

Amberkar

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 379 OF 2016

WITH

INTERIM APPLICATION NO. 2936 OF 2024

Rakesh Brijlal Jain and Ors.

.. Applicants

Versus

State of Maharashtra and Ors.

.. Respondents

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- Mr. Kevic Setalvad, Senior Advocate a/w. Mr. Jehan Lalkaka i./by Mr. Bhavesh Thakur, Advocates for Applicants.
- Dr. D.S. Krishnaiyer, APP for State.
- Mr. Gul Achhra for Respondent No.2 appearing as party in person.
- Mr. Shriram Shirsat a/w. Ms. Karishma Raje and Mr. Shekhar Mane, Advocates for Respondent No.3 - ED.

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CORAM : MILIND N. JADHAV, J.

DATE : JANUARY 21, 2025

JUDGEMENT:

1. This Criminal Revision Application (for short “**CRA**”) No.379 of 2016 challenges legality and validity of the impugned order dated 08.08.2014, issuing process passed by the learned Special Judge, Mumbai under the Prevention of Money Laundering Act, 2002 (for short “**PMLA**”), and seeks setting aside of the said order, principally on the ground that *prima facie* no offence whatsoever is made out under Sections 406, 418, 420 read with 120B Indian Penal Code, 1860 (for short “**IPC**”) from the complaint filed by Respondent No. 2, the FIR filed, the statement of witnesses recorded during

investigation, the chargesheet filed by prosecution M.E.C.R No. 12 of 2009 and and Criminal Case No. 04. of 2014 filed in the Special Court.

2. By order dated 01.09.2016, this Court recorded statement of learned APP that the Prosecutor appearing before the Special Court and the Investigating Officer shall not proceed with the complaint before the Special Judge. Ad-interim order dated 01.09.2016 is being continued till date.

3. I have heard the learned Advocates for respective parties and Mr. Gul Achhra, Respondent No.2, appearing in person. At their joint request, I have finally heard the CRA considering that it is pending since the year 2016.

4. I heard the parties at length on 15.10.2024, 12.11.2024 and 29.11.2024. Respondent No. 2 who is the original Complainant in the case appeared in person before me on 15.10.2024. He submitted his written notes of arguments in the present CRA to oppose the CRA. He informed the Court that he will neither make any oral submissions and arguments nor he is represented by any Advocate and the Court should consider his written notes of arguments and his presence should be dispensed with on all future dates of hearing. Accordingly, I recorded the above fact in my order dated 15.10.2024. Written notes

submitted by Respondent No.2 i.e. the original Complainant are considered by me.

5. CRA is vehemently opposed by Respondent No. 3 - Deputy Director of Directorate of Enforcement and Mr. Gul Achhra, Respondent No. 2 appearing in person representing his firm / company called G.K. Solutions Pvt. Ltd. and the State. Applicant No. 1 before me is Mr. Rakesh Brijlal Jain and Applicant No. 2 is his son Akshay Rakesh Jain.

6. Impugned order dated 08.08.2014 passed by the Court of Special Judge issuing process against Accused No. 1 to 3 is appended at Exhibit "HH" - page No. 250 of the Application. Accused No. 1 - Mr. Rakesh Brijlal Jain is the partner of M/s. Kamala Developers, Accused No. 2 - Mr. Dhinendra Rajithram Shukla is the Proprietor of M/s. Sadguru Enterprises, Accused No. 3 - Mr. Kiran Shelar is the Proprietor of M/s. Abhinav Trading Co. and M/s. Rajesh Chemoplast, Applicant No. 2 before me is the son of Applicant No. 1 and is the partner of M/s. Kamala Developers.

7. Case No. 4 of 2014 filed by prosecution before the Special Court under PMLA is that Applicant No. 1 through M/s Kamala Developers with the intention of cheating convinced Mr. Gul Achhra - Respondent No. 2 to execute Agreement dated 18.04.2007 for

purchase of immovable property (1st and 2nd floor commercial premises of building known as 'Ashok Enclave' being developed by M/s Kamala Developers) and simultaneously through M/s. Sadguru Enterprises (partnership firm) executed another Agreement dated 16.04.2007 for complete renovation and providing additional amenities in the said 1st and 2nd floor commercial premises for converting it into a Residential Hotel /Guest House and the monies received under this Agreement is alleged to be "proceeds of crime" received by Applicant No.1. This charge of the prosecution needs to be understood only by ascertaining the detailed facts in the present case.

8. For the sake of reference and convenience, facts of the case are delineated herein under:-

8.1. Since February 2007, M/s. Kamala Developers and Respondent No.2 were negotiating sale and purchase of commercial property in the project called 'Ashok Enclave' being developed by M/s. Kamala Developers. On 16.04.2007 a Renovation Agreement was executed on Rs. 100 Stamp paper between M/s. Sadguru Enterprises and M/s. G.K. Solutions Pvt. Ltd. to provide additional amenities works, renovation, improvements and alterations in respect of commercial premises situated on 1st and 2nd floor of building "Ashok Enclave" at Chincholi Road, Malad (West) (hereinafter referred to as the "**subject premises**"), for a lumpsum amount of Rs.4,57,84,400/-

scheduled to be paid in three installments of payment viz; Rs.2,00,00,000/- on 18.04.2007, Rs.1,50,00,000/- on 10.05.2007 and Rs.1,07,84,400 on 31.07.2007 subject to completion of the agreed works. Admittedly the third installment was paid by Respondent No. 2 – Complainant on 24.10.2007 after deducting a sum of Rs.30,67,500/- from the agreed amount of third installment to be paid on 31.07.2007 due to dispute raised by him for certain incomplete works. Respondent No. 2 - M/s. G.K. Solutions purchased the subject premises and desired to convert the same into a Residential Hotel /Guest House for commercial use. This Agreement is appended at page No. 42 below Exhibit 'A' to the Application.

8.2. On 18.04.2007 a registered Sale Deed was executed between M/s. Kamala Developers and M/s. G.K. Solutions Pvt. Ltd. (company belonging to Respondent No.2 – Complainant) for sale of the subject premises admeasuring 10,098 sq. ft. built up area (1st floor - Unit Nos. 1 to 15 and 2nd floor - Unit Nos. 16 to 30 of Wing A and B of building 'Ashok Enclave' with separate entry alongwith exclusive car parking for consideration of Rs.6,00,83,100/- wherein clause 3 and 3C of the Sale Deed is relevant. Clause 3C reads as follows:- *“The Developers/Vendors has completed all the civil works with amenities as per the Annexure - ‘C’ hereof and thereafter will hand over physical possession and peaceful use and occupation thereof after getting*

Occupation Certificate from the Municipal / local Authorities concerned to the purchasers hereof on or before 31.07.2007.”

8.3. Several work were admittedly undertaken on the specific instructions of Respondent No. 2 and as delineated in the Renovation Agreement. In compliance of the Renovation Agreement the first installment of Rs.2,00,00,000/- (Rupees Two Crores Only) was paid to M/s. Sadguru Enterprises on 18.04.2007.

8.4. On 16.04.2007 Deed of Consent-Cum-Confirmation was executed between M/s. Kamala Developers and Respondent No. 2 wherein M/s. Kamala Developers agreed and confirmed that default in handing over possession of the subject premises as agreed would entitle Respondent No. 2 to compensation including interest @18% p.a. on the total amount paid by him for the delayed period. Further, it was agreed that this Deed would be read concurrently with the Sale Deed.

8.5. On 10.05.2007 according to terms of Renovation Agreement, Respondent No. 2 paid the 2nd installment of Rs.1,50,00,000/- (Rupees One Crore Fifty Lakh Only) to M/s. Sadguru Enterprises as the works progressed.

8.6. On 03.07.2007, Applicant No. 1 – Mr. Rakesh Jain (Partner of M/s. Kamala Developers) purchased two flats in Andheri of

aggregate value of Rs. 89,51,080/- in a complete different project as investment.

8.7. By letter dated 09.07.2007 Advocate for Respondent No. 2 acknowledged letter dated 18.06.2007 of M/s. Kamala Developers and replied thereto that the subject premises were almost ready. The letter stated that if the matter relating to obtaining Occupation Certificate and handing over possession as agreed was not amicably settled then Respondent No. 2 would file legal proceedings including complaint before the Consumer Court, Economic Offences Wing, etc. and would insist on refund of Rs. 3.5 Crores of the payment already paid. The letter stated that M/s. Kamala Developers must complete the Renovation works as agreed and handover possession along with Occupation Certificate (for short "OC") on or before 31.07.2007 as agreed, failing which Respondent No. 2 would be entitled to recover compensation including interest @ 18% p.a. for delayed period as per Clause 4 of the Deed of Confirmation. The letter stated that Respondent No. 2 was ready and willing to pay the final third installment of Rs. 1,50,81,100/- against possession of the premises with OC and the additional amenities as agreed upon in Annexure 'C' of the Sale Deed.

8.8. Since works at the site of the subject premises was not progressing fast and causing financial loss to Respondent No. 2, his

Advocate addressed letter dated 02.08.2007 to M/s. Kamala Developers because neither reply to the above letter was received nor possession was handed over. Respondent No. 2 alleged that he was facing loss to the tune of Rs. 1.5 Lakh for every day of delay.

8.9. By reply letter dated 16.08.2007, M/s. Kamala Developers informed Respondent No.2 that it had complied with all its obligations under the Sale Agreement and Renovation Agreement and was not responsible for the delay as alleged in Respondent No.2's letter, since the delay in obtaining OC was due to major internal works carried out by Respondent No. 2 through M/s. Sadguru Enterprises in the subject premises and until and unless the said works were completed according to the sanctioned plan, it could not apply for OC and hence possession could not be handed over.

8.10. By letter dated 21.08.2007 counter - reply was given by Respondent No. 2's Advocate to Advocate for M/s. Kamala Developers requesting to handover possession of the subject premises immediately on "as is where is" basis and leave it to Respondent No. 2 to deal with M/s. Sadguru Enterprises and stated that otherwise legal action would be invoked against both i.e. M/s. Kamala Developers and M/s. Sadguru Enterprises.

8.11. On 24.10.2007 Respondent No. 2 paid Rs.77,16,900/- to M/s. Sadguru Enterprises by deducting Rs.30,67,500/- from the total amount of the third installment as per the Renovation Agreement for the works done until then and M/s. Sadguru Enterprises issued a no-claim letter to Respondent No. 2, following which by letter dated 24.10.2007 M/s. Kamala Developers handed over possession of the subject premises to Respondent No. 2.

8.12. By letter dated 30.03.2009 which is appended at Exhibit "S" of the CRA, Respondent No.2 requested M/s. Kamala Developers to procure OC from the Municipal Corporation for Greater Mumbai (for short "**MCGM**") for the subject premises and the entire building as the requisite NOC for Residential Hotel / Guest House was received from the Police.

8.13. M/s. Kamala Developers replied by letter dated 02.04.2009 stating that Application for OC was already filed with the Municipal Corporation of Greater Mumbai (for short '**MCGM**'), however it were unable to procure the OC because MCGM raised several discrepancies between the sanctioned plan and the on-site construction / renovation of the subject premises itself. It was informed that many service areas / duct areas were encroached by some of the other flat purchasers in the building leading to delay in getting the OC and it was trying its level best to obtain the OC.

8.14. On 23.05.2009 Respondent No. 2 addressed letter to M/s. Kamala Developers raising various disputes in respect of the subject premises stating that since OC was delayed he could not obtain statutory permissions and licenses for Residential Hotel / Guest House use in the subject premises for which M/s. Kamala Developers was liable to pay damages and called upon it to obtain the OC and get the Co-operative Housing Society registered.

8.15. The Prevention of Money Laundering Amendment Act, 2009 was enacted and came into effect from 01.06.2009, as a consequence of which Sections 120B, 418, 420 and 421 of the IPC (amongst others) became “scheduled” offences.

8.16. By letter dated 15.06.2009 M/s. Kamala Developers informed Respondent No. 2, *inter alia*, stating that due to the unauthorized works carried out in the building by some flat purchasers, illegal change of user made from residential user to commercial user in Flat Nos. 502, 503 and 504 of A-wing and some flat purchasers having enclosed their balcony areas unauthorisedly inside their living areas, there was delay in procuring the OC. He was informed that M/s. Kamala Developers had already written to the delinquent flat purchasers to restore back the use of their respective flats areas to residential status / user and as Chairman of the Society it was Respondent No.2's responsibility to ensure that the delinquent flat

purchasers restored back the position as per sanctioned plan which would facilitate in procuring OC. He was informed that OC could be obtained only after all illegal / encroached areas were restored back as per the sanctioned plan and delay in obtaining OC was not attributable to the Developer.

8.17. Being aggrieved due to delay in getting the OC Respondent No. 2 filed criminal complaint with the Commissioner of Police on 15.06.2009 against M/s. Kamala Developers for cheating.

8.18. On 26.06.2009 Deputy Commissioner of Police (EOW) informed Mr. Gul Achhra on behalf of Respondent No. 2 that after careful scrutiny of his complaint, *prima facie*, no cognizable offence was disclosed and he was informed to approach the appropriate civil forum i.e. Consumer Court / Civil Court for redressal of his grievance.

8.19. On 27.06.2009 Respondent No. 2 in letter addressed to M/s. Kamala Developers stated that it was trying to put the blame for not obtaining OC on others by raising petty and frivolous issues and if it did not pay, then Respondent No. 2 would be constrained to take up the matter legally against them and its other entity i.e. M/s. Sadguru Enterprises seeking recovery.

8.20. Despite return of the first complaint Respondent No.2 instead of approaching the Civil Court / forum filed a second

complaint for cheating, criminal breach of trust and harassment against M/s. Kamala Developers, this time with Malad Police Station on 20.07.2009 because it did not co-operate in obtaining OC due to which Respondent No. 2 could not get the required license to start his Residential Hotel / Guest House business in the subject premises since long leading to tension and harassment apart from suffering heavy financial losses. Respondent No. 2 alleged that M/s. Kamala Developers cheated him and betrayed his trust by not obtaining the OC on time.

8.21. In the statement of Mr. Gul Achhra recorded on 28.07.2009 in Malad Police Station he specifically stated that he paid a total amount of Rs.10.28 crores to Mr. Rakesh Jain but some works like hotel reception counter, travel desk, cybercafe, air conditioners, works in pantry, store room and carpets, etc. remained incomplete as per the additional amenities agreed to be provided in the Deed of Consent-Cum-Confirmation, further Hotel license, OC, Lodging License, etc. were also not obtained; that works remained incomplete at the time of handing over possession which he received on 24.10.2007 and due to this he deducted the amount of approximately Rs. 30,67,500/- from the third installment and paid an amount of Rs.77,16,900/- to M/s. Sadguru Enterprises. That he was therefore cheated by Mr. Rakesh Jain, Mr. Akshay Jain, other partners of M/s.

Kamala Developers and M/s. Sadguru Developers. On scrutiny of his complaint Malad Police Station filed a detailed Report which is appended at page No. 137 of the Application in response to Respondent No. 2's complaint wherein it opined that the entire dispute was civil in nature and hence Respondent No. 2 was once again advised to file a civil proceedings in the appropriate civil forum.

8.22. On 29.07.2009 Respondent No. 2's Advocate by letter addressed to M/s. Kamala Developers and M/s. Sadguru Enterprises informed that Respondent No.2 was very upset and felt cheated because M/s. Kamala Developers was trying to distinguish itself from M/s. Sadguru Enterprises and he called upon both to, *inter alia*, immediately obtain the OC and pay Rs. 4,27,16,900/- with interest @ 18% p.a. thereon from 01.08.2007 to Respondent No. 2. It was alleged that Applicant No. 1- Mr. Rakesh Jain purchased a garage on 15.09.2009 in the building complex where he had purchased the two flats in Andheri for Rs. 10,60,600/- (including stamp duty + registration charges). Relevancy of this is not at all understood as it is later alleged that these purchases were made to hide the alleged proceeds of crime.

8.23. On 02.12.2009, Respondent No. 2 filed Application under Section 156(3) of Code of Criminal Procedure, 1973 (for short "CrPC") in Criminal Complaint No. 111 of 2009 before Metropolitan

Magistrate's 48th Court at Andheri on the ground that by collecting Rs. 4,27,16,900/- were received under the Renovation Agreement by M/s. Sadguru Enterprises by fraud and with intention to cheat him and put him into financial losses by not delivering any works; and betraying his trust. It was alleged that he was threatened that the premises would be sold to a third party, which caused severe mental tension and torture and financial loss to the tune of several crores of rupees due to delay in getting the OC despite the subject premises being done up in all respects by 31.07.2007 as promised. This submission itself shows that the only grievance of Respondent No. 2 was due to delay in obtaining the OC by the Developer. Furthermore Respondent No.2 prayed that the matter be sent to Vile Parle Police Station for investigation or process be issued under Sections 406, 418, 420 and 120B of the IPC whereby it was alleged that M/s. Sadguru Enterprises was a dummy and bogus firm created with intention to cheat Respondent No. 2 and other unwary customers and avoid paying government tax in the form of capital gains taxes, service tax, etc.

8.24. The Metropolitan Magistrate's 48th Court at Andheri by order dated 11.12.2009 directed Vile Parle Police Station to investigate the matter.

8.25. On 19.12.2009 Vile Parle Police Station registered FIR under M.E.C.R No. 12 of 2009.

8.26. On 06.01.2010 Applicants filed ABA No. 21 of 2010 before Sessions Court seeking anticipatory bail. On 30.01.2010, Senior Police Inspector of Vile Parle Police Station submitted report regarding bail application of accused persons including Applicants.

8.27. On 05.02.2010 letter written by Orchid Hotel to Senior Police Inspector of Vile Parle Police Station stated that Respondent No. 2 and Applicants did not stay at the said Hotel on 24.10.2007 which is the date when the final Demand Draft (third installment) was alleged to be given by Respondent No. 2 to M/s. Kamala Developers under the Renovation Agreement. By the said letter they informed that CCTV footage was unavailable as the Hotel did not keep recordings for such long period. Vile Parle Police Station forwarded report on 23.02.2010 to the Metropolitan Magistrate requesting for appropriate orders from the Court. The report, *inter alia*, stated that the transaction of money in the present case was executed between Complainant (Respondent No.2 and M/s. Kamala Developers in their office but it was mentioned in the complaint about handing over one cheque at Orchid Hotel situated at Vile Parle, hence the case was transferred by Court to Vile Parle Police Station under Section 156(3) of CrPC. However, it is not clear if any inquiry was made by the Investigating Officer in this regard as to whether any meeting with Complainant indeed took place at Hotel Orchid. Complainant merely alleged that meeting dated

24.10.2007 took place, however he could not submit any evidence to substantiate his claim. It further stated that it was clear in the overall investigation that entire transaction between Complainant and M/s. Kamala Developers was executed within the jurisdiction of Malad and Santacruz Police Station and a detailed complaint was submitted by the Complainant at Malad Police Station earlier. However Malad Police Station informed the Complainant that case of Complainant was of a civil nature. Thereafter a third complaint was submitted by Complainant before Metropolitan Magistrate's Court by stating that one transaction of the last installment was made at Hotel Orchid, Vile Parle which was within the jurisdiction of Vile Parle Police Station.

8.28. In the interregnum on 12.05.2010 Sessions Court rejected ABA No.21 of 2010 of Applicants. Hence on 08.06.2010, Applicants filed ABA bearing No. 2713 of 2010 before this Court and it was allowed by this Court on 09.06.2010 after *inter alia*, holding that *prima facie* there was no criminal act and such civil transaction did not require Applicants to be subjected to custodial interrogation.

8.29. Resultantly on 09.08.2010 Applicant No. 1 was arrested and released on bail. On 11.08.2010 and 12.08.2010, chargesheet was filed by Vile Parle Police Station against Applicants and co-accused in the Metropolitan Magistrate's 48th Court at Andheri under Sections 406, 418, 420 and 120B of IPC as CC No. 1874/PW/2010.

8.30. On 25.08.2010 Respondent No. 2 challenged the ABA order dated 09.06.2010 in the Supreme Court in SLP (Crl) No. 16576 of 2010 which was dismissed as withdrawn.

8.31. On 16.08.2011 Respondent No. 2 filed Writ Petition No. 1760 of 2011 before this Court for obtaining OC for the entire building wherein the subject premises were situated from the MCGM. By order dated 07.02.2012 this Court directed MCGM to consider granting provisional part OC in accordance with law within 4 weeks. Thereafter on 15.03.2012 MCGM issued OC to Respondent No. 2 and on 19.03.2012 Writ Petition No. 1760 of 2011 was disposed as withdrawn.

8.32. On 07.12.2012 Vile Parle Police Station forwarded chargesheet dated 11.08.2010 to the Directorate of Enforcement and on 23.03.2013 Enforcement Case Information Report (ECIR) No. 2 of 2013 was registered and taken up for investigation under the PMLA as *prima facie* case of money laundering was alleged to have been made out against Applicant Nos. 1, 2 and Dhirendra Shukla of Sadguru Enterprises.

8.33. On 30.07.2013 M/s. Kamala Developers filed Summary Suit No. 2916 of 2013 in the City Civil Court at Dindoshi against Respondent No. 2 for recovery of Rs.19,73,115/- towards MVAT

(Maharashtra Value Added Tax) as per Clause 22 of the Sale Deed dated 18.04.2007.

8.34. On 05.09.2013 Applicants filed Criminal Writ Petition No. 3270 of 2013 for quashing and setting aside of the proceedings being CC No. 1874/PW/2010 pending before the Metropolitan Magistrate Court, Andheri.

8.35. In the meanwhile on 26.02.2014 order dated 26.02.2014 was passed by the ED for provisional attachment under Section 5(1) of PMLA whereby Applicant No. 1's two flats and garage which he had purchased were attached.

8.36. On 28.03.2014 ED filed complaint bearing PMLA Case No. 4 of 2014 against Accused No. 1 (i.e. Applicant No. 1) – Mr. Rakesh Brijlal Jain, Accused No. 2 – Mr. Dhirendra Shukla and Accused No. 3 – Mr. Kiran Shelar before the Additional Sessions Judge, City Civil Court, Mumbai (Designated Court under PMLA) for commission of offences under Section 3 and 4 of PMLA.

8.37. On 10.04.2014 Division Bench of this Court (Coram: Mr. Naresh Patil and Ms. Anuja Prabhudesai, JJ) disposed of Writ Petition No. 3270 of 2013 by directing Applicants to file Application for discharge in the Trial Court within 2 weeks from the date of the order passed and directed Trial Court to dispose of the said Application on

its own merits within 4 months from the date of filing of the Application.

8.38. On 21.04.2014 Applicants filed Discharge Application under Section 239 of CrPC before the Metropolitan Magistrate's 65th Court at Andheri.

8.39. On 08.08.2014 the designated Special Court under PMLA passed the impugned order issuing process against Applicants. The impugned order dated 08.08.2014 reads as under:-

"This is a complaint under section 3 read with 4 of the Prevention of Money Laundering Act, 2002. Heard learned SPP Shri Naqvi. The learned SPP vehemently submitted that prima facie case is made about against the accused . I have also gone through the complaint minutely. Having regard to the allegations made in the complaint against the accused and also having regard to the arguments of learned SPP Shri Naqvi, find that prima facie case is made out to issue process for the offence of Money Laundering u/s 3 punishable u/s 4 of Prevention of Money Laundering Act, 2002 against Accused Nos. 1 to 3.

Hence issue process against Accused Nos. 1 to 3 returnable on 08.10.2014."

8.40. Applicants thereafter filed Criminal Writ Petition No. 3280 of 2014 for quashing M.E.C.R Case No. 12 of 2009 pending before Metropolitan Magistrate Court, Andheri and Criminal Case No. 4 of 2014 pending before the Special Judge in PMLA Court. On 10.09.2014 Sessions Court granted bail to Applicant No. 1 in PMLA Case No. 4 of 2014.

8.41. By order dated 16.09.2014 Metropolitan Magistrate 65th Court Andheri dismissed Applicant's Discharge Application and transferred CC No.1874/PW/2014 to Court of Sessions under Section 323 of CrPC on the same day. Subsequently chargesheet was filed in Sessions Case No. 723 of 2014.

8.42. On 26.12.2014 Respondent No. 2 filed Criminal Application No. 734 of 2014 before this Court seeking quashing and setting aside of order dated 10.09.2014 passed by the Sessions Court granting bail to Applicant No. 1.

8.43. On 15.04.2015 Respondent No. 2 issued legal notice through his Advocate calling upon M/s. Kamala Developers, Rakesh Jain and his wife - Manju Jain, M/s. Sadguru Enterprises and Dhirendra Shukla to pay Rs.4,27,16,900/- with interest totalling to Rs.17,64,21,098.25/-.

8.44. On 26.05.2015 Respondent No.2 filed Civil Suit No. 648 of 2015 (renumbered as Commercial Suit No. 332 of 2015) against Applicant No. 1 and others for recovery of the aforesaid amount as compensation for causing mental agony and harassment to him.

8.45. By order dated 22.03.2016 the Division Bench disposal of Criminal Writ Petition No. 3280 of 2014 holding as under:-

"During the course of the hearing , it transpired that learned Special Judge had already passed an order below Exh.1 for issuance of process for the offence punishable under sections 3 and 4 of the Prevention of Money Laundering Act, 2002. The said order is not challenged by the petitioners. Petitioners have

also not filed copy of the complaint on record. As against the order of issuance of process, petitioners may have resort to appropriate remedies as permissible in law. In case, the issue of delay in filing the petition for challenging the order of issuance of process is raised, pendency of this petition in this Court shall be considered as a ground for deciding the issue of delay. Petition stands disposed of.”

8.46. On 10.01.2018 order dated 10.01.2018 was passed in Criminal Application No.734 of 2014 by this Court (Coram: A. S. Gadkari, J) dismissing Respondent No. 2's Criminal Application No. 734 of 2014 challenging the order dated 10.09.2014 by which Applicant No. 1 was granted bail by Sessions Court and order dated 10.09.2014 was upheld.

8.47. On 06.04.2016 Criminal Revision Application No. 379 of 2016 was filed under Sections 397 readwith 401 and 482 of CrPC for challenging the impugned order dated 08.08.2014 issuing process against Applicant No.1 in Special Case No.04 of 2014 and Sessions Case No.723 of 2014 pending before the Special Court under PMLA.

9. Mr. Setalvad, learned Senior Advocate for Applicants has taken me through the facts of the case and made the following five submissions:-

9.1. At the outset he would submit that the present dispute is a purely civil dispute and there is no overt criminal act on the part of Applicants and hence criminal proceedings ought to be quashed as the only apparent dispute raised by Complainant is due to delay in procuring OC for the subject premises. He would submit that the Commissioner of Police and Malad Police Station after a careful scrutiny of two previous

identical complaints filed by Respondent No.2 prior to filing of the third (present) complaint came to a definite conclusion that the allegations in those complaints did not constitute any criminal offence and advised Respondent No.2 to file a Civil Suit before the appropriate Court / forum for redressal of his grievances. He would submit that despite the aforesaid Respondent No.2 persisted and filed a third private Complaint under Section 156 (3) of CrPC before the Metropolitan Magistrate Court, Andheri suppressing outcome of the above two complaints having been decided and consigned and once again persuaded the Metropolitan Magistrate Court to direct investigation through the Vile Parle Police Station this time. He would draw my attention to the order dated 09.06.2010 passed by this Court while granting Anticipatory Bail to the Applicant, wherein in paragraph No.4 this Court observed that '*.... it appears prima facie that here does not appear to be any criminal act....*'. He would submit that Respondent No.2 has filed a Civil Suit in the City Civil Court bearing Suit No. 648 of 2015 in the year 2015 for recovery of amount of Rs.4,27,16,900/- alongwith interest being the consideration under the Renovation Agreement which is alleged to be the 'proceeds of crime' under PMLA by the ED in the present case. In support of this submission, he has referred to and relied on the following decisions of the

Supreme Court in the case of *Paramjeet Batra Vs. State of Uttarakhand*¹ and *G. Sagar Suri Vs. State of Uttar Pradesh*².

9.2. He would argue that to constitute offence of cheating under Section 420 of IPC the element of deception should be present since the very inception which in this case is when the Renovation Agreement was executed. He would contend that even if for the sake of argument it is assumed that there was a breach of the conditions in the said Agreement executed between parties still invocation of criminal proceedings cannot be the available remedy in law. In support of this proposition he has referred to and relied on the following decisions of the Supreme Court:-

- (i) *Alpic Finance Ltd. Vs. P. Sadasivan*³;
- (ii) *Anil Mahajan Vs. Bhor Industries*⁴;
- (iii) *Uma Shankar Gopalika Vs. State of Bihar*⁵;
- (iv) *All Cargo Movers India Pvt. Ltd. Vs. Dhanesh Badarmal Jain*⁶;
- (v) *VY. Jose Vs. State of Gujarat*⁷;
- (vi) *Vesa Holdings Pvt. Ltd. Vs. State of Kerala*⁸;
- (vii) *Satishchandra Ratanlal Shah Vs. State of Gujarat*⁹
- (viii) *Naresh Kumar Vs. State of Karnataka*¹⁰.

1 (2013) 11 SCC 673
 2 (2000) 2 SCC 636
 3 (2001) 3 SCC 513
 4 (2005) 10 SCC 228
 5 (2005) 10 SCC 336
 6 (2007) 14 SCC 776
 7 (2009) 3 SCC 78
 8 (2015) 8 SCC 293
 9 (2019) 9 SCC 148
 10 2024 SCC OnLine SC 268

9.3. He would submit that once it is clear that the offence of cheating is not made out against Applicants then there cannot be any ground for invocation of PMLA.

9.4. He would submit that chargesheet filed by prosecution is for offences under Section 406 of IPC as well as Section 420 of IPC and as per the decision of the Supreme Court in the case of ***Delhi Race Club Vs. State of Uttar Pradesh***¹¹ offence of cheating and criminal breach of trust cannot co-exist. He would submit that there is no allegation against Applicants that they have dishonestly misappropriated the subject property for their own use or that there has been any misappropriation of any amount received under the Agreements between the parties by Complainant. He would submit that a mere breach of condition in the agreement or contract does not, *ipso facto*, constitute an offence of criminal breach of trust without there being any case of entrustment. In support of this proposition he has referred to and relied upon the decision of the Supreme Court in the case of ***Santoshchandra Ratanlal Shah vs. State of Gujarat***¹².

9.5. Next he would argue on the maintainability of criminal proceedings before the Magistrate's Court on the ground of jurisdiction. He would submit that the subject premises are situated in Malad and accordingly two previous complaints were filed by Respondent No.2 with

11 2024 SCC OnLine 2248

12 (2019) 9 SCC 148

the Commissioner of Police and with Malad Police Station which were not taken cognizance of. He would submit that despite being aware that the Metropolitan Magistrate Court at Andheri did not have the territorial jurisdiction to try and adjudicate the present (third) complaint, Respondent No.2 filed the third private Complaint under Section 156(3) of Cr.P.C. before the said Court by suppressing the outcome of the previous two complaints by contending for the first time that Applicants used to meet him at their sales site office situated at Malad and Vile Parle and the office of M/s. Sadguru Enterprises was at Vile Parle. He would submit that there is no mention whatsoever about holding any meeting or exchanging cheque / demand draft at Orchid Hotel, Vile Parle alleged for the first time in the private Complaint filed and the same is an after thought and has been improvised by Respondent No.2 in his statement recorded by the Vile Parle Police Station. He would submit that Respondent No.2 in order to overcome the hurdle of territorial jurisdiction which was already pleaded by him twice earlier concocted and inserted an incident about holding a meeting at Orchid Hotel, Vile Parle for the first time which he had never pleaded earlier and most importantly besides mere pleading he did not place on record any material to substantiate his allegation.

9.6. He would submit that despite the aforesaid lacunae in the case of Respondent No.2, Prosecution filed chargesheet against Applicants

under the provisions of IPC as well as PMLA. He would submit that no *prima facie* case whatsoever is made out against Applicants by Prosecution and on the above grounds the impugned order of issuing process and hence criminal prosecution be quashed and set aside.

10. ***PER CONTRA***, Respondent No.2 - Mr. Gul Achhra has submitted his written notes of arguments to support the order issuing process and vehemently opposed grant of relief in the CRA. He would submit that CRA is not maintainable on the ground of mis-joinder of parties. He would submit that Applicants are accused of offences under IPC and not PMLA and hence on that ground itself the CRA be dismissed. He would submit that *prima facie* a strong case is made out by prosecution against Applicants.

10.1. He would submit that Applicants filed Discharge Application before the Metropolitan Magistrate Court, Andheri which is rejected by order dated 16.09.2014. He would submit that the legal provisions stated in the Sessions Court's order dated 12.05.2010 be considered for rejection of the present CRA. He would submit that Accused have hatched a criminal conspiracy to cheat him since inception and forgery is also involved. He would submit that Special Court has taken cognizance of ED's complaint and correctly issued the process against the Applicants.

10.2. He would rely on the decisions of the Supreme Court in the cases of ***Gulam Hussain Shaikh Chougule Vs. Superintendent of***

*Customs*¹³ and *Union of India Vs. Padam Narayan Aggarwal*¹⁴ to contend that statements of accused have been recorded by ED while conducting inquiry under PMLA and under Section 50(4) of PMLA the same are admissible in evidence.

10.3. He would submit that Applicants' contention about non-applicability of provisions of PMLA as Sections 120(B), 418 and 420 of IPC came to be added as 'scheduled offences' in June 2009 owing to amendment and the contentious transactions involved in the present matter pertaining to the period between February 2007 to October 2007 cannot be countenanced since in any event crime under Section 467 of IPC is a scheduled offence since inception which cannot be dropped against Applicants and trial has to be proceeded with. He would submit that Applicants are in possession of proceeds of crime since 2007 till date and hence provisions under PMLA are attracted.

10.4. He would submit that CrPC is a procedural law which can be applied retrospectively and provisions under PMLA are nothing but similar to provisions under CrPC which can also be applied retrospectively. Hence he would urge the Court to dismiss the CRA.

11. Mr. Shirsat, learned Advocate for Respondent No. 3 - ED would submit that Officers of Respondent No.3 have acted on the basis of compliant bearing MECR No. 12 of 2009 dated 19.12.2009 for offences

13 AIR 2001 SC 2930

14 2008 (231) E.L.T. 397 (S.C.)

under Sections 420 and 120-B of IPC covered under Part A of the Schedule to the PMLA and registered Compliant ECIR/02/MZO/2013 on 23.03.2013 for investigation against Applicants and Dhirendra Rajitram Shukla of M/s. Sadguru Enterprises under PMLA.

11.1. He would submit that investigation in present case has revealed that Applicant No. 1 received amount of Rs. 4,27,16,900/- from Accused No. 2 - Dhirendra Rajitram Shukla and Accused No. 3 - Kiran Venkanna Shelar which they had received for providing additional amenities to Respondent No. 2 in the subject premises. He would submit that Accused did not provide additional amenities and did not return the money to Respondent No. 2. This submission of Mr. Shirsat needs to be dealt with here and itself at the outset since this is the fulcrum of ED's charge / case. This submission or case is *prima facie* preposterous as such is not even the complaint of Respondent No.2. I have dealt with the three complaints of Respondent No.2 in the facts delineated herein above as also elaborately in my findings herein below.

11.2. How ED claims that the Renovation Agreement has not been complied with and monies received under that Agreement by M/s. Sadguru Enterprises are proceeds of crime when transferred to M/s. Kamala Developers is not understood. Even if one takes the word of Respondent No.2 for granted, the overwhelming correspondence placed on record is however to the contrary. The Renovation Agreement has

been fully delivered even according to Respondent No.2 himself as acknowledged by him. He himself has paid Rs.30,67,500/- less than the total consideration agreed therein for the works which remained incomplete. Respondent No.2 has himself over a period of time acknowledged the progress of work, paid the due installments on time under the Renovation Agreement. ED has turned a convenient blind eye to this which is not only shocking but extremely serious. This submission of ED is therefore rejected.

11.3. He would next submit that on the basis of available details provided by Respondent No. 2, Respondent No.3 called for Bank details of companies owned by Accused Nos. 1,2 and 3 alongwith their personal Bank account details. He would submit that on scrutiny, it revealed that amounts of Rs. 2,00,00,000/- on 20.04.2007; Rs. 1,50,00,000/- on 11.05.2007 and Rs. 77,16,900/- on 30.10.2007 were deposited into the account of M/s Sadguru Enterprises which are 'proceeds of crime'. How can these deposits be called as 'proceeds of crime' is an enigma when there is a clear agreement between the parties to pay the above installments for the works done and it has been admittedly acted upon. He would submit that subsequently, amount of Rs. 4,15,80,000/- was deposited in the personal bank account of Applicant No.1 by M/s Sadguru Enterprises as untainted money. This charge of ED is once again a surprise as it has no basis whatsoever. How can this amount be claimed as

‘proceeds of crime’ is not understood. There is no prohibition for such transfer by M/s Sadguru Enterprises to Applicant No.1 or M/s. Kamala Developers due to the cross holding stakes between them or due to their business relationship.

11.4. He would submit that investigation revealed that Respondent No.2 paid a total amount of Rs. 10,28,00,000/- to both entities namely M/s. Kamala Developers and M/s Sadguru Enterprises wherein Applicant No.1 was the partner and Accused No.2 was the proprietor and on scrutiny it is confirmed that Accused received Rs. 6,00,83,100/- paid to M/s. Kamala Developers for sale of subject premises i.e. the commercial property and Rs. 4,27,16,900/- for providing additional amenities to M/s Sadguru Enterprises under the Renovation Agreement which were not provided. According to him money laundering pertains to receipt of amount of Rs. 4,27,16,900/- by M/s. Sadguru Enterprises which is later transferred to M/s. Kamala Developers. Here once again I need to interject. If the additional amenities were not provided, there was no occasion for Respondent No.2 to pay the above amounts in three installments to Sadguru Enterprises over a period of time as per their contractual obligation. Rather Respondent No.2 has categorically acknowledged delivery of the obligations by M/s Sadguru Enterprises under the Renovation Agreement. Hence what is pleaded in ED’s pleadings and argued by Mr. Shirsat is not the Complainant’s case but a

completely unsubstantiated case without even reading the pleadings and with complete non-application of mind.

11.5. He would submit that the Special Judge took cognizance of the complaint filed by the Respondent / Department and passed a reasoned order holding that additional amenities were not provided and the amount of Rs.4,27,16,900/- was also not returned back. This submission is on the face of record incorrect. Civil Suit between parties is pending. It is not even Respondent No.2's case borne out of his own pleadings that the Renovation Agreement has not been acted upon. In support of this submission, he has referred to and relied upon the judgment of the Delhi High Court in the case of *Sanjay Agarwal Vs. Directorate of Enforcement*¹⁵. He would submit that Accused No. 2 admitted in his statement under Section 50(3) of PMLA that he entered into an Agreement and utilised the amounts received as per directions of Applicant No.1 and he could not provide extra amenities as per the Agreement. In support of this submission, he has placed reliance on the judgment of the three-judge Bench of the Supreme Court in the case of *Rohit Tandon Vs. Directorate of Enforcement*¹⁶ which observes that statements of witness/ accused recorded are admissible in evidence in view of Section 50 of PMLA. However, if this submission is to be countenanced, then such a confessional statement ought to be in

15 CRL. M.C. 3146/ 2022 and CRL.M.A. 13287/2022

16 (2018) 11 SCC 46

consonance with the pleadings and correspondence between the parties and it cannot be contrary to it.

11.6. He would submit that offence of money laundering is a continuing offence committed directly or indirectly, till the proceeds of crime are enjoyed as stated under Section 3 of PMLA. In support of this submission he has placed reliance on the following judgments of the Supreme Court and this Court:-

(i) *Vijay Mandanlal Choudhary and Ors. Vs. Union of India*¹⁷;

(ii) *DA Paul Vs. Union of India and Ors.*¹⁸; and

(iii) *Badshah Majid Malik vs Directorate Of Enforcement And Anr.*¹⁹

11.7. He would submit that order passed by the Metropolitan Magistrate 65th Court, Andheri rejecting the Discharge Application of Applicants by concluding that *prima facie* offence is made out from the FIR and the statement of witnesses and Panchnama against Accused for offences punishable under Sections 406, 418, 420 and 120 (b) of IPC has not been challenged and attained finality.

11.8. He would submit that this Court passed ad-interim order dated 01.09.2016 that stayed the trial before the PMLA Special Court which has caused an inordinate delay in the present case. Hence, Respondent –

17 (2002) 6 SCR 382

18 2020 SCC OnLine Kar 4995; (2021) 1 KCCR (SN 23) 35

19 Criminal Bail Application No. 3135 of 2022 decided on 19.06.2024

Department filed Interim Application No. 2936 of 2024 for vacating the said stay. He would submit that as observed in a plethora of judgments, stay orders lead to delay and deny the fundamental right of speedy justice. In support of this submission he has referred to and relied upon the judgments of Supreme Court in the cases of (i) ***Asian Resurfacing of Road Agency Private Limited & Anr. Vs. Central Bureau Of Investigation***²⁰ and (ii) ***High Court Bar Association, Allahabad Vs. State of UP and Ors.***²¹.

11.9. He would submit that stay of proceedings be vacated as the offence in the present case of money laundering is a serious threat not only to the financial system of the country but also to its integrity and sovereignty. To support this submission he has relied upon the judgments of the Madras High Court in the cases of (i) ***Sri G. Srinivasan Vs. The Chairperson, Adjudicating Authority under PMLA, New Delhi***²² and (ii) ***Smt. Shobana and Ors. Vs. Assistant Director of Enforcement, Chennai***²³.

11.10. He would submit that investigation in the present case reveals that Applicant No.1 is the major kingpin who laundered the proceeds of crime with the assistance of Accused Nos. 2 and 3 thereby layering and integrating funds to project the same as untainted properties. He would submit that present Revision Application is a mere tactic to delay and protract the proceedings before Trial Court.

20 (2018) 16 DCC 299

21 Criminal Appeal 3589 of 2023 with SLP (Crl.) Nos. 13284-13289 of 2023 and Cri. Appeal Diary No. 49052 of 2023.

22 W.P. No. 530 of 2011 decided on 01.04.2011

23 W.P. Nos. 14083 to 14085 of 2013 decided on 25.09.2013

11.11. In the backdrop of his aforesaid submissions, he would submit that the Special Judge has issued process against the Applicants and the same cannot be faulted and therefore would submit that the present CRA be dismissed and proceedings before the PMLA Special Court, Mumbai be allowed to be continued.

12. Dr. Krishnaiyer, learned APP for Respondent No.1 - State has adopted and supported the submissions advanced by Mr. Shirsat.

13. I have heard Mr. Setalvad, learned Senior Advocate for Applicants, Mr. Shirsat, learned Advocate for Respondent No.3 - ED, Dr. Krishnaiyer, learned APP for Respondent No.1 - State and considered the written submissions filed by Mr. Gul Achhra on behalf of Respondent No.2 and with the able assistance of the learned Advocates perused the entire record of the case placed before me. Submissions made by the learned Advocates have received due consideration of the Court.

14. At the outset, reference is drawn to the relevant provisions of PMLA which are invoked in the present case which are Section 2(1)(u) which defines 'proceeds of crime' and Sections 3 and 4 pertaining to offence of money-laundering and punishment thereunder. The said provisions are reproduced herein below for immediate reference:-

"2(1)(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.

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.*

Explanation. — For the removal of doubts, it is hereby clarified that,—

(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely:—

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property, in any manner whatsoever;

(ii) the process or activity connected with proceeds of crime is a continuing activity and continues till such time a person is directly or indirectly enjoying the proceeds of crime by its concealment or possession or acquisition or use or projecting it as untainted property or claiming it as untainted property in any manner whatsoever.

4. Punishment for money-laundering.— *Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and shall also be liable to fine:*

Provided that where the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words “which may extend to seven years”, the words “which may extend to ten years” had been substituted.”

15. In the present case, it is seen that case of the Enforcement Directorate (for short “ED”) is that Applicant No.1 on behalf of M/s. Kamala Developers received an amount of Rs.4,27,16,900/- as ‘proceeds

of crime' from M/s. Sadguru Enterprises. The second charge of ED to attribute this amount to 'proceeds of crime' is that M/s. Sadguru Enterprises has not delivered any of its services / obligations to the Complainant (Respondent No.2) under the Renovation Agreement and therefore the amount received from him and routed to M/s. Kamala Developers is alleged as 'proceeds of crime'. Apart from the above two charges there is no other case made out by ED. To understand levy of this charge, one needs to understand what 'proceeds of crime' means under the PMLA. As delineated herein above, Section 2 (1)(u) of PMLA refers to 'proceeds of crime' as "any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence...". The explanation to this definition provides that such property would include any property relatable to the scheduled offence mentioned in the PMLA.

16. From the above charge of ED and definition of 'proceeds of crime', the case of ED proceeds on a completely erroneous assumption. According to ED, the property (proceeds of crime) in question is the amount of Rs. 4,57,84,400/- received by M/s. Sadguru Enterprises from the Complainant. However, admittedly, this amount is received under a mutual contract / agreement dated 16.04.2007 between M/s. Sadguru Enterprises and Respondent No.2.

17. Respondent No.2 has not denied the Agreement nor can he deny the same because he has not only acknowledged the said Agreement as having been executed, but in turn has also complied with his own obligations under the same Agreement. The question before the Court is, “Why has ED ignored this Agreement?”. The fallacy in ED’s charge / claim is that after receiving the above amount M/s. Sadguru Enterprises has not provided any services to Respondent No.2. This charge of ED clearly falls flat because Respondent No.2 has himself clearly acknowledged that M/s. Sadguru Enterprises having delivered its obligations under the said Agreement dated 16.04.2007 for which Respondent No.2 agreed to pay the amount of Rs.4,57,84,400/- in three installments on fulfillment of the additional amenities to be specifically provided under its various conditions as agreed between them. Evidence on record acknowledged by Respondent No.2 clearly shows that save and except an amount of Rs.30,67,500/- Respondent No.2 has paid the entire above amount to M/s. Sadguru Enterprises intermittently in three installments for having delivered under the very Agreement as per the schedule of installments when the works under the Renovation Agreement were accomplished and completed by M/s. Sadguru Enterprises. Works to the extent of Rs.30,67,500/- having remained incomplete, Respondent No.2 has specifically acknowledged it in his own correspondence and he has

withheld this amount under the original Agreement to be given to M/s. Sadguru Enterprises after which a No-claim Certificate is issued to him.

18. It is seen tht the amount of Rs.4,57,84,400/- was not received by M/s. Sadguru Enterprises at one time but in three installments spread over between 18.04.2007 and 24.10.2007. These installments were mutually agreed by the parties namely Complainant i.e. Respondent No.2 with M/s. Sadguru Enterprises to be paid along with the progress of the additional works obligated to be completed by M/s. Sadguru Enterprises. There is a plethora of correspondence placed on record which is delineated in the facts stated herein above of Respondent No.2 acknowledging the work done by M/s. Sadguru Enterprises against the amount of Rs. 4,57,84,400/- which was to be received by it under the Agreement. Had it been the case of Respondent No.2 that nothing was delivered, there was no reason for Respondent No.2 to pay the second and the truncated third installment to Sadguru Enterprises, if that had been the case.

19. The last installment which was payable was paid by Complainant (Respondent No.2) to M/s. Sadguru Enterprises after deducting an amount of Rs. 30,67,500/- for the works which was left incomplete by M/s. Sadguru Enterprises according to Complainant himself as noted in the correspondence between them placed on record. Hence the case of ED to label the entire amount of Rs.4,57,84,400/-

transacted under the Agreement dated 16.04.2007 as 'proceeds of crime' is clearly illegal and not acceptable. It has no basis.

20. Next, the charge of ED is that the aforesaid amount is directly or indirectly received by Applicant No.1 and hence it would constitute 'proceeds of crime' as a result of criminal activity relating to a scheduled offence. In the facts discussed above, alleged criminal activity relating to a scheduled offence of cheating is not made out at all in the first place as a result of which there is no criminal activity by either M/s. Sadguru Enterprises or Applicant No.1. Rights of parties are clearly governed by the Agreement dated 16.04.2007. ED has failed miserably to acknowledge the same for reasons best known to it. There is a serious lacunae in the application of mind by ED.

21. In the present case there are clearly two sets of transactions viz; Contract / Agreements between parties, first is the registered Agreement for Sale of the subject immovable premises and the second is the Renovation / additional amenities Agreement executed between parties thereto for providing additional amenities to convert the subject premises into a Residential Hotel / Guest House user. Sale of premises is by the 'Vendor' called M/s. Kamala Developers who is the Developer. The registered Agreement for Sale with M/s. Kamala Developers speaks for itself. It is a registered Agreement, it does not require any iteration. The second Agreement / Contract is with M/s. Sadguru Enterprises to provide

the additional amenities for the subject premises so that intention of Respondent No.2 to use it as a Residential Hotel / Guest House is fulfilled.

22. Record and letters / correspondence placed before the Court clearly indicates that from February 2007, Respondent No.2 – Complainant entered into negotiations with M/s. Kamala Developers to purchase the subject premises culminating into the registered Sale Agreement dated 18.04.2007. Simultaneously, Respondent No.2 desired that the subject premises be changed to commercial user and be provided with additional amenities since he desired to open a Residential Hotel / Guest House therein for which he entered into a separate Agreement with M/s. Sadguru Enterprises for providing the same. Both the above Agreements are admitted contracts between parties and have been referred to and relied upon extensively. They are appended at Page Nos. 42 and 96 of the Application. I have perused the same. They are admitted by the parties, save and except ED not considering the Renovation Agreement and its compliance. There is no prohibition in law on the Partner of M/s. Kamala Developers to have any cross holding / ownership / stake in M/s. Sadguru Enterprises. What is crucial to be understood is whether any of the Agreements or the Renovation Agreement entered into are sham and bogus whereby a party thereto is duped of the amounts paid as a result of a any criminal offence and in

return nothing is provided. Such is clearly not the case here. Therefore to attribute the allegation of 'proceeds of crime' to the consideration amount under the Renovation Agreement dated 16.04.2007 is not only highly preposterous but a completely misconceived claim of ED which on the face of record can never be proved by the prosecution in trial.

23. Rights of parties are governed by the contractual / transactional documents executed qua the subject premises and whether the same have been complied with or otherwise as agreed upon. If it is the case of Respondent No.2 - Complainant that there is breach of any of the conditions as stated in the twin Agreements or either of the Agreement, the remedy of Respondent No.2 lies in a Civil Court / Forum. Dispute raised by Respondent No.2 is predominantly a civil dispute. Here it needs to be stated that Respondent No.2 has already filed a Civil Suit for return of amount with interest under the Renovation Agreement wherein the cause of action is not for non-compliance but on account of delay in obtaining the OC.

24. In the present case, it is clearly seen that there is no case made out by Respondent No.2 against M/s. Sadguru Enterprises for non-compliance and breach of the Renovation Agreement except for some works for which he did not pay the balance amount, which was accepted by M/s. Sadguru Enterprises and a No-claim Certificate was issued. It is not his case that there was never any intention since inception not to

carry out the Renovation / additional amenities works agreed under the various conditions of the Agreement. Once that is the case, ingredients of cheating are completely non-existent. This is not a case where M/s. Sadguru Enterprises has received and siphoned of the entire amount of Rs.4,57,84,400/- and absconded and transferred the said amount to Applicant No.1 and most importantly did not deliver upon its obligations under the said Agreement. Rather this is a case of the Complainant himself acknowledging the works done by M/s. Sadguru Enterprises under the said Agreement and only on being satisfied he paid the second and the third truncated installments to complete the payment schedule. According to Complainant's own letter dated 09.07.2007 appended at page No. 407, he has himself admitted that the subject premises were almost ready.

25. What is noteworthy is the fact that Complainant himself paid the first two (2) installments as per schedule i.e. an amount of Rs.2,00,000/- and 1,50,00,000/ and the third installment of Rs.1,07,84,400/- after deducting an amount of 30,67,500/- therefrom upon which M/s. Sadguru Enterprises issued a No-Claim Certificate to Complainant on 24.10.2007 which is appended at page No. 113 of the Application. Therefore there cannot be any element of cheating whatsoever that is alleged. This is precisely the reason as to why the Commissioner of Police in the first instance and the Malad Police Station

in the second instance refused to take cognizance of the complaint filed by Complainant as no cognizable offence was made out for filing a criminal complaint of cheating, criminal breach of trust and harassment.

26. It is seen from the record that Complainant (Respondent No.2) has himself recorded his statement before the Malad Police Station on 20.07.2009 and stated that there were certain incomplete works which remained pending on the date of taking possession that is on 24.10.2007. Resultantly, Malad Police Station rejected the Complaint on the premise that it arose purely out of a civil / contractual dispute (if any) between the parties. However the clinching letter which establishes the fact that it is a civil dispute between parties is the subsequent letter dated 29.07.2009 addressed by Complainant to M/s. Kamala Developers demanding interest at the rate of 18% as per the Agreement between the parties due to delay in handing over possession of the subject premises. This is the real crux of the matter which governs the rights of the parties which ED has conveniently failed to consider or recognize or even apply its mind to for reasons best known to ED only.

27. From the above observations it is seen that there is no element of cheating, criminal breach of trust, conspiracy, harassment or for that matter Money Laundering involved in the present case. Principal grievance of Complainant is due to delay in getting possession of the subject premises as promised under the Sale Agreement on the due date

i.e. 30.07.2007 as stated in the Agreement which was on account of delay in obtaining the OC. It needs to be noted and taken into account that possession of the subject premises could have been given by M/s. Kamala Developers to the Complainant for his use only after receiving the OC from the Corporation which is the Planning Authority. The Complainant himself was the Chairman of the Society and entered into correspondence with M/s. Kamala Developers for obtaining the OC which was delayed.

28. There is another clause in the Consent-cum-Confirmation Agreement which states that if there is any delay in handing over possession, Complainant would be entitled to 18% interest on the deposited amount until possession is handed over. Complainant has already invoked civil action by filing Civil Suit No. 648 of 2015 for recovery of the amount under the Renovation Agreement along with interest. Why has ED ignored this is only for ED to answer? I have not received any answer for this from the learned Advocate for ED. Merely by alleging preposterous submissions and arguments and using terminologies and definitive words like layering and integrating funds to be 'proceeds of crime' without application of mind is nothing but an exercise of oppression on the part of ED.

29. In the above facts whether the Complainant would be entitled to his claim as claimed in the Suit would be decided in the trial of that Suit. However, on Complainant's own case and he having paid the three

installments, supported by his own correspondence, there is a clear presumption that the amount of Rs.4,57,84,400/- received under the Renovation Agreement stood fully delivered and complied with. Had this not been so, the Complainant would never have paid the second and third installments later under the same Agreement. Complainant's own grievance that some works left incompleting is pleaded by him and he himself has truncated the third installment payment by Rs. 30,67,500/-. Hence there is no element of cheating seen as alleged either by the Complainant or by ED.

30. If there is no cheating involved, then there is no proceeds of crime or any criminal activity detected in the present case. For invocation of Section 3 of PMLA which is delineated herein above, the offence of Money Laundering is described as "whosoever directly or indirectly attempts to indulge or knowingly assists or unknowingly 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 tainted property is guilty of the offence of Money Laundering."

31. There is no allegation that Applicants were entrusted with Complainant's property. Rather Applicant No.1 sld the subject premises to Complainant there were two Agreements between parties. There could not have been any allegation because it is an admitted fact on record that

possession of the immovable subject premises was handed over to Complainant on 24.10.2007 against payment.

32. There is no allegation that Applicants or M/s. Sadguru Enterprises have dishonestly misappropriated the property or the monies paid under the twin Agreements for their own use by defrauding the Complainant and not delivering anything to him. It is not even Complainant's case that there has been a "misappropriation" at the inception. The record clearly shows that Complainant made a huge investment and did not get possession on time as agreed in the Agreements to start his Residential Hotel / Guest House due to delay in getting the OC. Hence, he was perturbed. The entire correspondence bears out this very case and nothing more. Undoubtedly obtaining OC was the Developer's responsibility. Complainant has filed a Civil Suit exercising his right for the delay which will be decided on its own merits.

33. There is no case of criminal breach of trust made out against the Applicants. The twin offences of cheating and criminal breach of trust certainly cannot co-exist. In the present case, FIR No. 12 of 2009 and the chargesheet dated 11.08.2010 allege violation of Section 406 of the IPC as well as Sections 418 and 420 of IPC. In any view of the matter, none of the elements of criminal breach of trust are seen from the aforesaid facts in this case. None of the ingredients of Section 420 or Section 406 of IPC can be said to be attributable to the amounts received by M/s. Sadguru

Enterprises under the Renovation Agreement as the said amounts were primarily paid for providing the additional amenities as per the conditions in the Renovation Agreement which admittedly stood delivered to the Complainant alongwith the subject premises. Hence, no offence of Money Laundering whatsoever is made about in the present case.

34. It is a shocking case that despite the Complainant failing twice in his attempt to register his case with the EOW / Commissioner of Police and Malad Police Station who both concluded his grievance was a clear civil dispute and refused to register the FIR, the Complainant thereafter approached the Metropolitan Magistrate Court Andheri and sought direction to the Vile Parle Police Station to investigate the matter. The Complainant was entitled to approach the Magistrate but he clearly suppressed the findings of the EOW and Malad Police Station in his Application filed before the Metropolitan Magistrate Court Andheri only for the reason that he wanted his complaint to be dealt with by the Vile Parle Police Station. Thus the Complainant had a clear sinister motive in his mind which becomes clearly evident. Further in order to bring the alleged crime under the jurisdiction of Vile Parle Police Station, Complainant for the first time ever alleged about a meeting with Directors of M/s. Kamala Developers, M/s. Sadguru Enterprises and himself in hotel Orchid near Santacruz. The prosecution has admittedly

failed to get any material evidence of the alleged meeting, neither the Complainant has bothered to provide any evidence save and except alleging it and the prosecution has accepted it. The order of Metropolitan Magistrate Court Andheri is itself a nullity on the face of record when it directs the Vile Parle Police Station to register the crime. It is equally shocking that Vile Parle Police Station filed a chargesheet after one year and then the crime is transferred to the Special Court.

35. Thus from the above it is clearly concluded that there is no deception whatsoever involved by the Applicant No. 1 or M/s. Sadguru Enterprises at the inception stage when the Renovation Agreement was entered into or at any point later in time and no case of cheating is made out. Most surprisingly, the chargesheet appended at page No. 241 does not state that the Applicants had any intention to defraud the Complainant neither the ingredients of cheating are existent in the mutual correspondence between the parties. This is a clear case where there was a dispute between the Complainant and M/s. Sadguru Enterprises for the balance work under the Renovation Agreement due to which Complainant deducted Rs.30,67,500/- at the time of paying the final installment of 1,07,84,400/- for not providing those amenities. The final installment after deduction i.e. Rs.77,16,900/- was paid by the Complainant without any objection. The only grouse of Complainant was

the inevitable delay in getting possession on time as agreed due to there being no OC issued by the MCGM.

36. From the above, it is seen that no element of cheating is involved. Complainant has clearly sought to convert a clear civil dispute between parties pertaining to mutual written contract into a criminal case. Complainant has not been deprived of his property. He has received his property along with additional amenities under the Agreements, hence invoking a criminal case is a sheer abuse of the due process of law and the legal system.

37. A mere breach of promise, agreement or contract does not, *ipso facto*, constitute an offence of criminal breach of trust without there being a clear case of entrustment - Clearly, the allegation / charge under Section 406 of the IPC has no basis.

38. Thus, once it is established that there is no cheating involved under the IPC then there is no proceeds of crime involved under Section 2(1)(u) of PMLA and therefore there is no Money Laundering involved under Section 3 of PMLA in the present case.

39. ED's Special Case No. 4 of 2014 proceeds on the basis that no work was done by M/s. Sadguru Enterprises, however, this is not the case of the Complainant as alluded to and delineated herein above. The reference to receipt of monies by Applicant No.1 from M/s. Sadguru Enterprises and its further transmission to M/s. Kamala Developers

cannot be deemed to be proceeds of crime or by any stretch of imagination as Money Laundering. During that period Applicant No.1 purchased two flats and one garage which have been attached by ED on the ground that the consideration involved in the purchase of these properties is from the above laundered money received under the Renovation Agreement. This conclusion and claim of ED is on the face of record preposterous and illegal. It cannot be countenanced in fact as well as in law.

40. There is no misappropriation of money or property by any of the parties to the transactions. There is no proceeds of crime as can be seen from herein above. The subject property stands delivered to the Complainant before OC. Hence the case of ED based on the alleged crime recorded by Vile Parle Police Station is completely misconceived. In the present case, once it is established that there is no offence under Sections 406, 418 and 420 IPC then the question of Money Laundering under Section 3 of PMLA does not arise.

41. From the above it is clear that prosecution and ED has not made out any case whatsoever for proceeding against the Applicants before the Court under the PMLA or even under IPC. At the highest if Complainant is aggrieved due to delay in receiving possession, his remedy lies in a Civil Court under the Sale Agreement which he has already invoked. No offence of cheating or Money Laundering exists qua the

Applicants in the present case. The issuance of process is a clear abuse of the process of the law. ED has conducted itself in a malafide manner when the various Agreements and correspondence between the parties clearly spell out their *inter se* rights. ED for reasons best known to it have supported Complainant's false case without application of mind or without going through the record delineated herein above.

42. The action of Complainant as also ED in the above facts to put the criminal system into motion is clearly malafide and calls for imposition of exemplary costs. I am compelled to levy exemplary costs because a strong message needs to be sent to the Law Enforcement Agencies like ED that they should conduct themselves within the parameters of law and that they cannot take law into their own hands without application of mind and harass citizens. It is well settled by various decisions of the Supreme Court and policy of the State as also the view of international community that offence of Money Laundering is committed by an individual with a deliberate design with the motive to enhance his gains, disregarding the interest of the nation and society as a whole. It is seen that conspiracy of Money Laundering is a three staged process, it is hatched in secrecy and executed in darkness. The present case before me is a classic case of oppression in the garb of implementation of PMLA. In the facts of this case none of the ingredients of cheating are present. There is nothing which prohibits a Developer

from entering into a Sale Agreement and allowing execution of a simultaneous Agreement for providing additional amenities / renovation in the same premises through another entity. This is how development in Mumbai City takes place. Both the Agreements have been validly entered into with the Complainant. They are transparent. The entity which provides Renovation / interiors / additional amenities is appointed by the Developer as it is his own project. There are cross holding between the Developer and the entity which is appointed. This is normal business practice. They cannot be faulted with.

42.1. Both the Agreements stand delivered qua the subject premises in question. There is nothing in law which prohibits persons having cross-holding stakes in companies / firms which provide such sale of premises and additional amenities in the same project. This is a fairly common practice in the city of Mumbai followed by almost all Developers due to logistical, legal and reasons of taxation. How Money Laundering is involved in the present case and invoked when the Agreements are executed and are delivered fully is only a figment of imagination of the ED. The element of delay in obtaining OC is the only cause of action pleaded in the Civil Suit by the Complainant. In the present case, ED has found an ally in the form of the Complainant. It is seen that the Complainant himself was the Chairman of the Society, he had complete knowledge of the fact as to why the OC was delayed, which was due to

several discrepancies on account of illegal infractions of the flat purchasers of the Society. Some flat purchasers had changed the user from residential to commercial, some of them had enclosed the balcony areas into their living area which led to delay in obtaining the OC.

42.2. In the present case the Developer M/s. Kamala Developers informed the Complainant about the unauthorized works undertaken by Complainant himself in his own subject premises for converting it into a Residential Hotel / Guest House, the illegal change of user of flat No. 502, 503 and 504 in 'A' wing from residential to commercial user and illegal enclosement of the balcony areas into the living room areas of flats by several flat purchasers in the Society which resulted in delay for obtaining the OC. The Complainant in this case was in the complete know how of this and had knowledge about the same as he was scrupulously following the progress of the subject premises. Under the MRTP Act if the building is developed and constructed by the Developer and internal developments are carried out either by the Developer or by the flat purchasers which are contrary to the sanctioned plan, the planning Authority that is the Corporation (MCGM) does not grant the OC and it requires the Developer or the incumbent flat purchasers who have committed those omissions to rectify them to bring them in alignment and consonance with the sanctioned plan. Only then OC is granted. Such is the case here which led to the delay.

42.3. Hence, for not delivering possession on time alongwith OC as per the Sale Agreement on the promised date, it cannot be held against the Developer. If the Developer gives possession before grant of OC he is liable to be penalized and prosecuted and would suffer punitive action in law. No Developer much less the Developer in question developing a big ticket project like in the present case will give possession for use before obtaining OC. It may even lead to black listing of the Developer for future. In this case civil action for the delay has already been invoked by Complainant. Hence, whether the Developer can be held responsible is the moot question? In my opinion the Developer is not responsible in such a scenario for any criminal liability. The Metropolitan Magistrate had no territorial jurisdiction to entertain such a proceeding. The Orders passed therein are a nullity. It is seen that the premises purchased by Respondent No. 2 which form subject matter of the present proceedings is situated in Malad. Respondent No. 2's complaint (dated 20.07.2009) was addressed to the Malad Police Station on the basis that the subject premises are situated in Malad. This complaint constitutes an admission that it is the Malad Police Station which has jurisdiction over the matter. However the Malad Police Station after scrutiny opined that the grievance in the complaint was a civil issue and Respondent No. 2 should pursue his claim in a civil Court.

42.4. Respondent No. 2 in its Application under Section 156(3) of the CrPC contended that Andheri Metropolitan Magistrate had jurisdiction since Applicant's sales office was in Malad and Vile Parle and the office of M/s. Sadguru Enterprises was in Vile Parle. Notably, there is no mention of any transaction at Orchid Hotel in Vile Parle. However, after the Metropolitan Magistrate directed Vile Parle Police Station to investigate vide Order dated 11.12.2009 the FIR dated 19.12.2009 states about the place of meeting between parties as Hotel Orchid, Vile Parle East for the first time. In Respondent No. 2's statement to the Vile Parle Police, he claims, for the first time, that on 24.10.2007, he handed over two Demand Drafts (Rs. 77,16,900 for Sadguru Enterprises and Rs. 1,50,83,100 for M/s. Kamla Developers) to Applicants at Hotel Orchid, Vile Parle.

42.5. It is seen that by letter dated 05.02.2010, Orchid Hotel has confirmed that neither Applicants nor Respondent No. 2 stayed at the Hotel. The said Orchid Hotel did not provide any CCTV footage due to long lapse of time. The Vile Parle Police Station prepared a Report dated 23.02.2010 for the Metropolitan Magistrate and the Report stated that:-

(a) Ashok Enclave building is situated in Malad;

(b) Offices / residences of the Complainant and Accused are situated on the boundary of Malad Police Station and Santacruz Police Station.

(c) The Complainant mentions in his complaint that one cheque was given at Hotel Orchid, Vile Parle, however, there is no evidence of this.

(d) After overall investigation, it is clear that the entire transaction was done in the boundary of Malad and Santa Cruz Police Station. A complaint to the Malad Police Station was made however the Malad Police Station came to the conclusion that the case was civil in nature.

(e) It appears that a new complaint has been submitted by the Complainant before Court by saying that one transaction was done at the Hotel Orchid Vile Parle East i.e. in the boundary of the Vile Parle Police Station.

42.6. Despite the above findings in the report, the Vile Parle Police Station filed the chargesheet on 11.08.2010 and on 12.08.2010 CC/1874/PW/2010 came to be registered before the Metropolitan Magistrate Andheri. It is seen that the Malad Police Station is attached to the Metropolitan Magistrate in Borivali and the Santacruz Police Station is attached to the Metropolitan Magistrate in Bandra.

42.7. It is thus clear that Respondent No. 2 in order to overcome the conclusion of the Malad Police Station has deliberately with a malafide intention concocted a story which is a complete afterthought about one transaction having taken place at Orchid Hotel in Vile Parle, so that the Vile Parle Police Station could investigate his complaint. This is nothing but a clear abuse of the process of Court and the police machinery. This issue of the territorial jurisdiction of the Vile Parle Police Station and the Metropolitan Magistrate, Andheri, goes to the root of the matter in this case. They do not have the jurisdiction to investigate and try the complaint. All investigations and actions undertaken by them are therefore a nullity.

42.8. In addition to the above, on 25.05.2015, Respondent No. 2 Complainant filed Civil Suit No. 648 of 2015 which was renumbered as Commercial Suit No. 332 of 2015 against, *inter-alia*, M/s. Kamla Developers and Applicant No. 1, seeking a refund of Rs. 4,27,16,900 along with interest. Notably, the said sum of Rs. 4,27,16,900 is the same amount which ED claims to be 'proceeds of the crime' under PMLA. This suit is pending. In addition, M/s. Kamala Developers has filed a prior Summary Suit No. 2916 of 2013 against Respondent No.2 Complainant in the Hon'ble City Civil Court at Dindoshi for recovery of Rs. 19,73,115/- towards Value Added Tax as per Clause 22 of the Sale Deed along with interest thereon. This suit is also pending. Rights and

claims of both parties shall be governed in the twin Civil Suits in accordance with law.

42.9. The correspondence with Respondent No.2 appended from page No.387 to page No. 431 is between the period from 01.06.2007 to 20.07.2009. This correspondence clearly shows that Respondent No. 2 was actively involved in changing the existing sanctioned plan of the very subject premises and made several alterations and changes like change of user of the subject premises, change of location of toilets, location of kitchen, size of rooms to conform to a Residential Hotel / Guest House etc. These works were undertaken by M/s. Sadguru Enterprises under the Renovation Agreement. Because of this correspondence which is completely neglected by the ED for reasons best known to ED only. ED has also concluded that no work was done by M/s. Sadguru Enterprises in reciprocation of its obligations under the Renovation Agreement.

42.10. Hence in view of my above specific observations and findings, I am fully convinced that this is a fit case for imposition of exemplary costs on the Complainant and ED for invoking criminal action in the present facts and harassing the Developer with criminal action.

43. Mr. Gul Achhra, on behalf of Respondent No.2 who is the Complainant in the present case is directed to pay costs of Rs.1,00,000/- to the Kirtikar Law Library, High Court, Mumbai. Respondent No.3 i.e. the Enforcement Directorate is directed to pay costs of Rs. 1,00,000/- to the High Court Original Side Library, Room No.39, High Court, Mumbai. The costs shall be paid by Respondent No.2 and Respondent No.3 as directed within a period of four (4) weeks from today. If the costs are not paid the same shall be recovered from the said Respondents as arrears of Land Revenue by the Collector, Mumbai and paid over to the said law libraries.

44. In view of my above findings this CRA is allowed in terms of prayer clauses (c) and (d). The attachment of the two flats and garage purchased by Applicant No.1 by Respondent No. 3 - ED is cancelled.

45. Interim Application No. 2936 of 2024 filed by Respondent No. 3 – ED is dismissed and disposed of accordingly.

[MILIND N. JADHAV, J.]

46. After the judgment is pronounced in Court, Mr. Shirsat, learned Advocate for Respondent No. 3 - ED prays for stay of judgment to challenge the same before superior Court. His request for stay

stands allowed. Operation of the judgment is stayed for a period of four weeks from today.

[MILIND N. JADHAV, J.]

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