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Judgment reserved on - 18.05.2023

Judgment delivered on - 03.07.2023

A.F.R.

Court No. - 16

Case :- APPLICATION U/S 482 No. - 1981 of 2023

Applicant :- Gayatri Prasad Prajapati

Opposite Party :- Directorate Of Enforcement Thru. Representative Assistant Director Lko.

Counsel for Applicant :- Indu Prakash Singh,Kaustubh Singh,Salil Shekhar Singh

Counsel for Opposite Party :- Kuldeep Srivastava

Hon'ble Subhash Vidyarthi J.

1. Heard Sri Malay Prasad, Ms. Saloni Mathur, Ms. Tanya Makkar, Sri Piyush Kumar Shukla and Sri. Kaustubh Singh Advocates for the applicant and Sri Kuldeep Srivastava, the learned counsel representing the respondent - Directorate of Enforcement (hereinafter referred to as 'E.D.').

2. By means of the instant application filed under Section 482 of the Criminal Procedure Code, the applicant has challenged validity of the order dated 22.12.2022 passed by the Sessions Judge / Special Judge, Prevention of Money Laundering Act, Lucknow in Sessions Case No. 1220/2021, rejecting the application for discharge filed by the applicant. The applicant has also assailed another order passed in the aforesaid case on the same date framing charge of commission of offence under Section 3 of the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA') against the applicant.

3. Briefly stated, facts of the case are that on 26.11.2020, an Inspector in the U. P. Vigilance Establishment filed a First Information Report (F.I.R.) No. 0003 of 2020 under Sections 13 (2) and 13 (1) (b) of the Prevention of Corruption Act 1988, Police Station Lucknow Sector, Vigilance Establishment, against the applicant stating that by means of a Government order dated 08.06.2018, U. P. Vigilance Establishment was directed to conduct an open enquiry against the applicant, who was the then Minister for Mining in U. P. Government.

It was found in enquiry that while working as a public servant, the applicant had earned ₹49,93,149/- from his known and valid sources of income, but he spent ₹3,48,21,760/- on acquisition of properties and maintenance during the same period. Thus the applicant spent ₹2,98,28,511/- in excess of his known income, which is disproportionate to his income from the known and valid sources. The applicant could not give any satisfactory reply regarding disproportionate expenditure and acquisition of properties. Besides this, there was prima facie evidence that the applicant had acquired benami properties also. The F.I.R. states that the aforesaid acts of the applicant amount to commission of offence under Section 13 (1) (b) of the Prevention of Corruption Act, 1988.

4. On 14.01.2022, the Directorate of Enforcement registered an Enforcement Case Information Report (ECIR) bearing number ECIR/ LKZO/04/2021 in furtherance of the aforesaid F.I.R. No. 0003 of 2020. It is recorded in the ECIR that from the averments made in the F.I.R., it appears that it is expedient to make inquiries against the applicant relating to illegal earnings, which are "proceeds of crime", i.e., tainted money, earned out of criminal activities and on the basis of the aforesaid information, a prima facie case of commission an offence of money-laundering under Section 3 of the PMLA appears to have been made out.

5. The E.D. carried out investigation and on 08.04.2021, it filed a Complaint No. 94 of 2021 in the Special Court for Prevention of Money Laundering cases at Lucknow stating that the applicant has committed the offence of money-laundering and he is liable to be prosecuted and punished under Section 4 of the PMLA. It is inter-alia stated in the complaint that the relevant documents/evidences were collected from various authorities, including Banks, Registrar of Companies, District Registration Authorities etc. and those were examined. There is another case bearing number ECIR/LKZO/08/2019 in respect of illegal mining in District Fatehpur, Uttar Pradesh, which was lodged on the basis of C.B.I. F.I.R. number RC 04 (A)/2019/SC-III/ND, in which the applicant is one of the named accused persons. The documents collected during the course of

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investigation in the aforesaid ECIR and the statements recorded under Section 50 of PMLA and Section 17 of PMLA during searches conducted on 30.01.2020 have also been taken into consideration during investigation.

6. The complaint contains a list of 57 bank accounts, of which 7 are in the name of the applicant's wife, 6 are in the name of his son Anil Kumar Prajapati, 6 are in the name of his other son Anurag Prajapati, 5 are in the name of the applicant's daughter Ankita Prajapati, 5 are in the name of his other daughter Sudha Prajapati, 14 are in the name of the applicant and rest of the accounts are in the name of some other persons and companies and a total of ₹ 3,50,17,045.48 is deposited in those bank accounts. The complaint also contains a list of 60 immovable properties worth ₹ 33,44,52,827/-, out of which 4 properties are in the name of the applicant's son Anurag Prajapati, 9 properties are in the name of his other son Anil Kumar Prajapati, 2 properties stand in the name of the applicant's wife, 2 are in the name of his daughter Sudha Prajapati, 1 property stands in the name of his other daughter Ankita and 1 property stands in the name of the applicant's daughter-in-law Shilpa and rest of the properties are in the names of some other persons and some companies, in which the applicant's sons are directors.

7. The complaint states that the applicant was examined during custodial remand and he was confronted with various documents and with two of his benami holders and his manager Hari Sharan Shukla. The statements of several persons were recorded under Section 50 of the PMLA and voluminous records/documents were scrutinised.

8. Both the applicant's daughters stated that they were students having no source of income and they had signed the tax related documents under directions of the applicant and after the applicant was taken into custody, on the directions of the applicant's son Anil Kumar Prajapati. The applicant's daughter-in-law stated that she is a housewife and she had signed the income tax documents showing income of rupees 2.20 Crores, on the directions of her husband Anil Prajapati and she doesn't know about the source of income.

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9. The applicant expressed ignorance about the source of money deposited in the bank accounts of himself and of his family members shown in the affidavit filed by him during 2017 elections and about the mode of payment of money for purchase of properties in his name and in the names of his family members.

10. The complaint states that the applicant became a member of the legislative assembly in the year 2012 and in the year 2013, he was appointed as Minister of State for Irrigation and later he was appointed as the Minister of State for Mining. The applicant remained a Minister till 2017 and on 15.03.2017, he was arrested in connection with a different F.I.R. registered by U. P. Police. During the period the applicant was a Minister, he misused his official position and unlawfully gained several Crores of Rupees in cash, which was deposited in the bank accounts of his family members, his employees and companies, in which his sons were directors. Investigation revealed that the applicant rose exponentially in wealth ever since he became a minister. The total income of the applicant during the period he was a Minister, was ₹ 72.38 lakhs whereas the assets standing in the name of the applicant, his family members and benami holders and of some companies in which the applicant's sons are directors, is ₹ 35 crores approximately. The applicant has committed the offence of money-laundering by amassing unexplained and unaccounted properties in the name of his family members and related companies.

11. The applicant filed an application for discharge under Section 227 of the Criminal Procedure Code, 1973 *inter alia* on the grounds that no charge-sheet has been filed in furtherance of the F.I.R. lodged by the vigilance establishment; that the allegations leveled in the complaint are false and there is no allegation and material which could associate the applicant with the offence alleged and establish his guilt even prima facie.

12. A supplementary affidavit was filed in support of the application for discharge wherein it was stated that as no police report has been filed in furtherance of the FI are No. 03/2020, trial of the case under PMLA should be postponed.

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13. The application for discharge has been rejected by means of the order dated 22.12.2022 passed by the trial Court on the ground that as per the law laid down by the Hon'ble Supreme Court in **Vijay Madanlal Choudhary and others versus Union of India**, 2022 SCC OnLine SC 929, a person can be prosecuted under PMLA, if a case is registered with the jurisdictional police. The trial court has framed a charge against the applicant that while being a Minister during the period Fabruary 2013 to March 2017, the applicant generated unaccounted money to the tune of approximately ₹ 35 Crores, which was invested in bank accounts in the name of his family members and companies controlled by his sons and in several shell companies and was also used for purchasing properties in the name of his family members and benami holders, and the applicant has directly been involved in possession, acquisition and use of proceeds of crime and projecting the same as untainted, thereby committing offence under Section 3 of PMLA, Punishable under Section 4 of the Act.

14. The applicant has challenged both the aforesaid orders rejecting his discharge application and framing charge against him, by filing the application under Section 482, Cr.P.C. and in the affidavit filed in support of the application, he has *inter alia* stated that the alleged benami holders are not even known to the applicant and they are individuals operating on their own in their businesses; that the failure of Vigilance Establishment in filing a report under Section 173 of Cr.P.C. prima facie shows that the applicant has not committed any offence; that the allegations leveled against him are false and that the case has been registered due to political animosity. It has also been stated in the affidavit that multiple complaints had been filed before the Hon'ble Lokayukta against the applicant but all those complaints were either closed or were withdrawn by the complainants. Multiple fresh complaints were filed on the same set of facts and the Hon'ble Lokayukta passed an ex-parte order referring the matter to the Hon'ble Chief Minister of the State for carrying out vigilance enquiry against the applicant, which forms the basis for initiation of the present proceedings.

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15. The respondent – Directorate of enforcement has filed a counter affidavit *inter alia* stating that the complaint was filed on the basis of investigation in respect of laundering of proceeds of crime acquired by the applicant during his tenure as a Minister. The properties identified as proceeds of crime in the hands of the applicant and other related persons have been provisionally attached by means of an order dated 07.04.2021 and further investigation in respect of further proceeds of crime and culpability of other persons in the offence of money laundering is still in progress. It has further been stated in the counter affidavit that the condition precedent for filing a complaint alleging commission of offence of money laundering is that either there should be an F.I.R. or there should be a police report under Section 173 Cr.P.C. As there is a F.I.R. in the present case, the applicant can be tried for the commission of the offence of money laundering. No rejoinder affidavit has been filed on behalf of the applicant.

16. Assailing the aforesaid orders dated 22.12.2022, Shri Malay Prasad, the learned counsel for the applicant, has submitted that a person can be charged with commission of offence under the PMLA if he is involved, either directly or indirectly, in any process or activity connected with proceeds of crime and he projects or claims such proceeds of crime as untainted property. Although a F.I.R. No. 003/2020 was registered on 26.11.2020, no report under Section 173 of the Criminal Procedure Code has been submitted till date. He has submitted that a complaint under PMLA can be filed only after a charge-sheet has been submitted in furtherance of the F.I.R. in respect of the Scheduled offence because existence of 'proceeds of crime' can be established only after submission of charge-sheet in the case in respect of the Scheduled offence.

17. The second submission of Sri Malay Prasad is that projection of claim of the proceeds of crime is essential for making out an offence under Section 3 of the PMLA and there is no such allegation against the applicant in the present case. In support of the submission, the learned counsel for the applicant has placed reliance on the following passage

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from the judgment of the Hon'ble Supreme Court in the case of **Nikesh Tarachand Shah versus Union of India**, (2018) 11 SCC 1: -

> ***"11.*** *Having heard the learned counsel for both sides, it is important to first understand what constitutes the offence of money laundering. Under Section 3 of the Act, the kind of persons responsible for money laundering is extremely wide. Words such as "whosoever", "directly or indirectly" and "attempts to indulge" would show that all persons who are even remotely involved in this offence are sought to be roped in. An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and "proceeds of crime" is defined under the Act, by Section 2(1)(u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (which is referred to in our judgment as the predicate offence). Thus, whosever is involved as aforesaid, in a process or activity connected with "proceeds of crime" as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property."*

18. The learned counsel for the applicant has submitted in his written submissions that E.D. did not supply a copy of the ECIR to the applicant before recording his statement under Section 50 of the Act.

19. Per contra, Sri. Kuldeep Srivastava, the learned Counsel for the E.D. has submitted that F.I.R. No. 003/2020 was registered against the applicant alleging commission of offence under Section 13 (2) read with Section 13 (1) (b) of the Prevention of Corruption Act, 1988, which are scheduled offences under the PMLA. The E.D. has conducted an investigation and has filed a complaint number 1220/2021 and the trial court has taken cognizance of the case on 06.09.2021 and has framed charge against the applicant on 22.12.2022. The learned counsel for the E.D. has submitted that there is no requirement under the PMLA to wait for submission of charge-sheet in respect of the scheduled offence before filing a complaint under the Act as offence under the PMLA is a separate and

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independent offence, distinct from the scheduled offence. He has further submitted that The trial is proceeding and 3 witnesses have already been examined. Shri Srivastava has also relied upon the judgment of the Hon'ble Supreme Court in the case of **Vijay Madanlal Choudhary** (Supra).

20. In **Vijay Madanlal Choudhary and others versus Union of India**, 2022 SCC OnLine SC 929, the Hon'ble Supreme Court has discussed all the earlier judgments, including the judgment in the case of **Nikesh Tarachand Shah**, and has summarised its conclusions in paragraph 467 of the judgment, which is being reproduced here: -

> ***"CONCLUSION***
>
> ***467.*** *In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms: —*
>
> ***(i)*** *The question as to whether some of the amendments to the Prevention of Money laundering Act, 2002 could not have been enacted by the Parliament by way of a Finance Act has not been examined in this judgment. The same is left open for being examined along with or after the decision of the Larger Bench (seven Judges) of this Court in the case of Rojer Mathew.*
>
> ***(ii)*** *The expression "proceedings" occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court.*
>
> ***(iii)*** *The expression "investigation" in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act.*
>
> ***(iv)*** *The Explanation inserted to Clause (u) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicating tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.*
>
> ***(v)*** ***(a)*** *Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory*

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amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

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

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

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

(vi) *Section 5 of the 2002 Act is constitutionally valid. It provides for a balancing arrangement to secure the interests of the person as also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. The procedural safeguards as delineated by us hereinabove are effective measures to protect the interests of person concerned.*

(vii) *The challenge to the validity of sub-Section (4) of Section 8 of the 2002 Act is also rejected subject to Section 8 being invoked and operated in accordance with the meaning assigned to it hereinabove.*

(viii) *The challenge to deletion of proviso to sub-Section (1) of Section 17 of the 2002 Act stands rejected. There are stringent safeguards provided in Section 17 and Rules framed thereunder. Moreover, the pre-condition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment. The Central Government may take necessary corrective steps to obviate confusion caused in that regard.*

(ix) *The challenge to deletion of proviso to sub-Section (1) of Section 18 of the 2002 Act also stands rejected. There are similar*

safeguards provided in Section 18. We hold that the amended provision does not suffer from the vice of arbitrariness.

(x) *The challenge to the constitutional validity of Section 19 of the 2002 Act is also rejected. There are stringent safeguards provided in Section 19. The provision does not suffer from the vice of arbitrariness.*

(xi) *Section 24 of the 2002 Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.*

(xii) ***(a)*** *The proviso in Clause (a) of sub-Section (1) of Section 44 of the 2002 Act is to be regarded as directory in nature and this provision is also read down to mean that the Special Court may exercise judicial discretion on case-to-case basis.*

(b) *We do not find merit in the challenge to Section 44 being arbitrary or unconstitutional. However, the eventualities referred to in this Section shall be dealt with by the Court concerned and by the Authority concerned in accordance with the interpretation given in this judgment.*

(xiii) ***(a)*** *The reasons which weighed with this Court in Nikesh Tarachand Shah for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.*

(b) *We are unable to agree with the observations in Nikesh Tarachand Shah distinguishing the enunciation of the Constitution Bench decision in Kartar Singh; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money laundering, including about it posing serious threat to the sovereignty and integrity of the country.*

(c) *The provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.*

(d) *As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973 Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.*

(xiv) *The beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the 2002 Act.*

(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*

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prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.

(b) *The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India.*

(xvi) *Section 63 of the 2002 Act providing for punishment regarding false information or failure to give information does not suffer from any vice of arbitrariness.*

(xvii) *The inclusion or exclusion of any particular offence in the Schedule to the 2002 Act is a matter of legislative policy; and the nature or class of any predicate offence has no bearing on the validity of the Schedule or any prescription thereunder.*

(xviii) ***(a) In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an F.I.R. under the 1973 Code. ECIR is an internal document of the ED*** *and the fact that F.I.R. in respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime.*

(b) Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest*.*

(c) *However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money laundering.*

(xix) *Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.*

(xx) *The petitioners are justified in expressing serious concern bordering on causing injustice owing to the vacancies in the Appellate Tribunal. We deem it necessary to impress upon the executive to take corrective measures in this regard expeditiously.*

(xxi) *The argument about proportionality of punishment with reference to the nature of scheduled offence is wholly unfounded and stands rejected."*

(Emphasis supplied)

21. The first submission of the learned counsel for the applicant that a person cannot be prosecuted for the offence under Section 3 of the

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PMLA unless a charge-sheet is filed in respect of the Scheduled offence, is negatived by the judgment of the Hon'ble Supreme Court in **Vijay Madanlal Choudhary** (Supra), wherein the Hon'ble Supreme Court has held that the only condition for prosecution of a person under PMLA is that a case regarding scheduled offence is registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. As F.I.R. No. 003/2020 under Sections 13 (2) and 13 (1) (b) of the Prevention of Corruption Act 1988 has already been registered with the jurisdictional police, the applicant can be tried under PMLA and filing of a report under Section 173 of the Criminal Procedure Code in furtherance of the F.I.R. alleging commission of scheduled offence is not a prerequisite for initiation of proceedings under PMLA.

22. The second submission of the learned counsel for the applicant is that there is no allegation or material that the applicant has projected or claimed proceeds of crime as untainted money whereas the same is essential for constituting an offence under Section 3 of the PMLA. Although in **Nikesh Tarachand Shah** (Supra), the Hon'ble Supreme Court had observed that before somebody can be adjudged as guilty under the said provision, the person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property. Subsequent to the decision in **Nikesh Tarachand Shah**, Section 3 of the PMLA has been amended by means of Section 193 of the Finance Act (No. 2), 2019, with effect from 01.08.2019, whereby an Explanation has been inserted in it. Section 3 of the PMLA as it exists presently, is as follows: -

> ***"3. Offence of money laundering***.*—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money laundering.*
>
> *Explanation.—For the removal of doubts, it is hereby clarified that,—*
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> *(i) a person shall be guilty of offence of money laundering if such person is found to have directly or indirectly attempted to*

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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."

23. In **Vijay Madanlal Choudhary**, the Hon'ble Supreme Court has held that in **Nikesh Tarachand Shah**, the questions raised were not in respect of the meaning of money laundering and moreover, Section 3 has been amended by inserting the Explanation post the judgment in **Nikesh Tarachand Shah**. The Hon'ble Supreme Court has held that Section 3 of the PMLA captures every process and activity, direct or indirect, in dealing with the proceeds of crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The expression "and" occurring in Section 3 has to be construed as "or" so as to include "every" process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money laundering on its own, being an independent process or activity. The interpretation suggested by the learned counsel for the applicant, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.

24. The last submission of the learned counsel for the applicant is that ED did not supply a copy of the ECIR to the applicant before recording his statement under Section 50 of the Act. This submission is also without force in view of the law laid down in **Vijay Madanlal Choudhary** (Supra) that in view of special mechanism envisaged by

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the 2002 Act, ECIR cannot be equated with an F.I.R. under the 1973 Code. ECIR is an internal document of the ED. Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest. Moreover, non-supply of ECIR before recording the applicant's statement under Section 50 of PMLA cannot vitiate the subsequent order rejecting the application for discharge and the order framing charges.

25. The statutory provisions regarding discharge of an accused person and framing charges against him, are contained in Sections 227 and 228 of the Criminal Procedure Code, which are being reproduced below: –

> *"227. Discharge.— If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for Page 9 of 17 proceeding against the accused, he shall discharge the accused and record his reasons for so doing.*
>
> *228. Framing of charge.— (1) If, after such consideration and hearing as aforesaid, the Judge is of opinion that there is ground for presuming that the accused has committed an offence which — (a) is not exclusively triable by the Court of Session, he may, frame a charge against the accused and, by order, transfer the case for trial to the Chief Judicial Magistrate, or any other Judicial Magistrate of the first class and direct the accused to appear before the Chief Judicial Magistrate, or, as the case may be, the Judicial Magistrate of the first class, on such date as he deems fit, and thereupon such Magistrate shall try the offence in accordance with the procedure for the trial of warrant cases instituted on a police report; (b) is exclusively triable by the Court, he shall frame in writing a charge against the accused. (2) Where the Judge frames any charge under clause (b) of sub Section (1), the charge shall be read and explained to the accused, and the accused shall be asked whether he pleads guilty of the offence charged or claims to be tried."*

26. The difference between the approach with which the Court should examine the matter in the aforesaid Sections has been explained by the Hon'ble Supreme Court in **Amit Kapoor v. Ramesh Chander**, (2012) 9 SCC 460, in the following words: -

> *"17. Framing of a charge is an exercise of jurisdiction by the trial court in terms of Section 228 of the Code, unless the accused is discharged under Section 227 of the Code. Under both these provisions, the court is required to consider the*

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> *"record of the case" and documents submitted therewith and, after hearing the parties, may either discharge the accused or where it appears to the court and in its opinion there is ground for presuming that the accused has committed an offence, it shall frame the charge. Once the facts and ingredients of the Section exists, then the court would be right in presuming that there is ground to proceed against the accused and frame the charge accordingly. This presumption is not a presumption of law as such. The satisfaction of the court in relation to the existence of constituents of an offence and the facts leading to that offence is a sine qua non for exercise of such jurisdiction. It may even be weaker than a prima facie case. There is a fine distinction between the language of Sections 227 and 228 of the Code. Section 227 is the expression of a definite opinion and judgment of the Court while Section 228 is tentative. Thus, to say that at the stage of framing of charge, the Court should form an opinion that the accused is certainly guilty of committing an offence, is an approach which is impermissible in terms of Section 228 of the Code.*
>
> * * *
>
> *30. We have already noticed that the legislature in its wisdom has used the expression "there is ground for presuming that the accused has committed an offence". This has an inbuilt element of presumption once the ingredients of an offence with reference to the allegations made are satisfied, the Court would not doubt the case of the prosecution unduly and extend its jurisdiction to quash the charge in haste. A Bench of this Court in State of Maharashtra v. Som Nath Thapa (1996) 4 SCC 659 referred to the meaning of the word "presume" while relying upon Black's Law Dictionary. It was defined to mean "to believe or accept upon probable evidence"; "to take as proved until evidence to the contrary is forthcoming". In other words, the truth of the matter has to come out when the prosecution evidence is led, the witnesses are cross-examined by the defence, the incriminating material and evidence is put to the accused in terms of Section 313 of the Code and then the accused is provided an opportunity to lead defence, if any. It is only upon completion of such steps that the trial concludes with the court forming its final opinion and delivering its judgment. Merely because there was a civil transaction between the parties would not by itself alter the status of the allegations constituting the criminal offence.*

27. Thus the law regarding the approach to be adopted by the court while considering an application for discharge of the accused persons under Section 227 and approach while framing charges under Section 228 of the Code, is that while considering an application for discharge of the accused under Section 227 of the Code, the Court has to form a definite opinion, upon consideration of the record of the case and the

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documents submitted therewith, that there is not sufficient ground for proceeding against the accused. However, while framing charges, the Court is not required to form a definite opinion that the accused is guilty of committing an offence. The truth of the matter will come out when evidence is led during the trial. Once the facts and ingredients of the Section exist, the court would presume that there is ground to proceed against the accused and frame the charge accordingly and the Court would not doubt the case of the prosecution.

28. When the record of the case is examined in light of the aforesaid legal position, what appears at this stage is that the vigilance establishment has filed F.I.R. No. 003/2020 under Sections 13 (2) and 13 (1) (b) of the Prevention of Corruption Act 1988, Police Station Lucknow Sector, Vigilance Establishment against the applicant stating that in furtherance of a Government Order dated 08.06.2018, U. P. Vigilance Establishment had conducted an enquiry against the applicant, who was the then Minister for Mining in U. P. Government. After conducting the open enquiry, the enquiry report was submitted to the Government in which it was found that while working as a public servant, the applicant spent ₹ 2,98,28,511-/ in excess of his known income, which is disproportionate to his income from the known and valid sources. The applicant could not give any satisfactory reply regarding the disproportionate expenditure and acquisition of properties. Besides this, there was prima facie evidence that the applicant had acquired benami properties also. The F.I.R. states that the aforesaid acts of the applicant amount to commission of offence under Section 13 (1) (b) of the Prevention of Corruption Act, 1988. The E.D. has conducted investigation, during which it has recorded statements of several persons, including the applicant, and has filed a complaint, which states that the applicant became a member of the legislative assembly in the year 2012 and in the year 2013, he was appointed as Minister of State for Irrigation and later he was appointed as the Minister of State for Mining. The applicant remained a Minister till 2017 and on 15.03.2017, he was arrested in connection with a different F.I.R. registered by U. P. Police. During the period the applicant was a Minister, he misused his official position and unlawfully gained several Crores of rupees in cash, which was

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deposited in the bank accounts of his family members, his employees and companies, in which his sons were directors. Investigation revealed that the applicant rose exponentially in wealth ever since he became a minister. The total income of the applicant during the period he was a Minister, was ₹ 72.38 lakhs whereas the assets standing in the name of the applicant, his family members and benami holders and of some companies in which the applicant's sons are directors, is ₹ 35 crores approximately. The applicant has committed the offence of money laundering by amassing unexplained and unaccounted properties in the name of his family members and related companies.

29. The aforesaid allegations clearly make out a case for trial of the applicant for commission of offence under Section 3 of the PMLA as upon consideration of the record of the case and the documents submitted therewith, it does not appear that there is not sufficient ground for proceeding against the applicant. There appears to be no illegality in the order passed by the Trial Court rejecting the application for discharge filed by the applicant and in the order framing charges against him.

30. The plea regarding closure or withdrawal of some earlier complaints filed before the Hon'ble Lokayukta and the F.I.R. having been lodged in furtherance of an order passed by the Hon'ble Lokayukta on a subsequent complaint allegedly filed on the basis of similar set of facts would also not affect the legality of the orders passed by the trial Court for more than one reason. Firstly, there is no averment that the earlier complaints had been closed after a full-fledged enquiry and summary closure of complaint or withdrawal thereof without any finding of innocence would be of no consequence. Secondly, the principle of *res judicata* does not apply to the proceedings before the Hon'ble Lokayukta. Thirdly, it would also not amount to *double jeopardy*, which principle is contained in Section 300 of Cr.P.C. For attracting the principle of double jeopardy, the person must have been tried by a 'Court of competent jurisdiction' for an offence and convicted or acquitted of such offence, whereas the Hon'ble Lokayukta is not a 'Court' within the meaning of the expression used in Section 300 of Cr.P.C.

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31. The E.D. has filed the complaint after conducting investigation, when the evidence collected prima facie established commission of offence under PMLA and there appears to be no illegality in the order passed by the trial Court rejecting the application for discharge of the applicant and the order framing charges against the applicant.

32. The application lacks merit and the same is, accordingly, rejected. However, there will be no order as to costs.

(Hon'ble Subhash Vidyarthi J.)

Order Date - 03.07.2023

A.Nigam