

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Reserved on : 20th September, 2022

Pronounced on : 26th September, 2022

+ W.P.(CRL) 408/2022, CRL.M.A. 3495/2022, CRL.M.A. 5002/2022
CRL.M.A.10739/2022, CRL.M.A.14801/2022, CRL.M.A. 17030/2022

HARISH FABIANI & ORS..... Petitioners

Represented by: Mr. Vikram Nankani, Mr. Sidharth Agarwal, Sr. Advs. with Mr. Dheeraj Nair, Ms. Vishrutyi Sahni, Mr. Abinav Sekhri, Ms. Aishna Jain, Advs.

versus

ENFORCEMENT DIRECTORATE & ORS Respondents

Represented by: Mr. S.V. Raju, ASG with Mr. Zoheb Hossain, SPP for ED with Mr. Vivek Gurnani, Adv. with Mr. Rajendra Singh, IO, ED. Mr. Anurag Ahluwalia, CGSC with Mr. Danish Faraz Khan, Adv. for UOI.

+ W.P. (CRL) 440/2022, CRL.M.A. 3811/2022, CRL.M.A. 14894/2022

ATUL CHORDIA..... Petitioner

Represented by: Mr. Mahesh Jethmalani, Sr. Adv. with Mr. Dheeraj Nair, Ms. Vishrutyi Sahni, Mr. Hitesh Jain, Ms. Siya Chaudhary, Mr. Subhash Jadhav, Ms. Aishna Jain, Advs.

versus

ENFORCEMENT DIRECTORATE & ANR..... Respondents

Represented by: Mr. S.V. Raju, ASG with Mr. Zoheb Hossain, SPP for ED with

Mr. Vivek Gurnani, Adv. with Mr.
Rajendra Singh, IO, ED.

+ W.P.(CRL) 443/2022, CRL.M.A. 3845/2022, CRL.M.A. 4639/2022,
CRL.M.A. 9001/2022, CRL.M.A.14896/2022, CRL.M.A.14897/2022

INDIABULLS HOUSING FINANCE LTD & ORS..... Petitioners

Represented by: Mr. Kapil Sibal, Mr. Rajiv Nayar,
Sr. Advs. with Mr. Rishi
Agrawala, Mr. Karan Luthra, Mr.
Ankit Banati, Mr. Shravan
Niranjan, Advs.

versus

UNION OF INDIA & ANR..... Respondents

Represented by: Mr. S.V. Raju, ASG with Mr.
Zoheb Hossain, SPP for ED with
Mr. Vivek Gurnani, Adv. with Mr.
Rajendra Singh, IO, ED. Mr.
Anurag Ahluwalia, CGSC with
Mr. Danish Faraz Khan, Adv. for
UOI.

+ W.P.(CRL) 919/2022, CRL.M.A. 7761/2022, CRL.M.A. 14900/2022
CRL.M.A. 14901/2022

INDIABULLS ASSET MANAGEMENT COMPANY LTD. & ANR.

..... Petitioners

Represented by: Mr. Kapil Sibal, Mr. Rajiv Nayar,
Sr.Advs. with Mr. Rishi Agrawala,
Mr.Karan Luthra, Mr. Ankit
Banati, Mr. Shravan Niranjan,
Advs.

versus

UNION OF INDIA & ANR..... Respondents

Represented by: Mr. S.V. Raju, ASG with Mr.
Zoheb Hossain, SPP for ED with
Mr. Vivek Gurnani, Adv. with Mr.
Rajendra Singh, IO, ED.

+ W.P. (CRL) 1299/2022, CRL.M.A.11196/2022,
CRL.M.A.14898/2022, CRL.M.A. 14899/2022

I ABENLA AIER & ANR. Petitioners

Represented by: Mr. Kapil Sibal, Mr. Rajiv Nayar,
Sr. Advs. with Mr. Rishi
Agrawala, Mr. Karan Luthra, Mr.
Ankit Banati, Mr. Shravan
Niranjan, Advs.

versus

UNION OF INDIA & ANR. Respondents

Represented by: Mr. Ajay Digpaul, CGSC for UOI
with Mr. Kamal R. Digpaul, Ms.
Swati Kwatra, Advs. for UOI. Mr.
S.V. Raju, ASG with Mr. Zoheb
Hossain, SPP for ED with Mr.
Vivek Gurnani, Adv. with Mr.
Rajendra Singh, IO, ED.

+ W.P.(CRL) 1316/2022, CRL.M.A.11317/2022, CRL.M.A. 15145/2022

SUNIL GIRDHARILAL MITTAL & ORS..... Petitioners

Represented by: Mr. Gaurav Mishra, Mr. Jaiyesh
Bakshi, Mr. Ravi Tyagi, Mr.
Daman Popli, Ms. Mayuri Shukla,
Ms. Neetu Devrani, Advs.

versus

ENFORCEMENT DIRECTORATE & ANR..... Respondents

Represented by: Mr. S.V. Raju, ASG with Mr.
Zoheb Hossain, SPP for ED with
Mr. Vivek Gurnani, Adv. with Mr.
Rajendra Singh, IO, ED. Mr.
Asheesh Jain, CGSC with Mr.

Keshav Mann, Mr. Vedansh
Anand, Advs. for R-2/UOI.

+ W.P.(CRL) 1350/2022, CRL.M.A.11534/2022, CRL.M.A.14891/2022,
CRL.M.A. 14892/2022

RAJIV GANDHI Petitioner

Represented by: Mr. Kapil Sibal, Mr. Rajiv Nayar,
Sr. Advs. with Mr. Rishi
Agrawala, Mr. Karan Luthra, Mr.
Ankit Banati, Mr. Shravan
Niranjan, Advs.

versus

UNION OF INDIA & ANR. Respondents

Represented by: Mr. S.V. Raju, ASG with Mr.
Zoheb Hossain, SPP for ED with
Mr. Vivek Gurnani, Adv. with Mr.
Rajendra Singh, IO, ED. Mr.
Kirtiman Singh, CGSC for UOI
with Mr. Waize Ali Noor, Ms.
Kunjala Bhardwaj, Mr. Madhav
Bajaj, Mr. Yash Upadhyay, Advs.
for UOI.

+ W.P.(CRL) 1691/2022, CRL.M.A. 14723/2022

SANDESH VILAS MORE & ANR. Petitioners

Represented by: Mr. Kapil Sibal, Mr. Rajiv Nayar,
Sr. Advs. with Mr. Rishi
Agrawala, Mr. Karan Luthra, Mr.
Ankit Banati, Mr. Shravan
Niranjan, Advs.

versus

UNION OF INDIA & ANR. Respondents

Represented by: Mr. Apoorv Kurup, CGSC with
Ms. Nidhi Mittal, Mr. Ojaswa

Pathak, Advs. for R-1/UOI. Mr. S.V. Raju, ASG with Mr. Zoheb Hossain, SPP for ED with Mr. Vivek Gurnani, Adv. with Mr. Rajendra Singh, IO, ED.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA
HON'BLE MR. JUSTICE ANISH DAYAL

J U D G M E N T

ANISH DAYAL, J.

1. These writ petitions were heard together and have sought similar prayers. For ease of reference, various reliefs sought in each of these writ petitions (and accompanying applications), presented in different permutations and combinations, could effectively be enumerated as under:

- i. Issue a Writ of Declaration or any Writ, Order or Direction of like nature declaring Section 2(1)(u), Section 50 and Explanation to Section 44 of the Prevention of Money Laundering Act, 2002 to be unconstitutional as being in violation of Articles 14, 19(1)(g), 19(6), 20(3) and 21 of the Constitution of India;*
- ii. Quash and set aside the impugned ECIR no. ECIR/07/HIU/2021 and stay all proceedings arising therefrom;*
- iii. Quash the summons issued in respect of ECIR No. ECIR/07/HIU/2021;*

- iv. *Issue a Writ of Certiorari or any Writ, Order or Direction of like nature directing the calling of records in relation to ECIR No. ECIR/07/HIU/2021;*
- v. *Issue a Writ of Prohibition or any Writ, Order or Direction of like nature restraining the Respondents from taking any coercive action in respect of the ECIR No. ECIR/07/HIU/2021 including conducting search and seizures at residences/office or issuing look out circulars or any other restrictive order;*
- vi. *Quash and set aside Look out Circulars issued against some of the petitioners.*

2. While these petitions were pending before this Court, the Hon^{ble} Supreme Court of India delivered its judgement in ***Vijay Madanlal Choudhary & Ors Vs. Union of India & Ors.***, 2022 SCC OnLine SC 929 on 27th July, 2022 deciding on the issue of constitutionality and *vires* of various provisions of the Prevention of Money Laundering Act, 2002 (“PMLA”) *inter alia* Section 2(1)(u), Section 50 and Explanation to Section 44. Considering that the Hon^{ble} Supreme Court in ***Vijay Madanlal Choudhary*** (*supra*) has already considered the issue of constitutionality of various provisions of PMLA, the issue of granting relief for prayers in the nature of para 1 (i) above does not arise. The judgement of the Hon^{ble} Supreme Court is binding on this Court and all parties in these petitions before this Court and there is no reason for this Court to issue any further declaration in that regard. Prayers sought in all these petitions before this Court in the nature of para 1 (i) above therefore do not survive and are infructuous, having been dealt with by the judgement of the Hon^{ble} Supreme Court in the matter of ***Vijay Madanlal Choudhary*** (*supra*).

Relief sought by the Petitioners

3. The immediate concern of the petitioners relates to prayers in the nature of para 1 (ii) – (vi), whereby the petitioners are concerned about the continuation of proceedings in relation to the ECIR No. ECIR/07/HIU/2021 (“the said ECIR”) issued by the Directorate of Enforcement (“ED”) despite the predicate offence registered under FIR No. 129/2021 (“the said FIR”) having been quashed by the judgment dated 4th May, 2022 of the High Court of Bombay. The petitioners pray for issue of a writ of certiorari setting aside summons issued by the ED to various petitioners in respect of the said ECIR, the Look Out Circular (“LOC”) and any other consequential proceedings emanating out of the said ECIR, and quash the same in view of the predicate offence having been quashed by judgment dated 4th May, 2022 passed by the High Court of Bombay in relation to the said FIR. The thrust of the petitioners’ contention is based upon the conclusion of the Hon^{ble} Supreme Court in *Vijay Madanlal Choudhary* (*supra*) in para 467 (v)(d) which reads as under:

“(v)(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.”

(emphasis supplied)

4. The crux of this conclusion in **Vijay Madanlal Choudhary** (*supra*) by the Hon“ble Supreme Court, in context of these petitioners, is that if the person accused of any scheduled offence is finally discharged/acquitted or the criminal case against him is quashed by a court of competent jurisdiction, there can be no case of money-laundering against him or anyone claiming such property (which is linked to the stated scheduled offence) through him.

5. Senior Counsel appearing for the petitioners have thus contended that the petitioners before this Court are either accused in the said FIR (now quashed by High Court of Bombay) or are otherwise not accused in the said FIR and therefore applying the *ratio* and finding of the Hon“ble Supreme Court, the ECIR against these petitioners and consequential proceedings do not survive.

Submissions on behalf the Respondents

6. Mr. S.V. Raju, the learned Additional Solicitor General, appearing for the ED, objected to this plea by the petitioners and contended *inter alia* that:

- i) The said FIR still subsists since it has only been quashed *qua* the petitioners before the Bombay High Court and not *in toto*. In support of this the learned ASG relies upon the concluding para 38 of the High Court of Bombay in its decision of 4th May, 2022.

ii) Relying upon the para 311 of ***Vijay Madanlal Choudhary (supra)*** it was contended that Hon^{ble} Supreme Court has stated that before resorting to an action and provision of attachment, registration of a scheduled offence or a complaint is not a precondition. The Hon^{ble} Supreme Court has stated that “*authorised officer can still invoke power of issuing order of provisional attachment and contemporaneously send information to the jurisdictional police about the commission of scheduled offence and generation of property as a result of criminal activity relating to a scheduled offence, which is being made subject matter of provisional attachment.*” Therefore, even though there may not be any scheduled offence registered, the ED can still move for provisional attachment and therefore the said ECIR may not be quashed.

iii) Since the prayer in the writ petitions seeking declaration regarding unconstitutionality of various provisions of the PMLA does not survive due to ***Vijay Madanlal Choudhary (supra)***, the basis of these writ petitions being before the Division Bench of this Court also gets eroded and therefore these writ petitions be transferred to a single bench of this Court.

iv) Since the ED has filed a Special Leave Petition vide Diary No. 26629 of 2022 on 25th August, 2022 before the Hon^{ble} Supreme Court which is yet to be adjudicated by the Hon^{ble} Supreme Court, in light of accepted principles (*inter alia* per ***D.K. Trivedi & Sons & Ors Vs. State of Gujarat & Ors.***, 1986 Supp SCC 20) and in consonance with a decision of this Hon^{ble} Court in ***Asst. Director, Directorate of Enforcement Vs. Kewal Krishna Kumar***, CRL. M.C.

1455/2021 order dated 10th November, 2021, this Court should stay their hand and not pass any order as prayed for by the petitioners.

v) Reliance was also placed upon para 253 of **Vijay Madanlal Choudhary** (*supra*) wherein the Hon^{ble} Supreme Court has stated that “...in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence”. The respondents have contended that use of the phrase “finally absolved by a Court of competent jurisdiction” would therefore include the adjudication by the Hon^{ble} Supreme Court in the SLP filed by the ED as well. The petitioners rebutted this by contending that a Court of competent jurisdiction for order of discharge, acquittal or quashing can only be finally the High Court and the SLP before the Supreme Court is really in the nature of an extraordinary remedy and therefore mere filing of SLP cannot provide a handle to the respondents to sustain the said ECIR.

vi) Reliance was placed on page 14 of the reply in CRL.M.A. 14801/2022 in W.P. (CRL) 408/2022 which shows that there were complaints of deliberate acts by the petitioner Harish Fabiani of offshore fraud. The respondents contended in light of these grave charges, the said ECIR ought not to be quashed.

vii) Reliance was also placed in Section 66 (2) of the PMLA which permits the ED or any authority specified by them to notify

any other officer or authority or body of any information received or obtained by the ED which in the opinion of the ED is necessary for that authority to perform its functions under law. Thus, as per the respondents, Section 66 allows the ED to give an opinion on the basis of information or material in their possession that provisions of any other law are being contravened and accordingly share the information with the appropriate authorities for necessary action. The ED contends that door should remain open for them to trigger action by appropriate authorities in case of any disclosure by the ED to them regarding contravention by the petitioners. To rebut this contention, the petitioners submitted that Section 66 cannot provide an infinite, open ended opportunity to the respondents to sustain the ECIR merely on a possibility of finding some information.

viii) Reliance was also placed on *State of Bihar & Anr. Vs. P.P Sharma, IAS, & Anr.*, 1992 Supp (1) 222 at para 23 to contend that even if, as per the petitioners, there were *mala fides* of the informant/complainant which led to the registration of the said FIR it should not impact investigation by the Investigating Officer.

ix) Reliance was also placed on *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi & Ors.*, (1983) 1 SCC 1 where the FIR was quashed against some of the accused. The Hon^{ble} Supreme Court in para 19 held that if the prosecution can at any stage produce evidence which satisfies the court that the other accused or those who have not been arrayed as accused against whom proceedings have been quashed, have also committed the offence, the court can take cognizance against them and try them along with the other accused.

Submissions in Rejoinder by the Petitioners

7. In response to the submissions of the learned ASG, Senior Counsels appearing for the petitioners advanced submissions in rejoinder which, for ease of reference, are collectively enumerated as under:

i) Once the Bombay High Court has quashed the scheduled offence on the basis of which the said ECIR was registered alleging offences under PMLA, the question of the said ECIR being sustained does not arise. This is undeniably clear from a reading of para 467 (v) (d) of *Vijay Madanlal Choudhary* (*supra*).

ii) The Hon^{ble} Supreme Court in its conclusion articulated in the aforementioned paragraph clarifies that the authorities under the PMLA cannot prosecute any person on a notional basis or on the assumption that a scheduled offence has been committed unless it is so registered within the jurisdiction of the police and/or pending inquiry/trial including by way of criminal complaint before the competent forum.

iii) The Hon^{ble} Supreme Court has further embellished this by clarifying that in the event a person is finally discharged or acquitted of the scheduled offence or the criminal case against him is quashed by a Court of competent jurisdiction, no offence of money-laundering against him or anyone claiming such property (being property linked to the scheduled offence).

iv) Responding to the specific arguments of the learned ASG that authorities have the liberty to disclose facts under Section

66(2) of the PMLA if any contravention is noticed by a person, it was contended by the Senior Counsel for the petitioners, that at any stage if any such facts are indeed found or discovered, the authorities would have the liberty to exercise their rights under applicable law and file a fresh FIR if so necessitated.

v) It was contended that the following parts of the ECIR are dispositive of the fact that it was solely and exclusively based on the FIR No. 129 dated 13th April, 2021 registered by P.S. Wada:

- Column No. 3 of the ECIR under “*Source from which the information/material received*” states “*FIR No. 0129 dated 13th April, 2021 registered by Police Station: Wada, Dist. Palghar, Maharashtra*”.
- Para 7 (i) of the ECIR prefates the complaint on the basis of FIR bearing No. 0129/2021 registered by the Officer in Charge, Wada Police Station against M/s Indiabulls Housing Finance Ltd. and other persons which was in turn based upon criminal complaint filed by Mr. Ashutosh Vijay Kamble before the Hon[’]ble Court of Judicial Magistrate First Class, Wada, Dist. Palghar and order dated 7th April, 2021 in Complaint No. 105/2021 under Section 156(3) of Cr.P.C. for registration of FIR.
- Para 7 (ii), (iii) of the ECIR elaborate on the nature of the offences which were alleged in the FIR against the accused *inter alia* for siphoning of huge amount of public money and buying shares in an illegal manner at inflated rates and claiming losses in such companies.

- Para 7 (iv) of the ECIR specifically states that the Section 120B, 420, 467, 471 of IPC under which the FIR has been registered falls under paragraph 1 of Part A of the scheduled offences under the Scheduled to PMLA.
- Para 8 of the ECIR is prefaced as “*on the basis of the above, prime facie case of money laundering u/s 3 punishable u/s 4 of PMLA, 2002 appears to have been made out.*”

vi) Judgement/order dated 4th May, 2022 of the High Court of Bombay at para 38 has categorically stated that powers under Section 482 of the Cr.P.C. were exercised to allow prayer clause „a“ in the writ petitions before the court, and a perusal of the prayer clause „a“ in the two writ petitions before the High Court of Bombay would show that that the relief sought was the quashing of the order of the Judicial Magistrate and the said FIR *in toto*.

vii) As per the petitioners, it was therefore quite apparent that even though prayer in the Writ Petition filed by Indiabulls Housing Finance Ltd. was seeking relief for quashing of the FIR in relation to the petitioners therein, the Writ Petition filed by Atul Chordia had a larger and broader prayer of quashing the FIR *per se*. These prayers having been granted the question of the said FIR being quashed only with respect with certain petitioners before the High Court of Bombay does not arise.

viii) Notwithstanding the above, the ECIR was premised on allegations of “*connivance*”, “*criminal conspiracy*” and “*common*

intention”. Therefore the respondents’ contention that the said FIR would only stand partially quashed and therefore the said ECIR should be sustained is untenable.

ix) Reference was also made to para 32 of the Bombay High Court order dated 4th May, 2022 in relation to Mr. Harish Fabiani which reads as under:

“32. There is also merit in the submissions of learned Counsel appearing for Petitioners that though it was alleged in the complaint that one Mr. Harish Fabiani had obtained loan and misutilized the loan amount, the document placed on record and relied on by Mr. Rohatgi, learned Senior Counsel demonstrates that the said loan was repaid.”

It was contended on behalf of Mr. Harish Fabiani that in any event the loan taken by Mr. Harish Fabiani has been totally repaid and on the contrary quite aside from siphoning money from India, Mr. Harish Fabiani who was a foreign citizen of Indian origin, had in fact played a pivotal role to strengthen economic and political ties between India and Spain and was the pioneer of private equity financing in India (as stated in his writ petition).

x) Reference was also made to para 33 of the Bombay High Court order that recorded submissions of the petitioners before the Bombay High Court and stated as under:

“33. We also find merit in the submissions of Dr. Chandrachud appearing for Petitioner in WP/6812/2021 that the Respondent No. 2 failed to provide necessary details in the complaint and only vague statements were made. Mr. Chandrachud justified in submitting that if the Petitioner could have failed in repayment of the loan the financial institution certainly would have initiated action against the Petitioner treating him either as defaulter or would have

initiated proceedings by taking recourse to SARFEAST Act.”

xi) Support was also taken of the observations of the Hon’ble Supreme Court in para 467 (v) (d) of **Vijay Madanlal Choudhary** (*supra*) that there cannot be mere “*notional basis*” or “*assumption that scheduled offence has been committed*”. Therefore, submission by the respondents that there could be an offence still subsisting would not be correct or acceptable.

xii) Reference was also drawn to the reply filed by the respondent No. 1 in W.P. (CRL) No. 440/2022 from para 6 to 9 where the respondent No. 1 has categorically stated that it was on the basis of the said FIR that the ECIR had been premised. Para 9 of the said reply states that “*the sections under which the FIR was registered are Scheduled Offence under the PMLA and thus the Subject ECIR was recorded.*”

xiii) It was vehemently contended that the PMLA authority cannot file a predicate offence and at best it could only disclose any circumstances which came to their knowledge to the appropriate authority which in its own wisdom and as per applicable law may proceed to file against the potential accused alleging a scheduled offence.

xiv) Reliance was placed on **State of Punjab Vs. Davinder Pal Singh Bhullar & Ors.**, (2011) 14 SCC 770 to contend that once the preceding proceeding stands quashed all consequential steps emanating out of the same stand quashed as well.

Analysis

It is now therefore imperative to examine the factual matrix and contentions of the parties in relation to the relief sought by the petitioners.

8. Consequent to directions in a petition filed under section 156 (3) Cr. PC by the complainant before the Judicial Magistrate First Class, Wada, FIR No. 129/2021 was registered in P.S. Wada (Thane) in District Palghar, Mumbai on 13th April, 2021 against following accused:

1. *Indiabulls Housing Finance Ltd. (Petitioner before this Court)*
2. *Mr. Mukesh Talreja Companies LLPs*
3. *Harish Motiram Fabiani (Petitioner before this Court)*
4. *Jasol Investment and Trading*
5. *Americorp Capital*
6. *Nimir Kishore Mehta*
7. *Rana Kapoor and Bindu Kapoor*
8. *Atul Chordia of Chordia Group (Petitioner before this Court)*

9. Writ Petition Nos. 1805/2021 and 6812/2021 were filed in High Court of Bombay by various petitioners seeking quashment of the order of 7th April, 2021 passed by the Judicial Magistrate First Class, Wada and FIR No. 129/2021 of P.S. Wada.

10. Para „a“ of the prayer in Writ Petition No. 1805/2021 filed by Indiabulls Housing Finance Ltd. & Ors. reads as under:

“a. Quash order dated 07.04.2021 passed by judicial magistrate in O.M.A. No. 105 of 2021 and FIR No. 0129 of 2021 dated 13.04.2021 in P.S. Wada under Sections 420, 465, 467, 468, 469, 470, 471 read with 120(B) of the Indian Penal Code, 1860 against the Petitioner and set aside all proceedings arising therefrom; and”

(emphasis supplied)

11. Para „a“ of the prayer in the Writ Petition No. 6812/2021 filed by Shri Atul Chordia reads as under:

“a. This Hon’ble Court be pleased to issue a Writ of Certiorari or any other Writ, order or direction calling for the records and proceedings of the said FIR bearing No. 129 of 2021 dated 13.04.2021 (Exhibit „A“ hereto) and upon examining the legality, correctness and propriety of the proceedings conducted so far, be pleased to quash and set aside the said FIR;”

12. The High Court of Bombay by the judgment and order dated 4th May, 2022 recorded in para 38 as under:

“38. We are of the opinion that the lodgment of the complaint against the Petitioners and continuity of the proceedings, is an abuse of process of law. Thus, these are the fit cases for exercising inherent powers of this Court under Section 482 of Code of Criminal Procedure, 1973 to secure the ends of justice. Accordingly, both Writ Petitions are allowed in terms of prayer clause ‘a’. Rule made absolute.”

(emphasis supplied)

13. It is therefore incontrovertibly clear from a bare perusal of the judgement/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 or truncated in any manner. Nothing in the said judgement/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 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.

14. Reference in this regard may be made to the judgement of the Hon^{ble} Supreme Court in ***State of Punjab v. Davinder Pal Singh Bhullar & Ors.***, (2011) 14 SCC 770, brought to this Court's attention by Senior Counsel for one of the petitioners, where the Hon^{ble} Supreme Court in paras 105, 107 and 111 has stated as under:

“105. The FIR unquestionably is an inseparable corollary to the impugned orders which are a nullity. Therefore, the very birth of the FIR, which is a direct consequence of the impugned orders cannot have any lawful existence. The FIR itself is based on a preliminary enquiry which in turn is based on the affidavits submitted by the applicants who had filed the petitions under Section 482 CrPC.

“107. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact situation, the legal maxim sublat

fundamento cadit opus meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case.

“111. Thus, in view of the above, we are of the considered opinion that the orders impugned being a nullity, cannot be sustained. As a consequence, subsequent proceedings/orders/FIR/investigation stand automatically vitiated and are liable to be declared non est”.

(emphasis supplied)

15. It is further the case of the petitioners before this Court that various petitioners in the respective writ petitions are not even accused in the said FIR No. 129/2021 and therefore there is no predicate offence and therefore the question of the said ECIR being sustained in isolation against them does not arise. For ease of reference, the list of petitioners before this Court who are not an accused in the said FIR are tabulated below:

Sr. No.	Petitioner	W.P (CRL) No.
1.	Sandesh Vilas More	1691/2022
2.	Sagar Vasant Mahadik	1691/2022
3.	Gagan Banga	443/2022
4.	Indiabulls Asset Management Company	919/2022
5.	Amber Maheshwari	919/2022
6.	I AbenlaAier	1299/2022
7.	Niraj Tyagi	1299/2022

8.	Sunil Girdharilal Mittal	1316/2022
9.	Avi Aggarwal	1316/2022
10	Honest Shelters Private Limited	1316/2022
11	Rajiv Gandhi	1350/2022

It is noted that this Court *vide* order dated 14th March, 2022 had allowed CRL.M.A. 4803/2022 filed by Sameer Gehlaut, petitioner No. 3 in W.P. (CRL) 443/2022, deleting his name from the array of parties, on the ground that he was not an accused in the FIR.

16. As per the petitioners, the above named persons are various employees of Indiabulls Housing Finance Limited and related companies and have been roped in by the respondents in the said ECIR without there being any underlying predicate offence registered against them. In light of the conclusion and finding of the Hon^{ble} Supreme Court in ***Vijay Madanlal Choudhary*** (*supra*) this Court finds no reason for the said ECIR to be sustained against them, without there being any evidence of a predicate offence or an FIR against them which is in existence or is legally alive.

17. In all these cases therefore, both of the employees against whom no complaint was ever filed for the scheduled offences and those against whom it was filed and has been quashed subsequently by a Court of competent jurisdiction, it would only be appropriate that the said ECIR against them under PMLA be quashed and all proceedings consequent

thereto undertaken or directed by the Respondents or any authority are set aside.

18. As regards the contention of the respondents that since an SLP has been preferred by the ED assailing the judgement/order dated 4th May, 2022 of the High Court of Bombay this Court should stay its hands in the interim, this Court finds that judgment/order of the High Court of Bombay quashing the FIR and the preceding order of the Judicial Magistrate was complete in all respects and it was exactly this kind of situation that the Hon^{ble} Supreme Court contemplated in para 467 (v) (d) of **Vijay Madanlal Choudhary** (*supra*) as a final discharge/acquittal of the scheduled offence or the criminal case being quashed by a court of competent jurisdiction. Therefore, finality has indeed been obtained as regards the extinguishment of the FIR. The fact that a Special Leave Petition had been filed by the ED which was not the party in the Writ Petitions before the High Court of Bombay against the said order of the High Court of Bombay does not dilute or erode the finality of the order of the High Court of Bombay.

19. In this regard reference may also be placed on para 253 of **Vijay Madanlal Choudhary** (*supra*) which reads as under:

“253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of

complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.”

(emphasis supplied)

20. The Hon“ble Supreme Court has been clear and categorical in its reasoning as evident from the para extracted above. The undeniable sequitur of the above reasoning is that *firstly*, authorities under the PMLA cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed; *secondly*, the scheduled offence must be registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum; *thirdly*, in the event there is already a registered scheduled offence but the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or quashing of the criminal case of the scheduled offence, there can be no action for money laundering against not only such a person but also any person claiming through him in relation to the property linked to the stated scheduled offence. In other words no action

under PMLA can be resorted to unless there is a substratum of a scheduled offence for the same, which substratum should legally exist in the form of a subsisting (not quashed) criminal complaint/inquiry or if it did exist the accused has since been discharged or acquitted by a Court of competent jurisdiction.

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

22. Reliance of the learned ASG on *State of Bihar & Anr. Vs. P.P Sharma, IAS & Anr. (supra)* and *Municipal Corporation of Delhi Vs. Ram Kishan Rohtagi & Ors., (supra)* may not be relevant to the conspectus of the issue before this Court. In these petitions, this Court is not required to go into the merits of the original complainant or the consequent investigation or the potential cognizance of the complaint

regarding those who weren't arrayed as accused. The judgment/order of the Hon'ble High Court of Bombay in this regard is final at this stage and any other allegation against the accused in the said FIR or any other persons not accused in the said FIR is a matter which would be for the appropriate Court of competent jurisdiction to decide in an appropriate proceeding before that Court. Suffice it to say, at this stage nothing has been brought to the attention of this Court of any existing or surviving complaint/inquiry or an FIR against the petitioners before this Court for any of the offences as provided in the Schedule of PMLA. In any event it is clarified that the relief sought in this petition relating to the particular ECIR no. ECIR/07/HIU/2021 which was specifically predicated upon FIR no. 129/2021, in light of the conclusions arrived at in **Vijay Madanlal Choudhary** (*supra*) by the Hon'ble Supreme Court, cannot survive.

23. Mr. Zoheb Hossain, advocate for the ED, towards the end of the hearing before this Court and just prior to this Court reserving judgment, made a submission that one of the writ petitions before this Court, the one filed by Shri Atul Chordia, was part of a Transfer Petition (Criminal) No. 245/2022 filed before the Hon'ble Supreme Court and was tagged along with the batch of matters in which the leading matter was **Vijay Madanlal Choudhary & Ors Vs .Union of India & Ors.**, SLP (CRL.) 4634 of 2014. According to the counsel for ED, the transfer petition was disposed of by the Hon'ble Supreme Court on 9th September, 2022 in terms of the judgment dated 27th July, 2022 in **Vijay Madanlal Choudhary** (*supra*) and therefore the *lis* in the issue would not survive before this Court. Aside from the propriety of raising this contention during the last moments of the hearing, contending that this Court may

not have jurisdiction, the submission itself is untenable since in the concluding paras of **Vijay Madanlal Choudhary** (*supra*), while dealing with the Transfer Petitions, the Hon^{ble} Supreme Court has noted:

“468. These transfer petitions are disposed of with liberty to the private parties to pursue the proceedings pending before the High Court. The contentions, other than dealt with in this judgment, are kept open, to be decided in those proceedings on its own merits. It would be open to the parties to pursue all (other) contentions in those proceedings, except the question of validity and interpretation of the concerned provision(s) already dealt with in this judgment.”

Conclusion

24. In light of the above analysis and discussion this Court concludes as under:

a) The relief sought regarding constitutionality or *vires* of various provisions of the Prevention of Money Laundering Act, 2002 is infructuous having been decided by the Hon^{ble} Supreme Court in **Vijay Madanlal Choudhary & Ors. Vs. Union of India & Ors.**, 2022 SCC OnLine SC 929.

b) The ECIR no. ECIR/07/HIU/2021 registered by the Directorate of Enforcement, Department of Revenue, Ministry of Finance, Government of India, under FIR No. 129/2021 dated 13th

April, 2021 registered by P.S. Wada, Dist. Palghar, Maharashtra stands quashed.

c) All proceedings arising from the ECIR No. ECIR/07/HIU/2021 are set aside and there would be no further coercive action or search and seizure or summons arising from the said ECIR.

d) The Look out Circulars issued by respondents pursuant to the ECIR No. ECIR/07/HIU/2021 are also set aside.

CRL.M.A. 3495/2022, CRL.M.A. 5002/2022 CRL.M.A. 10739/2022 ,CRL.M.A. 14801/2022, CRL.M.A. 17030/2022 in W.P.(CRL) 408/2022

And

CRL.M.A. 3811/2022, CRL.M.A. 14894/2022 in W.P. (CRL) 440/2022

And

CRL.M.A. 3845/2022, CRL.M.A. 4639/2022, CRL.M.A. 9001/2022, CRL.M.A. 14896/2022, CRL.M.A. 14897/2022 in W.P.(CRL) 443/2022

And

CRL.M.A.7761/2022,CRL.M.A.14900/2022 CRL.M.A. 14901/2022 in W.P.(CRL) 919/2022

And

CRL.M.A.11196/2022, CRL.M.A.14898/2022, CRL.M.A. 14899/2022 in W.P. (CRL) 1299/2022

And

CRL.M.A.11317/2022,CRL.M.A.15145/2022,inW.P.(CRL) 1316/2022

And

**CRL.M.A.11534/2022, CRL.M.A.14891/2022, CRL.M.A. 14892/2022
in W.P.(CRL) 1350/2022**

And

CRL.M.A. 14723/2022 in W.P.(CRL) 1691/2022

All pending applications are disposed of as infructuous.

**(ANISH DAYAL)
JUDGE**

**(MUKTA GUPTA)
JUDGE**

September 26, 2022/rk



नस्यमेव जयते