IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-31871-2017 (O&M)
Date of Decision:- 16.10.2018

Navdeep Singh … Petitioner

Versus

Assistant Director, Directorate of Enforcement ... Respondent

CORAM: HON'BLE MR. JUSTICE GURVINDER SINGH GILL

Present:- Mr. J.S. Bedi, Senior Advocate with
Mr. Barrister Rubal Garg, Advocate for the petitioner.

Mr. Lokesh Narang, Advocate for the respondent.

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GURVINDER SINGH GILL, J.

1. The petitioner Navdeep Singh has filed this petition seeking quashing of Complaint Case No.CNR No.PBJL010005702017 of 2017 (COMA 2/2017) dated 16.1.2017 (Annexure P-7) pertaining to offence under Section 3 punishable under Section 4 of Prevention of Money Laundering Act 2002 (hereinafter refered to as 'PMLA') and also summoning order dated 16.1.2017 (Annexure P-8) and all the subsequent proceedings arising therefrom, which are stated to be pending in the Court of Special Judge (Prevention of Money-Laundering Act, 2002), Jalandhar.

2. A few facts, necessary to notice are that the petitioner alongwith co-accused Sarabjit Singh was tried by the Special Court (Narcotic Drugs and Psychotropic Substances Act, 1985), Jalandhar in respect of FIR No.18 dated 4.6.2009 registered under Sections 21 and 25 of Narcotic Drugs and

Psychotropic Substances Act, 1985 (hereinafter referred to as '*the NDPS Act*') wherein it was alleged that Navdeep Singh and Pal Singh (since deceased) had been found in illegal possession of 95 grams of '*heroin*' which was recovered from the vehicle in which they were travelling together on 4.6.2009. An amount of ₹ 9 lacs was also recovered from underneath the rear seat of the vehicle, which had been kept in a bag. However, the third accused accompanying Navdeep Singh and Pal Singh managed to escape from the spot.

3. On the next day i.e. on 5.6.2009, the third accused namely Sarabjit Singh, who had run away from the spot, was arrested on the basis of secret information and who upon interrogation disclosed that he had kept concealed '*heroin*' and led the police party to the disclosed place from where 4 kgs. of '*heroin*' was recovered. The learned Special Court, Jalandhar vide its judgment dated 12.6.2018, sentenced Navdeep Singh to undergo rigorous imprisonment for one year and to pay fine amounting to ₹ 25,000/- while attributing recovery of 95 grams of '*heroin*' to him. The co-accused Sarabjit Singh was sentenced to undergo rigorous imprisonment for 12 years and imposed fine amounting to ₹ 2 lacs, on account of recovery of 4 kgs. of '*heroin*' at his instance.

4. Pursuant to the recovery of amount of ₹ 9 lacs alongwith *'heroin'* regarding which FIR No.18 dated 4.6.2009 was lodged against Navdeep Singh and others by State Special Narcotics Cell (SSNC), Ludhiana, an intimation regarding the same was sent by SSNC to Directorate Enforcement (Foreign Exchange Management Act and Prevention of Money-Laundering Act), Department of Revenue, Government of India and proceedings under

Section 5 of Prevention of Money-Laundering Act, 2002 were initiated. Vide order dated 18.3.2016 (Annexure P-4), a provisional order of attachment of the amount of ₹ 9 lacs was passed by Deputy Director, Directorate of Enforcement in terms of Section 5(1) of PMLA Act. The provisional order was forwarded to the Adjudicating Authority in terms of requirements of Section 5(2) of PMLA. A complaint was also filed before Adjudicating Authority in terms of Section 5(5) of PMLA Act. Subsequently, vide order dated 8.7.2016 (Annexure P-5), the provisional order of attachment was confirmed by the Adjudicating Authority in terms of provisions of Section 8(3) of PMLA. The operative portion of order dated 8.7.2016 (Annexure P-5) reads as follows:-

> "17. It is accordingly held that the property has been attached under Sction 5 is involved in Money Laundering. The Defendant are in possession of "proceeds of Crime" within the meaning of provisions of Prevention of Money Laundering Act, 2002 and accordingly it is ordered that the attachment of the property shall continue during the pendency of the proceedings relating to any offence under this Act before a court of under corresponding law of any other country, before the competent court of criminal jurisdiction outside india, as the case may be; and become final after an order of confiscation is passed under sub-section (5) to sub-sectio (7) of Section 8 or section 588 or sub-section (2A) of section 60."

5. The petitioner Navdeep Singh challenged the aforesaid order dated 8.7.2016 by filing an appeal (Annexure P-6) before the Appellate Authority (constituted under the PMLA Act), which is stated to be still pending. In the meantime, a complaint dated 16.1.2017 was filed against the petitioner Navdeep Singh and Sarabjit Singh in the Court of Special Judge (PMLA),

Jalandhar with a prayer for trying the accused for having committed offence under Section 3 of the PMLA punishable under Section 4 of the PMLA and also for confiscation of the amount of ₹ 9 lacs, which stood attached. The learned Special Judge (PMLA), Jalandhar, upon finding that a *prima facie* case was made out against both the accused for offence under Section 3 punishable under Section 4 of the PMLA, summoned the accused vide impugned order dated 16.1.2017 (Annexure P-8).

6. The learned counsel for the petitioner, while assailing the compaint as well as the summoning order, has submitted that the Directorate of Enforcement has proceeded against the petitioner in a hurried manner by filing the complaint, which is solely based on attachment order dated 18.3.2016 (Annexure P-4) and confirmation order dated 8.7.2016 (Annexure P-5), which infact have not attained finality inasmuch as appeal against the said confirmation order is still pending before the Appellate Authority. The learned counsel has also submitted that the complaint had been filed while concealing the aforesaid material fact regarding pendency of appeal against order regarding confirmation of attachment, before Appellate Authority. It has thus been submitted that since the very basis and foundation of the complaint is the attachment order and the confirmation order whereas the matter pertaining to the said attachment is still subjudice, therefore, prosecuting the accused under the PMLA Act is misuse of process of law and that the complaint and the consequent proceedings deserve to be quashed and in any case are required to be stayed till the proceedings regarding attachment attain finality.

7. The learned counsel, in order to hammer forth his aforesaid submission, presses into service a judgment of Hon'ble the Supreme Court reported as *2012(1) RCR (Criminal) 126-State of Punjab Verses Devinderpal Singh Bhullar and others*.

8. The learned counsel has further submitted that infact the amount of ₹ 9 lacs recovered from the petitioner is not ill-gotten wealth or proceeds of any crime but infact was an amount part of which he had received as earnest amount for sale of his property. The learned counsel in this context has drawn the attention of this Court to the statements of defence witnesses examined by him during the course of trial in respect of FIR No.18 dated 4.6.2009 i.e. the statements of DW-2 Ravi Singh Guleria, Senior Manager, Kotak Mahindra Bank, Ludhiana, DW-3 Kultar Singh and DW-4 Avnish Kumar Khosla.

9. On the other hand, the learned counsel for the respondent/complainant has submitted that in the present case, the petitioner, who was found in possession of 95 grams of '*heroin*' alongwith an amount of ₹ 9 lacs and also his co-accused Sarabjit Singh, already stand convicted by Special Court (NDPS) for having committed offence under Section 21 of NDPS Act vide judgment dated 12.6.2018. It has further been submitted that there is no statutory bar for prosecuting the accused under PMLA either during pendency of proceedings under any other Act or even during pendency of the attachment proceedings under PMLA. The learned counsel for the respondent/complainant, in order to buttress his aforesaid submission, places reliance upon judgment of Delhi High Court reported as *2018(2) RCR (Criminal) 586 J. Sekar Versus Union of India*.

10. I have considered rival submissions addressed before this Court. Under the Scheme of the PMLA, whosoever is involved in any manner or connected with the "proceeds of crime" whether concealment, possession, use etc. shall be guilty of offence of money laundering. Before proceeding further, it is apposite to refer to some of the relevant provisions of PMLA, which read as follows:-

> "**2(u):- "Proceeds of crime"** means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property (or where such property is taken or held outside the country, then the property equivalent in value held within the country)."
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> **3. Offence of money-laundering:-**
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> Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the (proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming) it as untainted property shall be guilty of offence of money-laundering.
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> **4. Punishment for money-laundering:-**
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> Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also to be liable to fine.
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> Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words "which may extend to seven years", the words "which may extend to ten years" had been substituted."
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> **5. Attachment of property involved in money-laundering .**

(1) Where the Director or any other officer not below the rank of Deputy Director authorised by the Director for the purposes of this section, has reason to believe (the reason for such belief to be recorded in writing), on the basis of material in his possession, that-

(a) any person is in possession of any proceeds of crime; and

(b) such proceeds of crime are likely to be concealed, transferred or dealt with in any manner which may result in frustrating any proceedings relating to confiscation of such proceeds of crime under this Chapter, he may, by order in writing, provisionally attach such property for a period not exceeding one hundred and eighty days from the date of the order, in such manner as may be prescribed :-

Provided that no such order of attachment shall be made unless, in relation to the scheduled offence, a report has been forwarded to a Magistrate under section 173 of the Code of Criminal Procedure, 1973, or a complaint has been filed by a person authorised to investigate the offence mentioned in that Schedule, before a Magistrate or court for taking cognizance of the scheduled offence, as the case may be, or a similar report or complaint has been made or filed under the corresponding law of any other country:-

Provided further that, notwithstanding anything contained in clause (b), any property of any person may be attached under this section if the Director or any other officer not below the rank of Deputy Director authorised by him for the purposes of this section has reason to believe (the reasons for such belief to be recorded in writing), on the basis of material in his possession, that if such property involved in money laundering is not attached immediately under this Chapter, the non-attachment of the property is likely to frustrate any proceeding under this Act.

(2) The Director, or any other officer not below the rank of Deputy Director, shall, immediately after attachment under sub-section (1), forward a copy of the order, alongwith the material in his possession, referred to in that sub-section, to the Adjudicating Authority, in a sealed envelope, in the manner as may be prescribed and such Adjudicating Authority shall keep such order and material for such period as may be prescribed.

(3) Every order of attachment made under sub-section (1) shall cease to have effect after the expiry of the period specified in that sub-section or on the date of an order made under sub-section (2) of section 8, whichever is earlier.

(4) Nothing in this section shall prevent the person interested in the enjoyment of the immovable property attached under sub-section (1) from such enjoyment.

Explanation. For the purposes of this sub-section, person interested, in relation to any immovable property, includes all persons claiming or entitled to claim any interest in the property.

(5) The Director or any other officer who provisionally attaches any property under sub-section (1) shall, within a period of thirty days from such attachment, file a complaint stating the facts of such attachment before the Adjudicating Authority.

8. Adjudication.

(1) On receipt of a complaint under sub-section (5) of section 5, or applications made under sub-section (4) of section 17 or under sub-section (10) of section 18, if the Adjudicating Authority has reason to believe that any person has committed an offence under section 3 or is in possession of proceeds of crime, it may serve a notice of not less than thirty days on such person calling upon him to indicate the sources of his income, earning or assets, out of which or by means of which he has acquired the property attached under sub-section (1) of section 5, or,

seized or frozen under section 17 or section 18, the evidence on which he relies and other relevant information and particulars, and to show cause why all or any of such properties should not be declared to be the properties involved in money-laundering and confiscated by the Central Government:

Provided that where a notice under this sub-section specifies any property as being held by a person on behalf of any other person, a copy of such notice shall also be served upon such other person:

Provided further that where such property is held jointly by more than one person, such notice shall be served to all persons holding such property.

(2) The Adjudicating Authority shall, after

(a) considering the reply, if any, to the notice issued under sub-section (1);

(b) hearing the aggrieved person and the Director or any other officer authorised by him in this behalf; and

(c) taking into account all relevant materials placed on record before him, by an order, record a finding whether all or any of the properties referred to in the notice issued under sub-section (1) are involved in money-laundering:

Provided that if the property is claimed by a person, other than a person to whom the notice had been issued, such person shall also be given an opportunity of being heard to prove that the property is not involved in money-laundering.

(3) Where the Adjudicating Authority decides under sub-section (2) that any property is involved in money-laundering, he shall, by an order in writing, confirm the attachment of the property made under sub-section (1) of section 5 or retention of property or record seized or frozen under section 17 or section 18 and record a finding to that effect, whereupon such attachment or

retention or freezing of the seized or frozen property or record shall

(a) continue during the pendency of the proceedings relating to any offence under this Act before a court or under the corresponding law of any other country, before the competent court of criminal jurisdiction outside India, as the case may be; and

(b) become final after an order of confiscation is passed under sub-section (5) or sub-section (7) of section 8 or section 58 B or sub-section (2A) of section 60 by the Special Court

(4) Where the provisional order of attachment made under sub-section (1) of section 5 has been confirmed under sub-section (3), the Director or any other officer authorised by him in this behalf shall forthwith take the possession of the property attached under section 5 or frozen under sub-section (1A) of section 17, in such manner as may be prescribed:

Provided that if it is not practicable to take possession of a property frozen under sub-section (1A) of section 17, the order of confiscation shall have the same effect as if the property had been taken possession of.

(5) Where on conclusion of a trial of 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.

(6) 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.

(7) Where the trial under this Act cannot be conducted by reason of the death of the accused or the accused being

declared a proclaimed offender or for any other reason or having commenced but could not be concluded, the Special Court shall, on an application moved by the Director or a person claiming to be entitled to possession of a property in respect of which an order has been passed under sub-section (3) of section 8, pass appropriate orders regarding confiscation or release of the property, as the case may be, involved in the offence of money-laundering after having regard to the material before it.

(8) Where a property stands confiscated to the Central Government under sub-section (5), the Special Court, in such manner as may be prescribed, may also direct the Central Government to restore such confiscated property or part thereof of a claimant with a legitimate interest in the property, who may have suffered a quantifiable loss as a result of the offence of money laundering:

Provided that the Special Court shall not consider such claim unless it is satisfied that the claimant has acted in good faith and has suffered the loss despite having taken all reasonable precautions and is not involved in the offence of money laundering.

11. The scheme of the Act, as discerned upon perusal of above referred provisions of PMLA, may be briefly stated as follows:-

(i) Upon receipt of intimation by the Directorate Enforcement regarding recovery of an amount believed to be *"proceeds of crime"*, an officer not below the rank of Deputy Director proceeds to conduct proceedings for provisional attachment of the recovered amount in terms of section 5(1) of PMLA. Such provisional attachment is valid for a period of 180 days only unless confirmed by Adjudicating Authority in terms of provisions of Section 8(3) of PMLA.

(ii) The provisional order of attachment is forwarded to 'Adjudicating Authority' for confirmation.

(iii) Simultaneously, a complaint is also required to be filed in terms of provisions of section 5(5) of PMLA before the 'Adjudicating Authority' within 30 days of passing of order of provisional attachment.

(iv) The Adjudicating Authority, on receipt of complaint under Sub-Section (5) of Section 5 of PMLA, if having reason to believe that any person has committed an offence under Section 3 of the PMLA or is in possession of proceeds of crime, is required to issue notice on the said complaint calling upon such person to indicate his sources of his income, earning or assets to justify his possession of attached property, and to show as to why, the property in issue ought not to be declared as one involved in money-laundering and be not confiscated.

(v) If the Adjudicating Authority comes to a conclusion that the property in issue is involved in money-laundering, he is required to confirm the provisional attachment in terms of provisions of Section 8(3) of PMLA.

(vi) Upon passing of order u/s 8(3) for confirmation of attachment, such attachment is to continue during the pendency of proceedings relating to offence under the PMLA or, under corresponding law of any other country before a competent Court of criminal jurisdiction outside India.

(vii) In case the Special Court, trying such person for offence under PMLA holds such person guilty of having committed offence of money-laundering, the attached property stands confiscated. In case of acquittal, the same is released.

12. In the present case, there was specific information with the police to the effect that the petitioner indulges in sale of narcotics and it was pursuant to the said secret information that the petitioner and his co-accused were arrested and the petitioner was found in possession of 95 grams of '*heroin*' and an amount of ₹ 9 lacs was also recovered from him. Consequently FIR was lodged for offence under Sections 21 and 25 of NDPS Act. Since offence under Section 21 of NDPS Act is listed amongst the scheduled

offences in the 'Schedule' to the PMLA, therefore, an offence under Section 3 of the PMLA would also get attracted.

13. It may here be mentioned that when the proceedings under Section 5 of the PMLA Act for attachment of amount of ₹ 9 lacs were initiated and provisional attachment order was passed which was later confirmed vide order dated 8.7.2016 (Annexure P-5) by the Adjudicating Authority, the trial in respect of the NDPS case was still pending. Infact even when the complaint dated 16.1.2017 (Annexure P-7) was filed, the trial was still pending and it was only on 12.6.2018 that the trial concluded and the petitioner and his co-accused were convicted.

14. The material question before this Court is as to whether prosecution for offence under Section 3 of PMLA can be initiated during the pendency of attachment proceedings or before the attachment confirmation attains finality or before the conviction of the petitioner under the NDPS Act attains finality.

15. As is evident from the scheme of the PMLA, the proceedings for attachment are separate and in the nature of interim measures required to be taken to avoid a situation where proceedings are rendered redundant on account of the property being squandered away. If the designated officer has reason to believe, based on the material in his possession, that a person is in possession of proceeds of crime and, such proceeds, are likely to be concealed, transferred or dealt with in any manner which may result in frustrating proceedings relating to confiscation of 'proceeds of crime', he may proceed to attach the property in question. In fact it is in anticipation of prosecution that attachment proceedings are initiated.

16. The second proviso to Section 5(1), when read alongwith first proviso, would itself make it clear that attachmant or pendency of attachment proceedings would not affect filing of a complaint under PMLA. While the first proviso to Section 5(1) envisages the provisional attachment being made simultaneously with the filing of the challan in the criminal Court for offences under Sections 3 and 4 of PMLA, the second proviso carves out an exception by providing that in case the Director or any other authorised officer has reason to believe that if such property involved in money-laundering is not attached immediately the non-attachment of the property is likely to frustrate any proceeding under this Act, the attachment may be made prior to initiation of criminal proceedings.

17. While proceedings under Sections 5 and 8 of PMLA are conducted by Enforcement Authorities, a complaint for offence under section 3 of PMLA is dealt with by a Special Court presided over by a judicial officer. Needless to mention that the Special Court is neither bound not governed not influenced by any order passed by the Enforcement Authorities and has to act independently on the basis of evidence led before it.

18. In *2018(2) RCR 586, J. Sekar Vs. Union of India*, A Division Bench of Delhi High Court, after examining the scheme of PMLA observed as follows:

> "36. There are, therefore, two *parallel* streams -
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> (i) criminal proceedings before the Special Court for trial of the offences under Section 3 read with Section 4 PMLA and;
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> (ii) the departmental proceedings before the authorities instituted under the PMLA, i.e. the Director, the AA, and the AT, the orders of which are subject to appeal before the High Court."

19. It is thus evident from the provisions of PMLA itself that there is no statutory bar for initiating prosecution under PMLA in case it is *prima facie* found that an offence under Section 3 of PMLA has been committed. Attachment proceedings are initiated simply with the purpose of ensuring that the recovered amount is kept intact.

20. During the course of arguments it was also contended by the learned counsel for the petitioner that infact the amount of ₹ 9 lacs was not 'proceeds of crime' but a part of it was sale consideration given by one Kultar Singh for purchase of his membership/share certificate No.3 in Queenland Co-operative Group Housing Society Ltd., G.H. 2, Sector-23, Panchkula for an amount of ₹ 6 lacs but since the society refused to transfer his share, therefore, Navdeep Singh subsequently cancelled the agreement and returned the amount to him. The learned counsel in this context has drawn the attention of this Court to the statement of DW-3 Kultar Singh made during the trial of FIR No.18 dated 4.6.2009 under the NDPS Act (Annexure P-11), the statement of DW-2 Ravi Singh Guleria, Senior Manager, Kotak Mahindra Bank, Ludhiana Branch, and also the statement of DW-4 Avnish Kumar Khosla. Although the said statements were not believed by the Special Court, Jalandar during the trial of NDPS case but the petitioner in any case would be at liberty to adduce evidence in this regard during the proceedings of the present complaint. The aforesaid contention, in the given circumstances, would form part of defence of the petitioner and the complaint can not be quashed at the threshold on the basis of the aforesaid defence.

21. Although, it has been vehemently argued by learned counsel for the petitioner that the complaint dated 16.1.2017 (Annexure P-7) is based solely on the order of attachment and order of confirmation but a perusal of the complaint shows that it is not solely on the basis of the attachment order that the complaint has been filed but the entire facts have been noticed in complaint. So much so, even the statement of the petitioner Navdeep Singh recorded in terms of Section 50 of the PMLA Act on 10.12.2015, 23.12.2015 and 13.1.2016 and also of the co-accused Sarabjit Singh on 8.3.2016 and 10.3.2016 have been referred to apart from the documents furnished by the accused in the shape of bank statements and Income Tax Returns (ITRs).

22. As regards the judgment cited by the learned counsel for the petitioner i.e. *Devinderpal Singh Bhullar's* case(supra), there is certainly no dispute as regards the proposition of law laid therein to the effect that if initial action is not in consonance with law all subsequent and consequential proceedings would be *non-est*. However, the present case is based on entirely different set of facts and the aforesaid proposition is not attracted to the present case. In the cited case, after the High Court had dismissed an appeal against acquittal, it subsequently proceeded *suo-moto* to direct the authorities to furnish details in respect of the proclaimed offenders and marked the matter as 'part heard'. While the said proceedings were pending, one of the acquitted accused moved an application to the effect that his father and uncle had also been abducted earlier and the High Court while enteretaining the application, proceeded to direct the CBI authorities to investigate the allegations made by said acquitted accused and further directed that the statement of such said acquitted accused be recorded under section 164

Cr.P.C. Although a submission had been made on behalf of CBI that the allegations of kidnapping of father and uncle of said acquiited accused had no connection with the matter in hand but the said contention was turned down by the High Court. Consequently, the CBI registered a case and started investigation. The aforesaid orders and leading to registration of the FIR were challenged by State of Punjab in Hon'ble Supreme Court, which were set aside while observing as follows:

> "71. The order impugned has rightly been challenged to be a nullity at least on three grounds, namely, judicial bias; want of jurisdiction by virtue of application of the provisions of Section 362 Criminal Procedure Code coupled with the principles of constructive *res judicata;* and the Bench had not been assigned the roster to entertain petitions under Section 482 Criminal Procedure Code The entire judicial process appears to have been drowned to achieve a motivated result which we are unable to approve of.
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> 72. It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case."

23. The above referred maxim *"sublato fundamento cadit opus",* has no application to the present case for the reason that it is not the order of attachment which is foundation for lodging a complaint under section 3 of P MLA but it is the factum of recovery of the amount of Rs. 9 lakhs, *prima-facie* believed to be 'proceeds of crime' which forms the foundation for prosecuting the accused for offence under section 3 of PMLA.

24. Consequently, there is no ground either for quashing the complaint filed against petitioner under Prevention of Money Laundering Act, 2002 or the summoning order or even for staying the proceedings of complaint during

pendency of the appeal against attachment before the Appellate Authority. The petition is sans any merit and is dismissed.

16.10.2018 **(Gurvinder Singh Gill)**
pankaj **Judge**

Whether speaking /reasoned	Yes / No
Whether Reportable	Yes / No