2023 INSC 542

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NOS. OF 2023
(Arising out of SLP (Crl.) Nos.12779-12781 of 2022)

Y. BALAJI ...APPELLANT(S)

VERSUS

KARTHIK DESARI & ANR. ETC. ...RESPONDENT(S)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP (Crl.) No.3941 OF 2022)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP (Crl.) No.11396 of 2022)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP (Crl.) No. 2023)
(Arising out of Diary No.40281 of 2022)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP (Crl.) No. 11397 of 2022)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP (Crl.) No. 2023)
(Arising out of Diary No.961 of 2023)

CRIMINAL APPEAL NOs. OF 2023
(Arising out of SLP (Crl.) Nos.1207-1208 of 2023)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP (Crl.) No. of 2023)
(Arising out of Diary No.5361 of 2023)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP (Crl.) No.3747 of **2023)**

CONTEMPT PETITION (C) NOS.750-751 OF 2023
(in Criminal Appeal Nos.1515-1516 of 2022)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP (Crl.) No. of 2023)
(Arising out of Diary No.10217 of 2023)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP (Crl.) No. of 2023)
(Arising out of Diary No.10186 of 2023)

CRIMINAL APPEAL NO. OF 2023
(Arising out of SLP(Crl) No. of 2023)
(Arising out of Diary No. 5364 of 2023

J U D G M E N T

V. Ramasubramanian, J.

Permission to file special leave petition(s) is granted.

2. Delay condoned.

3. Leave granted.

4. Aggrieved by two independent orders, one passed by a learned Judge of the Madras High Court on 31.10.2022 disposing of a batch of criminal petitions and the other passed by the Division Bench of the Madras High Court on 01.09.2022, putting on hold an investigation by the Enforcement Directorate[1], various persons such as ***(i)*** the *de-facto* complainants; ***(ii)*** third parties; ***(iii)*** the accused; and ***(iv)*** the ED have

[1] For short, "***ED***"

come up with these batch of appeals. Other than the batch of appeals arising out of the said two orders of the High Court, there are also two appeals, one challenging the refusal of the High Court to extend the time for completion of investigation and another challenging an order passed by the Division Bench of the High Court granting limited relief to the Enforcement Directorate to access certain documents available on record in the Special Court trying the predicate offences. Apart from these appeals, there are also two contempt petitions and an application seeking the constitution of a Special Investigation Team.

5. We have heard Shri Tushar Mehta, learned Solicitor General appearing for the ED, Shri Gopal Sankaranarayan, learned senior counsel, Shri Prashant Bhushan and Shri Balaji Srinivasan, learned counsel appearing for one set of parties (victims and a NGO), Shri Kapil Sibal, Shri C.A. Sundaram, Shri Sidharth Luthra, Shri Mukul Rohatgi, learned senior counsel appearing for another set of parties (accused), Ms. V. Mohana and Shri Siddharth Agrawal, learned senior counsel appearing for the *de facto* complainants and Shri Ranjit Kumar, learned senior counsel appearing for the State of Tamil Nadu.

Background Facts

6. The background facts necessary to understand the complexities of the batch of cases on hand are as follows:

(i) In November 2014, the Metropolitan Transport Corporation, wholly owned by the State of Tamil Nadu issued five Advertisements, in Advertisement Nos.1/2014 to 5/2014, calling for applications for appointment to various posts such as Drivers (746 posts), Conductors (610 posts), Junior Tradesman (Trainee) (261 posts), Junior Engineer (Trainee) (13 posts) and Assistant Engineer (Trainee) (40 posts);

(ii) After interviews were held on 24.12.2014 and the Select List got published, one Devasagayam lodged a complaint on 29.10.2015 with the Chennai PS CCB against 10 individuals, alleging that he paid a sum of Rs.2,60,000/- to a Conductor by name Palani for getting the job of Conductor in the Transport Corporation for his son. However, his son did not get a job and when he confronted Palani, he was directed to several persons. When he demanded at least the refund of money, he did not get it. Therefore, he lodged a complaint which was registered as FIR No.441 of 2015 for alleged offences under Sections 406, 420 read with Section 34 of the Indian Penal Code, 1860[2]. In this complaint, the accused who are now before us, including the one who is holding the post of Minister in the Government of Tamil Nadu were not implicated.

(iii) Similarly, one Gopi gave a petition dated 07.03.2016 to the Commissioner of Police claiming that he had applied for the post of Conductor and that after the interviews, he was approached by one Ashokan claiming to be the brother and one Karthik claiming to be the brother-in-law of the Minister Senthil Balaji, demanding a bribe for securing appointment and that he had paid a sum of Rs.2,40,000/- to those persons. Complaining that the Police did not register his

[2] For short "***IPC***"

complaint, the said Gopi filed a petition in Crl. OP No.7503 of 2016 on the file of the High Court of Judicature at Madras under Section 482 of the Code of Criminal Procedure, 1973[3] seeking a direction to the Commissioner of Police to register his complaint and investigate the same.

(iv) The said Crl. OP No.7503 of 2016 filed by Gopi was disposed of by a learned Judge of the High Court by an Order dated 20.06.2016. In the said order, it was recorded that according to the Additional Public Prosecutor, 81 persons had given similar complaints to the Police and that the complaint given by Devasagayam had been registered as FIR No.441 of 2015. The Additional Public Prosecutor took a stand before the High Court in the said petition filed by Gopi that all the 81 persons including Gopi will be enlisted as witnesses in the complaint registered at the instance of Devasagayam.

(v) When it was stated by the Additional Public Prosecutor at the time of hearing of the petition filed by Gopi that all 81 persons including Gopi will be cited as witnesses, in the complaint filed by Devasagayam, the petitioner Gopi objected to the same on the ground that Devasagayam had already been won over by the accused. In fact, it was pointed out that the Minister did not figure as an accused in the complaint of Devasagayam. A specific grievance was projected by Gopi that the Police are not going beyond the lower level officers. Accepting his statement, the High Court passed an Order dated 20.06.2016 in Crl. OP No.7503 of 2016 filed by Gopi, holding that the Police is duty bound to probe beyond the lower level minions to find out where the money had gone. After so holding, the Court directed the Assistant

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[3] For Short "***the Code***"

Commissioner of Police, Central Crime Branch (Job Racketing) to take over the investigation in FIR No.441 of 2015 and also directing the Deputy Commissioner of Police to monitor the same. The Court also held that since a FIR has already been registered at the behest of Devasagayam, it is not necessary to have another FIR registered on the complaint/representation made by Gopi.

(vi) Despite the direction issued by the High Court on 20.06.2016 to the Police to go beyond lower level officers and find out where the money trail ends (more than about 2 crores allegedly given to the Minister during January and March, 2015) and despite Gopi making specific averments against the brother and brother-in-law of the Minister, the Police filed a Final Report on 13.06.2017 under Section 173(2) of the Code, only against 12 individuals including those 10 persons named by Devasagayam. Upon the filing of the Final Report, the case got numbered as Calendar Case No.3627 of 2017 in FIR No.441 of 2015. Neither the Minister nor his brother or brother-in-law, were cited as accused, in the Final Report. The accused named in the Final Report were charged only for the offences under Sections 406, 420 and 419 read with Section 34 IPC and not under any provisions of the Prevention of Corruption Act, 1988[4].

(vii) One V. Ganesh Kumar then lodged a criminal complaint in FIR No.298 of 2017 on 09.09.2017 with the Chennai PS CCB, against four persons including the Minister Senthil Balaji. It was stated in his complaint that he was an employee of the Transport Department and that one of his colleagues by name Annaraj and his friend R. Sahayarajan were taken by one Prabhu (a relative of the Minister) to

[4] For short, "***PC Act***"

the house of the Minister Senthil Balaji and that the Minister instructed them to collect money from persons aspiring to get appointment as Drivers and Conductors. It was further stated in the complaint that as per the directions of the Minister, an amount totaling to Rs.95 lakhs was collected during the period from 28.12.2014 to 10.01.2015 and that though the amount was given to Prabhu and Sahayarajan, the persons who parted with money did not get appointed. Therefore, persons who paid money started exerting pressure upon V. Ganesh Kumar forcing him to lodge a complaint on 09.09.2017. Even this complaint, registered as FIR No.298 of 2017, was only for offences under Sections 406, 420 and 506(1). A Final Report was filed on 07.06.2018 in FIR No.298 of 2017, against the Minister Senthil Balaji and three others, only for offences punishable under Sections 420 and 506(1) read with Section 34 IPC. This Final Report was filed before the Special Court and the case was numbered as CC No.19 of 2020. Despite specific allegations, the offences under the PC Act were not included.

(viii) Another complaint was lodged by one K. Arulmani, on 13.08.2018 with the Commissioner of Police, Chennai City, complaining that a huge amount of Rs.40,00,000/- was collected by his friends who wanted to get employment in the Transport Corporation and that the money was actually paid to Shanmugam, PA to the Minister at the residence of the Minister in the first week of January, 2015. It was further stated in the complaint that after money was paid to Shanmugam, the complainant also met Ashok Kumar (brother of the Minister) and Senthil Balaji (Minister) and that the Minister assured to get appointment orders issued. This complaint

was registered by Chennai CCB PS as FIR No.344 of 2018, again for offences only under Section 406, 420 and 506(1) IPC. ***We do not know why the State Police were averse to the idea of including the offences punishable under the PC Act, in any of the three FIRs. While one may be averse to corruption, one cannot be averse to the PC Act***.

(ix) As had happened in respect of the other two complaints, the complaint in FIR No.344 of 2018 was also investigated (or not investigated) and a Final Report was filed on 12.04.2019. Even this Final Report, taken on record in Calendar Case No.25 of 2021 did not include the offences under the PC Act.

(x) At this juncture, a person by name R.B. Arun Kumar, working as a Driver in the Metropolitan Transport Corporation and who was cited as witness LW 47 in the Final Report in CC No.3627 of 2017 arising out of FIR No.441 of 2015 (Devasagayam's complaint) moved the Madras High Court by way of a petition under Section 482 of the Code in Crl. O.P No.32067 of 2019, seeking further investigation in the case, on the ground that the State Police have not acted as per the directions issued by the High Court in its order dated 20.06.2016 in Crl. O.P. No.7503 of 2016 to go beyond the lower level officers. In his petition, R.B. Arun Kumar also pointed out that the specific allegation of a huge amount of more than Rs.2 crores, having been paid to the Minister Senthil Balaji, had been completely suppressed by the investigating agency and that a dummy charge-sheet had been filed against minions. Therefore, by an order dated 27.11.2019, the High Court directed the Assistant Commissioner of Police, CCB (Job Racketing) to conduct further investigation in CC No.3627 of 2017 and

to complete the same within six months.

(xi) Emboldened by the non-inclusion of the offences under the PC Act in any of the three charge-sheets, Minister Senthil Balaji, arrayed as Accused No.1 in CC No.19 of 2020 arising out of FIR No.298 of 2017 lodged by V. Ganesh Kumar, filed a petition in Criminal M.P. No.7968 of 2020 seeking his discharge in CC No.19 of 2020. But the Special Court dismissed the petition for discharge, by an order dated 26.08.2020. Against the said order dismissing his discharge petition, the Minister filed a criminal revision petition in Crl. R.C. No.224 of 2021 on the file of the High Court.

(xii) But in the meantime, a Final (further) Report under Section 173(8) of the Code was filed in C.C.No. 24 of 2021 against 47 persons including the Minister Senthil Balaji and Shanmugam (PA to the Minister) in which the offences under the PC Act were included.

(xiii) Upon coming to know of the way in which the entire recruitment of candidates to various posts in the Transport Corporation had gone on, candidates who appeared for the selection but did not get selected started filing writ petitions, challenging the entire selection. A writ petition in WP No.9061 of 2021 was filed by one A. Nambi Venkatesh seeking to set at naught, the appointment of Junior Engineers. Similarly, one P. Dharmaraj and M. Govindarasu filed a writ petition in WP No.8991 of 2021, with regard to the post of Assistant Engineers.

(xiv) ***In May, 2021 the political climate in the State changed. Though the principal actors changed, the script remained the same for the victims and the political fortunes of the Minister continued, as he got a berth in the Cabinet, even in***

the new dispensation.

(xv) Thereafter, the person alleged to be the PA to the Minister, namely, Shanmugam, who was arrayed as Accused No.3 in CC No.25 of 2021 arising out of FIR No.344 of 2018 lodged by Arulmani, filed a petition in Crl.O.P No.13374 of 2021 on the file of the High Court seeking to quash CC No.25 of 2021. He claimed in the said petition that a compromise had been reached between the victims (Arulmani and others and the accused) and that, therefore, the complaint may be quashed. Following suit, R. Sahayarajan who was Accused No.3 in CC No.19 of 2020 also filed a quash petition in Crl.O.P No.13914 of 2021, enclosing a joint compromise memo seeking to quash CC No.19 of 2020. Similarly, one Vetrichelvan (Accused No.10) filed Crl. O.P No.6621 of 2021 for quashing the proceedings in CC No.24 of 2021.

(xvi) By an order dated 30.07.2021, the High Court quashed CC No.25 of 2021 on the basis of the Joint Compromise Memo. This order was passed completely overlooking the nature of the allegations, the offences for which the accused ought to have been charged as well as the previous orders passed by the High Court itself.

(xvii) Just a day before the High Court passed orders quashing CC No.25 of 2021, the ED registered an Information Report on 29.07.2021 in ECIR/MDSZO/21/2021 and issued summons to the Minister Senthil Balaji.

(xviii) At this stage, Devasagayam who filed the first complaint in FIR No.441 of 2015 and in whose case a Final Report was filed in CC No.3627 of 2017, filed a very strange petition on the file of the High Court in Crl.O.P. No.15122 of 2021 seeking *de novo* investigation in CC No.24 of 2021. It must be recalled at this stage that

Devasagayam's complaint was registered as FIR No.441 of 2015 dated 29.10.2015 and a Final Report was filed therein on 13.06.2017 leading to Calendar Case No.3627 of 2017. But by the orders of the High Court, the complaint of Gopi and others got clubbed with the investigation in Devasagayam's case leading to the registration of a separate Calendar Case in CC No.24 of 2021. The clubbing actually happened after an allegation was made before the High Court by Gopi, (petitioner in Crl. O.P No.7503 of 2016) to the effect that Devasagayam had been won over. While ordering the complaint of Gopi to be clubbed with the investigation in FIR No.441 of 2015, ***the High Court did not perhaps realize that it may enable Devasagayam to derail (incidentally he had retired from Railways and the word "derail" suits him) even the proceedings in CC No.24 of 2021.***

(xix) Finding that the offences under the PC Act were included only in one of the cases and not in others and that it had enabled the High Court even to quash one of the four calendar cases on the basis of a Joint Compromise Memo, candidates who were unsuccessful in the recruitment and who had filed writ petitions in the High Court challenging the process of selection, filed impleadment petitions, both in the quash petitions in other cases as well as in the petition filed by Devasagayam for *de novo* investigation.

(xx) At this stage, ED filed miscellaneous petitions in CC Nos. 19/20, 24/21 and 25/21 before the Trial Court seeking certified copies of the FIR, statements of witnesses, Final Report, etc. By an order dated 09.11.2021, the Trial Court directed the supply of certified copies of the FIRs, complaints and the statements under Sections 161 and 164 of the Code. However, the Trial Court refused to issue

certified copies of unmarked documents.

(xxi) As against the order dated 30.07.2021 passed by the Madras High Court quashing CC No.25 of 2021 on the basis of the Joint Compromise Memo, a special leave petition was filed by one P. Dharmaraj. It may be recalled that he was one of the unsuccessful candidates and he had filed a writ petition seeking to quash the entire selection.

(xxii) An NGO by name Anti-Corruption Movement also filed a special leave petition against the order of the High Court quashing CC No.25 of 2021.

(xxiii) Aggrieved by one portion of the order of the Trial Court refusing to grant certified copies of unmarked documents, the ED filed petitions before the High Court. By an order dated 30.03.2022 the High Court permitted ED to conduct an inspection under Rule 237 of the Criminal Rules of Practice, 2019[5] and thereafter to make third party copy applications for supply of copies of documents. The High Court also noted that under Rule 238, ED was entitled even to take extracts and thereafter file a fresh third party copy application before the Special Court. Challenging the limited relief granted by the High Court to ED in its order dated 30.03.2022, a person who is Accused No.3 in CC No.3627 of 2017 (CC No.24/2021) has come up with a special leave petition which forms part of the present batch of cases.

(xxiv) Thereafter, three writ petitions came to be filed, one by Minister Senthil Balaji and another by Shanmugam, alleged to be his Secretary and the third by Ashok Kumar (brother of the Minister), challenging the summons issued by ED. These writ petitions were

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[5] For short "***Rules, 2019***"

allowed by the High Court by an order dated 01.09.2022, primarily on the ground that one of the four calendar cases had already been quashed by the High Court by order dated 30.07.2021 on the basis of a Joint Compromise Memo and that further proceedings in the other calendar cases had been stayed by the High Court.

(xxv) But by a Judgment dated 08.09.2022, this Court overturned the order of the High Court dated 30.07.2021 and not only restored the calendar cases back to file but also directed the inclusion of the offences under the PC Act.

(xxvi) Despite the Judgment of this Court dated 08.09.2022, the High Court passed an order dated 31.10.2022 allowing the petition filed by Devasagayam and ordered a *de novo* investigation.

(xxvii) Therefore, challenging the order of the High Court dated 01.09.2022 quashing the summons issued by them, ED has come up with three appeals and the candidate who was unsuccessful in the selection and who has filed a writ petition before the High Court has come up with one appeal.

(xxviii) Challenging the order of the High Court dated 31.10.2022 directing *de novo* investigation, the ED has come up with one appeal, two candidates who were unsuccessful in the selection have come up with two separate appeals, Anti-Corruption Movement has come up with one appeal, the person who compromised the matter with the accused and supported the accused before the High Court for quashing the complaint has come up with one appeal and one of the accused has come up with another appeal.

(xxix) In other words, we have four appeals on hand arising out of the order of the High Court dated 01.09.2022 quashing the summons

issued by ED. Similarly, we have six appeals challenging the order dated 31.10.2022 passed by the High Court directing *de novo* investigation.

(xxx) We have two more appeals, which do not form part of the main stream. One of them is by an accused challenging the order of the High Court dated 30.03.2022, permitting the ED to conduct an inspection of the documents before the Trial Court under Rule 237 of the Rules, 2019. Another appeal is filed by the unsuccessful candidate challenging an order passed by the High Court dismissing a petition for extension of time to complete investigation.

(xxxi) Thus, we have on hand 12 appeals, four of them challenging the quashing of summons issued by ED, six of them challenging the order for *de novo* investigation, one of them challenging an order permitting ED to have inspection of documents and the last arising out of the order refusing to grant further time for completion of investigation.

(xxxii) Other than the appeals, we also have two contempt petitions filed by the Anti-Corruption Movement, complaining willful disobedience by the State of the directions issued by this Court in the order dated 08.09.2022 in Criminal Appeal Nos.1515-1516 of 2022.

(xxxiii) We also have an application in IA No.26527 of 2023 filed by the appellant in one of these appeals, who is an unsuccessful candidate. The prayer in this application is for the constitution of a Special Investigation Team to undertake a comprehensive investigation into the entire scam and for the appointment of a senior lawyer of repute as the Special Public Prosecutor to prosecute the accused. This application is taken out on the ground that a similar prayer made

in Criminal Appeal Nos.1514-1516 of 2022 was turned down by this Court, in the order dated 08.09.2022, in the hope that the State Police would act fairly and impartially. According to the applicant/appellant, the State Police had belied the hope expressed by this Court and that therefore it is now time to constitute a Special Investigation Team.

7. Since the batch of appeals on hand (not including the contempt petitions and the application for constitution of a Special Investigation Team) arise out of four different orders of the High Court, let us divide this Judgment into four parts, the first dealing with the challenge to the order for *de novo* investigation; the second dealing with the challenge to the order setting aside the summons issued by ED; the third dealing with the order permitting the ED to have inspection of the records of the Trial Court; and the fourth dealing with an order refusing to grant extension of time to complete investigation.

Part-I (Challenge to the order for *de novo* investigation)

8. As we have pointed out earlier, *de novo* investigation has been ordered by the High Court by its decision dated 31.10.2022 at the instance of one Devasagayam, who was the first person to lodge a complaint way back on 29.10.2015 alleging that one C. Palani working in the Transport Corporation received a sum of Rs.2,60,000/- for securing the job of a Conductor for his son and that he and his

accomplices committed offences punishable under Sections 406 and 420 read with Section 34 IPC. This complaint was registered as FIR No.441 of 2015. Despite the fact that the allegations of Devasagayam related to payment of money to an employee of the Transport Corporation for procuring a job for his son, the offences under the PC Act were not included in the FIR. Interestingly, Devasagayam is a retired employee of the Railways. ***While he was happy about paying illegal gratification for procuring employment for his son, he was not unhappy about the Police not including the offences under the PC Act in FIR No.441 of 2015.***

9. This attitude of Devasagayam was responsible for an allegation being made against Devasagayam in a petition filed by another victim by name Gopi, in Criminal O.P. No.7503 of 2016, that Devasagayam had been won over by the accused.

10. On Devasagayam's complaint, the Investigating Officer filed a Final Report on 13.06.2017, which led to the registration of a Calendar Case in CC No.3627 of 2017. Even in this Final Report, the offences under the PC Act were not included. Devasagayam did not bother to question the Police or move the Court as to why the offences under the PC Act were not included.

11. But fortunately, pursuant to the order passed by the High Court in the petition filed by Gopi, another Calendar Case came to be registered in CC No.24 of 2021, on a further Report submitted by the Police under Section 173(8) of the Code. In this CC No.24 of 2021, the Minister and his accomplices were included as accused and the offences under the PC Act were included.

12. This further Report under Section 173(8) of the Code which culminated in the registration of CC No.24 of 2021 was filed on 08.03.2021.

13. The inclusion of the name of the Minister and his accomplices in the Final Report submitted under Section 173(8) and the inclusion of the offences under the PC Act seems to have bothered Devasagayam more than the Minister himself. Therefore, Devasagayam filed a petition in Criminal O.P. No.15122 of 2021 in CC No.24 of 2021 seeking a direction to the Investigating Officer to conduct a *de novo* investigation.

14. The grounds on which Devasagayam sought *de novo* investigation were quite strange. In his petition seeking *de novo* investigation, Devasagayam stated that though his specific complaint was against one Baskar and nine others, the Final Report filed under Section 173(8) included other persons, who, according to Devasagayam, had

no connection with the case. Devasagayam also stated in his petition seeking *de novo* investigation that Baskar and Kesavan against whom he made a specific complaint, are not shown as accused. In fact, the allegation made by Gopi in his petition before the High Court that Devasagayam had been won over by the accused, was not without substance, as can be seen from a few averments made by Devasagayam in his petition Criminal O.P. No.15122 of 2021. For instance, in paragraph 7 of his petition seeking *de novo* investigation, he stated as follows:

> "It is crystal clear that the Petitioner and his son has made a specific complaint against one Baskar and Kesavan. The fictitious persons namely Baskar and Kesavan was arrayed as Accused No.1 and 2. ..."

15. It is not known whether Devasagayam was referring to the persons against whom he made a specific complaint as fictitious persons or whether he was calling the Minister and the person alleged to be his Secretary, named as accused in the Final Report as fictitious persons.

16. In paragraph 9 of his petition seeking *de novo* investigation, Devasagayam even relied upon a judicial precedent and contended in paragraph 10 that the Final Report under Section 173(8) had been filed without issuing notice to him and that the charges contained in

the Report against the other accused are irrelevant to the facts of his own case. Paragraphs 28 to 30 of Devasagayam's petition seeking *de novo* investigation show that he had gone to the extent of pleading the case of the main culprits. These paragraphs read as follows:

> "28. The gross violation and the irregularity in concluding the final report, with all the above it is pertinent to state that the final report did not warrant any commission of offence against anybody and the crime registered is motivated. A Court proceeding ought not to be permitted to degenerate into a weapon of harassment of prosecution.
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> 29. The allegations made in the Final report are so absurd and inherently Improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused, but may escape from the clutches of law.
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> 30. The present criminal proceeding is manifestly attended with mala fide and/or the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

17. ***It appears that Devasagayam, originally seems to have had a genuine grievance against the culprits at the bottom of the layer, but he later turned out to be a Trojan horse, willing to sabotage the investigation against influential persons***. This fact is borne out more by his pleadings in paragraph 31 of the petition in Criminal O.P. No.15122 of 2021. The relevant portion of paragraph 31 reads as follows:

> "31. ...**Where criminal proceedings are initiated based on illicit material collected on search and arrest which are per se illegal and vitiate not only a conviction and**

> **sentence** based on such material but also the trial itself, the proceedings cannot be allowed to go on as it cannot but amount to abuse of the process of the court; **in such a case not quashing the proceedings would perpetuate abuse of the process of the court resulting in great hardship and injustice to the accused**. In our opinion, exercise of power under section 482 Cr.P.C. to quash proceedings in a case like the one on hand, would indeed secure the ends of justice."

18. It is seen from the above averment of Devasagayam, that he was virtually pleading the case of the accused and seeking *de novo* investigation. ***But alas, Devasagayam was not the only one to be blamed. He had a silent partner in the prosecution which we shall see now. If Devasagayam leapfrogged several miles to protect the actual culprits, the High Court seems to have gone one step further by ordering de novo investigation on a point not canvassed in the petition filed by Devasagayam.*** In fact, in the main paragraph 21 of the impugned order of the High Court dated 31.10.2022, the High Court has discussed elaborately the contentions advanced on behalf of Devasagayam in support of his plea for *de novo* investigation. These contentions were in sync with the averments contained in his petition in Criminal O.P. No.15122 of 2021.

19. Though the original petition and the arguments recorded in paragraph 21 of the impugned order do not reflect one particular ground, the operative portion of the impugned order allows *de novo* investigation on a ground not raised in the petition. In paragraph 55 of

the impugned order, it was recorded by the High Court that as per the affidavit filed by the Investigating Officer, the investigating agency had seized the register used for entering interview marks and sent the same to the Forensic Department for analysis to find out the manipulations and that the Final Report under Section 173(8) of the Code was filed even before the receipt of the report of the Forensic Department. It is on this contention that the High Court thought fit to order *de novo* investigation not only in the case in which Devasagayam sought *de novo* investigation but also in all the criminal cases. ***What is interesting is that the order directing de novo investigation in all the three cases, has actually inured to the benefit of the accused, but the High Court put it on the ground that the credibility of the investigation should not be eroded. In fact, the accused did not seek de novo investigation on the ground of slackness on the part of the Investigating Officer, but it was Devasagayam who sought it, with the able assistance of the Investigating Officer.***

20. The fact that Devasagayam's petition was intended to help the accused is also borne out by one more fact. His original complaint dated 29.10.2015 which led to the registration of FIR in Crime No.441 of 2015 was against ten persons and the offences registered therein

were only under Sections 406 and 420 read with Section 34 IPC. On this complaint, a Final Report was filed under Section 173(2) of the Code on 13.06.2017 and this resulted in the registration of Calendar Case in CC No.3627 of 2017. Devasagayam was happy with the fact that the Report filed under Section 173(2) did not include the offences under the PC Act. Devasagayam was not bothered at that time about the fact that the register for entering the interview marks, sent to the Forensic Department had not been received. Suddenly, he became worked up after the filing of the Report under Section 173(8) leading to the registration of Calendar Case No.24 of 2021 including the offences under the PC Act.

21. ***What is shocking is that the High Court directed reinvestigation to be started ab initio, wiping out the earlier investigation altogether. One saving grace in this case is that even the learned senior counsel appearing for Devasagayam and the learned senior counsel appearing for the accused could not support the operative portion of the impugned order dated 31.10.2022, in Criminal O.P. No.15122 of 2021.*** Paragraphs 79 to 81 of the impugned order dated 31.10.2022, needs to be extracted. They read as follows:

> "79. Therefore, I am of the view that **reinvestigation to be**

> **started ab-initio wiping out the earlier investigation altogether** and to collect fresh evidence and material in the above criminal cases. Hence, I allowed the Crl.O.P.No. 15122 of2021 in C.C.No.24 of 2021 for de-novo investigation along with C.C.No.19 of 2021.
>
> 80. Therefore, it is directed the investigation should be conducted ab-initio comprehensively **without reference to the earlier investigation on record** covering all the aspects in relation C.C.No.19 of 2020 and C.C.No.24 of 2021 including **whether the offence under Prevention of Corruption Act, 1988 are made out** against the accused. The special Court before which C.C.No.19 of 2020 and C.C.No.24 of 2021 are pending will be at liberty to exercise power under Section 216 Cr.P.C, if there is any reluctance on the part of the State/investigating Officer.
>
> 81.Further, on completion of investigation, if the investigating agency makes out a case for cognizance of offence against the accused then the investigating agency of the predicate offence shall provide the relevant materials/documents to the Directorate of Enforcement so as to enable it to invoke its jurisdiction to commence its enquiry under the P.M.L.A Act thereafter."

22. ***By issuing the aforesaid direction, the High Court not only directed the wiping out of the investigation carried out so far, but virtually wiped out even the judgment of this Court dated 08.09.2022 passed in Criminal Appeal Nos.1514-1516 of 2022. Hail judicial discipline!***

23. Shri Kapil Sibal, learned senior counsel appearing for the accused and Shri Siddharth Aggarwal, learned senior counsel for Devasagayam, contended before us ***that the problem reflected in paragraphs 79 to 81 of the impugned order is one of language and not of law.*** According to them, the expression "*wiped out*" had

been used out of context and that what was sought to be removed by the High Court was only the conclusions reached by the Investigating Officer on the basis of the materials already collected. In other words, their contention was that the investigation so far made and the materials so far collected can never be thrown into the dustbin but that the conclusions reached by the Investigating Officer on the basis of those materials alone required to be wiped out.

24. ***It is true that English is not our mother tongue. It is also true that some allowance (or discount ranging from 0 to 90%) can be given at times to the use of certain loose expressions. But the expressions used in paragraphs 79 to 81 of the impugned order do not reflect a mere deficiency in language or law, but something more.*** As rightly pointed out by Shri Gopal Sankaranarayanan, learned senior counsel, the High Court has used in the impugned order, several words and expressions such as, ***(i)*** reinvestigation to be started *ab initio,* ***(ii)*** wiping out the earlier investigation altogether; ***(iii)*** collect fresh evidence and material; and ***(iv)*** without reference to the earlier investigation on record.

25. ***Apart from the usage of the above words and phrases, which in our opinion, not merely opened up a small loophole in the law but opened up a huge black hole in the galaxy, the High***

Court issued one more direction in paragraph 80. This direction is to the investigating agency to find out whether the offences under the PC Act are made out against the accused or not. Such a direction stares at what this Court has said in paragraph 45 of the decision dated 08.09.2022 in Criminal Appeal Nos.1514-1516 of 2022. This Court has said "*We are constrained to say that even a novice in Criminal Law would not have left the offences under the PC Act, out of the final report.*" Ignoring the said opinion of this Court, the High Court has directed the Investigating Officer to find out afresh whether the offences under the PC Act are made out or not. Therefore, the problem with the impugned order is not merely one of improper usage of language, as sought to be diluted by the learned senior counsel for the accused and the complainant, but something more.

26. Even while supporting the impugned order, the learned senior counsel for the accused and the learned senior counsel for Devasagayam, requested us to read down paragraphs 79 to 81 of the impugned order and go by its intent. But it is easier said than done since ***we have had precedents of this Court reading down statutes but never one of reading down a judgment.*** In view of the stand so taken even by the counsel for the accused and counsel for Devasagayam, it may not be strictly necessary to deal with the law

relating to *de novo* investigation. Yet we would make a useful reference to the decision in ***Vinay Tyagi*** vs. ***Irshad Ali alias Deepak***[6].

27. ***Vinay Tyagi*** (supra) arose out of certain peculiar facts. The Special Cell of Delhi Police registered a First Information Report against two persons under some provisions of the Explosive Substances Act, 1908, a few provisions of the IPC and Section 25 of the Arms Act. The accused filed a petition in the High Court of Delhi seeking a transfer of investigation to CBI on the ground that they were working as Informers for the Intelligence Agencies and that they have been falsely implicated. Though the High Court entertained the petition, no stay was granted. Therefore, the Special Cell of Delhi Police proceeded with the investigation and filed a charge-sheet. Thereafter, the High Court passed an order directing the CBI to undertake an inquiry and submit a report to the Court. Accordingly, CBI undertook an inquiry and filed a report stating that the investigation carried out by Delhi Police did not inspire confidence and that further investigation was needed. Thereafter, CBI filed a closure report. On the basis of the same, the accused sought discharge. Since discharge was not ordered, they approached the High Court, but the High Court remanded the matter back to the Sessions Court. It is the

[6] (2013) 5 SCC 762

said order of remand that was challenged by the Investigating Officer before this Court. This Court framed two questions as arising for consideration in ***Vinay Tyagi***. They read as follows:-

> ***"Question 1***
>
> **1.1.** Whether in exercise of its powers under Section 173 of the Code of Criminal Procedure, 1973 (for short "the Code"), the trial court has the jurisdiction to ignore any one of the reports, where there are two reports by the same or different investigating agencies in furtherance of the orders of a court? If so, to what effect?
>
> ***Question 2***
>
> **1.2.** Whether the Central Bureau of Investigation (for short "CBI") is empowered to conduct "fresh"/ "reinvestigation" when the cognizance has already been taken by the court of competent jurisdiction on the basis of a police report under Section 173 of the Code?"

28. While dealing with the First Question, this Court pointed out that investigation can be of three kinds namely, ***(i)*** initial investigation; ***(ii)*** further investigation; and ***(iii)*** fresh or *de novo* or reinvestigation. After exploring the meaning of "*initial investigation*" in paragraph 21 and the meaning of "*further investigation*" in paragraph 22, this Court recorded in paragraph 23, what a fresh investigation/reinvestigation/*de novo* investigation is and the circumstances under which the same can be ordered. Paragraph 23 of the decision reads as follows:-

> "**23.** However, in the case of a "fresh investigation", "reinvestigation" or "de novo investigation" there has to be a definite order of the court. The order of the court unambiguously should state as to whether the previous

> investigation, for reasons to be recorded, is incapable of being acted upon. Neither the investigating agency nor the Magistrate has any power to order or conduct "fresh investigation". This is primarily for the reason that it would be opposed to the scheme of the Code. It is essential that even an order of "fresh"/"de novo" investigation passed by the higher judiciary should always be coupled with a specific direction as to the fate of the investigation already conducted. The cases where such direction can be issued are few and far between. This is based upon a fundamental principle of our criminal jurisprudence which is that it is the right of a suspect or an accused to have a just and fair investigation and trial. This principle flows from the constitutional mandate contained in Articles 21 and 22 of the Constitution of India. Where the investigation ex facie is unfair, tainted, mala fide and smacks of foul play, the courts would set aside such an investigation and direct fresh or de novo investigation and, if necessary, even by another independent investigating agency. As already noticed, this is a power of wide plenitude and, therefore, has to be exercised sparingly. The principle of the rarest of rare cases would squarely apply to such cases. Unless the unfairness of the investigation is such that it pricks the judicial conscience of the court, the court should be reluctant to interfere in such matters to the extent of quashing an investigation and directing a "fresh investigation".

29. In paragraphs 43 and 45, this Court held that the power to order *de novo* investigation vests only with superior courts and that the same has to be exercised sparingly in exceptional cases. In paragraph 46, this Court pointed out that while ordering *de novo* investigation, there are two options open to the superior court namely, ***(i)*** to direct the report already prepared or the investigation so far conducted, not to form part of the records of the case; or ***(ii)*** to direct the report already prepared or the investigation so far conducted to form part of the record. If the superior court is silent on this aspect, the report

already prepared or the investigation so far conducted will form part of the record. In other words, if the superior court intended that the investigation so far conducted and the report already filed should not form part of the record, it should specifically say so.

30. In the order impugned in these appeals, the High Court has indicated by using four different expressions and phrases that the investigation so far conducted shall not form part of the record. ***But even according to the learned senior counsel for Devasagayam and learned senior counsel for the accused, the operative portion of the impugned order of the High Court need not be understood in such a manner. If that is so, all those phrases and expressions deserve to be removed. If they are removed, the life gets ebbed out of the impugned order, which in our opinion, it richly deserves.***

31. Before we wind up our discussion in Part-I, it may be necessary to deal with a few preliminary objections raised on behalf of the accused to the very maintainability of these appeals. The question of maintainability is raised on the basis of the status of the parties. Therefore, it is essential to take stock of the status of parties who have filed appeals against the order of the Madras High Court for *de novo* investigation. For easy appreciation, the status of parties who are the

appellants in the appeals arising out of the order for *de novo* investigation and a brief indication of who they are, are presented in a tabular column as follows:-

Civil Appeals arising out of Special Leave Petitions and Diary Numbers	***Name of appellant***	***Brief description of who he is and how he is aggrieved by the order of de novo investigation***
SLP (Crl.) Nos.1207-1208 of 2023	Director, Enforcement	ED is aggrieved because any shadow cast on the investigation of the predicate offence, is taken advantage of by the accused to thwart the investigation of the offence of money laundering.
SLP (Crl.) No.11396 of 2022	Y. Balaji	He was one of the aspirants for the post of Assistant Engineer in the Transport Corporation. His grievance is that he did not get selected on account of the corrupt practices adopted by the Minister and others. He has also filed writ petition in WP No.24275 of 2021 seeking a direction to the Director, Vigilance and Anti-corruption to conduct further investigation in CC No.19 of 2020. The writ petition is pending.
SLP (Crl.) No.11397 of 2022	S. Prithvirajan	He is one of the aspirants for the post of Junior Engineer. He claims that his marks were tampered to accommodate less meritorious candidates who indulged in corrupt practices.
SLP (Crl.) D.No.961 of 2023	Anti-Corruption Movement	A NGO interested in combating corruption.
SLP(Crl.)D.No. 10217 of 2023	V. Ganesh Kumar	He was the complainant in FIR No.298 dated 09.09.2017, registered against *(i)* Minister Senthil Balaji; *(ii)* Prabhu; *(iii)* Sahayarajan; and *(iv)* Annaraj, for offences under Sections 406, 420 and 506(1) IPC. Interestingly, he entered into a compromise with the accused and supported them in

		their petition for quashing of the FIR. Now he is aggrieved by the order for *de novo* investigation for obvious reasons.
SLP(Crl.)D.No. 10186 of 2023	R.Sahayarajan	He is one of the accused in the complaint given by V. Ganesh Kumar and he filed a petition before the High Court seeking to quash the FIR and the charge-sheet on the ground of a compromise.

32. Shri Mukul Rohatgi, Shri Kapil Sibal, Shri Sidharth Luthra, and Shri C.A. Sundaram, learned senior counsel appearing for different accused, uniformly raised a chorus, vociferously objecting to the maintainability of the appeals by each of those appellants, against the order of *de novo* investigation. Their contention is that investigation of a criminal offence cannot be a free-for-all exercise and that one must have locus to challenge the proceedings. According to the learned counsel, some of the appellants who are strangers, have not only come to court without any locus, but are also guilty of coming with unclean hands as can be seen from the fact that they have managed even to obtain copies of the confession statements recorded under Section 164 of the Code. It is also contended that some of the appellants before us are obviously set up by a rival political party and that therefore, this Court should not entertain the appeals filed by persons who have no *locus standi*.

33. It is true that criminal jurisprudence recognizes a limited role for victims and it is the State which is entrusted with the onerous responsibility of prosecuting the accused and getting them punished. ***But we must remember that certain theories of law were developed at a time when the process of administration of the criminal justice system was in the hands of honest and responsible Police officials and the stream remained largely unpolluted. Today the situation is different. In cases of this nature, where some of the complainants and the accused have come together to form an unholy alliance, the victims of crime cannot be left at the mercy of such partnerships.*** We have seen in this case, persons aspiring to secure public employment, paying illegal gratification, through persons who are public servants, to persons in power and later coming to the Court supporting the accused on the basis of an out of Court settlement. ***What was compromised between the complainant and accused is not just their disputes, but justice, fair-play, good conscience and the fundamental principles of criminal jurisprudence. In fact, the case on hand is one where there are two teams just for the purpose of record, but no one knows who is playing for which team and where the match was fixed.***

34. As a matter of fact, very vocal submissions were made on the question of locus in the previous round of litigation in ***P. Dharamaraj vs. Shanmugam***[7] in Criminal Appeal Nos.1514-1516 of 2022. But the objections relating to maintainability were rejected by this Court in the very same proceedings in the first round. Therefore, the accused cannot raise the question of locus again and again. But for the fact that the victims came to this Court in the first round of litigation, a huge scam would have been buried on the basis of a compromise.

35. One more objection was raised about the locus of Y. Balaji, the appellant in one of these appeals, on the ground that he had already filed a writ petition in WP No.24275 of 2021 on the file of the High Court seeking further investigation and that, therefore, he must pursue his remedies only in that writ petition. But this argument seeks to sweep under the carpet, the actual reality that by virtue of the impugned order dated 31.10.2022 directing *de novo* investigation, the writ petition filed by Y. Balaji for further investigation has been rendered infructuous. Therefore, if such a person who participated in the selection but who did not get appointment due to the corrupt practices adopted by the concerned persons and who had already filed a writ petition seeking further investigation, does not have *locus*

[7] 2022 SCC OnLine SC 1186

standi, we do not know who else will have.

36. ***The investigation and trial of a criminal case cannot be converted by the complainant and the accused into a friendly match. If they are allowed to do so, it is the Umpire who will lose his wicket.***

37. Much ado was made about some of the appellants filing copies of the confession statements under Section 164 of the Code, as part of the paper book in the appeals. It was contended by the learned senior counsel that the confession statements recorded before the Magistrate are sacrosanct and that the copies of the same cannot be made available to third parties and that at any rate, the appellants have not even explained as to whether they filed third party copy applications as stipulated in the Rules, 2019 and obtained these copies officially.

38. Reliance was placed upon Rule 207(12) and Rule 210 of the Rules, 2019 in support of his contention. Rule 207(12) and Rule 210 read as follows:-

> "**207(12)** After recording the confession statement of an accused, the Magistrate shall arrange to take two photocopies of the same under his direct supervision and certify the same as true copies. The confession statement in original shall be sent in a sealed cover to the jurisdictional Court through a special messenger or by Registered Post with Acknowledgment Due. One certified copy of the confession statement shall be immediately furnished to the Investigating Officer free of cost with a specific direction to use it only for the purpose of investigation and not to make

its contents public until the investigation is completed and final report filed. The other certified copy of the confession statement shall be kept in a sealed cover in safe custody of the Magistrate.

210. Application for copies by third parties. – Application for the grant of copies of judgment or order or any proceeding or document in the custody of a Court by a third party to the proceeding shall be allowed only by order of the Court obtained on a petition supported by an affidavit setting forth the purpose for which the copy is required."

39. It is clear from Rule 207(12) that a confession statement is a confidential document till the time investigation is complete and Final Report filed. The relevant portion of Rule 207(12) states "*... not to make its contents public until the investigation is completed and final report filed*".

40. Rule 210 extracted above enables "*third parties to apply to the Court for the grant of copies of Judgment or order or any proceeding or document in the custody of a Court*". Therefore, it is not as though the appellants have filed something to which they could have never had any access. ***It is an irony that persons who are victims of a huge jobs-for-cash scam are alleged to have come to Court with unclean hands by persons whose hands were allegedly tainted with corruption money.***

41. As a matter of fact, right from the time when Gopi approached the High Court with a petition in Crl. O. P. No. 7503 of 2016, there

have been several proceedings before the High Court where the parties have filed copies of several documents. There were also writ petitions filed by unsuccessful candidates challenging the selection. The counter filed by the Investigating Officer in those cases have been extracted by this Court in the Judgment dated 08.09.2022 in ***Dharmaraj*** *vs.* ***Shanmugam***[8]. Therefore, many of the documents have started appearing in the public domain at the instance of several persons. Hence, it is futile to contend that the appeals are liable to be thrown out on the ground that the appellants have come up with documents to which they could not have had any access.

42. Though Shri Gopal Sankaranarayanan, learned senior counsel appearing for the appellant in one of these appeals refrained from giving any political colour to the case on hand, it was contended by Shri Kapil Sibal, learned senior counsel that the appellant had been obviously set up by a rival political party. In support of his contention, he relied upon the timeline of events that began after the lodging of the first complaint in FIR No.441 of 2015. Though we did not wish to go into these details, we are compelled at least to touch the peripheries, lest we shall be held guilty of not dealing with an argument advanced across the Bar. The timeline of events provided by Shri Kapil Sibal,

[8] Criminal Appeal Nos.1514-1516 of 2022

learned senior counsel is as follows:-

29.10.2015	Complaint of Devasagayam against 10 individuals but not the Minister.
7/8.03.2016	Complaint of one Gopi alongwith several others alleging that the Minister, his brother and his brother-in-law demanded illegal gratification for making appointments.
20.06.2016	Criminal OP No.7503 of 2016 filed by Gopi was allowed by the High Court.
13.06.2017	A report under Section 173(2) of the Code was filed in the FIR lodged by Devasagayam, only for offences under Sections 406, 419 and 420 against 12 persons. The Minister was not named there.
22.08.2017	Minister Senthil Balaji formed part of the group of 18 MLAs who submitted a letter to the Governor.
09.09.2017	FIR No.298 of 2017 registered on the complaint of one V Ganesh Kumar against the Minister and three others.
18.09.2017	The Minister was disqualified.
13.06.2018	Cognizance was taken in CC No.19 of 2020 arising out of FIR No.298 of 2017 against the Minister and three others.
13.08.2018	A complaint is lodged by one Arulmani, naming the Minister, his brother Ashok Kumar and his PA Shanmugam. This results in the registration of FIR No.344 of 2018, *albeit* only for offences under Sections 406, 420 and 506 IPC
14.12.2018	The Minister defected to another political party.
12.04.2019	Final report filed in FIR No.344 of 2018 (becomes Calendar Case No.25 of 2021).
23.05.2019	Minister Senthil Balaji wins the by-elections, as a candidate of the party which he joined in 2018.
27.11.2019	Cognizance was taken in CC No.25 of 2021 arising out of FIR No.344 of 2018.
26.08.2020	The petition filed by Senthil Balaji for discharge is dismissed.
26.02.2021	General Elections to the State Assembly are announced.
08.03.2021	A final report under Section 173(8) of the Code is filed against the Minister and others, not only for the offences under the IPC but also for offences under the PC Act.
01.04.2021	Cognizance is taken in CC No.24 of 2021

02.05.2021	Results of the general election to the State Assembly are declared, the party in power is voted out, a new dispensation forms the Government and he becomes a Minister in the new regime.
July, 2021	A quash petition is filed and a compromise is reached.
30.07.2021	The High Court quashes CC No.25 of 2021 on the basis of the Joint Compromise Memo.

43. On the basis of the above timeline of events, it is contended by Shri Kapil Sibal that the Minister was implicated in the case on 08.03.2021, for offences under the PC Act immediately after the announcement of the elections to the Legislative Assembly, as he had switched over from the party in power to another. Therefore, it is claimed that the appellant is obviously set up by the political opponents in hot pursuit of the Minister.

44. But all that we could make out of the above timeline of events is that trouble started for the Minister, even when he was a Minister in a different political dispensation and even before he became part of a group of 18 MLAs in August, 2017. It must be remembered that the allegations in Criminal O.P. No.7503 of 2016, disposed of by the High Court on 20.06.2016, were made at a time when he was still a Minister in the previous regime and it happened more than a year before he became part of a splinter group. In the order dated 20.06.2016, it was recorded as a contention of the counsel for the

petitioner in paragraph 6 that the Police had seen to it that the name of the Minister did not figure in the complaint, in order to shield him. ***That the Investigation Officer did not choose to include the offences under the PC Act from the year 2015 till 08.03.2021, cannot be taken to the credit of the Minister, but should be taken as a discredit of the prosecution. If the shield of office protected him from 2015 till he formed part of the splinter group and the shield stood temporarily removed for a brief period of time until he again became a Minister in the next regime, the same cannot be said to be a case of political vendetta.*** We do not know whether the complainants would have entered into a compromise in July, 2021 if he had not become a Minister again in the new regime.

45. The decisions in ***Janata Dal*** *vs.* ***H.S. Chowdhary***[9] and ***Simranjit Singh Mann*** *vs.* ***Union of India***[10], relied upon by the learned senior counsel for questioning the *locus standi* of the appellants, will not go to their rescue. This Court has already dealt with the question of locus in its Judgment dated 08.09.2022 in Criminal Appeal Nos.1514-1516 of 2022 in ***P. Dharamaraj*** (supra).

46. Interestingly, we have two appeals challenging the correctness of the order of the High Court dated 31.10.2022 directing *de novo*

[9] (1992) 4 SCC 305
[10] (1992) 4 SCC 653

investigation, one of which is by the complainant V. Ganesh Kumar in FIR No.298 of 2017 and other by the accused R. Sahayarajan, who was arrayed as Accused No.3 in the complaint of the V. Ganesh Kumar. Both of them entered into a compromise and successfully trapped the High Court to quash the proceedings on the basis of the compromise. Fortunately, the order quashing the complaint was reversed by this Court. Yet both of them have the audacity to come before this Court attacking the order of *de novo* investigation.

47. What is worrisome is the fact that V. Ganesh Kumar is an employee of the Transport Corporation. In the charge-sheet filed on his complaint, which has been taken on file as CC No.19 of 2020, this V. Ganesh Kumar is stated to have collected amounts ranging from Rs.2,00,000/- to Rs.4,50,000/- for every post of Driver, Conductor or Mechanic, as the case may be. ***We do not know whether the Transport Corporation has at least placed him under suspension and initiated departmental proceedings. If they have not done so far, the Corporation should initiate disciplinary action against this V. Ganesh Kumar not only for being party to a job-for-cash scam but also for turning turtle and supporting the accused and thereafter coming to this Court to assail the order of de novo investigation, despite being an employee of the Corporation.***

Interestingly, his attack on the order of *de novo* investigation is not to achieve the same purpose as the victims want to achieve, by assailing the same order. The victims assail the order of *de novo* investigation for the purpose of ensuring that the offences under the PC Act are properly investigated and tried. But the object of V. Ganesh Kumar is not the same.

48. This is why we made repeated queries to Ms. V. Mohana, learned senior counsel appearing for V. Ganesh Kumar as to what V. Ganesh Kumar eventually wants. The only answer that we got to this question was that the power to order *de novo* investigation should be exercised sparingly and that this is not the case where the power requires to be exercised. Thus, it is clear that V. Ganesh Kumar is in a different camp as of now.

49. Therefore, the appeals challenging the impugned order of the High Court dated 31.10.2022 insofar as they are traceable to Criminal O.P. No.15122 of 2021 are concerned, deserve to be allowed. Accordingly, these appeals are allowed and the order dated 31.10.2022 passed in Criminal O.P.No.15122 of 2021 is set aside. Criminal O.P.No.15122 of 2021 shall stand dismissed.

Part-II (Concerning proceedings by Enforcement Directorate)

50. As we have narrated in the sequence of events, ED registered an Information Report on 29.07.2021, only after filing of a Final Report under Section 173(8) of the Code., in CC No.24 of 2021, including the offences punishable under the PC Act. This Final Report was in FIR No.441 of 2015, which was originally registered as CC No.3627 of 2017 (it became CC No.24 of 2021). The Final Report filed under Section 173(8) of the Code on 08.03.2021, named Shri V. Senthil Balaji (Minister) as Accused No.1 and the offences charged against the accused were under Sections 406, 419, 420 read with Section 34 and 120B, 465, 467, 471 and 201 IPC read with Sections 7, 12, 13(2) read with Section 13(1)(d) of the PC Act and Section 109 of IPC. Since the offences under Sections 120B, 419, 420, 467 and 471 of IPC and Sections 7 and 13 of the PC Act are included in The Schedule to the Prevention of Money-laundering Act, 2002[11], the registration of the Information Report by ED on 29.07.2021 cannot be faulted.

51. After registration of the Information Report, the ED started issuing summons to the accused. ED also filed petitions before the Special Court (in seisin of the predicate offences) seeking copies of documents. These petitions were partly allowed by the Trial Court by

[11] For short ***"PMLA"***

an order dated 09.11.2021. As against the portion of the order of the Trial Court disentitling ED to certified copies of the unmarked documents, ED filed petitions under Section 482 of the Code before the High Court. The petitions were partly allowed by the High Court by an order dated 30.03.2022 permitting the ED to follow the procedure of conducting inspection under Rule 237 of Rules, 2019 and thereafter by filing a fresh third-party copy application before the Special Court.

52. Thereafter, ED sent fresh summons to the Minister and others in April, 2022. Immediately, the Minister and two others filed three separate writ petitions seeking the quashing of the summons issued by ED.

53. In the writ petition filed by the Minister in W.P. No.18213 of 2022 for quashing the summons issued by the ED, he contended *inter-alia*: -

(i) that he was falsely implicated in FIR Nos.441 of 2015, 15 of 2016, 298 of 2017 and 344 of 2018;

(ii) that FIR No.15 of 2016 had already been quashed;

(iii) that FIR Nos.441 of 2015 and 298 of 2017 were stayed by the High Court;

(iv) that FIR No.344 of 2018 was quashed by the High Court;

(v) that in view of the above, the mandatory requirements of Section 2(1)(y) and Section 3 of the PMLA, are not attracted;

(vi) that the registration of ECIR was based upon those complaints;

(vii) that since those complaints are the subject matter of scrutiny in the quash petitions, there is nothing for ED to proceed;

(viii) that Section 63 of the PMLA prescribes a punishment for false information or failure to give information and hence the summons issued under Section 50 will force him to give statements incriminating himself in the cases for the predicate offences, thereby infringing upon his rights under Article 20(3) of the Constitution;

(ix) that ED had not identified any proceeds of crime with the accused, so as to enable them to proceed with the investigation;

(x) that before the Trial Court and the High Court, ED wanted copies of documents available with the State Police, on the ground that without the copies of such documents, it was not possible for ED to proceed;

(xi) that the initiation of investigation by the ED is vitiated by *malafide;*

(xii) that without any material being available with the ED either about the proceeds of crime or about the act of money-laundering on the part of the accused, ED cannot proceed; and

(xiii) that without having any incriminating material against the accused about money-laundering, ED cannot proceed further.

54. The focus in the writ petitions challenging the summons issued by the ED was primarily on: -

(i) the stay of further proceedings in two criminal cases for the predicate offences;

(ii) the quashing of one criminal case for a predicate offence; and

(iii) the attempt of the ED to proceed with the investigation in wilderness, after getting copies of the basic documents from the Special Court, without actually identifying the proceeds of crime. However, certain legal arguments were developed before the High Court in the course of oral hearing.

55. The arguments advanced before the High Court in the course of arguments, revolved around:-

(i) the law laid down by this Court in ***Vijay Madanlal Choudhary*** *vs.* ***Union of India***[12] ;

(ii) the necessity for the existence of jurisdictional facts before an authority or officer assumes jurisdiction;

(iii) the absence of a combination of criminal activity amounting to a scheduled offence, the generation of proceeds of crime therefrom and the act of money-laundering, which form the jurisdictional fact for ED to step in; and

(iv) the danger of allowing the ED to go on a fishing expedition without any material.

56. It is of interest to note that the accused argued before the High Court that their case was squarely covered by the decision in ***Vijay Madanlal Choudhary*** (supra) . It will be worthwhile to extract the relevant portions of the order of the High Court dated 01.09.2022, in which the counsel for each of the accused is stated to have relied upon the decision in ***Vijay Madanlal Choudhary***.

[12] (2022 SCC OnLine SC 929

57. The argument of the counsel for R.V. Ashok Kumar, brother of the Minister is extracted by the High Court in paragraph 3 as follows:-

> "3. Mr.Aryama Sundaram, learned Senior Counsel appearing for the petitioner in Writ Petition No.l8209 of 2022 pleaded at the outset that his client's case is squarely covered by the judgment of the Hon'ble Supreme Court in *Vijay Madanlal Choudhury and others case (supra)* in his favour, again proceeding further contended that Mr.R. V.Ashok Kumar is the brother of Mr.V.Senthil Balaji, who was the former Transport Minister during the period from 2011 to 2015..."

58. The argument of the counsel appearing for Shanmugam (Accused No.3) is extracted by the High Court as follows:-

> "2. ... there is no basis for proceeding against the petitioner under the Prevention of Money-laundering Act, because the Hon'ble Supreme Court in *Vijay Madanlal Chaudhary and others v. Union of India and others, 2022 (10) SCALE 577* has held that in the absence of proceeds of crime, the authorities under the Prevention of Money-laundering Act cannot step in or initiate any prosecution, therefore, the writ petition deserves to be allowed, by quashing the impugned proceedings.

59. Thus, it is seen from the impugned order that at least two out of three accused specifically argued before the High Court that their case was squarely covered by the decision of this Court in ***Vijay Madanlal Choudhary***, but ***interestingly most of the arguments advanced before us turned out to be an attack on the correctness of the decision in Vijay Madanlal Choudhary. We are not suggesting that this defection from one point of view to the other is covered***

by Schedule X. We are just recording this fact to show that most of the arguments were actually arguments of convenience.

60. Keeping in mind what the accused argued before the High Court, let us now see what the High Court did. In paragraph 13 of the impugned order, the High Court took note of ***Vijay Madanlal Choudhary*** with particular reference to paragraph 187(v)(d). In paragraph 14, the High Court took note of the quashing of the complaint for the predicate offence in one case and the stay of further proceedings in the other two cases relating to predicate offences. In paragraph 15, the High Court addressed the question as to what is the effect of a stay order. The High Court concluded that if proceedings under the PMLA are permitted to go on during the operation of the stay order in respect of predicate offences, it will cause damage to the reputation and goodwill of the parties and that therefore investigation by the ED cannot proceed. In paragraph 16 of the impugned order, the High Court recorded that other than the three FIRs, the ED was not in possession of anything else to proceed under the PMLA. In paragraph 17, the High Court recorded the contention relating to the non-existence of jurisdictional facts and referred to the decision in ***Arun***

Kumar *vs.* ***Union of India***[13] in paragraph 19. Thereafter, the High Court came to the conclusion in paragraph 20 that the quashing of the complaint in one criminal case and the stay of proceedings in other two Calendar Cases, showed that there was no jurisdictional fact or cause of action for the ED to initiate proceedings.

61. Since lot of arguments were advanced before us as though the ED proceeded without the existence of jurisdictional facts, it is necessary to extract paragraph 20 of the impugned order to show what the High Court thought to be a jurisdictional fact. Hence, paragraph 20 of the impugned order is extracted as follows:

> "20. A mere perusal of the above judgment clearly shows that the existence of jurisdictional fact is a condition precedent for the exercise of power by a Court of limited jurisdiction. Therefore, in the cases on hand, when there is no cause of action, since the proceeding in one of the calendar cases was quashed by the order dated 30.07.2021 in Criminal Original Petition No.13374 of 2021 and the proceedings in two other calendar cases have been stayed by this Court, there is no jurisdictional fact or cause of action for the respondent/department to initiate any proceedings during the period of order of stay operating against the two FIRs. Viz. C.C.No.l9/2020 and C.C.No.24 of 2021."

62. Again, in paragraph 22, the High Court recorded an opinion that the grant of stay would amount to eclipsing the proceedings. Therefore, on this sole ground, the High Court concluded in paragraph 22 of the impugned order that the ED has to await the outcome of the

[13] (2007) 1 SCC 732

proceedings for quashing the criminal complaints, in which a stay order was in force. But the High Court made it clear that it was not entering upon the merits and demerits of the proceedings initiated by the ED and the High Court left all the questions to be dealt with in appropriate proceedings.

63. Eventually, the High Court concluded in paragraph 23 of the impugned order as follows:

> "23. ... Therefore, as we have concluded that in view of the quashing of the proceedings in C.C.No.25 of 2021 and staying of the proceedings in C.C.No.l9 of 2020 & C.C.No.24 of 2021 as highlighted above, the scheduled offence for the present is eclipsed, suspended or stop operating during the period of stay, the respondent Department has to await the finality of the said proceedings. Needless to mention, if the proceedings in C.C.No.l9 of 2020 and C.C.No.24 of 2021 are quashed pursuant to the orders in the applications filed by the respective persons to quash the proceedings, in which event, the respondent cannot step in or initiate any proceedings under the Prevention of Money-laundering Act, as held by the Hon'ble Supreme Court in Vijay Madanlal Chaudhary and others and in Parvathi Kollur and another v. State by Directorate of Enforcement, 2022 LiveLaw (SC) 688 cited supra. ***Therefore, the respondent is hereby refrained from proceeding any further pursuant to the impugned proceedings in ECIR/MDSZO/21/2021, till the disposal of the Criminal Revision Case No.224 of 2021, Criminal Original Petition No.15122 of 2021 and the SLP (Crl) Diary No.9957 of 2022 (SLP (Crl) No.3841 of 2022)***."

64. Irrespective of the correctness of the reasonings given by the High Court in the impugned order, the conclusion of the High Court was only this, namely, that the ED cannot proceed, till the disposal of ***(i)*** Criminal Revision Case No.224 of 2021 filed by Minister-Senthil

Balaji against the order of the Trial Court refusing to discharge him; and ***(ii)*** Criminal O.P. No.15122 of 2021, filed by Devasagayam seeking *de novo* investigation.

65. Therefore, it is as clear as crystal, that the High Court, in the impugned order dated 01.09.2022 has given only a temporary reprieve to the accused against the summons issued by the ED. Today, Criminal Revision Case No.224 of 2021 filed by the Minister against the dismissal of his discharge petition, has been rejected by the High Court by its order dated 31.10.2022. Though Criminal O.P. No.15122 of 2021, filed by Devasagayam has been allowed by the High Court, by the very same order dated 31.10.2022, the said order has been set aside by us in Part-I of this judgment.

66. Insofar as the SLP (Crl.) No.3941 of 2022 @ Diary No.9957 of 2022 is concerned, it arises out of the order of the High Court dated 30.03.2022, which again is the subject matter of the present appeals.

67. ***In other words, the High Court has not quashed the summons issued by ED. The High Court had merely injuncted ED from proceeding further till the clog on the cases relating to the predicate offences is removed***.

68. Interestingly, none of the accused has come up with any appeal challenging the order of the High Court dated 01.09.2022, on the ground that the High Court ought to have quashed the summons issued by the ED in total, on other grounds. Instead, the accused appeared through counsel only to defend the impugned order dated 01.09.2022.

69. Therefore, in law, ***(i)*** once the dismissal of the petition for discharge has attained finality with the dismissal of Criminal Revision Case No.224 of 2021; ***(ii)*** once the order for *de novo* investigation in Criminal O.P. No.15122 of 2021 is set aside; ***(iii)*** once the order of the High Court dated 30.03.2022 relating to right of the ED to secure the copies of documents is dealt with; ***(iv)*** once the order of the High Court dated 30.07.2021 quashing one of the criminal cases is set aside; and ***(v)*** once the stay operating in two of the criminal cases for predicate offences is vacated, then the temporary reprieve that has been granted by the High Court to the accused in the impugned order would automatically go. Realising this difficulty in law, the accused changed the theme of the song completely before us, despite the fact that they were ordained as respondents in the appeals only to support the impugned order of the High Court.

70. In fact, all the learned senior counsel appearing for all the accused in the PMLA case, advanced arguments for the grant of larger reliefs than what they got under the impugned order, without even filing any appeal against the same. It is possible in law for a successful party (though in civil proceedings) to support the decree without supporting the judgment. But what the accused sought to do before us was to support the judgment and seek an enlargement of the decree, without independently filing appeals. Since they took a chance by adopting such a course, they may not even be able to challenge the impugned order hereafter, once the seal of approval on the same is affixed by this Court and the doctrine of merger comes into play.

71. We may look at this from another angle also. Suppose we dismiss all the appeals challenging the order of the High Court dated 01.09.2022, then the other portion of our order dealing with the challenge to the order of the High Court dated 31.10.2022 would automatically result in lifting the injunction imposed by the Division Bench of the High Court in the ED case by its order dated 01.09.2022. Therefore, it is not even necessary for us to deal with the contentions

raised on behalf of the accused for the purpose of getting larger reliefs. But we do not wish to adopt this route. Therefore, we shall address the contentions raised.

72. The contentions of Shri Kapil Sibal, learned senior counsel are:

(i) that to constitute the offence of money-laundering, one must have involved in any process or activity connected to the proceeds of crime;

(ii) that none of the three FIRs which formed the basis for the registration of an Information Report contained any allegation of generation of proceeds of crime or the offence of money-laundering;

(iii) that the ED was never in possession of any material to suspect that the accused did any activity connected with the proceeds of crime;

(iv) that this is why the ED filed applications before the Special Court seeking copies of documents to find out if something could be found;

(v) that under Section 66(2) of PMLA, the flow of information can be only from the ED to the other authorities about the contravention of the provisions of any other law and not the other way about;

(vi) that there are lot of inherent contradictions in the way the provisions of the PMLA were interpreted in ***Vijay Madanlal Choudhary*****;**

(vii) that though Section 50(2) of PMLA empowers the Director and his subordinates to summon any person whether to give evidence or to produce any record during the course of investigation, this Court

held in ***Vijay Madanlal Choudhary*** that it is not investigation in the real sense;

(viii) that the power under Section 50(2) of PMLA is akin to the power of the Police Officer under Section 160 of the Code;

(ix) that with the amendment of PMLA by Finance (No.2) Act, 2019 w.e.f. 01.08.2019, the requirement of *mens rea* was done away with and the Explanation inserted by the amendment made all processes or activities such as concealment, possession, acquisition, use, projecting as untainted property and claiming as untainted property, available in the alternative. In other words, while the main part of Section 3 uses the conjunction "*and*", the Explanation under Section uses the expression disjunction "*or*";

(x) that the amendment of Section 3 goes completely contrary to the law laid down in ***Bihta Co-operative Development and Cane Marketing Union Ltd.*** *vs.* ***Bank of Bihar***[14]**,** to the effect that an Explanation cannot widen the scope of the main Section;

(xi) that it is only where proceeds of crime are laundered that the PMLA comes into play, though the existence of proceeds of crime is a *sine qua non* for the commission of an offence under PMLA;

(xii) that if the ED were to have jurisdiction to investigate solely on the basis of information that a predicate offence has been committed, involving the proceeds of crime, it would amount to empowering the ED to enter the domain of the State Police, thereby causing fissures in the federal structure;

(xiii) that the mere existence of proceeds of crime without the quantum of proceeds being specified/identified and without the

[14] AIR 1967 SC 389

proceeds of crime being laundered, an offence of money-laundering cannot be made out;

(xiv) that it was wrongly decided in ***Vijay Madanlal Choudhary*** that it was not a penal statute, though the object of the Act is to prosecute and punish a person for the offence of money-laundering;

(xv) that the procedural safeguards available under the Code are also not available and hence ***Vijay Madanlal Choudhary*** has not been correctly decided. The learned counsel also drew our attention to several passages such as paragraphs 159, 163, 168 and 172 in the decision in ***Vijay Madanlal Choudhary*** and it was contended that it was wrongly decided.

73. According to Shri Kapil Sibal, learned senior counsel, certain fundamental questions arise in the present proceedings. They are:-

- ❖ What are the jurisdictional prerequisites for the ED to initiate investigation under the PMLA?
- ❖ Does the ED have the power to seek information from authorities investigating the predicate offence merely on the basis that investigation of a predicate offence is ongoing, even without receiving any information that a cognizable offence under the PMLA has occurred and being in possession of material that indicates the offence of money-laundering has taken place?
- ❖ Can the mere existence of proceeds of crime confer jurisdiction upon the ED to initiate investigation?
- ❖ What are the elements of "money-laundering"?
- ❖ What conditions need to be satisfied before the ED is empowered to issue summons under Section 50 of the PMLA?

❖ Can a summons under Section 50 PMLA be issued to a person who is in the nature of an accused under the PMLA or in the predicate offence?

❖ Do Sections 50 and 63 of the PMLA violate the constitutional safeguards under Art.20(3) and 21 of the Constitution?

74. Admitting the inevitable position in law that as a Two Member Bench, we are bound by the decision of the Three Member Bench in ***Vijay Madanlal Choudhary***, Shri Kapil Sibal argued that the matter may be placed before a Three Member Bench for resolving the conundrum created by the PMLA. In this connection, he drew our attention to paragraph 113 of the decision of another Three Member Bench in ***Union of India*** *vs.* ***Ganpati Dealcom Private Limited***[15], wherein this Court expressed an opinion that the ratio laid down in ***Vijay Madanlal Choudhary*** with respect to confiscation proceedings under Section 8 of the PMLA, required further exposition in an appropriate case and that without such exposition, much scope is left for arbitrary application. Learned senior counsel also drew our attention to an order passed by another Two Member Bench of this Court in a writ petition being Writ Petition (Crl.) No.65 of 2023, challenging some of the provisions of the PMLA. By an order dated 03.03.2023, a Two Member Bench of this Court directed the said writ

[15] (2023) 3 SCC 315

petition to be placed when the Bench would be sitting in a combination of three Judges. After it was so placed before a Three Member Bench, notice was ordered in the writ petition. Therefore, he contended that the present appeals arising out the proceedings initiated by ED may be placed before a larger Bench.

75. In sum and substance, all the above arguments of Shri Kapil Sibal, learned senior counsel are aimed at convincing us that ***Vijay Madanlal Choudhary*** was wrongly decided and that therefore we may refer it to a larger Bench.

76. Shri Sidharth Luthra, learned senior counsel appearing for one of the accused contended: -

(i) that when ECIR was registered, ED did not have requisite foundational materials, as admitted by them in their own counter affidavit;

(ii) that there has been a long delay both in the registration of FIRs for the predicate offence and the ECIR;

(iii) that the period of the commission of offence, according to the *de-facto* complainants was between December, 2014 and January, 2015 but the FIRs other than those filed by Devasagayam were of the year 2017 and 2018 and the ECIR was registered in the year 2021;

(iv) that there is no explanation on the part of the ED for such a delay;

(v) that to make out an offence of money-laundering even *prima facie*, three things are essential, namely ***(i)*** the commission of a crime,

which is a scheduled offence, ***(ii)*** generation of proceeds of crime; and ***(iii)*** the laundering of those proceeds, and that none of these three foundational facts are present in this case.

77. The arguments of Shri Sidharth Luthra, learned senior counsel is actually two-fold, namely, ***(i)*** that in the absence of a jurisdictional fact, which is a *sine qua non* or condition precedent for the exercise of power by ED, the summons issued by ED should go; or alternatively ***(ii)*** that in view of inherent contradictions contained in the decision in ***Vijay Madanlal Choudhary*** and in view of this Court having ordered notice in the review petition, the appeals on hand should also be referred to a larger Bench.

78. In support of his contention that the existence of a jurisdictional fact is a condition precedent for the exercise of power by ED, the learned senior counsel relies upon the decisions in ***Shauqin Singh*** *vs.* ***Desa Singh***[16] and ***Arun Kumar*** *vs.* ***Union of India***[17]**.**

79. To demonstrate that there are inherent contradictions in the decision in ***Vijay Madanlal Choudhary,*** the learned senior counsel relies upon the decision of the Delhi High Court in ***Enforcement Directorate*** *vs.* ***Gagandeep Singh***[18] and ***Parvathi Kollur*** *vs.* ***State***

[16] (1970) 3 SCC 881
[17] (2007) 1 SCC 732
[18] 2022 SCC Online Del 514

through ED[19].

80. To show that a petition for review has been entertained by this Court, the learned senior counsel relies upon the record of proceedings of this Court dated 25.08.2022 in Review Petition (Crl.) No.219 of 2022 in ***Karti P. Chidambaram*** *vs.* ***The Directorate of Enforcement.***

81. Lastly, it is contended that when certain questions of law are referred to a larger Bench, all subsequent matters should be tagged or deferred. In support of this contention, the learned senior counsel relies upon the orders passed by this Court in ***Jairam Ramesh*** *vs.* ***Union of India[20], Thomas Franco Rajendra Dev[21]*** *vs.* ***Union of India, Kantaru Rajeevaru (Right to Religion, In re-9 J.)*** *vs.* ***Indian Young Lawyers Association[22], Asgar Ali*** *vs.* ***State of Jammu and Kashmir[23]*** and ***Central Board of Dawoodi Bohra Community*** *vs.* ***State of Maharashtra[24].***

82. Contending that when the very initiation of proceedings by the ED was without the existence of jurisdictional facts, all subsequent actions, like a pack of cards should fall, the learned senior counsel relies upon the latin maxim *sublato fundamento cadit opus* meaning

[19] Crl. Appeal No.1254/2022 dt.16.08.2022
[20] SLP (C) No.13103 of 2019
[21] WP (C) No.366/2022 dated 12.05.2022
[22] (2020) 9 SCC 121
[23] 2022 SCC Online SC 3095
[24] 2023 SCC Online SC 129

that "*if initial action is not in consonance with law, all subsequent and consequential proceedings fall through*". In support of this contention, the learned senior counsel has relied upon the following decisions: ***(i) Badrinath*** *vs.* ***Government of Tamil Nadu***[25]*;* ***(ii) State of Kerala*** *vs.* ***Puthenkavu N.S.S. Karayogam***[26]*;* and ***(iii) State of Punjab*** *vs.* ***Davinder Pal Singh Bhullar***[27]**.**

83. Shri C.A. Sundaram, learned senior counsel appearing for one of the accused, adopted a different line of argument. Instead of attacking the correctness of ***Vijay Madanlal Choudhary,*** the learned senior counsel contended:-

(i) that the object of PMLA is to prevent money-laundering;

(ii) that to constitute an offence of money-laundering, a person should have involved himself in any process or activity connected with the proceeds of crime;

(iii) that ED can assume jurisdiction only after identification of the proceeds of crime;

(iv) that the mandate of ED does not extend to the prosecution of any one for offences other than money-laundering;

(v) that this is why Section 66(2) obliges the Director to share the information available with him with other authorities, whenever such information discloses the contravention of the provisions of any other law;

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[25] (2000) 8 SCC 395
[26] (2001) 10 SCC 191
[27] (2011) 14 SCC 770

(vi) that without the identification of a property which represents the proceeds of crime, a jurisdictional fact for the initiation of proceedings does not get triggered;

(vii) that no summons can be issued under Section 50 without registering an information report;

(viii) that the power to issue summons under Section 50(2) can be exercised only during the course of any investigation or proceeding under the Act;

(ix) that in the case on hand, no property representing the proceeds of crime has been identified;

(x) that this is why the High Court questioned the ED as to how Section 3 got invoked; and

(xi) that therefore the initiation of proceedings by the ED cannot be sustained even within the contours of law interpreted in ***Vijay Madanlal Choudhary.***

84. Lastly, it is contended by Shri C.A. Sundaram, learned senior counsel for one of the accused that though the High Court allowed the prayer of the accused for reasons other than those argued now, the party successful before High Court can always seek to sustain the judgment, on grounds other than those stated in the impugned order. In support of this contention, the learned senior counsel relies upon the decision of this Court in ***Management of the Northern Railway Co-operative Credit Society Ltd., Jodhpur*** *vs.* ***Industrial Tribunal,***

Rajasthan, Jaipur[28].

85. In response to the above submissions, it was argued by Shri Tushar Mehta, learned Solicitor General:

(i) that the offence of money-laundering is treated by the global community as an offence of international implication, affecting the economies of Nations;

(ii) that the law could be traced to Palermo and Vienna Conventions;

(iii) that the Conventions led to the establishment of Financial Action Task Force[29];

(iv) that for a long time after the above Conventions and the formation of FATF, India was found to be lacking in curbing money-laundering and hence certain recommendations were made for the Mutual Evaluation of Anti-Money Laundering and Combating the Financing of Terrorism;

(v) that the recommendations made by them were carried into effect by making suitable amendments to the Act;

(vi) that the historical perspective of the Act and the amendments thereto are discussed in detail in ***Vijay Madanlal Choudhary***;

(vii) that almost all provisions of the PMLA were challenged in ***Vijay Madanlal Choudhary*** and every ground of attack to each of the provisions is dealt with in *extenso* by the Three Member Bench;

(viii) that there cannot be repeated attempts to have several bites at the cherry;

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[28] (1967) 2 SCR 476
[29] For short, ***"FATF"***

(ix) that by doubting the correctness of the decision of a larger Bench, a cloud of uncertainty cannot be created on the application of a law;

(x) that the decision in ***Vijay Madanlal Choudhary*** is a binding precedent and the doctrine of *stare decisis* should be given meaning and value;

(xi) that the English precedents on the doctrine of *stare decisis*, such as those in ***Street Tramways*** *vs.* ***London County Council***[30] and ***Redcliffe*** *vs.* ***Ribble Motor Services***[31], have been followed by our Courts;

(xii) that as laid down by this Court in ***Sakshi*** *vs.* ***Union of India***[32], the doctrine of *stare decisis* gives certainty to law and guides people to mould their affairs in the future;

(xiii) that as held by this Court in ***Central Board of Dawoodi Bohra Community*** *vs.* ***State of Maharashtra***[33], a Bench of lesser coram cannot express disagreement with or question the correctness of the view taken by a Bench of larger coram;

(xiv) that as opined by Chief Justice John Roberts of the Supreme Court of the United States, '***it is a jolt to the legal system when you overrule a precedent***';

(xv) that the ratio laid down by a larger Bench should not become suspect merely because another view is possible;

(xvi) that in any case, ***Vijay Madanlal Choudhary*** has taken note of different views of several High Courts including the High

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30 (1898) AC 375 (378)
31 (1939) AC 215 (245)
32 (2004) 5 SCC 518
33 (2005) 2 SCC 673

Courts of Bombay, Delhi, Jharkhand and Punjab and Haryana, etc.; and

(xvii) that unsettling the law laid down in ***Vijay Madanlal Choudhary*** at a time when the ranking of the country in curbing the menace of money-laundering has improved, will derail the whole process.

86. We have carefully considered the rival contentions. A careful analysis of the arguments advanced by all the three learned senior counsel appearing for the accused namely Shri Kapil Sibal, Shri C.A. Sundaram and Shri Sidharth Luthra would show that a three-pronged strategy has been formulated in their attack on the initiation of proceedings by the ED. This three-pronged strategy goes as follows:

(i) questioning the correctness of the decision in ***Vijay Madanlal Choudhary*** and seeking a reference to larger Bench (by Shri Kapil Sibal);

(ii) accepting the decision in ***Vijay Madanlal Choudhary*** as correct and trying to demonstrate how the initiation of proceedings in the present case falls foul of the ratio in ***Vijay Madanlal Choudhary*** (by Shri C.A. Sundaram); and

(iii) relying upon some portions, but attacking some other portions of ***Vijay Madanlal Choudhary*** so that any one of these provide an escape route (by Shri Luthra).

87. In terms of issues, the arguments advanced by all the three learned senior counsel can be crystallized and formulated into two fundamental questions that may have to be addressed by us. These questions are:-

(i) Whether without identifying the proceeds of crime or a property representing the proceeds of crime and without identifying any process or activity connected to proceeds of crime as required by Section 3, which constitute the foundational/ jurisdictional fact, ED can initiate an investigation and issue summons?

(ii) Whether in the light of the fact that notice has been ordered in the review petition and a few interim orders have been passed in some proceedings, it is necessary for this Court to tag these appeals along with a review petition or defer the hearing of these matters until a decision is rendered in the review petition and other petitions?

88. Before we find an answer to these two questions, it is necessary to take note of how and why PMLA came into existence and what geopolitical circumstances compelled India to bring the law. According to United Nations Office on Drugs and Crime[34], South Asia, corruption is recognized as a crucial governance and security challenge in South Asia region. UNODC has estimated that corruption costs more than 5% of global GDP (US$2.6 trillion) annually, with estimates of global money-laundering at around $500 billion (works out to INR 40 lakhs

[34] For short, *"**UNODC**"*

crores) annually. Based upon a study conducted by Pune based Forensic Accounting Company by name "Indiaforensic" way back in the year 2011 on "*Ascertaining size of Corruption in India with respect to money laundering*", the Economic Times reported in its Edition dated 17.07.2011 that money laundered out of India in the decade 2001-2010 could be pegged at Rs.18,86,000 crores. This is why in May 2011, India became party to the United Nations Convention against Corruption (UNCAC) joining over 160 other countries who were party to this UN Convention.

89. The history of the legislation on money-laundering is almost six decades old. In brief, this history can be traced as follows:

(i) In 1961, United Nations Convention on Narcotic Drugs was adopted and it was amended by the protocol of the year 1972.

(ii) In 1971, United Nations Convention on Psychotropic Substances was made.

(iii) In 1974, a bank known as Herstatt Bank in Germany was forced into liquidation by the Regulators. On the day on which it happened, a number of banks had released payments to Herstatt in exchange for US dollars to be delivered in New York. But due to the time zone differences, Herstatt ceased operations between the times of the respective payments. As a result, payments were not made in New York. Therefore, a Standing Committee which came to be known as Basel Committee on Banking Supervision (BCBS) was formed by G-10 countries namely Belgium, Canada, France, Germany, Italy, Japan,

Netherlands, Sweden, Switzerland, UK and USA.

(iv) In December 1988, two things happened. One was the adoption of a Convention by name UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (popularly known as Vienna Convention). The second was that at about the same time, the Basel Committee issued a general statement of ethical principles which encourages banks' management to put in place effective procedures to ensure that all persons conducting business with their institutions are properly identified, that transactions that do not appear legitimate are to be discouraged and that cooperation with law enforcement agencies is achieved.

(v) In 1989, the FATF was established at the G-7 summit held at Paris, as an inter-governmental body by the member countries namely Canada, France, Germany, Italy, Japan, UK and USA. Now FATF consists of 39 members including India and over 200 jurisdictions around the world have committed to the FATF recommendations.

(vi) In 1990, the Member States of the Council of Europe signed and ratified a Convention known as The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, also known as the Strasbourg Convention or CETS 141. Interestingly, Australia though not a Member of the Council of Europe, also signed and ratified this Convention. The Convention sought to facilitate international co-operation and mutual assistance in investigating crime and tracking down, seizing and confiscating the proceeds thereof. The purpose of bringing the States together was to assist them in attaining a similar degree of efficiency even in the absence of full

legislative harmony.

(vii) As part of United Nations office on Drugs and Crime, a Global Programme against Money Laundering (GPML) was established in 1987 to assist Member States to comply with UN Conventions and other instruments that deal with money-laundering and terrorism financing.

(viii) On 15.11.2000, the UN General Assembly adopted the United Nations Convention against Transnational Organized Crime and it opened for signature by Member States at a high level political Conference convened at Palermo, Italy in December 2000 (now known as Palermo Convention).

(ix) On October 31, 2003, the United Nations General Assembly adopted the UN Convention against corruption and the Convention came into force in 2005.

(x) Pursuant to the political Declaration adopted by the special session of the United Nations General Assembly held between 8th to 10th June 1998 (of which India is one of the signatories) calling upon member States to adopt Anti Money Laundering Legislation & Programme, the Parliament has enacted a special law called the 'Prevention of Money Laundering Act, 2002' (PMLA 2002). The Act has come into force with effect from 1st July 2005. It has been substantially amended, by way of enlarging its scope, in 2009 (w.e.f. 01.06.2009), by enactment of Prevention of Money Laundering (Amendment) Act, 2009. The Act was further amended by Prevention of Money-Laundering (Amendment) Act, 2012 (w.e.f. 15-02-2013).

(xi) As part of the effort to assist jurisdictions prepare or upgrade their legislative framework to conform with international

standards and best practices to implement anti-money laundering measures and combating the financing of terrorism, UNODC issued in 2003, "*Model Money-Laundering, Proceeds of Crime and Terrorist Financing Bill*".

90. The Commonwealth Secretariat of the UNODC released in April 2009 an updated version of the "*Model Provisions on Money Laundering, Terrorist Financing, Preventive Measures and Proceeds of Crime*". Some of the provisions of the UN Model Law 2009 show that PMLA has been brought in tune with the Model Law.

91. The Drafting Note on self-laundering, contained in the Model Law deals with the question whether a person should necessarily be implicated in the predicate offence so as to be an accused in the offence of money-laundering. It reads as follows:

> *"Self-laundering:*
>
> *"As the section refers to "any person," this includes both the person who committed the predicate offence and third party launderers. Although generally not an issue in States in the common law tradition, there can be a question whether the offence should be extended to the person who also committed the predicate offence.*
>
> *The Vienna and Palermo Conventions provide an exception to the general principle that both the predicate offender and third parties should be liable for money laundering where fundamental principles of domestic law require that it not apply to the person who committed the predicate offence. In some countries, constitutional principles prohibit prosecuting a person both for money laundering and a predicate offence. In the case of most common law countries, there do not appear to be fundamental principles that prohibit the application of the money laundering offence to self-launderers. However, if an*

exception is necessary, an additional provision, as "[t]he offence of money laundering shall not apply to persons who have committed the predicate offence" should be incorporated.

If drafters believe that there is a need for additional clarity beyond the reference to "any person" to ensure that those who launder their own proceeds are covered, a provision can be added as "[t]he offences set forth in Section 3(2) - (5) shall also apply to the person who has committed the offence(s), other than money laundering, that generated the proceeds of crime."

92. Similarly, the portion of the Drafting Note in the Model Law, enlisting the kind of activities that may constitute the offence of money laundering reads as follows:

"Kinds of Offences: As the UN's Legislative Guide to the Palermo Convention and Legislative Guide for the Implementation of the United Nations Convention Against Corruption make clear, there are four general kinds of conduct that should be criminalized. The minimum requirements for each are:

1. Conversion or transfer of proceeds of crime. This includes "instances in which financial assets are converted from one form or type to another, for example, by using illicitly generated cash to purchase precious metals or real estate or the sale of illicitly acquired real estate, as well as instances in which the same assets are moved from one place or jurisdiction to another or from one bank account to another." (See, e.g., paragraph 231, in Legislative Guide for the implementation of the UN Corruption Convention). Regarding mental elements, the conversion or transfer must be intentional, the accused must have knowledge at the time of conversion or transfer that the assets are criminal proceeds, and the act must be done for either one of the two purposes stated – concealing or disguising criminal origin or helping any person (whether one's self or another) to evade criminal liability for the crime that generated the proceeds.

2. Concealment or disguise of proceeds of crime. There are many aspects noted in the provision as to which there can be concealment or disguise – almost any aspect of, or information about, the property, so this section is broad. The concealment or disguise must be intentional and the accused must have knowledge that the property constitutes proceeds of crime at

the time of the act. This provision deals with the intentional deception of others. This will include the intentional deception of law enforcement authorities. True nature may be the essential quality of it having been derived from criminal activity. Origin may be the physical origin, or its origin in criminality. For this second offence, there should not be a requirement of proof that the purpose of the concealment or disguise is to frustrate the tracing of the asset or to conceal its true origin. Although as a general matter this will be the purpose of the concealing or disguising, the applicable UN Conventions require that there be criminalization that is not dependent upon a showing of such purpose.

3. Acquisition, possession or use of proceeds. This section imposes liability on recipients who acquire, possess or use property, and contrasts with the two provisions above that deal with liability for those who provide illicit proceeds. There must be intent to acquire, possess or use, and the accused must have knowledge at the time of acquisition or receipt that the property was proceeds.

4. Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling. There are varying degrees of complicity or participation other than physical commission of the offence: assistance (aiding and abetting, facilitating) and encouragement (counselling). In addition, attempts are to be criminalized. Finally, this section includes conspiracy, a common law concept, or as an alternative, an association of persons working together to commit an offence.

Knowledge: The variants suggested are first, the basic one of knowledge that the property is proceeds of crime (which knowledge may be inferred from objective factual circumstances); and secondly a more flexible standard of knowledge or suspicion that the property is proceeds of crime."

Therefore, it is clear that the provisions of PMLA are in tune with the Model Law drafted by UNODC. Keeping this in mind, let us now search for an answer to the two questions.

Question 1: Whether without identifying the proceeds of crime or a property representing the proceeds of crime and without identifying any process or activity connected to proceeds of

crime as required by Section 3, which constitute the foundational/jurisdictional fact, ED can initiate an investigation and issue summons?

93. The common theme of the song of the learned counsel for the accused is that the mere registration of a FIR for a predicate offence, even if it is a scheduled offence, is not sufficient for the ED to register an Information Report and summon anyone. According to the learned counsel, the commission of the scheduled offence should have generated proceeds of crime and those proceeds of crime should have been laundered by someone, for the ED to step in. Going a step further, it was contended by the learned senior counsel that the ED should first identify some property as representing the proceeds of crime, before an Information Report is registered and a summon issued under Section 50(2).

94. These contentions, in our opinion, if accepted, would amount to putting the cart before the horse. Unfortunately for the accused, this is not the scheme of the Act.

95. Section 3 of the Act which defines the offence of money-laundering reads as follows:

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

guilty of offence of money-laundering.

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

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

(a) concealment; or
(b) possession; or
(c) acquisition; or
(d) use; or
(e) projecting as untainted property; or
(f) claiming as untainted property,

in any manner whatsoever;

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

96. If the main part of Section 3 is dissected with forensic precision, it will be clear that Section 3 addresses itself to three things (we may call them 3 'P's) namely, ***(i)*** person; ***(ii)*** process or activity; and ***(iii)*** product. Insofar as persons covered by Section 3 are concerned, they are, ***(i)*** those who directly or indirectly attempt to indulge; or ***(ii)*** those who knowingly assists; or ***(iii)*** those who are knowingly a party; or ***(iv)*** those who are actually involved. Insofar as process is concerned, the Section identifies six different activities, namely ***(i)*** concealment; ***(ii)*** possession; ***(iii)*** acquisition; ***(iv)*** use; ***(v)*** projecting; or ***(vi)*** claiming as untainted property, any one of which is sufficient to constitute the offence. Insofar as product is concerned, Section 3

identifies "*proceeds of crime*" or the property representing the proceeds of crime as the product of the process or activity.

97. Out of the three things that Section 3 addresses, namely ***(i)*** person; ***(ii)*** process; and ***(iii)*** product, the first two do not require any interpretation or definition. The third aspect namely "*product*", which Section 3 refers to as "*proceeds of crime*" requires a definition and hence it is defined in Section 2(1)(u) as follows:-

> "**2. Definitions**. — (1) In this Act, unless the context otherwise requires, —
>
> xxx xxx xxx
>
> (u) "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property or where such property is taken or held outside the country, then the property equivalent in value held within the country or abroad;
>
> Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" including 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;"

98. Keeping in mind these essential elements that make up the molecular structure of Section 3, if we go back to the case on hand, we will find ***(i)*** that the offences under Sections 120B, 419, 420, 467 and 471 IPC are scheduled offences included in paragraph 1 of the Schedule; and ***(ii)*** that the offences under Sections 7 and 13 of the PC Act are included in paragraph 8 of the Schedule.

99. All the three FIRs allege that the accused herein had committed offences included in the Schedule by taking illegal gratification for providing appointment to several persons in the Public Transport Corporation. In one case it is alleged that a sum of more than Rs.2 crores had been collected and in another case a sum of Rs.95 lakhs had been collected. It is this bribe money that constitutes the 'proceeds of crime' within the meaning of Section 2(1)(u). ***It is no rocket science to know that a public servant receiving illegal gratification is in possession of proceeds of crime***. The argument that the mere generation of proceeds of crime is not sufficient to constitute the offence of money-laundering, is actually preposterous. As we could see from Section 3, there are six processes or activities identified therein. They are, ***(i)*** concealment; ***(ii)*** possession; ***(iii)*** acquisition; ***(iv)*** use; ***(v)*** projecting as untainted property; and ***(vi)*** claiming as untainted property. If a person takes a bribe, he acquires proceeds of crime. So, the activity of **"acquisition"** takes place. Even if he does not retain it but **"uses"** it, he will be guilty of the offence of money-laundering, since "*use*" is one of the six activities mentioned in Section 3.

100. The FIRs for the predicate offences identify all the three components of Section 3, namely, ***(i)*** persons; ***(ii)*** process; and

(iii) product. Persons accused in the FIRs are those who have indulged in the process or activity. The illegal gratification that they have taken, represents the proceeds of crime. The ***(i)*** acquisition of such illegal gratification in the first instance; ***(ii)*** the possession of the tainted money before putting it to use; and ***(iii)*** today projecting it as untainted money, is the process or activity in which the accused have indulged. The corruption money represents the proceeds of crime.

101. Therefore, all the arguments as though there are no foundational facts or jurisdictional facts, are simply aimed at hoodwinking the Court.

102. ***It is true that there are some offences, which, though scheduled offences, may or may not generate proceeds of crime. For instance, the offence of murder punishable under Section 302 is a scheduled offence. Unless it is a murder for gain or murder by a hired assassin, the same may or may not generate proceeds of crime. It is in respect of such types of offences that one may possibly argue that mere commission of the crime is not sufficient but the generation of proceeds of crime is necessary. In the case of an offence of corruption, the criminal activity and the generation of the proceeds of crime are like Siamese twins.***

103. In fact, PMLA defines the word "*property*" in Section 2(1)(v) as follows:

> "**2. Definitions**.—(1) In this Act, unless the context otherwise requires,—
>
> xxx xxx xxx
>
> (v) "property" means 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;
>
> Explanation.—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;"

104. Therefore, even if an intangible property is derived as a result of criminal activity relating to a scheduled offence, it becomes proceeds of crime under Section 2(1)(u). In view of the above, we are not impressed with the contention that the investigation by ED was triggered without any foundational/jurisdictional facts. In our view, the allegations in the FIR point out to ***(i)*** involvement of persons in criminal activity relating to scheduled offences; ***(ii)*** the generation as well as ***(iii)*** laundering of the proceeds of crime within the meaning of Section 3. This is in view of the fact that wherever there are allegations of corruption, there is acquisition of proceeds of crime which itself tantamount to money-laundering.

105. A lot of heat and dust was generated about the ED registering an Information Report on 29.07.2021 without any material whatsoever

and thereafter indulging in a fishing expedition both by summoning the respondents and by seeking copies of various documents from the Special Court before which the complaints relating to the predicate offences are pending. But we do not see any substance in these arguments. The reason why we say so will be understood if we rewind and go back to a few facts.

106. On 29.10.2015, Devasagayam made a complaint. It was against ten different persons, but not against the Minister, his brother and his Secretary. But on 07/08.03.2016, one Gopi made a complaint naming the brother of the Minister and claimed that a total amount of more than Rs.2 crores was paid. Gopi then filed Criminal O.P. No.7503 of 2016 on the file of the High Court in which the High Court passed an order on 20.06.2016, to expand the investigation and go against the real culprits. But a Final Report under Section 173(2) of the Code was filed on 13.06.2017. This was followed by another complaint filed by V. Ganesh Kumar on 09.09.2017 in FIR No.298 of 2017. In this FIR, a Final Report was filed on 07.06.2018. Similarly, one Arulmani filed a complaint on 13.08.2018 in FIR No.344 of 2018 in which a Final Report was filed on 12.04.2019.

107. Subsequently, at the instance of one R.B. Arun Kumar, further investigation was ordered in FIR No.441 of 2015, by an order of the

High Court dated 27.11.2019. Thereafter, a discharge petition was filed by the Minister in one of those cases and after the same was dismissed, he filed a revision before the High Court. During the pendency of the revision, a Final Report was filed under Section 173(8) in one of those cases.

108. Around the same time, writ petitions were filed pointing out that there was a huge jobs-for-cash scam. In those writ petitions, the Assistant Commissioner of Police filed counter affidavits.

109. ***Thus, the information about all complaints, the nature of the complaints, the amount of money allegedly collected towards illegal gratification had all come into public domain. To say that the ED should have adopted an Ostrich like approach, without trying to find out where and to whom the huge money generated in the scam had gone, is something unheard of.***

110. In fact, ED was not trying to access any document which was inaccessible. In several proceedings before the High Court, such as ***(i)*** petitions for further investigation; ***(ii)*** writ petitions; and ***(iii)*** quash petitions, some of the documents whose certified copies were sought by the ED were already annexed. All that the ED wanted was authenticated copies of those documents and nothing more.

111. In fact, the FIRs as well as Final Reports are now uploaded in the websites of the Police Department in some of the States. In the State of Tamil Nadu, Police started uploading FIRs online, way back in 2016. In all Police Stations, a Crime and Criminal Tracking Network and Systems, popularly known as 'CCTNS' is installed. Therefore, the information relating to FIRs is in the public domain.

112. Once an information relating to the ***acquisition*** of huge amount of illegal gratification in the matter of public employment has come into the public domain, it is the duty of the ED to register an Information Report. This is because *"acquisition"* is an activity amounting to money-laundering and the illegal gratification acquired by a public servant represents "*proceeds of crime*," generated through a criminal activity in respect of a scheduled offence. ***Therefore, it does not require any expedition, much less a fishing expedition for someone to say that the receipt of bribe money is an act of money-laundering.***

113. ***The contention of Shri Sidharth Luthra that there was no explanation for the delay on the part of the ED in registering the Information Report, is a self-serving argument. If the ED registers an Information Report immediately upon the registration of a FIR for a predicate offence, ED will be accused***

of acting in haste. If they wait until the drama unfolds up to a particular stage, ED will be attacked as guilty of delay. The accused should be thankful to ED for giving a long rope from 2016 till 2021.

114. Therefore, all the arguments on facts and all the legal contentions emanating from some portions of the judgment in ***Vijay Madanlal Choudhary***, to challenge the validity of the proceedings initiated by ED are completely unsustainable.

Question No. 2: Whether in the light of the fact that notice has been ordered in the review petition and a few interim orders have been passed in some proceedings, it is necessary for this Court to tag these appeals along with a review petition or defer the hearing of these matters until a decision is rendered in the review petition and other petitions?

115. Now let us come to the contention revolving around the correctness of some portions of the decision in ***Vijay Madanlal Choudhary***.

116. First of all, we should point out that a notice ordered in the review petition being Review Petition (Crl.) No.219 of 2022, will not destroy or diminish the precedential value of ***Vijay Madanlal Choudhary***. The argument of the learned counsel for the accused, if accepted, will not only destroy the principles of judicial discipline and the doctrine of *stare decisis*, but also bring to a grinding halt, all

pending investigation in the country. In fact, the order dated 25.08.2022 passed in Review Petition (Crl.) No.219 of 2022 discloses that *prima facie* the Court was of the view that at least two of the issues raised in the review petition require consideration. Though it is not precisely spelt out in the order, those two issues relate to ***(i)*** not providing the accused with a copy of the ECIR; and ***(ii)*** reversal of the burden of proof and presumption of innocence. The points that the respondents are canvasing in this case, have nothing to do with those two issues. Therefore, the accused cannot have a piggyback ride on the review petition.

117. In fact, as we have pointed out elsewhere, the accused have not come up with any appeal challenging the order of the High Court dated 01.09.2022. Therefore, they are entitled at the maximum, to argue only for the dismissal of the appeals filed by ED and others against the said decision. Suppose we agree with the learned counsel for the accused and dismiss the appeals filed by ED, even then they cannot have an escape route since the impugned order of the High Court protects them only till the other proceedings are kept at bay.

118. Therefore, the accused is not entitled at all either to seek a reference to a larger Bench or to seek to defer the matter till a decision is rendered in the matters involving larger issues.

119. In view of the above, the appeals arising out of the order of the Division Bench of the High Court are liable to be allowed. Accordingly, these appeals are allowed and the order of the Division Bench of the Madras High Court dated 01.09.2022 is set aside. ED will now be entitled to proceed further from the stage at which their hands were tied by the impugned order.

PART-III (Permission to ED to inspect the records of the Special Court trying the predicate offences)

120. To recapitulate, ED registered an Information Report on 29.07.2021. Thereafter, ED filed applications before the Special Court seeking certified copies of the FIR, statements of witnesses, etc. By an order dated 09.11.2021, the Special Court allowed the application partly and directed the issue of certified copies of FIR, complaint, statements, etc., but refused to provide certified copies of unmarked documents.

121. As against the said order, ED moved the High Court under Section 482 of the Code. These petitions were partly allowed by the High Court by an order dated 30.03.2022, permitting ED to have inspection of the documents under Rule 237 of the Rules, 2019 and thereafter, to file a fresh third party copy application. It is against this order that one of the accused by name M. Karthikeyan (Accused No.3)

in the Final Report filed under Section 173(8) of the Code in CC No.24 of 2021 has come up with an appeal.

122. The grievance of the appellant in this appeal is that the High Court has overlooked the provisions of Rule 231(3) of the Rules, 2019 and also Section 65B of the Indian Evidence Act, 1872[35]. But both the above contentions are without substance. Rule 231 primarily deals with the grant of certified copies of certain other documents to the accused, before filing of the Final Report. Rule 231(3) states that certified copies of unmarked documents shall not be given. The High Court has not passed any order directing the grant of certified copies of unmarked documents. All that the High Court has done is permitting the ED to have an inspection of the documents under Rule 237 and thereafter to file a proper copy application. This is not contrary to Rule 231(3).

123. We do not know how an argument revolving around Section 65B of the Evidence Act is raised. Section 65B concerns the admissibility of electronic records. Without certification, ED may not be able to use those electronic records in evidence, in the prosecution under PMLA. But it does not mean that they cannot even have a look at the electronic record.

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[35] For short **"*the Evidence Act*"**

124. Therefore, we find no merits in the appeal. Hence, the appeal challenging the order of the High Court dated 30.03.2022 passed in Criminal O.P. No.5726 of 2022 is dismissed.

PART – IV (Extension of time to complete further investigation)

125. There is one appeal filed by Y. Balaji, whose status is indicated by us in a tabular column elsewhere. His appeal challenges an order passed by the High Court originally on 27.11.2019 directing the prosecution to complete further investigation in CC No.3627 of 2017 within six months. When a petition for extension of time was moved, the Court rejected it by an order dated 01.11.2021 on the ground that the prayer had become infructuous. Therefore, worried about the fate of further investigation, the victim has come up with the above appeal. But the worry of the appellant is baseless. Merely because the High Court has not granted extension of time, it does not mean that the direction to conduct further investigation has become infructuous. On the contrary, a Final Report has already been filed under Section 173(8) of the Code on 08.03.2021 in CC No.3627 of 2017 and the same has now become CC No.24 of 2021.

126. Therefore, the appeal challenging the orders dated 27.11.2019 and 01.11.2021 is dismissed.

Contempt Petitions

127. Anti Corruption Movement has come up with petitions seeking the initiation of contempt proceedings against the Police Officials who are in-charge of the investigation, on the ground ***(i)*** that the offences under the PC Act have not been included in CC No.25 of 2021; ***(ii)*** that steps were not taken to have the interim stay vacated in two criminal cases; and ***(iii)*** that a misleading picture was projected before the High Court as though the investigation was incomplete.

128. Shri Ranjit Kumar, learned senior counsel appearing for the State and Shri Tiwari, learned AAG for the State submitted that there was no willful disobedience of the orders passed by this Court and that the State actually took steps to vacate the stay. According to the learned senior counsel, the hands of the investigating agency were tied due to the stay order and that once the appeals arising out of the two substantial orders of the High Court dated 01.09.2022 and 31.10.2022 are disposed of, the State will take expeditious steps.

129. ***For the present, we would accept the explanation offered by the alleged contemnors. This is for the reason that the alleged contemnors alone are not to be blamed for where we are. The entire case turned out to be a match where it became impossible to identify who was playing for which team.*** Despite

this Court's order dated 08.09.2022, the High Court passed the order dated 31.10.2022, which practically has the effect of wiping out the directions issued by this Court. In its order dated 31.10.2022, the High Court referred to our order at various places and eventually destroyed the effect of the order of this Court. Therefore, the Police Officers alone cannot be held guilty of wilful disobedience. Hence, the contempt petitions are dismissed. However, if the future course of investigation shows any disobedience of the orders of this Court, it will always be open to the petitioner to come up again. With this observation, the contempt petitions are dismissed.

I.A.No. 26257 of 2023

130. This is an application taken out by Y. Balaji, appellant in some of these appeals, seeking the constitution of a Special Investigation Team and the appointment of a Special Public Prosecutor. This application is filed on the ground that the hope expressed by this Court in its order dated 08.09.2022 that the State Police would do a proper job, has been belied by subsequent events. Therefore, the applicant prays that time is now ripe for the constitution of a Special Investigation Team.

131. The application is opposed on the ground, ***(i)*** that a prayer of this nature cannot be made by way of an interlocutory application;

and ***(ii)*** that the allegation of the prosecution being influenced by the Minister does not stand substantiated.

132. ***As we have pointed out while dealing with the contempt petitions, the entire blame for this fiasco cannot be laid at the doorstep of the Police alone. We find several coparceners***. Hence, we reject this I.A. at this stage with liberty to the applicant to come back with a substantial petition seeking such a prayer, at a later point of time, when a foul play is suspected. Accordingly, I.A. No.26257 of 2023 is dismissed with the above liberty.

Results summed up

133. The result of the entire discussion is summed up as follows:

(i) The appeals arising out of the order for *de novo* investigation are allowed. That portion of the order of the High Court dated 31.10.2022 passed in Criminal O.P. No. 15122 of 2021 is set aside. The directions issued in the said original petition for *de novo* investigation are set aside. The Investigation Officer shall proceed with further investigation in all cases by including the offences under the PC Act. Any let up on the part of the Investigation Officer in this regard will pave the way for this Court to consider appointing a Special Investigation Team in future.

(ii) The appeals arising out of the order of the Division Bench of the High Court dated 01.09.2022 are allowed. The order dated 01.09.2022 is set aside. All the three writ petitions challenging the initiation of

proceedings by ED shall stand dismissed.

(iii) The appeal arising out of the order of the High Court dated 30.03.2022 is dismissed.

(iv) The appeal challenging the orders dated 27.11.2019 and 01.11.2021 of the High Court relating to extension of time for completion of investigation is dismissed. The Investigation Officer shall proceed with further investigation and file Further/Final Reports within two months.

(v) The Contempt Petitions and I.A. No. 26257 of 2023 are dismissed.

Application for impleadment is dismissed.

Pending application(s), if any, shall also stand disposed of.

.....J.
(KRISHNA MURARI)

.....J.
(V. RAMASUBRAMANIAN)

NEW DELHI;
MAY 16, 2023