

Directorate of Enforcement v. Akhilesh Singh & Ors. (Delhi)
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DELHI HIGH COURT

Before: Vikas Mahajan, J.
CRL.REV.P. 1199 of 2023
& CRL.M.A. 34025 of 2023

Decided on: 30.04.2024

Directorate of Enforcement - Petitioner

Versus

Akhilesh Singh & Ors. - Respondents

Prevention of Money-Laundering Act, 2002 (15 of 2003), Section 3, 4, 8 – Money Laundering case – Acquittal/ discharge of accused – Release of attached property -- Right of – Pendency of appeal – Effect of -- Section 8(6) of the PMLA makes amply clear that if an accused under the PMLA is discharged / acquitted, the learned Special Judge under Section 8(6) has no option but to pass an order releasing the properties attached under the PMLA – Till the judgment of acquittal predicate offence is reversed in an appeal, all the effects of acquittal will continue to operate and mere filing of an appeal against acquittal would not mean that the respondents will continue to suffer the rigors of criminal proceedings or attachment under the PMLA -- No infirmity in the order whereby the attached movable and immovable properties were directed to be released by the learned Special Judge.

(Para 28-32)

Full text Judgment/ Order with Headnote

Note:

For easy reference of readers, alongwith Headnote, the judgment downloaded from the official website of the Court has been annexed



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

Pronounced on: 30.04.2024

+ **CRL.REV.P. 1199/2023 & CRL.M.A. 34025/2023**

DIRECTORATE OF ENFORCEMENT

..... Petitioner

Through: Mr. Anurag Jain, Special Counsel for
ED with Mr. Deepak Kumar, EO for
ED.

versus

AKHILESH SINGH & ORS.

..... Respondents

Through: Mr. M.A. Niyazi, Ms. Anamika Ghai
Niyazi, Ms. Kirti Bhardwaj, Ms.
Nehmat Sethi and Mr. Arquam Ali,
Advocates.

CORAM:

HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J.

1. The present petition has been filed against the impugned order dated 09.10.2023 passed by the learned Special Judge (PC Act) (CBI)-10, Rouse Avenue Courts Complex, New Delhi in CT Case 30/2019 arising out of RC: ECIR/06/HIU/2017 under Sections 3 and 4 of the Prevention of Money Laundering Act, 2002 (in short 'PMLA'), whereby the respondents were discharged for the offences alleged in the complaint filed by the petitioner/Directorate of Enforcement (in short 'ED').
2. The facts in brief giving rise to the present petition are that the Jharkhand police had registered FIR No.21/2017 against the respondent



nos.1 and 2 under Sections 419/420/467/468/471 IPC read with Section 120B IPC at PS Birsanagar, Jamshedpur (Jharkhand).

3. All the offences invoked in the said FIR are scheduled offences under the PMLA and based on the same, a criminal case under Sections 3 and 4 of the PMLA was initiated by the petitioner/ED on 05.05.2017 bearing ECIR No.06/HIU/2017, against the respondent nos.1 and 2. However, later on, the petitioner/ED filed supplementary complaint dated 31.08.2021, whereby the respondent no.3 namely, Amit Kumar Singh was also arraigned as an accused.

4. In the predicate offence i.e. FIR No. 21/2017, the chargesheet was filed by the police on 30.12.2017 before the learned Chief Judicial Magistrate, Jamshedpur. The charges were framed in the said case and after the trial, the learned Chief Judicial Magistrate, Jamshedpur *vide* his judgment dated 14.08.2023 acquitted both the accused under Sections 419/420/467/468/471 IPC read with Section 120B IPC.

5. Sequel to above, the respondents herein, who had been arraigned as an accused in the criminal case under the PMLA, filed an application before the Special Court under Section 227 read with Section 239 CrPC seeking discharge from the offence of money laundering.

6. The learned Special Judge *vide* impugned order dated 09.10.2023 discharged the respondents from the offence of money laundering under Section 3 of the PMLA alleged in the complaint filed by the petitioner/ED, observing that the said offence was invoked against the respondents/accused on the basis of scheduled offence and once they have been acquitted by the concerned court in the scheduled offence, the criminal proceedings initiated under the PMLA cannot be continued as there can be no money



consideration when scheduled offence has not been committed by the respondents/accused. The operative part of the order dated 09.10.2023 reads as under:

“11. Thus it is clear from the observations of Hon'ble Supreme Court in the aforesaid judgment that the offence under Section 3 of The Prevention of Money Laundering Act, 2002 depend upon illegal gain of property as a result of criminal activity relating to a scheduled offence and once the accused is acquitted by the concerned court in the scheduled offence, the matter before special Court cannot be continued as there can be no offence of Money Laundering when scheduled offence has not been committed by accused persons.

12. Thus, in view of the above, the application filed by accused persons is allowed. Accused Akhilesh Singh, Garima Singh and Amit Kumar Singh are liable to be discharged. The accused namely Akhilesh Singh, Garima Singh and Amit Kumar Singh are discharged for the offences alleged in the complaint filed by Enforcement Directorate.”

7. During the pendency of the criminal proceedings under the PMLA, the competent authority had attached some bank accounts and immovable properties. *Vide* provisional attachment order dated 02.02.2018, immovable properties and bank accounts mentioned in para 2.18 of the complaint were attached and *vide* provisional order dated 12.08.2021 bank accounts mentioned in para 3.2 of the supplementary complaint were also attached. The Adjudicating Authority had confirmed the attachment in respect of the aforesaid properties and bank accounts in terms of Section 8(3) of the PMLA *vide* order dated 11.07.2018.

8. After the discharge of present respondents from the offence of money laundering under the PMLA, the learned Special Judge subsequently passed



order dated 07.11.2023 releasing all the immovable properties and ordering to defreeze/release all the bank accounts. The operative part of the order dated 07.11.2023 reads as under:

“Vide order dated 09.10.2023, Akhilesh Singh and Garima Singh were discharged from all the offences alleged in the complaint. The properties attached by the ED cannot be said to be the proceeds of crime and thus liable to be released.

Thus immovable properties as mentioned in para no.2.18 of complaint (also mentioned in the list filed by the Enforcement Directorate) are released. Necessary information be sent to the concerned Sub Registrars/Registrars as mentioned in Column No.5 of the list filed by the ED as well as to ED for compliance.

Further, the bank accounts as mentioned in para 2.18 of complaint and 3.2 of supplementary complaint (also mentioned in the list filed by the ED) are defreezed/released. Intimation be sent to bank authority along with copy of this order and list of details of bank accounts filed by ED for compliance. The ED shall release the amount in the respective bank accounts from which it was taken into possession.”

9. Originally, when the present petition was filed, no appeal had been preferred by the State of Jharkhand against the judgment of acquittal in the predicate offence. The submission was made by the learned counsel for the petitioner/ED that the State of Jharkhand is in the process of preferring an appeal to challenge the said acquittal, therefore, the operation of the aforesaid order dated 07.11.2023 of the Special Judge directing release of attached immovable properties and bank accounts, be stayed, otherwise, the present petition will be rendered infructuous. This Court while issuing notice had, however, passed the following order on 07.11.2023.

“Having regard to the facts of the case and the submissions



made by the learned counsel appearing on behalf of the petitioner, it is directed that any order passed by the learned Trial Court shall be subject to the outcome of the present petition.”

10. Subsequently, the learned Special Judge pursuant to its earlier order dated 07.11.2023 issued following further directions:

“It is apparent from the status report that order passed by this Court on 07.11.2023 has not been communicated by the ED to Sub-Registrars and bank officials. ED has communicated the order passed by the Hon’ble High Court on 07.11.2023 to the Sub-Registrars and concerned bank.

The order dated 07.11.2023 has been communicated to concerned banks and Sub Registrars by this court. ED shall also communicate the order dated 07.11.2023 passed by this court to concerned banks & Sub registrars.

ED shall also produce the letter vide which they communicated the ordre passed by Hon’ble High Court to the concerned bank and Sub-Registrars for perusal of the court.”

11. During the pendency of the present petition, the State of Jharkhand preferred an appeal against the order of acquittal and sequel thereto an application being CrI.M.A.34025/2023 was filed by the petitioner/ED praying as under:

“(a) Stay the operation of the orders dated 07.11.2023 and 07.12.2023 passed by Sh. Arvind Kumar Special Judge (PC Act) (CBI)-10, Rouse Avenue Courts Complex, New Delhi in RC: ECIR/06/HITJ120L7; U/s 3 & 4 Prevention of Money Laundering Act; CT Case No. 30/2019 till the final disposal of the main revision petition”

12. However, instead of deciding the aforesaid application, the main



matter itself was taken up for disposal with the consent of the parties and the arguments were heard.

13. Mr. Anurag Jain, learned Special Counsel for the petitioner/ED submits that though the respondents have been discharged from the offence of money laundering on the ground that they have been acquitted in the predicate offence registered *vide* FIR No.21/2017 under Sections 419/420/467/468/471 IPC read with Section 120B IPC at PS Birsanagar Jamshedpur (Jharkhand) but the said judgment of acquittal has not attained finality, inasmuch as an appeal being CrI.A. 252/2023 has been preferred by the State of Jharkhand before the learned District and Sessions Court, Jamshedpur, Jharkhand and the same is still pending. It is contended that the acquittal of the respondent in predicate offence shall attain finality only after it has been affirmed by the appellate court, as well as, by the Courts in the higher hierarchical tiers. In support of his contention, the learned counsel places reliance on para 467(d) of the decision of the Hon'ble Supreme Court in *Vijay Madanlal Choudhry vs. UOI: 2022 SCC OnLine SC 929*.

14. It is also urged by the learned counsel for the petitioner that criminal appeal/revision is a continuation of the proceedings before the learned Trial Court and for this reason as well, the order of discharge cannot be said to be a final order. In support of his contention, the reliance has been placed on the following decisions in - (i) *Anurag Baitha vs. State of Bihar: 1987 SCC OnLine Pat 26*; (ii) *Dattu Pant vs. Advya Chari and another: 1995 SCC OnLine Hyd 306*; (iii) *State vs. Diwanji Gardharji and Others: 1961 SCC OnLine Guj 59*; and (iv) *Surajbhan vs. State of MP: CrI. A. No. 6213 /2021* decided on 20.01.2022 by Gwalior Bench of MP High Court (DB).



15. The learned counsel has also placed reliance on the following decisions in - (i) **Directorate of Enforcement vs. Gagandeep Singh & Ors.**: CrI.Rev.P.493/2017 orders dated 14.07.2017 and 11.05.2018; (ii) **Directorate of Enforcement vs. Gagandeep Singh & Ors.**: SLP (CrI.) D. No. 42315/2022 decided on 10.02.2023; and (iii) **Joint Director ED vs. A. Raja & Ors.**, 2020:DHC:2892 to contend that despite the order of discharge/acquittal in the offence under the PMLA, the Hon'ble Supreme Court, as well as, this Court had stayed the impugned orders insofar as the same related to the release of attached properties.

16. Learned counsel further submits that the attached properties are only in custody of law and the same have to be protected pending decision of the appeal in predicate offence, otherwise, there is every likelihood that the respondents would dissipate, misappropriate or create third party interest in the attached moveable/immovable properties to frustrate the very purpose of pending appeal against the acquittal in predicate offence, which would entail multiplicity of proceedings and procedural complications.

17. *Per contra*, it is contended by the learned counsel that once a person is acquitted, the presumption of innocence in favour of the accused is strengthened and filing or pendency of an appeal against the acquittal cannot be considered as a continuation of trial / prosecution. In support of his contention, learned counsel places reliance on the following decisions in - (i) **Bharat Sanchar Nigam Ltd. vs. S Rajagopal and Another: 2015 Law Suit (Mad) 3534 (DB)**, (ii) **Rameshwar @ Balli vs. State of M.P.: 2022 Law Suit (MP) 1719**, (iii) **Balak Singh Thakur vs. State of M.P. 2014 SCC Online MP 1036**, and (iv) **R.C. Dubey vs. M.P. State Electricity Board: 2013 SCC Online MP 1004**.



18. He further contends that once the respondents have been acquitted in the predicate offence, the criminal proceedings under the PMLA will not survive, therefore, the learned Special Judge had rightly passed the impugned order discharging the respondents from the offences under the PMLA. In support of his contention, the learned counsel has placed reliance on the decision in (i) *Parvathi Kollur vs. Enforcement of Directorate*, 2022 SCC OnLine SC 1975; (ii) *Emta Coal Limited & Ors. vs. The Deputy Director Directorate of Enforcement*, 2023 SCC OnLine Del 6177; (iii) *Adjudicating Authority vs. Shri Ajay Kumar Gupta & Ors.*, 2022 SCC OnLine SC 2091; and (iv) *Directorate of Enforcement vs. M/s Obulapuram Mining Company Pvt. Ltd.*, 2022 SCC OnLine SC 2198.

19. Next, it is argued by the learned counsel for the respondents that the pendency of an appeal in a predicate offence against acquittal does not bar the Special Court to release the properties attached under the PMLA case as pursuant to the acquittal of the accused in predicate offence, attached properties could no more be treated as proceeds of crime or properties obtained from criminal activity.

20. He submits that if an accused under the PMLA is discharged / acquitted, the learned Special Judge is obliged to pass an order releasing the properties so attached, in terms of Section 8(6) of the PMLA, therefore, there is no infirmity in the order of the learned Special Judge directing release of the attached properties/bank accounts. Section 8(6) of the PMLA reads as under:

“8. Adjudication.—...

(6) Where on conclusion of a trial under this Act, the Special Court finds that the offence of money laundering has not taken



place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it.”

21. It is, therefore, urged by the learned counsel that the present petition deserves to be dismissed.

22. The moot question which falls for consideration in the present case is whether the proceedings under the PMLA could be continued despite the acquittal of the respondent nos.1 and 2 in the scheduled offence. Yet another related question that arises for consideration is whether the properties attached by the petitioner/ED on the premise that the same are proceeds of crime could be released notwithstanding the pendency of appeal preferred against the order of acquittal in the scheduled offence.

23. The controversy articulated in the above noted two questions is no more *res integra*. The Hon'ble Supreme Court with reference to the relevant provisions of PMLA in ***Vijay Madanlal Choudhry (supra)*** has observed as under:-

“253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression “derived or obtained” is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of



the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause “proceeds of crime”, as it obtains as of now.

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*281. The next question is : whether the offence under Section 3 is a standalone offence? Indeed, it is dependent on the wrongful and illegal gain of property as a result of criminal activity relating to a scheduled offence. Nevertheless, it is concerning the process or activity connected with such property, which constitutes offence of money-laundering. The property must qualify the definition of “proceeds of crime” under Section 2(1)(u) of the 2002 Act. As observed earlier, all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of “proceeds of crime” under Section 2(1)(u) will necessarily be crime properties. **Indeed, in the event of acquittal of the person concerned or being absolved from allegation of criminal activity relating to scheduled offence, and if it is established in the court of law that the crime property in the concerned case has been rightfully owned and possessed by him, such a property by no stretch of imagination can be termed as crime property and ex-consequenti proceeds of crime within the meaning of Section 2(1)(u) as it stands today.** On the other hand, in the trial in connection with the scheduled offence, the Court would be obliged to direct return of such property as belonging to him. It would be then paradoxical to still regard such property as proceeds of crime despite such adjudication by a Court of competent jurisdiction. It is well within the jurisdiction of the concerned Court trying the scheduled offence to pronounce on that matter.*



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467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms:-

XXXX XXXX XXXX

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

(Emphasis Supplied)

24. In *Parvathi Kollur (supra)*, the appellants therein were acquitted from the predicate / scheduled offence under the Prevention of Corruption Act, 1988 and premised on the said acquittal, the appellants were discharged from the offence under the PMLA by the Special Court observing that the occurrence of a scheduled offence was the basic condition for giving rise to “proceeds of crime” and that commission of scheduled offence was a pre-condition for proceeding under the PMLA. However, the said order of discharge was set aside by the High Court on a revision filed by the



Directorate of Enforcement. In an appeal, the order of the High Court was set aside by the Hon'ble Supreme Court referring to the three Judge Bench decision in *Vijay Madanlal Choudhry* (*supra*). It was held as under:

“5. Thereafter, the Trial Court, by its judgment and order dated 04.01.2019, allowed the application and discharged the appellants from the offences pertaining to the Act of 2002 while observing that occurrence of a scheduled offences was the basic condition for giving rise to “proceeds of crime”; and commission of scheduled offence was a pre-condition for proceeding under the Act of 2002.

6. Aggrieved by the said discharge order, the Directorate preferred a revision petition before the High Court. The High Court proceeded to set aside the discharge order while observing that the allegations made in the complaint and the material produced, prima facie, made out sufficient ground for proceeding against the appellants for offences under the Act of 2002.

7. Learned counsel for the appellants has contended that the issue as involved in this matter is no more res integra, particularly for the view taken by a 3-Judge Bench of this Court in the case of Vijay Madanlal Choudhary v. Union of India decided on 27.07.2022 where, the consequence of failure of prosecution for the scheduled offence has been clearly provided in the following terms:

“187.(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of



competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.”

8. Learned ASG appearing for the respondent, in all fairness, does not dispute the above position of law declared by this Court.

9. The result of the discussion aforesaid is that the view as taken by the Trial Court in this matter had been a justified view of the matter and the High Court was not right in setting aside the discharge order despite the fact that the accused No. 1 had already been acquitted in relation to the scheduled offence and the present appellants were not accused of any scheduled offence.

10. In view of the above, this appeal succeeds and is allowed. The impugned judgment and order dated 17.12.2020 is set aside and the order dated 04.01.2019 as passed by the Trial Court, allowing discharge application of the appellants, is restored.

(Emphasis Supplied)

25. Likewise, in *Pavana Dibbur v. The Directorate of Enforcement*, 2023 SCC OnLine SC 1586, the Hon'ble Supreme Court held as under:

“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.”

(Emphasis Supplied)

26. In ***Nik Nish Retail Ltd. & Anr. vs. Assistant Director, Enforcement Directorate, Govt. of India & Ors.: CRR No.2752 of 2018***, the Calcutta High Court had quashed the FIR in respect of the predicate offence on the basis of settlement and following the same, the proceedings initiated under the provisions of the PMLA were also quashed. The Special Leave Petition filed by the Directorate of Enforcement, titled as ***Assistant Director Enforcement Directorate vs. M/s Nik Nish Retail Ltd. & Ors.: SLP(CrI.)*** Diary No(s).24321/2023, challenging the quashing of PMLA proceedings, was dismissed by the Hon’ble Supreme Court observing as under:

“In paragraph 187 (v) (d) of the decision in the case of Vijay Madanlal Chowdhury & Ors. v. Union of India & Ors. (2022) SCC OnLine SC 929, it is held that even if predicate offence is quashed by the Court of competent jurisdiction, there can be no offence of money laundering against the accused.

Appropriate proceedings can be always filed by the concerned parties for challenging the order by which predicate offence was quashed. If the said order is set aside and the case is revived, it will be always open for the petitioner to revive the proceedings under the Prevention of Money Laundering Act, 2002.

The Special Leave Petition is accordingly disposed of.

Pending application also stands disposed of.”

(Emphasis Supplied)



27. In *Prakash Industries Ltd. v. Directorate of Enforcement*, 2022 SCC OnLine Del 2087, a Coordinate bench of this Court dealing with an identical question held that charge of money laundering will not survive after the charges in respect of the predicate offence are quashed or the accused is discharged. It was further observed that when it has been found that the accused had not indulged in any criminal activity, the property cannot be treated as proceeds of crime. The relevant part of the decision reads thus:

“59. This Court thus comes to the definite conclusion, that while the offense of money laundering may have been correctly described as a stand-alone offense in the sense of being a condition precedent for an allegation of money laundering being raised, that in itself would not infuse jurisdiction in proceedings that may be initiated under the Act even after a competent court has come to hold that no criminal offense stands committed or situations where the primary accused is discharged of the offense or proceedings quashed. When the offense of money laundering is described as a stand-alone offense, all that is sought to be conveyed is that it is to be tried separately in accordance with the procedure prescribed under the Act. It is evident from a reading of the Act that while the commission of a predicate offense constitutes the trigger for initiation of proceedings under the Act, the offense of money laundering must be tried and established separately. However, the Court finds itself unable to hold that a charge of money laundering would survive even after the charges in respect of the predicate offense are quashed or the accused is discharged upon the competent court finding that no offense is made out. The predicate offense does not merely represent the trigger for a charge of money laundering being raised but constitutes the very foundation on which that charge is laid. The entire edifice of a charge of money laundering is raised on an allegation of a predicate offense having been committed, proceeds of crime generated from such activity and a projection of the tainted property as untainted. However, once it is found on



merits that the accused had not indulged in any criminal activity, the property cannot legally be treated as proceeds of crime or be viewed as property derived or obtained from criminal activity.”

28. The position thus, emerging from the aforesaid decisions is that the scheduled offence and the proceeds of crime generated therefrom is the very foundation for the offence of Money Laundering. Once a person is discharged or acquitted from the scheduled offence, the very foundation gets knocked out and the charge of Money Laundering will not survive as there will be no proceeds of crime. Concomitantly, the properties attached under the PMLA cannot legally be treated as proceeds of crime or be viewed as property derived or obtained from criminal activity.

29. Further, submission of the learned counsel for the petitioner/ED is that since the appeal has been preferred by the State of Jharkhand against the judgment of acquittal in the predicate offence, therefore, the acquittal of the respondent nos. 1 and 2 in the predicate offence has not attained finality and consequently, the properties attached under the PMLA cannot be released, is to be considered only to be rejected. A perusal of Section 8(6) of the PMLA makes amply clear that if an accused under the PMLA is discharged / acquitted, the learned Special Judge under Section 8(6) has no option but to pass an order releasing the properties attached under the PMLA. Incidentally, the order of the Hon'ble Supreme Court passed in *M/s Nik Nish Retail Ltd.* (supra) leave no manner of doubt that if the judgment of acquittal in predicate offence is reversed in an appeal, it will be always open for the petitioner/ED to revive the proceedings under the PMLA. In other words, till the judgment of acquittal predicate offence is reversed in an appeal, all the effects of acquittal will continue to operate and mere filing of



an appeal against acquittal in a predicate offence would not mean that the respondents will continue to suffer the rigors of criminal proceedings or attachment under the PMLA.

30. There is also no substance in the submission of the learned counsel for the petitioner/ED that an appeal preferred against the order of acquittal is a continuation of the proceedings before the Trial Court, inasmuch as it is trite law that in the context of criminal proceedings, the trial concludes when the same results in acquittal, though in the case of conviction the trial is concluded against the convicted accused with the imposition of sentence.¹

31. Reliance placed by the petitioner on the order of the Hon'ble Supreme Court in *Gagandeep Singh* (supra) is misplaced. In the said case the Hon'ble Supreme Court while issuing notice in the SLP, formulated the questions to be decided akin to those which arise in the present case and also directed to maintain status quo with reference to the properties attached under the PMLA, but the said order is only an interim order and it does not lay down a law. However, this Court is obliged to proceed and decide the controversy involved in the present case on the basis of the law as it stands.²

32. The upshot of above discussion is that no proceedings under the PMLA could be sustained after the acquittal of the respondent nos.1 and 2 in the predicate offence. Accordingly, the learned Special Judge *vide* order dated 09.10.2023 has rightly discharged the respondents herein from the offences under the PMLA. Likewise, there is no infirmity in the order dated 07.11.2023 whereby the attached movable and immovable properties were directed to be released by the learned Special Judge.

¹ Sukhpal Singh Khaira vs. State of Punjab: (2023) 1 SCC 289

² Union Territory of Ladakh v. J&K National Conference: 2023 SCC OnLine SC 1140



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33. In view of the above, the petition is dismissed. All pending applications are also disposed of.

APRIL 30, 2024
MK

VIKAS MAHAJAN, J.

Signature Not Verified

Digitally Signed
By: NARENDRA SINGH
ASWAL
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