



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

FRIDAY, THE 25<sup>TH</sup> DAY OF AUGUST 2023 / 3RD BHADRA, 1945

CRL.MC NO. 5167 OF 2023

PETITIONERS/ACCUSED NOS.1 & 2

:

- 1 V.P. NANDAKUMAR, AGED 69 YEARS, S/O. PADMANABHAN,  
MANAGING DIRECTOR & CEO, MANAPPURAM FINANCE LIMITED,  
MANAPPURAM HOUSE, VALAPAD, THRISSUR DISTRICT,  
PIN - 680702.
- 2 BINDU. A.L, W/O. BENNY VL, VETTIYADAN HOUSE,  
ANNANAD PO, THRISSUR DISTRICT, PIN - 680309.

BY ADVS.  
SHARAN SHAHIER  
TERRY V.JAMES  
T.R.TARIN  
RAKHY BABY  
EDWIN JOSEPH  
AGNA JOY

RESPONDENTS/COMPLAINANT & STATE:

- 1 THE DEPUTY DIRECTOR, DIRECTORATE OF ENFORCEMENT,  
COCHIN ZONAL OFFICE, AK SESHADRI ROAD, COCHIN,  
PIN - 682011.
- 2 STATE OF KERALA REPRESENTED PUBLIC PROSECUTOR,  
HIGH COURT OF KERALA, ERNAKULAM, PIN - 682031.

BY ADVS.  
SRI.JAISHANKAR V NAIR

SMT NEEMA T V, SR. PP

THIS CRIMINAL MISC. CASE HAVING COME UP FOR  
ADMISSION ON 25.08.2023, THE COURT ON THE SAME DAY PASSED  
THE FOLLOWING:



**"CR"**

**ORDER**

The petitioners herein have been arrayed as accused Nos.1 and 2 in the Enforcement Case Information Report ('ECIR' for the sake of brevity) registered by the Enforcement Directorate ('ED' for the sake of brevity) as ECIR/36/KCZO/2022 dated 06.09.2022. They have approached this Court seeking to quash the ECIR and all further proceedings pursuant thereto.

2. The petitioner asserts that the aforementioned ECIR arose following the registration of Crime No.376/2022 at the Valappad Police Station, which pertains to an alleged offence under Section 420 of the IPC. It was consequent to the registration of the FIR at the instance of a certain P.K. Sagar that ECIR/36/KCZO/2022 dated 06.09.2022 was drawn up, invoking the provisions of the Prevention of Money Laundering Act, 2002 (PMLA, 2002).

3. The petitioners contend that immediately after the registration of the FIR, both the petitioners and the complainant arrived at an amicable settlement and decided to resolve the issues. The petitioners approached this



Court and instituted Crl.M.C.No. 4436/2022, seeking to quash all further proceedings. This Court, after getting the response from the complainant and the State, wielding its authority under Section 482 of the Cr.P.C., quashed all further proceedings in Crime No. 376/2022 at the Valappad Police Station.

4. The petitioners, relying on the observations and the law laid down by the Apex Court in the case of **Vijay Madan Lal Chaudhary v. Union of India**<sup>1</sup>, articulate that since this Court has quashed the crime and all further proceedings, any subsequent action under the Prevention of Money Laundering Act, 2002 (PMLA, 2002) lack a valid foundation. They contend that these actions under the PMLA, 2002 are therefore liable to fail. Anchored by these assertions, the petitioners have filed this petition, seeking the following reliefs:

For these and other grounds which may be permitted to be urged at the time of the hearing, it is most humbly prayed that this Hon'ble Court may be pleased to quash Annexure-A1 Enforcement Case Information Report numbered as ECIR/36/KCZO/2022 dated 6.9.2022 and all the further proceedings arising therefrom, in the interest of justice.

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<sup>1</sup> [2022 SCC OnLine SC 929]



5. Sri. Mahesh Jethmalani, the learned senior counsel appearing for the petitioners, as instructed by Sri. Sharan Shahier, the learned counsel, advanced the following contentions:

- a) The continuation of proceedings in relation to ECIR/36/KCZO/2022 is a clear abuse of process, particularly when the predicate offense, which has its basis in Crime No. 376/2022, stands quashed by this Court by Anneuxure-A10 judgment.
- b) Reliance is placed on paragraph No. 467 (v)(d) of the law laid down by the Apex Court in **Vijay Madan Lal Chaudhary** (supra), and it is urged in the event of the Crime involving the predicate offense being quashed by this court, there can be no offence of money laundering. To substantiate the above point, reliance is also placed on **Sekar @ Sekar Reddy v. Directorate of Enforcement**<sup>2</sup>.
- c) Attention of this Court is drawn to the order passed by the learned Single Judge quashing the proceedings, and it is pointed out that this Court had referred to the affidavit filed by the wherein he had stated in clear terms that he had no direct knowledge about the

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<sup>2</sup> [(2022) 7 SCC 370]



facts in the complaint and he does not have any evidence to prove the allegations.

6. In response, Sri. Jayasankar, the learned Central Government Counsel, advanced the following submissions:

- a) After the registration of the ECIR, a detailed enquiry was carried out by the ED, and several discrepancies were noticed. These aspects are to be brought to the notice of the concerned Government Departments.
- b) Placing reliance on Section 66 (2) of Act 15 of 2003, it is submitted that the said provision permits the ED or any authority specified by them to notify any other officer or authority or body of any information received or obtained by the ED which in the opinion of the ED is necessary for that authority to perform its functions under law. The ECIR is necessary to enable the enforcement authorities to ensure that the appropriate authorities take action on the contraventions that have been found by the ED.
- c) Reliance is placed on the observations made by a Division Bench of the Madras High Court in O.P.(Crl) No. 46376/2021, wherein it was held that the registration of an ECIR by the officers of the



Enforcement Directorate cannot be the subject matter of a judicial review under Section 482 of the Cr.P.C.

- d) Reliance is placed on the conclusions in **Vijay Madanlal** and it is urged that in view of the special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code.
- e) ECIR is an internal document of the ED and the fact that FIR 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 the property being proceeds of crime.

7. In response to the contentions advanced by Sri. Jayasankar, Mr. Jethmalani, the learned Senior counsel, submitted that a Bench of the Delhi High Court in the matter of **Harish Fabiani and Ors. v. Enforcement Directorate and Ors.**<sup>3</sup> on identical facts scenario relied on the law laid down in **Vijay Madanlal** (supra), **State of Punjab v. Davindir Pal Singh Bhullar**<sup>4</sup> and the orders passed by the Apex Court in Crl. A. Nos. 391-392/2018 and submitted that there is no impediment in quashing the

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<sup>3</sup> [(2022) SCC OnLine Delhi 3121]

<sup>4</sup> [(2011) 14 SCC 770]



proceedings. It is stated that once the predicate proceedings stand quashed, all consequential steps emanating therefrom will also terminate.

8. I have considered the submissions advanced and have carefully gone through the entire records.

9. In the instant case, it is clear and uncontested that the ECIR was registered in connection to a scheduled offence under Section 420 of the IPC, as detailed in Crime No. 376/2022 at the Valappad Police Station. Further, there is no dispute that the FIR, which led to the registration of the ECIR, stands quashed as per Annexure-A10 judgment dated 15.6.2023, invoking the authority vested under Section 482 of the Cr.P.C. A perusal of Annexure A-10 order would show that this Court considered the report provided by the Deputy Superintendent of Police from the Kodungallur Sub Division, who led the investigation. The report elucidated that the investigating officer had taken the complainant's statement and that he had stated clearly and categorically that he possessed no firsthand knowledge of the facts presented and lacked any evidence to support the allegations. Furthermore, he submitted an affidavit expressing his disinterest in pursuing the case. It was after reckoning all these aspects that the proceedings



stemming from Crime No.376/2022 at the Valappad Police Station were duly quashed.

10. In **Vijay Madanlal** (supra), the Apex Court was called upon to deal with the pleas concerning the validity and interpretation of certain provisions of the PMLA Act, 2002, and the procedure followed by the Enforcement Directorate while enquiring into / investigating offences under the PMLA. In paragraph No. 253 of the judgment, the Apex Court had occasion to observe as under:

Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions





of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now.

11. The Apex Court clarified that only property directly or indirectly arising from a criminal activity connected to a scheduled offence qualifies as "proceeds of crime." Authorities under the 2002 Act are not empowered to act against someone for money laundering based merely on assumptions. The Actions taken by them must stem from a registered crime or an ongoing formal complaint. If a person implicated in a scheduled offence is cleared by a competent court, no money-laundering charges can be made against them or anyone associated with them regarding the property tied to that offence. It was held that the reasoning provided above is based on specific sections of the 2002 Act, namely Section 2(1)(u) coupled with Section 3. If one were to adopt a different interpretation, it would mean misrepresenting or altering the Act's intended meaning, especially the definition of "proceeds of crime" as it currently stands.

12. The Apex Court has also reiterated the conclusions in paragraph No. 467 of the judgment. The relevant portion is 467 (v)(a)(d), wherein it was held as under:



(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.

13. What has been reiterated by the Apex Court is that for the offence of money laundering as defined under Section 3 of the 2002 Act to occur, a person must unlawfully obtain property from specific types of criminal activities, referred to as "scheduled offences." The 'Act' sets clear limits on the Directorate's ability to charge someone with the offence of money laundering. Mere suspicion or hunches that some individual may have perpetrated a scheduled offense is not enough to initiate proceedings for money laundering as defined under the Act. The alleged scheduled offence must first be reported to the police, and it should fructify into an FIR, and it should either be under investigation or awaiting trial. Only with an official



record or a pending case can the authorities then consider charges for money laundering. In the event of the accused not being found guilty of the scheduled offence or if the case against them is quashed by a competent court, then the initiation of the proceeding under the PMLA Act will have to cease.

14. In the case on hand, a perusal of Annexure-A1 ECIR would reveal that the source from which the information material was received is FIR No 376 of 2022. As the FIR stands quashed by this Court, there can be no offense of money laundering against the petitioners or anyone claiming such property being the property linked to stated offense through him. In that view of the matter, I find it difficult to accept the submission of the Central Government Counsel that the ECIR will survive even if the life-giving FIR is no more.

15. In this context , a Division Bench of the Delhi High Court in **Harish Fabiani** (supra) had occasion to observe as under in paragraph 22 of the judgment:

**22.** The Hon'ble Supreme Court has been clear and categorical in its reasoning as evident from the para extracted above. The undeniable sequitur of the above reasoning is that *firstly*, authorities under the PMLA cannot resort to action against any person for money-laundering on an



assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed; *secondly*, the scheduled offence must be registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum; *thirdly*, in the event there is already a registered scheduled offence but the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or quashing of the criminal case of the scheduled offence, there can be no action for money laundering against not only such a person but also any person claiming through him in relation to the property linked to the stated scheduled offence. In other words no action under PMLA can be resorted to unless there is a substratum of a scheduled offence for the same, which substratum should legally exist in the form of a subsisting (not quashed) criminal complaint/inquiry or if it did exist the accused has since been discharged or acquitted by a Court of competent jurisdiction.

16. Holding so, their Lordships proceeded to quash the ECIR in Fabiani.

17. The learned Central Government Counsel has relied on Section 66(2) of the Act, and it was argued that the ECIR is necessary to enable the enforcement authorities to ensure that the appropriate authorities take action on the contraventions that have been found by the ED. I am afraid the said contention cannot be accepted. Section 66 of the Act reads as under:



66. Disclosure of information.—131[(1)] The Director or any other authority specified by him by a general or special order in this behalf may furnish or cause to be furnished to—

(i) any officer, authority or body performing any functions under any law relating to imposition of any tax, duty or cess or to dealings in foreign exchange, or prevention of illicit traffic in the narcotic drugs and psychotropic substances under the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(ii) such other officer, authority or body performing functions under any other law as the Central Government may, if in its opinion it is necessary so to do in the public interest, specify, by notification in the Official Gazette, in this behalf, any information received or obtained by such Director or any other authority, specified by him in the performance of their functions under this Act, as may, in the opinion of the Director or the other authority, so specified by him, be necessary for the purpose of the officer, authority or body specified in clause (i) or clause (ii) to perform his or its functions under that law.

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

18. Section 66(1) of the PMLA prescribes the obligations of the Enforcement Directorate (ED) to provide or facilitate the provision of



pertinent information to designated government entities when such information is deemed essential for the discharge of their functions under relevant legislation. This provision permits information-sharing exclusively with Government Departments mentioned therein. These encompass officers, authorities, or bodies responsible for executing any functions under laws related to the levying of taxes, duties, or cess; those concerned with foreign exchange dealings; or those involved in the Prevention of Illicit Traffic of Narcotic Drugs and Psychotropic Substances as governed by the Narcotic Drugs and Psychotropic Substances Act, 1985. Further, the right of the Government to promulgate a gazette notification, thereby enabling additional Departments to access such information in the public interest, is also reserved. It is crucial to note that even if the ED has disseminated such information to a governmental entity, the receiving agency is mandated to undertake its independent investigation. It would have to critically analyze the received data, evaluate all related case records, and arrive at an informed decision concerning the initiation of relevant proceedings. The disclosure by the Enforcement Directorate would not exempt the notified governmental agencies from undertaking an independent evaluation to ascertain whether the accused has contravened any statutory provisions. The



act of disclosure in and of itself would not categorically render the information as constituting a "scheduled offence." Such information remains in the realm of an accusation and is to be construed as an "assumption" until such time as it is formally registered with the appropriate jurisdictional police or is subjected to an inquiry pursuant to a complaint filed before a competent forum.

19. This aspect was considered in Fabiani (supra), and the law was lucidly explained as under in paragraph No 23 of the judgment.

As regards the contention of the learned ASG for the ED that Section 66 PMLA permits the Respondents to activate any authority by disclosure of a scheduled offence, this Court is of the considered view that an ECIR or a proceeding under the PMLA cannot be triggered merely on that assumption alone, as noticed by the Hon'ble Supreme Court in the para 253 of Vijay Madanlal Choudhary (supra). Section 66(2) which was being pressed by the Respondents for this purpose merely encapsulates the power of the Director or any other authority to disclose/share any information it may have regarding contravention of any other law by a person/entity "for necessary action". The provision itself enables disclosure and sharing of information inter se authorities, however mere disclosure does not crystallize a scheduled offence. It is merely an "assumption" till it precipitates as being "registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum" (per the Hon'ble Supreme Court).



20. Though it was vehemently argued by the learned CGC relying on the law laid down by the Madras High Court in Crl.O.P. No SR 46376 of 2021 that registration of ECIR by the officers of the Enforcement Directorate cannot be subject matter of judicial review, I am not able to agree with the above submission. The Delhi High Court in Harish Fabiani (supra), the Calcutta High Court in **Nik Nish Retail Ltd. and Another v. Assistant Director, Enforcement Directorate, Govt. of India and Ors.**<sup>5</sup> have proceeded to quash the ECIR in view of the cessation of the proceedings which led to the registration of the predicate offense. Furthermore in Crl Appeal Nos 391-392/2018, The Apex Court, after recording the submissions of the Learned Solicitor General that the accused had been acquitted of the predicate offense, had quashed the ECIR.

In view of the discussion above, I am of the considered opinion that the petitioners are entitled to succeed. Annexure-A1 Enforcement Case Information Report numbered ECIR/36/KCZO/2022 dated 6.9.2022, and all further proceedings are quashed. However, it is made clear that in the event of the predicate offence getting revived, it would always be open for the ED

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<sup>5</sup> 2022 SCC Online Cal 4044.





Cri.M.C.No.5167/2023

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to revive the proceedings under the Prevention of Money Laundering Act,  
2002 as well.

Sd/-

**RAJA VIJAYARAGHAVAN V,  
JUDGE**

PS

**APPENDIX OF CRL.MC 5167/2023**

## PETITIONER ANNEXURES

- Annexure A1                    A TRUE COPY OF THE ENFORCEMENT CASE INFORMATION REPORT NUMBERED AS ECIR/36/KCZO/2022 DATED 6/9/2022.
- Annexure A2                    A TRUE COPY OF THE FIR IN CRIME NO. 376 OF 2022 OF VALAPAD POLICE STATION DATED 24/5/2022.
- Annexure A3                    A TRUE COPY OF THE COMPLAINT DATED 11/5/2022 FILED BEFORE THE JUDICIAL FIRST-CLASS MAGISTRATE COURT, KODUNGALLUR.
- Annexure A4                    THE TRUE COPY OF THE JUDGMENT DATED 18/8/2017 OF THIS HONOURABLE COURT IN CRL MC NO. 764 OF 2014.
- Annexure A5                    A TRUE COPY OF THE JUDGEMENT DATED 19/10/2017 IN CRL MC NO. 733 OF 2014 OF THIS HONORABLE COURT.
- Annexure A6                    A TRUE COPY OF THE JUDGMENT IN WPC NO. 12387 OF 2021 DATED 14/2/2023.
- Annexure A7                    A TRUE COPY OF THE REFER REPORT DATED 19/1/2023 SUBMITTED BEFORE THE JUDICIAL FIRST CLASS MAGISTRATE , KODUNGALLUR.
- Annexure A8                    A TRUE COPY OF THE JUDGMENT OF THIS HONOURABLE COURT IN CRL.MC NO. 3429 OF 2023.
- Annexure A9                    A TRUE COPY OF THE ORDER DATED 17/5/2023 IN CRL. MP NO. 548 OF 2023 IN RC NO. 34 OF 2023 IN CRIME NO. 376 OF 2022 OF VALAPAD POLICE STATION, PASSED BY THE JUDICIAL FIRST-CLASS MAGISTRATE COURT, KODUNGALLUR.



Annexure A10 A TRUE COPY OF THE JUDGMENT DATED 15/6/2023  
IN CRL.MC.NO.4436 OF 2022 OF THIS HONOURABLE  
COURT

Annexure A11 A TRUE COPY OF THE JUDGMENT IN WPC NO. 35024  
OF 2019 DATED 8/1/2021.

Annexure A12 A TRUE COPY OF THE INTERIM ORDER DATED  
12/5/2023 IN WPC NO. 15651 OF 2023.

Annexure A13 A TRUE COPY OF THE ORDER MODIFYING THE  
ANNEXURE A 12 INTERIM ORDER DATED 25/5/2023.

RESPONDENT ANNEXURES

Annexure R1(a) A true copy of the communication dated  
06.07.2023 issued by the Directorate of  
Enforcement addressed to the Director General  
of Police.