[2024] 3 S.C.R. 778 : 2024 INSC 217

Satyendar Kumar Jain
v.
Directorate of Enforcement

(Criminal Appeal No. 1638 of 2024)

18 March 2024

[Bela M. Trivedi* and Pankaj Mithal, JJ.]

Issue for Consideration

Whether the appellants have been able to satisfy the twin conditions laid down in s. 45 of the Prevention of Money Laundering Act, 2002, that there are reasonable grounds for believing that the persons accused of the offence under the PMLA is not guilty of such offence; and that he is not likely to commit any offence while on bail.

Headnotes

Prevention of Money Laundering Act, 2002 – s. 45 – Offence of money laundering – Conditions to be satified for grant of bail – Appellant-Minister in the Govt. of NCT of Delhi was the conceptualizer, initiator, fund provider and supervisor for the entire operation of the accommodation entries against cash totalling to around Rs. 4.81 crores received through entry operators in the bank accounts of the four companies, by paying cash and the said companies controlled and owned by him and his family – Other two appellants assisted the Minister by making false declarations under the IDS each of them declaring alleged undisclosed income of Rs.8.26 crores in order to protect the Minister – Prosecution complaint filed by the Enforcement Directorate against the appellants for the commission of the offence of Money laundering – Prosecution complaint fixed for framing of charge against the appellants – Bail applications – Denial of, by the High Court – Correctness:

Held: Though a company is a separate legal entity from its shareholders and directors, the lifting of corporate veil is permissible when such corporate structures have been used for committing fraud or economic offences or have been used as a facade or a sham for carrying out illegal activities – Declarations made by the other two appellants under the IDS though were held to be void, the observations and proceedings recorded in the said orders passed

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by the Authorities and by the High Court cannot be brushed aside merely because of the said declarations – Said proceedings clearly substantiates the case of the ED as alleged in the prosecution complaint – Appellants could not be permitted to take advantage of their own wrongdoing of filing the false declarations to mislead the Income Tax authorities, and now to submit that the said declarations under the IDS were void – Having regard to the totality of the facts and circumstances of the case, the appellants miserably failed to satisfy that there are reasonable grounds for believing that they are not guilty of the alleged offences – On the contrary, there is sufficient material collected by the ED to show that they are prima facie guilty of the alleged offences – Thus, it is not possible to hold that appellants complied with the twin mandatory conditions laid down in s. 45 – High Court also prima facie found the appellants guilty of the alleged offences under the PMLA, and the judgment does not suffer from any illegality or infirmity – Appellants were released on bail for temporary period after their arrest and the appellant-Minister was released on bail on medical ground which continued till date – Appellant to surrender forthwith before the Special Court. [Paras 28-33]

Prevention of Money Laundering Act, 2002 – ss. 3 and 2(1)(u) – Offence of money laundering u/s. 3 – Words "proceeds of Crime" in s. 2(1)(u) – Definition:

Held: Offence of money laundering captures every process and activity in dealing with the proceeds of crime, directly or indirectly, and is 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 – Authority of the Authorised Officer under the Act to prosecute any person for the offence of money laundering gets triggered only if there exists proceeds of crime within the meaning of s. 2(1)(u) and further it is involved in any process or activity – Property must qualify the definition of "proceeds of crime" u/s. 2(1)(u) – In all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "proceeds of crime" u/s. 2(1)(u) will necessarily be the crime properties. [Para 21]

Case Law Cited

Vijay Madanlal Choudhary and Others v. Union of India and Others [2022] 6 SCR 382 **: (2022) SCC OnLine SC 929;** *Karnail Singh v. State of Haryana and Another*

(1995) Supp (3) SCC 376; *Neelu Chopra and Another v. Bharti* [2009] 14 SCR 1074 **: (2009) 10 SCC 184;** *Myakala Dharmarajam & Ors. v. State of Telangana & Anr.* **(2020) 2 SCC 743;** *Gautam Kundu v. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India* [2015] 15 SCR 499 **: (2015) 16 SCC 1;** *Rohit Tandon v. Directorate of Enforcement* [2017] 13 SCR 156 **: (2018) 11 SCC 46 – referred to.**

List of Acts

Prevention of Money Laundering Act, 2002; Prohibition of Benami Property Transactions Act, 1988; Finance Act, 2016.

List of Keywords

Prevention of Money Laundering; Bail; Money laundering; Accommodation entries; Undisclosed income; Company, separate legal entity from its shareholders and directors; Lifting of corporate veil; False declarations; Surrender; Proceeds of Crime; Property; Beneficial owner.

Case Arising From

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal No.1638 of 2024

From the Judgment and Order dated 06.04.2023 of the High Court of Delhi at New Delhi in BA No.3590 of 2022

With

Criminal Appeal Nos.1639 and 1640 of 2024

Appearances for Parties

Dr. Abhishek Manu Singhvi, N. Hari Haran, Mrs. Meenakshi Arora, Sr. Advs., Vivek Jain, Abhinav Jain, Amit Bhandari, Rajat Jain, Sharian Mukherji, Mueed Shah, Siddhant Sahay, Dr. Sushil Kumar Gupta, Mrs. Sunita Gupta, Dr. Sushil Satrawala, Chandratanay Chaube, Ankit Shah, Manan Verma, Advs. for the Appellant.

S.V. Raju, A.S.G., Mukesh Kumar Maroria, Zoheb Hussain, Rajat Nair, Annam Venkatesh, Padmesh Mishra, Ms. Sairica S Raju, Vinayak Sharma, Kshitiz Agarwal, Vivek Gurnani, Vivek Gaurav, Kartik Sabharwal, Ms. Abhipriya, Advs. for the Respondent.

Judgment / Order of the Supreme Court

Judgment

Bela M. Trivedi, J.

1. Leave granted.

2. All the three appeals arise out of the common impugned judgment and order dated 06.04.2023 passed by the High Court of Delhi at New Delhi, in the Bail Application Nos. 3590 of 2022, 3705 of 2022 and 3710 of 2022, whereby the High Court has rejected all the bail applications of the appellants.

3. Earlier the Special Judge (PC Act) (CBI) -23 (MPs/MLAs cases) vide the separate detailed orders dated 17.11.2022 had rejected the bail applications of all the appellants – accused.

FACTUAL MATRIX

4. An FIR being case No.RC-AC-1-2017-A-0005 dated 24th August, 2017 came to be registered at the CBI AC-1, New Delhi against Shri Satyendar Kumar Jain, Minister in the Government of National Capital Territory of Delhi & Others, for the offences under Section 109 IPC and 13(2) read with Section 13(1)(e) of the PC Act, 1988 at the instance of the Dy. Superintendent of Police, CBI who had conducted a Preliminary Enquiry, being PE AC-1-2017-A0003 dated 10.04.2017 registered at the said office of the CBI. After the investigation, a Charge-sheet came to be filed by the CBI in respect of the said FIR on 03.12.2018 in the Court of Special Judge, CBI, Patiala House Courts, New Delhi against the six accused viz. Sh. Satyendar Kumar Jain, Smt. Poonam Jain, Sh. Ajit Prasad Jain, Sh. Sunil Kumar Jain, Sh. Vaibhav Jain and Sh. Ankush Jain.

5. Since Section 13(2) read with Section 13(1)(e) of the PC Act in the said FIR dated 24th August, 2017 were scheduled offences under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as the "PMLA") and since it was alleged *inter alia* that Sh. Satyendar Jain with the help of his family members and other persons had acquired disproportionate assets during the period from 14.02.2015 to 31.05.2017, while he was functioning as Minister of Govt. NCT of Delhi, and had laundered tainted cash amounts through Kolkata based shell companies, the Directorate of Enforcement had registered an ECIR bearing No. ECIR/HQ/14/2017 dated 30th August, 2017 against

Satyendar Jain, Vaibhav Jain, Ankush Jain and others for investigation into the commission of the offence of Money laundering as defined under Section 3 and punishable under Section 4 of the PMLA. On the completion of the said investigation, the Prosecution Complaint came to be filed on 27.07.2022 by the Directorate of Enforcement in the Court of District and Sessions Judge, Rouse Avenue District Court, New Delhi, against the accused Sh. Satyendar Jain and others with a prayer to take cognizance of the offences of money laundering under Section 3 punishable under Section 4 of PMLA. The said Prosecution Complaint being CC No.23/2022 is now pending at the stage of framing of charge against the appellants – accused.

6. During the course of investigation, the appellant- Satyendar Kumar Jain was arrested on 30th May, 2022 and the appellants-Vaibhav Jain and Ankush Jain were arrested on 30th June, 2022. The gist of the allegations made against the appellants-accused as mentioned in the said Prosecution Complaint is as under: -

S.No.	Name of the Accused	Role in the case (in brief)
1.	Satyendar Kumar Jain	Based on the discussion and material herein above, it is clear that Satyendar Kumar Jain hatched the criminal conspiracy and conceptualized the idea of accommodation entries against cash. To get his idea implemented, he recommended appointing his old friend Sh. Jagdish Prasad Mohta, Chartered Accountant as the auditor of Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd. and Mangalayatan Projects Pvt. Ltd. He (Satyendar Kumar Jain) first approached Sh. Jagdish Prasad Mohta for taking accommodation entries in lieu of cash in his aforesaid four companies. Shri Mohta arranged a meeting between Satyendar Kumar Jain and Rajendra Bansal, Kolkata based accommodation entry provider. In this meeting all the nitty gritties of these entries was finalized like percentage of commission, process of cash transfer, documents to be maintained etc.

		In this way Satyendar Kumar Jain was the conceptualizer, initiator, and supervisor for the entire operation of these accommodation entries. By taking the accommodation entries in various companies, Satyendar Kumar Jain was hiding behind the Corporate Veil. Investigation into the transactions and facts prove that Satyendar Kumar Jain initiated, managed and controlled the companies in which these accommodations entries were received. Accordingly, the accommodation entries totalling to Rs.4.81 Crore (Rs.4.75 crores as entries + Rs.5.32 lakhs as commission) were received during the period 2015-16 from Kolkata based entry operators in the bank accounts of the aforesaid companies and cash totalling to Rs.4,65,99,635/- i.e. (sum of Rs.4,60,83,500/- + Rs.5,16,135/- commission paid to entry operators), for this purpose, was paid to them. He also received accommodation entry of Rs.15,00,000/- in his company J.J. Ideal Estate Pvt. Ltd. during the year 2015-16 from Kolkata based entry operators by paying cash amounts of Rs. 15,00,000 + commission of Rs.16,800/-. By this criminal activity, he while holding the public office of and functioning as a Minister of Government of National Capital Territory of Delhi, during the period 14.02.2015 to 31.05.2017, acquired assets to the tune of Rs.4,81,16,435/- i.e. (sum of Rs.4,60,83,500/- + Rs.15,00,000/- received in J.J. Ideal Estate Pvt. Ltd. + Rs.5,16,135/- & Rs.16,800/- commission paid to entry operators) - , as discussed in above paragraphs, in his name and in the name of his family member/ friends, with the help of his business associates, which are disproportionate to his known sources of income for which he has not satisfactorily accounted for and laundered the proceeds of crime through a complex web of companies controlled by him.

		Satyendar Kumar Jain has thus committed the offence of money laundering as defined under Section 3 of PMLA by actually acquiring, possessing, concealing and using the proceeds of crime to the tune of Rs.4,81,16,435/- and projecting and claiming the same as untainted in the mode and manner as provided in the preceding paragraphs in the present complaint.
2.	Ankush Jain	Ankush Jain has knowingly assisted Satyendar Kumar Jain by making declaration under IDS, 2016 for declaring undisclosed income of Rs.8.6 crore (including Rs.1,53,61,166/- during check period) for the period from 2010-11 to 2015-16 in order to save and shield Sh. Satyendar Kumar Jain. He also prepared back dated documents with the help of Vaibhav Jain, Sunil Kumar Jain and Jagdish Prasad Mohta with regard to his directorship in Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd. and Indo Metalimpex Pvt. Ltd. by becoming directors of aforesaid companies from back date for showing his IDS declaration as genuine. Ankush Jain has thus committed the offence of money laundering as defined under Section 3 of PMLA by being actually involved in and knowingly assisting Satyendar Kumar Jain in projecting his proceeds of crime to the tune of Rs.4,81,16,435/- as untainted in the mode and manner as described in the preceding paragraphs in the present complaint and is therefore, liable for punishment under Section 4 of PMLA.
3.	Vaibhav Jain	Vaibhav Jain is involved in knowingly assisting Satyendar Kumar Jain by making declaration under IDS, 2016 for declaring undisclosed income of Rs.8.6 crore (including Rs.1,53,61,166/- during check period) for the period from 2010-11 to 2015-16 in order to save Sh. Satyendar Kumar Jain.

		He also prepared back dated documents with the help of Sunil Kumar Jain, Ankush Jain and Sh. Jagdish Prasad Mohta with regard to his directorship in Akinchan Developers Pvt. Ltd., Indo Metalimpex Pvt. Ltd. and Mangalayatan Projects Pvt. Ltd. by becoming directors of aforesaid companies from back date for showing his IDS declaration as genuine. Vaibhav Jain has thus committed the offence of money laundering as defined under Section 3 of PMLA by being actually involved in and knowingly assisting Satyendar Kumar Jain in projecting his proceeds of crime to the tune of Rs.4,81,16,435/- as untainted in the mode and manner as aforesaid in the complaint and is therefore, liable for punishment under Section 4 of PMLA.

SUBMISSIONS

7. The learned counsels for the parties made their respective submissions at length. The learned senior advocate Mr. Abhishek Manu Singhvi broadly made following submissions on behalf of the appellant Satyendar Kumar Jain:

(i) The appellant was already granted bail in the predicate offence registered by the CBI, and the arrest of the appellant was made by the ED almost five years after the registration of the ECIR, though the appellant was cooperating the ED by remaining present in response to the summons issued under Section 50 of the PMLA. The appellant was in custody from 30.05.2022 to 26.05.2023 and since then has been granted interim bail on the medical ground.

(ii) No shares of companies as alleged by the ED were acquired by the appellant within the check period and even otherwise the assets held by the company could not be attributed to its shareholders.

(iii) Even if the accommodation entries amounting to Rs. 4.61 crores are attributed to the appellant through his wife's shareholdings, it would come only to Rs. 59,32,122/- which is less than 1 crore,

and therefore the appellant is entitled to bail under the proviso to Section 45 of the PMLA.

(iv) There is gross discrepancy in the amount of proceeds of crime calculated by the ED and the amount mentioned in the Chargesheet of the CBI in as much as the alleged disproportionate amount is Rs.1,62,50,294/- as per the FIR whereas as per the ED the amount is Rs. 4,81,16,435/-.

(v) The appellant had neither served as a Director nor had signed any financial document during the check period, and the appellant had already resigned from the directorship of the allegedly involved Companies two years before the commission of the alleged offence. It was Vaibhav Jain and Ankush Jain and their family members who had a significant influence and control over the said companies.

(vi) The appellant's role in the companies has been delineated in the MOU seized from Vaibhav Jain's locker, which underscores the business relations and shows that the appellant's architectural expertise was to be employed for the investment to be financed by the families of Vaibhav Jain and Ankush Jain. Through the quashing of the provisional attachment order by the Delhi High Court, the allegation against the appellant being the beneficial owner had stood refuted.

(vii) The alleged proceeds of crime through accommodation entries were directed to the families of Vaibhav Jain and Ankush Jain, and the fresh shares issued to the Kolkata based Shell Companies were promptly transferred to Vaibhav Jain and Ankush Jain during the check period. The appellant therefore was not in possession of any proceeds of crime.

(viii) The appellant could not be held to be in constructive possession of the property, if there was no dominion or control of the appellant over the said property. As per the ED's complaint also the appellant was not in possession of the proceeds of crime and therefore also the appellant could not be said to be in constructive possession of the same.

(ix) There was no shred of evidence collected by the ED to show that the appellant had provided cash to Kolkata companies during the check period. It was Vaibhav Jain and Ankush Jain

who had explained on their Fragrance business as the legitimate source of the cash during their recording of statements under Section 50 of the PMLA.

(x) The Kolkata companies and the persons allegedly providing accommodation entries were not made the accused by the ED.

(xi) The allegation of the ED in its complaint that the appellant had committed a predicate offence of hatching a criminal conspiracy and by committing criminal activity had acquired assets to the tune of Rs. 4.81 crore in his name and in the name of his family members while holding the public office, was not the allegation made by the CBI in the FIR registered against the appellant and others with regard to the disproportionate assets charged under Section 13(1)(e) of the Prevention of Corruption Act.

(xii) The assumptions of proceeds of crime on the sole basis of accommodation entries is completely contrary to the concept of proceeds of crime as explained in the judgment of ***Vijay Madanlal Choudhary and Others vs. Union of India and Others***[1]. Such allegation could be a tax violation but could not be considered as proceeds of crime.

(xiii) The Prosecution Complaint is silent as to when the scheduled offence was committed and as to how and in what manner the proceeds of crime was laundered within the meaning of Section 3 of the PMLA.

(xiv) As regards the Income Disclosure Scheme (IDS) declaration made by Vaibhav Jain and Ankush Jain for about Rs.16 crores for the period 2010-2016, it has been submitted that the said IDS declarations were rejected by the PCIT vide the order dated 09.06.2017, on the ground of misrepresentation/suppression of facts. The said order of PCIT was challenged by Vaibhav Jain and Ankush Jain before the Delhi High Court, however the High Court had also rejected that petition vide the order dated 01.08.2019. Neither the PCIT nor the High Court had given any finding that the said amount of Rs. 16 crores belonged to the appellant.

1 [2022] 6 SCR 382 : 2022 SCC OnLine SC 929

(xv) The reliance placed by the ED on the appellant's letter dated 27.06.2018 was misleading and incorrect, in as much as the appellant vide the said letter had explicitly denied the appellant being the beneficial owner. Since Vaibhav Jain and Ankush Jain had already deposited the tax on the said income, the appellant in the said letter had only requested the authorities to adjust the said tax and not to make a demand again for the same amount from the appellant, however from the said letter it could not be assumed that the appellant had accepted the additions made in the assessment order.

(xvi) As held in ***Vijay Madanlal Choudhary*** (supra), the courts ought not to conduct mini trial and should consider only the broad probability of the matter. The appellant is not a flight risk, there is no risk of tampering of documents or witnesses. The jail violation as alleged by the ED has not been accepted by the concerned Jail visiting Judge and the Jail authorities. The appellant being sick and infirm, having undergone a spine surgery, is entitled to bail as per the proviso to Section 45 of PMLA.

8. The learned ASG Mr. SV Raju made the following submissions in the appeal preferred by the appellant Shri Satyendar Kumar Jain:

(i) It was revealed during the course of investigation that the appellant Satyendar Kumar Jain while posted and functioning as the Minister in the Government of National Capital Territory of Delhi, during the period from 2015 to 2017 had acquired assets in the form of movable and immovable properties in his name and in the name of his family members, which were disproportionate to his known source of income.

(ii) During the check period, the accommodation entries against cash of about 4.81 crores was received in the companies – M/s Akinchan Developers Pvt. Ltd., M/s Paryas Infosolutions Pvt. Ltd., M/s. Manglayatan Projects Pvt. Ltd., and M/s JJ Ideal Estate Pvt. Ltd., beneficially owned/ controlled by the appellant from Kolkata based entry operators through Shell Companies.

(iii) From the statements of Rajendra Bansal, Jivendra Mishra, both residents of Kolkata, and from Shri J.P. Mohta, the Chartered Accountant, it was revealed that Shri Rajendra Bansal had arranged accommodation entries in the companies of the

appellant. Shri Vaibhav Jain in his statement under Section 50 had also stated that the cash was provided by the appellant himself and had also explained about the modus operandi of transferring the cash from Delhi to Kolkata through Hawala operators and as to how in lieu of cash, accommodation entries were layered and received from Kolkata based shell companies into the companies owned by the appellant, and agricultural lands were purchased from the said funds.

(iv) From the documents obtained from the Income Tax Department it was revealed that the appellant had submitted the application before the income tax authorities requesting that the income tax paid by Vaibhav Jain and Ankush Jain under IDS, 2016 be adjusted against the demands raised in his individual assessments by the IT authorities, which established that the IDS declaration made by Vaibhav Jain and Ankush Jain were made for the appellant and that the amount paid in IDS as well as the tax paid thereon belonged to the appellant Satyendar Kumar Jain.

(v) The Special Court having taken the cognizance of the PMLA case vide the order dated 29.07.2022 and having held that there was *prima facie* evidence incriminating about the involvement of the appellant Satyendar Kumar Jain was sufficient to show the existence of the scheduled offence and also the existence of proceeds of crime.

(vi) The appellant Satyendar Kumar Jain was the main person behind the bogus shell companies based in Kolkata, which never did any real business. He had either incorporated them or was having majority shareholdings alongwith his wife. The accommodation entries of Rs. 16.50 crores (approx.) were received in the said companies during the financial years 2010-11, 2011-12 and 2015-16 with the modus operandi as revealed from the statements of the Auditor/Chartered Accountant Shri J.P. Mohta as well as the accommodation entry provider Shri Rajendra Bansal and also from the statement of Vaibhav Jain.

(vii) Though the principle of company being a separate legal entity from its shareholders is an established principle of Company law, the lifting of corporate veil has been upheld in the cases where the corporate structures have been used for committing

fraud, economic offences or have been used as a facade or a sham for carrying out illegal activities.

(viii) The bogus nature of IDS declarations was substantiated by the fact that the entire amount of Rs.16.50 Crores received as accommodation entry was split between Vaibhav Jain and Ankush Jain. The said declarations showed their modus operandi to shield Satyendar Jain and his family members, and assume the entire liability upon themselves to give it a colour of a tax evasion simplicitor, rather than a criminal activity relating to disproportionate assets. This modus operandi also showed that the appellants themselves had disregarded the corporate entities of these companies.

(ix) The disproportionate pecuniary resources earned by the appellant by the commission of scheduled offence, were used as accommodation entries for concealing and layering the tainted origins of the money, and therefore would qualify to be the proceeds of crime as defined under Section 2(1)(u) of the PMLA.

(x) The two entry operators namely Rajendra Bansal and Jivendra Mishra had expressed a fear that Shri Satyendar Kumar Jain being an influential politician will create danger to them.

(xi) The mandatory twin conditions of Section 45 of PMLA having not been satisfied, the appellant should not be released on bail.

9. So far as the appellants Ankush Jain and Vaibhav Jain are concerned, the Learned Senior Advocate Ms. Menakshi Arora with Learned Advocate Mr. Sushil Kumar Gupta made the following submissions: -

(i) The Scheduled offence in the present case i.e. the disproportionate assets case under Section 13(1)(e) of the PC Act is a period specific offence and gets accomplished only at the end of the check period (14.02.2015 to 31.05.2017). As stated in ***Vijay Madanlal Choudhary*** (supra), the proceeds of crime is indicative of criminal activity related to a scheduled offence already accomplished, and therefore the offence of money laundering can be initiated only after the Scheduled Offence is accomplished. However, in the instant case, the appellants have been roped in for benami transactions from 2015-2016 which was well before the end of check period i.e 31.05.2017.

(ii) The offence of money laundering against the appellants is attributed to their act of filing IDS on 27.09.2016 much before the end of check period i.e. 31.05.2017. Hence, the same cannot be considered as an act of assisting someone in the offence of money laundering as the proceeds of crime could have been generated after the end of the check period and not before that.

(iii) The act of declaring IDS by the appellants in respect of undisclosed income for the period from 2010-2011 to 2015-2016 cannot be considered as an act of assisting Satyendar Jain in committing the offence of money laundering, in as much as the possession of unaccounted property acquired by legal means may be actionable for tax violation, but cannot be regarded as the proceeds of crime unless the concerned tax legislation prescribes such violations as an offence and such an offence is included in the Schedule of the PML Act. In the instant case, the total amount of 16 crores has not been considered as the proceeds of crime as the ED is relying on the accommodation entries received during the check period.

(iv) The IDS filed u/s 183 of the Finance Act, 2013 was declared void u/s 193 of the said Act by the Income Tax authorities. Hence, the said act of the appellants filing the IDS cannot be construed as basis for levelling charges under Section 3 of PMLA. Reliance is placed on ***Karnail Singh vs. State of Haryana and Another***[2] for understanding the meaning of "void."

(v) It is not made clear by the ED as to the declaration of which IDS, whether the one filed by Vaibhav Jain or that filed by Ankush Jain has led to the assistance of Satyendar Jain for making out the offence under PMLA. Since the allegations are vague, the benefit of the same should go to the accused. In this regard, reliance is placed on ***Neelu Chopra and Another vs. Bharti***[3] and ***Myakala Dharmarajam & Ors. Vs. State of Telangana & Anr.***[4]

(vi) Since, the generation of proceeds of crime is not an offence under Section 3 of PMLA and the said offence could be

2 (1995) Supp (3) SCC 376

3 [2009] 14 SCR 1074 : (2009) 10 SCC 184

4 (2020) 2 SCC 743

committed only after the accomplishment of the Scheduled Offence, the alleged act could not be said to be an offence under Section 3 of PMLA. The act of the appellants assisting Satyendar Jain for accumulating assets as alleged by the CBI, cannot be said to be an offence under the PMLA.

(vii) The control of the entire records of the companies was with the appellants, including the bank accounts. They were the main decision- makers being the Directors, in respect of the acts performed on behalf of the Companies, and Mr. Satyendar Jain had nothing to do with the said Companies after 2013. The prosecution has unnecessarily tried to link the appellants with Satyendar Jain from the statements of witnesses recorded under Section 50 of the PMLA.

(viii) The Scheduled Offence does not allege conspiracy. The day Mr. Satyendar Jain decided to enter into politics, all the relations with him whether in respect of the Companies or any business transactions were severed, and since July 2013 he was neither a Director nor a shareholder nor had any relation with the Companies which were the Companies of the appellants.

(ix) The appellants are in custody since 30.06.2022 except for the period when they were released on the interim bail (Vaibhav Jain on 18.08.2023 to 27.12.2023 and Ankush Jain on 12.09.2023 to 27.12.2023).

(x) The appellants have not violated any conditions imposed by the Court when on interim bail, and have also not tried to delay the proceedings before the trial court in any manner.

10. The learned ASG Mr. S.V. Raju appearing on behalf of the respondent-Directorate of Enforcement made his submissions in the appeals preferred by the appellants- Ankush Jain and Vaibhav Jain as under: -

(i) The appellants-Ankush Jain and Vaibhav Jain were actively involved in the commission of the offence of money laundering by assisting the accused-Satyendar Kumar Jain. The appellant Ankush Jain was the Director of M/s. Mangalayatan Projects Pvt. Ltd. during the check period. The said company is one of the accused in the Prosecution Complaint filed on 27.07.2022. The said company had received the proceeds of crime amounting to Rs.1,90,00,000/- during the check period in the form of

accommodation entries from Kolkata based shell companies. The said appellant-Ankush Jain transferred the land possessed by M/s. Mangalayatan Projects Pvt. Ltd. in the name of his mother Indu Jain to frustrate the proceeds of crime.

(ii) Similarly, the appellant-Vaibhav Jain was the Director of M/s. Paryas Infosolution Pvt. Ltd. during the check period. The said company is also one of the accused in the Prosecution Complaint filed on 27.07.2022. The said company had received proceeds of crime amounting to Rs.69,00,300/- during the check period in the form of accommodation entries from the Kolkata based shell companies. The said appellant-Vaibhav Jain had transferred the land possessed by M/s. Mangalayatan Projects Pvt. Ltd. in the name of his mother Sushila Jain and wife-Swati Jain to frustrate the proceeds of crime. He also took back the shares without consideration from shell companies and thus both the appellants helped Satyendar Kumar Jain in projecting the tainted money as untainted in the process of money laundering.

(iii) Both the appellants had made declarations in their individual capacity under the IDS, 2016 for declaring undisclosed income of Rs.8.6 Crores during check period i.e. from 2010-11 to 2015-16, in order to shield Satyendar Kumar Jain for concealing the true nature of proceeds of crime.

(iv) Both the appellants prepared back dated documents with the help of each other and with the help of Sunil Kumar Jain and Jagdish Prasad Mohta for becoming directors in their respective companies i.e. Mr. Ankush Jain in M/s. Akinchan Developers Pvt. Ltd., and M/s. Indo Metalimpex Pvt. Ltd., and Mr. Vaibhav Jain in M/s. Akinchan Developers Pvt. Ltd., M/s. Mangalayatan Projects Pvt. Ltd. and M/s. Indo Metalimpex Pvt. Ltd. for showing the IDS declarations as genuine.

(v) The income sought to be disclosed by the appellants under the IDS declarations belonged to the appellant- Satyendar Jain, and the said IDS declarations were rejected by the Income Tax authorities under Section 193 of the Finance Act, 2016 on the ground of misrepresentation and suppression of facts. The said order was upheld by the High Court and the Supreme Court.

(vi) The declarations of the appellants were held void under Section 193 of the Finance Act, 2016, which applied only for the purpose of the said scheme, however, if the making of such declarations was an offence under a separate Act, namely, PMLA, then such an act would not be effaced merely because of Section 193.

(vii) The very fact that such declarations were made by the said appellants, was the relevant fact for the purposes of the alleged offence under the PMLA, as both the appellants are being prosecuted in their individual capacities for allegedly actively assisting the appellant- Satyendar Jain in concealing the proceeds of crime and projecting the proceeds of crime as untainted.

(viii) Section 13(1)(e) and Section 13(2) are both scheduled offences under the PMLA, and Section 3 of PMLA ropes in any person who may or may not have any role to play in the scheduled offence but has directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party involved in any process or activity connected with the proceeds of crime.

(ix) The money laundering need not commence only after the check period, inasmuch as the offence under Section 13(1) (e) of the PC Act contemplates that at any time the assets of the public servant could be disproportionate to his income, which could have been acquired by the public servant either at the beginning or in the middle of the check period also.

(x) From the statements of bank accounts of the four companies and various other Kolkata based shell companies controlled by Kolkata based entry operators revealed that the amount totalling to Rs. 4,60,83,500/- was received in M/s. Akinchan Developers Pvt. Ltd., M/s. Mangalayatan Projects Pvt. Ltd. and M/s. Paryas Infosolution Pvt. Ltd. from Kolkata based shell companies during the period 01.04.2015 to 31.03.2016 (during the check period) despite no business activities were carried out by the said companies and the shares were purchased at a very high premium.

(xi) The investigation revealed that the cash acquired by Satyendar Jain was given to the Kolkata entry operators for the purpose of accommodation entries contemporaneously during the check

period as and when they were acquired and thereafter the same were concealed and projected as untainted and sought to be laundered in the form of share application money. The said amount was also used for repayment of loan and purchase of agricultural lands by the said companies.

(xii) Though the CBI in their chargesheet dated 03.12.2018 filed in FIR No. RC-AC-I-2017-A 0005 (dated 24.08.2017) had quantified the proceeds of crime to be Rs.1,47,60,497.67, in view of the investigation conducted under PMLA it was established that all the companies were beneficially owned and controlled by Satyendar Jain, and the amount of Rs.4,81,16,435/- received during the check period was the proceeds of crime in the hands of Satyendar Jain. The said conclusion along with the facts underlying the same, have also been conveyed to the CBI under Section 66(2) of PMLA vide the letter dated 31.03.2022.

(xiii) Though the accommodation entries *per se* may not be the proceeds of crime in a given case, since in the instant case, it has been specifically alleged that the shares in the three companies during the check period which were held by the bogus share companies, were purchased by the Kolkata based bogus companies as entries in lieu of cash, the source of which cash was the public servant, namely, Saytendar Jain, he was the beneficial owner of the shares which was a vehicle to introduce the unaccounted cash or disproportionate pecuniary resources which squarely fell within the meaning of proceeds of crime as defined under Section 2(1)(u) of the PMLA.

11. During the course of arguments, the Court had sought clarification from the learned ASG Mr. Raju with regard to the role of the appellants-Ankush Jain and Vaibhav Jain, as also the quantum of proceeds of crime with which they were allegedly involved, specifically in respect of the figures mentioned in the Prosecution Complaint against them. Pursuant to the same, the Deputy Director, Directorate of Enforcement has filed his affidavit clarifying the role of the appellants – Ankush Jain and Vaibhav Jain and further stating *inter alia* that the figure of Rs.1,53,61,166/- was inadvertently mentioned at page no.-248, as it was the amount attributed by the CBI in its Chargesheet to Satyendar Jain, Ankush Jain and Vaibhav Jain individually for the purpose of receiving total accommodation entries in lieu of cash of

Rs.4.61 Crores, however respondent's investigation has revealed that the entire Rs.4.81 Crores (Rs.4.61 Crores plus commission plus Rs.15 lakhs in J.J. Ideal Estates Pvt. Ltd.) was entirely the property of Satyendar Jain received in his companies as accommodation entries in lieu of cash and this entire sum was sought to be declared by the appellants Ankush Jain and Vaibhav Jain in the IDS as their own income.

12. In the light of the said clarification, the Learned Senior Advocate Ms. Arora had further submitted that the so-called inadvertent error was not pointed out before the trial court and the High Court and it was only during the course of arguments before this Court, the said clarification/rectification was sought to be made, which is not permissible. According to her, ED attains jurisdiction to investigate only after the proceeds of crime is generated and when the same is subjected to any process or activity as mentioned in Section 3 of PMLA. Therefore, ED could not have increased the proceeds of crime beyond what was taken as disproportionate assets by the CBI i.e. 1,47,60,497/-. She further submitted that as per the FIR, the figure mentioned was Rs. 1,53,61,166/-, during the arguments and as per the written submissions the figure mentioned was Rs. 4,81,16,435/-, and the figure mentioned as per the affidavit is Rs.4,65,99,635/- which does not find mention in the complaint. Thus, the allegations made against the appellants being vague in nature, the benefit should go to the appellants.

ANALYSIS

13. We are well conscious of the fact that the chargesheet has already been filed in the predicate offence on 03.12.2018 for the offences under the Prevention of Corruption Act allegedly committed by the present appellants alongwith others, and the cognizance thereof has already been taken by the concerned Court. The Prosecution Complaint has also been filed by the respondent – ED against the present appellants alongwith others for the commission of the offence of Money laundering as defined under Section 3 read with Section 70 punishable under Section 4 of PMLA 2002. We have also been apprised that the Special Court has fixed the Prosecution Complaint for framing of charge against the appellants alongwith others. Under the circumstances any observation made by us may influence the process of trial. We, therefore would refrain ourselves from dealing

with the elaborate submissions made by the learned counsels for the parties on the merits of the case, we would rather confine ourselves to deal with the bare minimum facts necessary for the purpose of deciding whether the appellants have been able to satisfy the twin conditions laid down in Section 45 of the PMLA, that is (i) there are reasonable grounds for believing that the persons accused of the offence under the PMLA is not guilty of such offence; and (ii) that he is not likely to commit any offence while on bail.

14. In ***Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act), Government of India***[5], while holding that the conditions specified under Section 45 of PMLA are mandatory, it was observed as under: -

> **"30.** The conditions specified under Section 45 of PMLA are mandatory and need to be complied with, which is further strengthened by the provisions of Section 65 and also Section 71 of PMLA. Section 65 requires that the provisions of CrPC shall apply insofar as they are not inconsistent with the provisions of this Act and Section 71 provides that the provisions of PMLA shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. PMLA has an overriding effect and the provisions of CrPC would apply only if they are not inconsistent with the provisions of this Act. Therefore, the conditions enumerated in Section 45 of PMLA will have to be complied with even in respect of an application for bail made under Section 439 CrPC. That coupled with the provisions of Section 24 provides that unless the contrary is proved, the authority or the Court shall presume that proceeds of crime are involved in money-laundering and the burden to prove that the proceeds of crime are not involved, lies on the appellant."

15. In ***Vijay Madanlal Choudhary*** (supra), a three-judge bench while upholding the validity of Section 45 had observed as under: -

> **"387.** Having said thus, we must now address the challenge to the twin conditions as applicable post amendment of

5 [2015] 15 SCR 499 : (2015) 16 SCC 1

2018. That challenge will have to be tested on its own merits and not in reference to the reasons weighed with this Court in declaring the provision, (as it existed at the relevant time), applicable only to offences punishable for a term of imprisonment of more than three years under Part A of the Schedule to the 2002 Act. Now, the provision (Section 45) including twin conditions would apply to the offence(s) under the 2002 Act itself. The provision post 2018 amendment, is in the nature of no bail in relation to the offence of money-laundering unless the twin conditions are fulfilled. The twin conditions are that there are reasonable grounds for believing that the accused is not guilty of offence of money-laundering and that he is not likely to commit any offence while on bail. Considering the purposes and objects of the legislation in the form of 2002 Act and the background in which it had been enacted owing to the commitment made to the international bodies and on their recommendations, it is plainly clear that it is a special legislation to deal with the subject of money-laundering activities having transnational impact on the financial systems including sovereignty and integrity of the countries. This is not an ordinary offence. To deal with such serious offence, stringent measures are provided in the 2002 Act for prevention of money-laundering and combating menace of money-laundering, including for attachment and confiscation of proceeds of crime and to prosecute persons involved in the process or activity connected with the proceeds of crime. In view of the gravity of the fallout of money-laundering activities having transnational impact, a special procedural law for prevention and regulation, including to prosecute the person involved, has been enacted, grouping the offenders involved in the process or activity connected with the proceeds of crime as a separate class from ordinary criminals. The offence of money-laundering has been regarded as an aggravated form of crime "world over". It is, therefore, a separate class of offence requiring effective and stringent measures to combat the menace of money-laundering.

400. It is important to note that the twin conditions provided under Section 45 of the 2002 Act, though restrict the right

of the accused to grant of bail, but it cannot be said that the conditions provided under Section 45 impose absolute restraint on the grant of bail. The discretion vests in the Court which is not arbitrary or irrational but judicial, guided by the principles of law as provided under Section 45 of the 2002 Act.

404. As aforementioned, similar twin conditions have been provided in several other special legislations validity whereof has been upheld by this Court being reasonable and having nexus with the purposes and objects sought to be achieved by the concerned special legislations. Besides the special legislation, even the provisions in the general law, such as 1973 Code stipulate compliance of preconditions before releasing the accused on bail. The grant of bail, even though regarded as an important right of the accused, is not a mechanical order to be passed by the Courts. The prayer for grant of bail even in respect of general offences, have to be considered on the basis of objective discernible judicial parameters as delineated by this Court from time to time, on case-to-case basis.

406. It was urged that the scheduled offence in a given case may be a non-cognizable offence and yet rigors of Section 45 of the 2002 Act would result in denial of bail even to such accused. This argument is founded on clear misunderstanding of the scheme of the 2002 Act. As we have repeatedly mentioned in the earlier part of this judgment that the offence of money-laundering is one wherein a person, 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. The fact that the proceeds of crime have been generated as a result of criminal activity relating to a scheduled offence, which incidentally happens to be a non-cognizable offence, would make no difference. The person is not prosecuted for the scheduled offence by invoking provisions of the 2002 Act, but only when he has derived or obtained property as a result of criminal activity relating to or in relation to a scheduled offence and then indulges in process or activity connected with such

proceeds of crime. Suffice it to observe that the argument under consideration is completely misplaced and needs to be rejected."

16. In the light of the aforestated position of law propounded by the three Judge Bench, we have *prima facie* examined the case alleged against the appellants and the *prima facie* defense put forth by the appellants, to satisfy ourselves whether there are reasonable grounds for believing that the appellants are not guilty of the alleged offences under the Act and that they are not likely to commit any offence while on bail. Though it was urged on behalf of the respondent – ED that the appellant Satyendar Kumar Jain is a very influential political leader and is likely to influence the witnesses if released on bail, we would rather objectively decide the appeals on merits.

17. The case in nutshell put forth by the respondent – ED is that the appellant Satyendar Kumar Jain had conceptualized the idea of accommodation entries against cash and at this instance, his close associate Shri Jagdish Prasad Mohta had arranged a meeting between Satyendar Kumar Jain and Rajendra Bansal, a Kolkata based accommodation entry provider in July/ August, 2010. In the said meeting the modalities of carrying out accommodation entries, percentage of commission, process of cash transfer and documents to be maintained etc. were finalized. Thus, according to the ED, Satyendar Kumar Jain was the conceptualizer, initiator and supervisor for the entire operation of the accommodation entries. It has been alleged that the accommodation entries totalling to Rs.4.81 crores were received during the period 2015-16 from Kolkata based entry operators in the bank accounts of the four companies – Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd., Mangalayatan Projects Pvt. Ltd. and Akinchan Developers Pvt. Ltd., which companies were owned/controlled by him and his family members, and the cash totalling Rs.4,65,99,635/- approximately was paid to the said entry operators. It has been also alleged that the appellant Satyendar Kumar Jain received accommodation entries of Rs.15 lakhs in his company J.J. Ideal Estate Pvt. Ltd. during the year 2015-16 from the said Kolkata based entry operators by paying cash amounts of Rs.15 lakhs and commission of Rs.16,800/-. Thus, it has been alleged that Satyendar Kumar Jain committed offence of money laundering under Section 3 of PMLA by actually acquiring, possessing, concealing and using the process of bank to tune of Rs.4,81,16,435/- and projecting and claiming the same as untainted.

18. The ED has also alleged against the appellants Ankush Jain and Vaibhav Jain *inter alia* that they had assisted Satyendar Kumar Jain in the commission of the alleged offence by making separate independent declarations under IDS 2016 for declaring undisclosed income of Rs.8.26 crores for period from 2010-11 to 2015-16 in order to protect Satyendar Kumar Jain. As per the case of ED, the appellants Ankush Jain and Vaibhav Jain had prepared ante dated documents with the help of Sunil Kumar Jain and Jagdish Prasad Mohta with regard to the Directorship in Akinchan Developers Pvt. Ltd. Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd., and Mangalayatan Projects Pvt. Ltd. by becoming the Directors of the said companies from the back date for showing their IDS declarations as genuine. Thus, the said appellants have also committed the offence of money laundering as defined under Section 3 of PMLA by being actually involved in and knowingly assisting Satyendar Kumar Jain in projecting his proceeds of crime to the tune of Rs.4,81,16,435/- as untainted in the mode and manner stated in the Prosecution Complaint.

19. It was vehemently argued by the Learned Senior Advocate Mr. Singhvi, for the appellant Satyendar Jain that there was gross discrepancy in the amount of proceeds of crime calculated by the ED in the Prosecution Complaint and in the amount with regard to disproportionate assets mentioned by the CBI in the chargesheet filed in the predicate offence. According to him, the amount with regard to disproportionate assets mentioned by the CBI is Rs. 1,47,60,497/- whereas as per the ED the proceeds of crime is Rs.4,81,16,435/-. Even if the accommodation entries amounting to about Rs.4.6 crores are attributed to the appellant-Satyendar Kumar Jain through his wife's share holdings, it would come to only Rs.59,32,122/- which is less than one crore. He has further submitted that the appellant-Satyendar Kumar Jain neither served as a Director nor had signed any financial document during the check period and that he had already resigned from the Directorship of the companies two years before the commission of the alleged offence. According to him, it was the appellants- Vaibhav Jain and Ankush Jain, and their family members who had the significant influence over the control of the companies involved in the case.

20. In order to appreciate the submissions of Mr. Singhvi, let us have a cursory glance over the definitions of the words "beneficial owner" as contained in Section 2(1)(fa), "Money laundering" as defined in

Section 2(1)(p), "Proceeds of Crime" in section 2(1)(u) and "Property" in Section 2(1)(v), and the offence under Section 3 of the PMLA. The said definitions read as under:

> **"Section 2 (1) (fa)**
>
> (fa) "beneficial owner" means an individual who ultimately owns or controls a client of a reporting entity or the person on whose behalf a transaction is being conducted and includes a person who exercises ultimate effective control over a juridical person;
>
> **Section 2 (1) (p)**
>
> (p) "money-laundering" has the meaning assigned to it in section 3;
>
> **Section 2 (1)(u)**
>
> (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" include 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;
>
> **Section 2 (1)(v)**
>
> (v) "property" means any property or assets of every description, whether corporeal or incorporeal, movable or immovable, tangible or intangible and includes deeds and instruments evidencing title to, or interest in, such property or assets, wherever located;
>
> *Explanation*. --For the removal of doubts, it is hereby clarified that the term property includes property of any kind used in the commission of an offence under this Act or any of the scheduled offences;

Section 3

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."

21. The offence of money laundering as contemplated in Section 3 of the PMLA has been elaborately dealt with by the three Judge Bench in ***Vijay Madanlal Choudhary*** (supra), in which it has been observed that 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 is 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. Of course, the authority of the Authorised Officer under the Act to prosecute any person for the offence of money laundering gets triggered only if there exists proceeds of crime within the meaning of Section 2(1)(u) of the Act and further it is involved in any process or activity. Not even in case of existence of undisclosed income and irrespective of its volume, the definition of "Proceeds of Crime" under Section 2(1)(u) will get attracted, unless the property has been derived or obtained as a result of criminal activity relating to a scheduled offence. The property must qualify the definition of "Proceeds of Crime" under Section 2(1)(u) of the Act. As observed, in all or whole of the crime property linked to scheduled offence need not be regarded as proceeds of crime, but all properties qualifying the definition of "Proceeds of Crime" under Section 2(1)(u) will necessarily be the crime properties.

22. So far as the facts of the present case are concerned, the respondent ED has placed heavy reliance on the statements of witnesses recorded and the documents produced by them under Section 50 of the said Act, to *prima facie* show the involvement of all the three appellants in the alleged offence of money laundering under Section 3 thereof. In ***Rohit Tandon vs. Directorate of Enforcement***[6], a three Judge Bench has held that the statements of witnesses recorded by Prosecution – ED are admissible in evidence in view of Section 50. Such statements may make out a formidable case about the involvement of the accused in the commission of the offence of money laundering.

23. Again, the three Judge Bench in ***Vijay Madanlal Choudhary*** (supra) while examining the validity of the provisions contained in Section 50 held as under: -

> **431.** In the context of the 2002 Act, it must be remembered that the summon is issued by the Authority under Section 50 in connection with the inquiry regarding proceeds of crime which may have been attached and pending adjudication before the Adjudicating Authority. In respect of such action, the designated officials have been empowered to summon any person for collection of information and evidence to be presented before the Adjudicating Authority. It is not

6 [2017] 13 SCR 156 : (2018) 11 SCC 46

necessarily for initiating a prosecution against the noticee as such. The power entrusted to the designated officials under this Act, though couched as investigation in real sense, is to undertake inquiry to ascertain relevant facts to facilitate initiation of or pursuing with an action regarding proceeds of crime, if the situation so warrants and for being presented before the Adjudicating Authority. It is a different matter that the information and evidence so collated during the inquiry made, may disclose commission of offence of money-laundering and the involvement of the person, who has been summoned for making disclosures pursuant to the summons issued by the Authority. At this stage, there would be no formal document indicative of likelihood of involvement of such person as an accused of offence of money-laundering. If the statement made by him reveals the offence of money-laundering or the existence of proceeds of crime, that becomes actionable under the Act itself. To put it differently, at the stage of recording of statement for the purpose of inquiring into the relevant facts in connection with the property being proceeds of crime is, in that sense, not an investigation for prosecution as such; and in any case, there would be no formal accusation against the noticee. Such summons can be issued even to witnesses in the inquiry so conducted by the authorised officials. However, after further inquiry on the basis of other material and evidence, the involvement of such person (noticee) is revealed, the authorised officials can certainly proceed against him for his acts of commission or omission. In such a situation, at the stage of issue of summons, the person cannot claim protection under Article 20(3) of the Constitution. However, if his/her statement is recorded after a formal arrest by the ED official, the consequences of Article 20(3) or Section 25 of the Evidence Act may come into play to urge that the same being in the nature of confession, shall not be proved against him. Further, it would not preclude the prosecution from proceeding against such a person including for consequences under Section 63 of the 2002 Act on the basis of other tangible material to indicate the falsity of his claim. That would be a matter of rule of evidence.

24. In the instant case, it has been found during the course of investigation from the statements of witnesses recorded under Section 50 that the appellant Satyendar Jain and his family directly or indirectly were owning/controlling the companies - M/s. Akinchan Developers Pvt. Ltd., M/s. Paryas Infosolution Pvt. Ltd., M/s. Indo Metalimpex Pvt. Ltd. and M/s. Mangalayatan Projects Pvt. Ltd. He was the conceptualizer, initiator and supervisor of the accommodation entries totalling to Rs.4.81 Crores approximately, which were received from the Kolkata based entry operators in the Bank accounts of the said four companies. Shri J.P. Mohta in his statement had stated *inter alia* that Mr. Satyendar Jain had informed him in June/July, 2010 that he wanted to get investment/ accommodation entries in his companies against cash payment and therefore he introduced Mr. Jain with his friend Mr. Rajendra Bansal who was in the business of providing accommodation entries against cash. Mr. Rajendra Bansal in his statement under Section 50 had stated in detail as to how his companies provided accommodation entries to the four companies owned/controlled by Satyendar Jain from 2010-11 to 2015-16 against cash. Mr. Rajender Bansal had also stated that the cash was being received from Satyendar Kumar Jain/Jagdish Prasad Mohta at Kolkata through Hawala operators, and he used to pass on the address of Hawala operators to the other entry operators namely Jivendra Mishra and Abhishek Chokhani for collecting cash after taking token from them. He used to arrange entries for the companies of Satyendar Kumar Jain as per the details provided by Jagdish Prasad Mohta through his companies and other entry operators. He (Mr. Bansal) used to issue cheque/RTGS to subscribe the shares of the four companies of Satyendar Kumar Jain receiving the amounts in cash. He had further stated that the accommodation entries were reflected in the books of accounts of his companies as investments in shares. He used to give signed share applications along with signed blank transfer deeds to Jagdish Prasad Mohta. He had further stated that he had received cash through Hawala operators of Kolkata 40-50 times during 2010-2016 totaling to approximately 17 crores on the instructions of Satyendar Jain/Jagdish Prasad Mohta and he had provided accommodation entries for Satyendar Jain's Companies of about 17 crores, for which he had earned commission of Rs 12,40,000/- for providing/arranging such accommodation entries to the companies of Satyendar Jain.

25. Mr. Pankul Agarwal had stated in his statement that though he was appointed as a Director in M/s. J.J. Ideal Estate Pvt. Ltd., he did nothing except signing of the documents and that the said company was controlled by Satyendar Kumar Jain and Poonam Jain, and that he was never informed about any business activity of the said company by them. The appellant-Vaibhav Jain himself in his statement recorded on 27.02.2018, had stated that the cash amount of Rs.16.50 crores (approx.) was paid by him, Sunil Kumar Jain, Ankush Jain and Satyendar Kumar Jain for taking accommodation entries in M/s. Akinchan Developers Pvt. Ltd., Paryas Infosolution Pvt. Ltd., Indo Metalimpex Pvt. Ltd. and Mangalayatan Projects Pvt. Ltd. through Kolkata based entry operators, and that the entire idea was mooted by Satyendar Kumar Jain to use it for purchasing agricultural lands and to develop the township. The said witnesses had clearly stated that Satyendar Kumar Jain was the conceptualizer, initiator, fund provider and supervisor for the entire operation to procure the accommodation, share capital/premium entries. Though, the shareholding patterns of the said four companies are quite intricate, they do show that Mr. Satyendar Kumar Jain through his family was controlling the said companies directly or indirectly and that Mr. Satyendar Kumar Jain was the "beneficial owner" within the definition of Section 2(1) (fa) of PMLA.

26. At this juncture, it is extremely pertinent to note that the appellants-Vaibhav Jain and Ankush Jain had sought to avail of the Income Declaration Scheme, 2016 (IDS) by filing separate declarations under Section 183 of the Finance Act, 2016 in Form-I on 27.09.2016, in which both of the said appellants had individually declared an income of Rs.8,26,91,750/- as investments in shares of various companies in the assessment years 2011-12, 2012-13 and 2016-17. The Principal Commissioner, Income Tax (IV), New Delhi vide the order dated 09.06.2017 passed under Section 183 of the Finance Act, 2016 held that the said declaration of income of Rs.8,26,91,750/- by each of the appellants- Vaibhav Jain and Ankush Jain was made "by suppression and misrepresentation of facts", and therefore they were "void". It is further pertinent to note that the said order of PCIT was based on the report submitted by the ACIT, Special Range (IV) dated 07.06.2017 with regard to the assessment proceedings in case of M/s. Akinchan Developers Pvt. Ltd., M/s. Indo Metalimpex Pvt. Ltd., M/s. Paryas Infosolution Pvt. Ltd. ,and Mr. Satyendar Kumar

Jain. It was noted in the said report *inter alia* that the said companies had taken accommodation entries in the form of share capital from Kolkata based shell companies. On the basis of the said report, the notices under Section 148 of the Income Tax Act for the year 2011-12 an 2012-13 were issued to Mr. Satyendar Kumar Jain. The information regarding accommodation entries was also received by the Initiating officer for further examination and necessary action under the Prohibition of Benami Property Transactions Act, 1988 (for short "the PBPT Act). The Initiating officer had issued provisional attachment orders under Section 24(4) of the PBPT Act on 24.05.2017 holding that Mr. Satyendar Kumar Jain was the beneficial owner of the bogus share capital introduced in the companies. The said order of PCIT dated 09.06.2017 passed under Section 183 of the FA, 2016 was challenged before the High Court of Delhi at New Delhi by the appellants-Ankush Jain and Vaibhav Jain by filing Writ Petition (C) Nos. 6541 of 2017 and 6543 of 2017 which came to be dismissed by the High Court vide the order dated 21.08.2019. The High Court in the said judgment had elaborately dealt with all these issues and while dismissing the said writ petitions held as under:

> **"30.** There are eight companies whose shares were purchased by the two petitioners, whose names have been included in the list. Admittedly, in respect of the shares in ADPL, proceedings under section 24(4) of the Prohibition of Benami Property Transaction Act, 1988 have been initiated. The petitioners have themselves enclosed a copy of the order dated May 24, 2017 passed in respect of the "Benamidar", i.e., ADPL, which inter-alia notes that the cash that was routed through accommodation entries in the garb of share capital/premium in fact belonged to Mr. Satyender Kumar Jain and that it was at his direction that the entire transaction was orchestrated. It was noted that neither of these two petitioners was either a director or shareholder in the said company. It was noted that the declarants had not provided the name of the "Benamidar" through whom the investment had been routed and that these facts were all completely within the knowledge of the two petitioners. These conclusions of the Principal Commissioner of Income-tax have not been convincingly countered by either of the petitioners. In the circumstances,

> the Principal Commissioner of Income-tax was right in concluding that neither of the petitioners had made a full and true disclosure of all material facts."

27. The said order of the High Court was challenged by the appellants-Ankush Jain and Vaibhav Jain before the Supreme Court by filing Special Leave Petitions being SLP(C)Nos. 27522 of 2019 and 27610 of 2019, however they came to be dismissed vide the order dated 29.11.2019.

28. From the above stated facts there remains no shadow of doubt that the appellant- Satyendar Kumar Jain had conceptualized idea of accommodation entries against cash and was responsible for the accommodation entries totalling to Rs. 4.81 crores (approx.) received through the Kolkata based entry operators in the bank accounts of the four companies i.e. M/s. Akinchan Developers Pvt. Ltd., M/s. Paryas Infosolution Pvt. Ltd., M/s. Indo Metalimpex Pvt. Ltd. and M/s. Mangalayatan Projects Pvt. Ltd., by paying cash and the said companies were controlled and owned by him and his family. Though it is true that a company is a separate legal entity from its shareholders and directors, the lifting of corporate veil is permissible when such corporate structures have been used for committing fraud or economic offences or have been used as a facade or a sham for carrying out illegal activities.

29. It has also been found that the appellants - Ankush Jain and Vaibhav Jain had assisted the appellant-Satyendar Kumar Jain by making false declarations under the IDS each of them declaring alleged undisclosed income of Rs.8.26 crores in order to protect Satyendar Kumar Jain. Though it was sought to be submitted by the learned counsel for the appellants that the said declarations under IDS having been held to be "void" in terms of Section 193 of FA, 2016 by the income tax authorities, the same could not be looked into in the present proceedings, the said submission cannot be accepted. The declarations made by the appellants-Ankush Jain and Vaibhav Jain under IDS have not been accepted by the Income Tax authorities on the ground that they had misrepresented the fact that the investments in the said companies belonged to the said appellants, which in fact belonged to Mr. Satyendar Kumar Jain. The appellants could not be permitted to take advantage of their own wrongdoing of filing the false declarations to mislead the Income Tax authorities, and

now to submit in the present proceedings under PMLA that the said declarations under the IDS were void. The declarations made by them under the IDS though were held to be void, the observations and proceedings recorded in the said orders passed by the Authorities and by the High Court cannot be brushed aside merely because the said declarations were deemed to be void under Section 193 of the Finance Act, 2016. The said proceedings clearly substantiates the case of the respondent ED as alleged in the Prosecution Complaint under the PMLA.

30. Having regard to the totality of the facts and circumstances of the case, we are of the opinion that the appellants have miserably failed to satisfy us that there are reasonable grounds for believing that they are not guilty of the alleged offences. On the contrary, there is sufficient material collected by the respondent-ED to show that they are *prima facie* guilty of the alleged offences.

31. Though Ms. Arora had faintly sought to submit that the so-called inadvertent mistake committed by the ED with regard to the figures mentioned in the Prosecution Complaint in respect of the role of the appellants Ankush Jain and Vaibhav Jain should not be permitted to be corrected, which otherwise show that the allegations against the appellants were vague in nature, we are not impressed by the said submission. We are satisfied from the explanation put forth in the affidavit filed on behalf of the respondent-ED that it was only an inadvertent mistake in mentioning the figure Rs.1,53,61,166/- in the bracketed portion, which figure was shown by the CBI in its chargesheet. The said inadvertent mistake has no significance in the case alleged against the appellants in the proceedings under the PMLA.

32. From the totality of facts and circumstances of the case, it is not possible to hold that appellants had complied with the twin mandatory conditions laid down in Section 45 of PMLA. The High Court also in the impugned judgment after discussing the material on record had *prima facie* found the appellants guilty of the alleged offences under the PMLA, which judgment does not suffer from any illegality or infirmity.

33. The appellants were released on bail for temporary period after their arrest and the appellant-Satyendar Kumar Jain was released on bail on medical ground on 30.05.2022, which has continued till this

day. He shall now surrender forthwith before the Special Court. It is needless to say that right to speedy trial and access to justice is a valuable right enshrined in the Constitution of India, and provisions of Section 436A of the Cr.P.C. would apply with full force to the cases of money laundering falling under Section 3 of the PMLA, subject to the Provisos and the Explanation contained therein.

34. In that view of the matter, all the appeals are dismissed.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeals dismissed.