

(2025) 10 KL CK 1283

In the High Court Of Kerala

Case No : Criminal Miscellaneous Petition No. 4107 of 2022

P.R. Sandhya

APPELLANT

Vs

Director Of Enforcement Rep.By Assistant Director,
Government Of India

RESPONDENT

Date of Decision : 09-10-2025

Acts Referred:

Code of Criminal procedure, 1973 — Section 482Indian Penal Code, 1860 -
Section 107, 109, 120A, 120B, 121, 121A, 384, 385, 386, 387, 388, 389,
420Prevention of Corruption Act, 1988 - Section 7, 12, 13(1)(d), 13(1)(e),
13(2)Prevention of Money Laundering Act, 2002 - Section 2(y), 3, 4, 24 (a), 24(b)

Citation : (2025) 10 KL CK 1283

Hon'ble Judges : A. Badharudeen, J

Bench : Single Bench

Advocate : RI.S.Sreekumar, M.A.Mohammed Siraj, P.Prijith, Thomas P.Kuruvilla,
R.Githesh, Ajay Ben Jose, Manjunath Menon, Sachin Jacob Ambat, Anna Linda
Eden, Harikrishnan S., P.Martin Jose, Jaishankar V.Nair, Rekha.S., A.Rajesh

Final Decision : Dismissed

Judgement

A. Badharudeen, J

1. The 3rd accused in S.C. No. 1 of 2022 on the files of the Special Court/CBI Thiruvananthapuram (originally filed as S.C. No. 412 of 2018 before the Principal Sessions Court, Ernakulam) arising out of ECIR No.17/2009 of the Directorate of Enforcement (for short, 'ED' hereafter), Kochi has filed this Criminal Miscellaneous Case under Section 482 of the Code of Criminal procedure (for short, 'the CrPC' hereafter) and the prayer in this petition is to quash Annexure—G complaint and further proceedings thereof against the petitioner in the interest of justice.

2. Heard the learned Senior Counsel appearing for the petitioner, the learned Standing Counsel appearing for the ED and perused the decisions as well as the prosecution records made available.

3. While seeking quashment of the case as against the petitioner/3rd accused, it is pointed out by the learned Senior Counsel for the petitioner that ED registered R.C.No.18(A)/2008/CBI/KER against the petitioner arraying her as the 2nd accused and when the matter had been pending before the Chief Judicial Magistrate Court as C.C.No.125 of 2021 the petitioner filed CrI.M.C.No.2017 of 2022 before this Court and in the said proceedings as per order dated 10.04.2025, this Court quashed the same where the prosecution alleged commission of offences punishable under Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988 (for short, 'the PC Act 1988) and under Section 109 of the Indian Penal Code (for short, 'the IPC' hereafter) r/w Section 13(1)(e) of the PC Act, 1988 by the petitioner along with the other accused. Accordingly it is submitted by the learned Senior Counsel for the petitioner that in fact the predicate offence alleged in Crime No.RC.18(A)/2008 is not available. Therefore the present complaint (Annexure-G) alleging commission of offence under Section 3 of the Prevention of Money Laundering Act, 2002 (for short, 'the PML Act, 2002' hereafter) punishable under Section 4 of the PML Act, 2002 would not sustain against the petitioner in the absence of a predicate/scheduled offence to precede.

4. In fact the learned Senior Counsel for the petitioner as well as the learned Special Public Prosecutor relied on the three Bench decision of the Apex Court reported in 2022 SCC OnLine SCC 929 Vijay Madanlal Choudhary and Others v. Union of India and Others particularly with reference to paragraph No.270 and also the decision of the Apex Court reported in 2023 SCC OnLine SC 1586 Pavana Dibbur v. Directorate of Enforcement with reference to paragraph Nos. 17 and 31. It is also pointed out that the PML Act, 2002 came into force with effect from 01.07.2005 and Section 2(y) defined scheduled offence means (i) the offences specified under part A of the schedule or (ii) the offences specified under Part B of the Schedule if the total value involved in such offence is thirty lakh rupees or more. It is pointed out by the learned Senior Counsel for the petitioner that in the instant case the amount involved as per the allegation of the prosecution in the complaint is only Rs.15 lakh and therefore the offences alleged in R.C.5(A)/2009/CBI/TVM under the PC Act, 1988 viz. Sections 7, 12, 13(2) r/w 13(1), Section 7 would not come under the purview of scheduled offences. It is argued further that the offences alleged under Section 120B or 420 of IPC in R.C.5(A)/2009/CBI/TVM are not scheduled offences during the period. It is also pointed out by the learned Senior Counsel for the petitioner further that for the purpose of treating the offences alleged in R.C.5(A)/2009/CBI/TVM the amount involved would come to Rs.30 lakh or more. Apart from that it is contended that as per Section 3 of PML Act, 2002 mens rea or knowledge of the person who directly or indirectly attempts to indulge assists or to 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 unstained property is the inevitable ingredient and without which the said offence would not lie. Therefore the knowledge should be gathered from the very

beginning to sustain an offence under Section 3 of the PML Act, 2002. In this connection the learned Senior Counsel for the petitioner brought to the notice of this Court the allegation in RC.5(A)/2009/CBI/TVM, which was pointed out by the learned Standing Counsel for the ED as the predicate or scheduled offence wherein it has been stated that in pursuance of the said criminal conspiracy Sri.P.K.Sanal kumar (A1) accepted Rs.15 lakh from Sri.M.R.Lenin (A3) and Sri.Pradeep Rajan (A5) through Cheque No.638123 dated 01.12.2006 for Rs.10 lakh of HDFC Bank, Bangalore and cheque No.255545 dated 27.02.2007 for Rs.5 lakh of HDFC Bank, Vazhuthacaud Branch, which were deposited in the joint account of Sri.P.K.Sanalkumar (A1) and his wife Smt.P.R.Sandhya in HDFC Bank, Palakkad/Vazhuthacaud, as gratification other than the legal remuneration as a motive/reward for doing the above official Act Sri.M.R.Lenin (A3) and Sri.Pradeep Rajan (A5) in pursuance of the said criminal conspiracy abetted the commission of an offence punishable under Section 7 of the PC Act, 1988 by Sri.P. K.Sanalkumar (A1) who was a public servant by offering the bribe amount of Rs.15 lakh. That apart the statement of the petitioner that appears in pages 87 and 88 also brought to the notice of this court and the same is extracted as follows:-

"I had purchased a land extending to 25 cents and 237 sq.links in Survey No. 2364 /7-1 (Resurvey No. 249/14-1) at Andoorkonam village for Rs.2,50,000/- on 06.12.2006 as per deed No.5016/2006 of SRO Pothencode. The stamp duty paid for the above purchase was Rs.25,000/-. The amount of Rs.2,75,000/- paid by cheque on 05.12.2006 refers to the payment made in this connection. Further the above said 2 DDs for Rs.6,00,000/- taken by me was also used by me purchasing another property as per deed No.359/2007 of SRO Pothenkod on 22.01.2007. Apart from the DDs for 6 lakh mentioned above (value of property) a further amount of Rs.1,20,000/- was paid by cheque on 13.01.2007 to meet the expenses in connection with stamp duty etc. The property purchased on 06.12.2006 by deed No. 5016/2006 (25 cents and 237 sq.links in Resurvey No. 249/14-1) is still under my possession. The other property purchased in January 2007 has since been disposed of by me and the funds received were used for household expenses."

5. In reply to this argument the learned Standing Counsel for the ED apart from placing reliance on the decisions in Vijay Madanlal Choudhary's case (supra) and Pavana Dibbur's case (supra) placed a Division Bench decision of this Court in W.A. No. 2076 of 2016 and connected cases, referring to paragraphs 4, 5, and 6 to contend that even Section 420 of IPC was not incorporated in the Schedule with effect from 15.02.2013 since the petitioner has been dealing with proceeds of crime derived or obtained from a criminal activity even after it has been notified as as scheduled offence to be liable to be prosecuted for the offence of money laundering under the PML Act,2002. It is also pointed out by the learned Standing Counsel for the ED that in prosecution under Section 3 of PML Act, 2002 the presumption under Section 24 (a) and (b) would apply.

6. Similar statement given by the 1st accused who is the husband of the petitioner was also read out.

7. Therefore, the question whether the petitioner possesses the proceeds of crime, with or without knowledge, is a matter of evidence and cannot be determined in a petition seeking quashing of the case. It is also pointed out that, even otherwise, since the CBI has registered a case alleging that the property was admittedly purchased in the name of the petitioner using money out of ₹ 15 lakh allegedly demanded and accepted by her husband, Sri. Sanal Kumar, as bribe and she has been possessing the same as of now also, the same would show that she knew that she has been in possession of property acquired with the said money, which constitutes proceeds of crime. This is sufficient to hold prima facie that she had the knowledge or mens rea necessary to constitute an offence under Section 3 of the PML Act, 2002.

8. Having considered the rival submissions, it is relevant to refer paragraph 270 of Vijay Madanlal Choudhary's case (supra) as under:-

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

9. Similarly it is relevant to extract paragraphs 17 and 31 of Pavana Dibbur's case (supra) and the same as under:-

"17. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example,

let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence final report concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of subsection (1) of Section 3 of the PMLA.

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31. While we reject the first and second submissions canvassed by the learned senior counsel appearing for the appellant, the third submission must be upheld. Our conclusions are:

- a. It is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged, must have been shown as the accused in the scheduled offence;
- b. Even if an accused shown in the complaint under the PMLA is not an accused in the scheduled offence, he will benefit from the acquittal of all the accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly, he will get the benefit of the order of quashing the proceedings of the scheduled offence;
- c. The first property cannot be said to have any connection with the proceeds of the crime as the acts constituting scheduled offence were committed after the property was acquired;
- d. The issue of whether the appellant has used tainted money forming part of the proceeds of crime for acquiring the second property can be decided only at the time of trial; and
- e. The offence punishable under Section 120-B of the IPC will become a scheduled offence only if the conspiracy alleged is of committing an offence which is specifically included in the Schedule."

10. On reading the above decision it is clear that it is not necessary that a person

against whom the offence under Section 3 of the PML Act, 2002 is alleged, must have been shown as the accused in the scheduled offence. Even if an accused shown in the complaint under the PML Act, 2002 is not an accused in the scheduled offence, he will benefit from the acquittal of all accused in the scheduled offence or discharge of all the accused in the scheduled offence. Similarly he will get the benefit of the order of quashing the proceedings in the scheduled offence. Most importantly the first property (the alleged proceeds of crime) cannot be said to have any connection with the proceeds of the crime holding that the acts constituting scheduled offence were committed after the property was acquired. The issue as to whether the accused has used tainted money forming part of the proceeds of crime for acquiring the second property can be decided only at the time of trial.

11. Going by the Division Bench decision of this Court in W.A.No.2076 of 2016 and connected cases in paragraph No.4 the Division Bench addressed the questions as to whether the offence of money laundering under Section 3 of the PML Act, 2002 could be extended to a predicate offence which happened prior to the coming into force of the PML Act, 2002 or before the inclusion of such offences in the Schedule of the PML Act, 2002. While answering this question this Court held in paragraph No. 4 that this question is no longer *re integra* as it was held that in *Vijay Mandalal Chaudharay and Others v. Union of India & Ors.* [(2023) 12 SCC 1], the Apex Court held that it was possible, as the offence under Section 3 is a continuing offence.

12. The Division Bench further observed that the Apex Court in its judgment dated 17.03.2025 in SLP(Crl.) 6185/2023 (*Pradeep Nirankarnath Sharma v. Directorate of Enforcement & Another*) answered this question pointedly and in the affirmative. The Court held that money laundering is not a static event but an ongoing activity, as long as illicit gains are possessed, projected as legitimate, or reintroduced into the economy and thus if the accused commits any of the acts as defined in Section 3 of the PML Act, 2002 after its commencement, the Enforcement Directorate could maintain a criminal action against him, irrespective of the fact that the predicate offence allegedly took place before the commencement of the PML Act, 2002.

13. Finally this court held in paragraph No.6 as under:-

6. Article 20(1) of the Constitution declares that a person shall not be convicted for any offence except for violation of a law in force at the time of commission of the act. The expression 'law in force' refers to a law that is factually in operation at the time when the offence is committed, in contrast to a law 'deemed to be in force' due to the retrospective operation of a subsequently enacted law. This interdiction cannot be extended to a case of the above nature where a person is allegedly using the proceeds of crime or projecting or claiming it as untainted property, after the commencement of the relevant statutory provision. In that case, there is no question of retrospective operation of a penal law. There is only a reference in the statute to a past action, which is only for the identification of

the subject - the proceeds of crime. There is no penal consequence for the past act done by him, under the PMLA.”

14. In this connection it is relevant to refer to Section 3 as well as Section 24 of the PML Act, 2002 also for reference. Section 3 provides 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 1[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.

2[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.]

15. Section 24 reads as under:-

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.

16. It is true that as per the common order passed by this Court in CrI.R.P.No.560 of 2021 and CrI.M.C.No.2017 of 2022 case against the petitioner which was pending before the Chief Judicial Magistrate, Thiruvananthapuram as

C.C. No. 125 of 2021 was quashed by this Court. In fact the said case arose out of RC.18(A)/2008/CBI/KER. However the contention raised by the learned Standing Counsel for the ED is that the predicate offence for the purpose of the present complaint is R.C.5(A)/2009/CBI/TVM alleging commission of offences punishable under Sections 120B and 420 of the IPC r/w Sections 7, 13(1) r/w 13(2) of the PC Act, 1988 where the petitioner is not an accused, but her husband is an accused.

17. Going by the decisions extracted hereinabove, the legal position is no longer re integra on point that as long as illegal gains are possessed projected as legitimate or reintroduced into the economy and thus if the accused commits any of the offences as defined in Section 3 of the PML Act, 2002 after its amendment, the ED could maintain a criminal action against the accused irrespective of the fact that the predicate offence allegedly took place before the commencement of the PML Act, 2002. To put it differently, the conditions precedent for attracting the offence under Section 3 of the PML Act, 2002 are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in Section 3 of the PML Act, 2002.

18. In the instant case, when the statement of the husband of the accused was recorded by the ED, he has given statement that out of Rs.10 lakh received , two properties were purchased by my wife. The first property was purchased for Rs.2,50,000/- plus stamp duty of Rs.25,000/- on 06.12.2006 vide deed No. 5016 of 2006 of SRO Pothencode and the second property was purchased for Rs.6 lakh plus stamp duty on 22.01.2007 vide deed No. 359/2007 of SRO Pothencode. The second property has since been sold by my wife and the funds were used for household expenses. When the statement of the petitioner was recorded she also deposed in similar terms as already observed. Now the question arises for consideration is whether in view of the pendency of prosecution originated from RC.5(A)/2009/CBI/TVM holding that the petitioner has been dealing with proceeds of crime derived or obtained bribe money by her husband even after the said activity was notified as a scheduled offence so as to maintain the prosecution or else the prayer for quashment of the complaint is liable to be allowed.

19. On scrutiny of the settled law as discussed, even if the criminal activities may have been committed before the same had been notified as a scheduled offence for the purpose of the PML Act, 2002, if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, is liable to be prosecuted for offence of money- laundering under the PML Act, 2002-for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted.

20. Even though the predicate scheduled offence alleged herein is pertaining to RC.5(A)/2009/CBI/TVM, the proceeds of the said crime are admittedly in the

possession of the petitioner, being part of the proceeds of crime derived therefrom. Regarding mens rea or knowledge, as argued by the learned Senior Counsel for the petitioner is concerned, the same has to be inferred from the circumstances to be born out from the materials for the time being, since the case is at the pre-trial stage. As argued by the learned Standing Counsel for the Enforcement Directorate, even after registration of the present crime, and even at the time of filing this Criminal M.C., the petitioner has been continuing possession of the proceeds of crime. Therefore, it cannot be held at this stage that she had no knowledge or mens rea in possessing the same. Hence, this contention cannot be accepted to the advantage of the petitioner at this pre-trial stage, since the same is a matter to be considered during trial after adducing evidence.

21. The upshot of the above discussion is that the prosecution records prima facie justify the involvement of the petitioner, who is arrayed as the 3rd accused in this case, and therefore, the trial of the 3rd accused for the said offences is inevitable. In such circumstances, the prayer for quashment on the grounds urged by the learned Senior Counsel for the petitioner cannot be sustained.

22. In the result, this Criminal Miscellaneous Case fails and is accordingly dismissed, with direction to the Special Court to proceed with the trial against the petitioner and to dispose of the same as expeditiously as possible.

23. The interim order of stay shall stand vacated.

The Registry is directed to forward a copy of this judgment to the special court forthwith for information and compliance.