



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
WRIT PETITION NO. 612 OF 2023

Amar S. Mulchandani .. Petitioner
Versus
Directorate of Enforcement through its .. Respondent
Deputy Director and ors

WITH
INTERIM APPLICATION NO. 305 OF 2024
AND
INTERIM APPLICATION NO. 2466 OF 2023
IN
WRIT PETITION NO. 612 OF 2023
WITH
WRIT PETITION NO. 646 OF 2023

Vinay V. Aranha .. Petitioner
Versus
The State of Maharashtra and anr .. Respondents

WITH
INTERIM APPLICATION NO. 1749 OF 2023
AND
INTERIM APPLICATION NO. 1748 OF 2023
AND
INTERIM APPLICATION NO. 1747 OF 2023
IN
WRIT PETITION NO. 646 OF 2023
WITH
WRIT PETITION NO. 731 OF 2023

Sagar M. Suryawanshi .. Petitioner
Versus
Directorate of Enforcement and ors .. Respondents

WITH
INTERIM APPLICATION NO. 917 OF 2023
WITH
INTERIM APPLICATION NO. 918 OF 2023
AND

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INTERIM APPLICATION ST NO. 15945 OF 2023
IN
WRIT PETITION NO. 731 OF 2023
WITH
WRIT PETITION NO. 690 OF 2023

Sadhana M. Mulchandani and anr .. Petitioners
Versus

Directorate of Enforcement and ors .. Respondents

WITH
INTERIM APPLICATION NO. 2330 OF 2023
AND
INTERIM APPLICATION NO. 1118 OF 2023
AND
INTERIM APPLICATION NO. 1120 OF 2023
IN
WRIT PETITION NO. 690 OF 2023

WITH
WRIT PETITION NO. 711 OF 2023

Ashok S. Mulchandani and ors .. Petitioners
Versus

Directorate of Enforcement and ors .. Respondents

WITH
INTERIM APPLICATION NO. 1117 OF 2023
AND
INTERIM APPLICATION NO. 1122 OF 2023
IN
WRIT PETITION NO. 711 OF 2023

WITH
WRIT PETITION NO. 746 OF 2023

Sheetal K. Tejwani .. Petitioner
Versus

The State of Maharashtra and anr .. Respondents

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WITH
INTERIM APPLICATION NO. 1755 OF 2023
AND
INTERIM APPLICATION NO. 1753 OF 2023
IN
WRIT PETITION NO. 746 OF 2023
WITH
WRIT PETITION NO. 1030 OF 2023

Girish K. Tejawani .. Petitioner
Versus
The State of Maharashtra and anr .. Respondents

WITH
INTERIM APPLICATION NO. 1751 OF 2023
AND
INTERIM APPLICATION NO. 1750 OF 2023
IN
WRIT PETITION NO. 1030 OF 2023
WITH
WRIT PETITION NO. 961 OF 2023

Rajesh P. Sawant .. Petitioner
Versus
Directorate of Enforcement and ors .. Respondents

WITH
INTERIM APPLICATION NO. 1752 OF 2023
WITH
INTERIM APPLICATION NO. 1754 OF 2023
IN
WRIT PETITION NO. 961 OF 2023

Shrichand Aswani .. Applicant
Versus
Directorate of Enforcement and ors .. Respondents

Mr.Ravi Kadam, Senior Advocate with Mr.Karan Kadam, Mr.S.R. Phanse and Mr.S.S. Bedekar for the petitioner in WP No. 612/690/711 of 2023.

Mr.Sanjeev Kadam with Mr.Shantanu Phanse for the petitioner in WP 961/2023.

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Mr.Ajay Bhise with Deepali Kedar, Sagar Kursija for the petitioner in WP 731/2023, WP 746/2023 and WP 1030/2023.

Ms.Minal Chandnani, Prashant Kenjale, for Intervenor in IA No.917/2023.

Mr.Shekhar Mane for the petitioner in WP 646/2023.

Mr.H.S. Venegavkar for respondent nos.1 and 2 (ED).

Mr.Anil Anturkar, Senior Advocate a/w Ms.Minal Chandnani, Prashant Kenjale, Mr.Harshvardhan Suryavanshi, Ms.Kashish Chelani for the Intervenor in IA No. 1747 of 2023.

Mr.Anil Anturkar, Senior Advocate a/w Ms.Minal Chandnani, Prashant Kenjale, for respondent no.5 in IA NO.305/2024 in WP 612/2023.

Mr.Vivek Muglikar, ACP Crime-I, Pimpri Chinchwad.

Mr.Kadir Deshmukh, API, Vimantal police station, Pune.

CORAM : BHARATI DANGRE &

MANJUSHA DESHPANDE,JJ.

RESERVED ON : 9th JULY, 2024

PRONOUNCED ON : 29th AUGUST, 2024

JUDGMENT : (Per Bharati Dangre, J)

1 On 17/5/2018, FIR No. 163/2018 is registered at Vimantal police station on the complaint filed by one Sagar M. Suryawanshi, an account holder in Seva Vikas Co-operative Bank (for short 'Seva Bank'), Pimpri. The complainant, who is also a shareholder in the Bank made a grievance, that the Bank had advanced a loan of Rs.Seven crores in March 2018 and loan of Rs.4.5 crores in April 2018 to one Rosary Education Group. On inquiry, it was revealed to the complainant that Vivek Aranha and Vinay Aranha were the partners of Rosary Education Group and some property was mortgaged with the Bank, but it was sold by the accused persons vide a registered agreement on 29/12/2014. On the very same day, Leave and Licence agreement was executed

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between the purported owners and the accused nos.1 and 2, the Aranhas, leasing out 95% area of the said property. As far as 5% area of the subject property is concerned, a separate Leave and Licence agreement was executed in favour of one Aslam Kamiruddin Furniturewalla.

The complainant, therefore, alleged that the accused persons hand-in-glove with the officers in-charge of the Seva Bank, systematically siphoned off crores of rupees deposited by innocent depositors of the Bank. It was also alleged that the accused persons, in conspiracy with the office bearers of the Bank hatched a conspiracy to misappropriate crores of rupees by mortgaging the property by offering it as security for the huge loan amount, which was disbursed in their favour.

This FIR arraigned four persons as accused, being the members of Aranha family.

The members of Board of Directors of the Bank were impleaded as accused in the said C.R, which invoked Section 420 r/w Section 34 of the IPC.

THE BACKGROUND FACTS OF THE ECIR/MBZO-II/10/2021

2 FIR No. 163/2018 was the source for registration of ECIR/MBZO-II/10/2021 and the proceeds of crime, suspected to be raised was Rs. 11.5 crores, GIVING a reason to believe, that an offence of money laundering has been committed.

ECIR registered by Assistant Directorate of Enforcement, Mumbai Zonal Office-II, referred to the offence invoking Section 420 and 34 of IPC, and considering that Section 420 IPC, is in paragraph 1 of Part 'A', a scheduled offence under the Schedule to the

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Prevention of Money Laundering Act, 2002, on recording that prima facie a case for Money Laundering under Section 3 of the Prevention of Money Laundering Act, 2002, punishable under Section 4 of the Act, appears to have been made out, which required investigation by the Directorate of Enforcement, the subject ECIR under the provisions of Prevention of Money Laundering Act, 2002 was registered.

3 In the interregnum, an audit report was submitted by Rajesh Jadhawar, Joint Registrar (Audit), Commissionerate of Sugar, Pune, in terms of Section 81 of the Maharashtra Co-operative Societies Act, as by order dated 14/2/2019, passed by the Commissioner Co-operation and Registrar Co-operative Societies, Maharashtra State, Pune, he was appointed as a test auditor to conduct the audit of loan accounts of Seva Bank.

The Audit Report dated 6/8/2021 reported in respect of 124 loan accounts of the Seva Bank and permission was sought from the Commissioner, Co-operation to register FIRs in respect of separate groups of borrowers identified in the audit report.

4 On 10/8/2021, the Commissioner of Co-operation accorded permission to Mr. Rajesh Jadhawar to register separate FIRs on the basis of the audit report in relation to 124 loan accounts as the Audit Report had pointed out irregularity to the tune of Rs.429.57 crores.

This permission resulted in registration of three FIRs by Rajesh Jadhawar being registered as FIR No. 525/2021, 526/2021 and 527/2022 with Pimpri police station.

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FIR No. 525/2021 invoked Sections 406, 408, 409, 420, 467, 468, 471, 109, 120B r/w Section 34 IPC and arraigned Shri Amar S. Mulchandani and 27 other persons as accused, whereas FIR No.526/2021 arraigned 45 persons as accused which included Amar S. Mulchandani as prime accused and in FIR No.527/2021, along with Amar S. Mulchandani, 35 other persons were arraigned as accused; the cumulative gist of all the three FIRs being, causing financial loss to the Bank, on account of the irregularities in sanction of loan to three distinct groups.

5 On 13/8/2021, on a Writ Petition filed by Ashok Mulchandani and others, (Writ Petition St No.12345/2021 and Writ Petition St No.12404/2021) directed that though the Investigating Officer may proceed with the investigation, no coercive steps be taken against the petitioners.

The Writ Petition filed, raised a specific ground that the very same transaction which was the subject matter of FIR No.806/2009 in respect of which the Court had granted interim relief, the subject FIR was lodged and it was urged that the FIR dated 18/7/2019 was lodged against the same group of borrowers based on the test audit report conducted by the respondent no.2, pursuant to the permission granted u/s.81(5)(b) of the Maharashtra Co-operative Societies Act, 1960.

Similar orders were passed in Writ Petition No. 2896/2021 and 2897/2021 on 17/8/2021 in connection with FIR No. 163/2018, directing that in case the Investigating Officer deemed it necessary to arrest the accused persons, 72 hours advance notice shall be given.

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6 At this juncture, it is necessary to refer to registration of FIR 806/2019 on 19/7/2019 at the instance of one Dhanraj Aswani, alleging commission of offences punishable under Section 420, 406, 409, 465, 467, 468, 471 r/w Section 34 of IPC with Pimpri Chinchwad police station against the Bank and its officials. The said FIR No.806/2019 was premised on a purported report of investigation conducted by the Bank through Assistant Registrar, Co-operative Bank (Audit), Sugar Commissionerate, Maharashtra State, Pune, Shri Rajesh Jadhawar. The FIR inter alia alleged that there were improprieties in about 104 loans that were disbursed from different branches of the Bank, which were declared Non Performance Account (NPA) as on 31/3/2018 and it was alleged that the loans were granted without appropriate mortgage/hypothecation and in some cases, without verifying repayment capacity of the borrowers and since the accounts were declared NPA, it had caused heavy financial loss to the Bank depositors and the shareholders.

7 Aggrieved by the registration of this FIR, the Chief Executive Officer of the Bank Mr.Amarjeetsingh Mohindersingh Basi, filed a Criminal Writ Petition (WP No.4134/2019) for quashing of the said FIR and by order dated 27/8/2019, the Court stayed the further investigation in relation to the said FIR and also directed that no coercive action shall be taken, till the petition was heard finally.

The said order was passed in the backdrop that in Writ Petition No. 4828/2019, the Division Bench had stayed the order dated 14/02/2019, appointing the auditor and it was urged that despite the stay order, the audit was carried out in the month of May and June 2019 and based on which the FIR was registered.

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8 On 16/11/2021, the Division Bench heard Writ Petition No. 4134/2019 along with the Interim Applications for Intervention filed by the complainant Sagar Suryawanshi and Dhanraj Aswani and by a detailed judgment, allowed the Writ Petition by quashing and setting aside C.R.No. 806/2019. A pertinent observation of the Division Bench recorded thus:-

“(5) By way of abundant caution, it is clarified that we have not at all entered into the merits of the allegations in the instant FIR. Neither, we have delved into the aspect of legality of subsequently lodged FIRs, nor the merits of the allegations in those FIRs. The investigation and prosecution in the subsequently lodged FIRs shall proceed in accordance with law.”

9 However, in the interregnum i.e. after the stay of the investigation and till the quashing of C.R.No. 806/2019, nine FIRs were registered in different police stations involving loan accounts of different groups and it was one of the contention advanced that the FIR No. 806/2019, was overlapping the other CR's registered.

To continue the narration, the decision of this Court delivered on 24/11/2021 was challenged in a Writ Petition before the Apex Court, and on 5/12/2022, the Apex Court set aside the order passed by this Court:

10 On 18/4/2022, on completion of investigation in C.R. No.163/2018 registered with Vimantal police station, 'C' summary was filed, reporting that the title of the property which was the subject matter of the C.R was never transferred by the proposed accused to Prakashchandra Vyas, Jayshree Vyas and Khairunisa Aslam Furniturewalla, but the registered document dated 29/12/2014 was only an agreement to sale and the alleged accused

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persons received only Rupees One crore as the earnest money, but the transaction between the parties was never completed.

Recording that, even today, the alleged accused persons are owners of the above property and accordingly, they have mortgaged the same with the Bank. The Investigating Officer concluded that informant had filed false complaint against the alleged accused and also attributing imputations to the Officers of Seva Bank, so that he could avoid repayment of loan. He therefore, concluded that no offence has been committed by the alleged accused and therefore, 'C' Summary was filed.

The 13th Judicial Magistrate First Class, Pune, by order dated 18/4/2022, accepted the 'C' Summary by recording thus :-

“From the registered documents on record, 7/12 extract of the property, statement of officials of Seva Vikas Co-operative Bank, and the documents regarding loan of alleged accused with Seva Vikas Co-operative Bank, it appears that the alleged accused had all the right to mortgage the property with the Bank. Accordingly, the loan had been disbursed to them. There is nothing on record to indicate that the alleged accused persons had any intention to cheat or has cheating the Seva Vikas Co-operative Bank or its shareholders.

11 As far as the Petitioner, Amar Mulchandani is concerned, he was released on bail in connection with the FIR registered by Enforcement Directorate and he received summons to attend the office of Enforcement Directorate on 13.02.2023.

When he approached the High Court on 21.02.2023, the Court directed that prior to his arrest in connection with the said ECIR, he shall be given 72 hours notice, but this direction was stayed by the Supreme Court vide its order dated 21.02.2023.

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12 Another development which occurred, was that the State Government (Minister of Co-operation) quashed the Audit Report and Special Audit Report dated 06.08.2021 submitted by Rajesh Jadhawar, while allowing the Revision Application No.330/2022 filed by Daya Mulchandani.

The Petitioner came to be arrested in connection with ECIR/MBZO-II/10/2021 on 01.07.2023 and it is his specific contention that at the time of his arrest, the subsequent FIRs bearing Nos.525, 526 and 527 of 2021 were rendered otiose since they were founded upon the Audit Report dated 06.08.2021, which was quashed by the State Government on 31.05.2021.

13 In August, 2023 a supplementary complaint was filed in PMLA Special Case No. 673/2023 by Enforcement Directorate and Mr. Mulchandani was shown as accused No.4 therein. On 14.12.2023 the Special Judge, PMLA, took cognizance and issued process against Mr.Mulchandani.

14 It is, in this background, Mr. Mulchandani has filed WP No.612/2023, seeking following reliefs :-

“a. Issue a writ of certiorari and/or writ in the nature of certiorari and/or any other writ/order/direction, calling for records and proceedings of ECIR/MBZO-II/10/2021 registered by the Directorate of Enforcement (Respondent no. 1 herein) and all consequent actions taken thereafter and after satisfying itself as to its legality, veracity and propriety, be pleased to quash and set aside the said ECIR/MBZO-II/10/2021 registered with the Directorate of Enforcement (Respondent no. 1 herein) and all consequent actions taken thereafter.

b. Issue a writ of certiorari and/or writ in the nature of certiorari and/or any other writ/order/direction, calling for records and proceedings of summons dated 07.02.2023 and dated 13.02.2023 issued to the Petitioner under S. 50 of the Prevention of Money Laundering Act, 2002 and any subsequent

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summons issued to the Petitioner if any and after satisfying itself as to its legality, veracity and propriety, be pleased to quash and set aside the said summons dated 07.02.2023 and all and any further summons issued by the Respondents against the present Petitioner in connection with ECIR/MBZO-II/10/2021.

c. Issue a writ of certiorari and/or writ in the nature of certiorari and/or any other writ/order/direction calling for records and proceedings of letter/order/permission dated 10.08.2021 issued by the Commissioner of Co-operation and Registrar of Co-operative Societies and after satisfying itself as to its legality, veracity and propriety, be pleased to quash and set aside the same.

d. Issue a writ of mandamus and/or writ in the nature of mandamus and/or any other writ/order/direction directing the Respondents herein and their instrumentalities to not take any coercive action against the present Petitioner on the basis of Test Audit Report, Special report and Specific Report dated 06.08.2021 submitted by the Jt. Registrar Audit, Commissionerate of Sugar, to the office of the Commissioner of Co-operation and Registrar of Co-operative Societies.”

Seven other Petitions are filed by different accused, the details of which are as under:-

Writ Petition No.	Party Name
612/2023	Amar Mulchandani
690/2023	Sadhana Manohar Mulchandani
711/2023	Ashok Mulchandani
1030/2023	Girish Tejawani
731/2023	Sagar Maruti Mulchandani
746/2023	Sheetal Tejawani
646/2023	Vinay Vivek Aranha
961/2023	Rajesh P Sawant

The above Chart would reveal the details of the Petitioners in respective Petitions, which seek relief of quashing of ECIR/MBZO-II/10/2021 registered by the Directorate of Enforcement, and all the

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consequent actions taken thereafter. The stay of the proceedings in the aforesaid file is also sought by way of interim relief in each Petition.

COUNTER ARGUMENTS ADVANCED

15 We have heard the learned senior counsel Mr.Ravi Kadam representing the Petitioner in WP No.612/2023 whereas, the learned counsel Mr.Bhise has represented the Petitioner in WP No.731/2023, 746/2023 and 1030/2023. We have also heard Mr.Shekhar Mane for the Petitioner in WP No.646/2023.

The Enforcement Directorate is represented by Mr. Hiten Venegaonkar, the Public Prosecutor. We have also deemed it fit to hear learned senior counsel Mr. Anturkar for the intervenor, Mr.Shrichand Aswani.

16 Since WP No.612/2023 is the lead Petition, we have assimilated the facts from the same, and noted the argument of learned senior counsel Mr. Kadam for the Petitioner therein.

Mr. Kadam has rested the reliefs in the Petition, on the following broad grounds :-

- i) On acceptance of Closure Report in a predicate offence, an ECIR is rendered a dead letter and it is *non est*. In a non est ECIR, no FIR can be subsumed;
- ii) There is no power or provision in PMLA to subsume subsequent FIRs into a preexisting ECIR;
- iii) Even assuming for the sake of it, if subsumption is permissible, there must be a causal link between the subsumed FIRs and the existing ECIR;
- iv) The subsumed FIRs did not exist on the date and they are liable to be quashed on the ground of :

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- a) Audit Report which form the basis of these FIRs, itself is quashed and set aside;
- b) Sanction order accorded mechanically, vitiate the subsumed FIRs.
- c) Even otherwise, no predicate scheduled offence is made out on the face of the subsumed FIRs and hence the ECIR which is based on such FIRs is liable to be quashed and set aside.

17 Mr. Kadam has urged before us that the basis of ECIR/MBZO-II/10/2021 registered on 31.03.2021 was FIR no.163/2018 registered with Vimantal Police Station on 17.05.2018. On completion of the investigation, in this FIR, C-summary Closure Report was filed before the 13th Judicial Magistrate, 1st Class, Pune, which was accepted on 18/04/2022.

It is, therefore, the contention of Mr. Kadam that as on 18.04.2022 the impugned ECIR ceased to exist and it was, therefore, rendered a dead letter and no further action would have been taken under it.

18 In support of this proposition, he would rely upon the following decisions :-

- i) *Naresh Goyal vs. The Directorate of Enforcement & Anr.*¹ .
- ii) *Emta Cola Limited & Ors. vs. The Deputy Director, Directorate of Enforcement*² .
- iii) *Harish Fabiani & Ors. Vs Enforcement Directorate & Ors.*³ .
- iv] *Prakash Industries Limited vs. Union of India & Anr.*⁴ .

1 Criminal WP No.4037 of 2022

2 WP (C) No.2821/2022

3 WP (CRL) No.408/2022

4 2023 SCC Online Del 336

He has urged before us that on the curtains being drawn upon FIR No.163/2018 which was the foundation of ECIR/MBZO-II/10/2021, the subsequent subsuming of FIR bearing Nos.525, 526 and 527 of 2021, registered with Pimpri Chinchwad Police Station on 11/12.08.2021, by Rajesh Jadhawar, into the subject ECIR ought not to be permitted, since on the Closure Report being accepted in the subject FIR, the ECIR was a dead letter and it could not have absorbed any fresh actions including subsuming of the FIR's.

19 Mr.Kadam, by inviting our attention to the scheme of Act of 2012, has urged before us that it being a penal statute, it shall be construed strictly and the Directorate of Enforcement ought to have acted within its confines and shall exercise only the specific powers conferred under the same.

In absence of an enabling provision to permit subsuming of FIR into an ECIR, the Respondent has erred in subsuming the FIRs into a dead ECIR.

Mr. Kadam has relied upon the Affidavit in Rejoinder filed by the Petitioner on 10.04.2023 and he would submit that on 27/01/2023 a search and seizure was carried out with the Petitioner by Respondent Nos. 1 and 2 and some valuables were seized. Thereafter, he received a show cause notice under Section 8 of the PMLA to which the copy of the ECIR has been annexed which clearly reflected that it was solely based on FIR No.163/2018 in which 'C' summary was filed, which was even accepted.

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Alongwith the Affidavit, a copy of the ECIR is annexed at Exh.C, which reveal that the source of the information for the said ECIR is FIR No.0163/2018.

In addition, it is the contention of Mr. Kadam that the allegations in the ECIR have no proximate nexus with the allegations now sought to be levelled and investigated by Respondent Nos.1 and 2 and once C summary report is accepted in April, 2022, Respondent Nos.1 and 2 have maliciously sought to rely on some other FIRs, by contending that the same have been subsumed in the present ECIR, in an attempt to keep it alive and continue its investigation. It is his contention that there is no provision which permit subsuming of FIRs, particularly if the same are registered at a later point of time and there is a brazen malice on the part of the Respondent/ED, particularly when the allegations reflected in the impugned ECIR of money laundering and of dealing with proceeds of crime under Section 3 of PMLA have no causal connection with the purported loan fraud forming the subject matter of the subsumed FIRs.

It is the contention of Mr. Kadam that in connection with the two FIRs, no scheduled offence is made out and though the said FIRs have invoked Section 420 of the IPC, on perusal of the case of the prosecution reflected from the statement of complainant, it is evident that no allegations of cheating are comprised therein and the allegation is about criminal breach of trust, which is a totally distinct offence.

In addition, he submit that the criminal breach of trust is not a scheduled offence under the PMLA and, therefore, the

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Respondent, cannot rely on FIR nos.525, 526 and 527 of 2021, which has failed to make out an offence under Section 420 of the IPC. It is his further contention that the accusation in the two FIRs is as regards the loan disbursed by Seva Bank to Vinay Arhana and Sagar Suryawanshi and their connected entities and it is alleged that it has been misappropriated and the funds are siphoned off and embezzled. The said FIR contain an accusation that the transactions have been done in an environment of irregularities and ambiguities, and this at the most, according to Mr. Kadam, would make out an offence under Section 406 and 409 of the IPC, but not an offence under Section 420 of the IPC, and in any case, it is his submission that since the petitions for quashing of FIR Nos.526/2021 and 527/2021 are pending before this Court, this Court will not go into the merits of the allegations made in the predicate offence and come to a particular conclusion as to whether the particular provisions attracted in the predicate FIR, are made out or not.

In support of his submission that the subsumed FIRs were not existing on date of ECIR, Mr. Kadam would place reliance upon the decision in the case of *Prakash Industries Ltd. Union of India & Anr.*,⁵

20 In short, the submission of Mr.Kadam is, that the subject ECIR is liable to be quashed, as its very basis, the FIR No.163/2018 do not exist, and as the Audit Report itself is now set aside by the State Government, even the subsumed FIRs do not continue to hold any force as the underlined Audit Report no longer survive.

He would place reliance upon the decision of Delhi High

⁵ 2023 SCC OnLine Del, 336.

Court in the case of *Dr.R.P Gupta vs. CIT, 1996*,⁶ and the decision of the Apex Court in the case of *G.L.Didwania & Ors. vs. Income Tax Officer & Ors.*⁷ to support his contention.

In addition, it is his submission that the Registrar, Co-operative Societies, has mechanically, without application of mind and in great haste, has granted sanction to Mr. Jadhawar to file the said subsumed FIRs on 10.08.2021, as looking to the Inspection Report running into 1000 pages, it was impossible for a person to have gone through the lengthy and voluminous Inspection Report alongwith its accompaniments, to have any application of mind within the short period of time, and, therefore, when the sanction for registration of the said FIR was defective, on this ground itself the FIR was liable to be set aside.

21 Mr. Bhise, the learned counsel representing Mr. Sagar Suryavanshi in WP No.731/2023, has joined hands with Mr. Kadam in raising a challenge to the ECIR, and in addition, he would submit that on 27/01/2023, almost after two years from the registration of ECIR and 8 months after the closure of predicate offence, the respondent for the first time, carried out search at the petitioner's house and served him a copy of the summons under Section 50 of PMLA, directing him to appear before the Authority on 31.01.2023.

It is also his submission that, there is no link between the scheduled offence and the alleged subsumed FIR i.e. the FIR Nos.525, 526 and 527 of 2021, registered with Pimpri Police Station, as the ECIR even today is squarely based on the scheduled offence and the allegations are reflected in the impugned ECIR of money

6 SCC OnLine Delhi 331

7 1995 Supp. 2 SCC 724.

laundering and on dealing with the proceeds of crime under Section 3 of the PMLA, as there is no connection with the purported loan fraud, forming the subject matter of the subsumed FIRs.

Relying upon the decision of this Court in case of ***Naresh Goyal*** (supra), Mr. Bhise has urged before us that the existence of the scheduled predicate offence is a prerequisite for an ED investigation and the impugned ECIR is dated 31/03/2021, whereas, the subsumed FIRs are subsequence to the registration of the ECIR, and according to him, after the 'C' summary was excepted, no new complaint came to be lodged. He would place reliance upon the decision of the Apex Court in case of ***Pavana Dibbur vs. Directorate of Enforcement***,⁸ in submitting that it is the intention of the legislature which must be assimilated for ascertaining the 'Purpose and Object' or 'Reason and Spirit' prevailing through the statute and the words of a statute are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme and object of the Act and the intention of the Parliament is to be given effect to.

Mr. Bhise has placed before us a chart reflecting the allegations of the loan accounts mentioned in the subsumed FIRs, and according to him, in respect of the same, the Enforcement Directorate has already registered an ECIR/MBZO-II/32/2021 based upon the predicate offence in form of FIR No. 806/2019.

He would submit that Enforcement Directorate had registered two ECIRs in the year 2021 with respect to Seva Vikas Co-operative Bank, which were based on different set of facts and causes of action and according to him, there is no causal link

⁸ 2023 SCC Online SSC 1586

between the predicate offence FIR No.163/2018 and the three subsumed FIR Nos.525, 526 and 527 of 2021. He would submit that the three subsumed FIRs were registered prior to the quashing of predicate offence FIR No.806/2019, and these FIR's can be considered as a subsequent information discovered by the prosecution during the course of investigation of ECIR/MBZO-II/32/2021, as these FIRs contain the causal link with the predicate offence FIR No.806/2019, since this FIR, and the three subsumed FIRs were registered based upon the Inspection Report and the Audit Report respectively prepared by Mr. Jadhawar. However, the subsumption of three FIRs into the impugned ECIR is without any basis, as there is no causal link between the predicate offence FIR No.163/2018 and the three subsumed FIRs.

22 Mr. Venegavkar, the learned Public Prosecutor representing Respondent Nos.1 and 2 has invited our attention to an internal noting from the department in relation to ECIR/MBZO-II/32/2021, and pursuant to the quashing of the FIR No.806/2019 by the High Court on 16/11/2011, EOW, Pune had appealed before the Apex Court, which by order dated 25/07/2023, quashed the decision of the High Court and ordered to investigate the offence in FIR No.806/2019, which was registered on 19/07/2019.

Noting that ECIR/MBZO-II/10/2021 which relates to the Seva Bank involving the same management, office bearers and which involved the same *modus operandi*, with the main accused in the Bank having been arrested, and the properties having been attached being proceeds from crime under Section 5 of the PMLA, in order to ensure synchronized and comprehensive examination of

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the inter connected entities/elements in both ECIRs, it was proposed to merge ECIR/MBZO-II/32/2021 with ECIR/MBZO-II/10/2021. This internal decision is approved on 05/04/2024 and thereafter, handed over to Unit-V(I).

23 With this aforesaid clarification, Mr. Venegavkar has invited our attention to the nature and purpose of the special statute which focuses itself on the seriousness and gravity of an offence of money laundering, which is a different and independent class of offence.

He would place reliance upon the decision of this Court in case of *Anil Deshmukh vs. Enforcement Directorate*,⁹ and the observations in Para 18 and 35, highlighting the gravity of the offence of money laundering and the manner in which the special enactment deal with the offences. He would also lay emphasis upon the observations of the Apex Court in case of *Vijay Madanlal Chaudhary (supra)* to point out to us that the offence of money laundering is an independent offence, which is dependent on existence of proceeds of crime and laundering thereof. According to him, the proceeds of crime may be generated through a scheduled offence committed by anyone, and need not be necessarily the one committed by the petitioner. It is his submission that, test for the offence under PMLA would be laundering the proceeds of crime and not whether the petitioner committed the scheduled offence.

He would also invite our attention to Section 44 of the Act, which envisages filing of Closure Report and according to him, only upon such report being filed, an investigation under the Act

⁹ 2021 SCC Online Bom 3641

would be closed. He would specifically invoke Para 296 read with Para 363 of the Judgment in case of **Vijay Choudhary** (*supra*).

Reflecting upon the nature of an ECIR, Mr. Venegavkar has submitted that it is an internal file maintained by the Directorate of Enforcement, for internal administrative purpose and it differs from the First Information Report, as it is not a public document and that is what the Apex Court in **Vijay Choudhary** (*supra*) has observed, where the contention of the petitioner, that he is entitled to a copy of ECIR, was rejected.

Highlighting the case against the petitioners and specifically responding to Writ Petition No.612/2023, he would submit that several complaints of loan practises and favoured sanction of loans in the bank were received by the Commissioner cum Registrar of Co-operative Societies, Maharashtra State, Pune. Mr. Jadhawar was, therefore, deputed to conduct Test Audit of all loan accounts in excess of Rs.50 Lacs.

In the Audit Report, he reported about misappropriation of 429.57 Crores, involving 124 NPA loan accounts in the bank, which accounted for 92% of the loan disbursed. The Report indicated that the sanction of loans in absence of credit worthiness and loan repaying capacity of the borrowers lead to siphoning, diversion and its misutilization and this was all noticed during Audit.

The Board of Directors headed by Amar Mulchandani, the Chairman, in connivance with his family members/Director namely Ashok S. Mulchandani, Manoj Sadharam Mulchandani and Daya Ashok Mulchandani alongwith the borrowers, favoured several

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groups, while sanctioning the loans, despite having knowledge that they will not be repaying the loans. Based upon the findings of the Audit, 8 separate complaints involving 124 NPA accounts were filed with Pimpri Police station against the willful defaulters alongwith the Chairman, Board of Directors and Bank Officials of Seva Bank. On the complaint filed by Mr. Rajesh Jadhawar, 3 FIRs were registered bearing Nos.525, 526 and 527/2021, wherein Amar Mulchandani is arraigned as an accused, with various borrowers of Seva Bank for sanctioning the loans to borrowers without ascertaining their creditworthiness, and subsequently diverting and siphoning off the loan amount. These three FIRs were subsumed in the present ECIR, which was under investigation.

24 Mr. Venegavkar has also submitted that the RBI had also conducted scrutiny of loan accounts of various borrowers of the Seva Bank and reported in its order dated 02/02/2021 as below :

“Bank had not ensured regular monitoring of end use of funds in the accounts of borrower. Despite knowing that the proceeds of credit facilities sanctioned to above mentioned persons, were deployed for purpose/activities or creation of assets other than those for which the loan was sanctioned, bank did not take any steps to recover the said loans, charge penal interest etc.”

It is also pointed out that continuing irregularity in sanction of loans by Amar Mulchandani alongwith the Board of Directors and other Bank Officials, resulted in high NPA, and it diminished the net worth of the Bank. Resultantly, the Reserve Bank of India appointed an Administrator in June, 2021 and finally the license of the bank is also cancelled in October, 2022.

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25 It is urged by Mr. Venegavkar that the Petitioner is Ex-chairman of Seva Bank and he, in collusion with the other accused persons, have siphoned off public money and duped the depositors of the Bank, and has illegally benefited himself and created irreparable loss in connivance, with the borrowers. He is, therefore, accused of laundering the proceeds of crime and is alleged to have invested it in the name of his family members and associates like Rajesh Sawant. The FIRs registered against the petitioner Mr. Amar Mulchandani accused him of playing an active role in misappropriation of the funds and as he facilitated a chosen few to avail the loans, without completing the documentation, and ultimately, assisted the borrowers in diverting the loan amount. He is also accused of being a beneficiary of part of the proceeds, so generated by illegal diversion of the loan amounts by getting commissions.

Pointing out to the causal link to the ECIR based on FIR No.163/2018, Mr. Venegavkar would submit that the criminal act of each of the accused is not covered in a single FIR as the criminal act is associated with different set of facts, as loans were disbursed to different entities, in violation of the banking norms and the proceeds created thereof from the crime were subsequently laundered and this involved amount of Rs.429 Crores.

26 By relying upon the exhaustive affidavit filed by the Assistant Director, Directorate of Enforcement, Ministry of Finance, Government of India on 28/02/2023, Mr. Venegavkar, has attempted to demonstrate before us that the petitioner has received tainted monies or proceeds, generated from the scheduled offences, including the one in FIR No.525, 526 and 527 of 2021, as it

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resulted in generation of proceeds of crime, which have been laundered, the offence of money laundering is made out, as held by the Constitution Bench in the case of **Vijay Chaudhary** (*supra*).

Responding to the contention advanced by the learned counsel for the Petitioners, that on closure of CR No.163/2018, the ECIRs becomes non-existent or dead, Mr. Venegavkar has urged that there is a process prescribed in the Act to make the proceedings non-existent, by Section 44 of the PMLA, which is a statutory process.

In the case of **Vijay Chaudhary** (*supra*), it is only in three contingencies mentioned, the ECIR would come to an end, and even prior to this decision, according to Mr. Venegavkar, this Court in the case of **Babulal Varma Vs Enforcement Directorate**¹⁰, had taken a view that the PMLA is a standalone offence, and once the proceedings therein are initiated, then the closure of FIR, compromise between the parties, discharge of an accused, acquittal of an accused, or quashment of scheduled offences will not affect the proceedings under PMLA. However, the Apex Court in the case of **Vijay Chaudhary** (*supra*) has contemplated three eventualities, when the proceedings under PMLA would be non-existent i.e. acquittal, discharge of the accused and quashment of the schedule offence.

It is also pointed out to us that CR No.163/2018 was closed on 18/04/2022 when the decision of the Bombay High Court was holding the field, and subsequent thereto, came the decision of the Apex Court in case of **Vijay Chaudhary** in July, 2022. The alleged scheduled offences being CR Nos.525, 526 and 527 of 2021 were registered prior to the Judgment of **Vijay Chaudhary**, and according to Mr.Venegavkar, the existence of proceeds of crime in

¹⁰ Cri. Application No.201/21 in Cri.B.A.974/21

case of Seva Bank which is the “causal link”, between the FIRs that continue to subsist and therefore, the submission that on closure of CR No.163/2018 the ECIR is a dead letter, is not an acceptable proposition, according to him.

Mr. Venegavkar has placed reliance upon the decision of Delhi High Court in case of *Rajendra Singh Chaddha vs. Union of India, Ministry of Home Affairs through its Chief Secretary & Anr*,¹¹ as well as in case of *Neeharika Infrastructure Pvt. Ltd. vs. State of Maharashtra*¹².

27 We have specifically enquired with Mr. Venegavkar as to whether the practice of subsumption of FIRs, which is adopted in the present case, is frequently followed by the ED, and he has placed before us the following cases, where such exercise is undertaken :

Sr. No.	Case Name	ECIR No.	FIR No.
1	Anil Parab	MBZOI/57/2022 Dated 11.05.2022	Ministry of Environment complaint No.12 of 2022 dated 10.03.2022 FIR No.177 of 2022 Dated 08.11.2022
2	Mackstar (Wadhawan)	ECIR/MBZO-I/ 39/2020	FIR subsumed : FIR No.88 of 2023 registered with NM Joshi Marg PS
3	DHFL-UPPCL Fraud	ECIR/MBZO-I/02/ 2020	Multiple FIRs from Uttar Pradesh Police and Chennai Police, have been merged
4	Gainbitcoin Scam (Variable Tech Pvt. Ltd.)	ECIR/MBZO-II/02/ 2018 dated 03.04.2018	FIR in Maindan Garhi Delhi FIRs Subsumed : FIR No.330/331 of 2019 (Delhi) FIR No.49 of 2023 dated 23.03.2023 and multiple more having a total of 33 FIRs

11 WP (Cri) No.562/2023

12 2021 SCC Online SC 315

5	City Limousines & Ors.	ECOR/MBZO/65/2009	ECIR was recorded based on FIR dated 14.09.2007 registered by Cuffe Parade PS, Mumbai and subsequently 132 more FIRs were posted alongwith present case on the direction of Hon'ble Supreme Court
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THE ANALYSIS OF THE COUNTER SUBMISSIONS ADVANCED

28 The Directorate of Enforcement, through its Assistant Director, Mumbai Zonal Office, registered ECIR/MBZO- II/10/2021, upon complaint filed under Section 44 and 45 of the Prevention of Money Laundering Act, 2002 for commission of offence of money laundering defined under Section 3 of the Act of 2002, being made punishable under Section 4 of the Money Laundering Act. The Assistant Director, Director of Enforcement, Ministry of Finance, Government of India filed a complaint against 26 accused persons, on being authorized for filing of the complaint, as per the authorization issued by Government of India, Ministry of Finance, Department of Revenue.

29 On the basis of a complaint filed by a shareholder of Seva Bank, FIR No. 163 of 2018 was registered against Vinay Aranha, and Vivek Aranha of Rosary Education Group, invoking Section 420 r/w Section 32 of IPC, based on an allegation that the accused persons had mortgaged their already sold property with the bank to obtain loans and systemically cheated the bank and its shareholders.

Subsequent to this on the basis of multiple complaints regarding malpractices in the bank, Rajesh Jadhawar, Joint Registrar (Audit Cooperation Department), as per the direction of Commissioner of Co-operation Maharashtra State, conducted a test

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audit of the loan accounts and he reported to the misappropriation to the tune of Rs. 429.57 crore involving 124 NPA loan accounts, which accounted for 92% of the loans of SVB.

On the basis of the audit report, he filed 8 complaints, against distinct accused persons, which resulted in registration of 3 FIRs and a table indicating the gist of the accusations along with the accused in these FIRs is reproduced below, which would assist in dealing with the arguments advanced on behalf of the petitioner and the Enforcement Directorate:-

Sr. No.	FIR No. Date & PS	Name of Accused	Gist of FIR
1	525/2021 dated 11.08.2021, Pimpri Police Station, Pune	1. Dharmendra Sonkar 2. Netra Sonkar 3. Shailendra Sonkar 4. Ratan Sonkar 5. Amar Mulchandani 6. 23 other bank officials/directors	The said FIR was registered for misappropriation of loan amount to the tune of Rs.10.37 crore of Sonkar Group.
2	526/2021 dated 12.08.21, Pimpri Police Station, Pune	1. Vinay Vivek Aranha 2. Vivek Anthony Aranha 3. Deepti Vivek Aranha 4. Ambika Baldev Singh Dhinsa 5. Kishore Nathuram Chavan 6. Almaz Aziz Aladdin 7. Prasad Pandurang Nalavde 8. Amar Mulchandani 9. Ashok Mulchandani 10. Manohar Mulchandani 11. Daya Mulchandani 12. Suresh Shirode 13. 33 other directors/bank officials	It is alleged that 16 loans were sanctioned to the accused persons without the credit worthiness of the borrower and the loan amount was diverted, siphoned off and not utilized for the declared purpose. It is also mentioned in audit report as well as in the FIR that Board of Directors of Seva Vikas Bank whose chairman was Amar Mulchandani, was also colluding with Vinay Aranha in this conspiracy. Total outstanding is Rs. 43.18 Crore
3	527/2021 dated 12.08.2021, Pimpri Police Station, Pune	1. Sheetal Tejwani 2. Sagar Suryavanshi 3. Girish Tejwani 4. Gul Tejwani 5. Amar Mulchandani	The said FIR was registered for misappropriation of loan amount to the tune of Rs.60.67 crore involving 10 loan cases of Suryavanshi

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		6. Ashok Mulchandani 7. Manohar Mulchandani 8. Daya Mulchandani 9. Suresh Shirode 10. 27 others directors/bank officials	Group.
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30 It is no doubt true that the Commission of Schedule offence is a pre-requisite and *sine quo non* for initiating investigation under the Prevention of Money Laundering Act, which is a special enactment to prevent money laundering and to provide for confiscation of the property derived or obtained directly or indirectly from or involved in any process or activity connected to proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property.

The Enforcement Directorate recorded the Enforcement Case Information Report (ECIR) based on FIR No.163 of 2018, which invoked Section 420, a schedule offence, covered under the Act. Subsequently, other 3 FIRs mentioned in the above table were subsumed in the said ECIR and the entire loan scam of Seva Bank containing 124 loan accounts for total outstanding of Rs. 429.57 Crore was taken under the purview of investigation under PMLA, 2002.

The gist of the allegation in the FIR No.163 of 2018 as well as the 3 subsequent FIRs revolved around the working and functionality of Seva Bank and even in the first FIR No.163 of 2018, one of the account holder/shareholder made a grievance in respect of Rosary Education Group, being disbursed the loan without complying the requisite formalities for grant of loan and in the subsequent FIRs, which are filed subsequent to the audit report of

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Mr. Rajesh Jadhawar, which divulged misappropriation, alleged that the Board of Directors, including Shri Amar Mulchandani in connivance with other Directors and Borrowers, sanctioned favoured loans to them neglecting their credit worthiness, and the accusations set out that the loan amount was diverted, siphoned off and not utilized for the declared purpose. The report also revealed that the irregularity in the sanctioning of the loans by the Board of Directors/ Bank officials, diminishing its networth as large number loan accounts were rendered non-performing. The accused persons included the individuals, the members of the Board of Directors, and the office bearers of the Bank as well as different entities, like M/s Rosary Global Education Pvt Ltd, M/s Deepti Enterprises, proprietor Deepti Aranha, M/s Uniq Enterprises, M/s Paramount Infrastructure etc.

During the course of investigation, search and seizure action under Section 17 of the PMLA was conducted, at the business and residential premises of Amar Mulchandani and Vijay Aranha, Sagar Suryawanshi and their family members and Associates on the reasonable belief that the premises had parked the proceeds of crime and the records related to money laundering.

At this juncture, it is relevant to note that, obstruction at the end of Amar Mulchandani and his family members leading to filing of FIR No.130 of 2023, invoking Section 352, 201 and 120 B of IPC against all of the accused, who were arrested at the conclusion of the search proceedings.

31 The investigation lead to multiple unexplained financial transactions of the members of Mulchandani family with their

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relatives/friends/acquaintances and subsequent searches were conducted, at distinct premises belonging to these persons and various property documents/incriminating records/jewelery, high end cars, cash, bank accounts, worth Rs. 10,25,48,279 was recovered, which was seized/frozen.

During the course of search operation, statement of various person were recorded under Section 17 of the PMLA .

Since the investigation revealed that Amar Mulchandani, during his Chairmanship of Seva Bank had sanctioned ineligible loans to various borrowers in lieu of kickbacks by neglecting the prudent banking norms, which turned the accounts into NPA with an outstanding of Rs. 429.57 Crores, the major loan defaulter being Sagar Suryavanshi and Vinay Aarana, summons were issued to them.

Sagar Maruti Suryavanshi (Petitioner in Writ Peittion No.731) was arrested on 15/06/2023, on the reasonable belief that he was guilty of offence of Money Laundering and he was incarcerated till, the order passed on his bail application (BA No.1584/2024) on 25/07/2024.

Amar Mulchandani (Petitioner in Writ Petition No.612/2023), was arrested on 1/07/2023, and he is in judicial custody as on date.

32 Ashok Mulchandani, Manohar Mulchandani and Daya Mulchandani, were introduced by Amar Mulchandani as Directors of Seva Bank in order to enjoy majority and he is alleged to have gained complete control over the functioning of the bank, which assisted him in indulging in several malpractices, while sanctioning

favoured loans to the ineligible borrowers. He is accused of sanctioning loans without holding any meetings, or consultation of board of directors and his friends and associates were disbursed loans, by merely signing on blank loan applications and these loans were routinely shifted for other purposes. Mr. Amar Mulchandani, along with Mr. Ashok Mulchandani continued to be the director from 2007 to 2020, and within the total span of time that was available, the same *modus operandi* continued in sanction of loans from the bank without assessing the security value of the Mortgaged property and ever greening of old loans was done to avoid audit objections, expressing them to conceal the true state of affairs of the bank. The ever greening was facilitated by Mr. Amar Mulchandani in connivance with the loan borrower.

In return, Amar Mulchandani received kickbacks in form of cash to the extend of 20% of the loan amount and by obtaining signatures on blank cheques from borrowers, his commission money was withdrawn when the loan was disbursed and this was even noticed by RBI, while its scrutinized the loan accounts in Seva Bank.

33 The test audit of the loan accounts of Seva Bank brought about the whole *modus operandi* of Board of Directors, its officials, who were found to be responsible for misappropriation of bank's fund, thus jeopardizing the financial interest of its depositors and share holders. The commonality in the 3 FIRs, bearing 525, 526, and 527 arising out of the findings of the audit report with the FIR No.163 of 2018 is the *modus operandi* of the Board of Directors, resulting into loos to the bank, and in result adversely affecting the interest of the shareholders as well as the account holders in the Bank.

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It is the justification of the Enforcement Directorate that instead then opening 3 separate ECIRs on registration of the three FIRs 525, 526, 527 of 2021 on 11/08/2021, and 12/08/2021, since the money laundering was being investigated in the first ECIR, for assessing the cumulative losses caused to the bank and its shareholder, which was now discovered in the reports of the auditor, it was decided to subsume the FIRs in the existing ECIR.

34 Rival contentions were advanced before us about the feasibility and the permissibility of doing so and we would now advert our attention to the same.

“Money Laundering” has the meaning assigned to it in Section 3 of the Prevention of Money Laundering Act, 2002 and Section 3 reads thus:-

“3. 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 and projecting it as untainted property shall be guilty of offence of money-laundering.”

Section 4 prescribe the punishment for money-laundering and the Act of 2002 prescribe the procedure to deal with an offence of money laundering.

Chapter III of the Act set out the procedure for attachment, adjudication and confiscation of the property involved in money-laundering, whereas Chapter V has set out the procedure for issuance of summons, search and seizure.

Section 24 provide that, in any proceedings relating to proceeds of crime under the Act, in case of a person charged with offence of money-laundering, the Court shall, unless the contrary is

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proved presume that such proceeds of crime are involved in money-laundering.

35 The Prevention of Money Laundering Act, 2002, was enacted to address the issue of money-laundering and for its prevention, by providing for attachment of the proceeds of crime, its adjudication and its confiscation, by setting up the agencies and mechanisms for combating it, as it posed a serious threat to the financial situation of the nation spread across the globe.

The validity and interpretation of certain provisions of the Act, 2002, and the procedure followed by the Enforcement Directorate, while enquiring into/investigating the offences under the PMLA, as being violative of the Constitutional mandate was placed before the three Judge Bench of the Apex Court in case of *Vijay Mandanlal Chaudhary & Ors vs Union of India* and various concerns, as regards the provisions and its implementation came to be answered and a pertinent observation in paragraph no.455 of the decision reads thus:

“455. Needless to underscore that the 2002 Act is intended to initiate action in respect of money-laundering activity which necessarily is associated with the property derived or obtained by any person, directly or indirectly, as a result of specified criminal activity. The prosecution under this Act is not in relation to the criminal activity *per se* but limited to property derived or obtained from specified criminal activity. Resultantly, the inclusion of criminal activity which has been regarded as non-cognizable, compoundable or minor offence under the concerned legislation, should have no bearing to answer the matter in issue. In that, the offence of money-laundering is an independent offence and the persons involved in the commission of such offence are grouped together as offenders under this Act. There is no reason to make distinction between them insofar as the offence of money-laundering is concerned. In our opinion, therefore, there is no merit in the argument under consideration.”

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36 What amounts to an ECIR and how it is distinct from an FIR is also specifically deliberated upon and the finding to that effect is to be found in paragraph no.456 and 457 of the law report, which reads thus:-

“456. 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. 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. In the scheme of 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 concerned person for offence of money-laundering under Section 3 of this Act. 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 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 upto filing of the complaint in respect of offence under Section 3 of the 2002 Act is fully

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governed by the provisions of the 2002 Act itself. To wit, regarding survey, searches, seizures, issuing summons, recording of statements of concerned persons 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.

457. 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 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. 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 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.”

37 In the wake of the distinction drawn, the further question which arose for consideration was, whether it is necessary to furnish the copy of ECIR to the person concerned apprehending arrest, or at least after his arrest and this question was answered in the negative, by holding that supply of ECIR in every case to a person concerned is not mandatory, as it cannot be equated with an

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FIR, which is mandatorily required to be recorded and supplied to the accused as per provisions of 1973 Code.

Revealing a copy of an ECIR, if made mandatory would defeat the purpose sought to be achieved by the act of 2002, and it would amount to frustrating the attachment of the property and therefore, it was held that ECIR, which is essentially an internal document of Enforcement Directorate cannot be cited as violation of constitutional rights.

38 While we are called upon to decide the issue whether a subsequently filed FIR can be subsumed into an ECIR, despite the FIR which was the basis of the ECIR, having been resulting into a 'C' summary, we will definitely have to keep in mind the legislative intent, its object and purpose.

The Prevention of Money Laundering Act, 2002 being enacted to prevent money-laundering, has provided for a wider scope as this offence takes place when, whosoever directly or indirectly attempts to indulge or knowingly assist 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 projects or claims it as an untainted property.

A person is guilty of the offence of money laundering in all the above situations. A person is also guilty of money-laundering if he is found to have directly or indirectly attempted to indulge or knowingly assisted a party or is actually involved in concealment or possession, acquisition, use and projecting it as untainted property or claiming it to be so.

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39 The focal point of the offence of money laundering is 'proceeds of crime' and Section 2(1)(u) defines it in the following manner:-

“(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;”

All properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence cannot be regarded as proceeds of crime, but in order to attract the vice of proceeds of crime, a property must be derived or obtained directly or indirectly, 'as a result of' criminal activity relating to a scheduled offence.

For being proceeds of crime necessarily the property associated with the scheduled offence must have been derived or obtained, as a result of criminal activity relating to the concerned scheduled offence and in Vijay Madanlal Chaudhary, their Lordships of the Apex Court cautioned that this distinction must be born in mind, while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of 2002 Act, as dealing with the proceeds of crime by any process or activity constitutes offence of money-laundering under Section 3 of the Act.

Paragraph No.252, in case of Vijay Chaudhary offered a infallible test to ascertain, when a property would amount to 'proceeds of crime'

“252. Be it noted that the definition clause includes any property derived or obtained "indirectly as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression "proceeds of

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crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition "proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive Interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act."

40 Offering a further clarification, in paragraph 253, it is held in the very said verdict, that in a event the person named in the criminal activity, relating to a schedule offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action of money-laundering, against such a person or person claiming through him in relation to the property linked to the stated scheduled offence.

The aforesaid observation has to be read in the background of Section 44 providing for the offences under the Act to be triable by Special Court and Section 44 was amended vide Act no. 20 of 2005 and Act no. 2 of 2013 and the finance (no.2) Act, 2019.

Addition of a proviso in 2019 has given a new conspectus to the said provision. The said proviso reads thus:-
‘Provided that after conclusion of investigation, if no offence of money laundering is made out requiring filing of such complaint, the said authority shall submit a closure report before the Special Court.

41 The aforesaid proviso, which has been construed to be an enabling provision permit the authority authorised to file closure report before the Special Court, if no offence of money laundering has been made in the opinion of the investigating officer. In paragraph no.363, when interpreting the impact of the proviso their Lordships of the Apex Court in case of *Vijay Madanlal Chaudhary*, made the following observations:-

“363. Coming to the proviso inserted in this clause [Section 44(1) (b)] vide Finance (No. 2) Act, 2019, is, in fact, an enabling provision. It permits the Authority authorised to file a closure report before the Special Court in case it is of the opinion that no offence of money- laundering has been made out, requiring filing of such complaint. This provision is only to dispel the doubt that in the event the person has been arrested by the officer authorised under Section 19 of this Act on the basis of material in his possession and having reason to believe and recorded in writing of being guilty of an offence punishable under this Act, but after the inquiry done by him in exercise of powers under Chapters V and VIII of the 2002 Act, he forms an opinion that no offence of money-laundering is made out, requiring filing of complaint, it is open to him to file a closure report before the Special Court disclosing that position. The proviso would, thus, come into play in such cases where the complaint is yet to be filed owing to the pendency of inquiry before the authorities, under Chapters V and VIII of the 2002 Act. In that view of the matter and more so keeping in mind the purposes and objects behind the enactment of 2002 Act, such a provision must be regarded as having reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act. Accordingly, for the view taken by us, we do not find any dichotomy in these provisions, much less being manifestly arbitrary or unconstitutional.”

42 Another relevant observation in concluding para 467 of the *Vijay Madanlal Chaudhary* (supra) deserve reproduction:-

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

While holding the proviso to clause 4 of sub-section (1) of Section 44 of the 2000 Act, to be directory in nature, the provision was read down to mean that the special court may exercise judicial discretion on case to case basis.

43 Relying upon the aforesaid, what is sought to be urged before us on behalf of the petitioners, is once the closure report in a predicate offence i.e. C.R. No.163 of 2018 is filed and accepted, then ECIR/ MBZO-2/10/2021 is a dead letter and a non est and if it is so, then there is no question subsuming subsequent FIRs, in the same.

In support of this submission, our attention is drawn to the decision in case of *Naresh Goyal vs. Directorate of Enforcement* (Criminal Writ Petition No. 4037 of 2022) decided by the Division Bench of this Court, where the argument advanced on behalf of the petitioners in the two Writ Petitions was, that the ECIR registered by Directorate of Enforcement does not survive, in as much as, there is no scheduled offence, which is a condition precedent for initiating ED proceedings as Mr. Shirsat, the learned counsel for ED, did not dispute the fact that there was no scheduled offence pending against either of the petitioners and he also did not dispute that registration

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of scheduled offence is a condition precedent for initiating ED proceedings.

The facts placed before the Division Bench, reveal that a private complaint was filed before the Metropolitan Magistrate, against Jet Airways (India Ltd) and its erstwhile Non-Executive Directors, including both the petitioners, alleging offences punishable under IPC and by passing an order under Section 156(3), the Senior Police Inspector, MRA Marg Police Station, was directed to register an FIR.

Based on this FIR, ED registered the ECIR, under Section 3 and 4 of the PMLA. Admittedly, on 9/03/2020, a closure report was filed by the police on the ground that the dispute was civil in nature and in the matter of dues, which is payable to the complainant by Jet Airways, the claim in respect thereof, was already filed with Resolution Professional in the Insolvency proceedings, initiated under IBC, 2016.

Enforcement Directorate filed an Intervention Application as well as Protest Petition, challenging the closure report and the trial Court rejected the same by observing that it had no locus to intervene. When the informant appeared in the matter, and a Criminal Revision was filed, it was also dismissed on the ground that ED has no locus to intervene. Thereafter, a Criminal Writ Petition was also filed, which was also dismissed, and the said decision was upheld by the Supreme Court by dismissing the SLP

Recording that the acceptance of Summary had attained finality, the Division Bench referred to the decision of Vijay Mohanlal Chaudhary (supra) recording that only if there is a predicate

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offence, then an ECIR is maintainable, but if the FIR stands closed by a judicial process, the ECIR will not survive. A natural corollary of it would be that, the ED would not be able to continue with the investigation, there being no predicate offence.

44 In deriving the aforesaid conclusion, the Division Bench relied upon the decision of this Court in case of *State of Maharashtra vs. Bhimrao Vitthal Jadhav*, decided on 21/09/1974, which had held that granting of 'C' summary amounts to an acquittal and dealing with the argument of the counsel for the ED, he was confronted with the decision of Apex Court in case of *M/s Obulapuram Mining Pvt Ltd* (Criminal Writ Petition No.1269/2017) decided on 2/12/2022, where the Solicitor General appearing for the ED had admitted that since the proceedings before the Apex Court arose from an order of attachment and there is an acquittal in respect of a predicate offence, proceedings really would not survive.

45 We have looked into the decision of this Court in case of *State of Maharashtra vs. Bhimrao*, since the Division Bench founded its conclusion on the same by holding that 'C' summary amounts to an acquittal.

The facts, involved reveal that the police constable was accosted by the officers and men of Anti-corruption Bureau, and since he was smelling of alcohol, he was sent for medical examination and the chemical analysis showed that the concentration of the alcohol in blood was 0.49 percent. As the officer in-charge of the investigation felt that it was below 0.5, the percentage required to raise a presumption of having drunk, so as to constitute an offence under Section 66(1) (b) of the Bombay

Provision Act, 1949. He made a report to the Judicial Magistrate, claiming 'C' summary, which was granted.

The question that was placed before the Court was whether a departmental enquiry need to be undertaken for deciding whether the delinquent is fit to be retained in public service even though he has been acquitted by the Criminal Court.

In paragraph no.8, recording that it was not doubted that, "granting 'C' summary was a judicial order and that the granting of the summary amounts to an acquittal of the plaintiff-respondent in the present case, it was held that there is no automatic bar for holding departmental proceedings. The ultimate question whether acquittal in Criminal proceedings would bar holding of departmental enquiry was answered by recording that the departmental enquiry was not a trial and since a concession was given that 'C' summary was a judicial order and amounted to acquittal, the Court proceeded upon the same, as it was not disputed that 'C' summary report would amount to 'acquittal'.

46 By relying upon the decision of the Division Bench in ***Naresh Goyal (supra)***, the ECIR was quashed as the predicate offence did not survive, as the accused was acquitted in the wake of acceptance of 'C' summary. It is not in dispute that even in the present case before us 'C' summary has been accepted, which amounts to acquittal of the accused in the predicate offence. In the case of ***Vijay Madanlal Chaudhary (supra)***, it is specifically held that in three contingencies, stipulated therei, if the FIR is quashed, then the ECIR shall not survive. An acquittal of an accused is one such contingency.

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47. This principle is seriously doubted by Mr. Anturkar and he has relied upon the recent decision of the Supreme Court in case of ***CBI vs. Hemendra Reddy and ors***¹³, where the principle question that fell for consideration was formulated in paragraph no.3 of the decision in the following words:-

“3. The principal question of law that falls for the consideration of this Court in the present litigation is whether the High Court was justified in quashing the entire prosecution instituted by the CBI against the accused persons for the alleged offences on the ground that the CBI could not have undertakekn further investigation under sub section (8) of Section 173 of the Criminal Procedure Code, 1973 (for short, ‘the CrPC’) and filed a chargesheet having once already submitted a final report under sub section (2) of the Section 173 of the CrPC (closure report)? In other words, whether the High Court was right in taking the view that the Special Court could not have taken cognizance upon the chargesheet filed by the CBI based on further investigation having once already filed a closure report in the past and the same having been accepted by the court concerned at the relevant point of time?”

On a case being registered against the Appraiser in Customs Department, for being in possession of the disproportionate assets, FIR was registered by the CBI under Section 13(1) (e) r/w section 13(2) of the Prevention of Corruption Act, 1988. On conclusion of investigation, the CBI/ACB filed an application with a prayer to close the proceedings with the following prayer:-

“After completion of investigation, it has come to light that the accused cannot be prosecuted. Hence, final report under Section 173 of Cr.P.C. is being filed, which may be accepted.”

The Special Court on 29/01/2009, recorded as below:-

“Reason stated in the report is convincing. Hence the final report is accepted, and the FIR is closed and permitted to retain documents collected during investigation to be used in regular departmental action against A1”

48 The CBI filed Criminal Miscellaneous Petition under Section 173(8) of Cr.P.C, seeking to reopen and undertake further

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investigation by stating as below:-

‘...the prosecution has filed the final report under Section 173 Cr.P.C before this Hon’ble Court on 24.12.2008 with a prayer to close the FIR as a mistake of fact’

‘ It is humbly submitted that now new evidences emerge to prove the allegation leveled against the above said accused persons and to substantiate the charge of possession of the disproportionate to the known sources of income of A-1 and A-2. Hence, it is just and necessary to re-open and further investigate the above case under Section 173 (8) Cr.P.C in the interest of justice’

The Special Court allowed the application, and the CBI continued its investigation and issued summons, when the affected party respondent no.3 filed Criminal OP before the Madras High Court, seeking quashing of proceedings related to the summons received by him.

The High Court on 11/09/2014, rejected the prayer of respondent no.3 by holding that Under 173(8) of the CrPC, a police officer can carry on further investigation even after a report under Section 173(2) of the CrPC is submitted, in view of Section 173(8) of the CrPC and held in Vinay Tyagi v. Irshad Ali alias Deepak reported in (2013) 5 SCC 762, with the only rider being that the police should seek formal permission from the Court. It was held that acceptance of the final report by the Magistrate does not debar him from taking cognizance if on further investigation, fresh material comes to light and since fresh material was received in the year 2013 it warranted reopening of the investigation.

Thereafter, when the charge-sheet was filed, once again the doors of Madras High Court were knocked, seeking quashing of the charge-sheet and the CBI filed its counter to the petitions.

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49 The High Court allowed the Criminal Applications by holding thus:-

- (i) *That on receipt of a final report under Section 173 of the CrPC, the Magistrate has three options either to accept the report and close the case, to disagree with the report and proceed with the case or to order further investigation under Section 156(3) of the CrPC*
- (ii) *That the Magistrate is only empowered to direct "further investigation" and not to direct a "re-investigation/de-novo investigation".*
- (iii) *In terms of the judgment in Vinay Tyagi (supra) no investigation agency is empowered to conduct a fresh, de-novo or reinvestigation once a report under Section 173(2) of the CrPC is filed.*
- (iv) *The petition seeking "re-opening"/"further investigation" was filed after a lapse of 4 years*
- (v) *In order to empower the Magistrate to permit further investigation, something should have been pending before the Magistrate, but no matter was pending as the investigation had already been closed.*
- (vi) *The Special Court thus had no power to grant permission to conduct a further investigation.*
- (vii) *The judgment of Vinay Tyagi (supra) had not been brought to the attention of the High Court at the time of deciding Crl. O.P. No. 6371 of 2014."*

The High Court quashed the entire prosecution on the ground that the Special Court (CBI) had no jurisdiction to grant permission to CBI to conduct further investigation.

The contention of an accused that acceptance of a closure report terminate the proceedings finally, so as to bar the investigating agency from carrying out any further investigation in relation to the offence was examined, in light of the submission that an order accepting the closure report under Section 190 (1)(c) of Code of Criminal Procedure is a judicial order, and not an administrative order, as when final report of the police is submitted to the Magistrate and the Magistrate passes an order, either agreeing with the report of the police and finalizing the proceedings; or not agreeing with the police report and holding that the evidence is

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sufficient to justify the forwarding of the accused to the Magistrate and taking cognizance of the offence complained off.

Though the aforesaid contention was not rebutted, what was deemed necessary to be examined was, whether an order accepting a final report, would bar further investigation by the police or the CBI, as in the present cases, in exercise of statutory powers under chapter XII of Cr.PC. By placing reliance on the decision, in case of ***State of Rajasthan vs Aruna Devi***,¹⁴, in the facts where a final report was submitted stating that the complaint was false and this was accepted by the Magistrate, but since the Superintendent of Police had independently ordered further investigation, a challan was filed under Section 420 and 467 of IPC, and the Magistrate took cognizance, a challenge raised to the act of the Magistrate result in dismissal of the Revision, but the High Court allowed the Revision and the order of cognizance was set aside.

50 When the matter came up in an Appeal before the Apex Court under Article 136, it was held that, on further investigation being made, fresh materials came to light, which lead to the filing of further report, stating that a case has been made out. By relying upon the pronouncement flowing from two more decisions in case of ***K Chandrasekhar and S Papaiah***, in paragraph 79 a pertinent observation was made:-

“79. In the light of the aforesaid decision of the Supreme Court, it appears that though the order passed by the learned Magistrate accepting a final report under Section 173 is a judicial order, there is no requirement for recalling, reviewing or quashing the said order for carrying out further investigation under Section 173(8) of the CrPC. As held by this Court in the said decision, the provisions of Section 173(8) of the CrPC have been enacted to take care of such like situation is also.”

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In para 83, the conclusion drawn is summarized as below:

- “(i) Even after the final report is laid before the Magistrate and is accepted, it is permissible for the investigating agency to carry out further investigation in the case. In other words, there is no bar against concluding further investigation under Section 173(8) of the CrPC after the final report submitted under Section 173(2) of the CrPC has been accepted.*
- (ii) Prior to carrying out further investigation under Section 173 (8) of the CrPC it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.*
- (iv) Further investigation is merely a continuation of the earlier investigation, hence it cannot be said that the accused are being subjected to investigation twice over. Moreover, investigation cannot be put a par with prosecution and punishment so as to fall within the ambit of Clause (2) of Article 20 of the Constitution. The principle of double jeopardy would, therefore, not be applicable to further investigation.*
- (v) There is nothing in the CrPC to suggest that the court is obliged to hear the accused while considering an application for further investigation under Section 173(8) of the CrPC.”*

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In light of the above conclusion that, it is also held that even after the final report is laid before the Magistrate and accepted, it is permissible for the investigating agency to carry out further investigation and prior to carrying out the investigation under Section 173 (8) of the Code of Criminal Procedure, it is not necessary that the order accepting the final report should be reviewed, recalled or quashed.

51 The decision of the Apex Court is delivered in the background that prayer was made to close the proceedings by CBI, since on completion of investigation, it came to the light that the accused cannot be prosecuted under the provisions of the Prevention of Corruption Act. The Special Court, while considering the prayer to closed the FIR, accepted the final report and closed the same. The CBI itself sought reopening of the investigation under section 173(8), since new evidence emerged against accused to substantiate the charge of possession of disproportionate income to his known

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sources. The decision of the Apex Court revolve around the closure report, since it was based on absence of any material against accused, which subsequently was received and therefore, CBI sought reopening of the closure report.

It is worth to note that the Apex Court was conscious of Section 169 of the Code, which provided for release of an accused when the evidence was deficient, which definitely was not a report, but it contemplated filing of a report by the investigating officer in the manner provided in section 173 of the Code, as on completion of investigation, the officer-in-charge of the police station is duty bound to forward to the Magistrate report in the form prescribed, including the information whether the accused has been arrested, whether he has been released on his bond or whether he has been forwarded in custody. The Apex Court was only dealing with this report to be submitted on completion of investigation under sub-clause 2 of section 173 and, therefore, focused its attention on power of further investigation, as contemplated under sub-section 8 of Section 173 of the Code. It was not dealing with summaries i.e. 'C' summary.

52 The Bombay Police Manual 1959, which contains the Rules under the Bombay Police Act 1951, in Rule 219 has provided for submission of final reports and its Paltil. Rule 219 of the Bombay Police Manual, 1959 reads as under:-

219. Final Reports:- (1) *When there is no sufficient evidence to justify the forwarding of the accused to a Magistrate, the Police Station Officer or the investigating officer will release the accused person on bail, if he is in custody.*

(2) *The Police Station Officer will then submit a final report to the Magistrate empowered to take cognizance of an offence on a Police report through the Superintendent of Police or the Sub- Divisional Police Officer, as the case may be, in the following three classes of cases: -*

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(a) Those in which it appears from the Police investigation that no offence has been committed.

(b) Those in which it appears from the Police investigation that only a non-cognizable offence has been committed.

(c) Those in which there are grounds for believing that an offence has been committed, but in which, in the opinion of the officer-in-charge of the Police Station, there are not sufficient grounds to investigate or there is not sufficient evidence to justify sending anyone for trial, or in which the offender is not known or cannot be arrested and sent for trial.

In cases referred to the Police by a Magistrate, the final report will be sent direct to the Magistrate.

(3) The final report should be written up carefully by the officers- in-charge of the Police Station personally and should be accompanied by all the case papers numbered and indexed methodically. If the accused has been released on bail, the Magistrate should be requested to cancel the bail bond. He should also be requested to pass orders regarding the disposal of property attached, unless any of the articles, e. g., blood stained clothes, are required for further use in true but undetected cases. A request should also be made to the Magistrate to classify the case and to issue an appropriate summary of his order, viz. :-

"A" True, undetected (where there is no clue whatsoever about the culprits or property or where the accused is known but there is no evidence to justify his being sent up to the Magistrate (for trial).

"B" Maliciously false.

"C" Neither true nor false, e. g., due to mistake of fact or being of a civil nature.

"Non-cognizable" Police investigation reveals commission of only a non-cognizable offence.

(4) A Superintendent of Police or a Sub-Divisional Officer is not bound to forward a final report to the Magistrate immediately. He may of his own motion direct further enquiry or he may for special reasons permit a case to remain pending under investigation.

(5) When any further investigation is ordered and made subsequent to the submission of the final report the papers should, at each stage up to final disposal, be sent through the Superintendent of Police or the Sub-Divisional Officer. In urgent cases however, the Magistrate may return the papers, direct to the investigating officer.

(6) When a final report of an officer-in-charge of a Police Station is returned to him for further investigation or other purpose, the date of the submission of the final report in its last and complete form should be taken

as the date of its submission to the Magistrate for the purpose of determining, the beginning of the period of 14 days within which a summary of the Magistrate's final order should be sent

(7) It is not competent to a Magistrate to return investigating officer's report made to him under Section 173, Criminal Procedure Code, with an order to make a case against the accused and to send it up for trial. If the Magistrate considers that there is a prima facie case against the accused he should take action under Section 204 of the Code."

53 The above typical provision offers a guidance to the investigating officer or the police station officer about the report to be filed under section 173 of the Code after his investigation is complete.

The Apex Court in ***Hemendra Reddy*** (supra) was dealing with the final report under section 173(2) of the Code, which definitely has the scope for carrying further investigation, but when summaries are filed as mentioned above, and particularly, as per 'C' summary is concerned which is filed by the concerned police officer as the offence is neither true nor false or if it is of civil nature, we do not find that the proposition of law laid down by the Apex Court will apply to 'C' summary. Since 'C' summary amounts to acquittal, as in case of ***Naresh Goyal*** (supra) we see no reason why the observations of the Apex Court would apply to the present scenario.

54 The principle of law flowing from this decision, according to Mr. Anturkar deserve an extension to the principle in the case of ***Vijay Madanlal Chaudhary***, where it is held that if the person is finally discharged, acquitted of the scheduled offence or the criminal case against him, is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against him or anyone claiming such property being the property linked to the scheduled offence.

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55 In *Vijay Chaudhary* (supra), only three contingencies are contemplated; it being a trite position in law that offence under Section 3 of 2002 Act is dependent on illegal gain of property, as a result of criminal activity relating to a scheduled offence, but if the person is finally discharge/acquitted of the scheduled offence or the case against him is quashed, then there can be no continuation of proceedings of money laundering against him or anyone having linked with the said property, being described as 'Proceeds of Crime'.

56 The argument advanced by Mr.Kadam that on acceptance of closure report in a predicate offence, the ECIR is rendered a dead letter, as it is *non-est* and it do not possess the potential of subsuming an FIR, is premised on the ground that there is no power or provision in PMLA to subsume subsequent FIRs into a pre-existing ECIR.

While appreciating the said argument, the offence of money laundering, has to be the focus. Any person, who either directly or indirectly, attempts to indulge or knowingly assist or become part of, or is actually involved in any process or activity, connected with the proceeds of crime, which include its concealment, possession, acquisition or use, or its use and projection or claim that it is an untainted property, is guilty of an offence of money laundering.

The proceeds of crime is any property derived or obtained as result of criminal activity, relating to a scheduled offence, or where such property is taken or held outside the country, and the offence of money laundering necessarily precedes

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commission of the scheduled offences, which cover a category of offences under the Indian Penal Code, under the NDPS Act, Unlawful Activities Prevention Act, and all such offences which are set out in the schedule.

For attracting offence of money laundering, it postulates that there must be a predicate offence and offence of money laundering is dealing with the proceeds of crime.

The predicate offences are all offences that are listed in the schedule and unless there is commission of a predicate offence, an offence of money laundering cannot be committed. Even if a person is not convicted in a predicate offence, he can be found guilty of money laundering, as the intention of the legislature in introducing the offence of money laundering was to punish a person who 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 process or activity included in Section 3 of the Act. The initial interpretation that the offence of money laundering is a one time instantaneous offence and finishes with its concealment or possession or acquisition or use of projecting it as untainted property, or it being claimed as untainted property, was found to be a wrong interpretation and when the Finance Bill 2019 was introduced, justifying the amendments in the 2002 Act, it was categorically recorded that the intention of the legislature had always been that a person will be held guilty of offence of money laundering and will be punished, so long as he is enjoying the 'proceeds of crime' by its concealment or possession or acquisition or use, or projecting the property as untainted property or claiming it as untainted property.

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57 The Special Enactment which contemplate attachment of the property involved in money laundering, is premised on the exercise of power by an Officer not below the rank of Deputy Director authorised by the Director, if he has reason to believe on the basis of the material in his possession that any person is in possession of any proceeds of crime and such proceeds of crime are likely to be concealed, transferred or dealt with, in any manner, which may result in frustrating any proceedings relating to confiscation.

 The Act has also created mechanism for adjudication of the complaints by the Director or any other Officer, who had provisionally attached any property, by recording the reasons of his belief that a person is in possession of any proceeds of crime and which are likely to be concealed, transferred or dealt with to frustrate its confiscation, by following the appropriate procedure as prescribed, the adjudicating authority shall either affirm the attachment of property or order it's retention or freezing of the same, or may release the property, depending upon the material placed before him. If the attachment of the property is confirmed, the Act also contemplate the procedure for its management while the trial is pending.

58 It is evident from the scheme of the enactment that a predicate offence shall precede the offence of money laundering, but it may not be necessary that if the predicate offence comes to an end, the ECIR itself shall come to an end.

 As noted by the Apex Court, in ***Vijay M. Chaudhary (supra)***, that the mechanism of proceeding against the property

being proceeds of crime, is a *sui generis* procedure, and upon identification of the existence of the property being proceeds of crime, the Authority under the Act is expected to inquire into relevant aspects in relation to such property and take measures, as may be necessary, including attachment of the said property, for being dealt with, according to the scheme of the enactment. ECIR has a distinct connotation from an FIR in a sense that it is an internal document created by the Enforcement Department before initiating prosecution against a person involved with process or activity connected with proceeds of crime. It is not a statutory document, as the FIR recorded under Section 154 of Code of Criminal Procedure, is in as much as if such ECIR has not been recorded, it does not come in the way of the authorities referred to in Section 48 of the 2002 Act, to commence an inquiry/investigation for initiating civil action of attachment of the property, being proceeds of crime, by following procedure prescribed in that regard.

ECIR being essential in internal document of the Enforcement Directorate, non-supply of the same has not been viewed to be a violation of the constitutional right, and a person arrested being made aware of the grounds of arrest has been held to be compliant with the mandate of Article 22(1) of the Constitution, as held in ***Vijay Madanlal Choudhary*** (supra).

Since the offence under Section 3 of the Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence, and the existence of a predicate offence, is a *sine qua non* for prosecution under the 2002 Act, which has been held to be not permissible on notional basis, or on the assumption that the scheduled offence has been committed, unless it

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is so registered with the jurisdictional police and/or pending inquiry/trial including by way of a criminal complaint before the competent forum, it is only if the person is finally discharged/acquitted of the scheduled offence, or the criminal case against him is quashed by the court of competent jurisdiction, the predicate offence having come to an end, there can be no offence of money laundering against him or any one claiming such property be linked to the scheduled offence through him.

59 The question whether the subsequent FIR can be subsumed into an existing ECIR also deserve consideration. The term ‘subsumption’ or ‘subsuming’ is not defined under the statute, but in the normal parlance, it means to include something or someone. As per Merrium Webster’s dictionary, ‘subsume’ is defined as to include a place within something larger or more comprehensive; encompasses as a sub-ordinate or a component element.

 The word ‘subsume’ would therefore be indicative of combining, comprehending, comprising, covering, inserting etc.

 The term ‘subsumption’ would be synonymous with colligate, type of: include, consider as part of something. There can be no doubt that for subsuming the subsequent FIR, there is a need to have a quasi link with the first FIR, which resulted into the recording of ECIR.

60 Mr. Kadam had heavily relied upon the decision in case of Naresh Goyal and since the said decision has recorded that grant of ‘C’ summary amounts to acquittal and therefore, a conclusion was derived that since there was no scheduled offence against the

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petitioner in both the petitions, in view of the closure report filed which was accepted by the Court, the impugned ECIR will not survive. The premise on which Naresh Goyal is based, would bind us, as the decision of the Apex Court in case of State through **CBI Vs. Hemendra Reddy & Ors** (supra), as it is dealing with closure report and not summary report.

61 Another decision on which reliance is placed in case of **Indrayani Patnaik Vs. Enforcement Directorate**,¹⁵ where relying upon the decision in case of Vijay M. Chaudhary, the discharge of the petitioners from the scheduled offence, was pressed into service in support of the submission that there cannot be any prosecution for the alleged offence of money laundering in relation to the said offence, as the petitioners are already discharged.

The relevant observation in the said decision is reproduced by us as below :-

2. Learned senior counsel has submitted that in the present case, prosecution of the petitioners in relation to the scheduled offence, on which the proceedings under the Prevention of Money-laundering Act, 2002 (PMLA) were based, have already come to an end with the petitioners having been discharged from V.G.R. Case No. 59 of 2009 (T.R. Case No. 80 of 2011) by the order dated 27.11.2020, as passed by the High Court of Orissa in Criminal Revision No. 831 of 2018. Learned counsel would submit that in the given state of facts and the law declared by this Court, there cannot be any prosecution for the alleged offence of money-laundering in relation to the said offence for which, the petitioners have already been discharged.

4. The record as it stands today, the petitioners stand discharged of the scheduled offence and therefore, in view of the law declared by this Court, there could arise no question of they being prosecuted for illegal gain of property as a result of the criminal activity relating to the alleged scheduled offence.

5. That being the position, we find no reason to allow the proceedings against the petitioners under PMLA to proceed further

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In addition, it is also relevant to note the observation in paragraph no.6, which also deserve a reproduction.

6. However, taking note of the submissions made by the learned Additional Solicitor General and in the interest of justice, we reserve the liberty for the respondents in seeking revival of these proceedings if the order discharging the petitioners is annulled or in any manner varied, and if there be any legitimate ground to proceed under PMLA.

62 A further decision of the Delhi High Court in case of ***Harish Fabiani & Ors Vs. Enforcement Directorate & Ors***,¹⁶ on which reliance is placed by the counsel for the petitioners, would disclose that the petitions sought a declaration for declaring certain provisions under the Act of 2002 to be unconstitutional, being in violation of the fundamental rights. In addition, a prayer was also made to quash and set aside the impugned ECIR and stay all the proceedings arising therefrom and quash the summons issued therein.

During the pendency of this petition, Supreme Court delivered its judgment in Vijay Chaudhary on 27/7/2022, deciding upon the constitutionality of various provisions and therefore the said prayers were declared to be infructuous.

For the purpose of quashing of the ECIR, the petitioners urged that despite the predicate offence registered under FIR No.129/2021 having been quashed by the judgment dated 4/5/2022, by the High Court of Bombay, the petitioners were issued summons in respect of the ECIR and therefore, the other relief in the petitions were prayed for.

The pronouncement of law in Vijay M. Chaudhary to the effect that if the person accused of any scheduled offence is finally

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discharged/acquitted or the criminal case against him, is quashed by the Court of competent jurisdiction, no case of money laundering against him or anyone claiming such property through him, was presented in favour of the petitioners. The Addl. Solicitor General contested the said plea by contending that the FIR still subsists since it has only been quashed qua the petitioners before the Bombay High Court and not in *toto*. Reliance was also placed upon para 311 of **Vijay M. Chaudhary** (supra), by submitting that before resorting to an action and provision of attachment, registration of a scheduled offence or a complaint is not a pre-condition and even though there may be not any scheduled offence registered, ED can still move for provisional attachment and therefore, ECIR may not be quashed.

63 Referring to the factual matrix involved, it was noted that in the two Writ Petitions filed in the High Court of Bombay, various petitioners sought quashment of the order passed by the JMFC, Wada under Section 156(3) of Code of Criminal Procedure and FIR No.129/2021 registered pursuant thereto. The Bombay High Court allowed the Writ Petitions by recording that lodgment of the complaint against the petitioners and continuity of the proceedings is an abuse of process of law. It is in this background the following observation is recorded

14. It is therefore incontrovertibly clear from a bare perusal of the judgment/order of the High Court of Bombay read in conjunction with prayer clause 'a' extracted above from both the Writ Petitions before the Court, that both the order dated 7th April, 2021 passed by Judicial Magistrate in O.M.A. No. 105 of 2021 and FIR No. 129/2021 dated 13th April, 2021 in P.S. Wada stood quashed in toto. This Court finds no merit in the argument by the Respondents that the quashing was qua the petitioners before the High Court of Bombay and not the other accused in the said FIR. The quashing of the FIR and order of the Judicial Magistrate preceding its registration was complete and Not conditional, partial, and truncated in any manner. Nothing in the said judgment/order of the High Court of Bombay suggests otherwise. Once the predicate order under section 156(3) Cr.P.C. and the FIR stood quashed there

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would be no residue left in the matter against the accused as regards the allegations made in the said complaint and crystallized in the FIR.

64 Another pertinent observation is contained in paragraph no.22 to the following effect

22. The Hon'ble Supreme Court has been clear and categorical in its reasoning as evident from the para extracted above. The undeniable sequitur of the above reasoning is that firstly, authorities under the PMLA cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed; secondly, the scheduled offence must be registered with the jurisdictional police or pending inquiry by the way of complaint before the competent forum; thirdly, in the event there is already a registered scheduled offence but the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent Jurisdiction owing to an order of discharge, acquittal or quashing of the criminal case of the scheduled offence, there can be no action for money laundering against not only such a person but also any person claiming through him in relation to the property linked to the stated scheduled offence. In other words no action under PMLA can be resorted to unless there is a substratum of a scheduled offence for the same, which substratum should legally exist in the form of a subsisting (not quashed) criminal complaint/inquiry or if it did exist the accused has since been discharged or acquitted by a Court of competent jurisdiction.

There was no dispute in the said case before the Delhi High Court that the scheduled offence on the basis of which the ECIR was registered was itself quashed and therefore, it was held that the action under the PMLA cannot continue, as the Court may not be required to go into the merits of the original complaint or the consequent investigation as the judgment/order of the Hon'ble High Court of Bombay, in this regard is final, and any other allegations against the accused in the said FIR or any other persons not accused in the FIR, is a matter which would be for the appropriate Court of competent jurisdiction to decide in appropriate proceedings before that court.

65 In both the aforesaid decisions on which reliance is placed, there was quashing of the FIR and therefore, the cases were covered by the conclusion and finding by the Supreme Court in Vijay

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Chaudhary, that without there being any evidence of a predicate offence or an FIR against them, being in existence or legally alive, the ECIR would not survive.

In the case before us, FIR No. 163/2018 registered with Vimantal police station, had invoke an offence punishable under Section 420 r/w Section 34 of the IPC and it necessarily involved a misappropriation on part of the Bank, the complaint being filed by the shareholder to the Bank.

66 ECIR/MBZO-II/10/2021 registered on 31/3/2021 had its source in FIR NO. 163/2018 against Aranhas.

The subject ECIR compiled the following facts on carrying out the investigation;

A. That, on the same day on 29/12/2014, 1) Mr. Prakash Chandra Vyas 2) 7 Mrs. Jayshree Prakash Chandra Vyas 3) Mrs. Khairunisa Aslam Furniturewala and Aslam Kabrudin Furniturewala gave the property at Lohgaon Survey No. 206/3 which was purchased under Sale Deed No. 9393/14 through registered Live and License Deed Nos. 9395/14 and 9396/14 to 1) Vivek Arana 2) Vivek Arana of Rosary Education Group.

B. On 24/04/2018, the Directors of Rosary Global Education, viz 1) Vivek Arana 2) Vinay Arana 3) Miss. Dipti Vivek Arana on behalf of Rosary Education Group, again mortgaged the same property under Mortgage Deed No. 5171/18 registered at Deputy Registrar's Office, Havel No. 18, Pune to Seva Vikas Co-op Bank Ltd. Head Office near Seva Bhavan, near Sadhu Vaswani Garden Pimpri Pune (via Budhwar Peth Branch) and obtained a Term Loan Loan Amount of Rs. 2.5 Crore & Cash Credit Facility of Rs. 2 Crores.

C. That, on the basis of the said rent agreement, the directors of Rosary Education Group, viz 1) Vivek Arana 2) Vinay Arana 3) Miss. Dipti Vivek Arana 4) Chandralekha Vivek Arana have obtained an amount of Rs. 7 Crores in March 2018 and Rs. 4.5 Crores in April 2018 as loan and gave the said property as mortgage to them as per mortgage deed no. 4407/14 & 5171/18. Thus, they have deceived Seva Vikas Co-op Bank Ltd. and their shareholders. Accordingly, a case has been registered against them for financial fraud.

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D. On the basis of the aforesaid information, it appears that proceeds amounting to Rs. 11.5 crores have been generated out of criminal activities related to the scheduled offence and the same appears to have been utilized and parked by Vivek Anthony Ahana and others and thus, projected the same as untainted.

E. An ECIR bearing No. ECIR/MBZO-II/10/2021 is therefore recorded and investigation under the provisions of the Prevention of Money Laundering Act, 2002 and the Rules framed there-under is being initiated.

67 Admittedly, the ECIR is based on the subject FIR as it contained an accusation against Rosary Education Group, which had obtained loan and secured the loan by mortgaging the property and they deceived the Seva Bank and their shareholders, and the accused persons i.e. Aranhas Group was alleged of amassing illegal wealth to the tune of Rs.11.5 crores as it did not repay the loan of Rs.11.5 crores obtained from Seva Bank against the mortgage property.

Section 420 of the IPC being included as a scheduled offence in the Schedule to the PMLA Act, 2002, the subject ECIR was registered.

It is after investigation a 'C' Summary closure report is filed which was accepted on 18/4/2022. The three FIRs i.e. C.R. Nos. 525, 526 and 527 were registered at Pimpri Chinchwad police station based on the report of the Auditor Rajesh Jadhawar and in these FIRs, different loan accounts of distinct entities are referred with an allegation that the said groups have duped the Bank, as the loan accounts were declared as NPA.

FIR No.525/2021 covered 6 loan accounts, whereas FIR No.526/2021 covered 16 loan accounts and FIR No. 527/2021 was lodged in regards to 9 loan accounts.

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It is admitted that FIR No. 806/2019 had some overlapping accounts and based on this C.R, ECIR/MBZO/II/32-2021 was registered. This FIR No. 806/2019 was based on the inspection report and audit report by Auditor Rajesh Jadhawar, which upon quashing of this FIR by the High Court and its revival by the Supreme Court, on 25/7/2023, was merged with ECIR/MBZO/II/10/2021, which was already being investigated by Unit-5(1). The decision of the ED to merge ECIR/MBZO/II/32/2021 with ECIR/MBZO/II/10/2021, is an internal decision, considering the commonality of the offences which form the substratum of the ECIR/MBZO/II/10/2021.

FIR No. 806/2019 registered with Pimpri police station, on invoking Section 406, 420, 409, 465, 467, 467 and 471 r/w Section 34 of IPC against the Board of Directors, as they face the accusation that they had cheated the shareholders of the Bank by acting hand-in-glove with various groups and it was found that the Management, office bearers of the Bank had adopted the same *modus operandi* which was the basis for registration of ECIR/MBZO/II/10/2021 and Unit-5 was already investigating into it, by arresting the main accused and even the properties/proceeds of crime under Section 5 of the PMLA Act, was also attached.

In the wake of the above, since we could clearly notice the causa link between the FIR Nos. 525, 526 and 527 with the ECIR/MBZO/II/10/2021, we do not find substance in the submission advanced by Mr.Kadam that the subsumption could not have taken place, as when it is said that the three FIRs are subsumed in the existing ECIR, it only convey that they have been included in a particular group i.e. ECIR/MBZO/II/10/2021, because of the

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commonality, as the Enforcement Directorate was investigating the affairs of Seva Bank, qua the individual groups which had availed the loan in collusion with the Board of Directors and the officials of the Bank.

68 The pronouncement of the Apex Court in Vijay Choudhary (supra), in no uncertain words has highlighted the purpose and object of the 2002 Act, by stating that it is not limited to punishment for offence of money laundering, but it also provide measures for prevention of money laundering and for attachment of proceeds of crime, which are likely to be concealed, transferred or dealt with, in any manner, which may result in frustrating any proceedings relating to confiscation of such proceeds under the Act of 2002. It is *sui generis*, which necessarily warrant a link between the 'scheduled offence' defined under Section 2(1)(y) with 'proceeds of crime'. The property derived or obtained as a result of a criminal activity relating to an offence, termed as 'scheduled offence', is regarded as tainted property and dealing or layering such property, in any manner, attracts the offence of money laundering. The 'scheduled offence' is the one which is registered, upon an information relating to its commission, being provided under Section 154 of the Cr.PC. There is no corresponding provision in the 2002 Act for registration of an offence of money laundering. It is the money, which is the outcome of a 'scheduled offence' which is being laundered, and, hence, offence of money laundering comes into existence as it revolve around the proceeds of crime, which are generated.

It is now well settled that offence under Section 3 of the Act of 2002, is dependent on illegal gain of property as a result of

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criminal activity relating to a 'scheduled offence' and it is concerning the process or activity connected with such property which constitute the offence of money laundering. The provisions of the Act of 2002, cannot be set into motion, and it do not permit prosecution of any person thereunder on notional basis, or on the assumption that a 'scheduled offence' has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including filing of a criminal complaint before the competent forum.

The Act of 2002 has merely defined the term 'Proceeds of crime' in the backdrop of a criminal activity relating to a 'scheduled offence' and in ***Vijay Choudhary*** (*supra*), it is distinctly held that an offence under PMLA shall continue, except when the person is discharged or acquitted from the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction and since we are of the opinion that on acceptance of 'C' summary, the FIR comes to an end, but the ECIR continued its existence, as three FIRs were already subsume into it, before it died. Mr.Anturkar, in his words, has submitted that on acceptance of 'C' summary, the proceedings in the FIR No.163 of 2018 are only in state of Coma, but they do not deserve to 'rest in peace', as no curtains are finally drawn, but we do not subscribe to his submission, as though we accept that on acceptance of 'C' Summary, the FIR No.163 of 2018 has come to an end, but the ECIR, which had already subsumed three CRs i.e. 525, 526 and 527 of 2021, cannot be said to be nonest.

69 One decision on this point is the one delivered by Delhi High Court of ***Rajinder Singh Chadha vs. Union of India, Ministry of***

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Home Affairs Through its Chief Secretary & Anr. (supra)
pronounced on 24/11/2023.

We must also refer to the background facts in brief :-

a) Two FIRs viz. 16/2018 dated 24/01/2018 and FIR No.49/2021 dated 12/03/2021 were registered under Section 420, 406, 120B of the IPC at PS, EOW against the accused persons, including the petitioner, arising out of similar set of facts and circumstances.

The respective complainants alleged that despite payment of monies by them, they did not receive possession of flats, as promised by the Company, in which the Petitioner Rajinder Singh Chadha was acting as a Director, and it was alleged that he was responsible for siphoning off funds collected from the complainant.

During the pendency of the trial in both the FIRs, the accused persons settled their dispute with the complainants amicably.

b) In FIR No.16/2018, the accused moved an application for compounding under Section 320 of Cr.P.C. which was allowed by the trial Court and the accused persons accordingly stood acquitted. FIR No.49/2021 was quashed by the co-ordinate Bench of the High Court on 22/12/2022 in the wake of the settlement arrived at.

c) ECIR was lodged on 26/07/2019 by the Directorate of Enforcement against the Petitioner and unknown persons.

A search and seizure was carried out under Section 17(1) of the Act of 2002, at the office and residential premises of the petitioner and he was issued a show cause notice under Section 8(1) for a response to be filed.

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d) It is in this background facts, it was urged on behalf of the petitioner that the predicate offences, in the two FIRs now stand compounded and quashed and as a consequence the jurisdictional fact which form the basis of the ED's investigation has come to an end and the ECIR in the subsequent proceedings, cannot continue any longer.

70 In support, reliance was placed on the decisions in case of *Vijay Choudhary (supra)*, *Harish Fabiani & Ors. (supra)*, *Naresh Goyal (supra)*, *Prakash Industries Limited (supra)*, *Parvathi Kollur and Anr. vs. State by Directorate of Enforcement in Criminal Appeal No.1254/2022*, *Directorate of Enforcement vs. M/s.Obulapuram Mining Company in Criminal Appeal No.1269/2017* passed by the Hon'ble Supreme Court, *Emta Cola Ltd. (supra)*, *M/s.Nik Nish Retail & Anr. vs. Assistant Director, Enforcement Directorate*,¹⁷ *Manturi Shashi Kumar vs. ED*¹⁸, *Arun Kumar and Ors. vs. Union of India and Ors.*¹⁹

The learned Single Judge reproduced the relevant observations from Vijay Choudhary, Naresh Goyal and also the observations of Calcutta High Court in Nik Nish Retail (supra), to the following effect :

“34. The quashing of FIR of regular case automatically created a situation that the offences, stated and alleged in the FIR has no existence; thus the “Scheduled Offence” has also no existence after quashing of the FIR. When there is no “Scheduled Offence”, the proceedings initiated under the provisions of Prevention of Money Laundering Act, 2002 cannot stand alone.”

71 The Enforcement Directorate opposed the contention, by submitting that on the basis of the FIR, the ECIR was recorded on

¹⁷ 2022 SCC OnLine Cal 4044

¹⁸ 2023 SCC OnLine TS 1098

¹⁹ (2007) 1 SCC 732.

27/06/2019, and when the FIR was registered, there were 20 complainants, however, at the time of filing of charge-sheet, there were 60 more complainants and as per the petitioner, dispute was settled only with 61 out of 80 complainants. Before the Magistrate, it was recorded that the petitioner shall settle dispute with the remaining complainants as well.

Thereafter, fresh complaints were received and EOW registered another FIR No.49/2021 and this was also taken on record in the existing ECIR 09/HIU/2019.

The petitioner approached seeking quashment of FIR No.49/2021, which was allowed. Even in this FIR, there were 77 complainants and the dispute was settled only with 55. Further, 79 complaints were informed to be pending before RERA, Uttar Pradesh against the Company.

72 During the pendency of the Petition, FIR No.55/2023 was registered on 10/07/2023 against the Company and its Directors, invoking Sections 409, 420, 120B of the IPC with PS, EOW, which was based on similar allegations, as in previous FIR. On the FIR being registered, the investigation proceeded in the already open ECIR.

73 It was argued on behalf of the counsel for the Department that since the enquiry/investigation under PLMA culminated into a complaint, and the same being a complaint case, at this stage, raising an argument that ECIR has to be quashed because some of the FIRs are compromised, is premature since the 'scheduled offence' continue to exist, and it was urged that once the enquiry/investigation is concluded and the Respondent file a

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complaint, the petitioner can avail all the remedies available under the Cr.P.C. .

74 Dealing with the aforesaid rival contentions, where reliance was also placed upon the decision in the case of Prakash Industries (supra), the sequence of the dates and the events was distinctly noted by the learned Judge and an issue was framed as to whether the Department is justified in continuing the investigation/proceedings in the impugned ECIR/09/HIU/2019, which was initially registered on the basis of ‘scheduled offences’ in FIR No.16/2018, and thereafter continuing on the basis of FIR No.49/2021, by taking on record the scheduled offences in FIR No.55/2023, based on similar allegations as in earlier FIRs, in view of the fact that the ‘scheduled offences’ in the first two FIRs, stood compounded/quashed.

Dealing with the sequence of events, the learned Judge specifically held as under :-

“28. It is pertinent to note that the aforesaid FIRs were registered at the instance of investors who were aggrieved by the non-completion of a project by the company. A perusal of the aforesaid list of dates reflect that although the impugned ECIR was registered initially on the basis of scheduled offences registered vide FIR No.16/2018 dated 24.01.2018 which stood compounded vide order dated 19.11.2019, the second FIR No.49/2021 which was registered on 12.03.2021 was taken on record in the impugned ECIR by the department and the proceedings continued under the same. The department chose not to register a separate ECIR, but took on record the scheduled offences registered vide FIR No.49/2021 in the same ECIR, inter-alia, on the ground that it related to the same transaction and involved the same accused persons. The fact that FIR No.49/2021 was taken on record by the department in the present ECIR despite an order of compounding and acquittal was not challenged by the petitioner.

29. Hon’ble Supreme Court in Vijay Madanlal Choudhary (supra) has held that there is no corresponding provision to Section 154 of the CrPC in the PMLA requiring registration of an offence of money laundering. While observing the same, the

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Hon'ble Supreme Court held as under :

“457... 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. 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 connection with proceeds of crime. Thus, ECIR is not a statutory document, nor there is any provision in 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...”

75 By relying upon the observations of the Supreme Court in ***Vijay Choudhary*** (supra) carving out a distinction between ECIR under PMLA and an FIR under the provisions of Cr.PC., which had referred to the ECIR as an ‘internal document’, the learned Single Judge concluded that the ECIR was registered on prima facie satisfaction of commission of an offence under Section 3 of PMLA and the department, by way of the present ECIR, was not investigating the case of home buyers/investors in respect of the allegations in the first two FIRs, but with respect to the alleged ‘proceeds of crime’ generated from commission of the alleged scheduled offences in the FIR registered at the instance of home buyers/investors.

Holding that the third FIR i.e. FIR No.55/2023 also related to the same project which was the subject matter of the two previous FIRs, it was categorically held as below :-

“In the present factual context, even if separate FIRs are registered at the instance of separate home-buyers/investors, each of the said FIRs cannot be considered as a separate cause of action for registration of different ECIRs.”

The stand taken by the department in its written submissions was appreciated by recording thus :-

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“32. The stand taken by the department in the written submissions filed by learned Special Counsel is that 'The argument of the petitioner that FIR 55/2023 cannot be added to the existing ECIR, and ED should record an additional ECIR is against the scheme of the PMLA Act. In this regard it is submitted that the entire PMLA Act does not even mention the term 'ECIR', that ECIR is an internal departmental document for administrative purposes. In view thereof, as stated hereinbefore, the third FIR in the present case relates to the commission of a 'scheduled offence' in respect of the complainant therein, but for the purposes of an investigation under the PMLA, it would be the part of the same ECIR which related to investigation pertaining to 'proceeds of crime' under the PMLA in the previous FIRs. Needless to state, the Hon'ble Supreme Court, in Vijay Madanlal Choudhary (supra), has categorically held that the offence under PMLA is an independent offence. Since the ECIR has not been equated with an FIR and has been held to be an internal document, there cannot possibly be a restriction to bringing on record on any subsequent 'scheduled offence' registered by way of an FIR alleged to have been committed in respect of the same transaction which was the subject matter of such ECIR.

33. The proposition of law laid down in judicial precedents relied upon by learned Senior Counsel for the petitioner is not in dispute. In the said cases, the 'scheduled offence' was quashed or compounded in all respects. In the present case, 'scheduled offences' by way of the third FIR still exist. It is pertinent to note that even in an FIR being investigated by the local police involving multiple complainants, compounding with some of them will not be a ground for quashing of the said FIR. However, partial compounding/quashing is permissible.

76 Reliance was also placed upon the decision of a co-ordinate bench in *Nayati Healthcare and Research NCR Pvt. Ltd. And Ors. Through the Authorised Representative Sh. Satish Kumar Narula & Ors. vs. Union of India Ministry of Home Affairs through its Standing Counsel and Anr.*, 2023 DHC, 7542, in which by relying upon *Vijay Madanlal Choudhary (supra)* and *Nik Nish Retail (supra)*, an observation was quoted in Para 35 to the following effect :-

"13. The Telangana High Court in Manturi Shashi Kumar (supra) has also quashed a complaint under Section 3 of the PMLA on the grounds of the accused being discharged/acquitted of the scheduled offence. The relevant

observations of the said judgment are set out below:-

"28. Thus, according to Supreme Court, the offence under Section 3 of PMLA is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. If the person is finally discharged or acquitted of the scheduled offence or the criminal case against him is quashed by the court, there can be no offence of money laundering against him or anyone claiming such property being the property linked to the scheduled offence. It is immaterial for the purpose of PMLA whether acquittal is on merit or on composition."

14. In view of the aforesaid legal position, the present complaint filed by the ED and the proceedings arising therefrom cannot survive. Considering that the FIR has been quashed by this court and that it has not been challenged till date, there can be no offence of money laundering under section 3 of the PMLA against the petitioners.

15. Accordingly, the present petition is allowed and the ECIR bearing No.ECIR/51/DLZO-II/2021 and proceedings arising therefrom are quashed. Consequently, the Look Out Circular issued against the petitioners in respect of the aforesaid ECIR also stands quashed."

77 In conclusion, it was held that the subject ECIR dated 27.06.2019 cannot be quashed and registration of FIR no.55/2023 dated 10/07/2023 would constitute 'scheduled offences' legitimizing the existence of the said ECIR though it was specifically directed that since FIR No.16/2018 and 49/2021 have been compounded and quashed, the Enforcement Directorate cannot initiate or conclude any proceeding, including investigation, in connection with the two FIRs and the proceedings undertaken with respect to the two FIRs, qua the petitioner in ECIR were quashed.

78 With no definition of 'subsumption' or even 'predicate offence' in the Act of 2002, on reading of the observations of the learned Single Judge, in Rajinder Singh Chadha (supra) it can only be observed that ECIR is a genus and it may have different species provided there is a connect between the the genus and the species.

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As in the present case, we can find the causal link in the subsisting ECIR No. ECIR/MBZO-II/10/2021, which is still alive, and has not become a dead letter, as despite acceptance of 'C' summary, and one of the contingency contemplated in **Vijay Choudhary** (*supra*), have been attained, as there is an acquittal in FIR No.163 of 2018, the registration of subsequent FIR Nos. 525, 526 and 527 of 2021, with an proximate connect with the proceeds of crime generated and layered, they are capable and therefore, rightly subsumed into the said ECIR, which is still alive and kicking.

79 It is not unusual for the Enforcement Directorate to adopt this procedure and Mr. Venegavkar has placed before us distinct cases, where this methodology is adopted, to which we have referred as above.

We must also refer to a decision of this Court delivered by the learned Single Judge (A.S.Gadkari, J) in Criminal Application (APL) No. 201/2021 dated 16.03.2021, in case of **Babulal Verma S/o. Mulchand Varma & Anr. vs. Enforcement Directorate, Mumbai & Anr.**, which is equally a somehow similar thinking, when an Application filed under Section 482 read with 483 of the Cr.P.C. raised a challenge to the order passed in Remand Application by the learned Single Judge of Mumbai and sought direction to release applicant from confinement in Jail.

The counsel for the Applicants by placing reliance upon Sub-section (b) of Section 44 of PMLA added by way of proviso urged that 'scheduled offence' in the present case is a sine qua non for the offence of money laundering which would generate money (being laundered) and it also refer to as predicate offence. It was urged

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that the moment predicate/scheduled offence comes to an end, the offence lodged by Respondent No.1 on the said predicate offence also comes to an end and does not remain in existence. It was also urged that once scheduled offence is compromised/compounded, the structure of the present crime falls to the ground and does not survive and becomes *non est*.

The Enforcement Directorate represented by the Additional Solicitor General Mr. Anil Singh urged that investigation of the crime by ED is an independent investigation and once ECIR is registered then the base/predicate/scheduled offence is no more required for taking it to its logical end under PMLA and the scheduled offence is necessary only for registration of an offence under PMLA and thereafter whatever may happen to predicate/scheduled offence, is totally irrelevant. It was urged that PMLA is a self-contained statute and the offence registered under it stand alone, independent of predicate offence.

The learned Single Judge appreciated the said arguments in the backdrop of the scheme of the special enactment, which was connected with the specific object to track and investigate cases of money laundering.

We must quote the most pertinent observations of the learned Single judge, which reads thus :-

“Hypothetically, ‘an accused’ in a Predicate/Scheduled Offence is highly influential either monetarily or by muscle power and by use of his influence gets the base offence, compromised or compounded to avoid further investigation by ED i.e. money laundering or the trail of proceeds of crime by him, either in the Predicate/Scheduled Offence or any of the activities revealed therefrom. And, if the aforesaid contention of the learned counsel for the Applicants is accepted, it will put to an end to the independent investigation of ED i.e. certainly not the intention of Legislature in enacting the PMLA. Therefore, if the contention of the learned counsel for the Applicants is accepted, in that event, it would be easiest mode for the accused

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in a case under PMLA to scuttle and/or put an end to the investigation under the PMLA. Therefore, the said contention needs to be rejected.”

Based on the aforesaid observation, since the conclusion was drawn that in case of money laundering which involves many stages of ‘Placement’, ‘Layering’, it require systematic analysis and investigation and upholding the impugned order of remanding the applicants to the judicial custody, the application was dismissed.

It is to be noted that this decision was delivered on 16/03/2021, a few days before the Apex Court in Vijay Choudhary offered further clarification contemplating three contingencies when the ECIR, i.e. investigation under PMLA, came to an end.

80 In the wake of the above reading, we are satisfied that grievance of the petitioners do not deserve any consideration. Necessarily, the Writ Petitions filed by different accused, seeking similar relief cannot be entertained. Hence, the Petitions are dismissed. In view of the dismissal of the Writ Petitions, pending Interim Applications also stand disposed off.

(MANJUSHA DESHPANDE,J)

(BHARATI DANGRE, J.)