

**HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR**

Reserved on: 27.11.2024

Pronounced on: 03.01.2025

CRM(M) No. 484/2024

c/w

CRM(M) No. 418/2024

CRM(M) No. 484/2024

1. **Hilal Ahmad Mir**Appellant(s)/Petitioner(s)

Aged 53 years
S/O Sona Ul Lah Mir R/O House
No. 5, Lane 5, Pathan Colony,
Zakura, Srinagar, Jammu and
Kashmir, PIN Code 190006.

2. **Abdul Hamid Hajam**

Aged 64 years
S/O Late Gh. Nabi Hajam R/O
House No. 339, Mohalla Hurra,
Zakura, Hazratbal, Srinagar,
Jammu and Kashmir, PIN Code
190006

Through: Mr. Tasaduq H. Khawaja, Advocate with
Mr. Ab. Muizz, Advocate

vs

1. **Directorate of Enforcement Dy.
Director** Respondent(s)

Th. Srinagar Zonal Office, Shah
Building, Gogjibagh, Srinagar, Jammu
and Kashmir, PIN Code 190008.

Through: Mr. Zuhaib Hussain, Advocate
(Virtual Mode) with
Mr. Faizan Ah. Ganie, Advocate.

CRM(M) No. 418/2024

1. **Mohammad Shafi Dar**Appellant(s)/Petitioner(s)

Aged 64 years
S/O Abdul Ghani Dar R/O
Majeed Bagh, Barzulla, Srinagar.

Through: Mr. M. Y. Bhat, Sr. Advocate with

Mr. Sajid Ahmad Bhat, Advocate.

vs

1. Directorate of Enforcement

..... Respondent(s)

Srinagar Zonal Office, Shah Building,
Gogji Bagh Srinagar, J&K

Through: Mr. Zuhaib Hussain, Advocate (Virtual
Mode) with
Mr. Faizan Ah. Ganie, Advocate.

Coram: HON'BLE MR. JUSTICE JAVED IQBAL WANI, JUDGE

JUDGMENT

1. The issues involved in the instant petitions are akin and analogous to each other and are taken up hereunder for final disposal at this stage with the consent of learned counsel for the parties.
2. Before proceeding to advert to the issues involved in the petition, the brief facts in context of issues involved are briefly detailed hereunder:

A. CRM(M) No. 484/2024.

(i) The petitioners herein are stated to have been working as Chairman and Secretary of a registered Co-operative Society, namely, River Jehlum Co-operative House Building Society (for short 'the Society'), which Society had proposed to develop a satellite township at Shivpora, Srinagar on a big plot of land that was identified by the Society for the said purpose and the said land was proposed to be purchased by the Society from its land owners for the development of the said township.

(ii) In furtherance of the aforesaid proposal, petitioner 1 herein claims to have approached the Jammu and Kashmir State Co-operative Bank (for short 'the Bank') for grant of financial assistance by way of loan

of Rs. 300 crores in favour of the Society for enabling it to acquire the identified land from its owners and its subsequent development for establishment of the satellite township. A detailed project report is claimed to have been prepared and submitted to the Bank for consideration of the case of the Society for grant of loan. It is stated that the petitioner also filed an application to the Government of Jammu and Kashmir for facilitating early consideration of the said loan case. The Bank after considering the financial viability of the project and financial interests of the Bank, is stated to have agreed to finance the project to the extent of Rs. 250 crores and subsequently in the first instance, the Bank released an amount of Rs. 223 crores as loan and directly transferred the same in the accounts of 18 land owners against the land in question measuring 257 Kanal and 18 Marlas covered under Khewat No. 53 in estate Shivpora and the land owners consequently are stated to have executed an irrevocable power of attorney in favour of the petitioner 1 herein, in order to facilitate the transfer of the land in the name of the Society or else the ultimate purchasers of the plots of land therein the said township and the petitioner 1 herein, in turn is stated to have executed a perpetual lease deed qua the said land in favour of the Society through petitioner 2 herein, whereafter the leasehold rights are stated to have got mortgaged with the Bank and the land in question properly laid and marked in the relevant revenue records in favour of the Bank.

(iii) A frivolous investigation is stated to have been initiated in the matter by the Anti Corruption Bureau (for short 'ACB') after registering FIR No. 4/2020 for commission of offences punishable under Sections 120-B, 420, 467, 471 RPC read with Section 5(2) of J&K Prevention of Corruption Act, wherein the crux of the allegations against the petitioners and other co-accused therein the said FIR was that the petitioners herein had falsely claimed that the Society was a registered Society and succeeded in obtaining a loan of Rs. 250 crores from the Bank on false premise while alleging further that the loan had been sanctioned by the Bank illegally and fraudulently without following the Standard Operating Procedure, proper documentation, KYC norms and also without obtaining tangible security with further allegation that the whole exercise had been undertaken by the petitioners herein at the behest and instance of the then Chairman of the Bank, namely, Mohammad Shafi Dar (petitioner in connected CRM(M) No. 418/2024), who came to be the alleged kingpin in the whole affair, having compromised the interest of the Bank while sanctioning loan in favour of the Society.

(iv) The petitioners herein along with other accused persons therein the FIR (Supra) are stated to have been arrested in connection with the investigation therein the said FIR, however, subsequently released on bail by the orders of the competent court of law and during the course of said investigation, the land in question is stated to have been attached and the bank accounts of 18 land owners frozen, so as to stop

them from withdrawing the amount credited into their accounts against the land in question.

(v) After completion of the investigation in the FIR supra, charge-sheet is stated to have been filed before the competent court against the petitioners herein along with the other accused persons, which charge-sheet is stated to be pending trial before the competent court.

(vi) It is further stated that the attached Bank accounts of the land owners became subject matter of litigation before the Hon'ble Apex Court, wherein during the course of proceedings, Society volunteered to abide by its arrangement with the Bank and return the loan amount availed by it with interest, subject to the condition that the attachment order qua the land was lifted, whereupon the Apex Court is stated to have lifted the attachment order, however, in respect of the accounts of the land owners in order to facilitate them to withdraw the money that had been credited into their accounts in consideration of their land in question having been leased out perpetually in favour of the Society.

(vii) It is being further stated that the manner and the course, in which the money that was directly transferred in the accounts of the land owners by the Bank out of the loan amount sanctioned in favour of the Society in lieu of the land and was allowed to be withdrawn by the said land owners by the Apex Court, no money was ever transferred in the accounts of the petitioners or the Society or else used by the petitioners or the Society at any point of time.

(viii) It is further stated that in the meanwhile, it got transpired that the above named Mohammad Shafi Dar, the then Chairman of the Bank, who was alleged to be the kingpin in the whole affair and had been shown as the main accused in the charge-sheet, had instituted series of proceedings against the Government of J&K so that the Board of Directors of the Bank appointed by the Government are removed and fresh elections for electing new Board of Directors are conducted at the earliest, wherein the said Mohammad Shafi Dar could seek re-election and in the said litigations, various orders have had been passed and having not gone down well and that the then Government of J&K feeling irked by the said court orders, the interested officers in the then Government of J&K appear to have approached the respondent-Directorate for conducting further proceedings in furtherance of Enforcement Case Information Report (ECIR) registered in 2021 under No. ECIR/04/SRZO/2021 dated 31.03.2021 having been registered for investigating money-laundering aspect of the case, although there had been no element or feature of money-laundering, as sale consideration of the land in question had been credited in the accounts of the land owners by the Bank out of the sanctioned amount of loan directly and the petitioners have had never been in possession of the money in question that is alleged to have been laundered, as *sine qua non* for the offence of money-laundering that one should be in possession of “proceeds of crime” and engaged in an activity to project it as an untainted property.

(ix) It is further stated that the respondent-Directorate after remaining dormant for about three years reactivated itself most probably at the instance of the then Govt. of J&K for the aforesaid reasons of litigation instituted by the above named Mohammad Shafi Dar and in furtherance of the said ECIR registered in 2021 started further proceedings in the month of November 2023 and in the course of said proceedings, on 14.12.2023, attached the land in question being 257 Kanal and 18 Marlas having been acquired in the name of the Society in lieu of the sanctioned amount of loan and subsequent thereto, the petitioners herein as also the above named Mohammad Shafi Dar were again arrested by the respondent-Directorate in connection with the investigation in the ECIR (Supra), but were subsequently released on bail pursuant to the orders passed by the competent court of law/High Court.

(x) It is further stated that upon completing the investigation in the ECIR supra, the respondent-Directorate filed a complaint before the court of Special Judge, Anti Corruption Bureau (CBI) being Designated Court for the purposes of Prevention of Money-laundering Act, 2002 (for short PMLA), wherein the petitioners came to be arrayed as accused Nos. 2 and 3 and the above named Mohammad Shafi Dar as accused No. 1 and alleged to have committed offence under Section 44 and 45 read with Section 70 of the PMLA.

3. The petitioners herein have maintained the instant petition on the following grounds:

- a) *Because the registration of impugned report and consequential complaint has resulted in miscarriage of justice in that accused have been subjected to process under PMLA even though elements that are sine quo non for commission of offence under said Act are absent.*
- b) *Because from the bare perusal of complaint it transpires that there is no ingredient or element of offence of money-laundering in that the amount that has been released out of the sanctioned loan, which is described as “proceeds of crime”, has been, admittedly, directly transferred in the account of landowners. Petitioners have never been in possession of money which is alleged to have been laundered. The sine quo non for the offence of money-laundering is that one should be first in possession of “proceeds of crime” and then engage in an activity to project it as untainted property. That element is totally missing. The complaint is, therefore, liable to be quashed.*
- c) *Because the complaint is violative of Article 21 and 22 which besides ensuring fair process also guarantee protection against double jeopardy.*
- d) *Because admittedly the amounts that were transferred in the account of landowners and which were attached on the false premise that same were “proceeds of crime” were ordered to be released in favour of landowners by the orders of the Hon'ble Supreme Court. If the amounts in the account of landowners were “proceeds of crime”, the Hon'ble Supreme Court would not have ordered or allowed their release as “proceeds of crime” could not be so released. Treating the amount in the account of landowners for the purposes of making out case of money-laundering against the petitioners under such circumstances is not only abuse of process of law but amounts to overreaching orders of Hon'ble Supreme Court.*
- e) *Because the transaction between landowners and Society have been treated as genuine by the Hon'ble Supreme Court and allegation of the Society being non-existent has not been approved by the Hon'ble Supreme Court so much so calling landowners has been termed as harassment. No case can be thus made against petitioners.*
- f) *Because the existence of “proceeds of crime” and its possession by a person is quintessential ingredient of offence of money-laundering and a person can be accused of offence of money-laundering only if he projects or uses such property by projecting it as untainted property. None of the conditions exist in the present case. The complaint is, thus, liable to be quashed.*
- g) *That the Hon'ble High Court has already taken cognizance of the matter and stayed the proceedings in the complaint at the behest of so-called main accused, Mr. Mohammed Shafi Dar. Under the circumstances, proceedings cannot be continued against petitioners,*

which is neither practicable nor feasible. Copy of the order passed by the Hon'ble High Court at the first instance as well as order whereby said order has been extended till further orders are annexed herewith and collectively marked as Annexure III.

4. **Reply** to the petition has been filed by the respondent-Directorate, wherein the petition is being opposed, *inter alia*, on the premise that the petitioners herein entered into a conspiracy with the then Chairman of the Bank besides others while creating a non-existent fictitious Society in the year 2018-19 for obtaining a loan of Rs. 300 crores from the Bank on a false pretext of developing and establishing a satellite township at Shivpora, Srinagar and that an amount of Rs. 250 crores was sanctioned as loan by the then Chairman of the Bank on 25.04.2019, which loan was arranged by the Bank against its FD's maintained with the J&K Bank and upon receipt of a loan amount of Rs. 223 crores, 18 land owners executed irrevocable power of attorney in favour of the petitioner 1 herein being the Chairman of the Society who in turn executed a perpetual lease deed in favour of the petitioner 2 herein being Secretary of the Society and the said land was shown as a security pledged by the Society with the Bank for obtaining the loan and that in furtherance of the conspiracy hatched by the petitioners with other accused persons, the loan in question was sanctioned without any proper documentation and following KYC norms, inasmuch as in violation of the credit policy of the Bank as also without obtaining any field report, balance sheet, profit and loss statement, income tax reports, byelaws of the Society as also without securing the loan amount by way of taking sufficient collateral

security, stating further that even the sanctioning of the loan by the Bank in favour of the Society was not reported by the Bank to its controlling Bank being NABARD (National Bank for Agriculture and Rural Development) and instead concealed the same.

It is further stated that upon undertaking investigation by the ACB in the matter, the Board of Directors of the Bank including the Chairman came to be removed in terms of order dated 15.05.2020 and the land in question attached vide order dated 15.02.2020 besides freezing the accounts of land owners.

It is next stated that subsequently proceedings came to be initiated in the matter under ECIR dated 31.03.2021 and consequently upon undertaking investigation thereof and concluding the same, prosecution/complaint against six accused persons/entities including the petitioners herein came to be instituted on 29.01.2024 for offence of money-laundering under Section 3 punishable under Section 4 of the PMLA.

It is being lastly stated in the reply, before referring to the various judgments delivered by the Apex Court qua the ambit and scope of exercise of inherent power of this Court saved under Section 482 Cr. P.C., that the petitioners have committed the offence of money-laundering rendering them liable for prosecution under PMLA and that, as such, interference by this Court in the instant petition at this Stage will amount to abuse of process of law and will prove to be

detrimental to the interest of the Bank and defeat the purpose of PMLA.

B. CRM(M) No. 418/2024

(i) In the instant petition, the petitioner herein claims to have been elected as Chairman of the Bank in the month of December 2018 for a period of three years to expire in December 2021, however, alleges to have been dislodged on 15.05.2020 at the instance of a powerful team of bureaucrats working in the Government of J&K purportedly in exercise of its power under the J&K Co-operative Act, 1989 and got the FIR supra registered against the petitioner herein, in the capacity as Chairman of the Bank along with other accused persons for having sanctioned a loan allegedly in favour of a non-existent Society and that the removal of the petitioner and the elected board of Bank came to be questioned before the High Court in WP(C) No. 2775/2021, which came to be decided on 15.07.2022 holding that the nominated Board of Directors of the Bank is entitled to remain in position and legitimately run the affairs and management of the Bank till 04.10.2022 and that the nominated Board of Directors shall cease to be in existence after 04.10.2022 and that it is incumbent upon the Government or the Registrar to reconstitute the Board of Directors on or before 04.10.2022 by holding elections in accordance with the Act of 1989, rules and byelaws of the Bank and that such Board of Directors was never constituted and the order of the Court was not

complied with for which a contempt petition came to be filed and that one more petition being WP(C) No. 174/2023 came to be filed by one *Kashmir Valley Co-operative Society and another* which too was decided on 07.04.2023 by this Court by observing that it is clear that the respondent did not have power and competence to reconstitute the nominated Board which had already outlived its life and that it was not open to the Government to give a fresh lease of life to the said Board simply by replacing one of its members and that action of the respondent cannot be countenanced by law while quashing order dated 21.01.2023 in terms whereof an arrangement had been made by the Government for running the affairs of the Bank.

(ii) It is further stated that the petitioner yet again filed another petition before this Court titled as Ex-Board of Directors of the J&K State Co-operative Bank through its then Chairman, namely, Mohammad Shafi Dar against UT of J&K and the nominated Board of Directors nominated by the Government for running the affairs of the Bank.

5. Insofar as the issues involved in the instant petition are concerned, the petitioner herein, has reiterated the factual aspects referred in the aforesaid petition being CRM(M) No. 484/2024, as such, in order to avoid repetition, the said facts are not reiterated. However risking the repetition, it is pertinent to mention here that the petitioner herein is the alleged main accused implicated in the complaint having arisen out of the ECIR (Supra) and in the complaint is alleged to have committed

the offences as are alleged committed by the petitioners of CRM(M) No. 484/2024 supra.

6. The petitioner herein, as well, has maintained the instant petition fundamentally on the premise on which the petitioners of CRM(M) No. 484/2024 supra have maintained the said petition, as such, for the sake of brevity, the same is not reiterated hereunder.

7. **Objections** to the petition have been filed by the respondent-Directorate, wherein the petition is being opposed on almost same and similar premise and grounds on which the petition bearing CRM(M) No. 484/2024 supra has been opposed, as such, the same as well is not being reiterated for the sake of brevity.

Heard learned counsel for the parties and perused the record.

8. Before proceeding further in the matter, it would be advantageous and appropriate to refer to the ambit and scope of inherent power vested in this Court saved under Section 482 Cr.P.C, qua the quashing of a complaint/FIR.

A reference in this regard to the judgment of Apex Court passed in case titled **State of Haryana and others vs. Bhajan Lal and others** reported in **1992 Supp (1) SCC 335** would be relevant, wherein in para 102, following has laid down:

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the

ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

- 1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.*
- 2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155 (2) of the Code.*
- 3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.*
- 4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code.*
- 5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
- 6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
- 7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."*

The Apex Court further in this regard has also in case titled as **State of Karnataka vs. M. Devenderappa and another** reported in 2002 (3) SCC 89, at para 6 held as under:

"6....All courts, whether civil or criminal possess, in the absence of any express provision, as inherent in their constitution, all such powers as are necessary to do the right and to undo a wrong in course of administration of justice on the principle quando lex aliquid alicui concedit, concedere videtur et id sine quo res ipsae esse non potest (when the law gives a person anything it gives him that without which it cannot exist). While exercising powers under the section, the court does not function as a court of appeal or revision. Inherent jurisdiction under the section though wide has to be exercised sparingly, carefully and with caution and only when such exercise is justified by the tests specifically laid down in the section itself. It is to be exercised ex debito justitiae to do real and substantial justice for the administration of which alone courts exist. Authority of the court exists for advancement of justice and if any attempt is made to abuse that authority so as to produce injustice, the court has power to prevent abuse. It would be an abuse of process of the court to allow any action which would result in injustice and prevent promotion of justice. In exercise of the powers court would be justified to quash any proceeding if it finds that initiation/continuance of it amounts to abuse of the process of court or quashing of these proceedings would otherwise serve the ends of justice. When no offence is disclosed by the complaint, the court may examine the question of fact. When a complaint is sought to be quashed, it is permissible to look into the materials to assess what the complainant has alleged and whether any offence is made out even if the allegations are accepted in toto."

The Apex Court also in case titled as **Mohammad Wajid and another vs State of UP and others** reported in **2023 SCC Online SC 951** has at para 34 has observed as under:

"34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (Cr.P.C.) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary

pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the Cr.P.C. or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation.”

Thus, what emanates from the above principles of law is that the inherent power of this court saved under Section 482 Cr. P.C. does not confer any new power on the High Court, in that, it only saves the inherent power of this Court, which the court possessed before enactment of the Code of Criminal Procedure and it envisages three circumstances under which the inherent jurisdiction may be exercised, namely-

- a) To give effect to an order under the Code,
- b) To prevent abuse of process of court, and
- c) To otherwise secure the ends of justice.

9. It is also significant to mention here that the consistent view of the Constitutional Courts that it is neither possible nor desirable to lay down any inflexible rule which would govern the exercise of inherent jurisdiction and no legislative enactment dealing with procedure can provide for all cases that may possibly arise, thus suggesting that the courts have inherent powers apart from provisions of law which

are necessary for proper discharge of functions and duties imposed upon them by law. That is the doctrine which finds expression in Section 482 Cr. P.C. which merely recognises and preserves the inherent power of the High Court to do the right and to undo the wrong in the course of administration of justice on the principle **“that when the law gives a person anything, it gives him that without which it cannot exist”** and that the inherent power is exercised *ex debito justitiae* to do real and substantial justice for the administration of which alone the courts exist and that the authority of court exists for advancement of justice and if any attempt is made to abuse the authority so as to produce injustice, the court has power to prevent abuse and that it would be an abuse of process of court to allow any action which would result in injustice and prevent promotion of justice and that in exercise of powers, the court would be justified to quash any proceeding if it finds that the initiation/continuance of it amounts to abuse of process of court or quashing of these proceedings would otherwise serve the ends of justice.

- 10.** Before proceeding further in the matter, a reference to Section 2(1) (p), 2(1)(u), Section 3 and Section 4 of the Prevention of Money-Laundering Act, 2002 would be also relevant, which are reproduced hereunder:

“Section 2(1)(p)

“Money-laundering” has the meaning assigned to it in Section 3.

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 2 [“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 (a) 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 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 28[* * *]: 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."

What emanates from the aforesaid provisions is that in order to constitute an offence of money-laundering as defined under Section 3 (Supra) , the most important thing is that there must be an activity connected with the "proceeds of crime", which proceeds of crime in terms of the aforesaid definition would mean 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.

Thus, in order to constitute an offence under Section 3 of PMLA, Section 2(1)(u) is to be read together with Section 3 of PMLA to find out whether the ingredients of the offence of money-laundering are made out or not. When read so, the offence of money-laundering can said to have been committed by fulfilment of following conditions:-

- i. *Scheduled offence must have been committed;*
- ii. *Commission of scheduled offence must have resulted in some "proceeds of crime";*
- iii. *Person accused of money-laundering must have indulged in an activity connected with such "proceeds of crime".*

It needs to be mentioned here that the activity connected with the "proceeds of crime" attributed to an accused must be the voluntary act of the accused.

11. Keeping in mind the aforesaid provisions of the PMLA and reverting back to the case in hand, inasmuch as the settled position of law noticed and referred in the preceding paras laid down by the Apex

Court qua exercise of inherent power saved under Section 482 Cr. P.C. that the Court at this stage has to proceed on the premise of the facts as are stated in the complaint are true.

12. As is noticed in the preceding para, the case set up by the respondent-Directorate against the petitioners herein in the complaints put briefly is that petitioners in CRM(M) No. 484/2024, claiming to be the Chairman and Secretary of the Society had approached the Bank headed by the petitioner in CRM(M) No. 418/2024 for grant of a loan to enable the Society to develop a satellite township on an identified piece of land situated at Shivpora, Srinagar, in order to enable the Society to purchase land from the land owners, in response whereof, the Bank through its Chairman agreed and provided loan to the Society to the tune of Rs. 250 crores and the land owners in furtherance thereof executed an irrevocable power of attorney in favour of the Chairman of the Society i.e. petitioner 1 in CRM(M) No. 484/2024 to facilitate the transfer of land in favour of the Society, who in turn executed a perpetual lease in favour of the Society represented by the petitioner 2 in CRM(M) No. 484/2024, whereafter, the said lease hold rights had been mortgage by the Society with the Bank in lieu of the loan of Rs. 223 crores sanctioned by the Bank through its Chairman being petitioner in CRM(M) No. 418/2024, which loan amount had been transferred/credited in the Bank accounts of 18 land owners whose land was proposed to be utilised by the Society for developing the satellite township by the Society.

13. Perusal of the record tends to show that initially the investigation in the matter was initiated by the ACB upon registration of FIR 4/2020 (Supra) under the J&K Prevention of Corruption Act, wherein crux of the composite allegations against the petitioners in both the petitions was that the Society was falsely created which succeeded in obtaining the loan from the Bank on a false premise, which loan had been sanctioned by the Bank illegally and fraudulently without following Standard Operative Procedure, proper documentation, KYC norms, inasmuch as without obtaining tangible security and that the whole exercise had been undertaken by the accused persons including the petitioners herein at the behest and instance of Chairman of the Bank being petitioner in CRM(M) No. 418/2024, who was alleged to be the kingpin in the whole affair and upon completion of the investigation in the said FIR, charge-sheet came to be laid before the competent court against the petitioners, which is pending trial and whether the accused persons including the petitioners herein committed a scheduled offence is for the court of competent jurisdiction to decide.
14. This Court, however, at this stage as has been stated in the preceding paras would proceed on the premise that the accused including the petitioners herein are involved in a scheduled offence and, as such, the question that arises for consideration of this Court is as to whether the alleged offence has resulted in “proceeds of crime” for the accused persons including the petitioners herein and whether the accused

persons/petitioners herein have indulged into an activity related to such “proceeds of crime”.

15. It is pertinent to mention here and as has been noticed in the preceding paras as well, that during the course of investigation, land in question as also the Bank accounts of 18 land owners, in whose accounts the loan amount had been directly transferred/credited by the Bank were attached to prevent the land owners from withdrawing the money so transferred/credited and that the said attachment of the Bank accounts of the land owners became subject matter of the litigation before the Apex Court, wherein the Apex Court passed orders to facilitate the land owners the withdrawal of the said money, having been deposited/credited in their accounts in lieu of the land having been perpetually leased out in favour of the Society.

Having regard to the aforesaid position obtaining in the matter, inasmuch as the admitted facts noticed in the preceding paras, the alleged offence manifestly has not resulted in any “proceed of crime” in favour of the petitioners herein. A-fortiori, it cannot be said that the petitioners have indulged in any activity connected with the “proceeds of crime” for unless there are “proceeds of crime”, there cannot be any activity about the “proceeds of crime”, in that, **existence of “proceeds of crime” pursuant to the predicate offence is *sine qua non* for commission of offence of money-laundering**, to be precise that if there is no money or property, a question of money-laundering would not arise.

A reference in this regard to the judgment of the Apex Court passed in case titled as **Vijay Mananlal Choudhary and others vs. Union of India and others** reported in **2022 SCC Online SC 929** would be relevant, wherein at para 283 and 284 following has been held:-

“283. Even though, the 2002 Act is a complete Code in itself, it is only in respect of matters connected with offence of money-laundering, and for that, existence of “proceeds of crime” within the meaning of Section 2(1)(u) of the Act is quintessential. Absent existence of “proceeds of crime”, as aforesaid, the authorities under the 2002 Act cannot step in or initiate any prosecution.

284. In other words, the Authority under the 2002 Act, is to prosecute a person for offence of money-laundering only if it has reason to believe, which is required to be recorded in writing that the person is in possession of ““proceeds of crime””. Only if that belief is further supported by tangible and credible evidence indicative of involvement of the person concerned in any process or activity connected with the “proceeds of crime”, action under the Act can be taken forward for attachment and confiscation of “proceeds of crime” and until vesting thereof in the Central Government, such process initiated would be a standalone process.”

What emanates from the above position of law is that the Apex Court, *inter alia*, has held that in absence of “proceeds of crime”, the Authority under PMLA have no jurisdiction to proceed.

- 16.** Further perusal of the record tends to show and as has been noticed in the preceding paras, admittedly no money was transferred to the accounts of the petitioners herein, therefore, there was no occasion for the petitioners herein to indulge in any activity associated with the so called “proceeds of crime” as the money that has been released out of the sanctioned loan, which is described as the “proceeds of crime” in

the complaint, had admittedly been transferred/credited directly into the accounts of the land owners and the petitioners herein had never been in possession or control of the said money, which is alleged to have been laundered. As has been pointed out earlier, in order to constitute the offence of money-laundering, it is imperative that one should be first in possession of the “proceeds of crime” and then engage in an activity to project it as untainted property, **which however, is missing in the instant case.** In the instant case, “proceeds of crime” in favour of the petitioners would have arisen only had the petitioners developed the plots in the colony and sold them to earn profit in the process, in that, the said profits would have been the “proceeds of crime” and any activity related to such profits may have resulted in money-laundering, which stage in the instant case has not reached.

The fact that the money that was transferred in the accounts of the land owners which had been attached on the premise that the same is “proceeds of crime” and was released in favour of the said land owners by the orders of the Apex Court cannot be overlooked, in that, if the said money in the accounts of the land owners was “proceeds of crime”, the same would not have been ordered to be released in favour of the land owners and treating the said money in the accounts of the land owners for the purpose of making out a case of money-laundering against the petitioners herein under said circumstances cannot but said to be not only abuse of process of law, but as well an attempt to

overreach the orders of the Apex Court, in that, the transaction between the land owners and the Society essentially has been treated as a genuine transaction by the Apex Court while ordering release of money in question in favour of the land owners.

17. Thus, what emanates from the above is that none of the ingredients of the offence of money-laundering against the petitioners herein is found to be existing in the present case, more so in view of the fact that an act of mortgaging the property with the Bank for securing the loan that is said to have been obtained fraudulently without following Banking rules and regulations cannot by any stretch of imagination be termed as money-laundering and that the act of the petitioners herein of having fraudulently secured loan for development and establishment of satellite township by submitting false documents, at the most makes out a case for forgery or Bank fraud.

18. For what has been observed, considered and analysed hereinabove, the instant petitions succeed, as a consequence whereof, the impugned complaints qua the petitioners in both the petitions are quashed.

19. **Disposed of.**

(JAVED IQBAL WANI)
JUDGE

Jammu
03.01.2025
Sahil Padha

Whether the order is speaking:	Yes.
Whether the order is reportable:	Yes.