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HC-KAR

CNR: KAHC010389262024

NC: 2026:KHC:61902
WP No. 18821 of 2024
C/W WP No. 8914 of 2024
WP No. 4630 of 2025
AND 2 OTHERS

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 6TH DAY OF NOVEMBER, 2026

BEFORE

THE HON'BLE MR. JUSTICE M.I.ARUN

WRIT PETITION NO. 18821 OF 2024 (GM-RES)
C/W
WRIT PETITION NO. 8914 OF 2024 (GM-RES)
WRIT PETITION NO. 4630 OF 2025 (GM-RES)
WRIT PETITION NO. 5168 OF 2025 (GM-RES)
WRIT PETITION NO. 22460 OF 2025 (GM-RES)

IN W.P. NO.18821 OF 2024:

BETWEEN:

MR. Y.B. ASHWATHANARAYAN,
AGED 53 YEARS,
S/O LATE BYRAREDDY,
RESIDING AT: OLLAVADI VILLAGE AND PO.
KASABA HOBLI, CHINTHAMANI,
CHIKKABALAPUR DT.
KARNATAKA-563125. ... PETITIONER

(BY SRI. KIRAN S. JAVALI, SENIOR ADVOCATE FOR SRI. MAHENDRA GOUDA C.R. AND SRI. MAYANK JAIN, ADVOCATES)

AND:

1. UNION OF INDIA,
THROUGH THE DEPUTY DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
BENGALURU,
3RD FLOOR, B BLOCK, BMTC BUILDING,
SHANTINAGAR, TTMC, K.H. ROAD,
BENGALURU-560027.

2. THE REGISTRAR,
ADJUDICATING AUTHORITY (PMLA),
ROOM NO. 26, 4TH FLOOR,
JEEVAN DEEP BUILDING,

VERDICTUM.IN

PARLIAMENT STREET,
NEW DELHI-110001.

... RESPONDENTS

(BY SRI. S.V. RAJU, ASG A/W SMT. ANUPARNA BORDOLOI,
ADVOCATE FOR R1 AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION AND QUASH THE ORDER DATED 06/06/2024 PASSED BY THE 2ND RESPONDENT, THE ADJUDICATING AUTHORITY UNDER THE PMLA, 2002 PASSED IN O.A.1132/2024 PRODUCED AS ANNEXURE-A. IN SO FAR AS THE PETITIONER IS CONCERNED; ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, DIRECTING THE RESPONDENT TO RETURN BACK ALL THE ARTICLES SEIZED FROM THE PETITIONERS. IN SO FAR AS THE PETITIONER IS CONCERNED; PASS ANY ORDER OR DIRECTIONS AS THIS HON'BLE COURT DEEMS FIT IN THE CIRCUMSTANCES OF THE CASE.

IN W.P. NO.22460 OF 2025:

BETWEEN:

DR. RAJU KRISHNA C.
S/O MR. KRISHNA C.,
AGED ABOUT 55 YEARS,
QUARTERS NO.A-2,
MANGALORE UNIVERSITY CAMPUS,
MANGALA GANGOTHRI,
MANGALORE-574199.

... PETITIONER

(BY SRI. THAMMAIAH H.N., ADVOCATE)

AND:

1. THE UNION OF INDIA,
THORUGH THE DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
BENGALURU, 3RD FLOOR,
B-BLOCK, BMTC BUILDING,
SHATINAGAR, TTMC,
K.H. ROAD, BENGALURU-560027.

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2. THE KARNATAKA LOKAYUKTA POLICE,
KOLAR DT.-563131. … RESPONDENTS

(BY SRI. S.V. RAJU A/W SMT. ANUPARNA BORDOLOI, ADVOCATES FOR R1;
SRI. B.S. PRASAD, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH AND SET ASIDE THE ACTIONS OF 1ST RESPONDENT IN FILING/SUBMITTING PRIVATE COMPLAINT REPORT UNDER SECTION 200 OF THE CODE OF CRIMINAL PROCEDURE VIDE ANNEXURE-A DATED 11.09.2024 PCR NO.32/2024 PENDING BEFORE THE ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH.82) PETITIONER CONCERN ONLY; QUASH AND SET ASIDE THE ORDER DATED 30.10.2024 IN PCR NO.32/2024 PENDING BEFORE THE ADDL. CITY CIVIL AND SESSIONS JUDGE, BENGALURU (CCH.82) AT ANNEXURE-B TAKING COGNIZANCE OF THE COMPLAINT AND CALLING FOR STATUS REPORT; QUASH AND SET ASIDE ECIR IN BGZO/41/2023 DATED 30.11.2023 REGISTERED BY THE 1ST RESPONDENT OF WHICH THE CERTIFIED COPY OF SUMMONS DATED 19.01.2024 IS PRODUCED AT ANNEXURE-E; GRANT SUCH OTHER RELIEF OR RELIEFS AS THIS HON'BLE COURT DEEMS FIT CONSIDERING THE FACTS AND CIRCUMSTANCES OF THE CASE, IN ORDER TO MEET THE ENDS OF JUSTICE.

IN W.P. NO.8914 OF 2024:

BETWEEN:

MR. Y.B. ASHWATHANARAYAN,
AGED 53 YEARS,
S/O LATE BYRAREDDY,
RESIDING AT: OLLAVADI VILLAGE AND PO.
KASABA HOBLI, CHINTHAMANI,
CHIKKABALAPUR DT., KARNATAKA-563125.

… PETITIONER

(BY SRI. KIRAN S. JAVALI, SENIOR ADVOCATE FOR SRI. MAHENDRA GOUDA C.R. AND SRI. MAYANK JAIN, ADVOCATES)

AND:

1. UNION OF INDIA,
THROUGH THE DEPUTY DIRECTOR,
DIRECTORATE OF ENFORCEMENT,

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BENGALURU,
3RD FLOOR, B BLOCK, BMTC BUILDING,
SHANTINAGAR, TTMC, K.H. ROAD,
BENGALURU-560027.

2. THE REGISTRAR,
ADJUDICATING AUTHORITY (PMLA),
ROOM NO. 26, 4TH FLOOR,
JEEVAN DEEP BUILDING,
PARLIAMENT STREET,
NEW DELHI-110001. … RESPONDENTS

(BY SRI. S.V. RAJU, ASG A/W SMT. ANUPARNA BORDOLOI,
ADVOCATE FOR R1 AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION AND QUASH THE ECIR NO.BGZO/41/2023/2849 REGISTERED ON 30-11-2023 AND THE SUMMONS OF WHICH IS DATED 16.01.2024 PRODUCED AS ANNEXURE-A AND ALL CONSEQUENTIAL ACTIONS INCLUDING THE SHOW-CAUSE NOTICE ISSUED IN NO.O.A.1132/24 DATED 16.02.24 AT ANNEXURE-H ISSUED BY THE RESPONDENT NO.2, AS ILLEGAL AND ABINITIO VOID; ISSUE A WRIT OF MANDAMUS OR ANY OTHER APPROPRIATE WRIT, ORDER OR DIRECTION, DIRECTING THE RESPONDENT TO FOREBEAR THE RESPONDENTS FROM INITIATING ANY ACTION UNDER THE PROVISION OF THE PML ACT; PASS ANY ORDER OR DIRECTIONS AS THIS HON'BLE COURT DEEMS FIT IN THE CIRCUMSTANCES OF THE CASE.

IN W.P. NO.4630 OF 2025:

BETWEEN:

SRI. K.Y. NANJE GOWDA,
AGED ABOUT 56 YEARS,
S/O. LATE. YALLE GOWDA,
KOMMANAHALLI VILLAGE,
TEKAL HOBLI, MALUR TQ.,
KOLAR DT.-563137. … PETITIONER

(BY SRI. KIRAN S. JAVALI, SENIOR ADVOCATE FOR SRI. MAHENDRA GOUDA C.R. AND SRI. MAYANK JAIN, ADVOCATES)

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AND:

1. THE UNION OF INDIA,
THROUGH THE DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
BENGALURU, 3RD FLOOR,
B-BLOCK, BMTC BUILDING,
SHANTINAGAR, TTMC, K.H. ROAD,
BENGALURU-560027.

2. THE KARNATAKA LOKAYUKTA POLICE,
KOLAR DT.-563137

... RESPONDENTS

(BY SRI. S.V. RAJU, ASG A/W SMT. ANUPARNA BORDOLOI,
ADVOCATE FOR R1;
SRI. B.S. PRASAD, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH AND SET ASIDE THE ACTIONS OF 1ST RESPONDENT IN FILING/SUBMITTING PRIVATE COMPLAINT REPORT UNDER SECTION 200 OF THE CODE OF CRIMINAL PROCEDURE VIDE ANNEXURE-A DATED 11.09.2024 INSOFAR AS THE PETITIONER IS CONCERNED; TO GRANT SUCH OTHER RELIEF OR RELIEFS AS THIS HON'BLE COURT DEEMS FIT CONSIDERING THE FACTS AND CIRCUMSTANCES OF THE CASE, IN ORDER TO MEET THE ENDS OF JUSTICE.

IN W.P. NO.5168 OF 2025:

BETWEEN:

1. MR. K.N. GOPALA MURTHY
S/O NARAYANAPPA K.,
AGED ABOUT 58 YEARS,
MANAGING DIRECTOR KOLAR MILK UNION LTD.,
RESIDING AT 'HOMBELAKU'
NO.34/G, 3RD CROSS, THIRUMALA NAGAR,
ATTUR 2ND STAGE, YELAHANKA,
BANGALORE -64.

2. MR. NAGESH N, S/O NAGAPPA N.,
AGED ABOUT 44 YEARS,
NO.51, 5TH CROSS, 2ND RIGHT,

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JAI BHUVANESHWARI LAYOUT,
H.V. RESIDENCE,
KRISNARAJAPURAM, BANGALORE- 49.

... PETITIONERS

(BY SRI. KIRAN S. JAVALI, SENIOR ADVOCATE FOR SRI. MAHENDRA GOUDA C.R. AND SRI. MAYANK JAIN, ADVOCATES)

AND:

1. ASSISTANT DIRECTOR,
DIRECTORATE OF ENFORCEMENT,
3RD FLOOR, B BLOCK, BMTC BUILDING,
SHANTINAGAR, TTMC, K.H. ROAD,
BENGALURU-560027.

2. SUPERINTENDENT OF POLICE
LOKAYUKTA POLICE,
KOLAR-563101.

... RESPONDENTS

(BY SRI. S.V. RAJU, ASG A/W SMT. ANUPARNA BORDOLOI, ADVOCATE FOR R1;
SRI. B.S. PRASAD, ADVOCATE FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 R/W SECTION 482 OF CODE OF CRIMINAL PROCEDURE, PRAYING TO SET ASIDE THE ORDER 30.10.2024 DATED PCR NO.32/2024 AT ANNEXURE-A, INCLUDING IN THE COMPLAINT IN PCR NO.32/2024 ON THE FILE OF THE LXXXI ADDL. CITY CIVIL AND SESSIONS JUDGE (SPECIAL COURT EXCLUSIVELY TO DEAL WITH CRIMINAL CASES RELATED TO ELECTED MPS AND MLAS IN THE STATE OF KARNATAKA) CCH.82, BANGALORE AT ANNEXURE-B; PASS ANY OTHER ORDER OF DIRECTIONS AS THIS HON'BLE COURT DEEMS FIT, IN THE INTEREST OF JUSTICE.

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 17.10.2026 AND COMING ON FOR PRONOUNCEMENT OF ORDERS THROUGH PHYSICAL HEARING/VIDEO CONFERENCING, THIS DAY, THE COURT MADE THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE M.I.ARUN

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CAV ORDER

One Sri K.Y. Nanje Gowda, the petitioner in W.P. No.4630/2025, was the Chairman of the Land Grant Committee of Malur, Kolar District. There was an allegation made against him that he, in collusion with other Members of the Land Grant Committee, recommended grant of land measuring about 80 acres for about 38 persons and that the same was done by abusing their official position, in an illegal manner (hereinafter referred to as 'Land Scam Case'). It culminated in filing of a private complaint by one Sri K.C.Rajanna bearing PCR No.15366/2022 before the Chief Metropolitan Magistrate, Bangalore alleging commission of offences under Sections 468, 464, 465, 471, 420 and 120B of the Indian Penal Code, 1860. Based on the aforementioned complaint, Crime No.489/2022 came to be registered. Thereafter, the said K.Y.Nanje Gowda was appointed as Chairman of Kolar and Chikkaballapur Milk Union Ltd. (hereinafter referred to as 'KOMUL').

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2. Based on the allegations in the Land Scam Case, treating the same as a predicate offence, the Enforcement Directorate (hereinafter referred to as 'ED') took up the matter for investigation and registered it as ECIR/BGZO/41/2023. In the process of investigation a search was conducted on the premises of several persons. While conducting the search, the ED came across certain materials, which, in its opinion, amounted to a scam pertaining to recruitments of employees to KOMUL (hereinafter referred to as 'Job Scam Case').

3. Based on the alleged incriminating material pertaining to the Job Scam Case, summons were issued to one Sri Y.B.Ashwathanarayan. Aggrieved by the same, the said Sri Y.B.Ashwathanarayan has preferred W.P. No.8914/2024 with the following prayers:

> *"(a) Issue a writ of certiorari or any other appropriate writ, order or direction and quash the ECIR NO.BGZO/41/2023/2849 registered on 30-11-2023 and the summons of which is dated 16.01.2024 produced as Annexure-A and all*

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consequential actions including the show-cause notice issued in No.O.A.1132/24 dated 16.02.24 at Annexure-H issued by the respondent no.2, as illegal and ab initio void;

(b) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent to forebear the respondents from initiating any action under the provision of the PML Act;

(c) Pass any order or directions as this Hon'ble court deems fit in the circumstances of the case."

4. Thereafter, the ED filed O.A. No.1132/2024 under Section 17(4) of the Prevention of Money-Laundering Act, 2002 (hereinafter referred to as 'PMLA') before the Adjudicating Authority. The Adjudicating Authority has issued a show-cause notice in this regard to the concerned persons. Thereafter, the ED shared the information about the Job Scam Case with the jurisdictional police/authority, as contemplated under Section 66(2) of the PMLA.

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5. However, a closure report was filed in Crime No.489/2022 (Land Scam Case) which was pending on the file of the jurisdictional Trial Court. In reply, the complainant therein filed a protest petition against the closure report. However, as the allegations were made against a public servant and it required government sanction for continuation of the Land Scam Case before the Trial Court and as the same was not obtained, the Trial Court dismissed the said case for non-prosecution.

6. In the meanwhile, the said Sri Y.B.Ashwathanarayan issued a reply to the show-cause notice issued by the Adjudicating Authority. However, the Adjudicating Authority confirmed the seizure in O.A. No.1132/2024 on 06.06.2024. Aggrieved by the same, the said order has been impugned by Sri Y.B.Ashwathanarayan by filing another writ petition (W.P. No.18821/2024) with the following prayers:

> *"(a) Issue a writ of certiorari or any other appropriate writ, order or direction and quash*

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the order dated 06.06.2024 passed by the 2nd respondent, the adjudicating authority under the PMLA, 2002 passed in O.A.1132/2024 produced as Annexure-A in so far as the petitioner is concerned.

(b) Issue a writ of mandamus or any other appropriate writ, order or direction, directing the respondent to return back all the articles seized from the petitioners in so far as the petitioner is concerned.

(c) Pass any order or directions as this Hon'ble court deems fit in the circumstances of the case."

7. However, the jurisdictional police/authority did not deem it fit to act upon the information shared by the ED under Section 66(2) of PMLA, in respect of the Job Scam Case. Hence, the ED itself filed PCR No.32/2024 before the Trial Court to have the case referred to Lokayukta Police for investigation alleging offences under Sections 7, 11, 12 and 13 of the Prevention of Corruption Act, 1988 and Sections 120B, 420, 464, 465, 468, 471 of IPC.

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8. Aggrieved by the actions of the ED, Sri. K.Y.Nanje Gowda has preferred W.P. No.4630/2025 with the following prayers:

> *"a. To quash and set aside the actions of 1st Respondent in filing/submitting private complaint report under section 200 of the code of criminal procedure vide Annexure-A dated 11.09.2024 insofar as the petitioner is concerned.*
>
> *b. To grant such other relief or reliefs as this Hon'ble Court deems fit considering the facts and circumstances of the case, in order to meet the ends of justice."*

9. One Sri K.N.Gopala Murthy and one Sri Nagesh N., have preferred W.P. No.5168/2025 with the following prayers:

> *"(a) Set aside the Order dated 30.10.2024 in PCR No.32/2024 at Annexure-A, including the Complaint in PCR No.32/2024 on the file of the LXXXI Addl. City Civil and Sessions Judge (Special Court Exclusively to deal*

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with criminal Cases related to elected MPs and MLAs in the State of Karnataka) CCH.82, Bangalore at Annexure-B.

(b) Pass any other order or directions as this Hon'ble Court deems fit, in the interest of justice."

10. One Dr.Raju Krishna C., has preferred W.P. No.22460/2025 with the following prayers:

"a. To quash and set aside the actions of 1st Respondent in filing/submitting private complaint report under section 200 of the code of criminal procedure vide Annexure-A dated 11.09.2024 PCR No.32/2024 pending before the Addl. City Civil and Sessions Judge, Bangalore-(CCH.82) petitioner concern only.

b. To quash and set aside the order dated 30.10.2024 in PCR No.32/24 pending on Hon'ble Addl. City Civil & Sessions Judge, B'lore-(CCH.82) at Annexure-B taking cognizance of the complaint and calling for status report.

c. To quash and set aside ECIR in BGZO/41/2023 dated 30.11.2023 registered by the 1st Respondent of which the Certified copy of

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Summons dated 19.01.2024 is produced at Annexure-E.

d. To grant such other relief or reliefs as this Hon'ble Court deems fit considering the facts and circumstances of the case, in order to meet the ends of justice."

11. In the aforementioned writ petitions, the petitioners have challenged the actions of the ED in continuing the investigation, in respect of the Land Scam Case, even after the predicate offence being dismissed for non-prosecution and also the action of the ED in filing a private complaint, all by itself, against the petitioners in the Job Scam Case, when the concerned police/authority did not initiate any action based upon the information received under Section 66(2) of the PMLA.

12. The case of the petitioners is that once a predicate offence is closed, either on merits or on technical grounds, the ED cannot continue investigation under the provisions of PMLA and when ED, while investigation into

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proceeds of crime under one offence, comes across any material which in its opinion, amounts to commission of an altogether different scheduled offence (predicate offence), the ED is only empowered to share the information with the relevant police/authority and it is not empowered to present a private complaint and take up the matter for investigation alleging that the accused therein are benefitted by the proceeds of crime.

13. The case of the ED is that once the investigation is taken up based on the existence of a predicate offence and the same gets closed on technical grounds and not on merits, still the ED is empowered to investigate into the offence of money laundering under the provisions of PMLA. It is also contended that when the concerned authority does not act upon the information received under Section 66(2) of the PMLA, then in that event, as any person is empowered to set into motion the criminal proceedings, the ED is empowered to maintain a

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private complaint under Section 200 of the Code of Criminal Procedure, 1973/Section 223 of the Bharatiya Nagarik Suraksha Sanhita, 2023. On the said grounds, it is prayed that the writ petitions be dismissed.

14. The questions that arise under the instant petitions are:

(i) Can the Enforcement Directorate continue investigation into proceeds of crime under the provisions of the PMLA when the predicate offence is closed on technical ground such as for want of sanction from the concerned authority?

(ii) When the Enforcement Directorate, based on the material in its possession, is of the opinion that some other law in force is contravened, shares the information with the concerned agency for necessary action as per Section 66(2) of the PMLA and the said agency fails to initiate any prosecution against the accused, then in that event, can the Enforcement Directorate prefer a complaint under Section 200 Cr.P.C./223 of Bharatiya Nagarik Suraksha

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Sanhita, 2023 before the jurisdictional Magistrate and based on the said complaint can it initiate proceedings under the PMLA?

15. Section 3 of PMLA reads as under:

> *"**3. Offence of money-laundering.**— Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.*
>
> *Explanation.—For the removal of doubts, it is hereby clarified that,—*
>
> *(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—*
>
> *(a) concealment; or*
> *(b) possession; or*
> *(c) acquisition; or*
> *(d) use; or*
> *(e) projecting as untainted property; or*
> *(f) claiming as untainted property, in any manner whatsoever;*

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> *(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever."*

16. Section 2(1)(u) of PMLA defines 'proceeds of crime' which reads as under:

> *"(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;*
>
> *Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;"*

17. Thus, for an investigation or an inquiry to be made as to the existence of 'proceeds of crime' or

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laundering of the money obtained through proceeds of crime can be made only if there is pre-existence of a predicate offence and not otherwise. The Apex Court in ***Vijay Madanlal Choudhary and Others Vs. Union of India and Others***[1], in paragraphs 148, 149 and 152, has held as under:

> *"**148.** The next question is: Whether the offence under Section 3 is a stand-alone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money laundering. The property must qualify the definition of "proceeds of crime" under Section 2(1)(u) of the 2002 Act.*
>
> ***149.** As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" under Section 2(1)(u) will necessarily be crime properties. Indeed, in the event of acquittal of the person*

[1] (2023) 12 SCC 1

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concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the case concerned has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today. On the other hand, in the trial in connection with the scheduled offence, the court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a court of competent jurisdiction. It is well within the jurisdiction of the court concerned trying the scheduled offence to pronounce on that matter.

152. *Even though the 2002 Act is a complete code in itself, it is only in respect of matters connected with offence of money laundering, and for that, existence of proceeds of crime within the meaning of Section 2(1)(u) PMLA is quintessential. Absent existence of proceeds of crime, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution."*

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18. Further, the Apex Court in ***V. Senthil Balaji Vs. Deputy Director, Directorate of Enforcement***[2], in paragraph 21 has held as under:

> *"21. Hence, the existence of a scheduled offence is sine qua non for alleging the existence of proceeds of crime. A property derived or obtained, directly or indirectly, by a person as a result of the criminal activity relating to a scheduled offence constitutes proceeds of crime. The existence of proceeds of crime at the time of the trial of the offence under Section 3 of PMLA can be proved only if the scheduled offence is established in the prosecution of the scheduled offence. Therefore, even if the trial of the case under the PMLA proceeds, it cannot be finally decided unless the trial of scheduled offences concludes. In the facts of the case, there is no possibility of the trial of the scheduled offences commencing in the near future. Therefore, we see no possibility of both trials concluding within a few years."*

19. Thus, the role of ED under PMLA commences only after a primary law enforcement agency registers a

[2] 2024 SCC OnLine SC 2626

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FIR or a formal criminal complaint regarding scheduled/predicate offence. The power of the ED is derivative and not original. It cannot initiate an investigation *suo motu* based on a standalone suspicion of money laundering. If there is no existence of the predicate offence, then in that event, proceedings under PMLA cannot exist; meaning even when the predicate offence is terminated in favour of the accused therein, the proceedings under PMLA cannot continue.

20. In the instant case, admittedly, the private complaint filed in respect of the Land Scam Case has been closed for want of sanction from the competent authority. It has reached finality. Under the circumstances, the question of any person being convicted for the said offences does not arise. Thus, under the given facts and circumstances of the case, the action of the ED continuing the investigation or inquiry into existence of proceeds of

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crime derived from the scheduled offences alleged in the Land Scam Case cannot be sustained.

21. In respect of the ED preferring a private complaint under Section 200 Cr.P.C/223 BNSS, when the concerned authorities did not act on the information provided by the ED under Section 66(2) of the PMLA and on the strength of the same, it has to be held that the ED is not empowered to do so for the following reasons:

(i) A perusal of Section 66(2) of PMLA points out that if, during the course of investigation, the ED comes across violations of other provisions of law, it is duty bound to intimate the concerned agency and not take up the investigation by itself. In law, where an act is to be done in a particular way, it must be done in that way and in no other way. Our Constitution envisages separation of powers between different organs of government. The reason being that one institution in the country does not become supreme so that it is in a

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position to abuse the powers conferred on it. Law recognizes the requirements of checks and balances. The ED is not a super cop to investigate anything and everything which comes into its notice. Section 48 of the PMLA envisages the authorities under the Act. Once appointed under the PMLA, they are bound by the restraints imposed on them by the PMLA. Section 66(2) of PMLA envisages that if the ED is of the opinion that it is having certain materials which constitute a scheduled offence, then in that event, the same should be forwarded to the concerned agency. The Act does not expressly empower the ED or the authorities under the PMLA to prefer a private complaint in respect of a scheduled offence and on the strength of it, thereafter, take up investigation against the accused therein under the provisions of PMLA. In fact, maintaining law and order is the responsibility of the State and not the Centre. It is the duty of the concerned agency to examine the same and to take a

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decision whether to prosecute the matter further or not. The ED is not like any other person to file a complaint under Section 200 Cr.P.C./223 of BNSS. It has to exercise only those powers expressly conferred on it by the PMLA. Filing of a private complaint by the ED is not contemplated under the PMLA. Allowing the ED to prefer a private complaint, when the other government authorities deem it inappropriate to initiate any proceedings against anybody, will amount to permitting the ED to act as a super cop and it goes against the philosophy of the Act which requires a predicate offence to be in existence for the ED to initiate proceedings as contemplated under the PMLA. If the ED is permitted to file a private complaint, it will be in a position to file a private complaint against any person by itself and take up investigation against them. This is not contemplated under the provisions of the PMLA. In paragraphs 151 and 211 of ***Vijay***

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Madanlal Choudhary (supra), the Apex Court has held as under:

> ***"151.*** *It is possible that in a given case after the discovery of huge volume of undisclosed property, the authorised officer may be advised to send information to the jurisdictional police [under Section 66(2) of the 2002 Act] for registration of a scheduled offence contemporaneously, including for further investigation in a pending case, if any. On receipt of such information, the jurisdictional police would be obliged to register the case by way of FIR if it is a cognizable offence or as a non-cognizable offence (NC case), as the case may be. If the offence so reported is a scheduled offence, only in that eventuality, the property recovered by the authorised officer would partake the colour of proceeds of crime under Section 2(1)(u) of the 2002 Act, enabling him to take further action under the Act in that regard.*
>
> ***211.*** *This argument clearly overlooks the overall scheme of the 2002 Act. As noticed earlier, it is a comprehensive legislation, not limited to provide for prosecution of person involved in the offence of money laundering,*

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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 offence of money laundering. In other words, this legislation is an amalgam of different facets including setting up of agencies and mechanisms for coordinating measures for combating money laundering. Chapter III is a provision to effectuate these purposes and objectives by attachment, adjudication and confiscation. The adjudication is done by the adjudicating authority to confirm the order of provisional attachment in respect of proceeds of crime involved in money laundering. For accomplishing that objective, the authorities appointed under Chapter VIII have been authorised to make inquiry into all matters by way of survey, searches and seizures of records and property. These provisions in no way invest power in the authorities referred to in Chapter VIII of the 2002 Act to maintain law and order or for that matter, purely investigating into a criminal offence."

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The decision of the Apex Court in ***Mukesh Singh Vs. State (Narcotic Branch of Delhi)***[3] is not applicable to the present case as the same pertains to the NDPS Act and not the PMLA.

(ii) Examining the instant case itself, the jurisdictional police have filed a 'B' Report in the Land Scam Case. Thereafter, the sanctioning authority has not issued necessary sanction to prosecute the alleged accused therein. If we were to accept the contention of the ED in the instant case, it would amount to concluding that the jurisdictional police and the sanctioning authority are guilty of dereliction of their respective duties and the ED alone is correct. Similarly, in Job Scam Case, it amounts to presuming the Lokayukta Police/agency, who have not proceeded against the accused by not initiating any criminal proceedings based on the information provided by the ED, are guilty of dereliction of their respective duties and putting the ED

[3] (2020)10 SCC 120

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on a higher pedestal, which is not contemplated in law. The scheme of the PMLA envisages that prosecution regarding the predicate offence has to be initiated by the respective prosecuting agency/third party, but not ED or Authorities constituted under the PMLA.

22. For the aforementioned reasons, the petitions deserve to be allowed. Hence, the following:

ORDER

(i) All the petitions are allowed.

(ii) The impugned order dated 06.06.2024 passed by respondent No.2-Adjudicating Authority in O.A. No.1132/2024, insofar as it relates to the petitioner in W.P. No.18821/2024, is hereby quashed.

(iii) The respondents are directed to return the articles seized, if any, from the petitioner in W.P. No.18821/2024.

(iv) The ECIR No.BGZO/41/2023/2849 dated 30.11.2023, the summons issued pursuant thereto and the consequential proceedings including the show-cause notice dated 16.02.2024 in O.A. No.1132/2024, impugned in W.P.8914/2024 and W.P. No.22460/2025,

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are hereby quashed insofar as it relates to the petitioners therein are concerned.

(v) Proceedings in PCR No.32/2024 pending before the Additional City Civil and Sessions Judge, Bengaluru (CCH-82) stands quashed insofar as it relates to the petitioner in W.P. No.22460/2025, W.P.No.4630/2025 and W.P. No.5168/2025.

(vi) The ECIR No.BGZO/41/2023/2849 dated 30.11.2023 and the consequential summons dated 09.01.2024 impugned in W.P. No.22460/2025 are hereby quashed.

(vii) All pending interlocutory applications, if any, stand disposed of.

Sd/-
(M.I.ARUN)
JUDGE

KMS
CT:BCK
LIST NO.: