



**THE HIGH COURT OF ORISSA AT CUTTACK**

**CRLMC No.4405 of 2024**

(In the matter of an application under Section 528 of the Bharatiya  
Nagarik Suraksha Sanhita, 2023)

**Md. Intekhab Alam and Another        .....        Petitioners**

**-Versus-**

**Assistant Director,  
Enforcement Directorate,  
Government of India, Bhubaneswar        .....        Opposite Party**

For the Petitioners        :    Mr. P.N. Mishra, Senior Advocate

For the Opposite Party: Mr. Gopal Agrawal, Senior Advocate  
for Enforcement Directorate

**CORAM:**

**THE HONOURABLE SHRI JUSTICE SIBO SANKAR MISHRA**

-----  
Date of Hearing: 04.03.2025        Date of Judgment: 18.07.2025  
-----

**S.S. Mishra, J.** The present petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS) has been filed seeking quashing of the order of cognizance dated 03.12.2020 passed by the learned CBI-I cum-Special Judge (PMLA), Bhubaneswar, now in the Court of the learned Sessions Judge, Khurda at Bhubaneswar, as well as the consequential proceedings pending in Criminal Misc. Case (PMLA) No.16 of 2020.



2. The case arises out of allegations of illegal mining operations by M/s. Serajuddin & Co. (Petitioner No.2), a partnership firm comprising seven partners, including Md. Mofazzalur Rehman (since deceased) and Md. Intekhab Alam (Petitioner No.1). The Vigilance Department had registered FIR Nos.54 and 55 of 2009 at Vigilance P.S., Balasore, Odisha, leading to Charge Sheet Nos.3 and 4 dated 30.03.2012 against the petitioners under the following provisions:

- Sections 201, 379, 420, 120-B of the Indian Penal Code, 1860 (IPC)
- Section 21(1) of the Mines and Minerals (Development and Regulation) Act, 1957
- Section 2 of the Indian Forest Conservation Act, 1980
- Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988

3. Based on the said Charge Sheets being the predicated/scheduled offence, a complaint under Sections 3 and 45 of the PMLA, 2002 was filed before the learned Special Judge (PMLA), Bhubaneswar in CrI. Misc. (PMLA) Case No.16 of 2020, *inter*



*alia*, on the allegation that the petitioners had received proceeds of crime to the tune of ₹625,13,87,640.00/- (Six Hundred Twenty-Five Crores Thirteen Lakh Eighty-Seven Thousand Six Forty only) and the same is still retained by the Petitioner No.2 and, has been laundered by the Petitioner firm, which is an offence under Section 3 and punishable under Section 4 of the PMLA.

4. That it is also a matter of record that this Court vide order dated 23.09.2022 passed in CRLMC No.2845 of 2021 and CRLMC No.2272 of 2024, quashed the order of taking cognizance passed by the trial court and the entire proceedings emanating thereof against Md. Mofazzalur Rahman (deceased) and Md. Intekhab Alam (Petitioner No.1). Pursuant to the order dated 23.09.2022 passed by this Court, the learned Special Judge (Vigilance) Keonjhar vide order dated 01.11.2022 closed the case against the aforesaid accused in so far as the scheduled offence is concerned.

5. The petitioners, relying upon the order dated 23.09.2022 passed by this Court in CRLMC No.2845 of 2021 and CRLMC No.2272 of 2024 and subsequent orders closing the case against the petitioners by the court below, are now seeking quashing of the



proceedings under the PMLA, 2002, pending before the learned Special Judge, PMLA.

6. The primary grounds taken by the petitioners in support of their prayer for quashing is that with the scheduled offences having been quashed, there remains no basis for treating the alleged amount as '*proceeds of crime*' under Section 2(1)(u) of the PMLA, 2002 and once there is no '*proceeds of crime*', the proceeding under PMLA does not survive.

7. Mr. Mishra, the learned Senior Counsel for the petitioners, has strongly contended that the foundation of an offence under Section 3 of PMLA, 2002, is the existence of '*proceeds of crime*', which must originate from a scheduled offence. Since the scheduled offences have been quashed by this Court, there exists no legal basis to treat any amount in the hands of the Petitioners as proceeds of crime.

8. It has been further argued on behalf of the Petitioner No.2 that under partnership law, a firm is merely a collective name for its partners and partnership firm is not a juristic person. Since only two partners were being prosecuted for the scheduled offence, namely, Md. Mofazzalur Rehman (deceased) and Md. Intekhab



Alam (Petitioner No.1) and against the proceedings under the scheduled offence have already been quashed, the firm itself cannot be prosecuted independently.

9. The petitioners also relied on the judgment of the Hon'ble Supreme Court in the case of **"Indrani Patnaik vs Enforcement Directorate" W.P. (C) No.368 of 2021**, whereby the Hon'ble Apex Court has quashed the proceedings under PMLA against another accused company on similar grounds after the scheduled offence was quashed. The relevant paragraph of the judgment passed in the aforesaid case is extracted for ready reference:

*"Learned senior counsel has submitted that in the present case, prosecution of the petitioners in relation to the scheduled offence, on which the proceedings under the Prevention of Money-laundering Act, 2022 (PMLA) were based, have already come to an end with the petitioners having been discharged from V.G.R. Case No.59 of 2009 (T.R. Case No.80 of 2011) by the order dated 27.11.2020, as passed by the High Court of Orissa in Criminal Revision No.831 of 2018. Learned counsel would submit that in the given state of facts and the law declared by this Court, there cannot be any prosecution for the alleged offence of money-laundering in relation to the said offence for which, the petitioners have already been discharged. Learned Additional Solicitor General appearing for the respondents though has not disputed the order dated 27.11.2020 passed by the High Court, discharging the from the scheduled offence but has submitted that he has not received further instructions as to whether the prosecuting agency has challenged the said order or not. The record as it stands today, the petitioners stand discharged of the scheduled offence and therefore, in view of the law declared by this Court, there could arise no question of they being prosecuted for illegal gain of property as a result of the criminal activity relating to the alleged scheduled offence. That being the position, we find no reason to allow the proceedings against the petitioners under PMLA to proceed further. However, taking note of the*



*submissions made by the learned Additional Solicitor General and in the interest of justice, we reserve the liberty for the respondents in seeking revival of these proceedings if the order discharging the petitioners is annulled or in any manner varied, and if there be any legitimate ground to proceed under PMLA. Subject to the observations and liberty foregoing, this petition is allowed while quashing the proceeding in Complaint Case No.05 of 2020 dated 10.01.2020 pending in the Court of Sessions Court, Khurdha at Bhubaneswar cum Special Court under the Prevention of Money-laundering Act, 2002."*

**10.** It has been strenuously argued on behalf of the petitioner that under the scheme of PMLA, the offence of money laundering is linked to the commission of a scheduled offence as defined under Section 2(1)(y) of the Act. If there is no predicate offence, then there can be no proceeds of crime, and consequently, no offence of money laundering can arise. It is further submitted that the Delhi High Court in ***Directorate of Enforcement v. Akhilesh Singh (2024 SCCOnline DEL 3051)*** has taken the view that once the predicate offence is quashed, proceedings under PMLA cannot continue, as it is contingent upon the scheduled offence.

**11.** The petitioners have placed heavy reliance on the judgment of the Hon'ble Supreme Court in ***Vijay Madanlal Choudhary & Ors. v. Union of India (2022 SCC OnLine SC 929)***, where the Court categorically held that:

*"If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the court of competent jurisdiction, there can be no offence of money laundering against him or any one claiming such property being*



*the property linked to stated scheduled offence through him."*

Since the High Court has quashed the proceedings against the petitioners, there is no offence of money laundering under Section 3 of PMLA, 2002 would survive.

12. *Per contra*, Mr. Agrawal, the learned Senior Counsel for the Opposite Party-Enforcement Directorate argues that Charge Sheet Nos.3 and 4 dated 30.03.2012 filed in the court of the learned Special Judge (Vigilance), Balasore u/s.120B/420/379 of IPC r/w Section 13(1)(d) of the P.C. Act, 1988, Section 21(1) of MMDR Act, 1957 and Section 24 of the PMLA, 2002, raises a statutory presumption that any money recovered from the petitioners constitutes '*proceeds of crime*' unless they prove otherwise at trial. Thus, the petitioners must discharge their burden at the trial stage, and the proceedings should not be quashed at the threshold by scuttling the proceeding abruptly.

13. Reliance has been placed by the Opposite Party on the judgment of the Madras High Court in ***P. Rajendran v. Assistant Director, ED (CrI.O.P.No.19880 of 2022)***, where the court held that PMLA proceedings do not depend on the survival of the predicate offence. The court further observed that in a prosecution under PMLA, there are two sets of accused – one in the predicate



offence and the other in the prosecution initiated by the Enforcement Directorate. Therefore, PMLA is a standalone offence, distinct from the predicate offence. Further relying on *Assistant Directorate of Enforcement v. State & Ors. (Crl.O.P.No.28289 of 2023, Madras HC)*, which reaffirmed that even if the predicate offence is closed, ED can place the facts before the High Court under Section 482 Cr.P.C. to prevent miscarriage of justice.

14. The Opposite Party further contended that mere quashing of the scheduled offence qua one accused does not automatically establish that the seized amount is legitimate income, and an independent inquiry under PMLA is still permissible. The Opposite Party relied on *Mohan Lal Rathi v. Union of India & Ors. (MANU/UP/2866/2023, Allahabad HC)*, where the court emphasized that money laundering is an independent offence, and even if the predicate offence is closed, the proceedings under PMLA can continue if the ED establishes that the accused was engaged in money laundering.

15. It is also submitted that the charge of theft under Section 379 IPC still exists against M/s. Serajuddin & Co., which itself





forms a basis for the PMLA proceedings.

16. The learned Senior Counsel has also placed reliance on *Vijay Madanlal Choudhary v. Union of India (2022 SCC OnLine SC 929)*, where the Supreme Court held that the existence of a predicate offence is only relevant at the stage of initiation of PMLA proceedings, but once PMLA Court takes cognizance and proceeds with the matter, there would be no bearing of the non-existence of the scheduled offence.

17. Mr. Agrawal, the learned Senior Counsel further submitted that in view of Section 70 of the PMLA, which permits prosecution of a company and those in charge of its affairs, and in line with the principles laid down in *Vijay Madanlal Choudhary* (supra) and *P. Rajendran* (supra), proceedings under PMLA shall continue against the firm, M/s. Serajuddin & Co. and more particularly because the proceeds of crime has been routed through the accounts of the firm.

18. He further brought to the notice of the Court that during the pendency of the proceeding before the learned Special Court, PMLA, Bhubaneswar, Md. Mofazzalur Rahman expired and his name has been deleted by the Special Court (PMLA), so only



against Md. Intekhab Alam, present petitioner no.1, the proceeding under schedule offence has been quashed. But on 08.09.2023 supplementary complaint was filed against newly added accused persons, namely, Mr. Seraj Yusha, Mr. Meraj Yusha and M/s. Yazdani International Pvt. Ltd. represented through Mr. Seraj Yusha and Mr. Meraj Yusha. The learned Special Court took cognizance against the newly added accused persons and issued summons. Therefore, the cognizance order passed by the learned Special Court (PMLA) against other accused persons cannot be quashed on the ground that the proceeding under the scheduled offence has been quashed as against one of the accused.

**19.** The primary issue before this Court is whether proceedings under the PMLA, 2002, can continue against the petitioners when the scheduled offences forming the basis of the proceedings have been quashed and whether a firm which has not been made an accused in the predicate offence or against which no proceedings under the scheduled offence are pending can be made to face the proceedings under PMLA, 2002.

**20.** Before deliberating upon the legal issue that has arisen for the consideration of this Court, it would be relevant to extract



some of the provisions of PMLA, 2002.

### ***Section 2(1)(s)***

*““person” includes—*

*(i) an individual,*

*(ii) a Hindu undivided family,*

*(iii) a company,*

*(iv) a firm,*

*(v) an association of persons or a body of individuals, whether incorporated or not,*

*(vi) every artificial juridical person not falling within any of the preceding sub-clauses, and*

*(vii) any agency, office or branch owned or controlled by any of the above persons mentioned in the preceding sub-clauses;”*

### ***Section 2(1)(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” include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]**”*

### ***Section 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.]*

## **Section 24**

*Burden of Proof.—In any proceeding relating to proceeds of crime under this Act,—(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering.]*

## **Explanation to Section 44**

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

- (i) the jurisdiction of the Special Court while dealing with the*



offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;

(ii) the complaint shall be deemed to include any subsequent complaint in respect of further investigation that may be conducted to bring any further evidence, oral or documentary, against any accused person involved in respect of the offence, for which complaint has already been filed, whether named in the original complaint or not.]

### **Section 70**

Offences by companies.—(1) Where a person committing a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company, for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

*Provided that nothing contained in this sub-section shall render any such person liable to punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.*

(2) Notwithstanding anything contained in sub-section (1), where a contravention of any of the provisions of this Act or of any rule, direction or order made thereunder has been committed by a company and it is proved that the contravention has taken place with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of any company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

*Explanation [1].—For the purposes of this section,—*

(i) **“company” means any body corporate and includes a firm or other association of individuals; and**

(ii) **“director”, in relation to a firm, means a partner in the firm.**



*[Explanation 2.—For the removal of doubts, it is hereby clarified that a company may be prosecuted, notwithstanding whether the prosecution or conviction of any legal juridical person shall be contingent on the prosecution or conviction of any individual.]*

**21.** Bare reading of the aforementioned sections would make it amply clear that:-

- *'persons'* as defined U/s.2(1)(s)(4) includes a firm. Thus, for the purpose of the offence of money laundering defined U/s.3 of PMLA, 2002, a firm in its individual capacity and in separation to its partners can be made an accused. The intent of the legislature is very much clear that the purpose of PMLA, 2002 is to prevent the creation and circulation of *'proceeds of crime'* and remove the *'proceeds of crime'* which have entered into the mainstream economy. Therefore, legislature in its wisdom has brought under the purview of the offence of money laundering, the juristic personalities like companies and firms severally and individually. The basic rationale behind such enactment is to prevent the use of firms and companies to launder the black money generated as *'proceeds of crime'* by the associates of the company/firm in their personal capacity, however, using the shield of the company/firm.



- *'Proceeds of crime'* is not only derived or obtained from scheduled offence but also includes any property which may directly or indirectly be derived or obtained as a result of any criminal activity related to the scheduled offences. Thus, the legislature has consciously brought such gains under the purview of the definition of *'proceeds of crime'*, which are not only directly or indirectly derived from the commission of scheduled offences but also relatable to scheduled offences. Therefore, any income/gains/property would fall under the category of *'proceeds of crime'* if the same is in some manner or the other relatable to the scheduled offences. Thus, the prosecution in order to bring the income/gains/property under the category of *'proceeds of crime'*, has to prove relatebility of such property with the scheduled offences. In the facts of the present case proceedings under the scheduled offences are still pending in the court of competent jurisdiction, although both the petitioners are not parties to such proceedings anymore. But the fact remains that proceedings under the scheduled offence are still pending against other co-accused persons.



- Section 24 of PMLA, 2002 creates a presumption against the accused to say that unless the contrary is proved, it would be presumed that the alleged '*proceeds of crime*' are rooted in money laundering. Thereby, not only is a presumption created against the accused but a positive obligation is cast upon the accused to prove the contrary, that is to say that '*proceeds of crime*' are not involved in money laundering.
- Explanation to Section 44 clearly bifurcates proceedings under the scheduled offence and proceedings under PMLA, 2002 making both the proceedings independent as both the offences are independent.

**22.** In the present case, the closure of the predicate offence qua Petitioner No.1, removes the very foundation on which the proceeds of crime are alleged to have been generated by the Petitioner No.1. The Enforcement Directorate has not independently demonstrated that the petitioners personally engaged in activities that would constitute an offence under Section 3 of PMLA.

**23.** The Madras High Court, in *P. Rajendran v. Assistant*





**Director, ED (Crl.O.P.No.19880 of 2022)**, recognized that while PMLA is a standalone offence, it cannot be sustained in cases where the accused individuals are not actively engaged in money laundering but are merely implicated due to their association with the predicate offence.

24. Furthermore, in ***Mohan Lal Rathi v. Union of India (MANU/UP/2866/2023, Allahabad HC)***, the court held that a person accused under PMLA cannot be prosecuted indefinitely when the predicate offence is no longer in existence, unless there is specific evidence of money laundering against them.

25. It's equally relevant to note that the Prevention of Money Laundering Act, 2002, defines the offence of money laundering under Section 3, which criminalizes activities involving the proceeds of crime, when derived from a predicate offence. However, the Supreme Court in ***Vijay Madanlal Choudhary v. Union of India (2022 SCC OnLine SC 929)*** held that while PMLA proceedings do not automatically cease if the predicate offence is dropped, each case must be examined based on its individual facts. The Supreme Court has observed in multiple cases that criminal liability cannot be attributed to individuals



merely by virtue of their position in a company/firm unless there is direct involvement or *mens rea* (criminal intent). In the absence of such evidence, individuals cannot be made to face prolonged litigation.

26. Thus, in view of the law laid down in judgement passed by the Hon'ble Apex Court in the case of ***"Vijay Madan lal Chaudhary & Ors. Vs. Union of India & Ors."*** (supra) and ***"Indrani Patnaik vs. Enforcement Directorate"*** (supra) and on the basis of ratio of other judgments as discussed above, the only conclusion that could be arrived at is that the proceedings against Petitioner No.1 under PMLA, 2002 cannot be maintained and are liable to be quashed. Because, no schedule offence exists against him, hence he can't be related to the alleged proceeds of crime. However, in respect of Petitioner No.2, the situation is somewhat different. It appears from the observation made by the coordinate bench of this Court dated 23.09.2022, the predicative offence vis-à-vis the Petitioner No.1 was quashed solely on technical grounds. At the same time, the complicity of Petitioner No.2, i.e., the firm in the commission of the crime has been highlighted. An inescapable inference that could be drawn from the judgment is that by using the Partnership firm (Petitioner No.2) as a shield, the



crime appears to have been committed. Therefore, the complaint U/s.45 of PMLA against the firm survives particularly under the aid of Section 70 of PMLA.

27. In financial and corporate fraud cases, courts have distinguished between corporate liability and individual liability.

In *Shiv Kumar Jatia vs. State Of Nct Of Delhi (AIR 2019 SUPREME COURT 4463)*, the Supreme Court held that-

*“27. The liability of the Directors /the controlling authorities of company, in a corporate criminal liability is elaborately considered by this Court in the case of Sunil Bharti Mittal. In the aforesaid case, while considering the circumstances when Director/person in charge of the affairs of the company can also be prosecuted, when the company is an accused person, this Court has held, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company. At the same time it is observed that it is the cardinal principle of criminal jurisprudence that there is no vicarious CrI.A. @ SLP (CrI.)No.8008/18 etc. etc. liability unless the Statute specifically provides for. It is further held by this Court, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Further it is also held that an individual can be implicated in those cases where statutory regime itself attracts the doctrine of vicarious liability, by specifically incorporating such a provision.”*

28. The PMLA recognizes corporate liability under Section 70, and the law permits a company or a firm to be prosecuted separately from its officers. In the present case, the firm has been prosecuted separately and the predicated offence vis-a-vis the



firm still going on. Independent evidence has been provided by the Enforcement Directorate to establish the complicity of the firm through money laundering transactions carried through the firm.

**29.** Moreover, quashing of PMLA proceedings at this stage would create an anomalous situation because, in the event, it is proved in the course of trial that the proceeds of crime has been generated through the schedule offence for which the trial is pending qua other co-accused person, for the reasons that illegal mining activities have been conducted in the name of the Petitioner No.2, which is the precise reasons for quashing of the proceedings against the Petitioner No.1 by this Court vide order dated 23.09.2022 passed in CRLMC No.2272 of 2021. In that view of the matter, this Court is unable to accept the submission of the learned Senior Counsel, Mr. Mishra in so far as Petitioner No.2, i.e., the firm is concerned.

**30.** In the present case, complaint has been filed against the Petitioner No.1, i.e., Md. Intekhab Alam and Petitioner No.2, i.e., M/s. Serajuddin & Co. U/s.44 and 45 of PMLA, 2002 for commissioning of offence of money laundering, U/s.3 punishable U/s.4 of PMLA, 2002. The proceedings against accused No.1 in



his individual capacity have already been quashed by this Court pursuant to which the learned Special Judge (Vigilance), Keonjhar, has closed the proceedings against two accused persons vide its order dated 01.11.2022. Although, this Court vide order dated 23.09.2022, has quashed the criminal proceedings against Petitioner No.1 in the predicate offence, however, on perusal of the said order, findings recorded by this Court would suggest that petitioner No.1 was able to persuade this Court that the allegations and the material brought on record by the prosecution in the Charge Sheet was primarily against M/s. Serajuddin & Co (Petitioner No.2) and there was no specific allegation against the Petitioner No.1 in his personal and individual capacity, therefore, he in his personal capacity cannot be made to face the criminal trial in the predicate offence. Perusal of paragraph 13 of the said judgement passed by this Court would indicate that this Court has rather indicted M/s. Serajuddin & Co. (Petitioner No.2) with allegations of illegal mining activities. The relevant paragraphs of the order dated 23.09.2022 passed by this Court in CRLMC No.2272 of 2021 are extracted herein below:

*“13. In the case at hand, the documents relied on by the petitioner do not appear to have been disputed by the Vigilance Department. It further appears from the charge sheet and other papers on record that the entire allegation is directed against the Lessee-company, i.e., M/s. Serajuddin & Co.. There is*



*hardly any allegation in specific against the petitioners regarding their involvement in any of the alleged offences, independent of the will, intent or interest of the Lessee-company. The allegation against the Lessee-company appears to be essentially regarding alleged violation, illegalities etc. in relation to Mining activities, attracting the provisions of the MMDR Act. Needless to mention that no prosecution for any offence under the said Act can be initiated except on a complaint by the Authorized Officer in view of Section 22 of the said Act. A complaint is also required for launching a prosecution under the Forest (Conservation) Act, 1980. Thus, statutory have not been followed in the present case.”*

*“18. In view of the well settled principal of law, as apparent from the decisions quoted above, the prosecution launched against the petitioners is found to be legally not sustainable although the petitioners are admittedly Partners of the Lessee-company. Further, for the discussion made hereinbefore, the offence of criminal conspiracy and other offences as alleged, are found to be not made out against the petitioners, especially when there is no specific allegation in that regard against them either as an individual or a partner of the Lessee-company. Hence, this court finds merit in the contention of the petitioners that continuance of the criminal proceedings against them will amount to abuse of the process of the Court. The CRLMC, therefore, deserved to be allowed.”*

**31.** Therefore, the proceedings against M/s. Serajuddin & Co. (Petitioner No.2) for the offence of money laundering stand on a different footing altogether. This Court finds merit in the argument of the learned Senior Counsel for the Opposite Party that the proceedings under the predicate offence are not quashed in its entirety and same are still pending against other accused person before the Vigilance Court and the issue with regard to whether the money recovered and seized is *proceeds of crime* will finally be determined in the course of trial. Moreover, in view of a statutory presumption that any money/property recovered from the



petitioners constitutes '*proceeds of crime*' unless same is disproved at trial, the petitioner No.2 must discharge its burden at the trial alone, for which the proceedings ought not be quashed at the stage of cognizance.

**32.** Consequently, the proceedings against the petitioners, Md. Intekhab Alam and another are hereby quashed.

**33.** However, the proceedings against the company/firm shall continue, and the Enforcement Directorate is free to proceed in accordance with law regarding any further investigation or prosecution of the company/firm under PMLA by strictly complying the procedural safeguard provided under the Prevention of Money Laundering Act, 2002, and any other applicable laws.

**34.** The CRLMC is partly allowed.

**(S.S. Mishra)**  
**Judge**