IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : **19.09.2019**

Judgment Delivered on : **04.10.2019**

CORAM

THE HON'BLE MR. JUSTICE **M.M.SUNDRESH**
and
THE HON'BLE MR. JUSTICE **RMT. TEEKAA RAMAN**

Crl.O.P.No.9796 of 2019
& Crl.M.P.No.5129 of 2019

1.M/s VGN Developers P Ltd.,
Represented by its Managing Director
Shri D.Pratish, aged about 34 years,
S/o V.N.Devadoss,
No.15, Wallace Garden 2nd Street,
Nungambakkam, Chennai-600 034.

2.D.Pratish, aged about 35 years,
S/o V.N.Devadoss,
Managing Director of M/s VGN Developers P Ltd.,
Residing at No.23, Chellammal Street,
Shenoy Nagar, Chennai-600 030. .. Petitioners/A1 & A2

Vs.

The Deputy Director,
Directorate of Enforcement,
(The Prevention of Money Laundering Act, 2002),
Government of India, Ministry of Finance,
Department of Revenue, 2nd and 3rd Floor,
C Block, Murugesa Naicker Office Complex,
84, Greams Road, Thousand Lights,
Chennai-600 006. ... Respondent/
Complainant

Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.56 of 2018 pending on the file of Principal Sessions Judge, City Civil Court, Chennai and quash the same.

For Petitioner : Mr.Mukul Rohatgi, Sr.C.,
for 1st petitioner and
Mr.P.S.Raman, Sr.C., and
for P.R.Raman for 2nd Petitioner
for Mr.C.Seethapathy

For Respondent : Mr.G.Rajagopal,
Addl. Solicitor General Asst. by
M/s G.Hema, SCGSC.,

ORDER

(Order of the Court was made by **M.M.SUNDRESH,J.**)

This Criminal Original Petition has been filed by the petitioners, who are the Private Limited Company and the Managing Director respectively, to quash the proceedings in C.C.No.56 of 2018 pending on the file of Principal Sessions Judge, City Civil Court, Chennai, under Section 45(1) of the Prevention of Money-Laundering Act, 2002.

2. Heard Mr.Mukul Rohatgi, learned Senior Counsel appearing for the first petitioner and Mr.P.S.Raman, learned Senior Counsel and

Mr.P.R.Raman, learned counsel, for Mr.C.Seethapathy, learned counsel appearing for the second petitioner and Mr.G.Rajagopal, learned Additional Solicitor General of India, assisted by Ms. G.Hema, SCGSC, for the respondent and perused the records including the written arguments filed.

3. Before venturing into the respective contentions, let us place on record the requisite bare facts.

3.1. M/s Hindustan Teleprinters Limited, GST Road, Guindy, Chennai-600 032, was a company incorporated way back in the year 1960 as a Public Sector Undertaking. Needless to mention 100% share capital was owned by the Government of India. The company disinvested 74% of the shares in favour of a private company by name M/s Himachal Futuristic Communications Limited (HFCL). Accordingly, 26% of the remaining shares continues to be with the Government of India.

3.2. The Company entered into a Working Capital Consortium Agreement on 22nd April, 2000 with the State Bank of India('SBI') as a lead bank. The agreement was secured by deposit of title deeds creating an equitable mortgage. The land measuring 11.021 acres

situated in Thiru Vi Ka Industrial Estate, Guindy, was transferred in favour of M/s Hindustan Teleprinters Limited (hereinafter referred to as "the HTL"). In the year 2002, the company became NPA. Accordingly, on 07.03.2007, the lands were brought for sale by the SBI Asset Sale Committee. Though a successful bidder quoted a sum of Rs.298 crores, ultimately, the auction was withdrawn. Further proceedings were initiated under Rules 8(5) and 8(8) of the SARFAESI Rules, 2002. However, there were no bidders.

3.3. Thereafter, a decision was made by the State Bank of India and the consortium lenders to explore the possibility of the private treaty. The first petitioner made an offer to Rs.272 crores mortgaging the property in question along with the other assets. A sum of Rs.2 crores was paid through the Service Agreement dated 18.06.2013 executed by the HTL and the petitioners for the purpose of resurvey the land area and to settle the labourers. Though a request was also made on 12.06.2013 to pay the remaining 90% of the sale consideration on or before 22.06.2013 itself, the payment was made on 19.06.2013 and Sale Certificate was issued. Thereafter, the stamp duty was also paid on the guideline value.

3.4. The Central Bureau of Investigation("CBI") has registered a complaint for the offences under Sections 120(B) and 420 IPC and 13(2) and 13(1)(d) of Prevention of Corruption Act in RC 50(A)/2016 against the SBI Manager, Chief Manager of SBI, Manager of HTL and the petitioners. Based on the said First Information Report filed by the CBI., the Enforcement Directorate has registered a case on 06.01.2017 and proceeded with the investigation thereafter under Prevention of Money Laundering Act, 2002.

3.5. Seeking an order to quash the First Information Report, the petitioners have filed Crl.O.P.No.21905 of 2017. As the petitioner could not get any favourable orders in their challenge to the complaint registered by the Central Bureau of Investigation, a Final Report was filed before the jurisdictional Court on 29.04.2019. During the pendency of the proceeding before the Court qua the complaint of the respondent, the final report filed by Central Bureau of Investigation was accepted by XI Additional Special Court for CBI Cases, Chennai, on 30.04.2019 in Crl.M.P.No.4018 of 2019. In the meanwhile, the attachment order as confirmed by the Adjudicating Authority was set aside by the Appellate Tribunal for PMLA, New Delhi, on 14.02.2019,

qua the properties in question. Against which, the respondent is stated to have taken steps to file an appeal, which we are not concerned with in this proceeding.

3.6. The complaint given by the respondent was taken on file in C.C.No.56 of 2018 under Section 45(1) read with Sections 3, 4 and 70 of the Prevention of Money Laundering Act, 2002. Now, the petitioners have filed this criminal original petition before this Court seeking to quash the complaint by invoking Section 482 of the Criminal Procedure Code.

4. The material averments in the complaint of the respondent are as follows:

> "**(iii)**The RMZ Properties P Ltd Bangalore bid for Rs.298 crores on 7.3.2007 whereas the property was sold in the year 2013 at Rs.272 crores.
>
> As the Government of Tamil Nadu raised objection to the sale of land during that period of time, the matter was taken upto Hon'ble Supreme Court and finally granted an order in March 2009 in favour of HTL permitting the company to sell the land. In the meantime, the bid of RMZ properties was withdrawn by them. The CBI has categorically explained in detail in its final report at (i) in Tabular Column of the said

Final Report found in page 25 of the Annexure typed set filed by the petitioner dated 13.08.2019.

(iv)VGN has entered into a Criminal Conspiracy with the members of Consortium Bank and acquired the property much lower than the guideline value.

VGN has paid the entire sale consideration of Rs.272 crores by obtaining loan from their financiers. Apartment from this, the VGN has also paid Rs.29 lakhs for the payment made with a delay of 6 days. VGN has also paid Rs.2 Crores to HTL as service charges for getting clearance of property as explained in its statement. The consortium bank conducted meeting and decided to sell the property through private treaty as per the provisions permissible under SARFAESI Act. VGN had purchased the property above the upset price of Rs.250 crores. The CBI has categorically explained in detail in its final report at (ii) and (ii) in Tabular Column of the said Final Report found in page 25 to 27 of the Annexure typed set filed by the petitioner dated 13.08.2019.

(v) The petitioners are accused in FIR by CBI have allegedly committed "Scheduled Offences" as defined under Section 2(1)(x) and (v) of PMLA.

After thorough investigation of CBI, it has filed its final report stating that the allegations are not substantiated with prosecutable evidences and hence recommended for closure of the case. Therefore, Money Laundering is dependant on the crime of "Predicate offence" or "schedule Offence", the

proceeds of which are made the subject matter of crime of money laundering. In this case, there is no crime established under the scheduled offences as evidenced by the final report of the CBI dated 29.04.2019 and hence no proceeds of crime defined under PMLA would follow or act independently against the petitioners.

(vi) The funds derived out of the sale of residential units as a consequence of criminal activities are "proceeds of crime" as defined under PMLA:

When there is no criminal activity as shown against the petitioners during the purchase of property and the entire transaction of purchase of the property was done only under due process of law that too after obtaining a loan, the subsequent development of the said land with the funds of proposed buyers are to be treated as "untainted money" and can in no way be treated as proceeds of crime. Hence the money derived from the funds on further sale would not fall under the definition of PMLA."

"**13.3.6** From the voluntary statements given by Shri K.Ganeshraj, Ex-Bank Official, Shri E.Sendhil Kumar, Ex-Director of M/s VGN Developers P Ltd. and Shri K.Ramadass, the then Chief Manager, SAM Branch, SBI who handled the HTL Property under SARFAESI Act, it is evident that M/s VGN Developers P Ltd. represented by their Managing Director, Shri D.Pratish, have jointly conspired with the above persons and have cracked the deal by getting

valuable information for finalizing their value for the Private Treaty Sale of the HTL Property, Shri K.Ganeshraj has been paid an amount of Rs.81,60,000/- which was paid to him in 2 cheques issued by HTL in favour of his proprietary concern in the name of M/s Thai Easwary Consultancy Services during October 2013 and April 2014. The amount of Rs.81,60,000/- was paid out of the money of Rs.2 crores paid by M/s VGN Developers P Ltd., to M/s HTL in the guise of service charges for rectification in land revenue records. It is to be noted that there was no written agreement between Shri K.Ganeshraj and M/s. HTL for rendering any Commission Agent Services for having dealt the sale of M/s HTL's property on record. Shri K.Ganeshraj had not produced any documentary evidences showing the purposes for withdrawal of cash from the Bank Account of M/s Thai Easwary Consultancy Services on various dates for amounts ranging from Rs.1,00,000 to Rs.8,10,000. It is to be noted that an amount of Rs.1,50,000 was paid to one Shri Karthik, who happened to be the son of Shri K Ramadass, then Chief Manager, SAM Branch, SBI.

14. During the search conducted under the provisions of Section 17 of PMLA,2002, documents relating the individual customers, who have booked their flats in 'VGN FAIRMONT' at Guindy with of M/s VGN Developers P Ltd, were also recovered and seized under the Mahazar date 29.09.2018. Verification of the same revealed that there are around 482 customers, who have entered into purchase and construction agreement with M/s VGN Developers P Ltd. The price of the

undivided share of the land mentioned in the agreement entered into respectively with more than 416 customers, is quoted as Rs.8500/- per Square Feet., whereas the purchase value of the landed property of 10.46 Acres works out to Rs.5970/Sq Ft(10.46 Acres = 455638 Sq.Ft) as the entire property of 10.46 Acres had been purchased for Rs.272 Crores. The details of the project VGN FAIRMONT, income earned from the project as on date and to be earned in future by M/s VGN Developers P Ltd. Are detailed hereunder:"

5. Thus, the allegations are to the effect that the lands, which would fetch higher value in the public auction, were purchased by the petitioners in connivance with the other accused resulting in a huge loss. It was done through the illegal gratification. A private sale was effected, land was sold for a lesser price, thereafter sold for a higher price and the mortgage was also for a higher price as against the practice that only 80% of the total value would be released. To substantiate the same, witnesses have been examined.

6. The learned Senior Counsels appearing for the petitioners would contend that there is no malpractice involved. When once the predicated offence itself was closed by the order of the Court, the pending proceedings will have to be quashed. Payments were made

through cheques. The petitioners are bona fide purchasers. Sale was effected after going through the process with due approval from the concerned authorities. It was also done by invoking the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Rules(SARFAESI). There were no bidders on few occasions. The amendment made to Section 44(1) of the Prevention of Money Laundering Act, 2002, cannot be made applicable retrospectively considering the fact that it is a penal statute. To buttress their submissions, the learned Senior Counsels had made reliance on the following decisions.

(i).Nikesh Tarachand Shah Vs. Union of India and another (2018 11 Supreme Court Cases 1);

(ii)Binod Kumar Vs. State of Jharkhand and others (2011 (11) Supreme Court Cases 463); and

(iii) Mahanivesh Oils and Foods Pvt. Ltd., Vs. Directorate of Enforcement (2016 (1) High Court cases (Delhi) 265).

7. The learned Additional Solicitor General of India appearing for the respondent would submit that the complaint discloses a stand alone offence punishable under Section 3 of the Prevention of Money Laundering Act, 2002. Section 2(u) of the Act, which defines the

"proceeds of crime", makes the position clear that what is required is the involvement of a person qua the "proceeds of crime". These two provisions are wide enough to include the very property in question. This property of 10.4 acres sold by the State Bank of India itself is the "proceeds of crime". As per explanation to Section 2(u) of the Act, which defines the property, the complaint has been filed after thorough investigation. The statements including the documentary evidence by way of e-mails have been taken into consideration. One has to see the scope and ambit of Section 24 of the Act, which fixes the burden of proof on a person charged. Therefore, until and unless the presumption is dispelled by proving to the contrary, the proceeding cannot be questioned. The act is self contained and stand alone and thus, independent of predicating offence. The learned Additional Solicitor General has relied upon the following decisions to drive home his contentions.

1. Radha Mohan Lakhotia Vs. The Deputy Director, PMLA, Department of Revenue (2010 (5) Bom CR 625;
2. M.Shobana and others Vs. The Assistant Director, Director of Enforcement (W.A.No.2100 to 2102 or 2013 dated 22.03.2017);
3. Sri Sachin Narayan V. The Income Tax Department, by its Deputy Director of Income Tax (W.P.No.5299 of 2019 etc

batch dated 29.08.2019);

4. Soodamani Dorai Vs. The Joint Director of Enforcement (PMLA) Directorate of Enforcement (W.P.Nos. 8383 and 8384 of 2013 dated 04.10.2018);
5. Rakesh Manakchand Kothari V. Union of India (Spl. Crl.Appln.(Direction) No.4496 of 2014 dated 16.01.2015); and
6. Usha Agarwal V. Union of India through its Secretary (WP(C) No.23 of 2015 dated 29.08.2017) ;

8. As we do not have any quibble over the facts narrated, let us go into the issues raised. As rightly submitted by the learned Additional Solicitor General, the definition of "proceeds of crime" under Section 2(u) of the Act is very exhaustive and elaborate. It speaks of any property derived or obtained, directly or indirectly, by any person. It is no doubt true that the complaint has been made by the respondent only in pursuant to the scheduled offence. However, the object, rationale and the scope enshrined under the Prevention of Money Laundering Act, 2002, being a special statute is distinct and different from the one enshrined under the Indian Penal Code and the Prevention of Corruption Act. Though the facts may be overlapping the nature of investigation differs. Therefore, it cannot be stated that a mere closure by the Central Bureau of Investigation would provide a

death knell to the proceedings of the respondent. In a given case, the complaint may emanate from a registration of a case involving scheduled offence. But the fate of the investigation in the said scheduled offence cannot have bearing to the proceedings under the Prevention of Money Laundering Act, 2002. Section 2(u) of the Act merely speaks of a criminal activity relating to a scheduled offence. Therefore, we are concerned with the criminal activity qua a scheduled offence. Section 3 deals with the offence on money laundering. Once the respondent is of the view that a person is involved in any process of activity connected with the "proceeds of crime", which definition is very wide then he gets the power to investigate further. When such an investigation gets completed and found that there indeed was a money laundering, then the matter will have to be proceeded with before the jurisdictional Court, on a complaint being taken on file. Hence, there is no difficulty in holding that both the investigations can go on using the same channel while their waters need not mix all the time.

9. We have also perused the complaint filed. We do find adequate materials available including examination of witnesses and documents. Therefore, this Court cannot invoke Section 482 of the

Criminal Procedure Code to quash the proceedings at this stage. Exercise of power under Section 482 of the Criminal Procedure Code is not to be done by a Court by drop of the hat but only when a situation warrants. We are not inclined to hold that the trial, if conducted, would be an empty formality.

10. In **Radha Mohan Lakhotia Vs. The Deputy Director, PMLA, Department of Revenue (2010 (5) BomCR 625)**, the High Court of Bombay has held as follows:

> "The view that we propose to take is reinforced from the purport of section 3 and 4 of the Act of 2002. The same deal with the offence of money-laundering and punishment for money-laundering respectively. Both these provisions, even on strict construction, plainly indicate that the person to be proceeded for this offence need not necessarily be charged of having committed a scheduled offence. For, the expression used is "whosoever". The offence of money-laundering under section 3 of the Act of 2002 is an independent offence. It is committed if "any person" 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. Further, it would create a piquant situation as a person who is not charged of having committed a scheduled offence even if can be proceeded for offence of money laundering and even if such person is in possession of any proceeds of crime, no action of attachment

and 37 fa527-529.sxw confiscation of the proceeds of crime can be resorted to qua him albeit the proceeds of crime are in his possession. If the argument of the appellants were to be accepted, even the expression "whosoever" appearing in section 3 and 4 of the Act will have to be limited to person who has been charged of having committed a scheduled offence. The object of the enactment of 2002 would be completely defeated by such approach. Besides, the view that we propose to take is reinforced also from the purport of section 8 of the Act of 2002. It provides that the Adjudicating Authority if has reason to believe that "any person" has committed an offence under section 3, may serve notice upon such person calling upon him to indicate his source of his income, earning or assets, out of which or by means of which he has acquired the property attached under section 5(1) of the Act. Once again, the legislature has unambiguously used the term "any person" and not person charged of having committed a scheduled offence. Indeed, any person referred to in this provision is a person who has committed an offence under section 3 of the Act of 2002. He may not necessarily be a person charged of having committed scheduled offence. The proviso to sub-section (1) thereof stipulates that where a notice under the said sub-section specifies any property 38 fa527-529.sxw as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person. Suffice it to observe that even section 8 contemplates adjudication to be done by the Adjudicating Authority after provisional attachment order is passed under section 5 of the Act and upon receipt of complaint under section 5(5) of the Act. We are not referring to other provisions mentioned in the said section 8(1), as

we are dealing only with the case arising under section 5 of the Act. Considering the above, we are of the considered opinion that there is no merit in the argument of the appellants that action under section 5 of the Act could not have proceeded against them, as they were not charged of having committed a scheduled offence."

11. The Division Bench of this Court in **M.Shobana and others Vs. The Assistant Director, Director of Enforcement (W.A.No.2100 to 2102 or 2013 dated 22.03.2017)**, has held as under:

"58.Also that, the adjudication proceedings initiated against the Petitioners under the Prevention of Money-Laundering Act by requiring them to appear on the specified dates through summons cannot attract the ambit of Article 20(2) of the Constitution viz., the plea of 'Double Jeopardy' since the object of this Prevention of Money-Laundering Act is to ascertain the trail of Evil act of money laundering.

59. To put it succinctly, the initiation of proceedings like issuance of summons etc., in Prevention of Money-Laundering Act are self-contained, in-built and independent procedure mainly to prevent the act of money-laundering and connected activities. Furthermore, the Respondent has issued only summons dated 10.04.2013 to the Petitioners and the issuance of summons cannot be categorized as an act of prosecuting the petitioners twice. As such, the plea of 'double jeopardy' taken on behalf of the petitioners is not acceded to by this Court."

12. In **Sri Sachin Narayan V. The Income Tax Department, by its Deputy Director of Income Tax (W.P.No.5299 of 2019 etc batch dated 29.08.2019)**, the High Court of Karnataka has stated as follows:

> "25. The PML Act being a special enactment contemplates a distinct procedure at the initial stage and thereafter provide for initiation of prosecution in order to achieve the special purpose envisaged under the Act and as such, it cannot be construed that proceedings under the PML Act is to be equated with prosecution initiated under the criminal proceedings for the offence punishable under the Indian Penal Code. Thus, initiation of action under the PML Act cannot have any implication or impact in respect of registration of other cases either under the Indian Penal Code or any other penal laws.
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> 26. The offence of money laundering under Section 3 of the Act is an independent offence. A reference to criminal activity relating to a schedule offence has wider connotation and it may extend to a person, who is connected with criminal activity relating 45 to schedule offence, but may not be the offender of schedule offence. It is in this background, it has to be necessarily held that money laundering is a stand alone offence under the PML Act. In this background, when Section 44 of the PML Act is perused, it would clearly indicate that special court may take cognizance of the offence upon a complaint by authorized signatory, which means cognizance will be taken of an offence which is separate

and independent. The object of issuance of summons is to trace or ascertain the proceeds of crime if any and to take steps in that regard like attaching the proceeds of crime if proved in a given case.

27. Even in case of a person who is not booked for a scheduled offence but is later booked and subsequently acquitted for the offences punishable under different enactments, prescribed under Part 'A' to Part 'C' of the Schedule, still such person can be proceeded under PML Act. In other words, proceedings can be against persons who are accused of a scheduled offence or against persons who are accused of having committed an offence of money laundering and also persons who are found to be in possession of the "proceeds of crime". It is not necessary that a person has to be prosecuted under the PML Act only in the event of such person having committed schedule offence. The prosecution can be independently initiated only for the offence of money laundering as defined under Section 3 read with section 2(p) which provides that "money laundering" having the meaning assigned to it under Section 3 of the Act."

13. In **Soodamani Dorai Vs. The Joint Director of Enforcement (PMLA) Directorate of Enforcement (W.P.Nos. 8383 and 8384 of 2013 dated 04.10.2018)**, the decision of the learned single Judge of this Court is apposite.

"62. It is made clear that the very initiation under the Prevention of Money Laundering Act, 2002 is not akin to that of the

initiation of criminal proceedings under the Indian Penal Code. The Prevention of Money Laundering Act, 2002 is a Special Act contemplating an administrative proceedure at the initiat stage and thereafter prosecution. The Act has got certain special purposes and therefore, the initiation of proceedings under the Prevention of Money Laundering Act, 2002 can never be compared with the initiation of criminal proceedings under the Indian Penal Code. The enactment is a distinct one wherein separate procedures are contemplated in order to protect the interest of the alleged offenders also. The authorities under the Prevention of Money Laundering Act, 2002 cannot jump into the conclusion that the offenders are arrested at the first instance. An administrative procedure of verifying the records, recording statements of the offenders and other persons are provided under the Act. The method of adjudication, investigations are absolutely different and distinct and no way connected with the regular criminal cases registered under the Indian Penal Code either by Central Bureau of Investigation or by the other Investigation Agencies. Thus, the initiation of action under the Prevention of Money Laundering Act, 2002 cannot have any implications in respect of the registration of other cases under the Indian Penal Code or under any other Penal Laws."

14. The High Court of Gujarat in **Rakesh Manakchand Kothari V. Union of India (Spl. Crl.Appln.(Direction) No.4496 of 2014 dated 16.01.2015)** has held as follows:

10.27.That offence under Section 3 of P.M.L. Act is distinct and different, and therefore, omission of Part B from Schedule under Section 2[y] and substitution of Part A do not make any difference to the case of the petitioners, who are accused of offences under Section 3 of the P.M.L. Act, irrespective of absence of monetary ceiling.

11. The Apex Court has taken note of the above aspect that offence under Section 3 of the P.M.L. Act is distinct in the case of Binod Kumar vs. State of Jharkhand and Ors. reported in MANU/SC/0277/ 2011 : ((2011)11 SCC 463)."

15. The High Court of Sikkim in **Usha Agarwal V. Union of India through its Secretary (WP(C) No.23 of 2015 dated 29.08.2017)** has observed as under;

"56.Scheduled offence is defined under Section 2(y) of the Act and reads as follows;

"(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 thirty lakh rupees or more; or

(iii)the offences specified under Part C of the Schedule;

As already reflected in the foregoing discussions the offence under the Act is also a stand alone offence. In other words, a person need not necessarily be booked of a scheduled offence, but if he is booked and subsequently acquitted,he can still be

> prosecuted for an offence under the Act. Under Section 5 and Section 8 of the Act, proceedings can be against persons who are accused of a scheduled offence or against persons who are accused of having committed an offence of money-laundering or persons who are found to be in possession of the -proceeds of crime. It is not necessary that a person has to be prosecuted for an offence under the Act only if he has committed a scheduled offence. The prosecution can be independently only for the offence of money-laundering as defined in Section 3 and Section 2(p) which provides that -money-laundering has the meaning assigned to it in Section 3."

16. From the aforesaid pronouncements, we would like to reiterate that it is well open to the respondent to investigate and proceed further when an offence is made out under the provisions of Prevention of Money Laundering Act, 2002.

17. Section 24 of the Act places the burden of proof on a person charged with an offence of money laundering under Section 3 of the Act. Resultantly, either an Authority or a Court shall presume that such proceeds of crime are involved in money laundering until the contrary is proved. Therefore, the burden of proof by discharging the presumption lies upon the persons charged. Hence, investigation by the Central Bureau of Investigation and the respondent are totally

distinct and different. Sub Section 1 of Section 44(1) of the Act has been amended by way of an insertion through The Finance (No.2) Act, 2019 No.23 of 2019 dated 01.08.2019. Explanation which has been inserted states as follows.

> "Explanation-For the removal of doubts, it is clarified that --
>
> (i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;
>
> (ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not."

Though it has come into force subsequently, it is nothing but a clarificatory one. Therefore, looking from any perspective, the submissions made on the side of the petitioners cannot be countenanced.

18. Much reliance has been made on the two decisions of the Delhi High Court in Mahanivesh Oils and Foods Pvt. Ltd., Vs. Directorate of Enforcement (2016 (1) High Court cases (Delhi) 265) and Directorate of Enforcement V. M/s Mahanivesh Oils & Foods Pvt Ltd., (LPA.144 of 2016 dated 30.11.2016) by the learned Senior Counsel appearing for the petitioners. In the light of the discussion made above, we are of the view that the aforesaid decisions cannot help the petitioners. The learned Additional Solicitor General has also stated that as against the decision rendered in Directorate of Enforcement V. M/s Mahanivesh Oils & Foods Pvt Ltd., a Letters Patent appeal in LPA Nos.144/2016 & W.Ps.(C) No.4717/2016 and 4747/2016 was filed, wherein it was held by the Division Bench that the findings so recorded by the learned single Judge cannot be construed as conclusive and binding precedent.

19. Accordingly, the above Criminal Original Petition stands dismissed. However, it is made clear that the Principal Sessions Judge, City Civil Court, Chennai, shall not be influenced by any of the observation made by us in this order while disposing of C.C.No.56 of 2018. We further direct the Principal Sessions Judge, City Civil Court,

Chennai, to expedite the trial and dispose of C.C.No.56 of 2018 within a period of nine months from the date of receipt of a copy of this order. Consequently, connected criminal miscellaneous petition is also dismissed.

(M.M.S.,J.) **(T.K.R.,J)**
04.10.2019

Index:Yes

Speaking Order/Non Speaking Order

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To

1. The Deputy Director,
Directorate of Enforcement,
(The Prevention of Money Laundering Act, 2002),
Government of India, Ministry of Finance,
Department of Revenue, 2nd and 3rd Floor,
C Block, Murugesa Naicker Office Complex,
84, Greams Road, Thousand Lights,
Chennai-600 006.

2.The Principal Sessions Judge,
City Civil Court, Chennai.

3.The Additional Solicitor General of India,
High Court, Madras.

M.M.SUNDRESH, J.
and
TEEKAA RAMAN, J.

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Pre Delivery Order in
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