IN THE COURT OF SESSIONS AT CHENNAI
Present: **Tmt.S.Alli, M.L.,**
Principal Sessions Judge.
Thursday, the 15th day of February, 2024.

Crl.M.P.No.2136 / 2024
in
C.C.No.9 / 2023
in
ECIR No.MDSZO/21/2021

V.Senthil Balaji, S/o.Velusamy .. Petitioner / Accused

- vs -

The Deputy Director,
Directorate of Enforcement,
Ministry of Finance,
Chennai Zonal Office-II,
B-Wing, Shastri Bhavan,
Haddows Road,
Chennai-600006. .. Respondent / Complainant

This petition coming on 7.2.2024 before this court for hearing in the presence of Mr.S.Prabhakaran, Senior Counsel for M/s.N.Bharanikumar, K.S.Arivazhagan and Abinesh Babu, Counsel for the petitioner and of Mr.N.Ramesh, Special Public Prosecutor for respondent and upon hearing them and upon perusing the records, this court delivered the following:

ORDER

1. This petition has been filed by the petitioner u/s 309 of Cr.P.C. to defer the trial in C.C.No.9/2023 on this file of this court.

2. **The brief avements in the petition filed by the petitioner are as follows** :

The complaint filed by the respondent is frivolous and devoid of merit. It does not reveal the actual facts. The respondent has registered an ECIR against the petitioner on 29.07.2021 and the petitioner was asked to appear in person or through his authorized representative with the relevant documents mentioned in the summons on 04.08.2021. The list of documents annexed are duly submitted by the petitioner to the respondent, the petitioner was informed that the impugned proceedings was initiated against the predicate and scheduled offences in connection with C.C. No's.19/2020, 24/2021 and 25/2021 pending on the file of Additional Special Court for Criminal Trial against Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai. The petitioner was asked to depose the details of the said cases and the petitioner has revealed the details of the said cases as to his knowledge. While this being the case, the predicted crime against the petitioner has no basis for formation of a crime. The entire case was foisted against the petitioner to wreck vengeance.

3. The respondent filed a petition to the trial court seeking copies of the digital evidence and other documents from the trial court. On 30.05.2023, the trial court was pleaded to furnish the copies to the respondent. It is stated in the complaint that those digital and other evidences were sent to forensic department for genuinity certificate. It is purported in the complaint that the documents sent are assumed to be genuine. On 13.06.2023, the respondent all of a sudden came to the residence of the petitioner early in the morning and detained him. He was not given any grounds for such interrogation. From 7.00 A.M. in the morning on 13.06.2023, he was detained by the respondent officers at his house. He was not allowed to meet any of his relatives, friends and advocates. Thereafter, the petitioner was said to have arrested at 1.39 A.M. on 14.06.2023 and remanded to Judicial Custody on 14.06.2023.

4. The respondent has annexed as many as 77 documents for concluding the complaint (Referred as Relied upon Documents- RUD's). In the list of documents, the respondent has annexed the documents which were already produced and available with the trial court in connection with the predicative offences and it has been admitted by the respondent that no new documents except the statements of the witnesses are annexed for such conclusion of the reason to believe the guilt against the petitioner. With regard to document No.16 and 17, the respondent has submitted the foil challans of deposit and further stated to have collected Documents and statement of witnesses. With regard to document No's. 40, 41 and 42, the

reliance are made of Email trials which are all subject matter of the scheduled offence, with reference to the mail trials, the petitioner has not responded or sent from his account. In support of the complaint, the respondent had annexed the list of 21 witnesses and their statements.

5. The respondent is relying on the files produced by forensic sciences laboratory particularly a pen-drive alleged to have been seized from the premises of the petitioner by the agency of the predicate offence. In this regard it is pertinent to note that every electronic device including pen-drive has a serial number of its own; in order to prove the admissibility, the serial number in the electronic device including pen-drive has to be mentioned in the search proceedings, panchanama, seizure memo etc., but in the instant case, the same has not mentioned anywhere and the serial number of the HP pen-drive is also not known and as far as the petitioner is concerned he is disowning the pen-drive as it is fabricated and manipulated.

6. The respondent investigation was concluded, the copy of the Panchanama dated 6.2.2020 and search slip dated 10.2.2020 at the residential premises of the petitioner revealed that may incriminating documents and digital evidences, which were subsequently sent to Tamil Nadu Forensic Science Laboratory, the same was analyzed and found to be an incriminating evidence. It is the categoric case of the respondent that one HP Pen Drive seized by the predicate agency and marked as Item-V, dated 12.2.2020 in particular containing undeniable incriminating evidences that proved both predicate offence of corruption and money laundering offence of generation of process of crime. The respondent agency has concluded its investigation believing the alleged incriminating evidence, viz., pen drive which is the part of search slip dated 12.2.2020. The respondent while concluding the allegations of the complaint has observed at page No.82/14 paragraph NO.14.3.6 has stated and attached all the documents found in the HP Pen drive labeled as Item-5 seized from the residential premises of the petitioner with the gist of list of files mentioned in the report CF-27, report of the TNFSL was referred as the incriminating evidences for conclusion of offences under PMLA. The alleged incriminating evidence referred by the respondent agency at Volume No.2 said to have been supporting evidences for concluding the complaint of the respondent. 2853 pages of

documentary evidence believed to be the reason for concluding the complaint against the petitioner was filed and relied upon by the respondent. The entire case of the respondent revolves around the digital evidence, namely, Pen Drive and the Hard Disk seized from the residence of the petitioner. In all the parts of the complaint, the respondent believed the said digital evidence re incriminating and true and therefore found the petitioner guilt of committing the offences punishable under PMLA.

7. The digital evidence are manipulated, tampered and files were altered and planted. It is evidence from the Annexure 53 mentioned in the Forensic Report at Page 410 of the documents relied in the complaint (RUD-20), the report conclude that the details of examined windows properties of the files are furnished as "name, author, date of content created, date of last saved and modified" and the report further says that the property last saved by whom were found in the name of Shanmugam. The document TNFSL report of CF-27 at page 505 is to be consider, where the content of the entire files were furnished through Annexure-53 and the detail of author, content created, date last saved and date modified were given by the Deputy Director of TNFSL. The consolidated files are planted, manipulated and the same is evident from the content created, date last saved and date modified. The relevant dates are : File Name – March, 2015 VAC.xls – the date of creation of content as mentioned in the TNFSL report was on 31.10.2014 at 14.25 pm. and it has been further revealed in the report that the date has been modified on 27.11.2022 at about 12.46 pm. and it also furnished the detail of the date of last saved on 27.12.2022. Another file, which was created on 27.4.2015, but manipulated and altered on 27.12.2022 at about 12.40 p.m. The altered dates are the files belonged to Annexure-10 and 11 annexed at volume-2 in pages 425 to 427 of the documents annexed with the complaint.

8. The respondent has also relied upon a document – RUD-22, attached to page No.630 along with the complaint, the same has been referred as CF-116/2020, dated 23.9.2020, a report of the TNFSL in B.No.482/2020, where multiple folders, deleted folders from C drive retrieve with their files were shown as Lost Files of the month of March, 2020 and specific date of

22.4.2020-Panel. The lost files of the report in CF-116 are after the production of seized digital evidence to the court vide Panchanama dated 12.2.2020 on the search proceedings dated 6.2.2020. In Annexure-II, list of files attributed for the selected folders at page 639, the said file name has Name, Description, Category, File Created, Last Written and Item Path. In the said file also it is detected that the file was created on 4.6.2020 at about 16.32 hours and last written on 7.7.2020 at Serial No.2, 3, 4, 5 and 6, the yet another file created at Serial No.12 was on 6.8.2018 at 13.15 hours and it was last written on 7.7.2020 at about 12.28 hours. Similarly there is a manipulation, alteration and evidence is planted in Serial Nos.24, 30, 31, 33, 34, 35 and 36. There is a next level of manipulation found in the alleged incriminating evidence relied upon by the respondent vide RUD-22, Anenxure-III commencing from Serial No.1 to 13, 24, 28, 30, 48, 50, 51, 47, 49, 60, 61, 64, 65, 66, 87, 89, 91, 92, 93, 94, 95, 101, 102, 103, 104, 116, 117, 118 to 135. The respondent has created documents in order to fix the petition under the guilt of PMLA.

9. RUD-16, the counterfoils alleged to have been issued by the concerned bank after a lapse of almost 10 years. The deposit and the filled denominations differ from every page more particularly at page numbers 357, 359, 363, 365, 369, 373, 379 etc. The volume No.3 and 4 (RUD-29 and 29), is the list of candidates who have applied for the posts like Driver, Conductor, Junior Draftsman, Assistant Engineer, Junior Engineer etc. contained in the manipulated CF-27 of 2021. Hence, the same has to be disbelieved as the files contain belongs to manipulated CF-27 of 2021. There are contradictions in the interse testimony of the witnesses as well as contradictions in their individual testimony qua their police statements.

10. There are possible way that the transport officials would have been threatened and coerced to obtain statements under section 50 of PMLA posing their implication as accused in the enforcement case. Most of the persons who where called for to record the statements under 50 of PMLA against the petitioner are co-accused in predicate offence and also suspect in the ECIR registered by the respondent. Therefore, the same cannot be relied by the respondent to make out the case. The entire case and the documents relied by the respondent is based on the

predicate / schedule offence which is pending before the Special Court of cases related to MP/MLA, Chennai. The documents in hold of the respondent are secondary evidence where the primary evidence are under the custody of the court trying the predicate offence. In that scenario the genuineness of the relied upon documents cannot be tested before the predicate offence attaining its finality. Therefore, trying of the offences under PMLA is nothing but an abuse of process of law. The materials (RUDs) submitted by the respondent are not reliable and this court is vested with the power to shift through and weigh evidence to determine the genuinity of the alleged case and prima facie to look into the grave suspicion raised against the relied documents and corroboration of plausible views that favours the accused's innocence and broad implications as there is glaring injustice warrant malicious consideration.

11. Subsequent to the orders of the Hon'ble Supreme Court, the predicate agency has conducted a further investigation in all the above said calendar cases pending on the file of Special Court for Trial of Criminal Offences against MPs/MLAs and has filed supplementary final reports on various dates in criminal miscellaneous petitions and the same is pending for taking cognizance. The Special Court for trial of criminal offences against MPs/MLAs had not even taken cognizance at the alleged predicate / scheduled offence till date, while this being so, the simultaneous proceedings under PMLA in the present C.C.No.9/2023 shall be deferred until the cognizance and framing of charges in the predicate offence, as the respondent have not identified the proceeds of crime and their major evidence are corroborated on the evidences and statements from the predicate offence. The origination of the present proceedings under PMLA has commenced from the scheduled offence, as the scheduled offence is the basis of the genesis to the present alleged offence under PMLA, as a principle this court can await the cognizance, post cognizance and other summary of trial in the scheduled offence, as the scheduled offence forms a substantial proof of PMLA and therefore, the proceedings under PMLA shall be deferred. The scheme of PMLA proceeds on the assumption that from an earlier scheduled offence, if any proceeds of crime result, and if the said proceeds of crime are alleged to be laundered then, an offence of money laundering is stated to be made out, admittedly, the

present case on hand has no such result of the scheduled offence culminating to PMLA, therefore, the present proceedings shall be deferred till such cognizance, framing of charges in the predicate / scheduled offence. In the very nature of predicate offence and subsequent alleged offence of PMLA, the question of hearing a subsequent alleged offence of PMLA first cannot and would not arise and it is hereby requested to defer any further proceedings of the subsequent alleged offence of PMLA till the charges in the scheduled offence are framed in the interest of justice.

12. There is no material to show that the petitioner directly or indirectly attempted to indulge, or knowingly assisted or knowingly was a party to a process of activity connected with the proceeds of crime. The investigation done by the ED is also in violation of the judgment in **Prakash Industries Ltd. vs. Union of India and another (2023 SCC OnLine Del 336)** that the allegations made by the ED are absolutely vague and there are no reasonable grounds to believe that the applicant would be found guilty of the offence of money laundering. At this stage, the reliance on the statement under section 50 of PMLA cannot be placed in the absence of any material corroboration. Thought he statements recorded under Section 50 of PMLA are admissible in nature, but in the present case, the statements given to the ED suffers from material contradictions. There is no possibility of holding the petition guilty and therefore the petitioner is entitled ot be discharged from the alleged ED case. Statement of the co-accused persons in the predicate offence cannot be relied upon against the other accused persons in the absence of corroboration as to the material particulars. The evidence submitted by the respondent are tainted, manipulated, planted and there are no sufficient grounds to proceed trial against the petitioner. The outcome of the trial for scheduled offence would have a definite bearing on the outcome of the trial for the offence of money laundering and it may lead to a paradoxical result if the concerned person is later on acquitted of the scheduled offence while convicted of the offence of money laundering under PMLA at an earlier point of time. The trial of the scheduled offence, which is intricately connected to the money laundering allegations should precede the trial of the money laundering offence as the chronological order

of these trials is crucial for a fair and comprehensive understanding and outcome of the case. A sequential trial or a conjoint trial of scheduled offence and Money Laundering offence would enable a more efficient presentation of evidence, facilitate a clearer understanding of the facts, and contribute to the overall fairness of the proceedings. Hence, the petition to defer the trial in C.C.No.9/2023.

13. **<u>The brief averments in the counter filed by the respondent are as follows</u>** :

The respondent department filed the prosecution complaint u/s 43 & 44 of PMLA, 2002 for the offence defined u/s 3 and punishable u/s 4 of the Prevention of Money Laundering Act, 2002. The case is now posted for framing of charge against the accused. At this stage, to stall the further proceedings and to delay the framing of charge and commencement of trial, the petitioner / accused has file the present petition praying to defer the trial in the present case. By seeking the above prayer, the petitioner has sought "deferment of trial" alone and not the framing the charge. The relief "deferment of the trial" does not fall under the scope of section 309 Cr.P.C. This petition has no relevance at this stage and the petitioner cannot use this as a tool to stall the framing of charge by this court. The admissibility and maintainability of this petition can be taken up when the trial commences. The only reason stated by the petitioner for seeking deferment of trial is that the special court had not even taken cognizance of the alleged predicate / scheduled offence till date and hence, the simultaneous proceedings in this case shall be deferred as the respondent have not identified the proceeds of crime and their major evidence are corroborated on the evidence and statements from the predicate offence. The above reason is legally unsustainable and the pendency of the trial of the predicate offence has no bearing on the trial of the case under PMLA. The only exception is the final result in the predicate offence.

14. As per the amendment in Sec.44 of PMLA, the trial for the offence of money laundering is an independent offence which is governed by its provisions and it need not be interfered with by the trial of the scheduled offence. The persons listed out in the table are not arraigned as accused in the above CC. Sec.50(2) of the PMLA empowers the authorities of ED

to summon any person whose attendance is considered to be necessary, whether to give evidence or provide records, as the case may be. The summons proceedings and recording of statements under PMLA are judicial proceedings under section 50(4) of the PMLA and the same was strengthened by the Hon'ble Supreme Court of India in the case of **Vijay Madanlal Choudhary -vs- Union of India.** Therefore, the present challenge at the stage of framing of charge, is unwarranted and without merit. Sec.309 Cr.P.C. is applied to all cases involving criminal trials and inquiries of the accused in custody after taking cognizance. The main reason behind this section is to given an express direction to the courts to carry out speedy trials. The petitioner / accused in this case is a Sitting Minister without a Portfolio, involved in the cash-for-job scam. The Hon'ble Supreme Court of India issued guidelines in **Ashwini Kumar Upadhyay -vs- Union of India (WP (C) No.699 of 2016** to the designated courts. The petition has been filed only to halt the trial proceedings. Hence, the petition may be dismissed.

15. **<u>The brief averments in the reply to the counter are as follows :</u>**

The petitioner has filed the present petition u/s 309 Cr.P.C., which is a legal remedy available to the petitioner based on the principles of law. The Hon'ble High Court of Telangana, following the principles setout in Vijay Madanlal Choudhay case, has directed the trial court to await the result of pending proceedings of the scheduled / predicate offence as the same would have definite bearing in the trial proceedings, outcome of the trial and with respective interpretation would also have a bearing on framing of charges in the present proceedings. The Hon'ble Supreme Court of India, though upheld certain provisions which were put under challenge, has issued directions with observations to the parties concerned to pursue all contentions on its own merits in the concerned proceedings with an exception for answering the question of validity and interpretation of concerned provisions which has been dealt in the proceedings. The Hon'ble Supreme Court has confined its question of law with regard to the validity and interpretation of the provisions of 2002 Act and thereby directed all the courts to pursue any relief on its own merits and cases to cases basis. The scope of Sec.309

Cr.P.C. is on any stage, whenever such petition is filed the same shall be dealt in accordance with its own merits, the prayer sought by the petitioner is to defer only for the present, as the predicate / schedule offence is yet to be taken cognizance. The larger issue with regard to interpretation of Sec.309 Cr.P.C. is subjudiced before the Hon'ble Supreme court with a reference to answer. It is the general principal that the highest constitutional court of India has subjected the reference in connection with the similar issue and taken it for reference to be answered and therefore the answering reference will certainly have a bearing on the present proceedings and therefore, this court may await the result of such reference.

16. In Pradeep Nirankarnath sharma -vs- Directorate of Enforcement, there was no question of law involved with regard to Sec.309 Cr.P.C. and it has different footing and has not sought a prayer to defer the trial. Any observations given in a bail petition cannot be construed as an order on merits. There is every possibility that the statements recorded by the respondent can be disowned and disbelieved. More fully, none of the witnesses has stated against the petitioner, but stated only about the procedure followed during the process of recruitment. There is no overtact against the petitioner in the said statements of the co-accused. There is no abuse of process of law. The present petition filed by the petitioner under section 309 Cr.P.C. is a legitimate right under the statute and based on the settled principles of law.

17. Now, the point for consideration is :

"Whether the trial in C.C.No.9 / 2023 has to be deferred as prayed for by the petitioner ?"

POINT :

18. Heard both sides. Records perused.

19. The Senior Counsel, who was appearing for the petitioner would submit that the petitioner / accused has been charged for the offence u/s 3 of PMLA, punishable u/s 4 of the PMLA and he was arrested on 14.6.2023 and in judicial custody till date. Now the case is posted for framing of charges. The learned Senior Counsel would also submit the facts in respect of the search by the respondent, filing of complaint and also in respect of the

documents produced by the complainant. It is the further contention of the learned Senior Counsel appearing for the petitioner that charge sheet has been filed in C.C.No.19/2020 by the predicate agency on 18.2.2020. The charge sheets in C.C.No.24/2021 was filed on 25.3.2021 and in C.C.No.25/2021 was filed on 7.4.2021 before the trial court. Subsequently, on the direction of the Hon'ble Supreme Court of India, the predicate agency conducted further investigation in all the above three cases and filed supplementary final report and now all the three cases are pending with the Special Court for trial of cases relating to MPs/MLAs, Chennai. Cognizance was not taken by the Special Court in the supplementary complaint and therefore, the simultaneous proceeding under PMLA in the present case has to be deferred until the cognizance and framing of charges in the predicate offence, since, the respondent has not identified the proceeds of crime and the major evidence are corroborated in the evidences and statements from the predicate offence.

20. The learned Senior Counsel would also submit that since the Scheduled Offence is the basis of the genesis to the present alleged offence under PMLA, as a principle, this court can await the cognizance, post-cognizance and other summary of trial in the scheduled offence as the scheduled offence forms a substantial proof for PMLA and therefore, the trial in the present case has to be deferred. It is also submitted by the learned Senior Counsel that the very nature of predicate offence and subsequent alleged offence under PMLA, the question of hearing a subsequent alleged offence of PMLA first cannot and would not arise and therefore, any further proceedings of the subsequent alleged offence of PMLA has to be deferred till the charges in the scheduled offence are framed. The learned Senior Counsel has also relied upon the judgments:

(i) Hon'ble High Court of Telengana in Criminal Revision Case No.87/2021 (Director of Enforcement - vs - M/s.Bharathi Cement Corporation Pvt. Ltd.)

(ii) 2022 SCC OnLine SC 929 (Vijay Madhanlal Choudhary -vs - Union of India)

(iii) 2015 (4) SCC 435 (A.Tajudin - vs - Union of India)

(iv) 2018 (8) SCC 271 (Surinder Kumar Khanna -vs- Directorate of Revenue Intelligence.

(v) Vijay Sai Reddy -vs- Enforcement Directorate (2022 SCC OnLine 1604)

21. The learned Special Public Prosecutor would submit that the case is now posted for framing of charges and at this stage, the petition u/s 309 Cr.P.C is not maintainable. Also, the petitioner has not shown any sufficient cause to postpone or adjourn the trial. He would further submit that the trial for the offence of Money Laundering is an independent offence, governed by the provisions of PMLA and it need not be interfered with by the trial of scheduled offence. The learned Special Public Prosecutor would further submit that there is no bar in framing the charges and proceeding with the trial in the present case. It is also submitted by the learned learned Special Public Prosecutor that the petitioner cannot rely upon the judgment in Bharathi Cement Pvt. Ltd., since the said judgment of the Hon'ble High Court of Telangana has been challenged before the Hon'ble Supreme Court of India, in which it has been held by the Apex Court that the order of Hon'ble High Court does not clarify whether evidence can be recorded in the trial money laundering etc. Further, the Hon'ble Supreme Court of India has issued a guidelines to monitor the trial of cases involving MPs and MLAs and also directed that the trial court shall not adjourn the cases except for rare and compelling reasons. The learned Special Public Prosecutor in support of his contention relied on the judgments in

(i) Vijay Madanlal Choudhary - vs - Union of India

(ii) Pradeep Nirankarnath Sharma -vs- Director of Enforcement and Another

(iii) Directorate of Enforcement -vs- Bharthi Cement Corporation Pvt. Ltd. in SLP (Crl.) Dairy No.22328 of 2023

(iv) Ashwin Kumar Ubadhyay -vs- Union of India in WP(C)No.699/2016

22. Admittedly, the complaint filed by the respondent against the petitioner in C.C.No.9/2023 in ECIR No.MDSZO/21/2021 is pending before this court at the stage of framing of charges. Now, the petitioner has come forward with this petition u/s 309 of Cr.P.C. to defer the trial till taking of cognizance and framing of charges in the predicate offences.

23. After hearing the Special Public Prosecutor under Sec.226 of Cr.P.C. (Opening the case for prosecution), the court has to decide whether the charge has to be framed against the accused or the accused has to be discharged from the charge. Only after coming into conclusion that there are materials to frame charge against the accused for the alleged offences, framed charges, and thereafter, the trial has to be commenced. Now, the petitioner has not sought for the relief of deferring the framing of charge and he has only sought for deferment of trial. Therefore, at the stage of framing of charge, the question of deferment of trial does not arise and on that score only the petition is liable to be dismissed.

24. It is also not in dispute that the predicate and scheduled offences in connection with C.C. No's.19/2020, 24/2021 and 25/2021 are pending on the file of Additional Special Court for Criminal Trial against Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai. It is also admitted that on the basis of the above predicate and scheduled offences, the present ECIR No.MDSZO/21/2021 has been registered and the complaint has been filed. It is alleged that the supplementary charge sheet filed by the predicate agency has not been taken cognizance so far and therefore, the trial in this case has to be deferred till taking of cognizance and framing of charges in those cases. On the other hand, the learned Special Public Prosecutor would submit that there is no bar in framing of charge against the present accused and proceed with the trial. The offence of Prevention of Money Laundering Act is an independent offence governed by Prevention of Money Laundering Act.

25. In **Criminal Revision Case No.87/2021 (Director of Enforcement - vs - M/s.Bharathi Cement Corporation Pvt. Ltd,** referred by the learned Senior Counsel, who is appearing for the petition, it has been held by the Hon'ble High Court of Telangana that "*Thus, on a thorough consideration of all aspects of the matter, impugned order dated 11.1.2021 is hereby quashed. Further, it is directed that though the trial relating to the offence of money laundering can proceed independent of the trial of scheduled offence, nonetheless as the outcome of the trial for scheduled offence would have a definite bearing on the outcome of the trial for the offence of money laundering, it would be in the interest of justice if the special court trying the offence of money laundering while independently proceeding with the tiral, may, however, take a pause and await the ultimate pronouncement / decision of the Special Court trying the scheduled offence. Otherwise, as has been pointed out by the Supreme Court in Vijay Madhanlal Choudhary, it may lead to a paradoxical result if the concerned persons is later on acquitted of the scheduled offence while convicted the money laundering under PMLA at an earlier point of time. This would not only be paradoxical, but contrary to well established tenets of law as well.*" Against the judgment of the Hon'ble High Court of Telangana, the Directorate of Enforcement preferred SLP (Crl.) in 22328/2023, in which the Hon'ble Supreme Court of India has remarked as follows :

"Order of High Court does not clarify whether evidence can be recorded in the trial of money laundering. The court said what needs to be clarified is the modality of the procedure. We are hearing on modalities, how the whole thing is to be done. We are not saying that this approach is entirely wrong. We want to hear the parties. It should not happen that this applies to all contingencies. Every case will differ."

26. It is admitted fact that the result in the scheduled offences would have a definite bearing in the result of money laundering offence. In **Pradeep Nirankarnath sharma -vs- Directorate of Enforcement and another case,** the Hon'ble Supreme Court of India while hearing along with Bharathi Cements Pvt. Ltd. case, in SLP No.6185/2023 has held that "*We*

make it clear that though the trial will continue, the case shall not be finally decided." As such, the court is of the considered view that there is no bar either to frame charges against the accused if there are materials or proceeding with the trial in the present case after framing of charge and the only thing is that the court has to await for the ultimate pronouncement / decision of the Special Court, trying the scheduled offence.

27. It has been held by the Hon'ble Supreme Court of India reported in **2022 SCC OnLine, SC 929 (Vijay Madhanlal Choudhary -vs- Union of India),** *"It is only 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 scheduled offence."* However, in **Pradeep Nirankarnath sharma -vs- Directorate of Enforcement and another case in SLP No.6185/2023 on 18.8.2023,** the Hon'ble Supreme Court has held that though the trial will continue, the case shall not be finally decided and therefore, the petitioner cannot rely on the judgment in Vijay Madhanlal case on this aspect.

28. Also, even in the judgment in **Vijay Sai Reddy -vs- Enforcement Directorate (2022 SCC OnLine 1604)** referred by the learned Senior Counsel appearing for the petitioner, it has been held by the Hon'ble Supreme Court of India that "*From the above which emerges is that existence of the scheduled offence and proceeds of crime being the property derived or obtained as a result of criminal activity relating to the scheduled offence or sine qua non for not only initiating prosecution under PMLA, but also for continuation thereof. In the absence of these two conditions, the Special Court dealing with the offence under PMLA would not be competent to pronounce on the guilt or otherwise of the person concerned accused of Money Laundering."* Considering the said observation of the Hon'ble Supreme Court of India, the

court comes to conclusion that there is no bar to proceed with the trial and on the other hand, the court has to wait without pronouncing the judgment in the present case, till the pronouncement of judgment in the scheduled offence.

29. Further, the Hon'ble Supreme Court of India in the case of **Ashwini Kumar Ubadhyay - vs - Union of India on 9.11.2023** has issued slew of directions to monitor the trial of the cases, involving MPs and MLAs and one such direction is that "*The designated courts shall give priority (i) First to criminal cases against MPs and MLAs punishable with death or life imprisonment, then to (2) cases punishable with imprisonment for five years or more and then hear (3) other cases. The trial courts shall not adjourn the cases except for rare and compelling reasons"* Therefore, the court arrived at a conclusion that the court has to proceed with the framing of charges and then with the trial, since there is no bar for the same, though the scheduled offences are pending with the Special Court for trial of cases involving MPs/MLAs. The court do not find any merit to defer the trial as prayed for by the petitioner / accused and this petition has been filed to protract the proceedings, which deserves to be dismissed.

30. Though the learned Senior Counsel for the petitioner has relied upon the judgments in **Prakash Industries Ltd. vs. Union of India and another (2023 SCC OnLine Del 336) 2018 (8) SCC 271 (Surinder Kumar Khanna -vs- Directorate of Revenue Intelligence and 2015 (4) SCC 435 (A.Tajudin - vs - Union of India)** in support of his contention to defer the trial, the facts and circumstances in those judgments are not applicable to the case on hand at the present stage.

31. In the result, the petition is dismissed.

Dictated to Steno-typist, typed by him directly, corrected and pronounced by me in open court, this the 15th day of February, 2024.

S ALLI Digitally signed by S ALLI
Date: 2024.02.15
17:21:19 +0530

ss **Principal Sessions Judge.**

Draft / Fair Order :
Crl.M.P.No.2136/2024
in
C.C.No.9/2023
Dated 15.2.2024.