

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-M No.50475 of 2021 (O&M)

Reserved on 18.04.2022

Decided on: 19.05.2022

Dilip Lalwani and another

....Petitioners

Versus

Central Bureau of Investigation and another

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Vikram Chaudhari, Sr. Advocate
with Mr. Gorav Kathuria, Advocate
Ms. Hargun Sandhu, Advocate
and Mr. Kunal Sharma, Advocate
for the petitioners.

Mr. Sumeet Goel, Sr. Advocate
with Mr. Paramveer Dhull, Advocate
for respondent No.1 – CBI.

Mr. Satya Pal Jain, Sr. Advocate/Addl. Solicitor General of
India with Ms. Sharmila Sharma, Advocate
for respondent No.2.

ARVIND SINGH SANGWAN, J.

Prayer in this petition is for quashing the proceedings arising out of complaint No.ECIR/CDZO/04/2015 dated 24.09.2015 filed under Section 3 read with Section 4 of the Prevention of Money Laundering Act, 2002 ‘*qua* the petitioners’ as well as the order dated 30.06.2020 passed by the Special Judge, PMLA, vide which cognizance is taken in the second supplementary prosecution complaint No.ECIR/CDZO/04/2015 titled as “*Directorate of Enforcement vs Smt. Sona Bansal and others*”, filed by respondent No.2 – Directorate of Enforcement. It is also prayed that respondent No.1 – CBI and

respondent No.2 – Directorate of Enforcement be further directed to act in co-ordination and harmony with each other during the course of investigation relating to the cases of sale and purchase of land in Manesar.

Learned senior counsel for the petitioners has argued that petitioner No.1 is engaged in the business of real estate, commodity trading and stock trading for the last 30 years whereas petitioner No.2 is engaged in food processing and real estate business. It is further submitted that both the petitioners were acquainted with one Lalit Modi for the last about 20 years and he was advising the petitioners to make certain investment in the real estate. On the asking of Lalit Modi, the petitioners have purchased and then sold certain properties in an around NCR Delhi during this period. In the year 2004, the petitioners along with one Raj Kumar Arora and Lalit Modi became promoters of M/s. Sheel Buildcon Private Limited, Progressive Buildtech Private Limited and Ecotech Buildcon Private Limited. All the 03 companies were land owning companies. The shareholding of the petitioners and Raj Kumar Arora was equally divided and the companies were to engage in land aggregation.

Lalit Modi was having shareholding of 10% in all the 03 companies as he was having vast experience in that field and was the sole responsible person to manage the affairs of the 03 land owning companies. The decision relating to sale and purchase of the land on behalf of the companies were exclusively taken by him. Thereafter, the shareholding of the petitioners and Raj Kumar Arora were reduced to 30% each in the aforesaid companies. Subsequently, Lalit Modi

purchased the entire shareholding of Raj Kumar Arora and became 40% shareholder whereas the petitioners remain shareholder of 30% each as shareholding in the said companies. It is also submitted that from 25.11.2004 to 25.11.2005, Lalit Modi was solely managing the 03 land owning companies and he purchased certain land in Manesar, District Gurugram on the prevalent market rate which was much higher than the circle rate fixed by the Collector. The sole purpose of purchasing the land was *bona fide* with legitimate source of income duly reflected in the income tax returns. The purchases were made through sale deeds which were duly registered on payment of requisite stamp duty and registration charges.

It is stated that Haryana State Infrastructure and Industrial Development Corporation Limited (hereinafter referred to as 'HSIIDC') made a proposal in the year 2004 to acquire the land, in question and the State Government issued a notification dated 27.08.2004 under Section 4 of the Land Acquisition Act, 1894 (in short 'the Act of 1894'). The notification was for setting up of an industrial model township in village Manesar, Naurangpur and Lakhnoula in District Gurugram, measuring about 912 acres. Later on, the notification under Section 6 of the Act of 1894 was issued on 25.08.2005 reducing the proposed acquired land to 688 acres.

Learned senior counsel for the petitioners has further submitted that about 76% of the land was purchased by various persons including the company of the petitioners under the instructions of Lalit Modi, prior to issuance of notification under Section 6 of the Act of 1894. Later on, on 11.07.2006, a Draft Development Plan was notified

and subsequently, after 01 year on 05.02.2007, the Final Development Plan, 2021 of Gurugram was notified. It is also submitted that the decision to purchase some land was taken by Lalit Modi as most of adjoining land was purchased by other persons. The 03 companies purchased the land between November, 2004 to November, 2005. Later on, Lalit Modi proposed to the petitioners that one Atul Bansal through his company is interesting in acquiring 03 land owning companies and the petitioners gave consent and on 30.11.2006, an oral agreement was arrived at between Lalit Modi and Atul Bansal and Rs.5.00 crores as advance was paid by Atul Bansal towards the sale consideration of the 03 land owning companies, however, at that time, no share was transferred. Later on as per the agreement, the shares in the 03 land owning companies was transferred to A.B.W. Group (Aditya Build Well Group) belonging to Atul Bansal.

Learned senior counsel for the petitioners has also submitted that in fact, there was no sale or purchase of the actual land and rather, it was an investment in property through the 03 land owning companies and the entire shareholding in the company was transferred in favour of A.B.W. Group. It is also submitted that later on, on 24.08.2007, acquisition proceedings were dropped and FIR No.510 dated 12.08.2015 under Sections 420, 465, 467, 468, 471, 120-B IPC and Section 13 of the Prevention of Corruption Act, at Police Station Manesar, District Gurugram, with the allegations that due to issuance of notification by the State Government under Section 4 of the Act of 1894, many land owners in haste, under threat of acquisition, sold their land to private persons and companies and they were under threat to

sell their land at throw away prices to the company or their agents and the land was purchased on a much lower price than the prevalent market land rate causing Rs.1500 crores loss to the land owners. Later on, the State Government on 14.08.2015 transferred the investigation to CBI and RC No.RCCHG2015A0019 dated 15.09.2015 was registered.

Learned senior counsel for the petitioners has laid much emphasis on the fact that neither in the State FIR nor in the FIR registered by CBI, the petitioners were named as an accused nor any overt act or covert act is attributed to them. It is also submitted that during the investigation, CBI called the petitioners many times for recording their statement as a witness.

Later on, on 01.02.2018, a charge-sheet was filed by CBI in the "scheduled offence" before the Special Court in which various individuals and the companies including M/s. A.B.W. Infrastructure Limited and Atul Bansal as well as government officials were arraigned as an accused whereas the petitioners were never arraigned as accused nor in the CBI charge-sheet any material has come on record regarding their involvement or any conspiracy by CBI.

Learned senior counsel for the petitioners with reference to the charge-sheet has submitted that both the petitioners have been cited as a witness at Serial No.300 and 301, respectively. Even, Lalit Modi is cited as witness No.298 in CBI charge-sheet.

Learned senior counsel for the petitioners has further argued that the statement of both the petitioners and Lalit Modi was recorded by CBI under Section 161 Cr.P.C., in which the petitioners have only stated about setting up of the 03 companies, the sale deed in

favour of the company as well as the agreement in favour of M/s. A.B.W. Group.

Learned senior counsel for the petitioners has also submitted that except the sale and purchase of the land by the 03 land owning companies, the petitioners or the company neither ever applied for obtaining any licence for development of any colony nor ever applied to the government for withdrawal of the land from the acquisition proceedings as it was a simple investment made by the petitioners.

It is further submitted that in the meantime, the proceedings under the PMLA Act, were initiated by the Enforcement Directorate, Chandigarh, as per ECIR No.04/CDZO/2015 dated 24.09.2016.

It is next contended that the petitioners were also summoned by the Enforcement Directorate on various occasions wherein, they appeared and recorded their statements on 23.11.2007 and furnished all the documents as required by the Enforcement Directorate with regard to the transactions of the 03 land owning companies, the shareholding of the petitioners and of Lalit Modi, which were transferred in the name of M/s. A.B.W. Group.

Learned senior counsel for the petitioners has relied upon the statements recorded under Section 50 of the PMLA, attached as Annexures P-7 and P-8, respectively, wherein in reply to the questionnaire, the petitioners have given the details of the land purchased and sold to M/s. A.B.W. Group, the time upto which the petitioners were holding the share in the company, the details of the

other companies held by the petitioners, the source of purchasing the land of the company. The petitioners replied that through a joint company of both the petitioners DSL Properties Private Limited, they have purchased the land. With regard to a question about the detail of the business relation with Atul Bansal or his company, the petitioners have also given the details of the previous transaction at different places. Questions No.7 to 10, along with their reply, reads as under:-

“Ques:7 Whether you applied for licence to the office of DTCP vide application dated 26.12.2006?”

Ans: Neither we applied for any licence nor we authorised any person to file the application for seeking licence and we never paid any licence fee from our account.

Ques: 8 Are you aware that an application seeking licence on behalf of 15 companies including your three companies was filed on 26.12.2006 to the office of DTCP at Chandigarh?

Ans: This fact came to our knowledge when we were called by the Investigating Officer of CBI during their investigation in 2016. We did not give any consent to Sh. Atul Bansal or any other person or company to include the name of said three companies in the said application.

Quest: 9 Why did you purchase the land at Village Manesar which was notified by Haryana Govt. Gazetted Notification dt. 27.08.2004 u/s 4 of Land Acquisition Act, 1894?

Ans: Neither this fact was known to us at the time of purchase of land nor at the time of oral agreement entered into by Sh. Lalit Modi. This fact also came to our knowledge during investigation of CBI.

Ques: 10 Whether you raised any demand to Sh. Atul Bansal or his companies for your remaining

outstanding?

Ans: *We raised demand several times through Sh. Lalit Modi. We also issued Legal notice on 16.09.2015 through our lawyer M/s. KNM & Partners, was also served upon Sh. Atul Bansal and said companies.”*

Learned senior counsel for the petitioners has submitted that both the petitioners in reply to a query raised by Enforcement Directorate have also specifically stated that the petitioners have never applied for obtaining a licence from the office of DTCP and never paid any licence fee in this regard. It is also stated that the land was purchased only for the purpose of investment.

Similar statement was made by petitioner No.2.

It is next argued that on 17.07.2018, a prosecution complaint under Section 45 of the PMLA Act was filed by the Enforcement Directorate and in this complaint, the petitioners were not arraigned as an accused. Vide order dated 27.08.2018, the trial Court took cognizance of the said complaint and issued process against the accused persons arraigned in the said prosecution complaint. Later on, during those proceedings, the Enforcement Directorate issued a Provisional Attachment Order against M/s. A.B.W. Group on 24.12.2018. It is also submitted that a Supplementary Prosecution Complaint was filed on 14.02.2019, by the Enforcement Directorate and even in this complaint, the petitioners were not arraigned as an accused. The trial Court took cognizance of this complaint also and issued the process against the additional accused.

Learned senior counsel for the petitioners has next contended that after 02 years of the investigation in which the

petitioners were associated, time and again, and the investigation was started by CBI and prosecution was launched by the Enforcement Directorate, the petitioners were summoned again by the Enforcement Directorate on 22.07.2019 and again, Saurav Aggarwal, authorized agent of the petitioners appeared and supplied all the relevant documents. It is also submitted that on 05.06.2020, the impugned second supplementary prosecution complaint was filed by the Enforcement Directorate, in which the petitioners, for the first time, were arraigned as accused Nos.5 and 6. The trial Court issued the process and summoned the petitioners vide impugned order dated 30.06.2020, passed by the Special Judge, PMLA, Panchkula. The petitioners have appeared before the trial Court and were granted bail on 28.08.2020.

It is next submitted that the co-accused of the petitioners filed CWP No.2204 of 2021, titled as "*M/s. T.D.I. Infrastructure Limited and another vs Union of India and others*", in which on 15.02.2021, while issuing notice of motion, the trial Court was directed not to frame the charge.

The petitioners have filed the present petition, in which notice of motion was issued on 07.12.2021 and vide order dated 11.02.2022, the trial Court was also directed to adjourn the case beyond the date fixed before this Court.

Learned senior counsel for the petitioners has challenged the impugned complaint as well as the summoning order on the following points:-

- (a) As per Section 3 of the PMLA Act, prosecution can be

initiated against a person, who directly or indirectly attempts to indulge or knowingly assist or knowingly is a party or actually involved in any process or activity connected with proceeds of crime and projecting it as untainted property shall be guilty of the offence of money laundering.

(b) Learned senior counsel for the petitioners has then, referred to **“proceeds of crime”** as per Section 2(1)(u) of the PMLA Act, which provides that 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.

(c) Learned senior counsel for the petitioners has next argued that the **“Schedule”** as defined in Section 2(1)(x) of the PMLA Act, is the “Schedule” of the Act and the **“Schedule Offence”** as per Section 2(1)(y) of the PMLA Act, is *the offences specified under Part A of the Schedule and the offences specified under Part B of the Schedule.*

(d) Learned senior counsel for the petitioners has next submitted that in the **"scheduled offence"** wherein the CBI has registered an FIR and during the investigation, has recorded the statement of the petitioners under Section 161 Cr.P.C., the petitioners are cited as witness No.300 and 301, respectively. It is also submitted that when the 1st R.C. was registered under the PMLA Act, the statement of the petitioners were recorded under

Section 50 of the PMLA Act. However, the petitioners are nominated as an accused in the 2nd complaint, filed in exercise of powers under Section 44 of the PMLA Act, though, the prosecution by CBI and by the Enforcement Directorate is to be tried together by the same Judge, therefore, the prosecution of the petitioners by the Enforcement Directorate is mala fide as at no point of time, in the investigation by the CBI, the petitioners were found to be accused persons and rather they are cited as a witness.

(e) Learned senior counsel for the petitioners has also submitted that the Enforcement Directorate in the 1st complaint did not arraign the petitioners as accused or even in the supplementary statement again, did not arraign them as an accused and after 02 years of the initiation of the prosecution, in the 2nd complaint, the petitioners were referred to as accused Nos.5 and 6, which is contrary to the investigation conducted by CBI.

(f) Learned senior counsel for the petitioners has next argued that the Amendment to Schedule 3 of the PMLA Act, has come into force w.e.f. 01.06.2009 whereas, the sale deeds, in question relates to November, 2004 to November, 2005 and in the year 2006, the petitioners' company have sold the entire share in favour of M/s. A.B.W. Group, therefore, the prosecution of the petitioners only on the premise that they have earned some profit, while doing the business of sale and purchase of land, do not constitute any offence.

- (g) Learned senior counsel for the petitioners has also submitted that neither the petitioners had any knowledge about the pendency of any land acquisition proceedings, nor they were authorized persons for the day-to-day business dealings of the 03 land owning companies, for which Lalit Modi was authorized, to conduct the business and it has come in the investigation of CBI that the sale and purchase of 03 land owning companies was, in fact, managed by Lalit Modi and not by the petitioners and that is why, they were cited as witness by the CBI.
- (h) Learned senior counsel for the petitioners, in support of his arguments, has relied upon the recent judgment in **“J. Sekar @ Sekar Reddy vs Directorate of Enforcement”**, passed in **Criminal Appeal No.738 of 2022, decided on 05.05.2022**, wherein the Hon’ble Supreme Court has observed as under:-

“18. In view of the aforesaid legal position and on analysing the report of I.T. Department and the reasoning given by CBI while submitting the final closure report in RC MA1 2016 A0040 and the order passed by the Adjudicating Authority, it is clear that for proceeds of crime, as defined under Section 2(1)(u) of PMLA, the property seized would be relevant and its possession with recovery and claim thereto must be innocent. In the present case, the schedule offence has not been made out because of lack of evidence. The Adjudicating Authority, at the time of refusing to continue the order of attachment under PMLA, was of the opinion that the record regarding banks and its officials who may be involved, is not on record. Therefore, for lack of identity of the source of collected money, it could not be reasonably believed by the Deputy Director (ED) that the unaccounted money is

connected with the commission of offence under PMLA. Simultaneously, the letter of the I.T. Department dated 16.5.2019 and the details as mentioned, makes it clear that for the currency seized, the tax is already paid, therefore, it is not the quantum earned and used for money laundering. In our opinion, even in cases of PMLA, the Court cannot proceed on the basis of preponderance of probabilities. On perusal of the statement of Objects and Reasons specified in PMLA, it is the stringent law brought by Parliament to check money laundering. Thus, the allegation must be proved beyond reasonable doubt in the Court. Even otherwise, it is incumbent upon the Court to look into the allegation and the material collected in support thereto and to find out whether the prima facie offence is made out. Unless the allegations are substantiated by the authorities and proved against a person in the court of law, the person is innocent. In the said backdrop, the ratio of the judgment of Radheshyam Kejriwal (supra) in paragraph 38 (vi) and (vii) aptly applicable in the facts of the present case.

19. As discussed above, looking to the facts of this case, it is clear by a detailed order of acceptance of the closure report of the schedule offence in RC MA1 2016 A0040 and the quashment of two FIRs by the High Court of the schedule offence and of the letter dated 16.5.2019 of I.T. Department and also the observations made by the Adjudicating Authority in the order dated 25.2.2019, the evidence of continuation of offence in ECR CEZO 19/2016 is not sufficient. The Department itself is unable to collect any incriminating material and also not produced before this Court even after a lapse of 5 V2 years to prove its case beyond reasonable doubt. From the material collected by the Agency, they themselves are prima facie not satisfied that the offence under PMLA can be proved

*beyond reasonable doubt. The argument advanced by learned ASG regarding pendency of the appeal against the order of Adjudicating Authority is also of no help because against the order of the Appellate Authority also, remedies are available. Thus, looking to the facts as discussed hereinabove and the ratio of the judgments of this Court in **Radheshyam Kejriwal (supra)** and **Ashoo Surendranath Tewari (supra)**, the chance to prove the allegations even for the purpose of provisions of PMLA in the Court are bleak. Therefore, we are of the firm opinion that the chances to prove those allegations in the Court are very bleak. It is trite to say, till the allegations are proved, the appellant would be innocent. The High Court by the impugned order has recorded the finding without due consideration of the letter of the I.T. Department and other material in right perspective. Therefore, in our view, these findings of the High Court cannot be sustained.”*

Learned senior counsel for the petitioners has argued that since there is no material collected by the Enforcement Directorate and the petitioners are only cited as a witness by the CBI, the proceedings are liable to be quashed.

(h) Learned senior counsel for the petitioners has then, referred to a judgment of Delhi High Court **“Directorate of Enforcement vs Gagandeep Singh and others”**, passed in **CrI. Rev. P. No.493 of 2017 and CrI. M.A. Nos.19061 & 19985 of 2021, decided on 17.02.2022**, wherein it has been held as under:-

“29. The legislation of PMLA had been enacted with the objective to prevent and control money

laundering and to confiscate and seize the property obtained from the laundered money. The PMLA is a specific and special enactment to combat the menace of laundering of money, keeping in view the illegal practices that have been surfacing with respect to transfer and use of tainted money and subsequent acquisition of properties by using the same. The offence of money laundering is three- fold including the stages of placement, whereby the criminals place the proceeds of crime to the general and genuine financial system, layering, whereby such proceeds of crime are spread into various transactions within the financial system and finally, integration, where the criminals avail the benefits of crime as untainted money. The offence of money laundering under the PMLA is therefore, layered and multi-fold and includes the stages preceding and succeeding the offence of laundering money as well.

30. The offence of money laundering, however, is not to be appreciated in isolation but is to be read with the complementary provisions, that is, the offences enlisted in the Schedule of the Act. The bare perusal of the above mentioned provisions of the PMLA establishes the pre-requisite relation between the commission of "scheduled offence"s under the PMLA and the subsequent offence of money laundering. The language of Section 3 clearly implies that the money involved in the offence of money laundering is necessarily the proceeds of crime, arising out of a criminal activity in relation to the "scheduled offence"s enlisted in the Schedule of the Act. Hence, the essential ingredients for the offence of Section 3 of the PMLA become, first, the proceeds of crime, second, proceeds of crime arising out of the offences specified in the Schedule of the Act and third, the factum of knowledge while commission of the offence of money laundering. In

the present matter, at the initial stage of proceedings, the Respondents were charged for offences under Section 21/25/29 of the NDPS Act and 420/468/471/120B of the IPC, however, the learned Additional Sessions Judge, Amritsar, observed that material produced before the Court as well as the allegations made against the Respondents were largely made upon suspicion. Though certain material, properties and cash, were recovered and attached/seized but the fact that such properties were obtained through proceeds of crime of drug trafficking could not be established.

31. In view of the observation that the no "scheduled offence" was made out against the Respondents, this Court finds that an investigation and proceedings into the PMLA could not have been established against them at the first instance."

(i) Learned senior counsel for the petitioners, has also referred to another judgment of Gujarat High Court **"Jafar Mohammed Hasanfatta vs Deputy Director"**, passed in Criminal Revision Application No.926 of 2016, wherein while quashing the proceedings, the following observations were made:-

"35. The allegation against each of the petitioner is of commission of offence under Section 3 of PMLA, which is punishable under Section 4 of PMLA. Section 3 of PMLA reads as under :

"3. Offence of money-laundering.- 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."

36. *The 'proceeds of crime' is defined in Section 2(u) of PMLA as under -*

"(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;"

37. *A holistic reading of this definition of 'proceeds of crime' and the penal provision under Section 3 of PMLA, which uses conjunctive 'and', makes it luminous that any persons concerned in any process or activity connected with such "proceeds of crime" relating to a "'scheduled offence'" including its concealment, possession, acquisition or use can be guilty of money laundering, only if both of the two prerequisites are satisfied i.e. -*

(i) Firstly, if he -

(a) directly or indirectly 'attempts' to indulge,

(b) 'knowingly' either assists or is a party, or

(c) is 'actually involved' in such activity; and

(ii) Secondly, if he also projects or claims it as untainted property.

38. *The first of the two prerequisites to attract Section 3 of PMLA shall thus satisfy any of the following necessary ingredients -*

A. Re : Direct or Indirect Attempt:

*In **State of Maharashtra v. Mohd. Yakub, (1980) 3 SCC 57, [1983 (13) ELT 1637 (S.C.)]** the Hon'ble Supreme Court observed that -*

"13. Well then, what is an "attempt"?

In sum, a person commits the offence of "attempt to commit a particular offence" when (i) he intends to commit that particular offence, and (ii) he, having made preparations and with the intention to commit

the offence, does an act towards its commission; such an act need not be the penultimate act towards the commission of that offence but must be an act during the course of committing that offence."

Thus, an "attempt to indulge" would necessarily require not only a positive "intention" to commit the offence, but also preparation for the same coupled with doing of an act towards commission of such offence with such intention to commit the offence. Respondent failed to produce any material or circumstantial evidence whatsoever, oral or documentary, to show any such 'intention' and 'attempt' on the part of any of the petitioners.

B. Re : Knowingly Assists or knowingly is a party:

*In **Joti Parshad v. State of Haryana, 1993 Supp (2) SCC 497** the Hon'ble Supreme Court has held as follows -*

"5. Under the Indian penal law, guilt in respect of almost all the offences is fastened either on the ground of "intention" or "knowledge" or "reason to believe". We are now concerned with the expressions "knowledge" and "reason to believe". "Knowledge" is an awareness on the part of the person concerned indicating his state of mind. "Reason to believe" is another facet of the state of mind. "Reason to believe" is not the same thing as "suspicion" or "doubt" and mere seeing also cannot be equated to believing. "Reason to believe" is a higher level of state of mind. Likewise "knowledge" will be slightly on a higher plane than "reason to believe". A person can be supposed to know where there is a direct appeal to his senses and a person is presumed to have a reason to believe if he has sufficient cause to believe the same."

The same test therefore applies in the instant case where there is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to show that any of the petitioners, 'Knowingly', assisted or was a party to, any offence.

C. Actually involved :

Actually involved would mean actually involved into any process or activity connected with the proceeds of crime and thus "scheduled offence", including its concealment, possession, acquisition or use. There is absolutely no material or circumstantial evidence whatsoever, oral or documentary, to substantiate any such allegation qua the petitioners.

D. Neither any of the petitioners is arraigned as accused in the "'scheduled offence"s' punishable under Indian Penal Code for direct or indirect involvement, abetment, conspiracy or common intention, nor is any such case made out even on prima facie basis against any of them.

39. The second of the two prerequisites to attract Section 3 of PMLA would be satisfied only if the person also projects or claims proceeds of crime as untainted property. For making such claim or to project 'proceeds of crime' as untainted, the knowledge of tainted nature i.e. the property being 'proceeds of crime' derived or obtained, directly or indirectly, as a result of criminal activity relating to a "scheduled offence", would be utmost necessary, which however is lacking in the instant case.

40. Great emphasis was laid on behalf of the respondent on Section 24 of PMLA which reads after amendment vide Act 2 of 2013 as under -

"24. Burden of Proof.- In any proceeding relating to proceeds of crime under this Act, -

(a) in the case of a person charged with the offence of money-laundering under Section 3, the Authority or court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and

(b) in the case of any other person the Authority or court, may presume that such proceeds of crime are involved in money-laundering."

41. *On the basis of the said Section 24 read with Section 3 of PMLA, it was contended on behalf of the respondent that 'knowledge' of the "scheduled offence" or proceeds of crime is not essential under Section 3, and mere assistance in handling proceeds of crime even without knowledge would attract offence of money laundering, and burden would shift on the accused to prove that he is not involved in money laundering. It was submitted that the petitioners are all adults having knowledge of right and wrong. The bank accounts in which they received payments and made further payments were all in their names and they were the signatories having power to operate the accounts. None of them had the slightest hesitation in allowing their account to be used as a transit point for further transfer of the proceeds of crime. It shall thus be presumed that they have thus knowingly allowed the use of their bank accounts and knowingly involved themselves in this activity having full knowledge of the purpose and intent of the transactions and helped in the process of layering. Thereby they are involved in the process of money-laundering.*

42. *I find no merit in this stand of the respondent. I am of the view that this amended Section 24 shows legislative intent of attachment and confiscation of proceeds of crime by presuming involvement of proceeds of crime in money laundering irrespective of whether the*

person concerned is or not charged with the offence of money laundering. Thus, there shall be a legal presumption in any proceeding relating to proceeds of crime under PMLA that such proceeds of crime are involved in money-laundering. Burden would be on the person concerned to show to the contrary. However, as rightly pointed out by the learned Senior Counsel for the petitioners, there is no legal presumption in Section 24 that -

- (a) The concerned property is "proceeds of crime",*
- (b) The person accused has knowledge that the property is "proceeds of crime", and*
- (c) The person is involved in or is guilty of "money-laundering" merely for possessing or having any concern with the proceeds of crime.*

In fact Section 24 clearly indicates that even a person in possession or connected with any proceeds of crime may or may not be charged with the offence of money laundering. Whether a person shall be charged with money laundering or not shall thus depend only upon satisfying the requirements of Section 3 of PMLA as already explained above.

43. *In the instant case, neither there is anything to raise a presumption of fact or law that any of the petitioners was aware that the monies received in their bank accounts through banking channels were 'proceeds of crime' derived from any "'scheduled offence'", nor is there anything to further presume that the petitioners were intentionally projecting or claiming any proceeds of crime as untainted one. In absence of the same, merely because the petitioners are close relatives of Shri Afroz and had banking transaction with him or at his instance would not attract offence of money laundering under Section 3 of PMLA even on prima facie basis."*

(j) Learned senior counsel for the petitioners has argued that in para No.16.37 and 16.38, the CBI charge-sheet has drawn the following conclusions:-

“16.37. Investigation has revealed that Sh. Shashi Kant Chaurasia s/o Sh. Kamalkant Chaurasia, r/o R-729, New Rajendra Nagar, New Delhi, Mr. Dilip Kumar Lalwani r/o R-649, New Rajendra Nagar, New Delhi – 110060, Mr. Raj Kumar Arora r/o 120/500 (10), Lajpat Nagar, Kanpur and Mr. Lalit Modi r/o E-20, Lajpat Nagar-III, New Delhi – 110024, Directors of above companies had purchased around 88 acres land in the above three companies had purchased around 88 acres land in the above three companies from various landowners of village Manesar.

16.38. Investigation has further revealed that the above land was purchased at the rate of Rs.7,70,000/- to Rs.37,51,000/- per acre. The average purchase price of per acre land was around Rs.18.50 lacs. Thereafter, Sh. Atul Bansal, Director of ABW Infrastructure Ltd. And his associate companies had taken over these companies alongwith entire land @ Rs.55 lacs per acre on 22.04.2008. Investigation has revealed that the earlier directors of these 3 companies were known to Sh. Atul Bansal, before purchase of this land, as they were all engaged in real estate business.”

(k) Learned senior counsel for the petitioners has further argued that in the same CBI charge-sheet, with regard to co-accused Atul Bansal, Director of M/s. Aditya Buildwell Private Limited, in para 16.54, it is observed that since Atul Bansal has applied for grant of licence to set up a township of 190 acres with 15 associate

companies. It is further stated in para 16.136 that Atul Bansal in conspiracy has got wrongful gain through misuse of official position by the public servants. It is also submitted that the CBI investigation clearly show that there is no evidence collected against the petitioners and that is why they were cited as Witness Nos.300 and 301.

Learned senior counsel for the petitioners has submitted that even in the impugned second prosecution complaint filed by Enforcement Directorate, the only allegation against the petitioners, reads as under:-

“16.14 (vii). *Also, it is mentionable that entities namely Shashikant Chaurasia and Dilip Lalwani (As Ex-Directors/shareholders of Sheel Buildcon Pvt. Ltd. Progressive Buildcon Pvt. Ltd. and Ecotech Buildcon Pvt. Ltd.).... Indulged themselves in creating/forming/purchasing land owning companies, further purchasing notified land from farmers under pressure during the notification issued under Section 4 & 6 of the Land Acquisition Act, 1894 and further sold the same to Atul Bansal/ABWIL/Group Companies and earned huge undue profits to the extent of Rs.6.04 crores each lying in the Union Bank of India, Patel Nagar Branch, New Delhi Saving Bank Account No.308002050000155 & 308002010043649 respectively which is “Proceeds of Crime” as per Section 2(1)(u) by involving section 3 r/w section 70 of the PMLA.”*

(I) Learned senior counsel for the petitioners has further argued that as per CBI charge-sheet filed on 01.02.2018, the petitioners are cited as witnesses whereas in the first and supplementary prosecution complaint by

the Enforcement Directorate, the petitioners were not arraigned as an accused, however, only in the second prosecution complaint, the petitioners were arraigned as accused Nos.5 and 6 on 05.06.2020 with the only allegations as referred to in Para 16.14.

(m) Learned senior counsel for the petitioners has submitted that in view of the CBI charge-sheet and other facts, the prosecution of the petitioners by the Enforcement Directorate is liable to be quashed.

(n) Learned senior counsel for the petitioners has further referred to a judgment of the Hon'ble Supreme Court "**Nikesh Tarachand Shah vs Union of India**", 2018(11) SCC 1. The operative part of the said judgment, reads as under:-

*"7. Having heard learned counsel for both sides, it is important to first understand what constitutes the offence of money laundering. Under Section 3 of the Act, the kind of persons responsible for money laundering is extremely wide. Words such as "whosoever", "directly or indirectly" and "attempts to indulge" would show that all persons who are even remotely involved in this offence are sought to be roped in. **An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and "proceeds of crime" is defined under the Act, by Section 2 (u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a "scheduled offence" (which is referred to in our judgment as the predicate offence). Thus, whoever is***

involved as aforesaid, in a process or activity connected with "proceeds of crime" as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property."

(o) Learned senior counsel for the petitioners has further contended that in view of the judgment of **Nikesh Tarachand Shah's case (supra)**, it is apparent that Section 44 provides for a trial of "scheduled offence" and the offence of money laundering together by the same Special Court which is to try such offence under the Code of Criminal Procedure as if it is a Court of Sessions. It is submitted that the provisions of Section 2(1)(u) of the PMLA Act, shows that **"Proceeds of Crime"** is the property derived from the criminal activity relatable to the particular schedule/predicate offence.

(p) Learned senior counsel for the petitioners has further submitted that in the statement recorded under Section 161 Cr.P.C., before the CBI, a specific question was asked *"on whose direction, the application for licence was submitted to the Director, Town & Country Planning in collaboration of M/s. A.B.W. Group, for obtaining the*

licence”. The petitioners replied that “*the petitioners’ company had not filed any application for grant of licence and even never authorized anyone else to file an application for licence from DTCP*”.

(q) It is also submitted that the companies of the petitioners never passed any resolution nor given any authority or ever entered into agreement or MOU with A.B.W. for filing application for licence. Similar reply was given while replying to such similar questions when Enforcement Directorate recorded their statements under Section 50 of the PMLA Act. It is further argued that on the basis of the same statement, the CBI has termed the petitioners as witnesses whereas the Enforcement Directorate has without any further evidence, which is of documentary evidence, has nominated the petitioners as an accused.

In reply, learned senior counsel for the respondent – CBI has not disputed the factual position and has not opted to file reply on behalf of CBI.

Separate reply by way of Assistant Director, Directorate of Enforcement, Chandigarh is filed in which, after verifying the detailed investigation conducted by CBI as well as Enforcement Directorate, it is submitted that the offence under the PMLA Act is an independent offence of the predicate offence and to launch prosecution under Section 3 of the Act, it is not necessary that a predicate offence should have been committed. It is also submitted that the Hon’ble Supreme

Court in “**Rameshwar vs State of Haryana**”, 2018(6) SCC 215, has observed that the role of the middlemen, who have been unjustly enriched at the expense of the landholders and public interest, which was to be achieved by acquisition, should be investigated by CBI and the petitioners are middlemen and therefore, the offence is made out.

Learned counsel for respondent No.2 has referred to a judgment of the Sikkim High Court in “**Usha Agarwal vs Union of India**”, 2018 CrI. Law Journal 691; the judgment of Kerala High Court in “**A.K. Samsuddin vs Union of India and others**”, 2016 SCC (Online) Ker. 24144, and the judgment of Madras High Court in “**M. Shobana vs Assistant Director, Directorate of Enforcement**”, 2013 SCC (Online) Mad. 2961, wherein it has been observed that the proceedings under the PMLA are independent proceedings and even if a person is not booked under the "scheduled offence", he could still be prosecuted for an offence under Sections 5 and 8 of the PMLA Act.

In reply, learned senior counsel for the petitioners has argued that in pursuance of the direction by the Hon’ble Supreme in **Rameshwar’s case (supra)**, the CBI has conducted a detailed enquiry and cited the petitioners as witnesses as no evidence was found against the petitioners that they are the middlemen. It is further submitted that in the first prosecution complaint filed by the Enforcement Directorate as well as in the supplementary prosecution complaint filed by the Enforcement Directorate, the petitioners were never arraigned as accused and it is only in the second prosecution complaint that the petitioners have been arraigned as an accused, without there being any evidence against them as they have made similar statement before the

CBI under Section 161 Cr.P.C. as well as under Section 50 of the PMLA Act that they never applied for any licence for development of any project and have purchased the land on the advice of Lalit Modi and later on, the companies of the petitioners were purchased by M/s. A.B.W. Group through Atul Bansal, who is an accused even in CBI proceedings. Further, it is argued that in view of the judgment of the Hon'ble Supreme Court in ***J. Sekar @ Sekar Reddy's case (supra)***, the chances of proving the allegations even for the purpose of prosecution under the PMLA Act are very bleak and therefore, the prosecution is liable to be quashed as no prima facie case on the face of second prosecution complaint is made out against the petitioners.

After hearing the counsel for the parties and going through the report of CBI; the statement recorded by CBI under Section 161 Cr.P.C. of both the petitioners as well as recorded under Section 50 of the PMLA by the respondent – Enforcement Directorate and from the perusal of the first prosecution complaint; the second prosecution complaint filed under the PMLA as well as the impugned supplementary prosecution complaint, this Court find merit in the case on the following grounds:-

(a) Initially the FIR was registered by the State Police and later on, the same was transferred to CBI in view of the direction of the Hon'ble Supreme Court in Rameshwar's case (supra).

The CBI, on conclusion of the investigation, submitted its report under Section 173(2) Cr.P.C. before the Special Judge, CBI as well as under PMLA, in which both the petitioners were arraigned as a witness Nos.300 and 301.

As noticed above, in the CBI charge-sheet, in paragraph 16.37 and 16.38, the CBI did not find any cogent evidence to arraigned the petitioners as an accused in those proceedings.

In Para 16.54, Atul Bansal, Director of Aditya Buildwell Private Limited was arraigned as an accused by CBI as he has applied for grant of licence to set up a township and in para 16.136, the CBI investigation suggest that Atul Bansal, in conspiracy with public servants has got the wrongful gain, therefore, as per the CBI investigation, no evidence has come on record against the petitioners and thus, they were only cited as witness Nos.300 and 301.

(b) The CBI investigation further suggest that the petitioners are not accused in the charge-sheet, submitted by CBI under the "scheduled/predicate offence".

Though, it is well settled that the prosecution under Section 3 of the PMLA, for an offence of money laundering is an independent offence of the predicate offence and even in the absence of a predicate offence, the prosecution under Section 3 can be launched, however, this proposition of law is not applicable in instant case as it is not the case of the Enforcement Directorate that no scheduled or predicate offence is committed by petitioners rather the CBI registered a case on direction of Hon'ble Supreme Court and after thorough investigation submitted report under Section 173(2) Cr.P.C. and the perusal of the investigation by CBI do not suggest that the petitioners have committed any offence.

(c) Even it is the own case of the Enforcement Directorate that the first complaint No.ECIR/CDZO/04/2015 was filed on 24.09.2015, in which the petitioners were not arraigned as an accused.

It is also the own case of the Enforcement Directorate that in the supplementary complaint, the statement of the petitioners were recorded under Section 50 of the PMLA, in which specific question was put whether the petitioners through their company have ever applied for obtaining a licence for setting-up a project/township, to which the petitioners replied in negative and on completing the investigation, it was found that the petitioners had only made investment through their 03 land owning companies.

Even in this complaint, the petitioners were not arraigned as an accused, however, after 02 years of filing the 1st complaint, the impugned supplementary prosecution complaint was filed on 05.06.2021, in which for the first time, the petitioners were arraigned as accused No.5 and 6.

A perusal of this complaint show that all the persons, who are accused in the CBI prosecution were arraigned as an accused along with the petitioners.

(d) In paragraph 16.14(vii), as reproduced above, it is stated that the petitioners are Ex-directors/shareholders of M/s. Sheel Buildcon Private Limited, M/s. Progressive Buildtech Private Limited and M/s. Ecotech Buildcon Private Limited and were indulged in purchasing land through land owning companies and have even purchased notified land from the farmers and then, sold it to Atul Bansal/ABWIL Group of companies and earned huge profits.

There is no mention in the entire complaint that the 03 land owning companies, in which the petitioners were shareholders with one Lalit Modi, who was the Incharge of the working of the company, had ever applied for obtaining any licence from any department of the State of Haryana.

Even, there is no allegation that the petitioners

were found indulged in conspiracy with the State functionaries, who were competent to grant such licence and the only allegation is that the petitioners have purchased the land, which was later on, sold to M/s. A.B.W. Group of Companies through Atul Bansal and in that process, they have earned huge profits.

(e) This Court find force in the arguments of learned senior counsel for the petitioners that the petitioners through their companies have only made investment of money and purchased the land, in a legalized manner through registered sale deeds from November, 2004 to November, 2005 and later on in the year 2006, the said 03 land owning companies were purchased by Atul Bansal of M/s. A.B.W. Group, therefore, there is no evidence on record either of applying for licence for the purpose of setting-up of some township for earning profit nor there is any evidence collected by the Enforcement Directorate regarding any conspiracy of the petitioners with other co-accused, much less at the cost of repetition, it is observed that even the CBI investigation led to the same conclusion and therefore, in view of the judgment of the Hon'ble Supreme Court in J. Sekar @ Sekar Reddy's case (supra), on the bare perusal of the impugned prosecution complaint filed by the Enforcement Directorate it is based on preponderance of probabilities and the investigation, as per the impugned complaint itself, do not prove the case against the petitioners beyond reasonable doubt. Therefore, from the bare perusal of the allegations and the material collected in support thereof, it can be safely held that no prima facie offence is made out against the petitioners.

(f) As per Section 44 of PMLA, it is clearly provided that the trial of the "scheduled offence" of money laundering is to be tried together by the same

Special Court, which is to try offence under the Code of Criminal Procedure, therefore, once in the "scheduled offence", the petitioners are cited as witness, their prosecution under the PMLA with the same set of allegations, is nothing but misuse of process of law.

(g) A bare perusal of the statement recorded by CBI under Section 161 Cr.P.C. and the statement recorded by the Enforcement Directorate under Section 50 of the PMLA, show that a specific question was put to the petitioners, on whose direction, the application for licence was submitted to the Director, Town & Country Planning, in collaboration of M/s. A.B.W. Group and the consistent stand of the petitioners in both the statements is that the petitioners' company neither applied for grant of licence nor moved any such application. It was also specifically stated that the petitioners never authorized any other person to file any application for licence with the office of Director, Town & Country Planning, therefore, this Court find that the investigation conducted by CBI finding that the petitioners have not committed any "scheduled offence" and therefore, they are cited only as witness Nos.300 ad 301 in the charge-sheet, the prosecution of the petitioners under the PMLA, only on the basis of a preponderance of probabilities cannot be permitted.

(h) In the first two complaints filed by the Enforcement Directorate, the petitioners were not arraigned as an accused and in the impugned second supplementary statement, the only allegations as per para 16.14(vii) are that the petitioners have purchased the land through their companies, which amounts to proceeds of crime under Section 2(1)(u) read with Sections 3 and 17 of the PMLA.

From the perusal of the impugned complaint, on the face of it, it cannot be held that the alleged proceeds

of crime as stated in the impugned complaint is a property derived from the criminal activity relatable to a particular schedule or predicate offence, which is not proved as per the CBI investigation.

(i) From the bare perusal of the CBI charge-sheet, the statement of the petitioners under Section 161 Cr.P.C. as well as 50 of the PMLA, no offence is made out against the petitioners.

(j) In view of the judgment of the Hon'ble Supreme Court in Joti Parshad's case (supra), from the perusal of the impugned complaint, there is no material to show that the petitioner was a party knowingly or had reason to believe that he is party in an offence committed by the other accused, who are facing trial in prosecution for scheduled offence. Even as per Section 24 of the PMLA, it is clear that even a person in possession or connected with "proceeds of crime" may or may not be charged with offence of money laundering, unless the requirement of Section 3 of PMLA is satisfied.

In the present case, neither there is anything to raise a presumption of fact or law that any of the petitioners were aware that the purchase of land by their companies, sale consideration of which was paid by another company and duly accounted for in their Income-tax returns and later on, the sale of the entire share in the company to M/s. A.B.W. Group through banking channels were "proceeds of crime" deriving from any scheduled offence.

Even there is nothing on record to show that the petitioners were intentionally projecting or claiming any "proceeds of crime" as untainted one. Therefore, in the absence of the same, merely because in the scheduled offence, the CBI investigation suggest that the other accused who had applied for obtaining licence from the department of the State of Haryana in conspiracy with

the State functionaries, wherein the petitioners are cited only as witnesses, in the absence of any material, the offence of money laundering under Section 3 of the PMLA is not attracted from the bare perusal of the complaint.

(k) In view of the judgment in Gagandeep Singh’s case (supra) and Jafar Mohammed Hasanfatta’s case (supra), this Court find that no "scheduled offence" was made out against the petitioners as per CBI investigation and therefore, the proceedings under the PMLA Act, on the basis of the allegations in the impugned complaint are not established against the petitioners.

In view of what have been discussed hereinbefore, the present petition is allowed and the impugned prosecution complaint No.ECIR/CDZO/04/2015 titled as “*Directorate of Enforcement vs Smt. Sona Bansal and others*”, as well as the order dated 30.06.2020 passed by the Special Judge, PMLA, and subsequent proceedings arising therefrom are hereby quashed *qua* the petitioners, who are accused Nos.5 and 6.

(ARVIND SINGH SANGWAN)
JUDGE

19.05.2022

yakub

Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No