



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE RAJA VIJAYARAGHAVAN V

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

FRIDAY, THE 5TH DAY OF JUNE 2026 / 15TH JYAISHTA, 1948

WA NO. 1140 OF 2026

AGAINST THE JUDGMENT DATED 26.05.2026 IN WP(C) NO.15757

OF 2024 OF HIGH COURT OF KERALA

APPELLANTS:

- 1 M/S. COCHIN MINERALS AND RUTILE LIMITED
HAVING ITS REGISTERED OFFICE AT P.B. NO. 73, VIII/224,
MARKET ROAD, ALWAYE, ERNAKULAM, KERALA REP. BY CHIEF
GENERAL MANAGER (FINANCE) & COMPANY SECRETARY,
PIN - 683101
- 2 N.C. CHANDRASEKHARAN
SENIOR MANAGER - EDP M/S COCHIN MINERALS & RUTILE
LIMITED, P.B. NO. 73, VIII/224, MARKET ROAD, ALWAYE,
KERALA, PIN - 683101
- 3 ANJU RACHAEL KURUVILA
SENIOR OFFICER - EDP M/S COCHIN MINERALS & RUTILE
LIMITED, P.B. NO. 73, VIII/224, MARKET ROAD, ALWAYE,
KERALA, PIN - 683101
- 4 K.S. SURESH KUMAR
AGED 63 YEARS
CHIEF FINANCIAL OFFICER M/S COCHIN MINERALS & RUTILE
LIMITED, P.B. NO. 73, VIII/224, MARKET ROAD, ALWAYE,
KERALA, PIN - 683101



5 S.N. SASIDHARAN KARTHA
MANAGING DIRECTOR M/S COCHIN MINERALS & RUTILE LIMITED,
P.B. NO. 73, VIII/224, MARKET ROAD, ALWAYE, KERALA, PIN
- 683101

BY ADVS.

SRI. SIDDHARTH LUTHRA,
SRI. ARSHDEEP SINGH KHURANA
SRI. SULAKSHAN V.S.
SRI. KARTIKEYA DANG
SRI. HIMANSHU KASTURI
SMT. SIMRAN KHURANA
SRI. SOMANSH GUPTA
SHRI.M.GOPIKRISHNAN NAMBIAR
SHRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SHRI.PAULOSE C. ABRAHAM
SHRI.RAJA KANNAN
SRI. VIDISHA BAJAJ

RESPONDENT:

DIRECTORATE OF ENFORCEMENT
KOCHI ZONAL OFFICE REP. BY ASSISTANT DIRECTOR KANOOS
CASTLE, MULLASSERY CANAL ROAD WEST, COCHIN,
PIN - 682011

SHRI.A.R.L SUNDARESAN, ADDL.SOLICITOR GENERAL OF INDIA
SHRI. ZOHEB HUSSAIN, SPL. COUNSEL
SRI. JAYASHANKAR V. NAIR, RETAINER COUNSEL, ED.

THIS WRIT APPEAL HAVING COME UP FOR FINAL HEARING ON
05.06.2026, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:



"CR"

J U D G M E N T**Raja Vijayaraghavan V, J.**

In **Vijay Madanlal Choudhary v. Union of India**¹, a Three-Judge Bench of the Apex Court was called upon to consider a wide range of challenges concerning the constitutional validity and interpretation of various provisions of the Prevention of Money Laundering Act, 2002 (for short, 'PMLA'), as well as the procedure adopted by the Enforcement Directorate (for short, 'ED') while inquiring into and investigating offences under the Act.

2. In the aforesaid case, a challenge was mounted against Sections 3, 5, 8, 17, 18, 19, 24, 44, 45, 50 and 63 of the PMLA, the Schedule appended thereto, and the practice adopted by the Enforcement Directorate of registering an Enforcement Case Information Report ("ECIR"). The Apex Court, after undertaking an exhaustive and detailed examination of all the contentions advanced before it, upheld the constitutional validity of the impugned provisions. In the process, the Court authoritatively expounded the scope, ambit, and import of several foundational concepts under the Act, including "proceeds of crime" as defined under Section 2(u), "scheduled offence" as defined under Section 2(y), and the offence of money laundering under Section 3. The Court also closely examined the

¹ [(2023) 12 SCC 1]



statutory framework governing attachment, adjudication, and confiscation under Chapter III of the Act, as well as the powers conferred upon the authorities under Chapter VIII. Particular emphasis was laid on the authority vested in such officials to issue summons, compel the production of documents, and record evidence under Section 50 of the Act.

3. Despite this authoritative and comprehensive pronouncement, the contentions raised in the present petition suggest the controversy persists.

4. In essence, the contention of the appellants is that the registration of an ECIR, in the absence of a crime or complaint registered by a competent jurisdictional authority, is legally unsustainable. According to the petitioner, in the absence of such a foundational proceeding, the Enforcement Directorate lacks the jurisdiction to invoke its powers under the Act, including the power to issue summons requiring a person to produce documents or to appear and give evidence.

5. The learned Single Judge decided the issues raised by the appellants in the writ petition against them by the judgment dated 26.05.2026. Assailing the said judgment, the appellants have preferred this appeal.

6. The case of the petitioners as averred in the Writ Petition can be summarised as follows:



a. The 1st petitioner, M/s. Cochin Minerals and Rutile Limited, ('CMRL' for the sake of brevity) is a Public Limited Company registered with the Registrar of Companies, Ernakulam. Petitioners 2 to 5 are employees of the 1st petitioner Company.

b. On 25.01.2019, the Income Tax Department conducted a search under Section 132 of the Income Tax Act, 1961 (for short, 'the IT Act') at the factory and office premises of the 1st petitioner Company, as well as at the residences of its Managing Director and certain key employees. Pursuant thereto, notices dated 29.11.2019 were issued under Sections 153A and 143A of the IT Act for the Assessment Years 2013–14 to 2019–20.

c. Subsequently, on 06.11.2020, the Company approached the Income Tax Settlement Commission by filing an application under Section 245C of the IT Act. The application culminated in an order dated 12.06.2023 passed by the Interim Board for Settlement under Section 245D(4) of the IT Act. According to the petitioners, by virtue of the said order, the 1st petitioner was granted immunity under Section 245H of the IT Act from prosecution for any offence under the Act relating to the aforesaid assessment years.

d. On 25.09.2023, a complaint was submitted by one Mr. Shone George before the Ministry of Corporate Affairs (for short, "MCA"), seeking an



investigation into the affairs of the 1st petitioner Company under Sections 210(1)(c) and 212 of the Companies Act, 2013. Thereafter, the complainant, Mr. Shone George, approached this Court by filing a Writ Petition seeking a direction to the MCA to conduct an investigation into the affairs of the Company.

e. Subsequently, on 12.01.2024, the MCA passed an order under Section 210(1)(c) of the Companies Act, 2013, appointing three Inspectors under Section 210(3) of the Act to investigate into the affairs of the 1st petitioner Company and to submit a report to the Central Government.

f. Thereafter, on 31.01.2024, the MCA passed an order under Sections 212(1)(a) and 212(1)(c) of the Companies Act, 2013, entrusting the investigation into the affairs of the Company to the Serious Fraud Investigation Office (for short, "SFIO"). On the very same day, the SFIO issued an order under Sections 212(1) and 212(4) of the Companies Act, 2013, appointing Inspectors and Investigating Officers to carry out the investigation. They were directed to complete the investigation within a period of eight months and submit their report to the Central Government.

g. According to the petitioners, in view of the finality attached to the settlement proceedings under Section 245-I of the IT Act, no further



proceedings could have been initiated on the basis of matters that stood concluded by the Settlement Commission proceedings.

h. While matters stood thus, it was reported in the media on 27.03.2024 that the respondent had registered a case under the provisions of the PMLA in relation to M/s Exalogic Solutions Private Limited, one of the entities that was also under investigation by the SFIO.

i. Thereafter, on 08.04.2024, petitioners 2 to 5 were served with separate summonses issued by the respondent. The summonses required petitioners 2 and 5 to appear in person before the respondent on different dates. The petitioners contend that they were kept completely uninformed regarding the nature of the allegations against them and that no details whatsoever were furnished concerning the case under inquiry, the materials relied upon, or the documents and information allegedly available with the respondent.

j. According to the petitioners, the summonses referred to an "ECIR". However, neither the summonses nor the ECIR disclosed the nature of inquiry, the allegations under investigation, or the basis on which the proceedings had been initiated. The petitioners further contend that the details of the scheduled offence, which constitute the jurisdictional



foundation for the initiation of proceedings under the PMLA, were conspicuously absent from the summonses.

k. In the aforesaid circumstances, the petitioners submitted a reply to the respondent, contending that the proceedings initiated under the PMLA were without jurisdiction and requesting copies of the ECIR, particulars of the scheduled offence, and details of the allegations of money laundering. In response, the respondent, by e-mail, declined to furnish the information sought and merely reiterated the direction requiring the petitioners to appear on the dates specified in the summonses.

7. It is in the above factual backdrop that the Writ Petition came to be filed seeking the following reliefs:

- A. Call for the records leading to the investigation being carried out in ECIR/KCZO/11/2024 by the Respondent under the provisions of Prevention of Money Laundering Act, 2002 and to quash ECIR/KCZO/11/2024 and all investigations and proceedings emanating therefrom by the issuance of a writ of certiorari or such other writ, order or direction;
- B. Call for the records leading to issuance of Exhibits P-6 to P-9 Summons dated 08.04.2024 and Exhibit P-11 email dated 11.04.2024 by the Respondent and quash the same by the issuance of a writ of certiorari or such other writ, order or direction;
- C. Writ of Mandamus or any other writ, order or direction, directing the respondent to comply with the request made by the Petitioner company in Exhibit P-10 email dated 10.04.2024.



8. In the counter affidavit filed by the respondent, the following contentions were raised.

a. The petition is premature and, therefore, not maintainable. According to the respondent, an ECIR is not a statutory document but merely an internal record maintained by the Directorate of Enforcement, and consequently, it is neither amenable to challenge nor liable to be quashed. It was further contended that a person who has merely been issued a summons cannot, at that stage, be regarded as an aggrieved person so as to invoke the writ jurisdiction of this Court.

b. The Income Tax Department, Cochin, had conducted searches under Section 132 of the Income Tax Act, 1961, on 25.01.2019 in the case of CMRL, a publicly listed company incorporated on 18.08.1989. According to the respondent, Sri S.N. Sasidharan Kartha is the Managing Director of the Company and Sri Mathew M. Cherian is one of its promoters. It was stated that the Kerala State Industrial Development Corporation (KSIDC) holds approximately 13% of the Company's shareholding, while public shareholders hold about 48.75%. The search operations covered, inter alia, the residential premises of the Managing Director and the Chief Financial Officer of the Company, Sri. S. Suresh Kumar. According to the findings



allegedly unearthed during the search, the Company had inflated its expenditure by booking fictitious cash expenses under the heads of transportation and sludge handling, aggregating to ₹133.82 crores during the financial years 2012–13 to 2018–19. It was concluded by the IT Department that such inflated expenditure enabled the generation of unaccounted cash, which was subsequently utilised for making illegal payments to politicians, political parties, media houses and public servants.

c. The statements recorded before the Income Tax Authorities from the Chief Financial Officer and the Managing Director disclosed that such payments had been made to ensure the smooth functioning of the Company's business operations in the face of perceived threats of closure and environmental challenges. It was also alleged that the Company had booked fictitious expenditure amounting to ₹1.72 crores towards software services purportedly rendered by Smt. Veena Vijayan and M/s. Exalogic Solutions Private Limited, despite no services having actually been rendered.

d. The respondent relied upon certain loose sheets allegedly seized from the residence of Sri S. Suresh Kumar, Chief Financial Officer of the Company, during the search proceedings, as well as statements recorded from him under Section 132(4) of the Income Tax Act and statements recorded from the Managing Director under the same provision. According to



the respondent, these materials substantiate the allegations regarding the aforesaid illegal payments.

e. Subsequent to the searches conducted on 25.01.2019, the Income Tax Department quantified the total of such bogus expenditure allegedly utilized for cash payments at ₹135.54 crores for Assessment Years 2013-14 to 2019-20, i.e. Financial Years 2012-13 to 2018-19. CMRL approached the Income Tax Settlement Commission and quantified the inflated expenses at ₹134.27 crores. They claimed that the payment of ₹1.72 crores towards software services was a genuine payment. Further, out of the ₹134.27 crores, quantified by the Company herein as inflated expenses, CMRL pleaded that a sum of ₹73.38 crores be allowed as eligible expenses incurred for business purposes and offered the balance amount of ₹57.78 crores as additional income. The Settlement Commission by order dated 12.06.2023 upheld the findings of the Income Tax Department with respect to inflation of expenses, generation of cash for illegal payments, and fictitious payment of ₹1.72 crores to Smt. Veena Vijayan and her company M/s. Exalogic Solutions Pvt. Ltd. without rendering of services. However, the Interim Board for Settlement, as part of settlement, allowed 70% of the amount of ₹73.38 crores claimed as eligible expenditure and disallowed the remaining 30% thereof.



f. Since M/s. Cochin Minerals and Rutile Limited is a publicly listed company in which a substantial portion of the shareholding is held by public investors and KSIDC, the alleged diversion of company funds through illegal payments, including payments allegedly made without any legitimate business nexus to M/s. Exalogic Solutions Private Limited and others, resulted in financial loss to the shareholders. According to the respondent, such diversion diminished the profits available for distribution to the shareholders and amounted to dishonest or fraudulent removal and concealment of company funds, attracting Section 447 of the Companies Act, 2013, the same being a scheduled offence.

g. The shareholders of the Company are victims of offences involving cheating, criminal conspiracy, and dishonest or fraudulent removal or concealment of property, allegedly committed by the Company and its Directors. According to the respondent, such acts disclose cognizable offences under the various provisions of the Indian Penal Code, 1860.

h. Pursuant to the order of the Ministry of Corporate Affairs dated 12.01.2024 under Section 210(1)(c) of the Companies Act, an investigation was initiated, which was subsequently followed by an order under Section 212 entrusting the investigation to the Serious Fraud Investigation Office (SFIO).



i. The above criminal acts resulted in the generation of “proceeds of crime” in the hands of the recipients, including M/s. Exalogic Solutions Private Limited and others, through the commission of scheduled offences, and that such aspects were the subject matter of inquiry and investigation by the Directorate of Enforcement under the PMLA. The respondent also stated that a reference under Section 66(2) of the PMLA had been forwarded to the Kerala Police for registration of a criminal case in respect of offences punishable under Sections 120B, 411, 420, 421 and 424 of the Indian Penal Code, 1860.

j. It was contended that an inquiry under the PMLA can validly commence even before the registration of a First Information Report in respect of the scheduled offence and that the absence of such an FIR does not preclude the authorities referred to in Section 48 of the PMLA from initiating or proceeding with an inquiry. According to the respondent, the powers conferred upon the authorities under the PMLA are sufficiently broad to enable them to undertake preliminary inquiries and collect information relating to suspected money-laundering activities, independent of the formal registration of a criminal case for the scheduled offence.

k. The respondent further contended that the petitioners' reliance on the immunity granted under the provisions of the IT Act is wholly



misconceived. It was submitted that the second proviso to Section 245H of the IT Act expressly stipulates that, on and after 01.06.2007, the Income Tax Settlement Commission has no jurisdiction to grant immunity in respect of offences punishable under the Indian Penal Code or under any Central enactment other than the Income Tax Act, 1961 and the Wealth Tax Act, 1957. Consequently, any immunity granted in settlement proceedings under the Income Tax Act cannot operate as a bar against proceedings initiated under the PMLA or in respect of any other independent statutory offence.

I. The respondent also contended that a person summoned under Section 50 of the PMLA is under a statutory obligation to comply with such summons. By virtue of sub-section (3) of Section 50 of the PMLA, every person so summoned is bound to attend, either in person or through an authorised agent, as directed, and is further obliged to state the truth on any matter concerning which he is examined or required to make a statement. Such person is also bound to produce such records or documents as may be called for by the authority conducting the inquiry. According to the respondent, the issuance of the impugned summons was, therefore, well within the scope of the statutory powers conferred under the Act.

9. The learned Single Judge, after careful evaluation of the facts and circumstances, came to the conclusion that the Writ Petition was not maintainable



at the stage of issuance of summons. To come to the said conclusion, profuse reliance was placed on the observations made by a learned Single Judge of this Court in **C.M.Raveendran v. Union of India**². The learned Single Judge rejected the contention that the immunity granted under the IT Act would not entitle the petitioners to claim immunity from proceedings under the PMLA. For arriving at the said conclusion, the learned Single Judge noticed the second proviso to Section 245H(1) of the IT Act. Relying on the law laid down in **Vijay Madanlal** (supra) and specifically to paragraph No. 382.26, it was held that non-recording of an FIR regarding a scheduled offence will not impede the commencement of an inquiry/investigation for initiating civil action or provisional attachment of property, being proceeds of crime by the authorities referred to in Section 48 of the PMLA. It was also observed by the learned Single Judge that the existence of an FIR involving a scheduled offence is not a precondition for issuing summons under Section 50 of the PMLA. After the Writ Petition was heard and the same was reserved for judgment, an affidavit was filed by the respondent stating that they have received information that the SFIO had filed a complaint on 03.04.2025, alleging commission of offences under the Companies Act, 2013, and the charges referred therein, which include offence under Section 447 of the Companies Act, constitutes scheduled offences under the PMLA. The learned Single Judge took the view that subsequent events can also be looked into and went on to hold that the

² [2020 SCC OnLine Ker. 7555]



foundation of the argument of the petitioners that the summons had been issued without any scheduled offence disappeared. Holding so, the Writ Petition was dismissed.

10. Sri Siddharth Luthra, the learned Senior Counsel, as instructed by Sri Arshdeep Singh Khurana, the learned counsel, advanced the following submissions:

a. The learned Senior Counsel submitted that the case of the appellant was that the very registration of ECIR was without jurisdiction. According to the learned counsel, the ECIR would constitute the very foundation and genesis of proceedings initiated by the ED under the PMLA. Only if there exists a scheduled offence, the ED would have the jurisdictional authority to exercise powers under the provisions of the PMLA including the registration of the ECIR, the issuance of summons under Section 50 of the PMLA or any other consequential action. Reliance was placed on **Ankur Agarwal v. Directorate of Enforcement³ and Carona Ltd. v. Parvathy Swaminathan & Sons⁴** to bolster his submissions.

b. It is submitted that the Apex Court in **Vijay Madanlal** (supra) has emphatically held that an investigation by the ED under the PMLA must necessarily be premised on a valid FIR/complaint registered by a competent

³ [2025:AHC-LKO:11128]

⁴ [(2007) 8 SCC 559]



investigating agency in respect of a scheduled offence under the PMLA. It is only when the above jurisdictional facts exist that the respondent would have jurisdiction to investigate whether the proceeds of the crime have been laundered. In the absence of such a condition precedent, the continuance of the proceeding is illegal and without jurisdiction. According to the learned counsel, at the time of registration of the ECIR and issuance of summons, there was admittedly no complaint, consequential FIR or cognizance by any competent court in relation to any alleged scheduled offence. As the proceedings including the summons and investigation are initiated without jurisdiction, the same are liable to be quashed. Reliance was placed on the law laid down in **Radha Krishnan Industries v. State of Himachal Pradesh**⁵ to support his submissions.

c. There being no foundational fact for registration of an ECIR, if the Enforcement Directorate was permitted to invoke its powers under the PMLA and forced the appellants to undergo an inherently illegal investigation, it would result in manifest injustice. Reliance is placed on **South Indian Bank Ltd v. Directorate of Enforcement and State of Punjab v. Davinder Pal Singh**⁶ to emphasise his point.

⁵ [2021] 6 SCC 771]

⁶ [2024:KER:53873]



d. It is forcefully urged that the learned Single Judge has erred in dismissing the Writ Petition as premature on the ground that the challenge was only against the summons issued under the PMLA. It is submitted that the very registration of the ECIR itself was wholly without jurisdiction and that being the case, the same was amenable to judicial review and liable to be quashed.

e. Even assuming that the ED followed the directives in **Vijay Madanlal** (supra) and initiated emergent action under the second proviso to Section 5(1) of the PMLA, the same has to be accompanied by contemporaneous information sent to the jurisdictional authority for the registration of a predicate offence under Section 66(2) of the PMLA. In the case on hand, no documents have been placed on record to establish that such an exercise was carried out. Even otherwise, the information under Section 66(2) of the PMLA was sent after the lapse of more than three weeks from the registration of the ECIR. Furthermore, the respondent has not followed the initiation of proceedings under Section 5(1) with the attachment of the properties in terms of the second proviso to Section 5(1) of the PMLA.

f. It is submitted that the settlement commission under the IT Act invoked powers under Section 245D and if that be the case, in view of Section 245 I of the Income Tax Act, the order passed under Section 245D is



conclusive in nature and no matter covered therein can be reopened in any other proceedings under any other law for the time being in force. This aspect of the matter was not properly appreciated by the learned Single Judge.

g. It is submitted that the learned Single Judge has seriously erred in relying upon the additional affidavits dated 21.05.2025 and 03.06.2025 filed by the respondent much after the Writ Petition was reserved for judgment. No opportunity was granted to the appellants to file a response on the merits or to address submissions on the merits of the subsequent developments. It is submitted that if such an opportunity was granted, the appellants could have placed on record the proceedings pending before the High Court of Delhi in W.P.(Crl) No.1188 of 2024 wherein the appellants herein had challenged the very initiation of investigation by the SFIO including the orders dated 12.01.2024 and 31.01.2024 passed by the Ministry of Corporate Affairs under various provisions of the Companies Act. It is submitted that the learned Single Judge of the Delhi High Court had directed the SFIO not to proceed with the investigation report/complaint filed in the SFIO proceedings during the pendency of the proceedings. To support his submissions reliance is placed on **Mohinder Singh Gill v. Chief Election Commissioner**⁷.

⁷ [(1978) 1 SCC 405]



11. Sri. A.R.L Sundaresan, the learned Additional Solicitor General of India and Sri. Zoheb Hussain, the learned Special Counsel, opposed the submissions advanced by the learned Senior Counsel and they urged that the learned Single Judge had evaluated the entire facts in its proper perspective and had taken note of the observations of the Hon'ble Supreme Court in **Vijay Madanlal** (supra) while dismissing the petition as one without merits. The following submissions were made:

a. It is submitted that a perusal of the reliefs sought for in the writ petition would reveal that the challenge is mounted against the ECIR which was registered on 4.03.2024 by the ED and also Exhibit P6 to P9 summons issued under Section 50 of the PMLA to the officers of the Company to appear. According to the learned counsel, an ECIR is merely an internal document as settled in **Vijay Madanlal** (supra) and the registration of the same would not make the persons arrayed therein as an accused or entail them to face prosecution under the Act.

b. It is submitted that if valid information is received, the ED can commence an inquiry after registration of the ECIR and the fact that an FIR has not been registered involving a scheduled offence will not come in the way of the authorities mentioned in Section 48 to commence the enquiry. It is submitted that only for initiation of prosecution under Section 3 of the Act



is the registration of scheduled offence a prerequisite. In the instant case only an enquiry has been initiated after registration of an ECIR and the same has not culminated in the lodging of a complaint under Section 44 of the PMLA.

c. It is urged that the order passed by the Settlement Commission under Section 245D(4) of the IT Act cannot stand in the way of initiation of any action under the PMLA Act in view of the 2nd proviso to Section 245H. It is submitted that the said order will only enable the appellant to claim immunity under the IT Act and the Wealth Tax Act.

d. It is urged that CMRL is a publicly listed company in which 48.75 % shares are held by the general public and 13.41 % shares are held by KSIDC, a public sector undertaking. It has come out from the initiation of proceedings under the IT Act and the Companies Act that funds were diverted by CMRL to M/s. Exalogic through illegal payments without any business relationship whatsoever thereby causing loss to the public shareholders and KSIDC. It is submitted that by funnelling out funds by such devious methods and by depriving the shareholders of what they were entitled to, CMRL had committed the offence of cheating and other related offences. This diversion of funds led to the generation of proceeds of crime by M/s. Exalogic by way of commission of scheduled offences which is



presently under inquiry by the ED under the provisions of the PMLA. It is further submitted that immediately after registration of the ECIR, as contemplated under the statute, information was forwarded to the Kerala Police under Section 66(2) of the PMLA for registration of the crime. It is submitted that such a course was followed by the ED to conduct a prompt enquiry and to secure the proceeds of the crime, if, based on the enquiry, the allegations were found to be genuine.

e. It is further submitted that commencement of the investigation by the SFIO on the basis of directions issued by the MCA will not in any way interdict the ED from initiating inquiry under the Act. Reliance was placed on Section 71 of the PMLA to bring home the point that the provisions of the Act have an overriding effect over other laws.

f. It is submitted that the summonses were issued to the appellants to furnish details of agreements entered into between M/s. Exalogic and CMRL, copies of invoices issued by M/s. Exalogic to CMRL against the services rendered and the Ledger Account containing transactions between CMRL and M/s. Exalogic. According to the learned counsel, a person summoned to give evidence under Section 50(2) of the PMLA is bound to attend in person and state the truth upon any subject concerning which he is being examined or is expected to make a statement. According to the learned counsel, at the



stage of issuance of summons, the summonee does not assume the character of an accused.

12. We have carefully considered the submissions advanced by both sides and have gone through the entire record.

13. We find from the records that it was on 25.01.2019 that a search was conducted under Section 132 of the IT Act at the office and factory of CMRL and residential premises of the principal officers. Pursuant to the search, on 29.11.2019, notices were issued under Section 153A and Section 143(2) of the IT Act for the Assessment Years 2013–14 to 2019–20. While so, on 06.11.2020, an application was filed under Section 245C of the IT Act before the Settlement Commission. The Interim Board for Settlement passed an order under Section 245D(4) of the IT Act, granting immunity from prosecution for offences under the IT Act. However, the Settlement Commission upheld the findings of the Income Tax Department with respect to inflation of expenses, generation of cash for illegal payments, and fictitious payment of ₹1.72 crores to Smt. Veena Vijayan and her company M/s. Exalogic Solutions Pvt. Ltd. without rendering of services. As part of the settlement, the Settlement Commission allowed 70% of the amount of ₹73.38 crores claimed as eligible expense and disallowed the balance 30% of the claim. On 25.09.2023, a complaint was lodged by a certain Mr. Shone George against CMRL with the MCA, seeking an investigation in the affairs of the Company under Section



210(1)(c) and 212 of the Companies Act. Pursuant to directions issued by this Court in a W.P.(C) No. 42092 of 2023, the MCA passed an order on 12.01.2024, ordering that the affairs of CMRL are to be investigated and three Inspectors were appointed under Section 210(3) of the Companies Act. Immediately thereafter, on 31.01.2024, the MCA passed an order under Section 212(1)(a) and (c) of the Companies Act, assigning the investigation to be conducted by the SFIO. On the basis of the said order, the SFIO issued an order on 31.01.2024 under Section 212(1) and 212(4) of the Companies Act, 2013 appointing Inspectors and Investigating Officers to carry out an investigation and to conclude the same within a period of eight months. It was thereafter that on 08.04.2024, the summons dated 08.04.2024 were issued by the ED, requiring the officers to personally appear on 11.04.2024 and 15.04.2024.

14. A copy of the summons issued to the principal employees has been produced before this Court as Exts.P6 to P9. In the said summons, it is mentioned that the Assistant Director, Enforcement Directorate, was issuing the same, invoking his powers under sub-sections (2) and (3) of Section 50 of the PMLA. It is also stated that the said officer was making an investigation under the PMLA. In the summons, it has been mentioned that the person summoned shall appear to give evidence and to produce records as indicated in the annexure in connection with



the investigation or proceedings under the PMLA. The documents which were called from Sri K.S. Suresh Kumar and Sri S.N Sasidharan Kartha are the following:

- (i) Details of the entities you & your family members are associated with.
- (ii) List of the bank accounts maintained by M/s. Cochin Minerals and Rutile Limited, Kerala, since inception to till date.
- (iii) Audited Balance Sheets of M/s. Cochin Minerals and Rutile Limited, Kerala from FY 2013 - 2014 onwards.
- (iv) Documents related to Income Tax Assessment of M/s. Cochin Minerals and Rutile Limited Kerala
- (v) Copies of all agreements entered between M/s. Cochin Minerals and Rutile Limited, Kerala and M/s. Exalogic Solutions Private Limited / Smt. Veena Thaikkandiyil.
- (vi) Copies of all invoices issued by M/s. Exalogic Solutions Private Limited, Kerala / Smt. Veena Thaikkandiyil to M/s. Cochin Minerals and Rutile Limited, Kerala against the services rendered.
- (vii) Ledger Account containing the transactions between M/s. Cochin Minerals and Rutile Limited, Kerala & M/s. Exalogic Solutions Private Limited, Kerala / Smt. Veena Thaikkandiyil.

15. In the Writ Petition, the prayer sought for was to quash the ECIR/KCZO/11/2024 as well as the summons.



16. The contentions advanced before us thus raise three distinct questions:

- a) The legal nature and status of the ECIR vis-a-vis an FIR under the Code of Criminal Procedure, 1973 and whether it can be quashed;
- b) Whether the power of inquiry under Section 50 of the PMLA can be exercised without a prior FIR or complaint involving a scheduled offence?
- c) Whether the initiation of civil action under Section 5 or Section 50 of the PMLA requires the prior registration of a scheduled offence?

17. The first question that requires a comprehensive answer is with regard to the registration of the ECIR. It appears that despite the authoritative pronouncement of the Apex Court with regard to the legal nature of the ECIR, some confusion still persists. As is evident from the prayers sought in this writ petition, the main relief sought is to quash the ECIR. To answer the said issue, we shall refer to the relevant portions of the judgment in **Vijay Madanlal** (supra) where the Apex Court had explained the subtle distinction between an ECIR and an FIR. Paragraphs 366 to 372 of the judgment are of relevance:

366. As per the procedure prescribed by the 1973 Code, the officer in-charge of a police station is under an obligation to record the information relating to the commission of a cognizable offence, in terms of Section 154



of the 1973 Code [Lalita Kumari v. State of U.P., (2014) 2 SCC 1]. There is no corresponding provision in the 2002 Act requiring registration of offence of money laundering. As noticed earlier, the mechanism for proceeding against the property being proceeds of crime predicated in the 2002 Act is a sui generis procedure. No comparison can be drawn between the mechanism regarding prevention, investigation or trial in connection with the scheduled offence governed by the provisions of the 1973 Code.

367. In the scheme of the 2002 Act upon identification of existence of property being proceeds of crime, the authority under this Act is expected to inquire into relevant aspects in relation to such property and take measures as may be necessary and specified in the 2002 Act including to attach the property for being dealt with as per the provisions of the 2002 Act. We have elaborately adverted to the procedure to be followed by the authorities for such attachment of the property being proceeds of crime and the follow-up steps of confiscation upon confirmation of the provisional attachment order by the adjudicating authority. For facilitating the adjudicating authority to confirm the provisional attachment order and direct confiscation, the authorities under the 2002 Act (i.e. Section 48) are expected to make an inquiry and investigate. Incidentally, when sufficient credible information is gathered by the authorities during such inquiry/investigation indicative of involvement of any person in any process or activity connected with the proceeds of crime, it is open to such authorities to file a formal complaint before the Special Court naming the person concerned for offence of money laundering under Section 3 of this Act.

368. Considering the scheme of the 2002 Act, though the offence of money laundering is otherwise regarded as cognizable offence (cognizance whereof can be taken only by the authorities referred to in Section 48 of this Act and not by jurisdictional police) and punishable under Section 4 of the 2002 Act, special complaint procedure is prescribed by law. This procedure overrides the procedure prescribed under the 1973 Code to deal with other offences (other than money laundering offences) in the matter of registration of offence and inquiry/investigation thereof. This special procedure must



prevail in terms of Section 71 of the 2002 Act and also keeping in mind Section 65 of the same Act. In other words, the offence of money laundering cannot be registered by the jurisdictional police who is governed by the regime under Chapter XII of the 1973 Code. The provisions of Chapter XII of the 1973 Code do not apply in all respects to deal with information derived relating to commission of money laundering offence much less investigation thereof. The dispensation regarding prevention of money laundering, attachment of proceeds of crime and inquiry/investigation of offence of money laundering up to filing of the complaint in respect of offence under Section 3 of the 2002 Act is fully governed by the provisions of the 2002 Act itself. To wit, regarding survey, searches, seizures, issuing summons, recording of statements of persons concerned and calling upon production of documents, inquiry/investigation, arrest of persons involved in the offence of money laundering including bail and attachment, confiscation and vesting of property being proceeds of crime. Indeed, after arrest, the manner of dealing with such offender involved in offence of money laundering would then be governed by the provisions of the 1973 Code — as there are no inconsistent provisions in the 2002 Act in regard to production of the arrested person before the jurisdictional Magistrate within twenty-four hours and also filing of the complaint before the Special Court within the statutory period prescribed in the 1973 Code for filing of police report, if not released on bail before expiry thereof.

369. Suffice it to observe that being a special legislation providing for special mechanism regarding inquiry/investigation of offence of money laundering, analogy cannot be drawn from the provisions of the 1973 Code, in regard to registration of offence of money laundering and more so being a complaint procedure prescribed under the 2002 Act. Further, the authorities referred to in Section 48 of the 2002 Act alone are competent to file such complaint. It is a different matter that the materials/evidence collected by the same authorities for the purpose of civil action of attachment of proceeds of crime and confiscation thereof may be used to prosecute the person involved in the process or activity connected with the proceeds of crime for offence of money laundering. Considering the mechanism of



inquiry/investigation for proceeding against the property (being proceeds of crime) under this Act by way of civil action (attachment and confiscation), there is no need to formally register an ECIR, unlike registration of an FIR by the jurisdictional police in respect of cognizable offence under the ordinary law.

370. There is force in the stand taken by the ED that ECIR is an internal document created by the department before initiating penal action or prosecution against the person involved with process or activity connected with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in the 2002 Act requiring authority referred to in Section 48 to record ECIR or to furnish copy thereof to the accused unlike Section 154 of the 1973 Code. The fact that such ECIR has not been recorded, does not come in the way of the authorities referred to in Section 48 of the 2002 Act to commence inquiry/investigation for initiating civil action of attachment of property being proceeds of crime by following prescribed procedure in that regard.

371. The next issue is : Whether it is necessary to furnish copy of ECIR to the person concerned apprehending arrest or at least after his arrest? Section 19(1) of the 2002 Act postulates that after arrest, as soon as may be, the person should be informed about the grounds for such arrest. This stipulation is compliant with the mandate of Article 22(1) of the Constitution. Being a special legislation and considering the complexity of the inquiry/investigation both for the purposes of initiating civil action as well as prosecution, non-supply of ECIR in a given case cannot be faulted. The ECIR may contain details of the material in possession of the authority and recording satisfaction of reason to believe that the person is guilty of money laundering offence, if revealed before the inquiry/investigation required to proceed against the property being proceeds of crime including to the person involved in the process or activity connected therewith, may have deleterious impact on the final outcome of the inquiry/investigation. So long as the person has been informed about grounds of his arrest that is sufficient compliance of mandate of Article 22(1) of the Constitution. Moreover, the



arrested person before being produced before the Special Court within twenty-four hours or for that purposes of remand on each occasion, the court is free to look into the relevant records made available by the authority about the involvement of the arrested person in the offence of money laundering. In any case, upon filing of the complaint before the statutory period provided in the 1973 Code, after arrest, the person would get all relevant materials forming part of the complaint filed by the authority under Section 44(1)(b) of the 2002 Act before the Special Court.

372. Viewed thus, supply of ECIR in every case to the person concerned is not mandatory. From the submissions made across the Bar, it is noticed that in some cases ED has furnished copy of ECIR to the person before filing of the complaint. That does not mean that in every case same procedure must be followed. It is enough, if ED at the time of arrest, contemporaneously discloses the grounds of such arrest to such person. Suffice it to observe that ECIR cannot be equated with an FIR which is mandatorily required to be recorded and supplied to the accused as per the provisions of the 1973 Code. Revealing a copy of an ECIR, if made mandatory, may defeat the purpose sought to be achieved by the 2002 Act including frustrating the attachment of property (proceeds of crime). Non-supply of ECIR, which is essentially an internal document of ED, cannot be cited as violation of constitutional right. Concededly, the person arrested, in terms of Section 19 of the 2002 Act, is contemporaneously made aware about the grounds of his arrest. This is compliant with the mandate of Article 22(1) of the Constitution. (emphasis supplied by us)

18. The Hon'ble Supreme Court drew a distinction between an ECIR and an FIR. It was observed that an FIR under Section 154 of the Cr.P.C. is a creature of statute. The officer in charge of a police station has a mandatory, non-discretionary obligation to record information regarding the commission of a cognizable offence.



There is no corresponding provision in the PMLA, requiring registration of offence of money laundering. The Hon'ble Court held that no comparison can be drawn between the mechanism regarding prevention, investigation or trial in connection with the scheduled offence, while testing it against the provisions of the Cr.P.C.. It was also pointed out that, in the scheme of the PMLA, upon identification of existence of property, being the proceeds of crime, the authority under the Act is expected to inquire into the relevant aspects in relation to such property and take measures as may be necessary including the attachment of the property for being dealt with as per the provisions of the PMLA. For facilitating the adjudicating authority to confirm the provisional attachment, order and direct confiscation, the authorities mentioned in Section 48 are expected to conduct inquiry and investigation. When sufficient credible information is gathered during such inquiry/investigation, indicative of the involvement of any person in any process or activity connected with the proceeds of crime, it would be open to such authorities to file a formal complaint before the Special Court, naming the person concerned for the offence of money laundering under Section 3 of the PMLA. It was also held that an ECIR is nothing but an internal document, created by the Department before initiating penal action or prosecution proceedings against the person involved with process or activity, connected with proceeds of crime. More importantly, it was held that the fact that such ECIR has not been registered shall not come in the way of the authorities referred to in Section 48 of the PMLA to commence



inquiry/investigation for initiating civil action of attachment, being proceeds of crime by following the prescribed procedure. In plain and simple words, the ECIR is not a statutory document, and there is no provision in the PMLA, requiring the authority mentioned in Section 48 to record ECIR or to furnish copy thereof to the accused, as in the case of Section 154 of the Cr.P.C. As far as furnishing the copy of the ECIR is concerned, it was observed that the ECIR may contain sensitive operational details about the material in the ED's possession, disclosure of which could jeopardize the investigation and frustrate the attachment of proceeds of crime. Taking note of the above, the Apex Court has held that supply of a copy of the ECIR would defeat the purpose sought to be achieved by the PMLA. The Apex Court has also pithily observed that Section 19(1) of the PMLA, which requires that the arrested person be informed of the grounds of arrest "as soon as may be" is the only constitutionally mandated disclosure, and this satisfies the requirements of Article 22(1). The Court further held that not only is the ECIR a non-statutory document, but even the non-registration of an ECIR does not impede the commencement of inquiry or civil action. If the existence of an ECIR is not a legal prerequisite for ED action, it follows that the quashing of an ECIR is not a remedy that would have any operative legal consequence. The prayer to quash the ECIR was, therefore, misconceived and cannot be granted.



19. Having held that the ECIR is a non-statutory internal document whose registration is not mandated by the PMLA, it becomes necessary to address the broader question of whether the initiation of inquiry under Section 50 requires a prior registered crime or complaint involving a scheduled offence. This requires an examination of how the PMLA conceptually distinguishes between inquiry, investigation, and prosecution, and its relationship between the civil and penal limbs of the Act. Such an exercise is required as the contention of the appellant is that the commencement of inquiry or investigation for proceeding even under Section 50 of the PMLA, by the authorised officer, requires the registration of a crime/complaint for a predicate offence. In paragraph No. 100 of the **Vijay Madanlal** (supra), the Apex Court had occasion to explain the meaning of “investigation” occurring in clause (na) of Section 2(1) of the PMLA. It was observed as under:

100. We would now elaborate upon the meaning of “investigation” in clause (na) of Section 2(1). It includes all proceedings under the Act conducted by the Director or an authority authorised by the Central Government under this Act for collection of evidence. The expression “all the proceedings under this Act” unquestionably refers to the action of attachment, adjudication and confiscation, as well as actions undertaken by the designated authorities mentioned in Chapter VIII PMLA, under Chapter V PMLA, and for facilitating the adjudication by the adjudicating authority referred to in Chapter III to adjudicate the matters in issue, including until the filing of the complaint by the authority authorised in that behalf before the Special Courts constituted under Chapter VII PMLA. The expression “proceedings”, therefore, need not be given a narrow meaning only to limit it to proceedings before the court or before the adjudicating authority as is contended but must be understood



contextually. This is reinforced from the scheme of the Act as it recognises that the statement recorded by the Director in the course of inquiry, to be deemed to be judicial proceedings in terms of Section 50(4) of the 2002 Act.

Further in Paragraph Nos. 102 and 103, it was observed as under:

102. The task of the Director or an authority authorised by the Central Government under the 2002 Act for the collection of evidence is the intrinsic process of adjudication proceedings. In that, the evidence collected by the authorities is placed before the adjudicating authority for determination of the issue as to whether the provisional attachment order issued under Section 5 deserves to be confirmed and to direct confiscation of the property in question. The expression "investigation", therefore, must be regarded as interchangeable with the function of "inquiry" to be undertaken by the authorities for submitting such evidence before the adjudicating authority.

103. In other words, merely because the expression used is "investigation" — which is similar to the one noted in Section 2(h) of the 1973 Code, it does not limit itself to matter of investigation concerning the offence under the Act and Section 3 in particular. It is a different matter that the material collected during the inquiry by the authorities is utilised to bolster the allegation in the complaint to be filed against the person from whom the property has been recovered, being the proceeds of crime. Further, the expression "investigation" used in the 2002 Act is interchangeable with the function of "inquiry" to be undertaken by the authorities under the Act, including collection of evidence for being presented to the adjudicating authority for its consideration for confirmation of provisional attachment order. We need to keep in mind that the expanse of the provisions of the 2002 Act is of prevention of money laundering, attachment of proceeds of crime, adjudication and confiscation thereof, including vesting of it in the Central Government and also setting up of agency and mechanism for coordinating measures for combating money laundering. (emphasis supplied)



20. The Hon'ble Supreme Court held that merely because the expression "investigation" is used in the PMLA for various actions carried out by the authorised officer, it does not limit itself to matters of "investigation" as defined in Section 2(h) of the Cr.P.C. It was held that the expression "investigation" is interchangeable with the function of "inquiry" to be undertaken by the authorities under the PMLA, including collection of evidence for being presented to the adjudicating authority for its consideration and for confirmation of provisional attachment order. It was also held in paragraph No. 194 of **Vijay Madanlal** (supra) that the provisions of the PMLA are not only to investigate into the offence of money laundering, but more importantly, to prevent money laundering and to provide for confiscation of property related to money laundering and matters connected therewith and incidental thereto.

21. The Hon'ble Court has held that the PMLA is a comprehensive legislation, which is not limited to provide for prosecution of persons involved in the offence of money-laundering, but mainly intended to prevent money-laundering activity and confiscate the proceeds of crime involved in money-laundering. It also provides for prosecuting the person involved in such activity constituting the offence of money-laundering. In other words, the role of the Authorities appointed under Chapter VIII of the PMLA is such that they are tasked with dual role of conducting



inquiry and collect evidence to facilitate adjudication proceedings before the Adjudicating Authority in exercise of powers conferred upon them under Chapters III and V of the PMLA and also to use the same materials to bolster the allegation against the person concerned by way of a formal complaint to be filed for offence of money-laundering under the PMLA before the Special Court, if the fact situation so warrant. It is not as if, after every inquiry prosecution, is launched against all persons found to be involved in the commission of the offence of money laundering. It was held that inquiry is the foundational process and when ED receives information suggesting the existence of proceeds of crime, it may commence an inquiry for the purpose of gathering evidence. The officers empowered under Section 48 are entitled to issue summons, record statements, conduct searches and seizures with a primary objective of establishing whether the property in the possession of any person qualifies as a "proceeds of crime" under Section 2(1)(u). This inquiry is to initiate the civil action of attachment under Section 5 and the adjudication process before the adjudicating authority under Section 8. The investigation under the PMLA is not confined to collecting evidence for the prosecution, but it includes all action taken by the ED for any purpose under the Act. It should be borne in mind that the prosecution is the penal limb of the enactment. It is the final consequence of the inquiry/investigation revealing sufficient material establishing a person's involvement or activity connected with the proceeds of crime. It is only at this stage the authority files a formal complaint



under Section 44(1)(b) before the Special Court. It should also be borne in mind that prosecution is not an inevitable or automatic consequence of every inquiry. As held by the Apex Court in paragraph No. 212 of **Vijay Madanlal** (supra), it is not as if after every inquiry prosecution is launched against all persons found to be involved in the commission of offence of money laundering. In other words, while the civil and penal limbs are served by the same body of evidence, they operate under different jurisdictional prerequisites. The civil action of attachment may be initiated on the basis of material suggesting the existence of proceeds of crime, even without a registered scheduled offence. The penal action of prosecution, on the other hand, requires the registration of a scheduled offence as a foundational prerequisite, since the very definition of 'proceeds of crime' under Section 2(1)(u) of the PMLA requires that the property be derived or obtained as a result of criminal activity relating to a scheduled offence.

22. The next question is whether the power to issue summons and record statements under Section 50 is an exercise of the inquiry function and distinct from investigation for the purpose of prosecuting the offender. Under Section 50, the Director is empowered to exercise the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of matters specified in sub-section (1). While explaining the scope and ambit of Section 50, the Apex Court held as under in paragraph No. 338 of the judgment:



"338. In the context of the 2002 Act, it must be remembered that the summons is issued by the authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the adjudicating authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the adjudicating authority. It is not necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the adjudicating authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money laundering. If the statement made by him reveals the offence of money laundering or the existence of proceeds of crime, that becomes actionable under the Act itself.

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342. It is, thus, clear that the power invested in the officials is one for conducting inquiry into the matters relevant for ascertaining existence of proceeds of crime and the involvement of persons in the process or activity connected therewith so as to initiate appropriate action against such person including of seizure, attachment and confiscation of the property eventually vesting in the Central Government.

343. We are conscious of the fact that the expression used in Section 2(1)(na) of the 2002 Act is "investigation", but there is obvious distinction in the expression "investigation" occurring in the 1973 Code. Under Section 2(h) of the 1973 Code, the investigation is done by a "police officer" or by



any person (other than a Magistrate) who is authorised by a Magistrate thereby to collect the evidence regarding the crime in question. Whereas, the investigation under Section 2(1)(na) of the 2002 Act is conducted by the Director or by an authority authorised by the Central Government under the 2002 Act for the collection of evidence for the purpose of proceeding under this Act. Obviously, this investigation is in the nature of inquiry to initiate action against the proceeds of crime and prevent activity of money laundering. In the process of such investigation, the Director or the authority authorised by the Central Government referred to in Section 48 of the 2002 Act is empowered to resort to attachment of the proceeds of crime and for that purpose, also to do search and seizure and to arrest the person involved in the offence of money laundering. While doing so, the prescribed authority (Director, Additional Director, Joint Director, Deputy Director or Assistant Director) alone has been empowered to summon any person for recording his statement and production of documents as may be necessary by virtue of Section 50 of the 2002 Act. *Sensu stricto*, at this stage (of issuing summons), it is not an investigation for initiating prosecution in respect of crime of money laundering as such. That is only an incidental matter and may be the consequence of existence of proceeds of crime and identification of persons involved in money laundering thereof.

23. The Apex Court has held that the nominal use of the word “investigation” in Section 50 would not transform an inquiry into a prosecution. It was held that *stricto sensu*, at the stage of issuance of summons, the exercise carried out by the ED is not an investigation for initiating prosecution in respect of an offence of money laundering. The Court refused to hold that the word “investigation” used in Section 50(2) conferred a power to initiate prosecution, but instead characterised it as an inquiry power, directed at ascertaining the existence of proceeds of crime and the involvement of persons in the process or activity connected with such proceeds.



In other words, the power under Section 50 of the PMLA is primarily an instrument of the civil limb of the PMLA. The prosecution of the person against whom a summons was issued under Section 50 is a potential, but not an inevitable consequence. The evidence obtained in consequence of the notice under Section 50 would serve both the civil action before the adjudicating authority and the penal complaint before the Special Court. Whether prosecution follows depends on what the inquiry reveals and whether the jurisdictional prerequisites for prosecution, including the registration of a scheduled offence or a complaint before the jurisdictional authority has been satisfied.

24. In that view of the matter, the prayer to quash the summons issued under Section 50 cannot be granted. The power granted under Section 50 is essentially a civil action, directed at ascertaining the existence of proceeds of crime. As the Apex Court has held in **Vijay Madanlal** (supra), such summonses can be issued even to witnesses in the inquiry. The existence of a prior registered scheduled offence is not a jurisdictional prerequisite for the exercise of this power. The recipient of the notice issued under Section 50 is not an accused as there is no formal accusation against him at that stage. The summons is therefore legally valid and does not require to be preceded by the registration of a crime involving a scheduled offence.



25. The next question is whether the non-registration of an FIR or a non-filing of a complaint in respect of a scheduled offence would bar the ED from initiating civil action under Section 5 or while initiating action under Section 50. To answer the said question, it would be appropriate to refer to paragraph No. 162 of the judgment:

162. As a matter of fact, prior to the amendment of 2015, the first proviso acted as an impediment for taking such urgent measure even by the authorised officer, who is no less than the rank of Deputy Director. We must hasten to add that the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 PMLA registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. This is because the machinery provisions cannot be construed in a manner which would eventually frustrate the proceedings under the 2002 Act. Such dispensation alone can secure the proceeds of crime including to prevent and regulate the commission of offence of money laundering. The authorised officer would, thus, be expected to and, also in a given case, justified in acting with utmost speed to ensure that the proceeds of crime/property is available for being proceeded with appropriately under the 2002 Act so as not to frustrate any proceedings envisaged by the 2002 Act. (emphasis supplied)

26. In the conclusion portion, in paragraph No. 382 of the Judgment, it was held that 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 property being proceeds of crime. In other words, the Apex Court made it unequivocally clear that the critical distinction is that the prosecution of an accused requires a registered scheduled offence, whereas, initiation of civil action does not. It would also be appropriate to refer to Section 66(2) of the PMLA, which reads as under:

Section 66.

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(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.

27. Thus, the Section 66(2) mechanism in the PMLA would act as a bridge. When the ED proceeds to initiate civil action without a prior FIR, involving a scheduled offence, the law requires the ED to send information to the jurisdictional police under Section 66(2) contemporaneously. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence, as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the PMLA , enabling him to take further action under the



Act in that regard. In the case on hand, it has been stated in the counter that contemporaneous information has been passed on to the jurisdictional police, and when no crime was registered, the information was passed on to the superior officer. The non-registration of an FIR by the jurisdictional police in response to Section 66(2) information does not, however, render the civil action already initiated by the ED illegal or without jurisdiction.

28. Vehement submissions were advanced before us by the learned Senior Counsel appearing for the appellant to bring home the point that the order of Settlement passed under Section 245D(4) shall be conclusive as to the matters stated therein, and no matter covered by such order shall be reopened in any proceeding under this Act or under any other law for the time being in force. We are afraid that the above contention cannot be accepted. The second proviso to Section 245H states that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 to a person who makes an application under section 245C on or after the 1st day of June, 2007. Immunity from prosecution can be granted only for any action under the IT Act and the Wealth Tax Act. The PMLA is an independent statute with its own scheme of enforcement. The subject matter of Settlement under the IT Act is the concealment of income, non-payment of tax, and attendant penalties. On the other hand the



objective of the PMLA is the process or activity connected with proceeds of crime. Even if the Income Tax Settlement Commission determines that a taxpayer has made full and true disclosure and grants immunity under the IT Act, that determination operates only within the four corners of the IT Act and has no res judicata or estoppel effect in PMLA proceedings, which involve a distinct cause of action and a distinct legal regime. The settlement of a tax dispute cannot therefore extinguish the offence of money laundering or the ED's jurisdiction to inquire into the transactions leading to the proceeds of crime.

29. The appellants have raised a contention that additional affidavits were filed by the respondent, intimating the Court about the filing of a complaint before the jurisdictional forum by the SFIO and that too after the judgment was reserved. The said fact was taken note of by the learned Single Judge to hold that the substratum of the case set up no longer subsists. It was also contended that if an opportunity was granted, the appellants could have placed on record the interdictory orders passed in the said proceedings in a challenge mounted by the appellants before the Delhi High Court. The filing of the complaint by the SFIO is irrelevant to the validity of the ECIR and the issuance of summons under Section 50. We are of the view that nothing will turn on the observation made by the learned Single Judge with regard to the filing of the SFIO complaint.



30. In view of the discussion above, we hold that the non-registration of an FIR or non-filing of a complaint in respect of a scheduled offence will not bar the ED from initiating civil action under the PMLA. The registration of a scheduled offence is a prerequisite only for penal prosecution under Section 3 and not for the civil action of attachment under Section 5 or the exercise of inquiry powers under Section 50 of the PMLA. As regards the prayer to quash the ECIR, we hold that since the ECIR is not a statutory document and even the non-registration of an ECIR does not impede the commencement of civil action, the prayer to quash the ECIR cannot be granted in this case. The prayer sought for was, therefore, rightly rejected by the learned Single Judge. We find no reason to interfere with the said judgment.

This appeal is dismissed.

Sd/-
RAJA VIJAYARAGHAVAN V
JUDGE

Sd/-
K. V. JAYAKUMAR
JUDGE