[2023] 13 S.C.R. 1049 : 2023 INSC 1029

PAVANA DIBBUR
v.
THE DIRECTORATE OF ENFORCEMENT

(Criminal Appeal No. 2779 of 2023)

NOVEMBER 29, 2023

[ABHAY S. OKA* AND PANKAJ MITHAL, JJ.]

Issue for consideration:

Whether the offence u/s.120B, IPC included in Paragraph 1 of the Schedule to the Prevention of Money Laundering Act, 2002, can be treated as a scheduled offence even if the criminal conspiracy alleged is to commit an offence which is not a part of the Schedule.

Prevention of Money Laundering Act, 2002 – Paragraph 1 of the Schedule – Penal Code, 1860 – s.120B – Appellant purchased the first property from Alliance Business School and the second property from accused no.1 against whom an FIR was registered alleging that he collected Rs.107 crores from the students by claiming himself as the Chancellor of the Alliance University – Four FIRs, ECIR registered – Complaint filed against the appellant-accused alleging that she entered into a conspiracy with accused no.1 by getting executed nominal sale deeds in respect of the first and second properties in her name for the benefit of accused no.1 and facilitated him to use her bank accounts to siphon the university funds, assisting him in the activity connected with the proceeds of crime – Petition for quashing the complaint filed by the appellant, dismissed by High Court – Appellant pleaded that out of the four scheduled/predicate offences, chargesheets were filed in the case of three offences wherein only one offence covered by the Schedule to the PMLA was mentioned– It was thus contended that s.120B of IPC alone, in the absence of any other scheduled offence cannot sustain a charge under the PMLA and unless there is an allegation regarding a conspiracy to commit any scheduled offence, the prosecution under the PMLA cannot lie:

Held: The offence punishable u/s.120B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing

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an offence which is specifically included in the Schedule – In the present case, in the chargesheets filed in the alleged scheduled offences, there is no allegation of the commission of criminal conspiracy to commit any of the offences included in the Schedule – Except for s.120B, IPC, no other offence in the schedule was applied – Therefore, in this case, the scheduled offence does not exist at all – Hence, the appellant cannot be prosecuted for the offences punishable u/s.3, PMLA – Impugned order quashed and set aside – Complaint pending before the Special Court for PMLA cases, Bengaluru quashed as regards the present appellant – Code of Criminal Procedure, 1973 – s.482. [Paras 26, 27]

Prevention of Money Laundering Act, 2002 – s.3 – Plea of the appellant that as she was not arraigned as an accused in the chargesheets filed pertaining to the alleged scheduled offences, she cannot be roped in as an accused for the offences punishable u/s.3:

Held: In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable u/s.3 of the PMLA as there will not be any proceeds of crime – Thus, in such a case, the accused against whom the complaint u/s.3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused – Similarly, he will get the benefit of quashing the proceedings of the scheduled offence – However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence – Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists – An offence u/s.3 can be committed after a scheduled offence is committed – It is not necessary that a person against whom the offence u/s.3 is alleged must have been shown as the accused in the scheduled offence – Plea of the appellant rejected. [Paras 15, 16]

Interpretation of Statutes – Prevention of Money Laundering Act, 2002 – Paragraph 1 of the Schedule – Penal Code, 1860 – s.120B:

Held: The penal statutes are required to be strictly construed – The penal laws must be construed according to the legislative intent as expressed in the enactment – While giving effect to the legislature's intention, if two reasonable interpretations can be given to a particular provision of a penal statute, the Court should generally adopt the interpretation that avoids the imposition of penal consequences – A more lenient interpretation of the two needs to be adopted – The legislative intent which can be gathered from the definition of the scheduled offence under clause (y) of sub Section (1) of s.2 of the PMLA is that every crime which may generate proceeds of crime need not be a scheduled offence – Therefore, only certain specific offences have been included in the Schedule – Thus, if the submission of the ED that as s.120B, IPC is included in Part A to the Schedule even if the allegation is of making a criminal conspiracy to commit an offence which is not a part of the Schedule, the offence becomes a scheduled offence, is accepted, the Schedule will become meaningless or redundant – Reason explained – Interpretation suggested by the ED will defeat the legislative object of making only a few selected offences as scheduled offences – If such an interpretation is accepted, the statute may attract the vice of unconstitutionality for being manifestly arbitrary – It cannot be the legislature's intention to make every offence not included in the Schedule a scheduled offence by applying s.120B – Therefore, the offence u/s.120-B included in Part A of the Schedule will become a scheduled offence only if the criminal conspiracy is to commit any offence already included in Parts A, B or C of the Schedule. [Paras 23-25]

Vijay Madanlal Choudhary & Ors. vs. Union of India & Ors. **(2022) SCC Online SC 929 – referred to.**

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.2779 Of 2023

From the Judgment and Order dated 27.09.2022 of the High Court of Karnataka at Bengaluru in CRLP No.3542 of 2022.

Ms. Meenakshi Arora, Sr. Adv., Ms. Ashima Mandla, Ms. Mandakini Singh, Surya Pratap Singh, Ms. Ankita Chaudhary, Advs. for the Appellant.

S. V. Raju, ASG, Mukesh Kumar Maroria, Ms. Alka Agarwal, Annam Venktesh, Ms. Sairica Raju, Zoheb Hussain, Advs. for the Respondent.

The Judgment of the Court was delivered by

ABHAY S. OKA, J.

OVERVIEW

1. The respondent–the Directorate of Enforcement (for short, 'ED'), filed a complaint under the second proviso to Section 45(1) of the Prevention of Money Laundering Act, 2002 (for short, 'the PMLA') before the Special Court for PMLA Cases at Bengaluru. The appellant–Pavana Dibbur was shown as accused no.6 in the said complaint. By the order dated 17th March 2022, the Special Court took cognisance of the said complaint. The appellant filed a petition before the High Court of Karnataka at Bengaluru under Section 482 of the Code of Criminal Procedure, 1973 (for short, 'Cr.PC') seeking the relief of quashing of the said complaint. By the impugned judgment and order dated 27th September 2022, the petition for quashing the complaint has been dismissed.

2. In the year 2011, Alliance Business School (for short, 'ABS') purchased a property bearing Khata no.37/22 at Gollahalli Village, Jigani Hobli, Anekal Taluk, Bengaluru for the consideration of Rs.13.05 crores. The area of the said property is approximately five acres. For the sake of convenience, we are describing the said property as 'the First Property'. On 1st July 2013, the appellant purchased the first property from ABS by a registered sale deed for a consideration of Rs.13.5 crores. The accused no.1–Madhukar Angur, purchased a property measuring 4 acres and 0.4 Guntas bearing survey nos.61, 62 and 63 at Karpur Village, Kasaba Hobli, Anekal Taluk, Bengaluru. For the sake of convenience, we are describing this property as 'the Second Property'. The appellant purchased the second property by a registered sale deed on 29th June 2019 for a consideration of Rs.2.47 crores from accused no.1–Madhukar Angur.

3. For a period of five years, i.e. from 2010 to 2015, the appellant's husband–Dr Ayyappa Dore, was the Vice-Chancellor of the Alliance

University. The appellant also acted as the Vice-Chancellor of the Alliance University for a brief period. On 11th November 2017, a First Information Report (FIR) was registered on the complaint of the Registrar of the Alliance University against accused no.1– Madhukar Angur, alleging that he collected a sum of Rs.107 crores from the students by claiming himself as the Chancellor of the Alliance University. The allegation was that he collected the said amount between January 2017 and November 2017, which was deposited in the account of Srivari Education Services. Subsequently, crores of rupees were transferred to the account of the accused no.1.

4. An Enforcement Case Information Report (ECIR) was registered on 16th October 2020 by the ED against accused nos.1, 2 and 3, namely Madhukar Angur, his wife Priyanka Angur and Mr Ravikumar, Partner, Srivari Education Services and other unknown accused alleging the commission of the offence of money laundering under Section 3 of the PMLA. The ECIR was based on four FIRs, the details of which are as under:

Sl. No.	**FIR No.**	**Sections in FIR**	**Chargesheet**	**Sections under which the Chargesheet was filed**
1.	119 of 2016 (PS Jayaprakash Nagar)	376, 420 and 506 of IPC	B-Report filed/ Closure Report filed on 2nd February 2017	Closure Report accepted
2.	730 of 2016 (PS Madiwala)	143, 144, 147, 148, 149, 506 and 120-B of IPC	Chargesheet filed on 4th July 2017 in which the appellant is not named as the accused	Chargesheet is filed under Sections 143, 144, 147, 148, 149, 506, 120-B of IPC

3.	52 of 2017 (PS Shankarpura)	506, 504, 143, 149 and 420 of IPC	Chargesheet filed on 25th March 2018 in which the appellant is not named as the accused	Chargesheet filed under Sections 504, 506, 120-B read with 34 of IPC
4.	188 of 2017 (PS Anekal)	143, 406, 407, 408, 409 and 149 of IPC	Chargesheet filed on 18th June 2019 in which the appellant is not named as the accused	Chargesheet filed under Section 406, 408, 408, 447, 204, 120-B read with 34 of IPC

5. On 27th September 2021, the ED passed an order under Section 5 of the PMLA attaching first and second properties. A complaint was filed before the adjudicating authority on 13th October 2021, in which the appellant is shown as the fifth defendant.

6. The allegation against the appellant in the complaint filed under the second proviso of Section 45(1) of the PMLA is that she has entered into a conspiracy with accused no.1–Madhukar Angur by getting executed nominal sale deeds in respect of the first and second properties in her name for the benefit of accused no.1. The allegation of the ED is that the appellant facilitated the accused no.1 to use her bank accounts to siphon the university funds, thereby, assisting the accused no.1 in the activity connected with the proceeds of crime. By the impugned judgment, the learned Single Judge of the High Court dismissed the petition filed by the appellant. The learned Single Judge relied upon the decision of a Bench of three Hon'ble Judges of this Court in the case of ***Vijay Madanlal Choudhary & Ors. v. Union of India & Ors.***[1].

SUBMISSIONS OF THE APPELLANT

7. Ms Meenakshi Arora, the learned senior counsel appearing for the appellant, firstly submitted that the first and second properties are

1 (2022) SCC Online SC 929

not tainted properties and, therefore, the same are not covered by the definition of "proceeds of crime" under clause (u) of sub-section (1) of Section 2 of the PMLA. The learned senior counsel pointed out that the first property was acquired on 1st July 2013, much prior to the commission of the first scheduled offence. The allegation in the FIR dated 11th November 2017 against accused no.1 is that he collected a sum of about Rs.107 crores from the students between January and November 2017 and transferred the said amount to his account. Therefore, the appellant's acquisition of the first property can never be linked with the proceeds of the crime regarding the scheduled offence. She submitted that regarding the acquisition of the second property, the appellant had her own resources available to acquire the same. The learned senior counsel relied upon an Income Tax Return filed by the appellant under the Income Declaration Scheme, 2016, by which she declared a total undisclosed income of Rs.26,42,54,193/-. The appellant paid Rs.11,89,08,385/- towards income tax and penalty on 8th September 2016. The return was filed on 12th September 2016. Therefore, the appellant had a source of money for acquiring the second property for the consideration of Rs.2.47 crores. Both the properties acquired by the appellant had no nexus at all with the proceeds of crime of the scheduled offences. The learned senior counsel pointed out that consideration of Rs.2.47 crores was agreed upon, as it is mentioned in the sale deed that it was a distress sale made by the accused no.1–Madhukar Angur.

8. The second limb of the submissions of the learned senior counsel appearing for the appellant is that as the appellant has not been arraigned as an accused in the chargesheets filed pertaining to the alleged scheduled offences, she cannot be roped in as an accused for the offences punishable under Section 3 of the PMLA. She relied upon what is held in paragraphs 251 to 253 of the decision of this Court in the case of ***Vijay Madanlal Choudhary***[1]***.*** She submitted that in the decision, this Court held that if an accused in the scheduled/predicate offence is acquitted/discharged, he cannot be prosecuted for the offence punishable under the PMLA. She submitted that the appellant's case stands on a better footing as she was not even shown as an accused in any scheduled/predicate offences. She would, therefore, submit that the cognizance of the crime under the PMLA could not have been taken against the appellant.

9. The third submission of the learned senior counsel appearing for the appellant is that out of the four scheduled/predicate offences, chargesheets have been filed in the case of three offences, and in these chargesheets, only one offence covered by the Schedule to the PMLA has been mentioned, which is Section 120-B of IPC. She pointed out that in FIR no.119 of 2016 and FIR no.52 of 2017, Section 420 of IPC was included. However, in FIR no.119 of 2016, the closure report was filed, and in FIR no.52 of 2017, while filing the chargesheet, Section 420 of IPC was excluded. She contended that Section 120-B of IPC alone, in the absence of any other scheduled offence, cannot sustain a charge under the PMLA. Unless there is an allegation regarding a conspiracy to commit any scheduled offence, the prosecution under the PMLA cannot lie. Relying upon the proviso to Section 120-A of IPC, the learned senior counsel submitted that an illegal act or a legal act by illegal means, in furtherance of an agreement, committed by any person is a *sine qua non* for attracting the offence of conspiracy under Section 120-B of IPC. If Section 120-B of IPC can be treated as a standalone offence to attract prosecution under the PMLA, by that logic, a complaint under the PMLA can be filed where the allegation is of criminal conspiracy to commit an offence which is not a scheduled offence. Therefore, she submits that the complaint against the appellant deserves to be quashed.

SUBMISSIONS OF THE RESPONDENT

10. Shri S.V. Raju, the learned Additional Solicitor General appearing for the ED, submitted that even assuming that the appellant had monetary capacity to acquire the second property, one cannot conclude that the funds siphoned by the accused no.1, which constitute proceeds of crime, were not used by the appellant for acquiring the second property. He submits that this issue can be gone into only at the time of trial. Regarding the second submission, the learned Additional Solicitor General submitted that a person can be held guilty of the commission of a money laundering offence under Section 3 of the PMLA, even if he is not shown as an accused in the predicate offence. He submitted that it is apparent from the provision of Section 3 of the PMLA that in a given case, a person who is not an accused in the predicate offence can commit the offence of money

laundering. Regarding the third submission, the learned Additional Solicitor General submitted that wherever the legislature intended, it has made a particular offence read with another offence as a scheduled offence. He invited our attention to Paragraphs 4 and 6 of Part A of the Schedule to the PMLA. Referring to Paragraph 11 of the Schedule to the PMLA, he urged that the first four offences in Paragraph 4 and all the offences in Paragraph 6 clearly show the legislature's intention. He submitted that the schedule must be read as it is, and nothing can be added or subtracted from the Schedule considering the objects of the PMLA. He submitted that the validity of the Schedule has been upheld in the case of ***Vijay Madanlal Choudhary***[1]**.** He would, therefore, submit that no interference is called for with the impugned order.

CONSIDERATION OF SUBMISSIONS

THE EFFECT OF THE APPELLANT NOT BEING SHOWN AS AN ACCUSED IN PREDICATE OFFENCE

11. Section 3 of the PMLA reads thus:

"3. Offence of money-laundering.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

Explanation.—For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

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

On a plain reading of Section 3, unless proceeds of crime exist, there cannot be any money laundering offence. Clause (u) of sub-section (1) of Section 2 of the PMLA defines "proceeds of crime", which reads thus:

"2.Definition – (1) In this Act, unless the context otherwise requires,-

.. ..

(u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;

Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence."

12. Clause (v) of sub-section (1) of Section 2 of the PMLA defines "property" to mean any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible. To constitute any property as proceeds of crime, it must be derived or obtained directly or indirectly by any person as a result of criminal activity relating to a scheduled offence. The explanation clarifies that the proceeds of crime include property, not only derived

or obtained from scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence. Clause (u) also clarifies that even the value of any such property will also be the proceeds of crime. Thus, the existence of "proceeds of crime" is *sine qua non* for the offence under Section 3 of the PMLA.

13. Clause (x) of sub-section (1) of Section 2 of the PMLA defines "schedule". Clause (y) thereof defines "scheduled offence", which reads thus:

"2. Definition – (1) In this Act, unless the context otherwise requires,-

.. ..

(y) "scheduled offence" means—

(i) the offences specified under Part A of the Schedule; or

(ii) the offences specified under Part B of the Schedule if the total value involved in such offences is one crore rupees or more; or

(iii) the offences specified under Part C of the Schedule.**"**

14. The condition precedent for the existence of proceeds of crime is the existence of a scheduled offence. On this aspect, it is necessary to refer to the decision of this Court in the case of ***Vijay Madanlal Choudhary*[1]*.*** In paragraph 253 of the said decision, this Court held thus:

"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."

(underline supplied)

In paragraphs 269 and 270, this Court held thus:

"**269.** From the bare language of Section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form — be it one of concealment, possession, acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so. Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence — except the proceeds of crime derived or obtained as a result of that crime.

270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after

it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act — for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

(underline supplied)

15. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of ***Vijay Madanlal Choudhary***[1] supports the above conclusion. The conditions precedent for attracting the offence

under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 of the PMLA.

16. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the chargesheets filed in the scheduled offences deserves to be rejected.

ACQUISITION OF THE FIRST AND SECOND PROPERTY

17. The allegation against the appellant in the complaint is that she purchased the property worth crores, though she did not have the source of income which would generate enough money to buy the subject properties. The allegation against the appellant is that she allowed and facilitated accused no.1–Madhukar Angur, to conceal the siphoned/misappropriated amounts by using her bank account. Another allegation is that she is shown to have purchased the second property from accused no.1, though she did not have the resources to pay the consideration. The allegation is that she allowed the accused no.1 to use her bank accounts to facilitate siphoning the proceeds of the crime. Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, ex-facie, cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled

offence took place after its acquisition. The case of the appellant is that she possessed a substantial amount, as can be seen from the declaration made by her under the Income Declaration Scheme, 2016 in September 2016 and therefore, at the time of the acquisition of the second property, more than sufficient money was available with her to acquire the second property. The issue of whether the appellant used tainted money to acquire the second property can be decided only after the evidence is adduced. This is not a case where any material is placed on record to show that the sale consideration was paid from a particular Bank Account of the appellant. Therefore, it is not possible to record a finding at this stage that the Second property was not acquired by using the proceeds of crime. We also make it clear that we have considered the issue only in the context of the applicability of the PMLA. We have not dealt with the issues of valuation and legality of the sale deeds.

INTERPRETATION OF THE FIRST ENTRY IN PARAGRAPH 1 OF THE SCHEDULE

18. Now, we come to the third argument made by the learned senior counsel appearing for the appellant based on the interpretation of the Schedule. It must be noted here that in the case of ***Vijay Madanlal Choudhary***[1]***,*** even the validity of the Schedule was under challenge. A perusal of the said decision shows that this Court was not called upon to interpret any entry in the Schedule and, in particular, entry of Section 120-B in the Schedule. The challenge to the Schedule is dealt with in paragraphs 453, 454 and 455 of the said decision. The contention before this Court was that even minor offences have been included in the Schedule, and even compoundable offences form part of the Schedule. It was submitted that the offences which do not have cross-border implications have been included in the Schedule. In paragraphs 454 and 455 of the said decision, this Court held thus:

"454. This Schedule has been amended by Act 21 of 2009, Act 2 of 2013, Act 22 of 2015, Act 13 of 2018 and Act 16 of 2018, thereby inserting new offences to be regarded as scheduled offence. The challenge is not on the basis of legislative competence in respect of enactment of Schedule and the amendments thereto from time to time. However, it had been urged before us that there is no consistency in the approach as it includes even minor offences as scheduled

offence for the purposes of offence of money-laundering, more so even offences which have no trans-border implications and are compoundable between the parties. The classification or grouping of offences for treating the same as relevant for constituting offence of money-laundering is a matter of legislative policy. The Parliament in its wisdom has regarded the property derived or obtained as a result of specified criminal activity, being an offence under the concerned legislation mentioned in the Schedule. The fact that some of the offences may be non-cognizable offences under the concerned legislation or regarded as minor and compoundable offences, yet, the Parliament in its wisdom having perceived the cumulative effect of the process or activity concerning the proceeds of crime generated from such criminal activities as being likely to pose threat to the economic stability, sovereignty and integrity of the country and thus, grouped them together for reckoning it as an offence of money-laundering, is a matter of legislative policy. It is not open to the Court to have a second guess at such a policy.

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."

In this case, we are not called upon to decide the validity of the Schedule or any part thereof. The question is whether the offence under Section 120-B of IPC, included in Paragraph 1 of the Schedule, can be treated as a scheduled offence even if the criminal conspiracy

alleged is to commit an offence which is not a part of the Schedule. This issue did not arise for consideration in the case of ***Vijay Madanlal Choudhary***[1]***.***

19. Section 120-A of IPC defines "criminal conspiracy", which reads thus:

"120A. Definition of criminal conspiracy.—When two or more persons agree to do, or cause to be done,—

(1) an illegal act, or

(2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation.—It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object."

Section 120-B of IPC provides for punishment for a criminal conspiracy which reads thus:

"120B. Punishment of criminal conspiracy.— (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.

(2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both."

20. Now, we turn to the Schedule to the PMLA. We find that many offences, which may generate proceeds of crime, have not been included in the Schedule. We are referring to only a few of such offences only by way of illustration:-

a. Section 263A of IPC, which deals with the offence of making or possessing fictitious stamps is not a part of the Schedule;

b. Though offences punishable under Sections 392 to 402 regarding robbery and dacoity have been included in part A of the Schedule, the offence punishable under Section 379 of committing theft and the offence punishable under Section 380 of theft in a dwelling house are not made a part of parts A and B of the Schedule. The theft of both categories can be of a very large amount running into crores. The said two offences become scheduled offences by virtue of clause (3) of part C of the Schedule only if the offences have cross-border implications;

c. The offence punishable under Section 403 of dishonest misappropriation of property does not form part of the Schedule. The said offence becomes a scheduled offence by virtue of clause (3) of part C of the Schedule only if the offence has cross-border implications;

d. The offence under Section 405 of criminal breach of trust, which is punishable under Section 406, is not a part of the Schedule The said offence becomes a scheduled offence by virtue of clause (3) of part C of the Schedule only if the offence has cross-border implications;

e. Though the offence under Section 417 of cheating has been made a scheduled offence, the more stringent crime of forgery for the purposes of cheating under Section 468 is not a part of the Schedule, and

f. Though the offences under Sections 489A to 489C regarding forging or counterfeiting currency notes are part of the Schedule, the offence under Section 489D of making or possessing instruments or materials for forging or counterfeiting currency notes is not a part of the Schedule.

21. Now, coming to Part B of the Schedule, it includes only one offence under Section 132 of the Customs Act, 1962. The offence under Section 132 of the Customs Act of making a false declaration, etc., becomes a scheduled offence in view of sub-clause (ii) of Clause (y) of sub-section (1) of Section 2 of the PMLA only if the total value involved in the offence is Rs.1 crore or more. Part C of the Schedule provides that any offence specified in Part A having cross-border implications becomes a part of Part C. More importantly, all the

offences against the property under Chapter XVII of IPC having cross-border implications become scheduled offences. As pointed out earlier, the offences punishable under Sections 379 (theft), 380 (theft in dwelling house), 403 (dishonest misappropriation of property) and 405 (criminal breach of trust) are part of Chapter XVII. Though the said offences are not included in Part A, they become scheduled offences by virtue of Part C only if they have cross-border implications. Thus, it can be said that many offences capable of generating proceeds of crime do not form a part of the schedule.

22. The learned Additional Solicitor General argued that as Section 120-B of IPC is included in Part A to the Schedule, even if the allegation is of making a criminal conspiracy to commit an offence which is not a part of the Schedule, the offence becomes a scheduled offence. As stated earlier, many offences under Chapter XVII of IPC are not included in Parts A and B. They become scheduled offences only if the same have cross-border implications. Thus, the offences of dishonest misappropriation of property or criminal breach of trust or theft can become a scheduled offence, provided they have cross-border implications. If the argument of the learned Additional Solicitor General is accepted, if there is a conspiracy to commit offences under Section 403 or Section 405, though the same have no cross-border implications, the offence under Section 120-B of conspiracy to commit offences under Sections 403 and 405 will become a scheduled offence. Thus, if any offence is not included in Parts A, B and C of the Schedule but if the conspiracy to commit the offence is alleged, the same will become a scheduled offence. A crime punishable under Section 132 of the Customs Act is made a scheduled offence under Part B, provided the value involved in the offence is Rupees One Crore or more. But if Section 120-B of IPC is applied, one who commits such an offence having a value of even Rs.1 lac can be brought within the purview of the PMLA. By that logic, a conspiracy to commit any offence under any penal law which is capable of generating proceeds, can be converted into a scheduled offence by applying Section 120-B of the IPC, though the offence is not a part of the Schedule. This cannot be the intention of the legislature.

23. The penal statutes are required to be strictly construed. It is true that the penal laws must be construed according to the legislative

intent as expressed in the enactment. In Chapter 1 of GP Singh's Principles of Statutory Interpretation (15th Edition), it is observed that:

"The intention of the Legislature, thus, assimilates two aspects: In one aspect it carries the concept of "meaning", i.e. what the words mean and in another aspect, it conveys the concept of "purpose and object" or the "reason and spirit" pervading through the statute. The process of construction, therefore, combines both literal and purposive approaches. In other words the legislative intention, i.e., the true or legal meaning of an enactment is derived by considering the meaning of the words used in the enactment in the light of any discernible purpose or object which comprehends the mischief and its remedy to which the enactment is directed." In the words of A Driedger, *Construction of Statute,* 2nd Edn, 1983: **The words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the Scheme of the Act, the object of the Act, and the intent of the Parliament.** This formulation later received the approval of the Supreme Court and was called the "cardinal principle of construction"." In both Constitutional and statutory interpretation, the court is supposed to exercise discretion in determining the proper relationship between the subjective and objective purposes of the law and help the law achieve its purpose.**"**

(Emphasis added)

24. While giving effect to the legislature's intention, if two reasonable interpretations can be given to a particular provision of a penal statute, the Court should generally adopt the interpretation that avoids the imposition of penal consequences. In other words, a more lenient interpretation of the two needs to be adopted.

25. The legislative intent which can be gathered from the definition of the scheduled offence under clause (y) of sub-Section (1) of Section 2 of the PMLA is that every crime which may generate proceeds of crime need not be a scheduled offence. Therefore, only certain specific offences have been included in the Schedule. Thus, if the submissions of the learned Additional Solicitor General are accepted, the Schedule will become meaningless or redundant. The reason is that even if an offence registered is not a scheduled offence, the provisions of the PMLA and, in particular, Section 3 will

be invoked by simply applying Section 120-B. If we look at Section 120-B, only because there is a conspiracy to commit an offence, the same does not become an aggravated offence. The object is to punish those involved in conspiracy to commit a crime, though they may not have committed any overt act that constitutes the offence. Conspiracy is an agreement between the accused to commit an offence. If we look at the punishments provided under Section 120-B, it becomes evident that it is not an aggravated offence. It only incorporates the principle of vicarious liability. If no specific punishment is provided in the Statute for conspiracy to commit a particular offence, Section 120-B treats a conspirator of the main accused as an abettor for the purposes of imposing the punishment. The interpretation suggested by the ED will defeat the legislative object of making only a few selected offences as scheduled offences. If we accept such an interpretation, the statute may attract the vice of unconstitutionality for being manifestly arbitrary. It cannot be the legislature's intention to make every offence not included in the Schedule a scheduled offence by applying Section 120-B. Therefore, in our view, the offence under Section 120-B of IPC included in Part A of the Schedule will become a scheduled offence only if the criminal conspiracy is to commit any offence already included in Parts A, B or C of the Schedule. In other words, an offence punishable under Section 120-B of IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is otherwise a scheduled offence.

26. Coming back to the facts of the case, in the chargesheets filed in the alleged scheduled offences, there is no allegation of the commission of criminal conspiracy to commit any of the offences included in the Schedule. As pointed out earlier, except for Section 120B of the IPC, no other offence in the schedule has been applied. Therefore, in this case, the scheduled offence does not exist at all. Hence, the appellant cannot be prosecuted for the offences punishable under Section 3 of the PMLA.

CONCLUSIONS

27. While we reject the first and second submissions canvassed by the learned senior counsel appearing for the appellant, the third submission must be upheld. Our conclusions are:

a. It is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as the accused in the scheduled offence;

b. Even if an accused shown in the complaint under the PMLA is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;

c. The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;

d. The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the second property can be decided only at the time of trial; and

e. The offence punishable under Section 120-B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule.

28. Accordingly, the impugned order dated 27th September 2022 is, hereby, quashed and set aside, and the complaint being Special C.C no.781 of 2022 pending before the Special Court for PMLA cases, Bengaluru is, hereby, quashed only insofar as the present appellant is concerned.

29. The appeal is, accordingly, allowed.

Headnotes prepared by: Divya Pandey

Result of the case : Appeal allowed.