

News

ED can't act like a crook, we are concerned about its image: Supreme Court in PMLA verdict review



The Court was hearing arguments on the maintainability of review petitions challenging the correctness of the 2022 Vijay Madanalal ruling which sustained various PMLA clauses.

Enforcement Directorate

The Supreme Court on Thursday noted that the Enforcement Directorate (ED) cannot act like a thief and its conduct must be within the four corners of the law [Karti P Chidambaram v The Directorate of Enforcement].

A Bench of Justices Surya Kant, Ujjal Bhuyan and N Kotiswar Singh stressed that it is worried about the agency's reputation and that there is a difference between law-enforcement authorities and those that violate it.

"You cannot act like a crook. You have to work within the four corners of law. There is a difference between law-enforcing authority and law-violating agencies. See what I witnessed in one of the incidents that came true in what a minister said in parliament.... After 5000 cases, less than 10 convictions. We are equally concerned about the image of ED," Justice Bhuyan stated.

Justice Surya Kant, Justice Ujjal Bhuyan and Justice N Kotiswar Singh

You (ED) cannot act like a crook. You have to work within the four corners of law.

The Court made the statements while hearing the arguments in the review petitions against its July 2022 verdict in *Vijay Madanlal Choudhary v Union of India*, which upheld the constitutional legitimacy of the extensive powers of the ED under the Prevention of Money Laundering Act, 2002 (PMLA).

Additional Solicitor General (ASG) SV Raju spoke for the ED today and defended the agency.

He underlined that one of the reasons for the low conviction rate in PMLA cases is because the "rich and powerful use a powerful battery of lawyers and file so many applications".

"They do not even allow the trial to take place and delay it," he claimed.

On the review petitions, Raju contended that they are not viable since they are, in essence, appeals disguised as reviews.

"If the review is accepted, it would be tantamount to rewriting the judgment of *Vijay Madanlal*, which cannot be permitted," he stated.

Raju contended that there was no cause brought out by the petitioners to seek a review of the 2022 order.

"The constitutional legality was always in my favour. They took a chance and failed in that attempt. Now they're saying, no, that was wrong and redo it. Review can't be an appeal in disguise. They must first demonstrate that there is an error apparent on the face of the record when it comes to these two problems. The error obvious on the face of the record should not be an error that should be fished out. Review cannot be for requesting. They have to set out an exceedingly strong case for review," he said.

The review petitioners have primarily contested the constitutionality of the PMLA as upheld in *Vijay Madanlal*, especially its reverse burden clause, denial of procedural safeguards like providing accused the Enforcement Case Information Report (ECIR), and stringent bail

conditions under Section 45 of the PMLA.

The Enforcement Directorate (ED) has claimed three fundamental objections to the maintainability of their review pleas, namely:

Whether the review petition satisfies the threshold criteria of proving a “error apparent on the face of the record” in the final judgment?

Whether the review petition is in substance an appeal in disguise and liable to be dismissed on that ground?

Whether, in light of the 25 August 2022 order, just two issues - provision of the ECIR to the accused and the constitutional legitimacy of the reverse burden of proof under Section 24 can be examined?