Supreme Court of India
J. Sekar @ Sekar Reddy vs Directorate Of Enforcement on 5 May, 2022
Author: Vineet Saran
Bench: Vineet Saran, J.K. Maheshwari

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 738 OF 2022
(Arising out of Special Leave Petition (Crl.) No. 8305 of 2021)

J.Sekar @Sekar Reddy …Appellant

Versus

Directorate of Enforcement ...Respondent

JUDGMENT

Leave granted.

2. This appeal arises out of the judgment dated 04.02.2021 passed by the Division Bench of the High Court of Madras in Crl. O.P. No. 24200 of 2017 which was filed for quashing of the proceedings in C.C. No. 2 of 2017. The High Court, while dismissing the petition under Section 482 of the Criminal Procedure Code (for short 'Cr.P.C.') inter□alia rejected Signature Not Verified Digitally signed by the argument of the appellant that the FIR with respect to Rachna Date: 2022.05.06 16:49:56 IST schedule offence was closed for want of evidence and in Reason:

absence of connected evidence with a crime of schedule offence, the prosecution for offences under Sections 3 & 4 of the Prevention of Money Laundering Act, 2002 (for short "PMLA") is unsustainable. It is also held that though the commission of schedule offence is a fundamental pre□ condition for initiating the proceedings but the offence of money laundering is independent of the schedule offence because the PMLA deals with the process or activity with respect to the proceeds of crime including concealment, possession, acquisition or use, however in the light of the explanation of Section 44(1) of PMLA, the argument of the appellant was repelled. The High Court further held that if any observation has come in the bail application, having no material to connect with the commission of any offence, would not be enough to quash the proceedings. The Court relied upon the seizure made by the I.T. Department including that of the currency notes of denomination of Rs. 2000 in the context that the currency notes of denomination of Rs. 500 and Rs. 1000 ceased to be legal tender by order of the Government at the time of demonetization and the people were in queue to exchange those old currency notes for new ones. As the seizure of currency notes of Rs. 33 crores in the denomination of Rs. 2000 was made, therefore, the closure report made by Central Bureau

Investigation (in short 'CBI') in schedule offence cannot be relied upon.

2. Briefly, the facts relevant for the purpose of the appeal are that the appellant J. Sekar Reddy is the Managing Partner of M/s SRS Mining which is a partnership firm engaged in sand mining since 2013 and he had deposited Rs 312.64 Crores in three bank accounts of the firm. On 08.12.2016 and 09.12.2016, the Income Tax Department, Chennai (for short "I.T. Department") conducted search in the official/commercial premises of the appellant and others and seized currency amounting to Rs.106,98,89,800/- and 128.495 kg of gold (valued at Rs.36,72,07,311).

3. Thereafter, from 08.12.2016 to 12.12.2016, appellant joined inquiry before the IT Department about the seizure of currency notes and gold. Subsequently on 19.12.2016, the CBI registered RC 40(A) 2016/CBI/ACB/CHENNAI for offences under Sections 120-B r/w 409, 420 of Indian Penal Code (in short 'IPC') and Section 13(2), r/w 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act,1988 (in short 'PC Act') against the appellant and two others.

4. The Enforcement Directorate after perusing the FIR of the CBI felt that in addition to the scheduled offences, the provisions under Sections 2(1)(x) and 2(1)(y) of the PMLA would attract, however registered the offence at ECIR No. 19 of 2016 dated 19.12.2016 against the appellant and others. The respondent had enquired and conducted the investigation and, recorded the statement of the appellant and others and found new currency notes of denomination of Rs.2,000/- of a total value of Rs.33,74,92,000/ in a subsequent search on the official and commercial premises of the appellant.

5. In the meantime, the CBI had filed the custody petition which was dismissed by the Special Court vide order dated 30.12.2016. The CBI had also registered two FIRs being Crime No. RC MA1 2016 A0051 at 1500 hrs. and RC MA1 2016 A0052 at 1510 hrs on 30.12.2016 by a margin of ten minutes time. The appellant filed the bail application in RC MA1 2016 A0040 and RC MA1 2016 A0051 before the Principal Special Judge for CBI Cases, Chennai. The Special Court, by order dated 17.3.2017 granted bail to the appellant imposing certain conditions.

6. Subsequently, Deputy Director (ED), Chennai in ECIR CEZO/19/2016 passed an order for provisional attachment in exercise of the power under Section 5(1) of PMLA for a specified period of one month. On submitting the complaint OC No. 785 of 2017 before the Adjudicating Authority for confirmation of the order of provisional attachment, it refused to confirm the order of attachment and dismissed the same. In the order, the Adjudicating Authority stated that the description of the bank or bank officers is not on record. In absence of any identification, who were the bank officers who converted the denomination of old currency notes into new and that too from which bank, there was no material with the Deputy Director for making a reasonable belief for change of old into new currency notes through the bank officers and observed that the said allegation is based on speculations, which are not legally tenable.

7. It is relevant to note that RCMA1 2016 A0051 and RCMA1 2016 A0052 were challenged by the appellant as well as other co-accused before the Madras High Court by filing Crl. O.P. Nos. 24200 and 24202 of 2017 invoking the power under Section 482 Cr.P.C., which were decided by a common

order dated 27.6.2018 and the High Court in para 32 quashed the RC MA1 2016 A0051 and RC MA1 2016 A0052 against the appellant and other co-accused giving liberty to the CBI to treat the allegations made in FIRs as supplementary allegations or to merge the same in first FIR RC MA1 2016 A0040.

8 It is most relevant to note that CBI after investigation in the main case in RC MA1 2016 A0040 submitted the closure report before the Additional Sessions Judge, CBI Court, Chennai in exercise of power under Section 173(2) Cr.P.C. The said report was accepted vide order dated 25.9.2020 with an observation that for lack of sufficient evidence, nothing incriminating is found which may surface on the part of accused persons. Therefore, from the above facts, it is clear that the CBI registered three cases out of which in the main case RC MA1 2016 A0040, the final closure report was submitted by CBI itself which was accepted by the Court and in remaining two cases bearing Nos. RC MA1 2016 A0051 and RC MA1 2016 A0052, the High Court quashed the FIRs with respect to schedule offence.

9 So far as the investigation made by the I.T. Department on the basis of search is concerned, the same is closed. The appellant sought information from the I.T. Department vide communication dated 11.5.2019. In respect to the same, the I.T. Department vide letter dated 16.5.2019 provided the details of seizure made by it from the appellant. It is apparent that the new currency notes of denomination of Rs. 2000 belonged to M/s SRS Mining which is recorded in its cash book. Those currency notes seized are from the proceeds of the sand sales by M/s SRS Mining. The details of the tax, paid before or after self-assessment for Financial Year 2016-17 satisfied the Authority that money so seized was accounted money or tax paid.

10. The appellant contending all the above facts, approached the High Court of Madras invoking the jurisdiction under Section 482 Cr.P.C. seeking quashment of the proceedings related to PMLA case and prayed for the following reliefs:

> (i) To stay all further proceedings in CC No. 2 of 2017 on the file of the Hon'ble Principal Sessions Court, Chennai pending disposal of the above criminal original petition.
>
> (ii) To call for the records in CC No. 2 of 2017 on the file of the Hon'ble Principal Sessions Court, Chennai and quash the same and pass such further other order, orders as deemed fit and proper in the circumstances of the case and thus render justice.

By the impugned order dated 4.2.2021, the High Court of Madras dismissed the said petition.

11. We have heard Shri Vikram Chaudhari, learned Senior Counsel for the appellant and Shri S.V. Raju, learned Additional Solicitor General on behalf of the respondent.

12 Learned senior counsel for the appellant urged that for invocation of PMLA, pre-existing occurrence of the scheduled offence is required because the proceeds of crime are essential property

derived from criminal activity of the said offence. The Adjudicating Authority dealt with the order of the Deputy Director (ED) and for lack of evidence refused to pass an order for attachment. As per the material available on record, the offence of money laundering specified in Section 2(1)(p) and also in Section 3 of PMLA is not made out. It is further urged that as per Section 8(1) of PMLA, a show cause notice may be issued regarding the attached property if the said Authority is having reason to believe that any person has committed an offence under Section 3 or is in possession of proceeds of crime. The adjudication proceedings and criminal proceedings are independent to each other but the material for commission of offence recorded by the authorities in those proceedings may be a relevant factor, in particular when for lack of evidence, the Authority itself is satisfied that the attachment of the proceedings in PMLA case cannot be continued. Reliance has been placed on the judgments of this Court in Radheshyam Kejriwal Vs. State of West Bengal (2011)3SCC 581 and Ashoo Surendranath Tewari vs. Deputy Superintendent of Police, EOW, CBI and Another (2020) 9 SCC 636.

13. On the other hand, Shri S.V. Raju, learned Additional Solicitor General on behalf of the respondent contends that the order passed by the Adjudicating Authority under Section 5(5) PMLA is subject to the appeal which is pending before the Appellate Authority. Therefore, the order of the Adjudicating Authority and the finding recorded therein are not sufficient to quash the proceedings in the present case. Learned ASG is not in a position to controvert the arguments on merits as advanced by the learned senior counsel for the appellant.

14. After having heard learned counsels and on perusal of the material available on record, it is clear that the I.T. Department made search in the official/commercial premises of the appellant and other connected persons. Later, I.T. Department vide communication dated 16.5.2019 which was issued in response to the letter of the appellant dated 13.5.2019 was satisfied that the cash which was recovered from the officials/commercial premises of the appellant is explained and tax was paid in the self□assessment for the Financial Year 2016□17. The said letter is reproduced as thus:

“GOVERNMENT OF INDIA OFFICE OF THE JOINT DIRECTOR OF INCOME-TAX(INV)(OSD) UNIT-2(1), Room No. 223, 2nd Floor, Income Tax Investigation Wing, M G Road Nungambakkam, Chennai-600 034. Telefax : 044-28253651 Kg.arunraj@incometax.gov.in UNIT2(1)/2019-20 16.05.2019 To:

The Managing Partner M/s SRS Mining 317, Elite Empire G-12, Valluvarkottam High Road Nungambakkam Chennai-34 Sir, Sub: Search in the case of M/s SRS Mining and others-request to provide information-Reg Ref: Your letter dated 01.05.2019 received in this office on 13.05.2019 **** Please refer to the above.

2. The details requested by you are given below point wise:-

(i) The date of initiation of search action in the case of M/s SRS Mining and others is 08.12.2016. This office didn’t refer the case to the CBI and the CBI suo-moto initiated proceedings after news of seizure of huge amount of new Rs 2000 notes emerged.

(ii) The seized cash and gold belong to M/s SRS Mining, a partnership firm whose partners are Shri S. Ramachandran, Shri K.Rethinam and Shri J.Sekar

(iii) From the residence of Shri J.Sekar cash of Rs. 12,00,000/- in old currencies was seized

(iv) The details of seizure of new currencies of Rs. 2000 notes made in the various premises are given below:-

S.No. Name and address of the assessee New Denomination Rs. 2000 seized (in Rs.) 1 M/s SRS Mining, No.36, Sudhamma Building, 8,00,00,000 Flat No. 1, First Floor, Rear Block, Vijayaragava Road, T. Nagar, Channai – 600 2 M/s SRS Mining, 26/14, Yogammbai Street, T 1,63,06,000 Nagar, Chennai – 600 017 3 M/s SRS Mining, 3rd Floor, VBC Solitaire, No. 13,16,000 47 & 49, Bazullah Road, T Nagar, Chennai – 600 017 4 G.Venkatesh, Venu Jewellers, No. 127, shop 11,86,000 No. 18, NSC Bose Road, Adinath complex, Sowcarpet, Chennai – 600 079 5 K. Umapathy, Royal India Gems & Jewels P 1,00,000 Ltd., No. 226, Old No. 124, Shop No. 18,19,20 4th Floor, Adinath Complex, Chennai – 600 079 6 M/s SRS Mining, Tata Ace Vehicle TN23 BC 24,00,00,000 Total 33,89,08,000 The new currencies belong to M/s SRS Mining and they were recorded in the parallel cash book of M/s SRS Mining.

(v) As per the seized documents, the source of new currencies seized is from proceeds of sand sales by M/s SRS Mining.

(vi) The details of prepaid tax paid by SRS Mining before the search action are given below:-

Sl. No.	AY	Advance tax Rs.	TDS/TCS Rs.	Total prepaid tax paid Rs.
1	2016-17	12,00,00,000/-	58,35,283/-	12,58,35,283/-
2	2017-18	18,00,00,000/-	42,98,471/-	18,42,98,471/-
			Total	31,01,33,754/-

Post Search, M/s SRS Mining has paid Rs. 22,00,00,000/- towards self- assessment tax for AY 2017-18 relevant to FY 2016-17.

Yours faithfully (K G ARUNRAJ IRS) Joint Director of Income Tax (Inv.) (OSD) Unit 2 (1), Chennai" Therefore, the proceedings started on the basis of intriguing recovery of cash and other items in fact, does not exist and the I.T. Department itself was satisfied with the recovery after investigation in the year 2019. Therefore, the finding recorded in the impugned order by the High Court in paragraph 14 with regard to recovery of new currency notes of denomination of Rs. 2000 cannot be countenanced.

15. Reverting to the issue of registration of the main FIR by the CBI bearing No. RC MA1 2016 A0040 and thereafter two other cases RC MA1 2016 A0051 and RC MA1 2016 A0052 are based upon the information furnished by the I.T. Department. As discussed above, the cases bearing Nos.

RC MA1 2016 A0051 and RC MA1 2016 A0052 have been quashed by the High Court vide order dated 27.6.2018 passed in Criminal O.P. No. No. 409 of 2017. Thereafter in the main FIR RC MA1 2016 A0040, CBI submitted its closure report. The said closure report has been accepted by the Court in exercise of the power under Section 173(2) Cr.P.C. on 25.9.2020. The relevant extracts of closure report find mention in the court order is reproduced thus:

> "The Inspector of Police, CBI, ACB, Chennai has submitted a final report through Senior Public Prosecutor, CBI, praying an order to close the FIR pending before this court in RC MA1 2016 A 0040 U/s 120□B r/w 409, 420 IPC and Sec. 13(2) r/w 13 (1) (c) (d) of PC Act, 1989 ..... □□□□□□□□□□□□□

3. This court perused all the relevant records including the FIR, Statement recorded under Section 161 of Cr.P.C., the documents collected during investigation, by the Investigating Officer and in the final report it is submitted that this court may be pleased to accept this Closure Report under Section□173(2) of Cr.P.C. and may drop the action against A1 to A6 for lack of sufficient Evidence. There was nothing incriminating surfaced on the part of accused persons, as these accused 1 to 6 had in conspiracy with unknown bank officials and public servants cheated the Government of India.

4. The evidence on record is not adequate to launch prosecutable case against the accused persons beyond reasonable doubt to establish that they fraudulently converted the unauthorised cash held by them in old currency notes in to NHD, thereby depriving the public, in enforcing their right and thus the accused 1 to 6 had in conspiracy with unknown bank officials and public servants cheated the Government of India.

□□□□□□□□□□□□

6. The investigation has not established the allegations levelled against A1 to A6. On the basis of statement of witnesses of LW1 to 170 and documents D1 to D879 and M.O.I to 8 collected during the investigation, there is no sufficient evidence to launch prosecution against the accused 1 to 6 persons, for the offences of Criminal Conspiracy, Cheating, Criminal misconduct.

7. As per the oral and documentary evidence, the allegations in the FIR to the effect that the accused persons have caused wrongful loss to the Government of India to the tune of approximately 247.13 Crores and obtaining corresponding wrongful gain to themselves, is not substantiated with prosecutable evidence. Hence the final report has been filed for recommending closure of the case.

8. .....Hence this court is convinced and satisfied to accept the prayer of closure of the case.....

9. .....The reasons submitted by the prosecution for closure of F.I.R. in the absence of any evidence is acceptable." Thus, it is clear that the FIR with respect to schedule offence registered by the CBI with respect to proceeds of the crime including property attached has been closed.

16. On the basis of the intimation given by the I.T. Department and registration of the FIR by the CBI which was closed, the Directorate of ED registered ECIR/CEZO/19/2016 under Sections 3, 4 & 8(5) of PMLA. After the said FIR, Deputy Director (ED) passed an order under Section 5(1) of PMLA on 1.6.2017 attaching the property. For confirmation of attachment, OC No. 785 of 2017 was filed by the Department which is rejected by the Adjudicating Authority while exercising the power under Section 5(5) of PMLA. The Adjudicating Authority observed as thus:

> "It is pertinent to note that about two years have lapsed since passing of the said bail order dated 17.03.2017, and over two years have passed after filing of FIR, however till date no Final Report is filed by the concerned Investigating Officer investigating the scheduled offences. Most material is the fact that so far no bank or bank officers are identified, either by the officer investigating the schedule offences or even the Enforcement Directorate, Chennai. In view of the absence of any bank or bank officers having been identified, it was necessary for the Deputy Director to consider the absence and/ or non□identification of any bank or bank officers. Nothing is adduced or available on record as to which banks and which bank officers are involved, who have unauthorizedly converted demonetized old currency into new currency. The reasonable belief as is formed by the Deputy Director reveals that the vital aspect concerning the fact that no such bank or bank officers are existing or found is not considered by the Deputy Director at all. The Reasonable Belief is thus impaired. The Reasonable Belief formed by the Deputy Director inter alia is that the accused persons have laundered their unaccounted money in conspiring with the bank officials of various banks who helped them laundering the unaccounted money. There is nothing on record which reveals the name of even single bank, much less, the various banks as stated by the Deputy Director. Similarly not a single bank official is identified or named and there is nothing on record which reveals any such detail. Consequently the Reasonable Belief becomes baseless and is mere speculation of the Deputy Director. Such a belief can not be justified and sustained. The aspect concerning non□identification and/ or non□availability of any bank and bank officials, goes to the root of the formation of the entire Reasonable Belief. The Additional Director/ Joint Director/ Deputy Director ought to have directed the Enforcement Directorate Officers to investigate or cause to be investigated the aspect concerning the bank or bank officers. The Deputy Director ought to have deliberated on the issue and proceeded, which is not done. In the absence of such basic material the Reasonable Belief entertained by the Deputy Director specifically forming the Reasonable Belief that the accused laundered their unaccounted money in conspiring with the bank officials of various banks who helped them in laundering the unaccounted money, can not be legally tenable.

The Reasonable Belief of the Deputy Director further upon it's analysis indicates that the Deputy Director has entertained the Reasonable Belief as stated in para 21, 26 & 27 of the Provisional Attachment Order, only in respect of a part of the seized amount of Rs. 334792000/□, without specifying as to what quantum and as to what part of the seized amount of Rs. 334792000/□in the form of movable properties is related to the schedule offences.

The formation of the Reasonable Belief only for part of the seized amount and yet proceeding to attach the entire seized amount vitiates the entire Reasonable Belief and renders it as illegal. It is seen from the Reasonable Belief that such an exercise was not carried out by the Deputy Director.

The reasonable belief formed by the Deputy Director that the new currency, which were seized by the Income Tax Authorities are nothing but the currency received in lieu of exchange of old currency notes (demonetized currency) inclusive of commission for such exchange received by S/ Shri J. Sekar Reddy, M. Premkumar, S. Srinivaslu, S. Ramachandran & K. Rethinam, is neither based on any specified material nor is justified. It is therefore, concluded that the reasonable belief formed by the Deputy Director in this regard cannot be sustained, the same having been not based on any specifically material and the same is merely surmises, conjectures and speculation.

Considering the material in O.C., the written replies/ additional written reply/ submissions of the Defendants and the arguments above referred, I find that the property provisionally attached by PAO No. 14/2017 dated 12.06.2017, i.e. 49,480 kgs of gold valued of Rs. 13,96,88,246 mentioned in para 22 of PAO(para 1 of this order) is not involved in money laundering. ”

17. In the said sequel of facts, the legal position emerges by the judgment of Radheshyam Kejriwal (supra) is relevant in which this Court has culled out the ratio of the various other decisions pertaining to the issue involved and has observed as thus:

“12 After referring to various judgments, this Court then culled out the ratio of those decisions in para 38 as follows: (Radheshyam Kejriwal Case)

38. The ratio which can be culled out from these decisions can broadly be stated as follows:

> (i) Adjudication proceedings and criminal prosecution can be launched simultaneously;
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> (ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;
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> (iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;
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> (iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;
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> (v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases."

13. It finally concluded: (Radheshyam Kejriwal case "39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the court.

14. From our point of view, para 38(vii) is important and if the High Court has bothered to apply this parameter, then on a reading of the CVC report on the same facts, the appellant should have been exonerated." In the case of Ashoo Surendranath Tewari (supra), this Court relied upon the judgment of Radheyshyam Kejriwal (supra) and set□aside the judgment of the High Court while exonerating the appellants because the chance of conviction in a criminal case in the same facts appeared to be bleak.

18. In view of the aforesaid legal position and on analysing the report of I.T. Department and the reasoning given by CBI while submitting the final closure report in RC MA1 2016 A0040 and the order passed by the Adjudicating Authority, it is clear that for proceeds of crime, as defined under Section 2(1)(u) of PMLA, the property seized would be relevant and its possession with recovery and claim thereto must be innocent. In the present case, the schedule offence has not been made out because of lack of evidence. The Adjudicating Authority, at the time of refusing to continue the order of attachment under PMLA, was of the opinion that the record regarding banks and its officials who may be involved, is not on record. Therefore, for lack of identity of the source of collected money, it could not be reasonably believed by the Deputy Director (ED) that the unaccounted money is connected with the commission of offence under PMLA. Simultaneously, the letter of the I.T. Department dated 16.5.2019 and the details as mentioned, makes it clear that for the currency seized, the tax is already paid, therefore, it is not the quantum earned and used for money laundering. In our opinion, even in cases of PMLA, the Court cannot proceed on the basis of preponderance of probabilities. On perusal of the statement of Objects and Reasons specified in PMLA, it is the stringent law brought by Parliament to check money laundering. Thus, the allegation must be proved beyond reasonable doubt in the Court. Even otherwise, it is incumbent upon the Court to look into the allegation and the material collected in support thereto and to find out whether the prima facie offence is made out. Unless the allegations are substantiated by the authorities and proved against a person in the court of law, the person is innocent. In the said backdrop, the ratio of the judgment of Radheshyam Kejriwal (supra) in paragraph 38 (vi) and

(vii) aptly applicable in the facts of the present case.

19. As discussed above, looking to the facts of this case, it is clear by a detailed order of acceptance of the closure report of the schedule offence in RC MA1 2016 A0040 and the quashment of two FIRs by the High Court of the schedule offence and of the letter dated 16.5.2019 of I.T. Department and also the observations made by the Adjudicating Authority in the order dated 25.2.2019, the evidence of continuation of offence in ECR CEZO 19/2016 is not sufficient. The Department itself is unable to collect any incriminating material and also not produced before this Court even after a lapse of 5 ½ years to prove its case beyond reasonable doubt. From the material collected by the Agency, they themselves are prima facie not satisfied that the offence under PMLA can be proved beyond reasonable doubt. The argument advanced by learned ASG regarding pendency of the appeal against the order of Adjudicating Authority is also of no help because against the order of the Appellate Authority also, remedies are available. Thus, looking to the facts as discussed hereinabove and the ratio of the judgments of this Court in Radheshyam Kejriwal (supra) and Ashoo Surendranath Tewari (supra), the chance to prove the allegations even for the purpose of provisions of PMLA in the Court are bleak. Therefore, we are of the firm opinion that the chances to prove those allegations in the Court are very bleak. It is trite to say, till the allegations are proved, the appellant would be innocent. The High Court by the impugned order has recorded the finding without due consideration of the letter of the I.T. Department and other material in right perspective. Therefore, in our view, these findings of the High Court cannot be sustained.

20. Accordingly, we set aside the impugned order passed by the High Court. Consequently, this appeal is allowed. ECR CEZO 19/2016 including Complaint bearing No. 2 of 2017 stands quashed.

.....J.

[VINEET SARAN] .....J.

NEW DELHI ; [J.K. MAHESHWARI]
MAY 5, 2022.