

**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

BEFORE

HON'BLE SHRI JUSTICE SUBODH ABHYANKAR

MISC. CRIMINAL CASE No. 40622 of 2023

BETWEEN:-

**SMT. MANJRI CHOUDHARI W/O SH. VIJAY
CHOUDHARY, AGED ABOUT 58 YEARS,
OCCUPATION: HOMEMAKER 905-906, INDRA
DARSHAN, BUILDING NO. 19, NEAR MILLAT
NAGAR, LOKHANDWALA, ANDHERI WEST,
MUMBAI (MAHARASHTRA)**

.....PETITIONER

**(BY SHRI VIKRAM CHOUDHARY – SENIOR ADVOCATE WITH SHRI
AKSHAT KOTHARI - ADVOCATE)**

AND

**UNION OF INDIA ASSISTANT DIRECTOR
DIRECTORATE OF ENFORCEMENT INDORE
SUB ZONAL OFFICE, GOVERNMENT OF INDIA,
209, PALIKA PLAZA, PHASE III, MTH
COMPOUND, INDORE (MADHYA PRADESH)**

.....RESPONDENT

(BY SHRI HIMANSHU JOSHI - ADVOCATE)

.....

Reserved on : 22.02.2024

Pronounced on : 26.04.2024

.....

*This petition having been heard and reserved for orders, coming
on for pronouncement this day, the court passed the following:*

ORDER

- 1] Heard finally, with the consent of the parties.
- 2] This petition has been filed by the petitioner under Section 482 of Cr.P.C. seeking the following reliefs:-

“In view of the facts and circumstances mentioned above, it is, therefore, respectfully prayed that this Hon'ble Court may kindly be pleased to:

- i. Quash & set aside the impugned Supplementary Prosecution Complaint dated 19.12.2022 (Annexure P-21) arising out of ECIR/INSZO/07/2023 in SC No. 162/2015 wherein, the petitioner has been arraigned as Accused No.3, as the proceedings qua her are a gross and blatant abuse of the process of law;
- ii. Quash & set aside the impugned order dated 17.01.2023 (Annexure P-22) whereby cognizance has been taken by the Special Court (PMLA), Indore against the petitioner in a patently routine and mechanical manner without any application of judicial mind thereby rendering the order so passed to be untenable in law contrary to the fundamental tenets on which criminal jurisprudence is premised; and
- iii. Pass such or further order(s) or direction(s) that this Hon'ble Court may deem fit and proper in the interest of justice.”

- 3] In brief, the facts of the case are that vide the impugned order dated 17.01.2023, the learned Judge of the Special Court has taken the cognizance against the petitioner under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002 (in short ‘the Act of 2002’), and being aggrieved the present petition has been filed on the premise that the respondent has *mala fide*ly exercised its powers in filing the additional charge-sheet against the petitioner in the case in which the original FIR was lodged on 25.04.2011 at Crime No.RC/BD1/2011E/0005, at the instance of the lead consortium bank PNB (Punjab National

Bank) owing to the default in the repayment of credit facilities availed by M/s. Zoom Developers Private Limited (ZDPL), despite the fact that the petitioner has nothing to do with ZDPL. Subsequent to that, E.D. also registered an Enforcement Case Information Report (ECIR) case No.ECIR/INSZO/2013/0007 dated 31.08.2013.

4] It is the further case of the petitioner that in the case of ZDPL, the petitioner's husband Shri Vijay Choudhary and the Company Secretary of ZDPL Shri Sharad Kabra, as also the father of the petitioner have also been arraigned as accused, and despite the fact that the petitioner, in her statement has clearly stated that she was acting only on her husband's instructions, and has no knowledge or involvement in the original case registered against the other accused persons, she has been falsely arraigned only with a view to further harass her being the wife of the main accused. Senior counsel for the petitioner has drawn the attention of this Court to a Provisional Attachment Order (PAO) No.01 of 2021 after referring the statement of the petitioner in the aforesaid PAO, it was also stated in para 6.4 about the petitioner as under:-

“She is an independent director and authorized signatory in some M/s. ZDPL associate companies (such as M/s Zoom Realty Projects Private Limited), wherein she used to sign cheques and documents on the instructions of her husband Shri Vijay Choudhary;

She had expressed ignorance about knowledge of business transactions of the companies in which she is nominated director and properties purchased on her name; She further stated that only Shri Vijay Choudhary and Shri Sharad Kabra had knowledge of all these transactions, and she was only an authorized signatory and used to sign cheques and company

documents on the instructions of her husband Shri Vijay Choudhary.”

5] It is submitted that till the aforesaid time in the year 2021, the respondent had no intention to prosecute the petitioner in the aforesaid case, however, the supplementary charge-sheet has been filed against the petitioner on 19.12.2022, alleging that she is also accessory to her husband in all the money laundering process being the independent director in the company ZDPL, the cognizance of which has also been taken by the learned Judge of the trial Court in a routine manner without application of mind. Shri Choudhary, learned Senior counsel for the petitioner has submitted that in the entire additional supplementary charge-sheet, there is nothing to suggest that the petitioner had any knowledge about money laundering activities as are alleged against her husband and other accused persons. Senior counsel has also submitted that the petitioner had already approached the Supreme Court in S.L.P. (Crl.) No.31609 of 2023, assailing the impugned order dated 17.01.2023, however, it was dismissed as not pressed in the following manner:-

“Learned counsel appearing for the petitioner submits that his client would like to approach the High Court and does not want to press this present petition.

The present petition is dismissed as not pressed.”

6] In support of his submissions, Shri Choudhary has relied upon various decisions, viz., in the case of **Jafar Mohammed Hasanfatta & Ors. Vs. Deputy Director, ED & Ors.** passed in **CRA No.926 of 2016 dated 16.02.2017** paras 40 to 43; **Pepsi**

Foods Ltd. and Another vs. Special Judicial Magistrate and Others reported as (1998) 5 SCC 749 para 28; **Maksud Saiyed Vs. State of Gujarat and others** reported as (2008) 5 SCC 668 paras 13 and 15; **GHCL Employees Stock Option Trust Vs. India Infoline Limited** reported as (2013) 4 SCC 505 para 14; **Sunil Bharti Mittal Vs. Central Bureau of Investigation** reported as (2015) 4 SCC 609 paras 47 and 48; **S. K. Alagh Vs. State of Uttar Pradesh and others** reported as (2008) 5 SCC 662 paras 16 and 19; **Maharashtra State Electricity Distribution Company Limited and another Vs. Datar Switchgear Limited and others** reported as (2010) 10 SCC 479 para 30; **Sharad Kumar Sanghi Vs. Sangita Rane** reported as (2015) 12 SCC 781 paras 9, 10 and 11; and **M/s. Chawda Builders Vs. Union of India and another** rendered by this Court in **W.P. No.10629 of 2022 dated 12.09.2023**.

7] Shri Himanshu Joshi, learned counsel for the respondent, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out. Counsel has submitted that in the light of the order passed by the Supreme Court in S.L.P. (Crl.) No.31609 of 2023, wherein the same order was sought to be challenged, but the petition was withdrawn, no case for interference is made out.

8] Counsel has also submitted that specific allegations have been levelled against the petitioner of her involvement in the case and as per the charge-sheet dated 23.02.2015, filed by the CBI,

her role is described as under:-

“Smt. Manjri Vijay Choudhary (A-3):- who happens to be the wife Sh. Vijay Choudhary (A-2) and daughter of accused deceased Sh. B.L. Kejaiwal. Smt. Manjri Choudhary (A-3)’ stood as a guarantor to for availing Bank Guarantee Security facilities from Punjab and Sind Bank, IBD Branch. In certificate Dt. 11.10.2008 issued by C.A. K.D. Vyas (Membership No.14618) Net worth of Smt. Manjri Choudhary (A-3) is stated at Rs.1,25,62,209/- Photocopy of Balance Sheet being issued by C.A. Sh. K.D. Vyas is initiated by Smt. Manjri Choudhary (A-3) which proves the net worth in form of Assets which she furnished as Guarantee to the Bank. As per the details given in assessment note by lead bank Smt. Manjri Choudhary (A-3) is shown as a Director in the group of Six holding companies of M/s. Zoom Developers Pvt. Ltd. (A-1). The sister concerned companies of M/s. Zoom Developers Pvt. Ltd. (A-1) of which Smt. Manjri Choudhary (A-3) is one of the Directors, the said companies were used by accused Sh. Sharad Kabra (A-4) and Sh. Vijay Choudhary (A-2) for the purpose of Round Tripping of Bank Guarantee Funds availed from various consortiums of Banks.”

9] Counsel for the respondent has also submitted that in the case of the petitioner’s husband Shri Vijay Choudhary, the Supreme Court has also held that Section 4 of the Act of 2002 makes no distinction between person directly involved in the process or activity connected with the proceeds of crime and the other not so directly involved. Thus, it is submitted that the petitioner being indirectly involved in the case, cannot seek clean chit at this stage as it would be necessary to allow the respondent to lead evidence against the petitioner and she will have ample opportunity to lead her evidence in her defence. It is submitted that the matter involves embezzlement of hundreds of crores of rupees, and thus, it is submitted that the petition be dismissed.

10] Heard counsel for the parties and perused the documents

filed on record.

11] So far as the impugned order dated 17.01.2023 is concerned, whereby the learned Judge of the trial Court has taken cognizance against the petitioner, it reads as under:-

“.....

प्रकरण आज आई.ए. क्रमांक 2/19 , 3/19 व 4/19 के लिखित/मौखिक तर्क एवं आई.ए. क्रमांक 5/19 के जवाब तर्क एवं अन्यत आरोपीगण के विरुद्ध संज्ञान लेने हेतु नियत है। प्रवर्तन निदेशालय की ओर से पूर्व में दिनांक 19 .12.2022 को अन्य आरोपीगण के विरुद्ध द्वितीय सप्ली मेंटी परिवाद प्रस्तुत किया था जिसके साथ संलग्न दस्तावेज एवं उल्लेखित अभिवचनों के आधार पर 01-मैसर्स जूम रियलटी प्रोजेक्टल प्रायवेट लिमिटेड मुम्बई 02-श्रीमती मंजरी चौधरी डायरेक्टर मैसर्स जूम रियलटी प्रोजेक्टल प्रायवेट लिमिटेड, बिल्डिंग नं. 19 , 905-906, इन्द्र दर्शन बिल्डिंग , नियर मिलाट नगर , लोखंडवाला, अंधेरी वेस्ट, मुम्बई , 03- श्री वरुण केजरीवाल डायरेक्टर मैसर्स जूम रियलटी प्रोजेक्टल प्रायवेट लिमिटेड 41-42, लिंक गार्डन टावर नंबर 2, न्यूट लिंक रोड अंधेरी वेस्टर मुम्बई के विरुद्ध धारा 3 सहपठित धारा 4 प्रिवेंसन ऑफ मनी लॉन्ड्रिंग एक्ट 2012(sic) (2002) के अंतर्गत संज्ञान लिया गया। उक्ति आरोपीगण एवं उनकी ओर से कोई अधिवक्ता उपस्थित नहीं है। अतः उक्त आरोपीगण को परिवाद पत्र की प्रति सहित सूचना पत्र जारी किया जाये। प्रकरण आई.ए. क्रमांक 2/19 , 3/19 व 4/19 के लिखित/मौखिक तर्क एवं आई.ए. क्रमांक 5/19 के जवाब तर्क नवीन आरोपीगण की उपस्थिति हेतु दिनांक 14.02.2023 को पेश हो।”

(Emphasis Supplied)

12] So far as Sections 3 and 4 of the Act of 2002 are concerned, the same read as under:-

“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 ⁵[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.

⁶[*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.]

4. Punishment for money-laundering.—Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine ¹[* * *]:

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

(Emphasis Supplied)

13] So far as the procedure for taking cognizance of an offence is concerned, the Supreme Court, in the case of **Sunil Bharti Mittal (supra)** has reflected upon the power of the Magistrate to take cognizance, the relevant paras of which read as under:-

“47. We have already mentioned above that even if CBI did not implicate the appellants, if there was/is sufficient material on record to proceed against these persons as well, the Special Judge is duly empowered to take cognizance against these persons as well. Under Section 190 of the Code, any Magistrate of First Class (and in those cases where Magistrate of the Second Class is specially empowered to do so) may take cognizance of any offence under the following three eventualities:

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts; and
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

This section which is the starting section of Chapter XIV is subject to the provisions of the said Chapter. The expression “taking cognizance” has not been defined in the Code. However, when the Magistrate applies his mind for proceeding under Sections 200-203 of the Code, he is said to have taken cognizance of an offence. This legal position is explained by this Court in *Chief Enforcement Officer v. Videocon International Ltd.* in the following words: (SCC p. 499, para 19)

“19. The expression ‘cognizance’ has not been defined in the Code. But the word (cognizance) is of indefinite import. It has no esoteric or mystic significance in criminal law. It merely means ‘become aware of’ and when used with reference to a court or a Judge, it connoted ‘to take notice of judicially’. It indicates the point when a court or a Magistrate takes judicial notice of an offence with a view to initiating proceedings in respect of such offence said to have been committed by someone.

20. ‘Taking cognizance’ does not involve any formal action of any kind. It occurs as soon as a Magistrate applies his mind to the suspected commission of an offence.”

48. Sine qua non for taking cognizance of the offence is the application of mind by the Magistrate and his satisfaction that the allegations, if proved, would constitute an offence. It is, therefore, imperative that on a complaint or on a police report, the Magistrate is bound to consider the question as to whether the same discloses commission of an offence and is required to form such an opinion in this respect. When he does so and decides to issue process, he shall be said to have taken

cognizance. At the stage of taking cognizance, the only consideration before the court remains to consider judiciously whether the material on which the prosecution proposes to prosecute the accused brings out a prima facie case or not.”

(Emphasis Supplied)

14] It is found that in the impugned order, the learned Judge of the trial Court has taken cognizance against the petitioner along with other accused persons without adverting to the merits of the case in any manner, whereas, it is also found that when earlier, a PMLA complaint was filed in the year 2021, the respondents were of the opinion that the petitioner was working only on the instructions of her husband Vijay Choudhary and the statements given by her that she has signed the cheques on the instructions of her husband and father, and that she has no knowledge and she has expressed ignorance about having any knowledge about the transactions, which the co-accused Vijay Choudhary and Sharad Kabra were entering into. However, on the same set of statements, the respondents have held that since the petitioner has signed the cheques and is also the Director of ZDPL, she is also liable to be prosecuted under the PMLA Act.

15] It is also found that in the case of **Vijay Madanlal Choudhary Vs. Union of India** in **S.L.P. (Crl.) No.4634 of 2014 dated 02.07.2022**, on which the respondents have relied upon, the Supreme Court, in para 183 has held as under:-

“PUNISHMENT UNDER SECTION 4 OF THE 2002 ACT

463. It is urged that there is no gradation of punishment depending on the nature of offence which may be committed by the principal offender and other offenders. Section 4 of the 2002 Act makes no distinction between person directly involved in the

process or activity connected with the proceeds of crime and the other not so directly involved. Further, the scheduled offence may have been committed by someone else and the offence of money-laundering by third person owing to being involved in the process or activity connected with the proceeds of crime. The petitioners have relied on Section 201 and 212 of IPC. It is their case that this distinction is absent in Section 4 of the 2002 Act which provides that the term of rigorous imprisonment shall not be less than three years and extend upto seven years or ten years, as the case may be, with fine. This argument to say the least is flimsy and tenuous. For, the punishment under Section 4 is not in relation to the predicate offence, but offence of money-laundering under Section 3 of the 2002 Act. The person may be involved in any one or more than one process or activity connected with the proceeds of crime. All of them are treated as one class of offender involved in money-laundering. The proceeds of crime may be derived or obtained as a result of criminal activity with which the offender involved in money-laundering offence may not be directly concerned at all. Even so, he becomes liable to be proceeded under Section 3 and punished under Section 4 of the 2002 Act. The principle of an accessory after the fact will have no application to the offence of money-laundering. Suffice it to observe that the argument under consideration is devoid of merit."

(Emphasis Supplied)

16] So far as the allegations levelled against the petitioner Manjri Choudhary in the supplementary prosecution complaint dated 19.12.2022 are concerned, it has been narrated in the following manner:-

“III. SMT. MANJRI CHOUDHARY, (Director, M/s. Zoom Realty Projects Private Ltd).

She is an independent director and authorized signatory in some M/s ZDPL associate companies (such as M/s Zoom Realty Projects Private Limited). She used to be accessory to her husband Shri Vijay Choudhary. Although, from above it is clear that day to day affairs of M/s ZDPL and M/s ZRPPL was being looked after by. Shri Vijay Choudhary, Shri Sharad Kabra and others, but it is apparent that she was an accessory to the offence of money laundering. Thus, it is apparent that the Manjari Choudhary has committed a contravention of the section 3 of PMLA, 2002 as she was directly attempted to indulge, knowingly assisted the ZDPL and ZRPPL, and knowingly is a party, is actually involved in the process or activity connected with proceeds of crime including its concealment, possession,

acquisition, use and projecting and claiming as untainted property.

Majari Chaudhary being one of its directors has committed a contravention of section 70 of the PMLA, 2002, or of any rule, direction or order made there under on behalf of 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 thus, liable to be punished under section 4 of PMLA, 2002.”

17] Since the petitioner is also one of the Directors of M/s. Zoom Realty Projects Private Limited, which Company is also an accused in the present case, the petitioner’s involvement in the present case can be presumed qua Section 70 of the Act of 2002, which reads as under:-

“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[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.

²[*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.]”

(Emphasis Supplied)

18] In view of the aforesaid, it is apparent that since S.70 provides for a deeming provision, that the Director shall be deemed to be guilty of contravention, unless he or she proves that the contravention took place without his/her knowledge or connivance and that he/she exercised all due diligence to prevent such contravention, in the considered opinion of this Court the petitioner being the Director of **M/s. Zoom Realty Projects Private Ltd**, cannot be let off at this stage, when she would have ample opportunity to lead evidence during the course of trial as provided under Section 70 of the Act of 2002. In such circumstances, this Court is not inclined to interfere with the impugned order.

19] So far as the judgements relied upon by the senior counsel for the petitioner are concerned, the same are distinguishable on facts and in none of the judgements, S.70 of the Act of 2002 or the like provisions, have been discussed or considered.

20] Accordingly, the petition being devoid of merits, is hereby **dismissed.**

(SUBODH ABHYANKAR)
JUDGE

Pankaj