

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.10.2024

PRONOUNCED ON : 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.O.P.No.28289 of 2023

and

CrI.M.P.No.19636 of 2023

The Assistant Directorate
Directorate of Enforcement, Ministry of Finance,
Department of Revenue,
Chennai Zonal Office, 5th Floor,
Shastri Bhawan, 'B' Wing,
No.26, Haddows Road, Chennai – 600 026. ... Petitioner

Vs.

1.The State rep by
The Additional Deputy Commissioner of Police-II,
Central Crime Branch, Greater Chennai Police,
Vepey, Chennai – 600 007.
Crime No.304 of 2012.

2.Nagarajan

3.Martin

4.Moorthy

5.Leema Rose

... Respondents

Prayer: Criminal Revision is filed under Section 482 of the Code of Criminal Procedure, to call for the records and set aside the Closure Report filed by the 1st respondent dated 14.11.2022 accepted by the learned Judicial Magistrate-I, Alandur by order dated 17.11.2022 made in Crime No.304 of 2012.

For Petitioner : Mr.AR.L.Sundaresan
Additional Solicitor General of India
Assisted by Mr.S.Sasikumar
Special Public Prosecutor
[For Enforcement Directorate]

For Respondents : Mr.P.S.Raman, Advocate General
Assisted by Mr.R.Muniyappa,
Additional Public Prosecutor (for R1)
Mr.N.R.Elango, Senior Counsel
for Mr.T.Vijay (for R2)
and Mr.A.S.Aswin Prasanna (for R3)
and Mrs.Aruna Elango (for R4)
and Mr.Agilesh Kumar (for R5)

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Under assail is the Closure Report dated 14.11.2022 filed by the 1st respondent, accepted by the learned Judicial Magistrate-I, Alandur by order dated 17.11.2022 made in Crime No.304 of 2012.

I.BRIEF FACTS OF THE CASE:

2. Based on reliable information received on 12.03.2012 that crores of rupees of un-accounted money was available in the house bearing Door No.4, Old No.16, 25th Cross Street, Thillai Ganga Nagar, Nanganallur, Chennai – 600 061 belonging to Mr.Nagarajan, Son of Murugesan (AI in the predicate offence), house search was conducted and a sum of Rs.7,20,05,000/- (Rupees Seven Crores Twenty Lakhs and Five Thousand) was seized. It was stated by Mr.Nagarajan/AI that the amount was the sale proceeds of lottery tickets of the State of Kerala and Maharastra, which were printed in Calcutta and Faridabad along with his partners Mr.Martin and Mr.Murthy (A2 and A3 in the predicate offence). Based on the said search, an FIR was registered in Crime No.304 of 2012 against Mr.Nagarajan/A1, Mr.Martin/A2 and Mr.Murthy/A3 for offences punishable under Sections 294N, Section 420 and 120B of Indian Penal Code. (Section 420 IPC is a scheduled offence under Prevention of Money Laundering Act, 2002

hereinafter referred as PMLA).

3. Mr.Martin/A2, while filing the petition for Anticipatory Bail before the Court concerned, had produced an agreement for sale dated 02.03.2012 typed on stamp paper of the Government of Tamil Nadu bearing No.AE 147535, as if it was issued on 01.03.2012 to Mrs.Leema Rose by a stamp vendor Mr.Mayilsamy under which Mr.G.Murthy/A3 has purportedly entered into a sale agreement for a property in favour of the said Mrs.M.Leema Rose, wife of Mr.Martin/A2. Out of an agreed sale consideration of Rs. 12,30,00,000/-, a sum of Rs.7,30,00,000/- is purportedly to have been paid as advance by cash by Mrs.Leema Rose to Mr.G. Murthy and the amount of cash, which was seized in the house of Mr.Nagarajan/A1 on 12.03.2012 was the amount received under the sale agreement.

4. The stamp paper bearing No.AE 147535 was issued by the Government treasury to the stamp vendor Mr.Mayilsamy only on 09.03.2012 and Mr.Mayilsamy had sold the said stamp paper to one Mrs.Vimala only on 13.03.2012. The said fact was established through the statement of the stamp vendor Mr.Mayilsamy under Section 50 of PMLA. The reply letter dated

12.07.2012 given by the Assistant Treasury Officer, Special Treasury, Coimbatore, addressing to the Enforcement Directorate revealed the said fact that the stamp paper itself was sold on 13.03.2012, but it was ante-dated.

5. On 25.03.2013, an alteration report in Crime No.304 of 2012 was filed by the Investigating Officer before the Learned Judicial Magistrate, Alandur that during the course of investigation, the Investigating Officer collected the un-registered sale agreement dated 02.03.2012 between Mr.Martin/A2's wife Mrs.Leema Rose and Mr.Murthy/A3 typed on stamp paper bearing AE 147535 and 147536, which were issued by the State Government to the stamp vendor Mr.Mayilsamy only on 09.03.2012. The document was sold to the public through Government treasury, only on 13.03.2012, but the document was prepared by Mr.Murthy/A3 and Mrs.Leema Rose, as if the said agreement was prepared on 02.03.2012 on a date even prior to selling of the stamp paper by the Government to the stamp vendor. Therefore, the said act amounted to fabrication of document prepared by Mr.Murthy/A3 and A2's wife Mrs.Leema Rose, trying to give legal colour to illegal seized money of Rs.7,20,05,000/-. Thus, the penal Sections were altered as Sections 294A, 420, 120B IPC and Section 467, 468

and 471 IPC and Mrs.Leema Rose/A4, wife of Mr.Martin/A2 was also arrayed as an accused in the predicate offence. Pertinently, Sections 420, 467 and 471 IPC are scheduled offences under PMLA.

6. The learned Single Judge of this Court in CrI.O.P.No. 13106 of 2023 filed by A2 and CrI.O.P.No.14971 of 2013 filed by A3 quashed the proceedings in Crime No.304 of 2012.

7. Challenging the said order of the learned Single Judge, the State of Tamil Nadu filed SLP in Criminal Appeal Nos. 423 and 424 of 2018 and the said appeals were allowed by the Hon'ble Supreme Court of India by order dated 28.03.2018, holding that the agreement is said to have been entered on 02.03.2012, but the stamp paper in question was issued on 09.03.2012 and later sold to Mrs.Vimala on 13.03.2012. The question raised was whether possession of huge cash of Rs.7.2 crores can be explained by the accused and whether such explanation can be accepted or not, are the matters, which will be gone into at the relevant stage in the proceedings.

8. In the above backdrop, the prosecution complaint has been filed by the Enforcement Directorate on 07.01.2016 in C.C.No.21 of 2016 on the file of the learned Principal Sessions Judge, Chennai. A1, A3 and A4 in the PMLA case filed petition for discharge before the Sessions Court and the said petitions were dismissed on 27.03.2017. Thereafter, Crl.O.P.No. 7632 of 2017 which was filed by the Accused A1 to A5 in the PMLA case before the High Court was dismissed as withdrawn on 14.12.2021. Crl.O.P.No.13298 of 2022 filed by A3 and A4 in the PMLA case before this Court to quash the proceedings in C.C.No.21 of 2016 (PMLA case), which was dismissed by the Division Bench of this Court on 06.09.2022. As against the said order, A3 and A4 in PMLA case filed a Special Leave Petition in SLP (Crl.) No. 10971 of 2022. The State Police investigating the predicate offence, inspite of sufficient materials being available to prove the offence under Sections 294A, 420, 120B IPC and Sections 467, 468 and 471 IPC filed a Closure Report on 14.11.2022. The learned Judicial Magistrate No.1, Alandur passed an order accepting the FAD report filed by the State Police on 17.11.2022.

9. The Hon'ble Supreme Court of India disposed of the SLP in SLP (Criminal) No.10971 of 2022 on 23.01.2023, closing the PMLA proceedings

at that stage, giving liberty to the Enforcement Directorate to question the closure report dated 17.11.2022 by taking appropriate action, which the law permits at their command and with an observation that at a later stage, if there is any change in circumstances, the Enforcement Directorate is at liberty to take appropriate steps available under law, including to recall of the order passed by the Hon'ble Supreme Court of India.

II.CONTENTIONS MADE ON BEHALF OF THE PETITIONER:

10. Mr.AR.L.Sundaresan, the learned Additional Solicitor General of India appearing on behalf of the petitioner/Enforcement Directorate would submit that the cryptic order accepting the closure report passed by the learned Judicial Magistrate, Alandur on 17.11.2022 is against all canons of justice. The Closure Report filed by the State police itself reveals that the genuineness of the alleged sale agreement dated 02.03.2012 would not be established, which means the defence of the accused that the unaccounted cash of Rs.7,20,05,000/- found with Mr.Nagarajan/A1 was the consideration for the sale, which purportedly took place pursuant to the sale agreement dated 02.03.2012 also cannot be established. Therefore, on the said ground, Closure Report dated 14.11.2022 has no legs to stand. The learned

Magistrate has not considered the materials available on record and the investigation earlier conducted by the State police themselves. All along the State Police opined that materials are available to prove the offence and suddenly a Closure report was filed mysteriously, which raises a serious suspicion and the said circumstances ought to have taken into consideration by the learned Magistrate while accepting the Closure Report by passing the cryptic order.

11. The learned Magistrate ought to have rejected the Closure Report dated 14.11.2022 filed by the 1st respondent and ordered for further investigation to be made to unearth the facts relating to the materials collected to establish the case of the prosecution. The earlier investigation revealed that the materials are available for prosecution and to establish the offence. Despite the fact that the investigation proceeded in a right direction and materials are collected to establish offence, the Closure Report merely filed on the ground that ante dating the sale agreement would not amount to offence is untenable. The learned Magistrate ought not to have accepted the closure report.

12. The learned Additional Solicitor General of India drew the attention of this Court with reference to the agreement for sale dated 02.03.2012. It is made clear that the stamp paper bearing No.AE 147535 was issued by the Government treasury to the stamp vendor Mr.Mayilsamy only on 09.03.2012 and the said Mr.Mayilsamy, in-turn sold the said stamp paper to Mrs.Vimala on 13.03.2012. The said fact was established through the statement of the stamp vendor Mr.Mayilsamy under Section 50 of PMLA. The reply letter given by the Assistant Treasury Officer, Special Treasury, Coimbatore, dated 12.07.2012 also reveals the said fact that it amounts to fabrication of documents in order to project tainted money as untainted, is an offence falling within the scope of Section 3 of PMLA and further, it is an offence under Section 467 IPC. When both the predicate offence and PMLA offence has been made out, the closure report suddenly filed by the state police raises a serious doubt and therefore, the present petition is to be considered.

13. The learned Additional Solicitor General of India would contend that the investigation by the State police commenced in a right direction and the matter went upto Hon'ble Supreme Court of India and the

fact regarding fabricated documents were also traced out. The investigation under the PMLA also reveals existence of proceeds of crime and the accused persons acted to show tainted money as untainted by creating a fabricated agreement for sale. When the proceeds of crime is already in existence, the closure report suddenly filed by the State police would provide cause for the Enforcement Directorate to challenge the same. The serious economic offence of money laundering and the persons involved in the said offence, cannot be allowed to go scot-free and in such circumstances, when the Enforcement Directorate, on their independent investigation traced out the proceeds of crime and relevant materials are also collected, the offences made out under PMLA cannot be allowed to be buried. Thus, the Enforcement Directorate is to be construed as an aggrieved person, as they are the prosecutors under the PMLA. When the economic offences relating to money laundering is *prima facie* established, closure report, if filed on certain suspicious circumstances by the State police on extraneous circumstances, then the Enforcement Directorate is entitled to question the correctness of the said closure report by approaching the High Court.

14. The learned Additional Solicitor General of India relied on the

petition filed by the Assistant Commissioner of Police, Central Crime Branch before the learned Judicial Magistrate, Alandur in Crime No.304 of 2012, wherein, the State Police have reiterated that the fabricated documents prepared by A3 and A2's wife Mrs.Leema Rose for accounting the illegal money of Rs.7,20,05,000/- was seized. Accordingly, a request was made before the Court that in Crime No.304 of 2012 the following Sections 294A, 420, 120B IPC may please be altered as Sections 294(b), 420, 120B IPC and 467, 468, 471 IPC against the accused involved in the case viz., Mr.G.Moorthy/A3 and Mrs.Leema Rose/A4, wife of Mr.S.Martin. Therefore, earlier investigation of the State Police projects the prosecution case that an offence has been made out and sufficient materials are collected to establish the offence. Even before the Hon'ble Supreme Court of India, the State Police established that the case against the accused persons are made out through fabricated documents. While so, suddenly the closure report was filed on 14.11.2022 and by passing a cryptic order, the Learned Judicial Magistrate accepted the closure report on 17.11.2022, which caused prejudice to the investigation conducted by the Enforcement Directorate under PMLA.

15. The learned Additional Solicitor General of India further relied on the order passed by the Division Bench of this Court in CrI.O.P.No.13298 of 2022 dated 06.09.2022. The Division Bench dismissed the Criminal Original Petition filed by Mr.M.Nagarajan and Mrs.Usha. The findings of the Court is that the impugned complaint is bereft of *prima facie* materials for quashing the same. The observations made in Paragraph No.17 of the said order also reveals that *prima facie* case has been made out against the accused persons to prosecute the offenders under Section 420 IPC. When sufficient materials collected and placed before the Division Bench in Criminal Original Petition filed to quash the complaint in C.C.No.21 of 2016 in PMLA was dismissed, now the closure report accepted by the Learned Judicial Magistrate is running counter to the findings made by the Division Bench of this Court.

III.ARGUMENTS MADE ON BEHALF OF THE 1st RESPONDENT /STATE OF TAMIL NADU:

16. Mr.P.S.Raman, the learned Advocate General appearing on behalf of the 'State' though recused from arguing the case of the accused on merits, would submit that in a federal structure under the Indian Constitution, the State is the prosecuting agency and the closure report filed by the State

Police, once accepted by the Learned Magistrate, the Enforcement Directorate has no *locus standi* to challenge the same. When the predicate offence has been closed and found to be non-existent, the PMLA cannot be sustained, as per the ratio laid down *Vijay Madanlal Choudhary and Others V. Union of India and Others*¹ by the Hon'ble Supreme Court of India. When the IPC offence has not been made out as per the closure report filed by the State Police accepted by the Learned Judicial Magistrate, offence under PMLA cannot sustain. The Enforcement Directorate cannot be said to be an aggrieved person, since their actions under PMLA depend on the existence of a predicate offence. When the predicate offence disappeared, the PMLA offence cannot continue as per the principles laid down by the Hon'ble Apex Court in *Vijay Madanlal Choudhary's* case cited *supra*.

17. The learned Advocate General would further submit that mere ante-dating of a sale agreement is not a forgery. The sale agreement was acted upon. Thus, the offence is not made out. State Police filed a closure report on the said basis and the same was accepted by the Learned Judicial Magistrate. Thus, the present petition filed by the Enforcement Directorate is not maintainable and liable to be dismissed.

¹ 2022 SCC ONLINE SC 929

IV.ARGUMENTS MADE ON BEHALF OF THE RESPONDENTS 2 TO 5:

18. Mr.N.R.Elango, learned Senior counsel appearing for respective learned counsels on record viz., Mr.T.Vijay (for R2), Mr.A.S.Aswin Prasanna (for R3), Mrs.Aruna Elango (for R4), Mr.Agilesh Kumar (for R5) would submit that the Enforcement Directorate is not an aggrieved person. The agreement for sale dated 02.03.2012 even presuming to be ante dated, the same would not constitute an offence under IPC. The State Police initially not considered this aspect and erroneously formed an opinion that the offence had been made out. Subsequent investigation revealed that offence under Section 420 IPC has not been made out and consequently, closure report has been filed. Once the closure report is accepted by the Learned Magistrate, the Enforcement Directorate cannot challenge, merely on the ground that an offence under PMLA has been made out. Offence under PMLA is dependant on the predicate offence and when the predicate offence disappeared, PMLA cannot exist. Thus, the Enforcement Directorate has no *locus standi* to challenge the validity of the acceptance of closure report made by the Learned Judicial Magistrate.

19. Mr.N.R.Elango, learned Senior Counsel solicit our attention with reference to the facts narrated in the First Information Report and the manner in which the agreement for sale was entered into between the parties. Mr.N.R.Elango, learned Senior counsel also relied on the Judgment of the Division Bench of this Court dated 06.09.2022 in CrI.O.P.No.13298 of 2022. He relied on the observations made by the Division Bench that the Court agreed with the learned Senior Counsel that the cash of Rs.7,20,05,000/- had come into the hands of the State Police on 12.03.2012 and it should have shown that said amount is 'proceeds of crime' for which the subsequent act of the accused fabricating the sale agreement to prove its legitimacy would have no bearing. When such observation has been made by the Division Bench, aggrieved with the contentions raised by the accused persons, now the Enforcement Directorate cannot turn around and claim that proceeds of crime exist and they are entitled to continue the prosecution under PMLA. When the basis for the predicate offence is absent and the closure report of the State police is accepted by the Learned Judicial Magistrate, the PMLA offence cannot sustain, in view of the legal principles settled by the Hon'ble Apex Court in *Vijay Madanlal Choudhary's* case cited *supra*. The Division Bench considered the principles laid down in the *Vijay Madanlal Choudhary's* case

cited *supra*.

20. The matter was taken by way of an Appeal before the Hon'ble Supreme Court. Even the Hon'ble Supreme Court has observed the fact that a closure report was filed, which has been later accepted by the Learned Judicial Magistrate by order dated 17.11.2022. When the Hon'ble Supreme Court recorded the closure report accepted by the Learned Judicial Magistrate on 17.11.2022, now the Enforcement Directorate may not be permitted to reopen the PMLA offence, since the predicate offence is closed. The learned Senior Counsel relied on the financial statements produced by the accused persons for income tax assessment.

V.DISCUSSIONS:

21. Since the present petition has been filed by the Directorate of Enforcement to quash the closure report filed in the predicate offence, the Enforcement Directorate mainly contended that proceeds of crime is in existence. Therefore, they are the aggrieved persons. In respect of proceeds of crime, the accused persons have projected tainted money as untainted, which is an offence under Section 3 of PMLA.

(A) PROCEEDS OF CRIME IN THE PRESENT CASE:

22. The Enforcement Directorate passed order under Section 5(1) of PMLA attaching the proceeds of crime under the Provisional Attachment Order Nos.04 and 05 of 2012 dated 02.04.2012 and 11.04.2012 respectively and the said attachment was confirmed by the Adjudicating Authority under order O.C.No.138 of 2012 dated 14.08.2012. Another provisional attachment order was passed bearing No.09 of 2012 dated 22.08.2012 and it was confirmed by confirmation order in O.C.No.154 of 2012 dated 13.12.2012. However, in the appeal, filed by the private respondents herein under Section 26 of PMLA, the Appellate Tribunal has passed an order on 14.09.2023 disposing of the appeal giving liberty to the Enforcement Directorate to take appropriate steps available under law including to recall the said order in the event of the criminal cases under the predicate offence and PMLA are revived. The order was passed by the Appellate Tribunal setting aside the attachments on account of the fact that the predicate offence was closed.

23. Since the confiscation of the Proceeds of Crime has to be decided finally under Section 8(5) of PMLA, it has become necessary for the

Enforcement Directorate to challenge the correctness of the impugned order passed by the Learned Magistrate accepting the closure report filed by the State Investigating Agency. Thus, the Enforcement Directorate filed the present quash petition under Section 482 of Criminal Procedure Code.

(B) MAINTAINABILITY OF THE PRESENT PETITION:

24. The respondents 2 to 5 and the 1st respondent / State of Tamil Nadu raised an issue of maintainability of the present quash petition, more specifically by the Enforcement Directorate. Mr.P.S.Raman, learned Advocate General appearing on behalf of the 1st respondent and Mr.N.R.Elango, learned Senior Counsel appearing on behalf of the respondents 2 to 5 respectively would contend that Enforcement Directorate is not a victim nor an aggrieved person. Thus, not entitled to be heard by the Learned Magistrate at the time of consideration of the closure report filed by the State Investigating Agency. Thus, the Enforcement Directorate has no right to question the order impugned passed by the Learned Magistrate accepting the further actions drop report.

25. Let us examine the issue relating to maintainability.

26. Offence under Section 3 of PMLA deals with 'Proceeds of Crime', which is possessed, used, handled or projected as untainted money. Proceeds of Crime is defined under Section 2(1)(u) of PMLA as the proceeds that is generated out of a criminal activity in a scheduled offence. Sections 420, 467, 471 of Indian Penal Code (IPC) are scheduled offences. The predicate offence in the present case as originally registered was for Section 420 of IPC and subsequently altered based on the petition filed by the State Police and Sections 467 and 471 IPC are included. Thus, the sum of Rs.7,20,05,000/- generated out of the criminal activity is a “Proceeds of Crime”. The proceeds of crime was attempted to be projected as untainted money by creating a fabricated document in the form of an ante dated sale agreement dated 02.03.2012. Thus, proceeds of crime has been identified and the persons, who have generated the proceeds of crime, used the proceeds of crime and projected the proceeds of crime as untainted money have also been identified.

27. Once the proceeds of crime is identified, the same is subject to provisional attachment under Section 5 and confirmation under Section 8 of

PMLA. If the proceeds of crime is attached under Section 8 of PMLA, then the same is liable to be confiscated to the Central Government under Section 8(5) of PMLA at the conclusion of trial for being dealt with under the provisions of PMLA.

28. In the present case, prosecution complaint was already filed for the offence under Sections 3 and 4 of PMLA by the Enforcement Directorate. The same has been closed by the Hon'ble Supreme Court of India only on account of the closure of the predicate offence. Since the action of the Enforcement Directorate is dependent on the predicate offence, in order to continue the proceedings under PMLA, the closure of the predicate offence deserves to be challenged.

29. The Hon'ble Supreme Court of India, while disposing of the Special Leave Petition in SLP.Crl.No.10917 of 2022 dated 23.01.2023 filed by A1 and A3 against the PMLA proceedings held that the **“Enforcement Directorate / respondent to take appropriate steps available under law including recall of the present order, if so advised”**. Further observation was made that **“If the Enforcement Directorate wants to question the**

closure report accepted by the Learned Magistrate by order dated 17.11.2022, they are always at liberty to take appropriate action which law permits at their command.

30. In this context, the learned Additional Solicitor General of India would argue that if at all the Hon'ble Supreme Court formed an opinion that once the predicate offence is closed, the PMLA proceedings also has to be closed and there is no further remedy for the Enforcement Directorate, the Hon'ble Supreme Court would not have granted the liberty to challenge the order of the Learned Magistrate accepting the closure report in the manner known to law.

31. Learned Senior Counsel appearing on behalf of the respondents 2 to 5 during the course of arguments relied upon paragraphs 281 to 284 and 467(v)(d) of the judgment in *Vijay Madanlal Choudhary's* case cited *supra*. Paragraph 467 of the judgment is summarisation of the conclusion on seminal points in issue. Accordingly, there is no quarrel over the proposition that if the predicate offence is quashed or the accused persons are discharged or it ends in acquittal finally, the proceedings under PMLA cannot be

continued. However, the judgment should be read only in the context of what is decided in the said case. It ought not to be read as Statute. The said judgment, more particularly, the above mentioned paragraphs, does not lay down that once there is an acquittal or discharge or quash in the predicate offence, the Enforcement Directorate cannot question the orders of the Learned Magistrate before the High Court under Section 482 of Criminal Procedure Code. There is no such absolute restraint in the judgment in *Vijay Madanlal Choudhary's* case cited *supra*. There is no such bar. On the contrary, in paragraph 290 of the said judgment, the Hon'ble Supreme Court has recognised the rights of Enforcement Directorate to work out the remedies as per law. The relevant portion of the said paragraphs are extracted hereunder;

290. In case the scheduled offence is not already registered by the jurisdictional police or complaint filed before the Magistrate, it is open to the authorised officer to still proceed under Section 5 of the 2002 Act whilst contemporaneously sending information to the jurisdictional police under Section 66(2) of the 2002 Act for registering FIR in respect of cognizable offence or report regarding non-cognizable offence and if the jurisdictional police fails to respond appropriately to such information, **the**

authorised officer under the 2002 Act can take recourse to appropriate remedy, as may be permissible in law to ensure that the culprits do not go unpunished and the proceeds of crime are secured and dealt with as per the dispensation provided for in the 2002 Act. Suffice it to observe that the amendment effected in 2015 in the second proviso has reasonable nexus with the object sought to be achieved by the 2002 Act.

32. As such, if the Investigating Agency dealing with a predicate offence is not taking appropriate action as per law and on account of the same an accused is allowed to go scot free with the proceeds of crime, the Enforcement Directorate, for the purpose of achieving the objects under PMLA and to deal with the proceeds of crime under PMLA is entitled to take recourse to the remedies available under law.

(C) INHERENT POWERS OF THE HIGH COURT UNDER SECTION 482 OF CRIMINAL PROCEDURE CODE:

33. Learned Advocate General appearing on behalf of the 'State' and the learned Senior Counsel appearing on behalf of the respondents 2 to 5 argued that the Enforcement Directorate is not an victim nor an aggrieved person and they have no *locus standi* to invoke Section 482 of Criminal

Procedure Code by filing the present petition and therefore, it is to be rejected.

34. In the context of the above submissions, pertinently under Section 482 of Criminal Procedure Code, nothing in the code would prevent the High Court from passing such orders as are necessary to prevent abuse of process of law and to meet the ends of justice. Section 482 does not contemplate either aggrieved person or victim alone as the person, who is entitled to file the petition. It is the inherent power conferred to the High Court. It is always open to anyone, who is connected with the issues, and concerned with the outcome of the case to approach the High Court under Section 482 to bring it to the notice of the High Court that an illegality has occurred and the same has to be corrected in the interest of justice to avoid miscarriage of justice.

35. Thus, we are of the opinion that the petition filed under Section 482 of Criminal Procedure Code by the Enforcement Directorate as a person concerned with the issues is very well maintainable and the offence under PMLA born from and out of the predicate offence and after investigation the

Enforcement Directorate identified the “proceeds of crime”. That being the factum, they cannot be said to be an alien to the issues involved.

(D) ANALYSIS OF THE JUDGMENTS RELIED ON BY THE RESPONDENTS:

36. The respondents relied on the judgment in the case of *Bhagwant Singh vs. Commissioner of Police*². It is a Pre-PMLA judgment, wherein, the issues were considered by the Hon'ble Supreme Court. When the judgment itself is prior to PMLA, the proceeds of crime now present in the case on hand cannot be fit-in with the facts and principles considered by the Hon'ble Supreme Court in the above case. Thus, the facts are distinguishable.

37. The Prevention of Money Laundering Act, 2002 contemplates new set of offence and the procedures to be followed while dealing with the offence. The Enforcement Directorate under the PMLA is the Investigating Agency and working of the Enforcement Directorate with the State Investigating Agency shall be in tandem. Thus, the said judgment is of no avail to the respondents.

2.(1985) 2 SCC 537

38. Mr.N.R.Elango, learned Senior Counsel and the learned Advocate General relied on the judgment of the Learned Single Judge of the Bombay High Court in the case of *Directorate of Enforcement vs. State of Maharashtra and Others*³. In the above case, the Enforcement Directorate had filed an application before the Learned Magistrate to intervene and make submissions at the time of hearing of the closure report. The application was dismissed by the Learned Magistrate and confirmed by the Learned District Judge against which a petition was filed before the High Court. The Learned Single Judge of the Bombay High Court opined that only three categories of persons are having locus to be heard by the Learned Magistrate at the stage for consideration of the closure report. They are the complainant, injured persons or relatives / heirs of the deceased. In the said case M/s.Akbar Travels, who was the *de facto* complainant was appearing before the Learned Magistrate and opposing the closure petition and hence the High Court was of the opinion that the Learned Magistrate would consider the correctness or otherwise of the closure report after hearing the *de facto* complainant. Therefore, Enforcement Directorate is not a necessary party before the Learned Magistrate at that stage.

3. CRL.W.P.(STAMP).No.3122 of 2023

39. In paragraphs 17, 18 and 19 of the order, the Learned Single Judge of the Bombay High Court held that Learned Magistrate have no inherent powers like Section 151 Civil Procedure Code or Section 482 of Criminal Procedure Code. The above observation would amplify that the ratio of the judgment is restricted only to the right of the Enforcement Directorate to appear before the Learned Magistrate at the time of consideration of the closure report. It is not a preposition dealing with the right of the Enforcement Directorate to file a petition before the High Court under Section 482 of Criminal Procedure Code and does not deal with the inherent powers of the High Court under Section 482 to meet the ends of justice or to prevent miscarriage of justice. Thus, the scope of the judgment of the Learned Single Judge of the Bombay High Court need not be extended in the context of the facts established in the present case on hand.

40. The order of the Learned Single Judge of the Bombay High Court was taken by way of SLP before the Hon'ble Supreme Court of India and the Apex Court passed an order on 26.09.2022 in the case of *Directorate of Enforcement vs. State of Maharashtra*⁴. The Hon'ble Apex Court has left

4. SLP(CRL).No.5524 of 2021

the question of law open and further said that if the Enforcement Directorate has any other rights or remedies available to them, they may avail the same in accordance with law. Thus, we are of the considered opinion that the very ground raised by the respondents that the Enforcement Directorate cannot intervene in the matter is incorrect. The scope of Section 482 of Criminal Procedure Code is wider enough and Enforcement Directorate as a person in connection with the issues involved has got a right to file a petition if they are of the opinion that there is miscarriage of justice in the matter of acceptance of closure report filed by the State Investigating Agency after tracing out *prima facie* material against the accused persons relating to predicate offence.

(E) OBJECT OF PMLA:

41. Free and fair investigation is the hallmark of the criminal justice system. It is essential that investigating agencies operate in free and fair manner to ensure that both the rights of the accused and the State are well protected during the course of investigation.

42. It is a known fact that the main object of PMLA is to prevent

money laundering. The economic health of the State needs to be protected and money laundering scars the economic condition of our great nation as a whole. It tends to hamper the economic growth of a country. The sufferers ultimately will be the common man. Legislations like PMLA is to protect the interest of the common man.

43. Money Laundering tends to affect the economic aspects leading to a vicious cycle, whereby the consequential ill effects of money laundering tends to burden the common man. Hence, a free and fair investigation into these offences are prerequisite.

44. It is important that the State and the Central Investigating Agencies act in an unbiased, fair and cautious manner to ensure that the object of PMLA is preserved. Any prejudice or unfair investigation into such offences not only defeats the object of PMLA, but will prevent the course of a fair investigation, thereby saving the offenders of money laundering from the clutches of PMLA. PMLA object is crystal clear. Any legislation is ultimately for the benefit of the common citizen of our great nation. The benefit of the legislation must serve the country and common man. The

implementation of the legislation determines the effective functioning of the law. When execution is done in a fair and unbiased manner, it ensures that the fruits of the law reaches the common man. Even in PMLA, the object is to protect the economic strength of our great nation. Hence, it is essential that the Investigating Agencies involved in the process of unearthing the offence pertaining to money laundering do so in a free and fair manner and work with an object to protect the interest of the common man.

(F) ABOUT THE CLOSURE REPORT BY STATE POLICE AND ACCEPTANCE BY THE LEARNED MAGISTRATE:

45. The closure report dated 14.11.2022 filed by the Police in the predicate offence palpably appears to be wrong. In the context of the genuineness of Sale Agreement, which was perpetually to project the tainted money as untainted.

46. The State Investigating Officer callously comes to the conclusion that there is no evidence to prove the fabrication of the false document in the form of an ante dated sale agreement dated 02.03.2012. For the State Police to say so is least expected, when the alteration report is

based on the State Government records. Assuming that they are available, even then, the State Government Treasury Records reveals that the concerned stamp paper was issued only on 09.03.2012 is always available and is cast iron evidence that the alleged sale agreement dated 02.03.2012 is a false document ante dated on a stamp paper released only on 09.03.2012 by the Treasury. This proves the existence of both the predicate offence as well as the PMLA offence.

47. The stamp vendor and the buyer of the stamp paper Smt.Vimala were unavailable for examination, which would not justify for acceptance of the closure report by the Learned Magistrate.

48. The closure report of the State Police was filed on the findings from the judgment in Crl.O.P.Nos.13106 and 14917 of 2013 quashing the predicate offence, but the said judgment had been set aside by the Hon'ble Supreme Court in Crl.A.Nos.423 and 424 of 2018 dated 28.03.2018. This renders the reliance on it improper and irrelevant.

49. The Investigating Officer accepted that Mr.G.Moorthy / A3 paid the income tax on the alleged sale proceeds, overlooking the fact that such declarations could be based on self-assessment without verifying the legitimacy of the transaction. Further, paying income tax on proceeds of crime will not wipe off or erase the facts of illegal sales of lottery tickets, creation of a fabricated document and relying on a false document, as if it was genuine, which are penal offences under Sections 420, 467, 468 and 471 IPC.

50. Learned Magistrate failed to consider the order of the Hon'ble Supreme Court in the Crl.A.Nos.423 and 424 of 2018 dated 28.03.2018 setting aside the order of the Learned Single Judge of this Court in Crl.O.P.No.13106 and 14917 of 2013 and the reasons recorded in the same for restoring the FIR bearing No.304 of 2012, which called for a complete investigation into the allegations.

(G) WHETHER CREATING AN ANTE DATED DOCUMENT IS FORGERY:

51. Creation of an alleged sale agreement dated 02.03.2012 with

recitals as if advance sale consideration of Rs.7,30,00,000/- was received by Mr.G.Moorthy / A3 from Smt.Leema Rose / A4 on 02.03.2012 on a stamp paper, which was released by the Government only on 09.03.2012 attempting to give legal colour to the huge amount of cash seized on 12.03.2012 is a clear case of creation of a fabricated document as per the illustration (d) and (e) under Explanation 1 in Section 464 IPC. As the created document is a valuable security and the same has been used for the offence of cheating and has been used, as if it was genuine, the ingredients of the offence under Sections 467, 468 and 471 IPC are also clearly made out.

(H) ABOUT THE IMPUGNED ORDER:

52. The impugned order dated 17.11.2012 passed by the Learned Magistrate accepting the further action dropped report seems to be a mechanical order, passed without taking note of all relevant facts and materials available on record. Learned Magistrate accepted the closure report, as if the Court is bound by the report. The Court has not exercised its jurisdiction to examine the materials available in the case and the earlier orders passed by the Hon'ble Supreme Court in the matter. Thus, the acceptance of closure report has resulted in miscarriage of justice happened.

53. The narration of entire facts with reference to the legal position in the aforementioned paragraphs would reveal that the respondents 2 to 5 attempted to project tainted money as untainted by creating fabricated agreement for sale. The said position was categorically endorsed by the State Investigating Agency during the course of initial investigation in the predicate offence. Pertinently, the State Police filed a petition before the Learned Judicial Magistrate, Alandur for alteration of penal provision that Sections 294A, 420, 120B IPC may please be altered as Sections 294A, 420, 120B IPC and 467, 468 and 471 IPC. In the said petition filed by the State Investigating Agency, they have categorically stated as follows;

“During the course of investigation I have collected the unregistered sale agreement dated 02.03.2012 made between A-2's wife Tmt.Leema Rose and A-3 Tr.G. Moorthy for the sale of his house of (A-3) at new number 4, Old No.56, 3+d Main Road, Anna Nagar, Chennai 40, in the Indian non judicial stamp paper bearing number AE 147535 and 147536 were supplied by the State Government to one stamp vendor namely Tr.Mayilsamy on 09.03.2012, The above said document were sold to public only on 13.03.2012. But the document prepared by A-3 Tr.G. Moorthy and A-2's wife Tmt.Leema Rose is on 02.03.2012, which was

prior to the selling of the stamp from Government to the vendor.

It is further submitted that from the above fabricated documents prepared by A-3 and A-2's wife Tmt. Leema Rose for accounting the illegal money of Rs.7,20,05,000/ - seized in the reference cited crime number.”

54. The accused persons Mr.S.Martin / A2 and Mr.G.Moorthy / A3 filed CrI.O.P.Nos.13106 and 14971 of 2013 to quash the Crime No.304 of 2012. The Learned Single Judge of the High Court passed final orders on 15.10.2014 quashed the criminal proceedings in Crime No.304 of 2012. Interestingly, the State of Tamil Nadu preferred an appeal before the Hon'ble Supreme Court of India in CrI.A.Nos.423 and 424 of 2018. The Hon'ble Apex Court recorded the allegations as projected by the State Police. It is relevant to extract the following observations in the judgment;

“2. The aforesaid FIR was registered pursuant to reporting by M. Nataraj, Inspector of Police, Crime, Adambakkam Police Station, Chennai. The FIR inter alia stated that the informant had received information that several crores of unaccounted money was stashed in the house of accused-1, Nagarajan pursuant to which a raid was conducted and cash amounting to Rs.7,20,05,000/- stored in three bags was found. The FIR further noted that said accused No.1 Nagarajan had

admitted that he and his associates, namely, Accused No.2 Martin and Accused No.3 Murthy had illegally printed lottery tickets of the States of Sikkim, Kerala and Maharashtra and sold the same without obtaining any permission and in the process had amassed enormous profit and the cash in question represented the same. Rs. 50 lakhs in cash were also seized from the house of Accused No. 3 Murthy. A-1 Nagaraj was immediately arrested and Crime No.304/2012 was registered under Sections 294(A), 420 and 120(b) IPC and the case was forwarded for investigation.

3. During the course of investigation 3625 numbers of lottery tickets of various States were recovered. In his application for anticipatory bail, accused No.2 Martin relied upon a document i.e. Agreement of Sale dated 02.03.2012. According to this unregistered agreement, the wife of accused No.2 – Martin named Mrs. Leema Rose had agreed to purchase House No.4, Old No. 56, 3rd Main Road, Anna Nagar, Chennai-40 from said accused No.3-Murthy and had paid Rs. 7.3 crores by way of advance in cash. It was submitted that the seized cash in question represented such amount received in cash.

4. While the matter was still under investigation, Crl.O.P. Nos.13106/2013 and 14971/2013 were filed on

21.05.2013 and 11.06.2013 respectively, praying inter alia quashing of aforesaid Crime No. 304 of 2012. A common counter affidavit dt. 25.06.2013 refuting all material allegations was filed by Assistant Commissioner of Police on behalf of State of Tamil Nadu. It was submitted, inter alia that the unregistered agreement dated 02.03.2012 was on a stamp paper which was issued by the State Government to the stamp vendor on 09.03.2012 and the same was sold to one Vimla on 13.03.2012. It was further submitted that the lottery tickets recovered during investigation were sent to the respective State Governments to check whether they were genuine and the report was still awaited. The counter affidavit further submitted that the investigation was still incomplete.

5.

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7. In our view the assessment made by the High Court at a stage when the investigation was yet to be completed, is completely incorrect and uncalled for. Presence of two crucial facts was enough to let the investigation go on, namely, recovery of huge amount of cash of Rs.7.2 crores from the house of one of the accused and that such recovery was accepted by the accused. The explanation given by them about the alleged transaction of agreement of sale and receipt of cash in pursuance thereof does not prima facie appear to

be correct. The agreement is stated to have been entered on 02.03.2012 while the stamp paper in question was issued by the relevant department on 09.03.2012 to the vendor which was later sold to lady named Vimla on 13.3.2012. Whether the possession of huge cash amounting to Rs. 7.2 crores can be explained by the accused and whether such explanation be accepted or not, are all matters which will be gone into at the relevant stage in the proceedings. The investigation in any case ought not to have been set at naught but it ought to have been permitted to be taken to its logical conclusion.

8. We are not expressing any opinion on merits or demerits of either the case of the prosecution or the defence of the accused but we are of the firm opinion that while the investigation was still incomplete, the High Court ought not to have interfered in the present case. Leaving all questions open to be agitated at appropriate stages in the proceeding, we set aside the view taken by the High Court and allow these appeals. Consequently Crime No.304 of 2012 stands restored to its file and the appellant is free to conduct investigation and take the matter to its logical conclusion.”

55. The Hon'ble Supreme Court restored Crime No.304 of 2012 by order dated 28.03.2018. The accused persons filed Crl.O.P.No.7632 of 2017

under Section 482 Criminal Procedure Code to quash PMLA case in C.C.No.21 of 2016. The said case was dismissed as withdrawn on 14.12.2021. Thereafter, the accused Mr.M.Nagaraj / A1 along with Smt.Usha filed a petition to quash the PMLA case in C.C.No.21 of 2016. The Division Bench decided the case on merits and passed orders on 06.09.2022, wherein, dismissing the petition with a finding as follows;

“18. Thus, looking at from any angle, we are unable to hold that the impugned complaint is bereft of prima facie materials for quashing the same.”

56. During the interregnum period, more specifically, after dismissal of the quash petition filed by the Nagarajan / A1, the State Police filed a closure report before the Learned Magistrate on 14.11.2022, which was accepted by the Learned Magistrate on 17.11.2024. The Special Leave Petition (SLP) filed by Mr.Nagarajan / A1 was taken up for hearing by the Hon'ble Supreme Court on 23.01.2023 and it was disposed with a finding that the Enforcement Directorate is always at liberty to take appropriate action, which the law permits at their command.

VI.CONCLUSION:

57. A legislation when brought into force with a legislative intent does not stay in the same shape, as it was intended to be. Evolution of the legislation is inevitable in a growing country. The operation and implementation of the law decides that the legislation is taken forward in its intended spirit and force. Once the legislation is applied and tested, the consequences of such application determine the character and fate of the legislation.

58. The objects of the PMLA as intended is crystal clear from the day of its inception. Economic interest of our great nation is the soul object. The consequent implementation of the law should be in tandem with the legislative intent. Any misuse or abuse of the law will fracture the bones of PMLA, thereby rendering it wholly ineffective. Legislation of such nature must be handled with caution and must not injure any vital organs of Part III of the Constitution of India.

59. The successful functioning of PMLA rests with the

Investigating Agencies. Both the State and Central Investigating Agencies need to work in tandem to ensure smooth functioning of PMLA. The potential misuse of such law must be cut to a bare minimum at the earliest to prevent the offenders from taking benefit under the umbrella of such misuse.

60. Misuse of any legislation will render it ineffectual, thereby defeating the legislation and its object. The downfall of any legislation starts with its misuse. It is in the hands of Implementation Agencies to exercise due care and caution by plugging the gaps and not paving way for misuse or improper usage of such law.

61. To remind that facts of the present case at this juncture, the seizure of huge amount of cash of Rs.7.20/- crores was on 12.03.2012. The sale agreement is said to have been entered into on 02.03.2012. The stamp paper has been released by the State Government only on 09.03.2012 and it was sold by the stamp vendor to one Smt.Vimala on 13.02.2012. It is a clear case of cheating by amassing money by sale of illegally printed lottery tickets attracting Section 420 of IPC, creation of a false document in the form of a sale agreement attracting the provisions of Sections 467, 468 and

471 of IPC and hence *prima facie* materials are available for both the predicate offence and the offence under PMLA. But the PMLA proceedings are sought to be scuttled by closing the proceedings in the predicate offence.

62. The chronological event of the litigation would reveal that schematic approach was made by the accused persons to escape from the clutches of PMLA proceedings. Once the “proceeds of crime” is traced out by the Enforcement Directorate and a complaint under PMLA has been filed before the Competent Court, the offence under PMLA has become stand alone offence and stand alone process, which is to be proceeded by following the procedures as contemplated under PMLA. For initiation of PMLA proceedings, predicate offence is required. During the pendency of complaint under PMLA, if the predicate offence is closed, in the present case, it resulted in miscarriage of justice, the Enforcement Directorate is well within its rights to place the facts before the High Court by instituting petition under Section 482 of Criminal Procedure Code to meet the ends of justice.

63. In the present case, the State Investigating Agency registered the

predicate offence, conducted investigation and against the dismissal of quash petition filed SLP before the Hon'ble Supreme Court and the criminal case was restored by the order of the Apex Court. When the *prima facie* case regarding a predicate offence has been upheld by the Hon'ble Supreme Court by restoring the criminal case in the predicate offence, filing closure report thereafter by the very same State Agency is undoubtedly suspicious and doubtful.

64. In our opinion, the State Agency has made an attempt to bury the predicate offence against the accused persons in a suspicious manner and on extraneous considerations, which are visible through their actions including the closure report filed by the State police.

65. The State Investigating Agency and the Enforcement Directorate are directed to proceed with the case in tandem, so as to ensure that the criminal case instituted is proceeded in accordance with law. However, the trial must go on uninfluenced by the observations, if any made relating to facts in the present case.

66. The facts established and the legal position considered made us to arrive at an irresistible conclusion that the Closure Report filed by the 1st respondent dated 14.11.2022 accepted by the learned Judicial Magistrate-I, Alandur by order dated 17.11.2022 made in Crime No.304 of 2012 stands set aside. Accordingly, the Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

[S.M.S., J.] [V.S.G., J.]
28.10.2024

GD/Jeni
Index : Yes / No
Speaking order / Non-speaking order
Neutral Citation : Yes / No

To

1. Judicial Magistrate-I, Alandur
2. The Additional Deputy Commissioner of Police-II,
Central Crime Branch, Greater Chennai Police,
Veperiy, Chennai – 600 007.

CRL.O.P.No.28289 of 2023

S.M.SUBRAMANIAM, J.
and
V.SIVAGNANAM, J.

GD/Jeni

CRL.O.P.No.28289 of 2023

28.10.2024