

Vinod Mathew Wilson v. The Union of India and others (Kerala)

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KERALA HIGH COURT

Before: Gopinath P. & Syam Kumar V.M., JJ

WP(C) No. 17179 of 2024

Decided on: 20.05.2024

Vinod Mathew Wilson - Petitioner

Versus

The Union of India and others - Respondents

Prevention of Money-Laundering Act, 2002 (15 of 2003), Section 2(1)(p), 3 – Constitution of India, Article 226 -- Proceeds of crime – Direction to register a case and arrest of accused -- Enforcement Directorate is not an investigating agency stricto sensu -- The command and mandate of the Enforcement Directorate under the 2002 Act is to ensure that no person benefits from the proceeds of crime derived out of the commission of a scheduled offence and to see that such property is confiscated to the State -- There cannot be any direction issued to consider representation which has been filed with a prayer to register a case and arrest certain individuals for that is not the mandate of the Enforcement Directorate.

(Para 1, 19)

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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2024:KER:32952

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE GOPINATH P.

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

MONDAY, THE 20TH DAY OF MAY 2024 / 30TH VAISAKHA, 1946

WP(C) NO. 17179 OF 2024

CRIME NO.146/2021 OF Kodakara Police Station, Thrissur

PETITIONER:

VINOD MATHEW WILSON

AGED 40 YEARS

S/O V.G WILSON, HAVING PERMANENT ADDRESS AT
VAZHAYIL VEEDU, NEDIYARA P.O, EROOR VILLAGE,
ANCHAL, KOLLAM DISTRICT AND NOW HAVING OFFICE AT
OFFICE OF STATE PRESIDENT, AAM AADMI PARTY,
KERALA STATE COMMITTEE OFFICE, MATHER SQUARE,
NEAR NORTH RAILWAY STATION, ERNAKULAM NORTH P.O,
ERNAKULAM, PIN - 682018

BY ADVS.

MANU RAMACHANDRAN

M.KIRANLAL

T.S.SARATH

R.RAJESH (VARKALA)

SAMEER M NAIR

SAILAKSHMI MENON

JOTHISHA K.A.

SHIFANA M.

RESPONDENTS:

- 1 THE UNION OF INDIA
REPRESENTED BY ITS SECERTARY,
MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI, PIN - 110001
- 2 THE DIRECTORATE OF ENFORCEMENT
HEAD OFFICE, PRAVARTAN BHAWAN,
APJ ABDUL KALAM ROAD, NEW DELHI,
REPRESENTED BY ITS DIRECTOR, PIN - 110011
- 3 THE JOINT DIRECTOR
THE DIRECTORATE OF ENFORCEMENT ZONAL OFFICE,
KOCHI, KANOOS CASTLE, MULLASSERY CANAL ROAD WEST
(A K SESHADRI ROAD), KOCHI, ERNAKULAM, PIN - 682011



- 4 THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
OFFICE OF PRINCIPAL CHIEF COMMISSIONER OF INCOME
TAX, KERALA, KOCHI, PIN - 682018
- 5 NATIONAL INVESTIGATION AGENCY
BRANCH OFFICE, HOUSE NO.28/443, NEAR KSEB OFFICE
OF GIRI NAGAR, GIRI NAGAR, KADAVANTHARA,
KOCHI, ERNAKULAM, PIN - 682020
- 6 STATE OF KERALA
REPRESENTED BY ITS SECERTARY, MINISTRY OF HOME
AFFAIRS, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM, PIN - 695001
- 7 THE STATE POLICE CHIEF
KERALA STATE POLICE, POLICE HEADQUARTERS,
VAZHUTHACAUD, THIRUVANANTHAPURAM, PIN - 695010
- 8 THE ASSISTANT COMMISSIONER OF POLICE
THRISSUR, THRISSUR DISTRICT, PIN - 680001
- 9 THE STATION HOUSE OFFICER
KODAKARA POLICE STATION,
THRISSUR DISTRICT, PIN - 680684
BY ADV. KRISHNA T C, SCGC
JAISHANKAR V.NAIR, SC, ED

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
10.05.2024, THE COURT ON 20.05.204 DELIVERED THE FOLLOWING:



(CR)

JUDGMENT*Dated this the 20th day of May, 2024*Syam Kumar V.M. J.

The prayers sought in this Writ Petition, which is filed as a public interest litigation, are as under:-

- “(i) *To issue a writ of mandamus or any other writ or order or direction directing respondents Nos.2 to 4 to consider and take action in Ext.P3 representation as per law within a time limit fixed by the Hon'ble Court, in the interest of justice ;*
- (ii) *To issue a writ of mandamus or any other writ or order or direction directing respondent Nos.1, 6 and 7 to consider and take action in Ext.P5 representation as per law within a time limit fixed by this Hon'ble Court, in the interest of justice ; and*
- (iii) *Such other writ, orders or directions deem fit on facts and in the interest of justice.”*

2. Petitioner submits that a money heist had occurred within the limits of Kodakara Police Station and that Crime No.146 of 2021 dated 07.04.2021 concerning the same had been registered in the said Police Station. According to the petitioner, since the said heist has hawala and money laundering overtones involving political leaders,



he has preferred Ext.P3 representation dated 24.04.2024 and Ext.P5 representation dated 28.04.2024 before the concerned respondents *inter alia* seeking registration of a case under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'the 2002 Act'). Petitioner laments that no action has been taken by the concerned respondents on his said representations and since according to him the nature of crime involved has ramifications for the economic security of the nation, he has moved this Writ Petition seeking the above prayers.

3. When this Writ Petition came up for consideration on 07.05.2024, the learned standing counsel for respondents 2 and 3 vehemently challenged the maintainability of the Writ Petition and sought time to file a statement specifically on the said respect.

4. Subsequently, statements have been filed by respondents 1 and 5 as well as respondents 2 and 3.

5. Respondents 2 and 3 have in their statement, challenged the *locus standi* of the petitioner to prefer the Writ Petition in a matter which essentially has criminal law implications. The statement also reveals that based on FIR No.146 of 2021 dated 07.04.2021 of Kodakara Police Station and the Final Report filed therein by the



Police, an ECIR/KCZO/11/2023 dated 30.01.2023 has been registered by the Enforcement Directorate under the Act, 2002 and that the matter is under active investigation. It has been stated therein that several persons have been questioned and their statements recorded. That effective steps are being presently undertaken by the Enforcement Directorate to ascertain the proceeds of crime including the money trail and that meticulous investigation is required in cases of such nature to find out the money trail, the proceeds of the crime and the persons involved in the money laundering case, are also pointed out by respondents 2 and 3 in their statement. The Enforcement Directorate has through the said statement sought dismissal of the Writ Petition at the very threshold on the ground of maintainability and lack of *locus standi* in the petitioner .

6. Respondents 1 and 5 have in their statement contended that the Writ Petition is not maintainable and that no public interest is involved in the matter. It is alleged by them therein that the Writ Petition has been filed with political interest and ulterior motives by the petitioner who is admittedly the State President of a political party. It is also averred therein that Ext.P2 Final Report clearly reveals that the State Police has completed the investigation and has filed the Final



Report before the jurisdictional Magistrate who has taken cognizance of the matter. Respondents 1 and 5 thus seek dismissal of the Writ Petition on the ground that a public interest litigation is not maintainable in a criminal matter and that the petitioner is only a stranger who is in no way connected with the alleged crime.

7. We have heard Sri.Manu Ramachandran learned Advocate appearing for the petitioner, Sri.Jaishankar V.Nair learned Advocate appearing on behalf of respondents 2 and 3, Sri.T.C.Krishna learned Advocate appearing on behalf of respondents 1 and 5 and the learned Standing Counsel appearing on behalf of the 4th respondent. We have also heard the learned Government Pleader appearing on behalf of respondents 6 to 9.

8. Since the question of *locus standi* of the petitioner to prefer the Writ Petition has been challenged by the all the respondents, and the same being a question that goes to the very root of the matter, we deem it fit to consider the same at the outset.

9. The learned counsel for the petitioner has invited our attention to the judgment of the Supreme Court in **Dr.P.Nalla Thampy Thera v. Union of India and others** (W.P.(Crl.) No.114 of 1991) and he contends that in defining the rule of *locus standi* in



public interest litigations, no 'rigid litmus test' can be applied and that the dominant object of public interest litigation is to ensure observance of the provisions of the Constitution or the law which can be best achieved to advance the cause of community or disadvantaged groups and individuals. Basing on the said dictum, learned counsel for the petitioner further submits that public interest litigation necessitates appreciation of doctrine of *locus standi* on a case to case basis. Since the respondents are with oblique motives and under undue political pressure delaying further necessary action in the criminal proceedings arising out of the FIR in Crime No.146 of 2021 of Kodakara Police Station, which according to the petitioner have serious economic consequences for the nation, the objection of *locus standi* raised by the respondents is devoid of merits and unsustainable. Learned counsel for the petitioner further submits that this Court had an occasion to consider the very same subject matter earlier in Writ Petition (C) No.11797 of 2021 wherein vide judgment dated 24.11.2021, this Court had recorded the statements of the Deputy Solicitor General of India that based on the complaints received from various persons, a file has been opened by the Enforcement Directorate and they are in receipt of the charge sheet in



Crime No.146 of 2021 of Kodakara Police Station and the Enforcement Directorate is examining the details and appropriate action under the 2002 Act will be taken as envisaged in law. This Court had also in the said judgment recorded the statement that the State Police is also conducting further investigation in Crime No.146 of 2021. Based on the above said judgment in W.P.(C) No.11797 of 2021, counsel for the petitioner submits that nothing much has further transpired in the matter after the said judgment and that there is a stalemate in proceeding further, which it alleged is deliberate, purposeful and a result of undue political interference.

10. This argument of the petitioner is countered by the learned counsel appearing for respondents 2 and 3 relying on the judgment of the Hon'ble Supreme Court in **State of Jharkhand v. Shiv Shankar Sharma and others** (2022 SCC Online SC 1541), wherein it has been held that for entertaining a public interest litigation, the court needs to be satisfied credentials of the person approaching the court. Reliance is also placed on the judgments of the Hon'ble Supreme Court in **Simranjit Singh Mann v. Union of India and another** [(1992) 4 SCC 653 : 1993 SCC (Cri) 22] and **Subramanian Swamy and others v. Raju through Member, Juvenile Justice Board**



and another [(2013) 10 SCC 465 : (2013) 4 SCC (Cri) 785 : 2013 SCC OnLine SC 754], wherein the Supreme Court has held that a third party, who is a total stranger to the prosecution, has no *locus standi* in criminal matters and has no right to whatsoever to file a petition in public interest. In **Manohar Lal v. Vinesh Anand and others** [(2001) 5 SCC 407 : 2001 SCC (Cri) 1322 : 2001 SCC OnLine SC 634], it has been held that doctrine of *locus standi* is totally foreign to criminal jurisprudence and similarly in **State of Uttaranchal v. Balwant Singh Chaufal and others** [(2010) 3 SCC 402 : (2010) 2 SCC (Cri) 81 : (2010) 1 SCC (L&S) 807 : 2010 SCC OnLine SC 196], the Supreme Court has held that public interest litigation is available only where larger public interests are involved and when the matter is so grave and urgent that it must take precedence over other matters. The dictum in **Swaraj Abhiyan and another v. Union of India and others** [(2017) 11 SCC 237 : 2016 SCC OnLine SC 1417], wherein the Supreme Court has held that when an issue takes the colour of political nature or a political protagonist approaches the court in the guise of a public interest litigation to settle political scores, it loses the character of public interest litigation, is also relied on by respondents 2 and 3.

11. The legal position regarding *locus standi* in matters



involving criminal jurisprudence being as stated above, the counsel for respondents 2 and 3 submits that it is beyond dispute that the petitioner is in no way connected to Crime No.146 of 2021 of Kodakara Police Station. The learned counsel points to para 3 of the Writ Petition wherein it has been stated as follows: *"The petitioner is having no personal or private interest in the matter and the present writ petition is filed to espouse the social cause against the hawala money transactions plaguing the economic security of India."* Further, it is relevant to note that although in Ext.P2 charge sheet the names of the accused are specifically mentioned, none of them have been impleaded and arrayed as parties to the Writ Petition. Prayers sought for in the Writ Petition cannot thus be granted without the necessary parties in the respondent array. It is also relevant to note that Exts.P3 and P5 representations are dated 24.04.2024 and 28.04.2024 respectively. The Writ Petition filed based on the said exhibits is dated 29.04.2024. Thus the Writ Petition has been filed within less than a week of the date in Exts.P3 and P5 representations. The said facts read in conjunction, fortifies the contention of respondents 1 and 5 that the Writ Petition has been filed with political objectives in mind and for instrumentalising the Court as a platform for furthering partisan



political interest.

12. With respect to the contention put forth by the petitioner based on **Dr.P.Nalla Thampy Thera v. Union of India and others** (supra), the mandate laid down therein that public interest litigation necessitates appreciation of doctrine of *locus standi* on a case to case basis is not satisfactorily met with or satisfied by the petitioner in the facts and circumstances of the case at hand. We note that the petitioner has not sought to enforce any fundamental right of the general public nor does he complain that any of his fundamental rights for being violated. As revealed by the discussion of the cases above, it is no longer *res integra* that entertaining public interest litigation in matters having criminal overtones should be done with great circumspection and care. We are guided in this respect by the dictum laid down by the Hon'ble Supreme Court in **Janata Dal v. H.S.Chowdhary and Others** [1991 KHC 1163 : AIR 1993 SC 892] which reads as follows: *“Even if there are million questions of law to be deeply gone into and examined in a criminal case of this nature registered against specified accused persons, it is for them and them alone to raise all such questions and challenge the proceedings initiated against them at the appropriate time before the proper forum and not for third parties under*



the garb of public interest litigants”. The above proposition has been affirmed by the Apex Court in **Sanjai Tiwari v. State of Uttar Pradesh and another** [(2021) 15 SCC 660 : 2020 SCC OnLine SC 1027].

13. In view of the above, we find that the petitioner has failed to reveal any *locus standi* to prefer or maintain the above Writ Petition as a public interest litigation. The objections raised by the respondents in their statements regarding lack of *locus standi* in the petitioner has legal merit and are accordingly accepted and upheld.

14. We are convinced that even if we were to hold that the Writ Petition is maintainable at the instance of the petitioner, the reliefs sought for cannot be granted.

15. Ext.P3 representation is addressed to officials of the Enforcement Directorate seeking registration of a case under the Act, 2002, against a named individual. There is also a prayer in Ext.P3 that the named individual and his associates should be arrested. The prayer for consideration of Ext.P3 by the competent authority under the 2002 Act is based on a misconception of the scope of the 2002 Act.

16. In the 2002 Act,
“*Money laundering*” is defined in Section 2(1)(p), “*Proceeds of*



Crime” is defined in Section 2(1)(u) and “*Property*” is defined in Section 2(1)(v), and the offence of Money laundering is set out in Section 3 of the 2002 Act. Section 2 (1) (p) of the 2002 Act states that “*money-laundering*” has the meaning assigned to it in Section 3 of the said Act. Section 2 (1)(u) defines “*proceeds of crime*” as “*any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad*”. The Explanation to Section 2 (1)(u) of the 2002 Act states thus “*For the removal of doubts, it is hereby clarified that “proceeds of crime” include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence*”. Section 2 (1)(v) of the 2002 Act defines property as “*any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located*”. The Explanation to Section 2 (1)(v) of the



2002 Act reads thus : *“For the removal of doubts, it is hereby clarified that the term property includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences”*. Section 3 of the 2002 Act sets out the ingredients of the offence of money laundering and the provision reads thus:-

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

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

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

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

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

17. To understand the scope of the proceedings under the 2002



Act we may usefully refer to two judgments of the Supreme Court namely (i) **Vijay Madanlal Choudhary v. UOI**, [2022 SCC OnLine SC 929] & (ii) **Pavana Dibbur v. Directorate of Enforcement**, [2023 SCC OnLine 1586]. In **Vijay Madanlal Choudhary (supra)** it was held:-

"89. This argument clearly overlooks the overall scheme of the 2002 Act. As noticed earlier, it is a comprehensive legislation, not limited to provide for prosecution of person involved in the offence of money-laundering, but mainly intended to prevent money-laundering activity and confiscate the proceeds of crime involved in money-laundering. It also provides for prosecuting the person involved in such activity constituting offence of money-laundering. In other words, this legislation is an amalgam of different facets including setting up of agencies and mechanisms for co-ordinating measures for combating money-laundering. Chapter III is a provision to effectuate these purposes and objectives by attachment, adjudication and confiscation. The adjudication is done by the Adjudicating Authority to confirm the order of provisional attachment in respect of proceeds of crime involved in money-laundering. For accomplishing that objective, the authorities appointed under Chapter VIII have been authorised to make inquiry into all matters by way of survey, searches and seizures of records and property. These provisions in no way invest power in the Authorities referred to in Chapter VIII of the 2002 Act to maintain law and order or for that matter, purely investigating into a criminal offence. The inquiry preceding filing of the complaint by the authorities under the 2002 Act, may have the semblance of an investigation conducted by them. However, it is essentially an inquiry to collect evidence to facilitate the Adjudicating Authority to decide on the confirmation of provisional attachment order, including to pass order of confiscation, as a result of which, the proceeds of crime would vest in the Central Government in terms of section 9 of the 2002 Act. In other words, the role of the Authorities



appointed under Chapter VIII of the 2002 Act is such that they are tasked with dual role of conducting inquiry and collect evidence to facilitate adjudication proceedings before the Adjudicating Authority in exercise of powers conferred upon them under Chapters III and V of the 2002 Act and also to use the same materials to bolster the allegation against the person concerned by way of a formal complaint to be filed for offence of money-laundering under the 2002 Act before the Special Court, if the fact situation so warrant.....”

“181.It is also correct to say that there is no such requirement under the 2002 Act or for that matter, that there is nothing like investigation of a crime of money-laundering as per the scheme of 2002 Act. The investigation, however, is to track the property being proceeds of crime and to attach the same for being dealt with under the 2002 Act. Stricto sensu, it is in the nature of an inquiry in respect of civil action of attachment. Nevertheless, since the inquiry in due course ends in identifying the offender who is involved in the process or activity connected with the proceeds of crime and then to prosecute him.....”

18. In ***Pavana Dibbur*** (supra) after referring extensively to ***Vijay Madanlal Choudhary*** (supra) it was held:-

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

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



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

(underline supplied)

16. In paragraphs 269 and 270, this Court held thus:

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

270. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money-laundering to indulge in or to assist or being party to the process or



activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money-laundering under the 2002 Act – for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money-laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence has been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all.”

17. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to “extortion” are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the



accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary¹ supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of sub-section (1) of Section 3 of the PMLA.”

19. From the above, it is clear that the Enforcement Directorate is not an investigating agency *stricto sensu*. The command and mandate of the Enforcement Directorate under the 2002 Act is to ensure that no person benefits from the proceeds of crime derived out of the commission of a scheduled offence and to see that such property is confiscated to the State. Therefore, in the facts of this case there cannot be any direction issued to consider Ext.P3 which has been filed with a prayer to register a case and arrest certain individuals for that is not the mandate of the Enforcement Directorate. Moreover, the statement filed on behalf of respondents 2 and 3 filed in this case indicates that the Enforcement Directorate has registered an ECIR/KCZO/11/23 in the above matter and the same is being enquired into as well. Thus we see no reason to direct the consideration of Ext.P3.



20. Ext.P5 representation regarding which the 2nd relief seeks that action be taken under the provisions of Section 6 of the National Investigation Agency Act, 2008 (hereinafter referred to as 'the NIA Act, 2008'). The prayer in Ext.P5 is that suitable action be taken by the State Government under Section 6 of the NIA Act 2008. This is misconceived. A reading of Section 6 of the NIA Act, 2008 shows that the process starts with the registration of an FIR under Section 154 Cr.P.C in respect of an offence set out in the Schedule to the NIA Act, 2008. A reading of Ext.P2 final report indicates that even in the final report there is no indication that any of the offences in the Schedule to the NIA Act, 2008 has been committed.

For all the aforesaid reasons, the Writ Petition is liable to be dismissed. Ordered accordingly.

Sd/-

**GOPINATH P.
JUDGE**

Sd/-

**SYAM KUMAR V.M.
JUDGE**

csl



APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE FIR IN CRIME NO.146/2021 OF
KODAKARA POLICE STATION, THRISSUR DISTRICT

EXT.P2: TRUE COPY OF THE FINAL REPORT IN CRIME NO.146/2021
OF KODAKARA POLICE STATION, THRISSUR DISTRICT
WHICH IS NOW PENDING AS C.P.NO.47/2021 ON THE
FILES OF JFMC, IRINJALAKUDA.

Ext.P3: TRUE COPY OF THE REPRESENTATION VIA EMAIL DATED
24.04.2024 SUBMITTED BY THE PETITIONER TO
RESPONDENTS 2 TO 4

EXT.P4: TRUE COPY OF THE REPRESENTATION VIA EMAIL DATED
25.04.2024 SUBMITTED BY THE PETITIONER TO
RESPONDENT NO.5-NIA

EXT.P5: TRUE COPY OF THE REPRESENTATION VIA EMAIL DATED
28.04.2024 SUBMITTED BY THE PETITIONER TO
RESPONDENT NOS.1, 6 & 7

RESPONDENTS' EXHIBITS :

NIL