



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on: March 07, 2024**

Pronounced on: July 19, 2024

+ **W.P.(CRL.) 2903/2019 & Crl.M.As.38025/2019 & 38028/2019**

SATHISH BABU SANA

..... Petitioner

Through: Mr.Siddharth Aggarwal, Senior Advocate with Ms.Stuti Gujral, Ms.Shaurya Singh, Mr.Saikh Bakhtiyar, Ms.Rudrali Patil & Mr.Akshat Gupta, Advocates

Versus

DIRECTORATE OF ENFORCEMENT & ANR.Respondents

Through: Mr.Zoheb Hossain, Special Counsel for ED with Mr.Vivek Gurnani, Mr.Kartik Sabharwal, Mr.Baibhav & Ms.Manisha Dubey, Advocates

+ **W.P.(CRL.) 384/2019**

SH. PRADEEP KONERU

..... Petitioner

Through: Mr. Mukul Rohtagi, Senior Advocate, Mr. Jayant Bhushan, Senior Advocate with Ms. Devanshi Singh, Mr.Anirudha Deshmukh, Mr. Mahesh Agarwal, Mr. Rishi Agrawala, Mr. Ankit Banati, Mr. Abhay Agnihotri and Ms. Tarini Khurana, Advocates

Versus

CENTRAL BUREAU OF INVESTIGATION & ANR. ..Respondents

Through: Mr. Chetan Sharma, Additional Solicitor General with Mr.Ripu Daman Bhardwaj, CGSC, Mr. Amit Gupta and Mr. Vikramaditya, Advocates for CBI



Mr. Parvinder Singh, SP, CBI, AC-III
and Insp. S. Kumar in person
Mr. Zoheb Hussain, Special Counsel
with Mr. Vivek Gugnani, Mr. Baibhav,
Mr. Kartik Sabharwal and
Mr. Kanishk Maurya, Advocates for
ED

+ **W.P.(CRL.) 2353/2019**

SH. PRADEEP KONERU

..... Petitioner

Through: Mr. Mukul Rohtagi, Senior Advocate,
Mr. Jayant Bhushan, Senior Advocate
with Ms. Devanshi Singh,
Mr. Anirudha Deshmukh, Mr. Mahesh
Agarwal, Mr. Rishi Agrawala,
Mr. Ankit Banati, Mr. Abhay
Agnihotri and Ms. Tarini Khurana,
Advocates

Versus

DIRECTORATE OF ENFORCEMENT & ANR. Respondents

Through: Mr. Zoheb Hussain, Special Counsel
with Mr. Vivek Gugnani,
Mr. Baibhav, Mr. Kartik Sabharwal
and Mr. Kanishk Maurya, Advocates
for ED
Mr. Chetan Sharma, Additional
Solicitor General with Mr. Ripu
Daman Bhardwaj, CGSC, Mr. Amit
Gupta and Mr. Vikramaditya,
Advocates for CBI
Mr. Parvinder Singh, SP, CBI, AC-III
and Insp. S. Kumar in person



CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

JUDGMENT

SURESH KUMAR KAIT, J

1. An investigation was carried out by the Directorate of Enforcement ('DoE') under the provisions of Foreign Exchange Management Act, 1999 ('FEMA') against accused Moin Akhtar Qureshi on the allegation that he through his company, namely, India Premier Services Pvt. Ltd. (IPSPL) applied for obtaining Concession Agreement from M/s DIAL (Delhi International Airport Limited) for running lounge services at Terminal-3 at IGI Airport, Delhi. The permission required involvement of various Government agencies for providing various security clearances. The BBM messages and interception indicated that certain Government servants were in close touch with accused Moin Akhtar Qureshi and some other Government servants dealing with the case were providing information to accused Moin Akhtar Qureshi about the movement of the file, and other public servants not connected with the case were persuading the officers in *mala fide* way to give permission. Some conversations have reference to the facilitation money changing hands. However, the permission was not granted due to observations by Intelligence Bureau.

2. There were allegations that Moin Akhtar Qureshi was able to procure undue relief against illegal favours by obtaining huge amount of money for the work done which was taken in the name of Government



servants/politicians and the said public servants illegally either obtained the money themselves or through their kith and kin. References were also collected from the Income Tax Department which revealed that accused Moin Akhtar Qureshi had taken huge amount of money from different persons for obtaining undue favours and he, in connivance with public servants, exercised his personal influence or by illegal and corrupt means.

3. The above facts attracted the provisions of Section 120-B IPC, Sections 7, 8, 9, 10, 11 and 13(1)(d) read with Section 13(2) of Prevention of Corruption Act, 1988. The Directorate of Enforcement, on the basis of the said material, sought an investigation from the Central Bureau of Investigation ('CBI'). A letter/complaint dated 16.02.2017 was sent by the Enforcement Directorate, and based thereupon, CBI registered FIR bearing No.RC224/2017/A/0001, under Sections 8, 9, 13 (2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988 ('PC Act') read with Section 120-B of Indian Penal Code, 1860 ('IPC') for hatching criminal conspiracy, taking illegal money to influence a public servant and for exercise of personal influence with public servant and abuse of official position by public servant against accused persons, namely, Moin Akhtar Qureshi, Aditya Sharma, Pradeep Koneru, A.P. Singh and other unknown persons.

W.P.(CRL.) 2903/2019

4. Petitioner-Satish Babu Sana has preferred W.P.(Crl) 2903/2019 under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking to declare provisions of Section 50(2) of Prevention of Money Laundering Act, 2002 ('PMLA') as unconstitutional being *ultra vires* and



violative of Articles 14, 20 and 21 of Constitution of India and Section 132 of Indian Evidence Act, 1872 ('IEA').

5. During the course of investigation by the Department of Enforcement, searches were conducted at various places of Moin Akhtar Qureshi and his companies, which resulted into extraction of BBM messages for the period 2011 to 2014 and other incriminating documents authenticated by service provider Blackberry, Canada, which revealed he had taken huge amount of money from different public persons using corrupt practices, through illegal means. The data so procured, revealed name of Satish Sana.

6. On 12.05.2017, petitioner-Satish Babu Sana received summons under Section 50 of PMLA from respondent No.1-DoE with direction to appear on 12.05.2017. The petitioner claims to have appeared before the competent authority and his statement under Section 50 of PMLA was recorded on the said date. Petitioner again received summons for appearance on 19.05.2017, 11.07.2017, 13.07.2017 and 14.07.2017. Petitioner claims to have appeared on each and every date before the competent authority and his statement under Section 50 of PMLA was recorded on every dates mentioned above.

7. On 23.10.2017, a complaint/charge-sheet under Section 45 of PMLA was filed by respondent No.1/DoE before the concerned court wherein petitioner-Satish Babu Sana was cited as prosecution witness No.27 in the list of witnesses attached to the complaint.

8. Thereafter, a supplementary charge-sheet was filed by respondent No.1-DoE. Petitioner was again summoned under Section 50 of PMLA and was directed to appear on 27.02.2019 before the competent authority, where again his statement under Section 50 of PMLA was recorded.



9. Petitioner claims to have again received summons dated 18.07.2019 from respondent No.1-DoE under Section 50 of PMLA where he was cited as a witness.

10. Petitioner-Satish Babu Sana, received another summons under the provisions of *Foreign Exchange Management Act (FEMA)* and was asked to appear before the competent authority on 25.07.2017. According to petitioner, being a law abiding citizen, he appeared before the competent authority on the said date, i.e. 25.07.2019, at 11:30 AM and his statement was again recorded by the concerned Investigation Officer, however, he was made to leave at about 09:30 PM with summons in his hand for appearance on the next date, i.e. 26.07.2019, at 10:30 AM.

11. Petitioner claims to have again appeared before the competent authority on 26.07.2019, however, he was made to sit till 09:30 PM when he was informed that he is under arrest. He was informed that there were contradictions in his statements; therefore, he was taken into custody by the Investigation Officer under Section 19 of PMLA.

12. Petitioner was produced before the Court of Magistrate on 27.07.2019, seeking his custodial remand for fourteen days, however, the court granted it for five days. Petitioner claims to have filed bail application on 31.07.2019 which got listed on 01.08.2019 before learned Special Judge, PMLA. Vide order dated 01.08.2019, his custodial remand was further extended for nine days, with direction to the State to file reply to the bail application of petitioner. However, again, the respondent sought extension of judicial remand of petitioner for fourteen days, which was allowed and his bail application was listed for 17.08.2019.

13. On 19.08.2019, the learned PMLA Court allowed petitioner's bail



application and he was granted bail.

14. The petitioner has approached this Court seeking a declaration that Section 50(2) of the PMLA is constitutionally invalid/ unconstitutional, and *ultra virus* of Section 132 of the Indian Evidence Act and Articles 14, 20 (3) and 21 of the Constitution of India, in case of a witness to a case. A declaration is sought that provisions of Section 50(2) of PMLA shall not apply to any person who has been arrayed and shown as a witness in a complaint. Hence, a writ of certiorari is sought to be issued to quash the summons dated 19.7.2019 and 25.7.2019.

15. During pendency of the present petition, this Court vide order dated 14.10.2019 had stayed operation of summoning order dated 30.09.2019 passed by the learned Trial Court whereby petitioner- Satish Babu Sana was directed to tender his further statement under Section 50(2) of the Act, 2002.

W.P.(Crl) 384/2019

16. Similarly, during search conducted at various places of Moin Akhtar Qureshi and his companies by the Department of Enforcement and extraction of BBM messages for the period 2011 to 2014 and other incriminating documents, which were authenticated by service provider Blackberry, Canada, it came to knowledge that petitioner- Pradeep Koneru is one of the persons who had given huge amount of money to Moin Akhtar Qureshi, through illegal means.

17. During the course of investigation, the Enforcement Department summoned the petitioner for appearance on 01.05.2017 and his statement under Section 50 of PMLA was recorded.

18. According to petitioner, between the years 2017 till 2018, he was



telephonically summoned 4-5 times by the Enforcement Department and he always appeared before the Department. Upon completion of investigation, charge-sheet under Section 45 of the PMLA was filed before the competent Court of jurisdiction wherein petitioner-Pradeep Koneru was arrayed as prosecution witness No.26

19. Petitioner claims to have also travelled abroad during this period. However, on 19.05.2018, he was apprehended at the airport on the basis of Look Out Circular ('LOC') and he was shocked to learn that respondent No.1-CBI had conflict of opinion and he was recommended for arrest. The petitioner challenged LOC by filing W.P.(Crl) 2962/2018, which was subsequently allowed by this Court vide order dated 02.04.2019.

20. On 02.02.2019, Petitioner-Pradeep Koneru preferred present petition under Articles 226 & 227 of the Constitution of India, read with Section 482 Cr.P.C. read with Articles 14 and 21 of the Constitution of India, seeking quashing of Sections 24, 50 and 70 of PMLA in view of provisions of OM No.25016/31/2010-IMM dated 27.10.2010 issued by the Ministry of Home Affairs, Government of India.

21. This Court vide order dated 05.02.2019 granted interim protection to the petitioner *inter alia* directing the respondent-CBI to not take any coercive steps against him.

22. During pendency of the present petition, petitioner was again summoned on 23.07.2019 under the provisions of Section 50 of PMLA. However, since petitioner had to travel abroad so on 28.07.2019, he nominated his representative to appear on the next date i.e. 29.07.2019. Petitioner claims to have informed the CBI vide his letter dated 16.08.2019 in respect of his travel to United States of America and Dubai from



22.08.2019 to 25.08.2019, however, on 19.08.2019 he received summons for personal appearance, without any representative. He was subsequently arrested and his status was changed from being a witness to the accused. The petitioner is, thus, also seeking quashing of R.C. No.224/2017.A.0001 dated 16.02.2017, registered by the respondent No.1-CBI.

W.P.(CrI) 2353/2019

23. Petitioner-Pradeep Koneru has also preferred W.P.(CrI) 2353/2019 under Article 226 of the Constitution of India read with Section 482 Cr.P.C. seeking to declare Section 50(2) of PMLA as constitutionally invalid/unconstitutional and *ultra vires* of Section 132 of Indian Evidence Act and Articles 14, 20(3) and 21 of the Constitution of India.

24. Petitioner has further sought a declaration that Section 50(2) of PMLA is not applicable to a person who has been arrayed as a witness in the complaint. In addition, petitioner has also prayed for quashing of summons dated 19.07.2019 and 25.07.2019 as void, *ab initio* and quash the proceedings arising out of the ECIR No.2/2017 being violative of Section 132 of IEA and Articles 14, 20 and 21 of the Constitution of India.

25. Petitioner-Pradeep Koneru has averred that the Directorate of Enforcement, Department of Revenue, while investigating certain violations of the FEMA came to the conclusion that one Moin Akhtar Qureshi was guilty of in connivance with several public servants in exercising influence over the aforesaid public servants through corrupt or illegal means and, therefore, he was booked under the provisions of PC Act and relevant provisions of IPC. On the complaint of DoE to the CBI, an FIR was registered being R.C. 224/2017/A/0001 dated 16.02.2017 at Police Station CBI-AC-VI (SIT), Delhi to investigate into the schedule offences.



26. During pendency of the present petition, this Court vide order dated 14.10.2019 had granted *ad interim* relief by staying operation of summons dated 30.09.2019 issued to the petitioner. The interim order is still in operation.

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27. Since the subject matter of these petitions spring out of common FIR bearing No.RC224/2017/A/0001 and commons questions of law have been raised, therefore, with the consent of learned counsel for the parties representing both the sides, these petitions were heard together and are being disposed of by this common judgment.

28. **The brief background of this case**, as has been spelt out in the *complaint under Section 45 of Prevention of Money Laundering Act, 2002* filed by the Directorate of Enforcement [CC/3012 dated 23.10.2017] (509), is that CBI registered a case vide FIR/RC No. 224/2017/A 0001 dated 16.02.2017 under Sections 8, 9, 12 & 13(2) r/w 13(1) (d) Prevention of Corruption Act r/w Section 120-B IPC against Moin Qureshi and its AMQ group of companies for criminal conspiracy, taking illegal gratification to influence various public servants and abuse of official position by them.

29. During the course of investigation, the EoD on the basis of certain documents, opined that Moin Akhtar Qureshi and his associates, in collusion with public servants holding high positions in public office, generated and transacted huge amount of illegal money i.e. proceeds of crime.

30. The extracted BBM messages and documents recovered, revealed that Moin Akhtar Qureshi had taken huge amount of money from different public persons for obtaining undue favours from public servants by using corrupt practices. The **complaint under Section 45 of Prevention of**



Money Laundering Act, 2002 filed by the Directorate of Enforcement

further notes as under:-

“4. b) There are many conversations and BBM messages present which have been exchanged between Moin Akhtar Qureshi and the accused persons (involved in other criminal cases) and also the persons who wanted to seek undue favors from other investigating agencies of Govt. It is also reflected that he was able to procure undue relief for such accused persons by getting them off the hook from investigating agencies. In this way, he also obtained huge amount of money for providing his services towards using his influence. The money was obtained by Moin Qureshi in the name of Govt. servants/ political persons holding public office and the said public servants illegally intum either obtained the money for themselves or through their kin. In support of this, two public persons/ witnesses Satish Sana and Pradeep Koneru came forward and recorded their statements under Section 50 PMLA to the effect that they had paid crores of rupees to Moin Qureshi to help them in getting relief from investigating agency, CBI. The persons apart from Satish Sana and Pradeep Keneru who had paid money to Moin Qureshi, are under investigation.

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7. During the course of ED investigations Sh. Satish Sabna and Sh. Pradeep Kneru in their statement under 50 PMLA have confired that they delivered crores of rupees to Moin Akhtar Qureshi through his employee Sh. Aditya



Sharma for obtaining illegal favour from govt. servant after using his influence. Aditya Sharma who has been confronted with the facts and evidences on record, had confirmed the transactions received by him. The same were also found in tandem with the contents of BBM messages (Retrieved by forensics lab, CERT-In).

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65. That, from the facts and circumstances enumerated above, it is apparent that the aforementioned movable and immovable assets acquired by Moin Akhtar Qureshi in his names or in companies names or in the name of his family members are nothing but proceeds of crime generated by way of corruption and illegal activities by acting as a middle-man after influencing the government servants in providing favors (in their nefarious activities) like cases of Satish Sana, Pradeep Koneru.

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68. The Complainant craves to rely upon the documents and list of witnesses as per Annexure 1 & 2 respectively, annexed to this complaint and craves leave to add further documents and witnesses with the permission of this Hon'ble Court during the course of trial in order to prove the guilt of the accused persons."

31. As per list of witnesses attached to the aforesaid complaint, the name of petitioner- Pradeep Koneru appeared at Sl.No.26 and name of petitioner- Satish Babu Sana appeared at Sl. No. 27. The names shown depict as under:-



LIST OF WITNESSES

<i>S. No.</i>	<i>Name of Witnesses</i>
26.	<i>Pradeep Koneru, S/o Koneru Rajendra Prashad R/o N-10 Crescent Avenue Keshwaperimul Puram, Green ways Road, Chennai, AP</i>
27.	<i>Satisih Babu Sana S/o Lt. Sana Subbarao R/o Villa-72, Hill Ridge Villas, Beside ISB, Gachibawli, Hyderabad, Telangana</i>

32. Thereafter, CBI vide notice under Section 160 Cr.P.C. dated 01.10.2018, summoned petitioner- Satish Babu Sana for investigation and his statement was recorded on 03.10.2018. However, on 15.10.2018, the said petitioner made a complaint to the Superintendent, CBI against the acts of public servants, namely, Rakesh Asthana, Special Director, CBI; Devender Kumar, DSP CBI; Manoj Prasad and Somesh Prasad, on the basis of which a complaint under Sections 7, 13 (2) r/w Section 13(1) (d) of the Prevention of Corruption Act, 1988 and Section 7A of the Prevention of Corruption Act (as amended in 2018) was registered.

33. In the said complaint, petitioner- Satish Babu Sana alleged that pursuant to his summoning in RC 2242017A001 against Moin Akhtar Qureshi and others, he had appeared before the CBI on 12.10.2017 and he was again and again called by Devender Kumar, DSP CBI three- four times. Thereafter, he had left for Dubai, where he met Somesh Prasad and Manoj Prasad, who convinced him that they had good connections in CBI and after talking to some CBI officials, assured him that on payment of Rs.Five Crores, they will get him favourable order in his case. Both these persons showed him profile photo of CBI Director Rakesh Asthana with whom they had spoken in his presence, which photo he tallied from Google search also.



34. In the said complaint, petitioner- Satish Babu Sana complained that he paid amount of Rs.One Crore to Manoj Prasad in his office in Dubai and thereafter, on the asking of Somesh Prasad, gave Rs.1.95 crores to Sunil Mittal on 13.12.2017 in New Delhi. The petitioner also alleged that he was informed that the said amount was given to Rakesh Asthana, in lieu of taking care of case against him. However, petitioner was short of money and Manoj Prasad asked him to pay balance of Rs.Two Crores. Again, he was summoned by the CBI on 19.02.2018 and on 21.02.2018 for questioning and interrogation. Thereafter, he flew to Dubai to meet Manoj Prasad. Petitioner again received notice for appearance in CBI office on 09.06.2018, after making a request to the Investigating Officer, he did not go.

35. On 25.09.2018, when petitioner was leaving for Paris with his family, he was apprehended at Hyderabad Airport pursuant to Look Out Circular issued against him and he was directed to appear before SP, CBI, New Delhi on the next day i.e. 26.09.2018. The petitioner claims to have appeared in CBI office on 01.10.2018 and 03.10.2018, when he was directed and to submit his handwritten statement explaining about his relations with Sukesh Gupta and Moin Akhtar Qureshi.

36. However since petitioner was disturbed due to the ongoing case against him before the CBI and he was yet to make payment of Rs.Two Crore to Manoj Prasad, he claims to have again handed over Rs.Twenty Five Lacs to one Punit in Delhi and also Manoj Prasad to come to Delhi to manage. Thereafter, on the pretext of making travel arrangement of Manoj Prasad, petitioner again gave 25,000 *dhirams* at Dubai through his friend and again got 30,000 *dhirams* delivered to his office.

37. Thereby, the petitioner- Satish Babu Sana in his complaint (RC



13(A)/2018/CBI/AC-III pleaded that the CBI persons, in the name of helping him to come out of the CBI case, had grabbed huge amount of money from him and prayed for legal action against them. **(Page-635)**

38. However, thereafter, ED preferred application before the learned Special Court, CBI seeking petitioner's remand for 14 days for custodial interrogation, alleging that accused Moin Akhtar Qureshi had amassed huge sum of money from public servants, including petitioner-Satish Babu Sana, who has projected the payment of Rs.50 Lacs and Rs.1.5 Crore in the nature of share capital and business expenses, which are in fact proceeds of crime. The ED claimed that petitioner was arrested under Section 19 of the PC Act on 27.07.2019 and his custodial interrogation was required, since he had failed to discharge presumption under Section 24 of PMLA.

39. The learned Trial Court, vide order dated 19.08.2019 released the petitioner on bail on parity with accused Moin Akhtar Qureshi, who was already on bail, subject to the condition that he will cooperate in the investigation as and when called by the Investigating Agency *inter alia* holding as under:-

*“The only other grounds, therefore, to decline bail would as are laid down u/s 439 Cr.P.C. In the instant matter the applicant had been assisting the investigating agency ever since 2017 till the time of his arrest. He has roots in society and there is nothing on record to suggest that there is any likelihood of his absconding in case he is granted bail. In so far as submission of Mr. Singh regarding the accuse having not cooperated in investigation is concerned, Ld. Counsel for the accused has relied upon the judgment in (2017) 9 SCC 714 titled as **Santosh Vs. State of Maharashtra**, wherein Hon'ble Supreme Court*



held that not confessing cannot be considered same as not co-operating. Mr. Singh also expressed his apprehension regarding possibility of accused interfering with the investigation/ tampering with the evidence. There is nothing on record to show that accused did interfere with the investigation all this time in any manner except for the allegation that he did not co-operate in the investigation.

In view of the facts as they are since accused Moiin Akhtar Qureshi has already been granted bail and the role of applicant is no graver than his role in the case, the application of accused Satish Babu Sana seeking grant of bail is allowed.

The applicant is admitted to bail on furnishing personal bond in the sum of Rs.5 lakh with one surety of like amount.”

40. The petitioner- Satish Babu Sana has, by way of this petition, challenged his arrest on the ground that statement recorded under Section 50 of PMLA is a substantive piece of evidence as against the statement recorded under Section 161 Cr.P.C., which is admissible under Section 193 read with Section 228 of the IPC.

41. During the course of hearing, learned senior counsel appearing on behalf of petitioner submitted that based upon petitioner's statement recorded under Section 50 of the Act, he was determined as a witness to the complaint under Section 45 PMLA filed against the accused persons and in all his subsequent statements recorded under Section 50 of the Act, recorded one after another, no new fact or situation has emerged and so, conversion of his status from a witness to an accused, on the ground that there are contradictions in his statements, is in violation of the provisions of



Section 63 of PMLA and Section 132 of the Evidence Act as well as Articles 14, 20 and 21 of the Constitution of India.

42. Learned senior counsel for petitioner further submitted that summoning, arrest and prosecution of petitioner under Section 50 of PMLA, after arraying him as a witness premised upon his earlier statement recorded under Section 50 of PMLA, is illegal and against the provisions of law.

43. Reliance was placed upon decision of Kerla High Court in ***Kavitha G Pillai Vs. The Joint Director, Director of Enforcement*** 2017 SCC OnLine Ker 10118. Hence, prayed a writ of mandamus is directed to be issued against respondent No.1- DoE declaring change of status of petitioner from a witness to an accused, bad in law and to quash the impugned summoning orders dated 19.07.2019 and 25.07.2019 issued by respondent No.1 as *void-ab-initio*. In addition, quashing of ECIR No.2.2017 by declaring it illegal and violative of Section 132 of Evidence Act and Articles 14, 20 and 21 of Constitution of India.

44. In the petitions preferred by petitioner- Pradeep Koneru, he has averred that during investigation against one Moin Akhtar Qureshi and his group of companies, it transpired that he was acting as a middlemen for certain public servants. The allegation against the petitioner was that he was acting as a middleman, who had given money to Moin Akhtar Qureshi for purported benefit, which is termed as “proceeds of crime”. On the basis of the investigation, complaint under Section 45(1) of PMLA was filed against Moin Akhtar Qureshi and statement of petitioner under Section 50 PMLA was recorded on 01.05.2017. After investigating, the petitioner was cited as witness at Serial No.26 in the complaint.

45. However, thereafter, petitioner was summoned on 23.07.2019 and



19.08.2019 under Section 50 of PMLA, arrayed as an accused.

46. Learned senior counsel appearing on behalf of petitioner- Pradeep Koneru submitted that prior to filing of the complaint, petitioner attended the Bureau as many as seven times as and when telephonically called and summoned by the Investigation Officer; he had given similar version in all his statements recorded under Section 50 of the Act and respondent has not been able to show any new fact or allegation to summon him in the garb of investigation. Learned senior counsel further submitted that statement recorded under Section 50 PMLA is equivalent to statements recorded under Sections 193 and 228 of the IPC in judicial proceedings and so, his 'status' acquired after recording of statement under Section 50 PMLA cannot be changed unless exceptionally unusual or subsequent facts emerge on record.

47. Learned senior counsel for petitioner submitted that respondent No.1 cannot change acquired status of a "witness" to an "accused" when the investigation qua the petitioner stood concluded, especially when in his version, the petitioner has helped the prosecution case and therefore, has been cited as a "witness".

48. Also submitted that the main accused in the present FIR are Ex Directors of CBI and Moin Akhtar Qureshi and since the version putforth by the petitioner- Pradeep Koneru before the DoE and CBI is similar, he has wrongly been arrayed as an accused.

49. Learned counsel submitted that petitioner had always, as and when directed, appeared before the ED and CBI, however, Look Out Circular was issued against him without any information or intimation. Learned senior counsel submitted that after filing of the complaint, the petitioner for the first time was summoned on 23.07.2019, which required him to appear on



29.07.2019 in person or through a representative. However, petitioner had to travel abroad and this information was duly given to the concerned Investigating Officer of CBI and also via e-mail dated 21.08.2019, that he has to travel United States of America from 22.08.2019 till 25.08.2019 and in view of the fact that LoC issued against him was set aside by this Court vide order dated 02.04.2019 in W.P.(CRL.) 2962/2018 subject to certain conditions, observing that *“since, the petitioner has been regularly joining investigation, there is no justification in keeping the present Look-out Circular dated 16.05.2018 alive”*, his non-appearance was neither deliberate nor attempt to avoid the investigation.

50. Learned senior counsel submitted that a statement recorded under Section 50 of PMLA has rigour of judicial proceedings and based upon his statement, he was arrayed as a “witness” and after filing of the report/complaint under Section 45 PMLA, statement under Section 50(2) PMLA cannot be recorded. Section 50(2) PMLA is a special provision for conduct of investigation, which applies during the stage of ‘any investigation or proceeding under this Act’ and since these proceedings culminated into filing of a complaint under Section 45 PMLA and the cognizance has been taken by the court, therefore, any further statement which can impinge upon the status of a person can only be recorded by the court either under Section 193 or Section 319 of the Penal Code.

51. Learned senior counsel empathically submitted on behalf of petitioner- Pradeep Koneru that if the impugned summoning of petitioner is allowed to be sustained, then the entire rigour of Section 50 (2) should be declared to be unconstitutional. In the alternative, it is prayed that Section 50(2) should be constitutionally saved by holding that no supplementary



statement, on the same facts which have been recorded in the earlier Section 50(2) Statements, be allowed to be taken once a person acquainted with the facts of a case has been accorded a status of a witness.

52. Learned senior counsel for petitioner vehemently submitted that O.M. No. 25016/31/2010-IMM dated 27.10.2010 issuing the guidelines for issuance of Look Out Circular Notices cannot be said to be procedure established by Law and ought to be struck down as unconstitutional being violative of Article 21 of the Constitution. Also submitted that to challenge the 2010 Notification under which an LoC is issued, is different from challenging the issuance of LoC itself in a particular fact scenario. It is averred on behalf of the petitioner- Pradeep Koneru that the 2010 instructions being administrative (and at best executive) in nature, cannot be a source of power in absence of any Legislation/delegated Legislation providing for deprivation of such liberty.

53. Learned senior counsel submitted that if the allegations against a person, to be investigated before ED or CBI, are identical, which ever agency investigates later would be violating rights of a citizen available to him under Articles 20 and 21 of the Constitution of India. If an investigating agency has investigated a set of charges against a person, the second agency must take into account the investigation already undertaken, so that contrary conclusions are not arrived at. It was submitted on behalf of the petitioner that fair trial includes fair investigation, which is a facet of Article 21 and if once a statement under Section 50 of PMLA is recorded, there can be no occasion to arrest a person in respect of the same transaction.

54. Lastly, learned senior counsel submitted that petitioner has always fully cooperated in the investigation and for this reason only, he was named



in the list of witnesses. However, he has later been arrayed as an accused and LoC has been issued against him. A direction is thus sought to be issued to declare that statement recorded under Section 50 (2) PMLA, 2002 is binding upon any other authority arising out of same case and also that the impugned O.M. of the year 2010 is bad in law and violative of fundamental rights of petitioner under Article 21 of the Constitution. Thus, quashing of FIR No. No.RC224/2017/A/0001, registered at the instance of respondent No.1 and proceedings consequential thereto, is sought by petitioner-Pradeep Koneru.

55. **On the other hand, the stand of respondents** is that the plea of petitioners in the above captioned petitions that no new facts/allegations have emerged which required their summoning, deserves to be rejected as investigations in PMLA proceedings are still continuing and trail of entire proceeds of crime are yet to be ascertained. It is averred by the respondents that even if there are no new facts emerging on record, still there is no bar in summoning a person to verify the facts. As per messages retrieved from BBM of Aditya Sharma, petitioners- Satish Babu Sana and Pradeep Koneru, both had given money to Moin Akhtar Qureshi and investigation in respect of source of funds is still underway.

56. Learned ASG appearing on behalf of respondents submitted that the statements tendered under Section 50 of PMLA have no relation with the change of status from a 'witness' to 'accused'. Section 50 *ibid* merely acts an aid to investigation granting power to specified authorities to gather evidence by way of statements and/or production of records, which results into filing of complaint before the competent court. The power to arrest an accused, in terms of Section 19 *ibid*, has been granted to arrest an accused



after forming reasons to believe that the said persons has committed an offence punishable under the Act and till the conclusion of investigation, role and status of the persons involved may modify on the basis of facts being unravelled in the subsequent investigation.

57. Learned ASG pointed out that upon scrutiny of the BBM messages it has transpired that Moin Akhtar Qureshi had taken huge amount of money from different public persons for obtaining undue favours from public servants at the extant time after exercising his personal influence over them using corrupt practices, through illegal means, thereby influencing them. It is submitted that in the present case, Proceeds of Crime at the time of filing of prosecution complaint were calculated at Rs. 11.09 Crores whereas thereafter rose to Rs.12.79 Crores and so, the new facts have emerged during the investigation.

58. Learned ASG further submitted that Section 132 of the Evidence Act would be applicable to the witness from recording a self incriminating statement in evidence before the Court and not at the stage of tendering a statement under the summons. To attract the provisions of Section 132 of Evidence Act, it is a pre-condition that firstly the person is an accused and secondly, he is compelled to give a statement; whereas in the present case, both the above mentioned pre-conditions are not attracted in the facts of the present case, as the petitioners were not compelled to give a statement in this case.

59. It was submitted by learned ASG that under Section 50(2) of PMLA, Director or Additional Director, Joint Director, Deputy Director or Assistant Director, has the power to summon any person whose attendance is considered necessary to produce any records during the course of any



investigation or proceedings. Also, the statements recorded u/s 50 PMLA are distinct and different from the statements recorded by the police officers during the course of investigation under the provisions of Cr.P.C.

60. With regard to issuance of LoC in respect of petitioner- Pradeep Koneru, the stand of CBI is that he had preferred W.P.(CRL.) 2962/2018 and vide order dated 18.12.2018 had suspended operation of LoC dated 16.05.2018. Thereafter, vide order dated 02.04.2019, this Court had with certain conditions quashed the LoC 16.05.2018 observing that *“since the petitioner has been regularly joining investigation, there is no justification in keeping the present Look Out Circular dated 16.05.2018 alive. The same be recalled by the issuing authority.”*

61. Learned Special Public Prosecutor appearing on behalf of CBI submitted that since there was an apprehension that petitioner- Pradeep Koneru may flee from the country, LoC dated 16.05.2018 was issued against him in the light of OM dated 27.10.2018 whereby investigating agencies, including the CBI, have been permitted to take recourse to LoC in cognizable offences. It was submitted that BBMs messages have revealed that Pradeep Koneru had sent messages to Moin Qureshi concerning CBI cases against his father – Rajender Prasad Koneru and brother- Madhu Koneru and he had sent huge amount of money to him.

62. Learned Special Public Prosecutor submitted that the facts and circumstances of cases of ED and CBI are different and the investigation conducted by ED, in no way shall prejudice the rights of the petitioners in proceedings initiated by the CBI so, it would not be appropriate to quash the FIR. Moreover, no complaint was ever made by petitioner- Pradeep Koneru in respect of extortion of money.



63. To draw attention of this Court to the provisions of Section 8 of PC Act, reliance was placed upon decisions of Hon'ble Supreme Court in *Upendra Rai Vs. Central Bureau of Investigation* 2018 SCC OnLine Del 12856; decision dated 05.02.2014 in *Central Bureau of Investigation Vs. Jitender Kumar Singh* (Crl. Appeal No. 943 of 2008 with Criminal Appeal No. 161 of 2011) and *Babji Vs. State of Andhra Pradesh* (2018) 17 SCC 732. Reliance was also placed upon decision dated 19.12.2019 of High Court of Chattisgarh at Bilaspur in *B.L. Aggarwal Vs. Central Bureau of Investigation and Ors.*

64. With regard to applicability of provisions of Section 120B IPC, reliance was also placed upon decisions in *Yogesh alias Sachin Jagdish Joshi Vs. State of Maharashtra* (2008) 10 SCC 394 .

65. Further, reliance was placed upon decisions in *Union of India Vs. Prakash P. Hinduja and Anr.* (2003) 6 SCC 195; *P. Chidambaram Vs. Directorate of Enforcement* (2019) 9 SCC 24; *Kaptan Singh Vs. Stae of Uttar Pradesh & Ors.* (2021) 9 SCC 35 and *Jitul Jentilal Kotecha Vs. State of Gujarat & ors.* 2021 SCC OnLine SC 1045 by learned Special Public Prosecutor appearing on behalf of CBI.

66. Learned counsel appearing on behalf of ED also similarly stated that investigation in this case is in progress and the petitioners have wrongly averred that no new facts/ allegations are raised requiring summoning of petitioner. It was submitted that petitioners have challenged the Constitutionality of a Statute on an apprehension of arrest and the apprehension has to be reasonable and plausible, which petitioners have not been able to do. Learned counsel for ED submitted that Charges are yet to be framed and trial is yet to commence. The investigation in respect of



proceeds of crime is still underway and Section 50 of PMLA acts as an aid to the investigation, granting power to a specified authority to gather evidence by way of statements and/or production of records and the power under Section 19 of the Act has been granted to arrest an accused after forming reasons to believe that the said person has committed an offence punishable under the Act. Merely because a person has been cited as a witness in earlier proceedings does not place him in any exalted position and during investigation if it is found that he is guilty of money laundering, his role has to be changed from a witness to that of an accused.

67. Attention of this Court was drawn to the fact that several financial transactions between petitioner and Moin Akhtar Qureshi took place and investigation revealed the manner in which acquisition, transfer and subsequent utilization has been done, which culminated into filing of the complaint and so, in terms of Section 19 of the ACT, the petitioners have been arrayed as accused. It was submitted that till conclusion of investigation role and status of persons involved can be changed, based upon the facts and circumstances and the department has been cautious to follow up the procedure of investigation under the provisions of PMLA and Cr.P.C.

68. Learned Special Public Prosecutor submitted that subsequent upon issuance of Provisional Attachment Order 08/2017 in respect of proceeds of crime, prosecution Complaint was filed on 23.10.2017 and thereafter, supplementary complaint dated 17.07.2018 was filed. It was submitted that Section 50(2) PMLA empowers the Director or Additional Director, Joint Director, Deputy Director or Assistant Director 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 and under Section 50 PMLA, the summoned person is required to give truthful statement and is not absolved from speaking truth on the ground that such statement is admissible in evidence and could be used against him. Next submitted that a statement recorded pursuant to Section 50(3) and Section 50 (4) of the PMLA is at a stage of investigation to determine the facts in a particular case and summoning as per Section 50 of the Act, is not an act of prosecution.

69. It was submitted that investigation in this case was initiated under PMLA, 2002 subsequent to registration of FIR u/s 120(B) IPG & PC Act, 1988-Section 8, 9, 12 & 13 (2) r/w 13(1) (d) by CBI.

70. Lastly, it was submitted that in view of the nature and complexity of the transactions involved, the investigation may continue until the entire money trail can be identified, attached and made available for eventual confiscation. During such investigative process, new facts may emerge leading to a change in the position/facts presented earlier before the appropriate Court/Authority. Merely because a person has been cited as a witness in earlier proceedings does not place him in any exalted position.

71. In rebuttal, the averment of learned senior counsel appearing on behalf of both the petitioners was that once petitioners have been arrayed as witness pursuant to recording of their statements under Section 50 of PMLA, they cannot be arrayed as accused in the complaint and the same is illegal and against the provisions of law. Also submitted that undue delay in completion of investigation is itself a ground to quash the FIR. Reliance is placed upon decisions in *A R Antulay Vs. R.S. Nayak* 1992 (1) SCC 225; *Kartar Singh Vs. State of Punjab* (1194) 3 SCC 569; *Pankaj Kumar Vs.*



State of Maharashtra (2008) 16 SCC 117 and *Vijay Madanlal Chaudhary Vs. UOI* (2022) SCC OnLine SC 929. Thus, in view of the above settled position of law, the present petition deserves to be allowed.

72. The submissions advanced by learned counsel representing both the sides were heard at length and the material placed on record has been carefully perused.

73. The undisputed facts of the case are that pursuant to investigation under the provisions of FEMA, 1999 against AMQ Group of Companies and Moin Akhtar Qureshi, it transpired that he has been indulging as a middleman for certain public servants. A complaint was filed by the Directorate of Enforcement with the CBI, based upon which, FIR No.R.C. 224.2017.A.0001 was registered at Police Station CBI-AC-VI (SIT), Delhi on 16.02.2017 to investigate into the schedule offences.

74. During investigation, the Black Berry Messages (BBM) and interception mobile call records of Moin Akhtar Qureshi indicated that the certain Govt. servants were in close touch with him and were providing confidential information to him. Many conversations and BBM messages were exchanged between Moin Akhtar Qureshi and the accused persons involved in other criminal cases and also the persons who wanted to seek undue favors from the CBI. The investigation revealed exchange of money as bribe in the forms of gifts to senior level officers holding sensitive position.

75. During further investigation and scrutiny of BBM it revealed that father of the petitioner, Rajendra Prasad Koneru and his brother- Madhu Kenuru, were arrested by CBI on 03.11.2011 for the offences punishable u/s 120-B, 409, 420, 109, 477 of IPC and u/s 13(2) r/w Sec. 13(1(c) & (d) and



Sec. 15 of PC Act, 1988 and Pradeep Koneru had paid Rs. 5.75 Crore to Moin Akhtar Qureshi and sent several e-mails with regard to the said CBI case.

76. Also it was revealed that Satish Babu Sana had paid amount of Rs.5,00,000 to Moin Akhtar Qureshi by way of claimed investment in M/S Great Heights Infratch Private Limited and as per Forensic Extraction Report in respect of hard disk of mobile numbers 9810035614 and 9711305614 of Moin Akhtar Qureshi, BBM messages retracted, amount of Rs.12,69,00,000/- was paid by Satish Babu Sana to Moin Akhtar Qureshi .

77. The provisions of Section 3 of PMLA provide as under:-

“Whosoever directly or indirectly attempts to indulge or knowingly assist or knowingly is a party or is actually involve in any process of activity connected (Proceeds of Crime including concealment, possession, acquisition, or use or projecting or claiming) untainted property shall be guilty of an offence under money laundering.”

78. Section 2(u) of the Prevention of Money laundering Act, 2002 defines, “Proceeds of crime” as under:-

“Section 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] [or abroad];

[Explanation.- For the removal of doubts, it is hereby clarified that "proceeds of crime"



including property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;]

79. In respect of “proceeds of crime”, the Hon’ble Supreme Court in *Vijay Madanlal Choudhary & Ors. vs Union of India & Ors.* 2022 SCC OnLine SC 929, has observed as under:-

“37. Coming to section 3 of the 2002 Act, the same defines the offence of money-laundering. The expression "money-laundering", ordinarily, means the process or activity of placement, layering and finally integrating the tainted property in the formal economy of the country. However, section 3 has a wider reach. The offence, as defined, captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and not limited to the happening of the final act of integration of tainted property in the formal economy to constitute an act of money-laundering.

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42. From the bare language of section 3 of the 2002 Act, it is amply clear that the offence of money-laundering is an independent offence regarding the process or activity connected with the proceeds of crime which had been derived or obtained as a result of criminal activity relating to or in relation to a scheduled offence. The process or activity can be in any form—be it one of concealment, possession,



acquisition, use of proceeds of crime as much as projecting it as untainted property or claiming it to be so.

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Thus, involvement in any one of such process or activity connected with the proceeds of crime would constitute offence of money-laundering. This offence otherwise has nothing to do with the criminal activity relating to a scheduled offence—except the proceeds of crime derived or obtained as a result of that crime.”

80. In the present case, during the course of investigation by ED, Satish Babu Sana and Pradeep Koneru in their respective statements recorded under Section 50 of PMLA, admitted having paid crores of rupees to Moin Akhtar Qureshi through his employee Sh. Aditya Sharma for obtaining illegal favor from govt. servant(s) after using his influence. Aditya Sharma was also confronted with the facts and evidences on record, who confirmed the monetary transactions received by him. The same were also found in tandem with the contents of BBM messages retrieved by forensics lab, CERT-In. These amounts were found to be sent for Hawala Transactions through Delhi based Hawala Operators which reflected in the BBM messages of Aditya Sharma and Ex. CBI Director AP Singh.

81. Petitioner- Satish Babu Sana in his statement under Section 50 of PMLA admitted having invested Rs. 50 Lacs in farmland business in the company M/s. Great Heights Infratech Pvt. Ltd. of Sh. Moin Akhtar Qureshi and also that he had given cash of Rs.1.5 crores to him. The investigation thus revealed involvement of Satish Babu Sana in acquisition of proceeds of crime by Moin Akhtar Qureshi and that he had paid huge amounts to him to



influence the public servants. He projected the payments of Rs. 50 Lacs and Rs. 1.5 crore, as investment in share capital & business expenses respectively, without any cogent reason or explanation for the same, which are sham transactions.

82. Similarly, Pradeep Koneru also in his statement recorded under Section 50 of the Act admitted that he had to pay more than Rs.5.75 crores to Moin Akhtar Qureshi as he was extorting money for providing help in his family case through his help i.e. Director of CBI A.P.Singh.

83. Satish Babu Sana and Pradeep Koneru have, thus, *prima facie* committed offence of money laundering as defined in Section 3 of the PMLA, 2002 by directly or indirectly indulging in, knowingly assisting, knowingly a party and actually involved in all or 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.

84. The petitioners have challenged the constitutionality of Section 50 of PMLA, which has already been put to rest by the Hon'ble Supreme Court in its Three Judge Bench decision in ***Vijay Madanlal Choudhary Vs. UOI*** 2022 SCC OnLine SC 929, wherein it is held as under:-

“150. The validity of this provision has been challenged on the ground of being violative of articles 20(3) and 21 of the Constitution. For, it allows the authorised officer under the 2002 Act to summon any person and record his statement during the course of investigation. Further, the provision mandates that the person should disclose true and correct facts known to his personal knowledge in connection with the subject matter of investigation. The person is also obliged to sign the statement so



given with the threat of being punished for the falsity or incorrectness thereof in terms of section 63 of the 2002 Act. Before we proceed to analyse the matter further, it is apposite to reproduce section 50 of the 2002 Act, as amended. The same 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

Substituted by Act 2 of 2013, section 22, for “banking company or a financial institution or a company” (w. e. f. 15-2-2013, vide S. O. 343(E), dated 8-2-2013).

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

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153. *Indeed, sub-section (2) of section 50 enables the Director, Additional Director, Joint Director, Deputy Director or Assistant Director to issue summon to any person whose attendance he considers necessary for giving evidence or to produce any records during the course of any investigation or proceeding under this Act. We have already highlighted the width of expression "proceeding" in the earlier part of this judgment and held that it applies to proceeding before the Adjudicating Authority*



or the Special Court, as the case may be. Nevertheless, sub-section (2) empowers the authorised officials to issue summon to any person. We fail to understand as to how article 20(3) would come into play in respect of process of recording statement pursuant to such summon which is only for the purpose of collecting information or evidence in respect of proceeding under this Act. Indeed, the person so summoned, is bound to attend in person or through authorised agent and to state truth upon any subject concerning which he is being examined or is expected to make statement and produce documents as may be required by virtue of sub-section (3) of section 50 of the 2002 Act. The criticism is essentially because of subsection (4) which provides that every proceeding under sub-sections (2) and (3) shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the IPC. Even so, the fact remains that article 20(3) or for that matter **section 25 of the Evidence Act, would come into play only when the person so summoned is an accused of any offence at the relevant time and is being**

* Substituted by Act 13 of 2018, section 208(f), for "Director" (w.e.f. 19-4-2018, vide G. S. R. 383(E), dated 19th April, 2018).

compelled to be a witness against himself.

This position is well-established. The Constitution Bench of this court in *M. P. Sharma* (supra) had dealt with a similar challenge wherein warrants to obtain documents required for investigation were issued by the Magistrate being violative of article 20(3) of the Constitution. This court opined that the guarantee in article 20(3) is



against "testimonial compulsion" and is not limited to oral evidence. Not only that, it gets triggered if the person is compelled to be a witness against himself, which may not happen merely because of issuance of summons for giving oral evidence or producing documents. Further, to be a witness is nothing more than to furnish evidence and such evidence can be furnished by different modes. The court went on to observe as follows :

"Broadly stated the guarantee in article 20(3) is against 'testimonial compulsion'. It is suggested that this is confined to the oral evidence of a person standing his trial for an offence when called to the witness-stand. We can see no reason to confine the content of the constitutional guarantee to this barely literal import. So to limit it would be to rob the guarantee of its substantial purpose and to miss the substance for the sound as stated in certain American decisions. The phrase used in article 20(3) is 'to be a witness'. A person can 'be a witness' not merely by giving oral evidence but also by producing documents or making intelligible gestures as in the case of a dumb witness (see section 119 of the Evidence Act) or the like. 'To be a witness' is nothing more than 'to furnish evidence', and such evidence can be furnished through the lips or by production of a thing or of a document or in other modes. So far as production of documents is concerned, no doubt section 139 of the Evidence Act says that a person producing a document on summons is not a witness. But that section is meant to regulate the right of cross-examination. It



is not a guide to the connotation of the word 'witness', which must be understood in its natural sense, i. e., as referring to a person who furnishes evidence. Indeed, every positive volitional act which furnishes evidence is testimony, and testimonial compulsion connotes coercion which procures the positive volitional evidentiary acts of the person, as opposed to the negative attitude of silence or submission on his part. Nor is there any reason to think that the protection in respect of the evidence so procured is confined to what transpires at the trial in the court room. The phrase used in article 20(3) is 'to be a witness' and not to 'appear as a witness'. It follows that the protection afforded to an accused in so far as it is related to the phrase 'to be a witness' is not merely in respect of testimonial compulsion in the court room but may well extend to compelled testimony previously obtained from him. It is available therefore to a person against whom a formal accusation relating to the commission of an offence has been levelled which in the normal course may result in prosecution. Whether it is available to other persons in other situations does not call for decision in this case."

(emphasis supplied)

85. Admittedly, in the present case, the petitioners in the case registered by the CBI were arrayed as the witnesses to a case under scheduled offences. However, during the process of investigation, case under the



provisions of PMLA has been registered wherein they have been arrayed as accused. The ratio of law laid down by the Hon'ble Supreme Court in *Vijay Madanlal (Supra)*, clearly spells out that it may happen in cases that a person who is witness in offences related to scheduled offences, during his interrogation, may put-forth some material which would indicate his involvement in the commission of offence under PMLA. This Court in a catena of decisions has already held that proceedings under the scheduled offences and PMLA are separate and distinct and have no binding upon each other.

86. The Hon'ble Supreme Court in *Vijay Madanlal (Supra)* further held as under:-

*“112. Reverting to clause (d) of sub-section (1) of section 44, it postulates that a Special Court while trying the scheduled offence or offence of money-laundering shall hold trial in accordance with the provisions of the 1973 Code as it applies to a trial before a court of sessions. Going by the plain language of this provision, no fault can be found for conducting trial in the respective cases in the same manner as provided in the 1973 Code. However, the grievance is about the insertion of Explanation vide Finance (No. 2) Act, 2019. As a matter of fact, this insertion is only a clarificatory provision, as is evident from the opening statement of the provision which says that "for the removal of doubts, it is clarified that". None of the clauses inserted by this amendment travel beyond the principal provision contained in clause (d). Clause (i) of the Explanation enunciates **that the jurisdiction of the Special Court while dealing with the offence being tried under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of***



both sets of offences by the same court shall not be construed as joint trials. This, in fact, is reiteration of the earlier part of the same section, which envisages that even though both the trials may proceed before the same Special Court, it must be tried separately as per the provisions of the 1973 Code. In so far as clause (ii) of the Explanation, at the first glance, it does give an impression that the same is unconnected with the earlier part of the section. However, on closer scrutiny of this provision, it is noted that the same is only an enabling provision permitting to take on record material regarding further investigation against any accused person involved in respect of offence of money-laundering for which complaint has already been filed, whether he has been named in the complaint or not. Such a provision, in fact, is a wholesome provision to ensure that no person involved in the commission of offence of money-laundering must go unpunished. It is always open to the Authority authorised to seek permission of the court during the trial of the complaint in respect of which cognizance has already been taken by the court to bring on record further evidence which request can be dealt with by the Special Court in accordance with law keeping in mind the provisions of the 1973 Code as well. It is also open to the Authority authorised to file a fresh complaint against the person who has not been named as accused in the complaint already filed in respect of same offence of money- laundering, including to request the court to proceed against such other person appearing to be guilty of offence under section 319 of the 1973 Code, which otherwise would apply to such a trial.”



87. It is relevant to note here that petitioner Satish Babu Sana in his statements record under Section 50 of the Act had been changing his stand. With regard to various statements given by Satish Babu Sana, the prosecution in its Second Supplementary Complaint dated 14.02.2020 has *inter alia* stated as under:-

“7.8 Previous statements of Sh. Satish Babu Sana recorded under PMLA on various dates were analyzed and it was seen that he had been shifting his stand in his various statements. In his statement dated 19.05.2017, on being asked to explain the communication dated 08.11.2012 which reads as “recd 85 rest 15 tomrw mornng, satish says not posble today or tomrw, can I pay 50 to ram bhai” he stated that “This conversation as per my knowledge is not related to me”. In the same statement on being asked to explain the message dated 22.11.2012 which reads as “Recd 50 L frm Satish” he stated that “I have invested this amount 50 Lakhs in his real estate company M/s. Great Heights Infra Pvt. Ltd. I have paid this amount through cheque I have declared this amount with Income Tax 2012-13. I have purchased 50,00,000 shares for Rs. 1 each.” Further in his statement dated 14.07.2017, to the Ques.(27):- Of How much total money was paid to Mr. Moin Akhtar Qureshi, He replied that, “he has paid Rs.50 Lacs through RTGS to his company account and Rs. 25 Lacs in instalment. For Rs. 50 Lacs paid he gave me a Share Certificate of his Company M/s Great Height Infratech Pvt. Ltd, C-134, Ground Floor, Defence Colony, New Delhi. And Rs. 25 Lacs which was paid to Moin Qureshi was also withdrawn from the bank account of my company”. The relevant extracts from his statement dated 27.02.2019 are as below: -,



“Q3: How much money have you given to Moin Qureshi in lieu of the business and help he provided to you in getting business mentioned above?”

Ans: Liquor Business: In 2012 for liquor Business I have spent small Amounts for Expenses for travelling and Logistics may be around 5 lac to 10 Lacs. LNG Business: For LNG business I already explained in previous Answer that I have given around 1.5 Cr. In Cash to Moin Qureshi in 2012-13 Farmland: For Farmland business I already explained in previous Answer in Invested 50 lac to his company Great Height Infratech in July 2012 from my Account.

Q5. How much money was paid for bail of Sukesh Gupta to Moin Qureshi and when?

Ans. As I recollect Moein Qureshi was forcing me to pay money for bail on behalf of Sukesh Gupta though he has not helped in the bail. Due to his pressure I told Mr. Shabir Ali and Anurag Gupta to pay Moien Qureshi. They replied that as Moin Qureshi was not helped still they paid 85 lacs in cash to Moin Qureshi. After getting the bail in March 2014, Moin Qureshi again started pressuring me for which I have paid to him 25 lacs in cash in two installments.

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In view of conflicting statements being made by him and his attempts to project the illicit payments as genuine investment/business deal without any cogent evidence of the same, he was placed under arrest by Directorate of Enforcement on 26.07.2019 and was interrogated at length in custody.”

88. The afore-noted extracts of the Second Supplementary Complaint dated 14.02.2020 show how petitioner- Satish Babu Sana has been changing



his statement recorded under Section 50 of the Act, vires of which have been challenged before this Court. Relevantly, the Hon'ble Supreme Court in its decision dated 31.05.2023, in W.P. (Crl) 251/2023, titled as *Vijay Bhatia Vs. Union of India & Ors.* has deprecated the practice of filing writ petitions challenging the validity of Section 50 of the Act despite its decision in *Vijay Madanlal Choudhary (Supra)*.

89. Having regard to the Supreme Court's decision in *Vijay Madanlal Choudhary (Supra)* and the fact that the petitioners are involved in the case of money laundering, we find that proceedings under PMLA have been rightly initiated against them. The petitioners have challenged their summoning, which in our opinion is just and proper to unearth the roots of the money trail.

90. Finding no merit in the averments raised by the petitioners, these petitions and pending applications are accordingly dismissed.

91. The interim protection granted to petitioners vide order dated 05.02.2019 [in W.P.(C) 384/2019]; dated 23.08.2019 [in W.P.(C) 2353/2019] and dated 14.10.2019 [in W.P.(C) 2903/2019] shall continue for two weeks.

(SURESH KUMAR KAIT)
JUDGE

(NEENA BANSAL KRISHNA)
JUDGE

JULY 19, 2024

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