2026:KER:35985

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE T.R.RAVI

TUESDAY, THE 26TH DAY OF MAY 2026 / 5TH JYAISHTA, 1948

WP(C) NO. 15757 OF 2024

PETITIONERS:

1 M/S. COCHIN MINERALS AND RUTILE LIMITED
HAVING ITS REGISTERED OFFICE AT P.B. NO. 73,
VIII/224, MARKET ROAD,
ALWAYE, ERNAKULAM, KERALA
REP. BY CHIEF GENERAL MANAGER (FINANCE)
& COMPANY SECRETARY, PIN - 683101

2 N.C. CHANDRASEKHARAN
SENIOR MANAGER - EDP
M/S COCHIN MINERALS & RUTILE LIMITED,
P.B. NO. 73, VIII/224, MARKET ROAD,
ALWAYE, KERALA, PIN - 683101

3 ANJU RACHAEL KURUVILA
SENIOR OFFICER - EDP
M/S COCHIN MINERALS & RUTILE LIMITED,
P.B. NO. 73, VIII/224, MARKET ROAD,
ALWAYE, KERALA, PIN - 683101

4 K.S. SURESH KUMAR
AGED 63 YEARS
CHIEF FINANCIAL OFFICER
M/S COCHIN MINERALS & RUTILE LIMITED,
P.B. NO. 73, VIII/224, MARKET ROAD,
ALWAYE, KERALA, PIN - 683101

5 S.N. SASIDHARAN KARTHA
MANAGING DIRECTOR
M/S COCHIN MINERALS & RUTILE LIMITED,
P.B. NO. 73, VIII/224, MARKET ROAD,
ALWAYE, KERALA, PIN - 683101

BY ADVS.
SHRI.M.GOPIKRISHNAN NAMBIAR
SHRI.K.JOHN MATHAI
SRI.JOSON MANAVALAN
SRI.KURYAN THOMAS
SRI.PAULOSE C. ABRAHAM
SRI.RAJA KANNAN
SRI.SIDHARTH LUTHRA
SRI.ARSHDEEP SINGH KHURANA
SRI.SULAKSHAN V.S.
SRI HIMANSHU KASTURI
SRI.KARTIKEYE DANG
SRI.MANAN KHANNA
SRI.ADITYA CHOPRA

RESPONDENT:

DIRECTORATE OF ENFORCEMENT
KOCHI ZONAL OFFICE
REP. BY ASSISTANT DIRECTOR
KANOOS CASTLE, MULLASSERY CANAL ROAD WEST,
COCHIN, PIN – 682011

SRI.ARL SUNDARESAN (ASGI)
SRI.ZOHEB HOSSAIN (SPL. COUNSEL)
SRI JAISHANKAR V. NAIR ((RETAINER COUNSEL)

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 10.10.2025, THE COURT ON 26.05.2026 DELIVERED THE FOLLOWING:

2026:KER:35985

T.R. RAVI, J.

W.P.(C). No.15757 of 2024

Dated this the 26th day of May, 2026

JUDGMENT

The original petition has been filed praying for the following reliefs;

> "A. Call for the records leading to the investigation being carried out in ECIR/KCZO/11/2024 by the Respondent under the provisions of Prevention of Money Laundering Act, 2002 and to quash ECIR/KCZO/11/2024 and all investigations and proceedings emanating therefrom by the issuance of a writ of certiorari or such other writ, order or direction;
>
> B. Call for the records leading to issuance of Exhibits P-6 to P-9 Summons dated 08.04.2024 and Exhibit P-11 email dated 11.04.2024 by the Respondent and quash the same by the issuance of a writ of certiorari or such other writ, order or direction;
>
> C. Writ of Mandamus or any other writ, order or direction, directing the respondent to comply with the request made by the Petitioner company in Exhibit P-10 email dated 10.04.2024.
>
> D. Pass such other orders and grant such other reliefs as this Hon'ble Court may deem fit, proper, just and necessary in the facts and circumstances of this case

and in the interest of justice, equity and good conscience."

2. On 25.01.2019, a search was carried out by the officers of the Income Tax Department, at the factory and offices of the 1st petitioner Company and the residences of the Managing Director and key employees of the 1st petitioner, under Section 132 of the Income Tax Act, 1961. On 29.11.2019, notices were issued under Section 153A and Section 143A of the Income Tax Act with reference to Assessment Years 2013-14 to 2019-20. On 06.11.2020, the 1st petitioner filed an application under Section 245C of the Income Tax Act before the Income Tax Settlement Commissioner, and the application was numbered as KL/KO 51/2020-2021/10 and 11/IT. On 12.06.2023, an order was issued by the Interim Board for settlement -II, New Delhi under Section 245D(4) of the Income Tax Act. According to the petitioners, by virtue of the above order, complete immunity was granted to the 1st petitioner, under Section 245H of the Income Tax Act, from prosecution for any offence under the Income Tax Act, for the above referred assessment years.

3. On 25.09.2023, a complaint was filed by one Mr. Shone George against the 1st petitioner, before the Ministry of Corporate Affairs, seeking an investigation into the affairs of the Company

under Section 210(1)(c) and Section 212 of the Companies Act. The complainant filed WPC No.42092 of 2023 before this Court seeking a direction to the Ministry of Corporate Affairs to investigate into the affairs of the Company. On 12.01.2024, the Ministry of Corporate Affairs passed an order under Section 210(1)(c) of the Companies Act, appointing three Inspectors under Section 210(3) to investigate into the affairs of the 1st petitioner. On 31.01.2024, the Ministry of Corporate Affairs passed an order under Sections 212(1)(a) and (c) of the Companies Act assigning the investigation into the affairs of the Company to the Serious Fraud Investigation Office ('SFIO' for short). On the same day, the SFIO issued orders appointing Inspectors and Investigating Officers to carry out the investigation. The time granted for the Officers to complete the investigation was 8 months. On 27.03.2024, according to the petitioner, it was reported in the media that a case had been registered under the provisions of The Prevention of Money-Laundering Act, 2002 ('PMLA' for short), in relation to M/s.Exalogic Solutions Private Ltd., based on a complaint filed by the SFIO. The respondent issued a summons requiring petitioners 2 and 3 to personally appear at the office of the respondent on 11.04.2024, and petitioners 4 and 5 to personally

appear on 15.04.2024. On 10.04.2024, the 1st petitioner replied to the respondent stating that the proceedings initiated under the PMLA are without jurisdiction and sought for certain information/details. On 11.04.2024, the respondent through an e-mail, informed the petitioners 2 and 3, that the reply sent on their behalf cannot be accepted, and directed them to appear on 12.04.2024. This led to the filing of the writ petition on 12.04.2024.

4. The writ petition was admitted on 12.04.2024 and this Court recorded the submission of the counsel for the respondent that no coercive steps are to be taken against the petitioners. The date for joining the investigation was extended by this Court till 15.4.2024. On 16.04.2024, the petitioners filed IA Nos.1 to 3 of 2024. Along with IA No.1 of 2024, Exhibits P12 to P15 were produced and the following prayers were made.

1. Order the immediate release of Petitioners No.2 to 4 who have been restrained illegally, in violation of the interim order dated 12.04.2024, by the officers of the Respondent.
2. Order the preservation and retention of the CCTV footage of the interrogation of Petitioners No. 2 to 4 by the Respondent on 15.04.2024-16.04.2024 in terms of the orders of the Hon'ble Supreme Court in **Paramvir Singh Saini v. Baljit Singh, (2020) 7 SCC 397**.

3. Order the preservation and retention of the Call Detail Records (CDRs) of the Petitioners No. 2 to 4 as well as the investigating officer of the Respondent in the present case, viz., Sh.Satyaveer Singh, Assistant Director, Directorate of Enforcement, Kochi Zonal Office from 15.04.2024 to 16.04.2024.

4. Pass any other order(s) as may be deemed fit in the interest of justice."

5. IA No.2 of 2024 was filed seeking to produce additional document and I.A.No.3 of 2024 was filed seeking a hearing in the vacation court. On 16.4.2024, the CGC after submitting that petitioners 2 to 4 were allowed to leave after interrogation, sought time to get instructions regarding prayers 2 and 3 in IA No.1 of 2024, since the first prayer in the said application had become infructuous. On 18.5.2024, IA No.4 of 2024 was filed seeking to produce additional documents Exhibits P16 to P20.

6. The respondent has filed a counter affidavit contending that the writ petition is premature, since at the stage of summons, the person summoned is not even a person aggrieved and that ECIR is merely an internal document and a prayer to quash the same cannot be maintained. Reliance was placed on the judgment in **Kirit Shrimankar v. Union of India & Ors. [W.P.(Crl.)No.109 of**

2013], **Union of India & Anr. v. Kunisetty Satyanarayana [(2006 (12) SCC 28]**, **Commissioner of Customs, Calcutta & Ors. v. M/s. M.M. Exports & Anr. [2010 (15) SCC 647]**, **C.M.Raveendran v. Union of India [2020 SCC OnLine Ker. 7555]**, **Virabhadra Singh v. Enforcement Directorate [2017 SCC OnLine Delhi 8930]**, **Raghav Bahl v. Enforcement Directorate [W.P.(Crl.)No.2392/2021 (Delhi High Court)]**, **State of Gujarat v. Choodamani Parameshwaran Iyer [SLP (Crl.) No.4212/2019]**, **Vijay Madanlal Choudhary & Ors. v. Union of India & Ors. [2022 SCC OnLine SC 929]**, **Jitendra Nath Patnaik v. Enforcement Directorate [Crl.M.C.No.2891/2023 of Orissa High Court]**, **N.Dhanraj Kochar & Ors. v. Directorate of Enforcement [2022 SCC OnLine Mad. 8794], Pawan Insaa v. Directorate of Enforcement (CRM-M-No.6378 of 2023 of, Punjab & Haryana High Court]**, **P.T.Anthony v. Union of India [(2005) 279 ITR 363]**, **Monica Bedi V. State of A.P. [(2011) 1 SCC 248]**, **Nathi Devi v. Radha Devi Gupta [(2005) 2 SCC 271**], **Lalita Kumari v. Govt. of U.P. [(2014) 2 SCC 1]**, **Angad Singh Makkar v. Union of India & Ors. (CRM-M-5228-2024)**, **Amanatullah Khan v. Directorate of**

Enforcement [Bail Application No.795 of 2024 -Delhi High Court)] and **Directorate of Enforcement v. State of Tamil Nadu [SLP (Crl.) No.1959-1963/2024]**. It was also contended that the reliance placed on the judgment in **Pavana Dibbur v. Enforcement Directorate [2023 SCC OnLine SC 1586]** and **Yash Tuteja v. Union of India [2024 SCC OnLine SC 533]** are wholly misplaced. On facts, it was contended that the search conducted by the Income Tax Department had revealed that the 1st petitioner Company had inflated its expenditures by ₹133.82 Crores, by booking bogus expenses in cash under the heads transportation and sludge handling, during the financial years 2012-2013 to 2018-2019, and generated, cash which was used for making illegal payments to politicians, parties, media houses and public servants. It is stated that the CFO and MD of the Company had admitted before the Income Tax authorities that such cash payments were made to ensure smooth business operations, as they were facing threats of closure of the business and environmental challenges. It is also stated that the search revealed that the Company booked bogus expense of ₹1.72 Crores under the head Software Services and the amount was paid to Smt.Veena Vijayan and her Company

M/s.Exalogic Solutions Pvt. Ltd. without any such services being rendered. Regarding the order dated 12.06.2023 passed by the Interim Board for Settlement - II, New Delhi, it is contended that the said order is in no way conclusive of any matters pertaining to the offence of money laundering or any proceedings under any other law apart from the Income Tax Act. It is stated that the petitioner had preferred a petition before Income Tax Settlement Commission, quantifying the inflated expenses of ₹134.27 Crores and claiming that the payment of ₹1.72 Crores towards software services was a genuine payment. Before the Commission, the Company had offered a balance amount of ₹57.78 Crores as additional income, after deducting ₹73.38 Crores as eligible expenses. The Settlement Commission accepted the findings of the Income Tax Department with respect to the inflation of expenses, generation of cash for illegal payments and the fictitious payment of ₹1.72 Crores to Smt. Veena Vijayan and her Company M/s. Exalogic Solutions Pvt. Ltd., and by its order, allowed 70% of the amount of ₹73.38 Crores claimed as eligible expense and disallowed the balance 30% of the claim.

7. The respondent filed a counter affidavit in IA No.1 of 2024. The contention that respondents 2 to 4 were in illegal custody

was denied and it is stated that the said respondents had appeared in response to summons on 15.04.2024 and their statements were recorded. It is stated that the petitioners 2 to 4 and their family members do not have a case that they were in illegal custody, and it was the 1st petitioner who had approached the Court with the said allegation. The allegation that the petitioners 2 to 4 were detained for more than 24 hours has been denied. It is contended that collection of materials for the purpose of inquiry under the PMLA cannot be termed as a coercive action or considered as a violation of the undertaking given before this Court. The petitioners have filed a reply to the counter affidavit filed by the respondent on 27.05.2024 and since the same is more in the nature of arguments, the contents are not extracted herein.

8. The main contention raised by Sri Sidharth Luthra, Senior Advocate appearing for the petitioners is that no action could have been initiated by the respondent for registering the ECIR, carrying out investigations, summoning of employees of the petitioner Company, etc., in the absence of a scheduled offence, and hence the entire proceedings are without any jurisdiction. The next contention raised is that the respondent could have initiated an investigation

under the PMLA only on a valid FIR/complaint registered by a Criminal Investigation Agency in respect of a predicate offence, included as a "scheduled offence" under the PMLA. It is contended that the commission of a predicate/scheduled offence should have resulted in certain proceeds of crime, and only then would the respondent have jurisdiction to investigate whether the proceeds of crime have been laundered. It is contended that the only offence under the Companies Act, 2013, which has been included in the schedule to the PMLA with effect from 19.04.2018, is the offence under Section 447 of the Companies Act, dealing with punishment for fraud. It is further contended that on a combined reading of Sections 3, 4, 2(1)(u), 2(1)(x) and 2(1)(y) of the PMLA, only such acts relatable to a scheduled offence would come within its purview. The counsel contends that only the crime investigation agency *prima facie* concludes that a criminal offence involving "proceeds of crime has been committed, an investigation into money laundering by the respondent can be commenced. It is argued that in the absence of either an FIR registered against the petitioners or a complaint by any authorised person before any court having jurisdiction to take cognizance of such scheduled offence, there was no occasion for the

respondent to initiate any investigation/enquiry against the petitioners in relation to any alleged offence of money laundering. It is further contended that an action under Section 447 of the Companies Act, could have been initiated only when the SFIO, after a thorough investigation, submits a report under the provisions of the Companies Act, regarding the alleged fraud. Apart from taking me through the statutory provisions, the Senior Counsel relied upon the judgments in **Arvind Kejriwal v Directorate of Enforcement [2024 SCC OnLine SC 1703]**, **L. Chandra Kumar v. Union of India & Ors. [(1997) 3 SCC 261]**, **S.N.Sharma v. Bipen Kumar Tiwari & Ors. [(1970) 1 SCC 653],** and **Siemens Ltd. v. State of Maharashtra [(2006) 12 SCC 33],** other than the judgments referred to earlier.

9. Sri Zoheb Hossain, special counsel appearing for the respondent, contended that the proceedings under the PMLA can be initiated even in the absence of an FIR. It is submitted that the writ petition is premature, since only a summons has been issued, and the petitioners' rights have not been curtailed in any manner. It is contended that ECIR is an internal document and cannot be quashed, that the immunity granted to the 1st petitioner under the Income Tax

Act is not an immunity under the PML Act, and that the existence of an FIR is not a pre-condition for a scheduled offence. Regarding the contention that the exclusive jurisdiction to investigate an offence under the Companies Act is with the SFIO, the counsel submitted that the contention cannot arise since the provisions of the Companies Act cannot take away the power of the respondent to investigate into an offence under the PML Act. Reference was made to Section 48 of the PML Act regarding the authorities that can initiate action and Section 2(na), which defines 'investigation'. Section 5 of the Act is referred to, to submit that no FIR is required for initiating action for attachment of property involved in money laundering. Counsel relied on the decisions of the Hon'ble Supreme Court in **A.K.K. Nambiar v. Union of India & Ors. [(1969) 3 SCC 864], Kanda Padayachi @ Kandaswami v. State of Tamil Nadu [(1971) 2 SCC 641]**, **Rohit Tandon v. The Directorate of Enforcement [(2018) 11 SCC 46]**, **Satyender Kumar Jain v. Directorate of Enforcement [2024 INSC 217]**, **Suresh Dhanuka v. Sunita Mohapatra [(2012) 1 SCC 578]** and **Puran Singh & Ors. v. State of Punjab & Ors. [(1996) 2 SCC 205].** The Counsel also submitted on the judgments in **C.M.Raveendran (supra)**,

Vijay Madanlal Choudhary (supra), **P.T.Anthony (supra)**, **Dhanraj Kochar (supra)**, and **Pawan Insaa (supra).**

10. Sri. ARL Sundaresan, Additional Solicitor General, endorsed the arguments raised by Sri. Zoheb Hossain. Based on the pleadings and the arguments, the issues that arise can be summarised as follows.

1. Whether the writ petition is maintainable against a summons issued by the respondent under the PMLA?
2. Whether enquiries under the PMLA can commence in the absence of an FIR in respect of a scheduled offence?
3. Whether immunity under the PMLA can be claimed based on the immunity granted under the Income Tax Act?
4. Whether the powers of the respondent under the PMLA are dependent on the final report of the SFIO under Section 212 of the Companies Act?
5. Whether the fact that SFIO has filed a complaint

pending this writ petition can be considered for the purpose of deciding the writ petition?

Question No.1 :

Whether the writ petition is maintainable against a summons issued by the respondent under the PMLA?

11. The respondents raised a preliminary objection that the writ petition is premature since it has been filed challenging a summons which had been issued under Section 50 of the PMLA. Reliance was placed on the judgment of a learned Single Judge of this Court in **Raveendran C.M. (supra)**. The learned Single Judge in the said case had considered a similar situation and on the contention regarding maintainability, the learned Judge held as follows.

> "**5**. The learned ASG raised preliminary objection regarding maintainability of the writ petition. It was contended that the writ petition is liable to be dismissed as premature since, mere issuance of summons under Section 50 of the Act does not give rise to any cause of action. In support of this contention reliance is placed on the decision of the Apex Court in Kirit Shrimankar v. Union of India and Others [order dated 20.11.2014 in WP(Crl.). No.110/2013] and Union of India and Another v. Kunisetty Satyanarayana [(2006) 12 SCC 28]. In Kirit Shrimankar, the petitioner approached the Apex Court after officials from the Customs Department conducted search in the residential premises of his former wife. The petitioner alleged that he was threatened with arrest and incarceration, if he did not submit to

the dictates of the Customs Officials. The Apex Court observed that it was highly premature for the petitioner to seek remedy under Article 32 of the Constitution of India based on such flimsy averments, which cannot form the basis for a prima facie apprehension. Thereupon, the petitioner withdrew the writ petition. In Kunisetty Satyanarayana, the appellant had approached the court on being served with a show cause notice by his employer regarding the genuineness of his caste certificate. After adverting to precedents, on the proposition that ordinarily no writ would lie against a charge sheet or show cause notice, the Apex Court held as follows;

> "14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."

The decision of the High Court of Delhi in Virbhadra Singh and Another v. Directorate of Enforcement and Another [2017 SCC Online Del 8930] was cited to contend that no person is entitled in law to evade the command of the summons issued under Section 50 of the Act on

the ground that he may be prosecuted in future. Attention was drawn to the observations of the Honourable Supreme Court in Pool Pandi v. Superintendent, Central Excise [(1992) 3 SCC 259] on the entitlement of a person summoned under the Customs Act to have the presence of a companion during questioning. The relevant portion of the judgment is extracted hereunder:

> "11. We do not find any force in the arguments of Mr Salve and Mr Lalit that if a person is called away from his own house and questioned in the atmosphere of the Customs office without the assistance of his lawyer or his friends his constitutional right under Article 21 is violated. The argument proceeds thus : if the person who is used to certain comforts and convenience is asked to come by himself to the Department for answering questions it amounts to mental torture. We are unable to agree. It is true that large majority of persons connected with illegal trade and evasion of taxes and duties are in a position to afford luxuries on lavish scale of which an honest ordinary citizen of this country cannot dream of and they are surrounded by persons similarly involved either directly or indirectly in such pursuits. But that cannot be a ground for holding that he has a constitutional right to claim similar luxuries and company of his choice. Mr Salve was fair enough not to pursue his argument with reference to the comfort part, but continued to maintain that the appellant is entitled to the company of his choice during the questioning. The purpose of the enquiry under the Customs Act and the other similar statutes will be completely frustrated if the whims of the persons in possession of useful information for the departments are allowed to prevail. For achieving the object of such an enquiry if the appropriate authorities be of the view that

> such persons should be dissociated from the atmosphere and the company of persons who provide encouragement to them in adopting a non-cooperative attitude to the machineries of law, there cannot be any legitimate objection in depriving them of such company. The relevant provisions of the Constitution in this regard have to be construed in the spirit they were made and the benefits thereunder should not be "expanded" to favour exploiters engaged in tax evasion at the cost of public exchequer. Applying the 'just, fair and reasonable test' we hold that there is no merit in the stand of appellant before us."

To drive home the limited scope of interference at the investigation stage, learned ASG cited the decision in Commissioner of Customs, Calcutta and Others v. M.M.Exports and Another [(2010) 15 SCC 647], wherein the Apex Court had cautioned that, as far as possible, High Courts should not interfere at the stage when the Department has issued summons. In Dukhishyam Benupani v. Assistant Director, Enforcement Directorate v. Arun Kumar Bajoria [(1998)1 SCC 52], interference by the High Court into the interrogation of a person summoned under Section 40 of the FERA, by fixing the time and venue for interrogation, was frowned upon and the Honourable Supreme Court observed that it is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law and that, the decision regarding the venue, the timings, the questions and the manner of putting such questions to persons involved in such offences, is best left to the discretion of the investigating agency.

6. I find substantial force in the preliminary objection regarding maintainability raised by the learned ASG. Exhibit P11 summons is issued under Section 50(2) of the Act. A person issued with summons is bound to attend in person or through authorised agents, as the

officer issuing the summons directs, and is bound to state the truth upon any subject respecting which he is examined or makes statements and to produce such documents as may be required. As held by the Apex Court in Kirit Shrimankar, no cause of action arises merely for reason of a person being called upon to state the truth or to make statements and produce documents. I am unable to accept the submission of the learned counsel for the petitioner that the cause of action is based on the repeated summoning of the petitioner in spite of his illness, which gave rise to the reasonable apprehension that the petitioner will be forced to give statements against his will. I find no basis for such apprehension inasmuch as the date for appearance was changed by the 2nd respondent on three occasions, acceding to the request made by the petitioner. Having commenced an investigation or proceeding, the 2nd respondent cannot be expected to wait indefinitely to suit the petitioner's convenience. As held by the Apex Court in Dukhishyam Benupani, it is not for this Court to monitor the investigation and to decide the venue, the timings, the questions and the manner of questioning. I find the following observations by Justice R.K.Gauba in Virbhadra Singh to be contextually relevant;

> "Suffice it to observe in this context, and at this stage, that those in public life are expected to be open to probity. Higher the position in life (or polity), higher the obligation (moral, if not legal) to be accountable. Endeavours to stall investigation into their affairs by the law enforcement agencies, particularly on technical grounds, have the potency of giving the impression that there is something to hide."

12. I am in respectful agreement with the conclusions arrived at by the learned Judge in the above judgment. The case at hand is similar on facts and the challenge has been made at the stage of issuance of the summons. No cause of action can be said to have

been arisen at this stage, since the summons only calls upon the person to state the truth or to make statements and produce documents. I hence find that the writ petition is premature and is liable to be dismissed. However, since several other contentions have been raised, I deem it proper to answer the said contentions as well.

QUESTION No.3 :

Whether immunity under the PMLA can be claimed based on the immunity granted under the Income Tax Act?

13. I shall next address the question of immunity granted under the Income Tax Act. Under Section 245(C), an assessee can, at any stage of a case relating to him, apply to the Settlement Commission to have his case settled. The application should contain a full and true disclosure of the income that has not been disclosed, the way the income was derived, the tax payable thereon, etc. The Settlement Commission can, on receipt of an application under Section 245(C), consider the same and pass an order under Section 245(D)(4). The Settlement Commission grants immunity under Section 245(H), which reads thus;

> "**245H.** (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under section 245C has co-operated with the

Settlement Commission in the proceedings before it and has made a full and true disclosure of his income and the manner in which such income has been derived, grant to such person, subject to such conditions as it may think fit to impose for the reasons to be recorded in writing, immunity from prosecution for any offence under this Act or under the Indian Penal Code (45 of 1860) or under any other Central Act for the time being in force and also (either wholly or in part) from the imposition of any penalty under this Act, with respect to the case covered by the settlement :

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under section 245C:

Provided further that the Settlement Commission shall not grant immunity from prosecution for any offence under the Indian Penal Code (45 of 1860) or under any Central Act other than this Act and the Wealth-tax Act, 1957 (27 of 1957) to a person who makes an application under section 245C on or after the 1st day of June, 2007.

(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.

> (2) An immunity granted to a person under sub-section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particulars material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had not such immunity been granted.
>
> (3) On and from the 1st day of February, 2021, the power of the Settlement Commission under this section shall be exercised by the Interim Board and the provisions of this section shall *mutatis mutandis* apply to the Interim Board as they apply to the Settlement Commission."

Section 245H only grants immunity against prosecution for any offence under the Income Tax Act or under the Indian Penal Code or under any Central Act for the time being in force and against imposition of any penalty under the Income Tax Act with respect to the case covered by the settlement. The proviso to the Section says that no immunity from prosecution for any offence under the Indian Penal Code or under any Central Act other than the Income Tax Act and the Wealth Tax Act, 1957, can be granted to a person who makes

an application under Section 245(C) on or after 01.06.2007. Section 245(I) says that every order of settlement passed under Section 245(D)(4) shall be conclusive as to the matters stated therein. In view of the second proviso to Section 245(H)(1), the Settlement Commission cannot grant any immunity from prosecution under any Central Act other than the Income Tax Act and the Wealth Tax Act, if an application under Section 245(C) is made after 01.06.2007. Admittedly, the application to the Settlement Commission was made only on 06.11.2020. As such, the immunity, if any, available to the 1st petitioner, is only regarding prosecution under the Income Tax Act. Moreover, the Settlement Commission constituted under Section 245B of the Income Tax Act has not been vested with any power to deal with complaints regarding money laundering and can only deal with settlement of cases under Chapter XIXA of the Income Tax Act. Hence, the contention that the petitioners are entitled to immunity from proceedings under the PMLA cannot be countenanced. The above issue is found against the petitioners.

Question No.2 :

Whether enquiries under the PMLA can commence in the absence of an FIR in respect of a scheduled offence?

14. In the case at hand, the challenge is against a summons issued under Section 50 of the PML Act. Section 50 reads thus:

> "**50. Powers of authorities regarding summons, production of documents and to give evidence, etc.**—
>
> (1) The Director shall, for the purposes of section 13, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit in respect of the following matters, namely:—
>
> (a) discovery and inspection;
>
> (b) enforcing the attendance of any person, including any officer of a reporting entity and examining him on oath;
>
> (c) compelling the production of records;
>
> (d) receiving evidence on affidavits;
>
> (e) issuing commissions for examination of witnesses and documents; and
>
> (f) any other matter which may be prescribed.
>
> (2) The Director, Additional Director, Joint Director, Deputy Director or Assistant Director shall have power to summon any person whose attendance he considers necessary whether to give evidence or to produce any records during the course of any investigation or proceeding under this Act.
>
> (3) All the persons so summoned shall be bound to attend in person or through authorised agents, as such officer may direct, and shall be bound to state the truth upon any subject respecting which they are examined or make statements, and produce such documents as may be required.
>
> (4) Every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code (45 of 1860).
>
> (5) Subject to any rules made in this behalf by the Central

Government, any officer referred to in sub-section (2) may impound and retain in his custody for such period, as he thinks fit, any records produced before him in any proceedings under this Act:

Provided that an Assistant Director or a Deputy Director shall not—

(a) impound any records without recording his reasons for so doing; or

(b) retain in his custody any such records for a period exceeding three months, without obtaining the previous approval of the Joint Director."

15. Exhibit P6 summons only directs an officer of the petitioner to appear in person before the respondent, to give evidence and to produce records as indicated in the annexure to the summons. The documents directed to be produced relate to the agreements entered into between the petitioner and M/s. Exalogic Solutions Private Limited/Smt. Veena Thaikkandiyil, and copies of all invoices issued by M/s. Exalogic Solutions Private Limited/Smt.Veena Thaikandiyil to the petitioner, against the services rendered and the ledger accounts containing the entries regarding the transactions. The documents produced in the writ petition indicate that the respondent is at the preliminary stage of the investigation.

16. In **Vijay Madanlal Choudhary (supra)**, the Hon'ble Supreme Court considered the issue in detail. In paragraph 467 of the Judgment, the Hon'ble Supreme Court concluded as follows :

"467. In light of the above analysis, we now proceed to summarise our conclusion on seminal points in issue in the following terms: -

(i) The question as to whether some of the amendments to the Prevention of Money-laundering Act,2002 could not have been enacted by the Parliament by way of a Finance Act has not been examined in this judgment. The same is left open for being examined along with or after the decision of the Larger Bench (seven Judges) of this Court in the case of Rojer Mathew.

(ii) The expression "proceedings" occurring in Clause (na) of Section 2(1) of the 2002 Act is contextual and is required to be given expansive meaning to include inquiry procedure followed by the Authorities of ED, the Adjudicating Authority, and the Special Court.

(iii) The expression "investigation" in Clause (na) of Section 2(1) of the 2002 Act does not limit itself to the matter of investigation concerning the offence under the Act and is interchangeable with the function of "inquiry" to be undertaken by the Authorities under the Act.

(iv) The Explanation inserted to Clause (u) of Section 2(1) of the 2002 Act does not travel beyond the main provision predicating tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence.

(v)(a) Section 3 of the 2002 Act has a wider reach and captures every process and activity, direct or indirect, in dealing with the proceeds of

crime and is not limited to the happening of the final act of integration of tainted property in the formal economy. The Explanation inserted to Section 3 by way of amendment of 2019 does not expand the purport of Section 3 but is only clarificatory in nature. It clarifies the word "and" preceding the expression projecting or claiming as "or"; and being a clarificatory amendment, it would make no difference even if it is introduced by way of Finance Act or otherwise.

(b) Independent of the above, we are clearly of the view that the expression "and" occurring in Section 3 has to be construed as "or", to give full play to the said provision so as to include "every" process or activity indulged into by anyone. Projecting or claiming the property as untainted property would constitute an offence of money-laundering on its own, being an independent process or activity.

(c) The interpretation suggested by the petitioners, that only upon projecting or claiming the property in question as untainted property that the offence of Section 3 would be complete, stands rejected.

(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity

connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum.

If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or any one claiming such property being the property linked to stated scheduled offence through him.

(vi) Section 5 of the 2002 Act is constitutionally valid. It provides for a balancing arrangement to secure the interests of the person as also ensures that the proceeds of crime remain available to be dealt with in the manner provided by the 2002 Act. The procedural safeguards as delineated by us hereinabove are effective measures to protect the interests of person concerned.

(vii) The challenge to the validity of sub-section (4) of Section 8 of the 2002 Act is also rejected subject to Section 8 being invoked and operated in accordance with the meaning assigned to it hereinabove.

(viii) The challenge to deletion of proviso to sub-section (1) of Section 17 of the 2002 Act stands rejected. There

are stringent safeguards provided in Section 17 and Rules framed thereunder. Moreover, the pre-condition in the proviso to Rule 3(2) of the 2005 Rules cannot be read into Section 17 after its amendment. The Central Government may take necessary corrective steps to obviate confusion caused in that regard.

(ix) The challenge to deletion of proviso to sub-section (1) of Section 18 of the 2002 Act also stands rejected. There are similar safeguards provided in Section 18. We hold that the amended provision does not suffer from the vice of arbitrariness.

(x) The challenge to the constitutional validity of Section 19 of the 2002 Act is also rejected. There are stringent safeguards provided in Section 19. The provision does not suffer from the vice of arbitrariness.

(xi) Section 24 of the 2002 Act has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional.

(xii) (a) The proviso in Clause (a) of sub-section (1) of Section 44 of the 2002 Act is to be regarded as directory in nature and this provision is also read down to mean that the Special Court may exercise judicial discretion on case-to-case basis.

(b) We do not find merit in the challenge to Section 44 being arbitrary or unconstitutional. However, the eventualities referred to in this section shall be dealt with by the Court concerned and by

the Authority concerned in accordance with the interpretation given in this judgment.

(xiii) (a) The reasons which weighed with this Court in Nikesh Tarachand Shah for declaring the twin conditions in Section 45(1) of the 2002 Act, as it stood at the relevant time, as unconstitutional in no way obliterated the provision from the statute book; and it was open to the Parliament to cure the defect noted by this Court so as to revive the same provision in the existing form.

(b) We are unable to agree with the observations in Nikesh Tarachand Shah distinguishing the enunciation of the Constitution Bench decision in Kartar Singh; and other observations suggestive of doubting the perception of Parliament in regard to the seriousness of the offence of money-laundering, including about it posing serious threat to the sovereignty and integrity of the country.

(c) The provision in the form of Section 45 of the 2002 Act, as applicable post amendment of 2018, is reasonable and has direct nexus with the purposes and objects sought to be achieved by the 2002 Act and does not suffer from the vice of arbitrariness or unreasonableness.

(d) As regards the prayer for grant of bail, irrespective of the nature of proceedings, including those under Section 438 of the 1973

Code or even upon invoking the jurisdiction of Constitutional Courts, the underlying principles and rigours of Section 45 may apply.

(xiv) The beneficial provision of Section 436A of the 1973 Code could be invoked by the accused arrested for offence punishable under the 2002 Act.

(xv) (a) The process envisaged by Section 50 of the 2002 Act is in the nature of an inquiry against the proceeds of crime and is not "investigation" in strict sense of the term for initiating prosecution; and the Authorities under the 2002 Act (referred to in Section 48), are not police officers as such.

(b) The statements recorded by the Authorities under the 2002 Act are not hit by Article 20(3) or Article 21 of the Constitution of India.

(xvi) Section 63 of the 2002 Act providing for punishment regarding false information or failure to give information does not suffer from any vice of arbitrariness.

(xvii) The inclusion or exclusion of any particular offence in the Schedule to the 2002 Act is a matter of legislative policy; and the nature or class of any predicate offence has no bearing on the validity of the Schedule or any prescription thereunder.

(xviii) (a) In view of special mechanism envisaged by the 2002 Act, ECIR cannot be equated with an FIR under the 1973 Code. ECIR is an internal document of the ED and the fact that FIR in

respect of scheduled offence has not been recorded does not come in the way of the Authorities referred to in Section 48 to commence inquiry/investigation for initiating "civil action" of "provisional attachment" of property being proceeds of crime.

(b) Supply of a copy of ECIR in every case to the person concerned is not mandatory, it is enough if ED at the time of arrest, discloses the grounds of such arrest.

(c) However, when the arrested person is produced before the Special Court, it is open to the Special Court to look into the relevant records presented by the authorised representative of ED for answering the issue of need for his/her continued detention in connection with the offence of money-laundering.

(xix) Even when ED manual is not to be published being an internal departmental document issued for the guidance of the Authorities (ED officials), the department ought to explore the desirability of placing information on its website which may broadly outline the scope of the authority of the functionaries under the Act and measures to be adopted by them as also the options/remedies available to the person concerned before the Authority and before the Special Court.

(xx) The petitioners are justified in expressing serious concern bordering on causing injustice owing to the vacancies in the Appellate Tribunal. We deem it necessary to

impress upon the executive to take corrective measures in this regard expeditiously.

(xxi) The argument about proportionality of punishment with reference to the nature of scheduled offence is wholly unfounded and stands rejected."

17. It can be seen from sub-paragraph xviii(a) that non-recording of an FIR regarding a scheduled offence does not impede the commencing of inquiry/investigation for initiating civil action of provisional attachment of property, being proceeds of crime, by the authorities referred to in Section 48 of the PMLA. The word 'investigation' has been defined in Section 2(n)(a) to include all proceedings conducted by the Director or by an authority authorised, for the collection of evidence. A reading of the summons issued would show that what has been initiated is only an investigation. At this stage it is not possible to state what the outcome of the investigation would be. As the law has already been laid down by the Hon'ble Supreme Court, that the existence of an FIR is not a pre-condition for issuing summons under Section 50 of the PML Act, it only needs to be followed by this Court.

Questions 4 & 5 :

Whether the powers of the respondent under the PMLA are dependent on the final report of the SFIO under Section 212

of the Companies Act?

Whether the fact that SFIO has filed a complaint pending this writ petition can be considered for the purpose of deciding the writ petition?

18. After the writ petition was heard and taken for orders, an affidavit was filed on 21.05.2025 by the respondent wherein it is stated that the respondent has received information that the SFIO has filed a complaint on 03.04.2025 against the petitioners alleging commission of offences under the Companies Act, 2013 and 1956 and the charges referred therein under Section 447 of Companies Act constitute scheduled offences under the PMLA. The counsel for the respondent hence argued that the contention regarding the existence of a scheduled offence no longer survives and the very foundation of the writ petition is lost. It is submitted that there can be no further challenge against the summons issued to the officers of the petitioner to appear.

19. Serious objection was raised to the affidavit filed on behalf the respondent. It is contended that after a case is taken for others, no further materials could have been brought in, and the Court cannot look into such aspects for the purpose of rendering a

judgment. Reliance is placed on the provisions of the Code of Civil Procedure and some reported judgments.

20. I do not think it is necessary to go into the objections raised. The Court is dealing with a writ petition filed under Article 226 of the Constitution of India and any fact that has come into existence prior to the pronouncement of the judgment in the writ petition is bound to be considered by the Court. The Court cannot shut its eyes to such facts which are virtually admitted, and which has a bearing on the contentions raised in the writ petition. The affidavit filed by the respondent shows that an order under Section 212 referring the matter to the SFIO was issued pursuant to an order dated 12.01.2024 under Section 210 (1)(c) of the Companies Act. It speaks of the subsequent events like the complaint filed by the SFIO on 03.04.2025 to contend that the primary contention that the summons had been issued even without the existence of a scheduled offence no longer survives. This Court cannot ignore the above fact and decide the case. At the time of rendering the judgment, the Court must bear in mind the fact situation as it prevails on that day. A decision otherwise will be purely academic. I hence find that this Court is bound to look onto the subsequent events while rendering

the judgment. In view of the above conclusion, it has necessarily to be held that the foundation of the argument of the petitioners that the summons had been issued without any scheduled offence no longer exists. It is hence not necessary to interfere with the summons at this stage on the ground that there was no complaint filed by the SFIO at the time when the summons was issued. The further contention that the power of the respondent under the PMLA are dependent on the final report of the SFIO under Section 212 also cannot be countenanced. As already held, the issuance of summons was only for the purpose of investigation and does not even require the registration of an FIR. The above questions are hence found against the petitioners.

Consequently, the writ petition fails and is dismissed.

Sd/-
T.R. RAVI
JUDGE

dsn/pn

2026:KER:35985

APPENDIX OF WP(C) NO. 15757 OF 2024

PETITIONERS' EXHIBITS

Exhibit P1	**A COPY OF THE COMPANY MASTER DATA OF THE PETITIONER AS PER THE WEBSITE OF THE MINISTRY OF CORPORATE AFFAIRS**
Exhibit P2	**TRUE COPY OF THE ORDER DATED 12.01.2024 PASSED BY THE MINISTRY OF CORPORATE AFFAIRS U/S. 210(1)(C), COMPANIES ACT**
Exhibit P3	**TRUE COPY OF ORDER U/S. 212 OF COMPANIES ACT DATED 31.01.2024 PASSED BY THE MINISTRY OF CORPORATE AFFAIRS**
Exhibit P4	**TRUE COPY OF THE ORDER DATED 31.01.2024 PASSED BY THE SFIO**
Exhibit P5	**TRUE COPY OF THE MEDIA REPORT DATED 27.03.2024 APPEARING ON THE WEBSITE OF HINDUSTAN TIMES**
Exhibit P6	**TRUE COPY OF SUMMON NO. PMLA/SUMMON/KCZO/2024/1994 DATED 08.04.2024 ISSUED BY THE RESPONDENT TO THE 2ND PETITIONER**
Exhibit P7	**TRUE COPY OF SUMMON NO. PMLA/SUMMON/KCZO/2024/1995 DATED 08.04.2024 ISSUED BY THE RESPONDENT TO THE 3RD PETITIONER**
Exhibit P8	**TRUE COPY OF SUMMON NO. PMLA/SUMMON/KCZO/2024/1993 DATED 08.04.2024 ISSUED BY THE RESPONDENT TO THE 4TH PETITIONER**
Exhibit P9	**TRUE COPY OF SUMMON NO. PMLA/SUMMON/KCZO/2024/1992 DATED 08.04.2024 ISSUED BY THE RESPONDENT TO THE 5TH PETITIONER**
Exhibit P10	**TRUE COPY OF REPLY LETTER DATED 10.04.2024 ISSUED BY THE PETITIONER COMPANY TO THE RESPONDENT**
Exhibit P11	**A TRUE COPY OF EMAIL DATED 11.04.2024 FROM THE**

	RESPONDENT TO THE PETITIONER COMPANY
Exhibit P12	**TRUE COPY OF THE INTERIM ORDER DATED 12.04.2024 PASSED BY THIS HON'BLE COURT IN THE WRIT PETITION (CIVIL) NO, 15757 OF 2024**
Exhibit P13	**TRUE COPY OF THE REPRESENTATION DATED 14.04.2024 ISSUED BY THE APPLICANT ON BEHALF OF PETITIONERS NO. 2 AND 3 TO THE RESPONDENT**
Exhibit P14	**TRUE COPY OF THE REPRESENTATION DATED 15.04.2024 ISSUED BY THE APPLICANT ON BEHALF OF PETITIONER NO. 5 TO THE RESPONDENT**
Exhibit P15	**TRUE COPY OF THE REPRESENTATION DATED 16.04.2024 ISSUED BY THE APPLICANT TO THE RESPONDENT**
Exhibit P16	**TRUE COPY OF THE EMAIL DATED 16.04.2024 ISSUED BY THE RESPONDENT TO PETITIONER NO. 1**
Exhibit P17	**TRUE COPY OF THE REPRESENTATION DATED 17.04.2024 ISSUED BY PETITIONER NO. 1 TO THE RESPONDENT**
Exhibit P18	**TRUE COPY OF THE EMAILS DATED 15.05.2024, ALONG WITH ATTACHMENTS THERETO, SENT TO THE PETITIONER NO. 1 BY THE DEPONENT**
Exhibit P19	**TRUE COPY OF THE EMAILS DATED 15.05.2024, ALONG WITH ATTACHMENTS THERETO, SENT TO THE PETITIONER NO. 1 BY THE PETITIONER NO. 4**
Exhibit P20	**TRUE COPY OF THE EMAILS DATED 15.05.2024, ALONG WITH ATTACHMENTS THERETO, SENT TO THE PETITIONER NO. 1 BY THE BROTHER OF PETITIONER NO. 5**