

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 22ND DAY OF APRIL, 2022

BEFORE

THE HON'BLE MR. JUSTICE K.NATARAJAN

WRIT PETITION NO.288 OF 2022 (GM-RES)

BETWEEN

1. M/S DECCAN MINING SYNDICATE PVT. LTD.,
HAVING ITS OFFICE AT S-7, II-FLOOR
ESTEEM ARCADE, NO.26
RACE COURSE ROAD
BANGALORE - 560 001
REP. BY DIRECTOR - SHRI. RAJENDRA JAIN.
2. MR. RAJENDRA JAIN
S/O LATE S.M. JAIN
AGED ABOUT 52 YEARS
DIRECTOR
M/S DECCAN MINING SYNDICATE PVT. LTD.,
HAVING ITS OFFICE AT S-7, II-FLOOR
ESTEEM ARCADE, NO.26
RACE COURSE ROAD
BANGALORE - 560 001. ... PETITIONERS

(BY SRI. KIRAN S. JAVALI - SR. ADVOCATE FOR
SRI. CHANDRASHEKARA .K - ADVOCATE)

AND:

ASSISTANT DIRECTOR
DIRECTORATE OF ENFORCEMENT
BANGALORE ZONAL OFFICE
III-FLOOR, 'B' BLOCK
BMTCC-TTMC BUILDING
K.H. ROAD, SHANTHINAGAR
BANGALORE - 560 027. ... RESPONDENT

(BY SRI. MADHUKAR M. DESHPANDE - SR. PANEL COUNSEL)

THIS WRIT PETITION IS FILED UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA READ WITH SECTION 482 OF CR.P.C., PRAYING TO QUASH THE ENTIRE PROCEEDINGS IN SPL.C.C.NO.134/2015 ON THE FILE OF THE SPECIAL COURT FOR PREVENTION OF MONEY LAUNDERING ACT, 2002 VIDE ANNEXURE-A AS ILLEGAL AND ABINITIO VOID.

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDERS ON 25.03.2022 THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

This petition is filed by the petitioner-accused Nos.1 and 2 under Article 226 of the Constitution of India read with Section 482 of Cr.P.C. for quashing the entire proceedings in Spl.C.C.No.134/2015 pending on the file of Special Court for Prevention of Money Laundering Act, 2002 as illegal and *void ab initio* and for other reliefs.

2. Heard learned Senior counsel appearing for the counsel for the petitioners and the Special Counsel for the respondent-Directorate of Enforcement (hereinafter referred to as 'ED').

3. The case of the petitioners is that the respondent filed a complaint under Section 200 of Cr.P.C. read with Section 45(1) of PML Act for the offences punishable under Sections 3 and 4 of Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PML Act') wherein it is alleged that a FIR has been registered by CBI on 01.10.2011 for the offences punishable under Sections 120B, 379, 411, 420, 427, 447, 468, 471 of IPC, Sections 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988 (hereinafter referred to as 'P.C. Act') and Section 26 of Indian Forest Act, 1927 against petitioner No.1 and others. After investigation, the CBI filed the charge-sheet before the XLVI Additional City Civil and Sessions and Special Judge for CBI Cases, Bengaluru on 02.08.2013. It is further alleged that the offence under the P.C. Act and other offences are the scheduled offences and therefore, based upon the CBI charge-sheet, the respondent registered a case in ECIR/BGZO/09/2013 on 19.09.2013. The said case was registered based upon the FIR registered by CBI.

4. It is alleged that on behalf of CBI, independent team of surveyors headed by the Chief Surveyor, conducted survey of the area occupied by the petitioner M/s. Deccan Mining Syndicate Pvt. Ltd. (DMSPL). The survey report submitted on 07.12.2012 (item No.80 of Relied Upon Documents in the charge sheet) stated that the team surveyed the area and demarcated the mine area into two blocks i.e. 'A' block and 'C' block. Both these blocks were found extended outside the lease area of DMSPL and they alleged to have illegally extracted the mines from the area which comes to 1.43 crores metric tons and the data was collected. Out of this, around 62 lakhs metric tons were from outside their mining lease area. Based upon the said survey report, the CBI filed charge sheet before the Special Court for CBI Cases on 02.08.2013 for the above said offences. There were public interest litigations before the Hon'ble Supreme Court and the Hon'ble Supreme Court, during the proceedings, constituted Central Empowered Committee (CEC) to examine the boundaries of illegal mining in various States including Bellary at Karnataka. The team identified the

area encroached by DMSPL about 14.31 Ha. and submitted the report on 03.02.2012.

5. It is further stated that in the writ petition filed in W.P. (C) No.562/2009 (**SAMAJ PARIVARTANA SAMUDAYA AND OTHERS Vs. STATE OF KARNATAKA**), the Hon'ble Supreme Court on 18.04.2013, at paragraph 39, has observed as under:

" 39. We make it clear that we have not understood the above statement as an admission on the part of the Federation and it is on a consideration of the totality of the facts placed before us that we accept the findings of the survey conducted by the Joint Team constituted by the orders of this Court and the boundaries of each of the leases determined on that basis. We further direct that in supersession of all orders either of the authorities of the State or Courts, as may be, the boundaries of leases fixed by the Joint Team will henceforth be the boundaries of each of the leases who will have the benefit of the lease area as determined by the Joint Team. All proceedings pending in any court with regard to boundaries of the leases involved in the present proceeding shall stand adjudicated by means of present order and

no such question would be open for re-examination by anybody or authority."

6. As per the proceedings of the joint team of CEC dated 02.07.2011, the area of encroachment was found to be 14.31 Ha. However, 2.46 Ha. was used as mining pit and the balance area is used for dump, etc. The SCCL has also considered the fact that the original mining lease No.636 was granted on 20.05.1966. It is also mentioned in Annexure-I of charge sheet filed by CBI at Kammathervu village, Sandur taluk that the said mining lease was granted in favour of 'Shri Motilal J Boal' in 1962 and later, transferred to 'M/s. Motilal J Boal' in 1972 for extracting the iron ore area of 22.23 Ha (50 acres) for a period of 20 years with effect from 1966. M/s. Deccan Mining Syndicate which was a partnership firm of Shri S.M. Jain and Smt. Kamala S. Jain was started mining in 1981. On 25.09.1991, a Private Limited Company in name of M/s. Deccan Mining Syndicate Private Ltd. came into existence and took over the partnership firm M/s.Deccan

Mining Syndicate. A charge sheet came to be filed regarding criminal conspiracy to cheat National Mineral Development Corporation Ltd. (NMDC) by stealing iron ore from the area of NMDC which are outside their area leased dishonestly inducing delivery of the property i.e. iron ore, which constitute an offence under Sections 120-B and 420 of IPC. Accordingly, a proceedings under the PML Act was initiated and the investigation was conducted under PML Act by registering a case on 19.09.2013 in No.ECIR/BGZC/09/2013.

7. During the course of investigation, accused No.2 was examined under Section 50(2) and (3) of PML Act. The accused took over as Managing Director of DMSPL in the year 2005 after death of his father and he was looking after the business. As per the orders of the Hon'ble Supreme Court, the mines were closed in 2010-11.

8. It is further alleged that during the course of investigation, the Bank accounts and the fixed deposits of

the petitioner company has been attached by the ED authority including the SB account and current account in various branches of the SBI and other banks and the report of the CEC has been accepted by the Hon'ble Supreme Court that DMSPL had encroached upon total area of 14.31 Ha. and the proceeds of sale of iron ore excavated out of this area amounts to proceeds of crime in terms of Section 2(i)(u) of PML Act. Therefore, the ED filed the complaint against the petitioner which is under challenge.

9. The learned Senior counsel appearing for the petitioners, challenging the proceedings on various grounds, submitted that the proceedings initiated by the respondent is bad both in law and on facts and illegal exercise of power. The scheduled offences have been discharged by the trial Court and the very attachment proceedings as proceedings for punishment is unsustainable in law. It is contended that the very order of attachment was questioned before the appellate

Tribunal and the appellate Tribunal has noticed the fact of discharge and has ordered to release the attached properties and hence, proceedings of the departmental side have been come to a close cannot form the basis for continuation of criminal proceedings. It is further contended that the final report filed by the ED in special C.C. No.165/2013 alleging that the petitioner had violated the provisions of Prevention of Corruption Act and IPC, and the same has not been examined which had resulted in miscarriage of justice. It is further contended that the final report submitted by the CBI had also not taken note of the fact that the petitioner had been doing its mining activities in accordance with law.

10. It is further contended that the orders and directions issued by this Court in W.P. No.19766/2005 which had clearly directed to re-draw the sketch of mining lease No.1111 and it was only consequent thereto, the petitioner had been conducting the mining activities. The very basis for charge sheet and consequent investigation

of CBI had failed to notice and appreciate this fact. The Final report by CBI was a clear miscarriage of justice.

11. It is further contended that in furtherance of the report of the CBI the basis for initiating action under the PML Act issuing provisional attachment order dated 28.03.2014 came to be confirmed by the adjudicating authority under Section 8 of the PML Act by order dated 06.08.2014. No credence has been given to the binding nature of the order passed by this Court in W.P. No.10335/1998 and connected with W.P. No.19766/2005, which were disposed on 31.03.2008. Hence, the entire proceedings is illegal in view of the non existence of the scheduled offence. The discharge order passed by the Special Court on 30.01.2016 has affected very existence and continuation of proceedings in Spl. C.C. No.134/2015 and taking cognizance is liable to be set aside. In view of the fact that the scheduled offence ceases to exist, all consequential action and proceedings there of would be rendered non-existent and is required to be set aside as

not maintainable. It is further alleged that the offence was consequent to FIR registered under the PML Act and the law under the Act had undergone changes with effect from 15.02.2013 and provision of Section 8 of PML Act was squarely applicable in the present case and hence, the same is liable to be quashed.

12. The learned Senior Counsel further contended that this Court in the writ petition in W.P. No.10335/1998 clubbed with W.P. No.19766/2005 (GM-MM/S) has considered the dispute between the petitioner company and the NMDC, and a sketch was prepared through the surveyor and has categorically stated that there is no encroachment of any land or illegal mining by the petitioner company and the writ petition filed by the NMDC came to be dismissed vide order dated 31.03.2008 and the NMDC also filed writ appeal before the Division Bench and later, it was dismissed as withdrawn and the judgment of this Court in the above writ petition has attained the finality wherein there is a categorical finding that there is

no violation of any mining lease and the encroachment in the land of the NMDC in the mining lease No.1111 and the boundaries were also fixed by the surveyor and marked as Q, Q1 and Q2 by the Joint Director of Land Records, and therefore, the question of filing one more complaint by the NMDC by suppressing the order of this Court and holding the petitioner company for illegal mining and registering the case by the CBI is an abuse of process of law. When the petitioners-accused have already been discharged by the competent Court holding that there is no illegality or illegal mining by this petitioner and subsequently in the attachment proceedings before the Tribunal, the ED officials have stated that in view of discharge, the property attached by the ED were allowed to release, the question of continuation of proceedings under the PML Act does not arise and it amounts to abuse of process of law and hence liable to be quashed.

13. The learned Senior Counsel has also contended that Section 8 of the PML Act, 2002 came into force on

01.07.2005 and subsequently, from time to time, it was amended and there was drastic change in respect of possession of proceeds of the crime and release of the same. The case was registered against the petitioners subsequent to the amendment came into force on 15.02.2013. Therefore, the proceedings against the petitioners and the provisional attachment has been set aside and the same was released in favour of the petitioner company. Such being the case, the petitioners are entitled for quashing the criminal proceedings. Hence, prayed for allowing the petition.

Learned Senior Counsel for the petitioners has relied on the judgment of the Hon'ble Supreme Court in case of **RADHESHYAM KEJRIWAL Vs. STATE OF WEST BENGAL AND ANOTHER** reported in **2011(3) SCC 581**.

14. Per contra, learned Special Counsel appearing for the respondent-ED objected the petition and contended that the proceedings under the PML Act is a stand alone offence and since merely the Special Court has discharged

the accused, the offence committed under the PML Act will not vanish and therefore, the accused is required to face the trial. The provisional attachment order is on the administrative side but the proceedings under the PML Act is on the prosecution side. Therefore, the question of exonerating the petitioners from the charges does not arise. In the appeal, the appellate Tribunal has not passed any order in respect of the provisional attachment case. Therefore, the order passed by the appellate Tribunal will not come in the way of conducting prosecution against the petitioners and release of the property will not be a reason for closing the offence. The petitioners were exonerated from the charges on a technical ground. It is also contended that the order of discharge has been challenged, which is pending before this Court. It is further contended that the scheduled offences are predicate offences which are distinct from the PML Act which is nothing but 'stand alone' case and not depend upon the predicate offence. Even if the accused is convicted or acquitted or discharged in the predicate

offence, the prosecution under the PML Act will continue as stand alone case and hence, prayed for dismissing the petition.

In support of his case, the learned counsel for respondent has relied upon the judgment passed by the Co-ordinate Bench of this Court in a batch of writ petitions in ***W.P. No.38642/2016 dated 11.12.2020.***

15. Having heard the arguments of learned counsel for the parties, perused the records.

16. On perusal of the records, it reveals that the CBI registered a case against the petitioner company and others as per the direction of the Hon'ble Supreme Court on 23.09.2011 in Spl. Leave to Appeal (Civil) No.7366-7367/2010 and connected matters wherein the Hon'ble Supreme Court directed the CBI to investigate certain illegalities committed by various persons in the matter of mining lease No.1111 of NMDC. The Hon'ble Supreme Court held that as per the report of CEC, there was

massive illegal mining by the third party in respect of mining lease of NMDC. Therefore, in order to prevent the third party from illegal mining by the petitioner company, on the complaint lodged by the NMDC and as per the directions, the CBI registered FIR in RC 19(A)2011 and proceeded to investigate the matter. Then, it was requested the Singareni Collieries Company Ltd. Hyderabad, for providing technical assistance. Accordingly, the CBI filed the charge sheet against the petitioner company for the offences punishable under Sections 120-B, 379, 420, 427, 447 read with Section 13(2) read with Section 13(1)(D) of Prevention of Corruption Act. Sections 120B and 420 of IPC and Section 13(2) and 13(1)(d) of PC Act are the scheduled offences under the PML Act. Therefore, the ED registered a case in ECIR/BGZO/09/2013 on 19.09.2013 for commission of the offence of money laundering as per Sections 48 and 49 of PML Act. The CBI filed the charge sheet against the petitioners and others including the officials of the Department of Commerce and Industries.

17. It is an admitted fact that the case was registered by the ED based upon the cases registered by the CBI and the CBI also filed the charge sheet. The Special Court took the cognizance of the offence in Special C.C. No.165/2013 and the accused persons filed an application for discharge. The Special Court by considering the case of the parties, allowed the application and discharged accused Nos.1 to 7 vide order dated 30.01.2016. It is also an admitted fact that respondent ED filed a revision petition against the order of discharge which is pending before this Court.

18. The learned Senior Counsel for the petitioners contended that the case registered by the CBI, which was a predicate offence, was already ended in discharge as there was no offence at all. Such being the case, the proceedings under the petitioners under PML Act will not survive. Therefore, the proceedings shall have to be quashed. But, the learned Special Counsel for respondent

contended that even if the predicate offence has ended in acquittal or discharge or conviction, that will not come in the way of conducting proceedings under the PML Act and the offence under the PML Act is the stand alone offence. He has relied upon the judgment of the Co-ordinate Bench of this Court in W.P. No.38642/2016.

19. In the said case, a similar contention was taken by the parties for quashing the criminal proceedings and the Co-ordinate Bench of this Court in its order raised the points at paragraph 30, which read as under:

30. Having heard the learned Advocates appearing for parties, I am of the considered view that following points would arise for my consideration:

- (i) Whether sub-section (4) of Section 8 of PML Act is violative of Article 14 and Article 300A of the Constitution of India and as such proceedings initiated against petitioners under PML Act are liable to be quashed?*
- (ii) Whether the proceedings initiated under the PML Act by the authorities would be bad in law or without jurisdiction for want of existence of predicate offence or offence*

prescribed under the Schedule to the PML Act not being in existence on the date of initiation of proceedings under PML Act?

OR

Whether the offence of money laundering under Section 3 of PML Act is a stand alone offence?

- (iii) Whether the proceedings initiated by the authorities under PML Act and passing orders of provisional attachment and its confirmation thereof is liable to be set aside or quashed on account of any procedural lapse prescribed under Sections 5 and 8 of PML Act?*
- (iv) Whether the notice/s issued by the authorities to take possession of the property on provisional order of attachment being confirmed is liable to be set aside?*
- (v) Whether writ petitions are liable to be dismissed on the ground of petitioners having not availed the alternate remedy of appeal available under Section 25 and under Section 42 of PML Act?*
- (vi) What order?"*

20. After raising the points, the Co-ordinate Bench of this Court answered points at paragraph 82 of the order

holding that the existence of a predicate offence for initiation of proceedings under the PML Act is not a condition precedent or in other words, the offence under Section 3 of the PML Act is the stand alone offence. Hence, the presence of scheduled offence as prescribed under the PML Act would not be a condition precedent for proceeding against such person under the PML Act.

21. The contention of the petitioners' Counsel is that the NMDC as well as the petitioners already filed writ petitions before this Court in W.P. No.10335/1998 connected with W.P. No.19766/2005 and the said writ petitions were considered by the Co-ordinate Bench of this Court and it was held that the prayer of the NMDC for quashing the notification dated 13.06.2006 cannot be granted and the subsequent lease deed 15.07.2006 cannot be declared as illegal and the notification dated 4.4.2005 challenged by the petitioners also held not to be quashed in its entirety. The Co-ordinate Bench has also held that the first renewal of licence in favour of NMDC over 647.50

Ha. (1600 acres) is upheld but not as per the sketch appended thereto. However, the sketch was re-drawn from the standing point A and end point of ML of M/s. SM and IO near Hari Shankar temple. The Co-ordinate Bench of this Court has also held that the boundaries fixed by the JDLR in respect of NMDC is not correct and earmarked boundaries of the NMDC is only 1,600 acres. The judgment of the Co-ordinate Bench of this Court though challenged by the NMDC by filing writ appeals before the Division Bench in W.A Nos.1134/2008 and 1135/2008 came to be dismissed as withdrawn on 12.08.2011. The judgment of the Co-ordinate Bench of this Court has attained finality which was not challenged by the NMDC.

22. The learned counsel for the respondent has relied upon the judgment of the Co-ordinate Bench of this Court in respect of the orders that the offence under the PML Act is stand alone offence. But in the appeal filed by the appellants in W.A. No.106/2021, the Division Bench of this Court by its order dated 04.05.2021 has held that the

Co-ordinate Bench of another Division Bench in W.A No.107/2021 has held that all the contentions shall be agitated before the appellate Tribunal and the same would be applicable to the W.A. No.106/2021 also and by disposing W.A. No.107/2021, the Division Bench has reserved liberty for pressing interim protective orders. Therefore, it cannot be said that the Division Bench has upheld in respect of the legal issue that the PML Act is stand alone offence and the judgment of acquittal in the predicate offence will not have any bearing in PML proceedings. On the other hand, the Division Bench has stated that those contentions can be raised before the Tribunal under Section 8 of the PML Act.

23. In this regard, learned Senior counsel for the petitioners has taken the contention that the ED passed an order of provisional attachment which was challenged before the Appellate Tribunal and later, on the request made by the respondent, the appellate Tribunal disposed of the appeal to approach the Special Court for releasing

the attached properties. Accordingly, the petitioners approached the Special Court by filing an application under Section 451 of Cr.P.C. and the trial Court passed an order by releasing the interim custody of the attached properties with a condition to execute indemnity bond of the worth of the attached property until final decision of the Court. The documents produced by the learned counsel for the petitioners reveal that the provisional attachment order has been challenged before the appellate Tribunal wherein the appellate Tribunal vide order dated 20.06.2016 has observed as under:

"Learned counsel for the respondent submits that he has taken the instruction from the respondent, who has no objection if the appellant apply for releasing of the property before the special court as per the provision in view of the discharge order passed in favour of the appellant.

Learned counsel for the appellant agrees to said suggestion made by the learned counsel for the respondent. Let the appellant may take necessary steps in this regard as per law."

24. The learned Senior counsel for the petitioners has relied upon the judgment of the Hon'ble Supreme

Court reported in **Radheshyam Kejriwal's** case (supra).

Paragraphs 38 and 39 of the said judgment read as under:

" 38. The ratio which can be culled out from these decisions can broadly be stated as follows:

(i) Adjudication proceedings and criminal prosecution can be launched simultaneously;

(ii) Decision in adjudication proceedings is not necessary before initiating criminal prosecution;

(iii) Adjudication proceedings and criminal proceedings are independent in nature to each other;

(iv) The finding against the person facing prosecution in the adjudication proceedings is not binding on the proceeding for criminal prosecution;

(v) Adjudication proceedings by the Enforcement Directorate is not prosecution by a competent court of law to attract the provisions of Article 20(2) of the Constitution or Section 300 of the Code of Criminal Procedure;

(vi) The finding in the adjudication proceedings in favour of the person facing trial for identical violation will depend upon the nature of finding. If the exoneration in adjudication proceedings is on technical ground and not on merit, prosecution may continue; and

(vii) In case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the

underlying principle being the higher standard of proof in criminal cases.

39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the Court.

25. Admittedly, the provisional attachment order passed by the officer under the PML Act dated 28.03.2014 which was challenged before the appellate Tribunal by the petitioners in MP-PMLA-2540/BNG/2016 and connected matters, the appellate Tribunal passed an order on 23.12.2016 and disposed of the appeal on the basis of the submission made by the respondent's counsel (ED) that the appellant can apply releasing the property before the Special Court in view of the discharge order passed by the CBI Court. Based upon the submission of the learned counsel for the ED, the appeal was disposed of by granting

liberty to the petitioner to make an application for releasing of the property under Section 8 of the PML Act.

26. Accordingly, in view of the observation of the appellate Tribunal in the appeal, the petitioner filed an application under Section 451 of Cr.P.C. before the CBI Court in Special CC No.134/2015, whereby the CBI Court allowed the application to release the property by directing to execute the indemnity bond of the value of the property which was attached. The learned counsel for the petitioners also brought to the notice of this Court that prior to the amendment to Section 8(5) of the PML Act w.e.f. 01.06.2009 till 15.02.2013, before the Amendment Act, 2012, it provides that where on conclusion of a trial for any scheduled offence, the person concerned is acquitted, the attachment of the property or retention of seized property or record under Sub section (3) and net income, if any, shall ceased to have effect, and as per Section 8(6) of the PML Act, where the attachment of the property or retention of the seized property or record

becomes final under clause (b) of Section (3), the adjudicating authority shall, after giving an opportunity of being heard to the persons concerned, make an order confiscating such property.

27. Whereas after the amendment of the Act in the year 2012, Sub-section (5) of Section (8) provides where on conclusion of a trial, an offence under this Act, the Special Court finds that the offence of money-laundering has been committed, it shall order that such property involved in the money-laundering or which has been used for commission of the offence of money-laundering shall stand confiscated to the Central Government. Sub-section (6) of Section 8 states where on conclusion of a trial under this Act, the Special Court finds that the offence of money-laundering has not taken place or the property is not involved in money-laundering, it shall order release of such property to the person entitled to receive it. That means, prior to the amendment, the power of confiscation and releasing the property to the holder was within the

jurisdiction of the adjudicating authority under the PML Act, whereas in the Amendment Act, 2012 (Act 2 of 2013), the power was entrusted with the Special Court. Admittedly, alleged offence by the petitioners was said to have committed prior to the amendment to the PML Act w.e.f from 15.2.2013. As per the allegation against the petitioners and as per the proceedings of the CEC dated 02.07.2011, the CBI filed charge sheet as on 02.08.2013, i.e. much prior to the amendment of Section 8. Therefore, the old Amendment Act, 2009 (Act 21 of 2009) will applicable to the case on hand.

28. Once the ED submitted no objection before the appellate Tribunal for release of the property in favour of the petitioners stating that no offence was made out against them in view of the discharge of the petitioners in criminal case, and without challenging the order of the appellate tribunal, now the ED cannot blow hot and cold at the same time. Therefore, the contention of the respondent's counsel cannot be accepted.

29. In view of the above findings and as per the judgment of the Hon'ble Supreme Court in **Radheshyam Kejriwal's case** (supra), the Hon'ble Supreme Court has categorically held at paragraph 38(vii) that in case of exoneration, however, on merits where the allegation is found to be not sustainable at all and the person held innocent, criminal prosecution on the same set of facts and circumstances cannot be allowed to continue, the underlying principle being the higher standard of proof in criminal cases.

30. Here, in this case the, adjudication proceedings were concluded and attained finality and it was ordered to release the property seized under the alleged crime under the PML Act. That apart, the Special Court has already discharged the accused holding that absolutely there is no material against the petitioners for framing charge. After analysing the documents produced by the CBI and after the conclusion of the criminal case, the trial Court has also

released the property in question for interim custody which was not challenged by the ED before the Hon'ble Supreme Court or before this Court. The order of the appellate Tribunal also was not appealed before this Court or the Hon'ble Supreme Court, which has attained the finality. Therefore, the standard of proof in criminal prosecution is higher degree than the standard of proof required before the adjudicating authority, when the adjudicating authority themselves stated that no offence is committed and disposed the appeal and ordered to release the property. The request of the ED counsel for continuing the prosecution against the petitioners is nothing but abuse of process of law. At the cost of repetition, the Hon'ble Supreme Court in **Radheshyam Kejriwal's** case at paragraph 39 has held as under:

" 39. In our opinion, therefore, the yardstick would be to judge as to whether the allegation in the adjudication proceedings as well as the proceeding for prosecution is identical and the exoneration of the person concerned in the adjudication proceedings is on merits. In case it is found on merit that there is no contravention of the

provisions of the Act in the adjudication proceedings, the trial of the person concerned shall be an abuse of the process of the Court."

31. Therefore, by looking to the facts and circumstances of the case, I am of the view that conducting the criminal proceedings against petitioners-accused No.1 and 2 is abuse of process of law and is liable to be quashed.

32. Accordingly, the writ petition is allowed. The criminal proceedings against petitioners-accused Nos.1 and 2 in Spl.C.C.No.134/2015 pending on the file of Special Court for Prevention of Money Laundering Act, 2002, is hereby quashed.

**Sd/-
JUDGE**

Cs
CT-SG