdiction and authority of law, particularly not within the scope of the enquiry contemplated under the PMLA, 2002, it is a case of colourable exercise of power.

(iii) Broadly, the learned Senior Counsel submitted that by the issuance of impugned summons, the respondent is indulging in usurpation of the powers of State Government and its machineries in violation of the constitutional limits prescribed.

(iv) The learned Senior Counsel also submitted that the Central Government cannot act as a superior authority in the federal structure and direct the officers of State to appear under Section 50(2) of the PMLA, 2002, even though they have power to seek assistance, in terms of Section 54 of the PMLA, 2002, that too after the registration of an FIR in relation to a predicate offence.

(v) Though the learned Senior Counsel drew a distinction between malice in law and mala fide exercise of power and submitted that his argument is confined to malice in law, made a serious note that similar actions are initiated by the respondent only in certain States



W.P.Nos.33459 to 33468 of 2023

WEB COPY

like Tamil Nadu by referring to illegal mining of minor minerals in violation of the Mines and Minerals (Development and Regulation) Act, 1957 read with Tamil Nadu Minor Mineral Concession Rules, 1959. Whereas no such action is initiated in other States governed by ruling party, where thousands of cases relating to illegal mining are reported. We are not inclined to consider this submission which is contrary to the Senior Counsel's preliminary statement on the gist of his arguments, particularly in the absence of any statistics or verifiable material.

(vi) The focus of the learned Senior Counsel is on the usurpation of powers of the State Government by the Centre through the Enforcement Directorate. He submitted that such exercise of power is in contravention of the principles of federalism under the Constitution.

(vii) He also relied upon several provisions of the PMLA, 2002 in support of his arguments and we are inclined to consider the submissions on the admitted facts in the following paragraphs.



W.P.Nos.33459 to 33468 of 2023

WEB COPY

6. The respondent, namely, the Assistant Director, Directorate of Enforcement has filed an objection affidavit. The learned Additional Solicitor General raised a preliminary objection stating that the writ petitions are not maintainable by the State Government, as the State is not an aggrieved person to challenge the process of investigation. The learned Additional Solicitor General also relied upon a few complaints registered in different parts of the State. Referring to the Enforcement Case Information Report (ECIR), the learned Additional Solicitor General submitted that as per the First Information Report mentioned in the ECIR, prima facie, it is observed that the activities of illegal mining are happening in the State of Tamil Nadu in collusion with officials and local mafia, hand in glove. When serious allegations involving theft of national wealth and cheating or offences under the Prevention of Corruption Act are also registered along with offences relating to illegal mining under the Mines and Minerals Act, the respondent has jurisdiction to initiate action under the Prevention of Money Laundering Act, 2002. He also filed a typedset giving details of the estimation of extent and volume of sand mining in Tamil Nadu using modern techniques. A scientific study, according to the learned Additional



W.P.Nos.33459 to 33468 of 2023

WEB COPY

Solicitor General, was conducted through an expert team comprising Professors of IIT, Kanpur and it was found that in the State of Tamil Nadu, illegal mining beyond the permitted limits, has been carried out and the value of excess sand mining during the past several years comes to Rs.4730 Crores, as against the recorded revenue of Rs.36.45 Crores earned by the State Government. The learned Additional Solicitor General, while referring to the First Information Reports registered within the State of Tamil Nadu with regard to illegal mining, submitted that the Central Government has authority and reasons to believe existence of proceeds of crime on account of illegal sand mining and therefore empowered to investigate into the offences under Section 3 of the PMLA, 2002. He also submitted that the filing of writ petitions by the State is to shield the officers in higher ranking positions who have committed the scheduled offence, particularly under the provisions of Prevention of Corruption Act. He submitted that the statement during the course of investigation by the Engineer of Water Resources Department (WRD) will justify their further investigation.



W.P.Nos.33459 to 33468 of 2023

7. The learned Additional Solicitor General, in the course of arguments, pointed out that though the respondent has sought for information under Section 54 of the PMLA, 2002 regarding the First Information Reports registered for the past five years in connection with illegal sand mining, the Director General of Police has not responded so far. Making a distinction between the power under Section 54 and Section 50(2) of the PMLA, 2002, the learned Additional Solicitor General submitted that the enquiry by issuing summons is within the jurisdiction and authority of the respondent under the PMLA, 2002.

8. This Court, *prima facie*, found that the writ petitions filed by the State Government along with the District Collector concerned, are maintainable, in view of the specific allegations made in the affidavit questioning the jurisdiction of the respondent to conduct investigation in relation to mining violations, which is within the exclusive domain of the State Government. Though the learned Senior Counsel appearing for the petitioners relied upon a few judgments of the Hon'ble Supreme Court for the proposition that the writ petitions filed by the State Government are



W.P.Nos.33459 to 33468 of 2023

WEB COPY

maintainable wherever the State is an aggrieved person, this Court finds a thin difference between the State Government filing writ petition as a person individually affected and the State challenging the action of the Central Government agency for usurping the very power of the State Government and its instrumentalities. Since the State Government complains about invasion into their jurisdiction, which according to them, is opposed to true federalism, they are entitled to be heard on such serious issues as person suffering legal injury. Therefore, though the cases relied upon by the learned Senior Counsel fall in different context, we are *prima facie* convinced that the State Government can maintain the writ petitions having regard to the issues raised by them. Further the District Collectors to whom impugned summons are issued are also parties as third petitioner in all the writ petitions. Their locus standi cannot be disputed. However, our conclusion regarding the maintainability of the writ petition is only our *prima facie* view for deciding the interim petitions seeking stay of operation of the impugned summons and will be subject to our final decision on the main writ petitions after completion of further pleadings indicated by both sides.



W.P.Nos.33459 to 33468 of 2023

9. The learned Senior Counsel Mr.Dushyant Dave appearing for the

WEB COPY

petitioners relied upon a few provisions of the PMLA, 2002. From a reading of the Statement of Objects and Reasons, it is seen that the legislation, namely, the Prevention of Money Laundering Act, 2002 has a chequered history and the object of the Act is to prevent money laundering and to provide for confiscation of property derived from or involved in money laundering and for matters connected therewith or incidental thereto. Section 2(1)(p) of the PMLA, 2002 states that the term “money laundering” has the meaning assigned to it in Section 3. Section 3 of the Act reads as follows:-

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

2[*Explanation.*--For the removal of doubts, it is hereby clarified that,--



WEB COPY



W.P.Nos.33459 to 33468 of 2023

(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:--

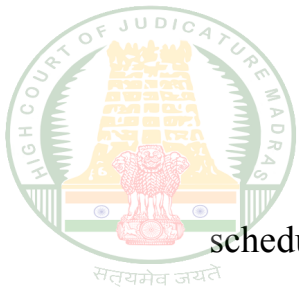
- (a) concealment; or
- (b) possession; or
- (c) acquisition; or
- (d) use; or
- (e) projecting as untainted property; or
- (f) claiming as untainted property,

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.]”

As per Section 2(1)(u), “proceeds of crime” means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];

[Explanation.--For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the



W.P.Nos.33459 to 33468 of 2023

WEB COPY

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;]

10. The scope and object of Section 3 and the relevant provisions under the PMLA, 2002 have been elaborately discussed by the larger Bench of the Hon'ble Supreme Court in the case of *Vijay Madanlal Choudhary v. Union of India* reported in *2022 SCC Online SC 929*. After an elaborate discussion, the Hon'ble Supreme Court, considering the question whether the offence under Section 3 is a standalone offence, has 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



WEB COPY



W.P.Nos.33459 to 33468 of 2023

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



WEB COPY



W.P.Nos.33459 to 33468 of 2023

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.



WEB COPY



W.P.Nos.33459 to 33468 of 2023

Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.” (emphasis supplied)

The Hon'ble Supreme Court summarized their conclusion by seminal points, in paragraph 467. Paragraph 467(v)(d) and 467(xv)(a) are relevant for our purpose, and hence, they are extracted below:-

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



WEB COPY



W.P.Nos.33459 to 33468 of 2023

him.

467.(xv)(a) The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not “investigation” in strict sense of the term for initiating prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.”

11. Therefore, the authorities under the PMLA, 2002 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 such complaint is pending enquiry or trial. As observed by the Hon'ble Supreme Court in paragraph 282 of the judgment in *Vijay Madanlal Choudhary*, the authorised officer under the PMLA, 2002 can prosecute any person for offence of money laundering only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the PMLA, 2002. The Hon'ble Supreme Court has held that merely because existence of undisclosed income and irrespective of its volume is noticed, the proceeds of crime under Section 2(1)(u) cannot be presumed, unless the property has been derived or obtained as a result of criminal activity relating



W.P.Nos.33459 to 33468 of 2023

to a scheduled offence. Therefore, the existence of proceeds of crime within the meaning of Section 2(1)(u) of the PMLA, 2002 is quintessential, as held by the Hon'ble Supreme Court and in the absence of existence of proceeds of crime as aforesaid, the authorities under the PMLA, 2002 cannot step in or initiate any prosecution.

12. In the given cases, the learned Additional Solicitor General, referring to the Enforcement Case Information Report (ECIR), pointed out that the information gathered by the respondent shows the nature of predicate offence. From the report, it is seen that the respondent has relied upon four First Information Reports. The first one is registered by Murappanadu Police Station, Thoothukudi District for the alleged offence under Section 302 of Indian Penal Code. The second one refers to the case registered by Vigilance & Anti-Corruption, Theni for the alleged offence under Sections 120(B) & 471 of Indian Penal Code and for the offence under the Prevention of Corruption Act. The third case is registered by the Vigilance and Anti-Corruption, Thanjavur for the alleged offence under Sections 120(B), 420 of Indian Penal Code and for the offence under the



W.P.Nos.33459 to 33468 of 2023

WEB COPY

Prevention of Corruption Act. Referring to the fact that the cases which are registered are related to illegal mining, the learned Additional Solicitor General pointed out that the cases were registered not only for the offence or violation under the provisions of Mines and Minerals (Development and Regulation) Act, but also for the scheduled offences.

13. The learned Additional Solicitor General produced a few First Information Reports. The First Information Report in Crime No.68 of 2023 dated 25.04.2023 is for the alleged offence under Sections 302 & 506(ii) of IPC. A reading of the whole First Information Report shows that it is a case of murder. From the facts stated therein, we could see that an innocent and honest Village Administrative Officer was attacked while he was in his office by two persons for making a complaint against the accused for illegal mining. The next First Information Report is at the instance of Vigilance and Anti-Corruption after a sudden inspection by the Geology and Mining Department officials within the campus of District Collectorate of Dindigul District. It is alleged that the inspection team found unaccounted money to the tune of Rs.1,00,150/-. The complaint is that the money seized in the



W.P.Nos.33459 to 33468 of 2023

WEB CON

official premises of Geology and Mining, is the ill-gotten money relating to the illegal mining activities. The third First Information Report is given by the Vigilance and Anti-Corruption pursuant to the search operation in Theni District. From the nature of complaint, it is seen that the officials of DVAC found that the accused 1 to 5 were private individuals who were given licence for gravel quarry to certain extent of land located in Periyakulam Taluk, Theni District for certain period and that the said individuals have taken and removed gravels dishonestly from adjacent land, for which no permission was granted and that such dishonest removal was in collusion with the officials of the Revenue and Geology & Mining Departments, as they allowed to take gravels from poramboke lands. The next First Information Report refers to the complaint, which is registered in Crime No.8 of 2018 dated 23.08.2018 by the Vigilance and Anti-Corruption, Thanjavur for the alleged offence under Sections 120(B), 421, 409, 109 of IPC read with Section 13(1)(c) and other provisions of the Prevention of Corruption Act. From the said complaint, the allegation by the Vigilance and Anti-Corruption Department is that in collusion with the officials of Revenue and Geology & Mining Departments, the suspects have quarried



W.P.Nos.33459 to 33468 of 2023

gravel more than the permitted depth of land.

WEB COPY

14. The complaints as seen from the First Information Reports produced before this Court by the learned Additional Solicitor General only indicate the registration of cases in relation to illegal mining coupled with scheduled offence. This Court can take judicial notice that thousands or lakhs of complaints are registered throughout the State for the scheduled offence. In Paragraph-8 of the Enforcement Case Information Report, it is stated that the mining mafias who are involved in theft of national wealth are generating huge proceeds of crime. When offences under Sections 302, 120(B), 420, 471 of IPC or Section 7(a) and other provisions of the Prevention of Corruption Act are scheduled offences as specified under Part A of the Schedule of PMLA, 2002, it is submitted that a prima facie case for an offence of money-laundering as defined under Section 3 of the PMLA, 2002 is made out. However, the impugned summon, which is purportedly issued in exercise of the power under Section 50(2) of the PMLA, 2002, shows that the respondent required the District Collector concerned to appear before the respondent to give evidence and produce records as



W.P.Nos.33459 to 33468 of 2023

named in the annexure in connection with the investigation under the PMLA, 2002. The annexure to the summons issued to the District

Collectors would show that the District Collectors concerned have to appear with copy of their Aadhar and passport size photographs along with the list of all sand mining sites in the district concerned in the prescribed format.

From the format, it is seen that the District Collectors are required to give the details of the sand mining sites in their districts under the following heads, namely, (a) name of the site, (b) complete address of quarry, (c) GPS coordinate of quarry, (d) complete address of depot, (e) GPS coordinate of depot, (f) permitted area, (g) permitted depth with the personal remarks.

The enquiry relates to the quarry sites in respect of which permission was granted in the respective districts. The enquiry is not relating to any assistance required for an offence under the PMLA, 2002. From the nature of enquiry, this Court finds that the investigation of the respondent is not in relation to existing proceeds of crime, but to find out whether schedule offence has been committed in the district. Therefore, the scope of enquiry is not confined to money laundering attracting Section 3, but an enquiry relating to sand mining without an existence of proceeds of crime. In other



W.P.Nos.33459 to 33468 of 2023

WEB COPY

words, this Court *prima facie* is convinced that without identifying the proceeds of crime, the respondent is trying to fish out the possible commission of offence under the schedule. By this impugned summons, the respondent ventures into a fishing expedition to find out whether informations and evidence collected from the district administration can be processed further from other sources to find out commission of scheduled offence so that the respondent may then identify the proceeds of crime which will help them to proceed under the PMLA, 2002.

15. The learned Additional Solicitor General, referring to the registration of First Information Reports in various places throughout the State submitted that every illegal sand mining involve commission of offence under the schedule. He relied upon the judgment of the Hon'ble Supreme Court in the case of *Y.Balaji v. Karthik Desari and another, 2023 SCC OnLine SC 645* and submit that the issue is covered by this precedent. A reading of the above judgment, of course, indicates that similar issue was considered by the Hon'ble Supreme Court. It was argued before the Hon'ble Supreme Court that to make out an offence of money laundering, three



W.P.Nos.33459 to 33468 of 2023

WEB COPY

things are essential, namely, (i) the commission of a crime, which is a scheduled offence, (ii) generation of proceeds of crime, and (iii) the laundering of those proceeds. When a submission was made that none of these three foundational facts are present in that case, the Hon'ble Supreme Court has rejected the contention after referring to the provisions of PMLA, 2002 and its objects by referring to the history of the legislation. It was observed therein that the First Information Report registered against the accused therein shows commission of offence included in the schedule by taking illegal gratification for providing appointment to several persons in the Public Transport Corporation. Hon'ble Supreme Court recorded the fact that in all three cases already registered, allegation is that crores of money had been collected by the accused. Since it was the bribe money that was allegedly collected by a Minister in the said case, that ill-gotten money was held to be the proceeds of crime within the meaning of Section 2(1)(u) of the PMLA, 2002. It was in the said factual context after finding that the ill-gotten bribe money constitutes proceeds of crime within the meaning of Section 2(1)(u) of the PMLA, 2002, the Hon'ble Supreme Court has observed that it is no rocket science to know that a public servant receiving



W.P.Nos.33459 to 33468 of 2023

WEB COPY

illegal gratification is in possession of proceeds of crime. It was further observed that the argument that mere generation of proceeds of crime is not sufficient to constitute an offence of money laundering, is preposterous. It is to be noted that a case had already been registered for offences under the Prevention of Corruption Act. However, the same is not the position in the cases on hand, as the summons were issued to find out existence of predicate offence by further investigation after getting basic information from the District Collector. In other words, the investigation appears to be to identify the impact of illegal mining whether it leads to inference of commission of scheduled offence and then to infer the existence of 'proceeds of crime'.

16. The learned Additional Solicitor General tried to explain by stating an example how the scheduled offence can be inferred from illegal mining. When a case of excess mining is registered for violation of any offence under the provisions of Mines and Minerals (Development and Regulation) Act, it involves invariably the offence of cheating and other predicate offences (found in the schedule) and any amount generated by



W.P.Nos.33459 to 33468 of 2023

such illegal mining activity will lead to a legitimate inference regarding the existence of proceeds of crime and it is sufficient to constitute the offence of money laundering.

17. This Court, having regard to the nature of investigation pursuant to the impugned summons, is unable to accept this argument. The very purpose of enquiry by issuance of impugned summons is just to find out whether an offence which is scheduled under the PMLA, 2002 is committed and then to draw a presumption that the illegal money generated by such sand mafia or offenders can be considered as proceeds of crime. Section 66(2) of the PMLA, 2002 reads as follows:-

“66. Disclosure of information. (1) ...

(2) If the Director or other authority specified under subsection (1) is of the opinion, on the basis of information or material in his possession, that the provisions of any other law for the time being in force are contravened, then the Director or such other authority shall share the information with the concerned agency for necessary action.”



W.P.Nos.33459 to 33468 of 2023

It is to be noted that even the Hon'ble Supreme Court in *Vijay Madanlal Choudhary* has observed that the respondent even if it had unearthed any particular offence and found proceeds of crime relating to the said offence, then under Section 66(2), the respondent is bound to inform the investigating agency about such offence. Only if the offence is scheduled offence, the respondent will get a right to further investigate the proceeds of crime, as held by the Hon'ble Supreme Court. Having regard to the interpretation of various provisions by the Hon'ble Supreme Court, this Court is *prima facie* convinced that the nature of enquiry contemplated by issuing the impugned summons is not within the jurisdiction of the respondent. It is just an attempt to investigate the possibility of identifying any proceeds of crime as a result of any criminal activity, which is not so far registered by the State agencies. Since this Court is *prima facie* convinced that the enquiry contemplated by the impugned summons is not within the domain or within the authority of the respondent, as per Section 50 of the PMLA, 2002, is inclined to grant an order of interim stay of operation of the summons impugned in the five writ petitions, namely, W.P.Nos.33459, 33460, 33461, 33462 & 33467 of 2023. Accordingly, being convinced that



W.P.Nos.33459 to 33468 of 2023

there is a prima facie case and balance of convenience in favour of petitioners, there shall be an order of interim stay of operation of the impugned summons.

18. We make it clear that this Court is inclined to dispose of the writ petitions on merits uninfluenced by any of the observation/conclusion we have reached in this order for the purpose of interim relief, pending disposal of the main writ petitions.

19. This Court sincerely appreciates the way in which the respondent had responded to these writ petitions within a short time. A detailed affidavit of objection is filed by the respondent raising several issues. The learned Senior Counsel appearing for the petitioners requested time to file reply in response to the objection in the form of affidavit. The learned Additional Solicitor General also submitted that they may be permitted to file a detailed counter affidavit.

20. Post the matters on 21.12.2023 for hearing of the main writ



W.P.Nos.33459 to 33468 of 2023

petitions. If the respondent wants to file any additional counter or objections

WEB COPY

in the form of affidavit, the same may also be served on the counsel on

record for the petitioners in these cases within a period of two weeks. The

petitioners are also at liberty to file their rejoinder in advance before the

next date of hearing.

Index : yes/no

(S.S.S.R.,J.)

(S.M.,J.)

Neutral citation : yes/no

28.11.2023

SS



WEB COPY



W.P.Nos.33459 to 33468 of 2023

S.S.SUNDAR,J.
AND

SUNDER MOHAN,J.

SS

W.P.Nos.33459 to 33468 of 2023

28.11.2023