THE HON'BLE SRI JUSTICE RAVI CHEEMALAPATI

WRIT PETITION NO.18057 OF 2023

ORDER:

The present Writ Petition is filed seeking the following relief:

> *"..to declare the issuance and continuation of provisional attachment of the Petitioner Company current account bearing no.037111100002740 Union Bank of India Machavaram Branch, Vijayawada vide Provisional Attachment Order No.01/2023 dt 10.05.2023 passed by the Respondent No.3 and seeking confirmation of the same vide Original Complaint No.1996 of 2023 dt 08.06.2023 before Respondent No.4 on the basis of ECIR/NKSZO/27/2022, 31.05.2022 even after the quash of Cr.No.85 of 2021 dt 03.03.2021 Mangalagiri P.S under Sections 420, 406, 120B R/w 34 of IPC and Cr,No,346 of 2021 dt 19.06.2021 Mangalagiri P.S under Sections 120B, 409, 471, 420 and 506 of IPC Predicate Offences by this Honble Court as illegal, arbitrary, violative of Articles 14, 19 and 21 of the Constitution of India unjustified contrary to Prevention of Money laundering Act, 2002 an abuse of authority and consequently to set aside the Provisional Attachment Order No.01/2023 dt 10.05.2023 and Original Complaint No.1996 of 2023 dt 08.06.2023 issued and pending before the Respondent No 3 and 4 respectively against the Petitioner Company and forthwith release the attachment and defreeze the Petitioner Company current account bearing no.037111100002740 Union Bank of India Machavaram Branch, Vijayawada and pass.."*

2. Heard Sri N.Subba Rao, learned Senior counsel for the petitioner and Sri JUMV.Prasad, learned standing counsel for the respondents.

3. Learned Senior Counsel for the petitioner company in elaboration to what has been stated in the affidavit contended that, investigation under PMLA was initiated vide ECIR/VKSZO/027/2022

dated 31.05.2022 against the petitioners and officials of M/s NRI Academy of Sciences(society) for alleged misappropriation of funds of the said society on the basis of two FIRs vide Cr.No.85/2021, dated 03.03.2021, Managalagiri P.S. for the offences under Sections 420, 406, 120B r/w 34 of IPC and Cr.No.346/2021, dated 19.06.2021, Mangalagiri P.S.(Collectively called predicative offences). He further submitted that, the petitioners company has no nexus with the said NRIAS except for former shareholder and director of the Petitioner company namely Mr M.Appa Rao is a member of the NRIAS who has left himself from the petitioners company in the year 2021 after settling the finances. He further submitted that, the 3rd respondent issued an email communication dated 29.04.2023 to the 5th respondent to freeze account of the petitioner, pending investigation in ECIR registered against the NRIAS thereby petitioner company account has been high-handedly freezed.

He further submitted that, in spite of quashing the scheduled offences in Crlp.No.2341/2023 and W.P.No.12137/2021 against the accused, the authorities are proceeding with the enquiry without any authority and jurisdiction which is contrary to the settled principles of law and PMLA Act, 2002.

In support of his contentions, learned Senior counsel for the petitioner relied on the judgment passed by the Division Bench of High Court for Telangana in W.A.No.107/2023 following the judgment in ***Vijaya Madanlal Choudhary Vs Union of India***[1].

Learned Senior Counsel for the petitioner further submits that, the judgment passed in W.A.No.107/2023 squarely applicable to the facts of the present case and draw the attention of this Court to the facts of the said case and prayed to consider the present writ petition also in the same lines.

4. On the other hand, Sri JUMV Prasad, learned standing counsel vehemently opposed the relief sought in the writ petition and on counter submitted that, prior to amendment of 2015, the first provisio acted as an impediment for taking such urgent measure even by the authorized officer, who is not less than the rank of Deputy Director and further contended that, the nuanced distinction must be kept in mind that to initiate "prosecution" for offence under Section 3 of the Act registration of scheduled offence is a prerequisite, but for initiating action of "provisional attachment" under Section 5 there need not be a pre-registered criminal case in connection with scheduled offence. Therefore, he submitted that,

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[1] (2022) SCC Online SC 929

the Judgment relied on by the learned Senior counsel for the petitioner is not applicable to the facts of the case. As such, the authority have power to proceed with the enquiry under Section 5 of the PMLA Act, 2002. He further submitted that, all the grounds that are raised and urged by the petitioner before this court can be urged by filing an explanation/written version before the adjudicating authority and seek for raising of the attachment and further, there is appeal provision if any orders passed by the original authority. As such, prayed to dismiss the writ petition.

5. In reply, learned senior counsel for the petitioner submitted that, the authorities have no jurisdiction to entertain and proceed further, and adjudication before the original authority is of no consequence and nothing but a futile exercise. As such the petitioner need not file any written version and prayed to pass appropriate orders in that regard.

6. Perused the record.

7. It is not in dispute that predicative offences registered against the accused have been quashed by this Court in Crlp.No.2341/2023 and W.P.No. 12137/2021. The Division Bench of High Court of Telangana while dealing with similar case in W.A.No.107/2023, has duly taken into consideration the judgment

of the Hon'ble Apex Court in ***Vijaya Madanlal Choudhary Vs Union of India*** which reads as follows:

> ***"...24***. *We may now deal with the decision of the Supreme court in* ***Vijay Madanlal Choudhary*** *(supra). Supreme court dealt with the expression "proceeds of crime" in the following manner:*
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> ***2: 1***. *The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act -- so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the 2002 Act. Dealing with proceeds of crime by war of any process or activity constitutes offence of money-laundering under Section 3 of the Act.*
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> ***28.*** *Thus, according to Supreme Court, the offence under Section 3 of PMLA is dependent on illegal gain of property as*

> *a result of criminal activity relating to a scheduled offence. If the person is finally discharged or acquitted of the scheduled offence or the criminal case against him is quashed by the court, there can be no offence of money laundering against him or anyone claiming such property being the property linked to the scheduled offence. It is immaterial for the purpose of PMLA whether acquittal is on merit or on composition*.

8. A perusal of the said judgment, it shows that the criminal case therein was settled in Lokadalat whereby the said crime has been closed. While coming to the present case, the criminal cases herein have been quashed by this Court.

9. In the said judgment the Division Bench of Telangana High Court has taken the facts and circumstances of the case therein into consideration and held that if a person is finally discharged/acquitted of the scheduled offence or the criminal case registered against him is quashed by the Court of competent jurisdiction there can be no money laundering against him or any one claiming such property being the property linked in scheduled offence through him.

10. However, in the present case, the provisional attachment took place on the ground that, predicative offences have been registered against the members and other officials of the NRIAS. In view of quashing of the said crimes, there are no scheduled offences. As held by the Hon'ble Supreme Court in the judgment referred supra,

since there is no scheduled offence, there can be no offence of money laundering. The judgment relied on by the learned Senior counsel for the petitioner is squarely applicable to the facts of this case. As such, the Writ Petition is liable to be allowed.

Accordingly writ petition is **allowed** and thereby setting aside the Provisional Attachment Order No.01/2023 dated 10.05.2023 and Original Complaint No.1996/2023 dated 08.06.2023 issued and pending before Respondent No.3 & 4 forthwith and the respondents are directed release the attachment and defreeze the Petitioner's Company current account bearing no.037111100002740, Union Bank of India, Machavaram Branch, Vijayawada. No costs.

Miscellaneous applications, pending if any, shall stand closed.

JUSTICE RAVI CHEEMALAPATI

09.08.2023,
BRS