IN THE COURT OF SH.SHAILENDER MALIK, SPECIAL JUDGE (PC ACT), CBI-21: ROUSE AVENUE COURT COMPLEX, NEW DELHI

ED vs. Abhay Kumar Kumar Srivastava & Ors.
CT Cases No.37/2019
(CNR No.DLCT11-001190-2019)
ECIR No.ECIR/01/HIU/2014 dated 06.03.2014

J.P. Mishra
Assistant Director
Directorate of Enforcement
(Prevention of Money Laundering Act)
Government of India,
Delhi Zonal Office,
10-A, Jam Nagar House,
Akbar Road, New Delhi. ….Complainant

Versus

(1)**Shri Abhay Kumar Srivastava**
s/o Shri S.P. Srivastava
Former CMD, NALCO,
R/o A-137/A, Sector-27,
Noida (UP). ….Accused No.1

(2)**Shri Bhushan Lal Bajaj**
s/o late Chaman Lal Bajaj
R/o A-356, Sector-46,
Noida (UP). ….Accused No.2

(3)**Smt.Chandni Srivastava**
w/o Shri Abhay Kumar Srivastava
R/o A-137/A, Sector-27,
Noida (UP). ….Accused No.3

(4)**Smt.Anita Bajaj**
w/o Shri Bhushan Lal Bajaj
R/o A-356, Sector-46,
Noida (UP). ….Accused No.4

Date of Institution	:	01.04.2015
Date of judgment reserved	:	05.06.2025
Date of judgment pronounced	:	21.07.2025

JUDGMENT

1. This is a complaint filed by Directorate of Enforcement through Assistant Director J.P. Mishra for offence under Section 3 r/w 4 of Prevention of Money Laundering Act against Shri Abhay Kumar Srivastava (A-1); Bhushan Lal Bajaj (A-2); Smt.Chandni Srivastava w/o Abhay Kumar Srivastava (A-3); and Smt.Anita Bajaj w/o Bhushan Lal Bajaj (A-4).

2. It appears from the perusal of the complaint that CBI had registered FIR No.RC ACI2011-A0001 dated 25.02.2011 against accused no.1 to 4 herein as well as one Gurvinder Singh Bhatia, Jaswinder Singh Bhatia and Ratan Pal Singh Bhatia for commission of offence under Section 120B IPC, Section 7, 8, 13(2) r/w 13(1)(d) of P.C. Act, 1988. A-1 Sh.A.K. Srivastava was the then Chairman cum Managing Director of National Aluminium Company Limited (NALCO), a public sector undertaking of Government of India. On 28.07.2010 NALCO floated a tender for purchase of 2 lakhs tonne of wash coal from its Captive Power Plant Unit at Angul, Odisha. Four companies applied for tender, out of which tender of two companies were rejected at the stage of technical bid.

Leaving two bidders in the field i.e. M/s Maheshwari Brothers Coal Limited and M/s. Bhatia International Limited Indore. As per the tender condition supply order could be distributed between lowest three bidders if L2 and L3 agreed to match the bid of L1, in the ratio of 50:30:20. Since only two bidders were left in the field, supply order was proposed to be divided among them in the ratio of 60:40. M/s Bhatia International Limited being L2 agreed in writing, to match the bid of L1. As such quantity of 2 lakh tonne, to be purchased was divided in the ratio of 60:40 respectively by purchase committee as per note dated 28.12.2010 and 30.12.2010. This was approved by Acting CMD B.L. Bagda on 31.12.2010 for placing before the committee of Directors, to be chaired by Sh.A.K. Srivastava on 03.01.2011.

3. It is mentioned in complaint of ED that as per CBI case, A-1 Sh.A.K. Srivastava, CMD, NALCO has been collecting illegal gratifications against tender approved by NALCO from suppliers through A-2 B.L. Bajaj. ACI, Special Unit of CBI intercepted many incriminating telephonic conversation by legal technical surveillance of telephone, mobile no.9849010101 of Bijay Mandhani, CMD of M/s Maheshwari Brothers Limited and landline no.120-2502758 and 120-4282351 installed at the residence of A-2 B.L. Bajaj and his mobile no.9999686888. These conversations showed that Rs.1.20 crores @ Rs.150 per tonne for 80,000 MT was decided as illegal gratification from Bhatia International Limited for A-1 Sh.A.K. Srivastava as an award for aforesaid contract. Those telephonic conversation further reflected that Bijay Mandhani of M/s Maheshwari Brothers Limited had introduced G.S. Bhatia to A-2 B.L.

Bajaj and decided the rate of illegal gratification @ Rs.150 per metric tonne. Bijay Mandhani of M/s Maheshwari Brothers Limited discussed distribution of aforesaid tender with G.S. Bhatia, on a call dated 09.12.2010 and both of them agreed for distribution of their contract @ 60:40. Another call dated 09.01.2011 also indicated that Bijay Mandhani told G.S. Bhatia to talk to B.L. Bajaj, as per instructions given to him by A-1 A.K. Srivastava. Mr.Mandhani confirmed that all the work of A-1 are being done by A-2 Mr.Bajaj. On 10.01.2011 in another call Bijay Mandhani told G.S. Bhatia that order would be issued on 11.01.2011 and Bhatia International has been given order of 80,000 metric tonne, as such Bijay Mandhani told G.S. Bhatia that he has to pay Rs.1.20 crores. Out of which he asked Mr.Bhatia to imemdiately pay “75” and rest after 10 days. Bijay Mandhani further told that he had already paid “one” (one crore).

4. As per the intercepted telephonic calls on 02.02.2011 B.L. Bajaj talked to Jaswinder Singh Bhatia in coded language and enquired about the progress of the things. Jaswinder Singh Bhatia assured B.L. Baja to get the work done in two consecutive days. On 03.02.2011 by a call no.16 B.L. Bajaj asked Ratan Pal Singh Bhatia that as discussed with J.S. Bhatia whether they will be making delivery that day or not.

5. It is further mentioned in complaint that on 02.02.2011 B.L. Bajaj contacted Vinod Kumar of M/s Tirupati Jewelers and asked him to make a deal of 3 kg gold @ Rs.20,000/- per 10 grams, to which Vinod Kumar refused to agree at that rate and told about the risk in carrying Rs.60-70 lakhs in cash for buying gold. On 10.02.2011 in call no.23 B.L. Bajaj again discussed with Vinod Kumar of Tirupati Jewelers, Noida

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regarding rate of gold, then Vinod Kumar agreed that he may arrange for "three" (three kg of gold). Similar discussion was made at call no.30 dated 16.02.2011. On 21.02.2011 as per call no.43 B.L. Bajaj confirmed Vinod Kumar of Tirupati Jewelers about likelihood of receipt of additional amount of Rs.40 lakhs on Wednesday (23.02.2011) and therefore Vinod Kumar to purchase three more gold bricks. As per call no.50 B.L. Bajaj informed jeweler Vinod Kumar that Rs.40 lakhs would be arranged next day and directed Vinod Kumar to purchase three gold bars. Thereafter there was a discussion of gold rates between B.L. Bajaj and A.K. Srivastava. Sh.A.K. Srivastava told B.L. Bajaj that high rate of gold does not matter and work be finished on the basis of prevailing gold rate.

6. As per the allegations in CBI case A.K. Srivastava was not collecting illegal gratification himself but he used services of B.L. Bajaj for this purpose. B.L. Bajaj was his friend and ex-colleague in NTPC and was presently a Sr. Vice President in M/s Nagarguna Construction Company as well as sole arbitrator in NALCO matters. It is alleged that after obtaining the illegal gratification on behalf of A.K. Srivastava, B.L. Bajaj procured gold bars of 1 kg weight which were being kept in the locker of Bank of Maharashtra, UPSC Shahjahan Road Branch. It is alleged that locker no.127 was opened on 21.06.2010 and operated by Smt.Chandni Srivastava (A-3) in benami name of Smt.Anita Bajaj w/o B.L. Bajaj (A-4). A trap was laid at Bank of Maharashtra, by officers of CBI and it was observed that Smt.Chadni Srivastava (A-3) and Anita Bajaj (A-4) came to the bank together but only Smt.Chandni Srivastava contacted bank officers and after signing the locker operation register,

went to the strong room to operate a locker. After operation of locker A-3 Smt.Chandni Srivastava while coming out of the bank, they were intercepted by officials of CBI and enquired about keeping of 3 kg gold bricks in the locker. It came in the charge sheet of the CBI that upon enquiries from bank officials it revealed that Smt.Chandi Srivastava operated the locker no.127 at 10.55 a.m. in above mentioned bank. That locker was found to be in the name of Smt.Anita Bajaj. Thereafter request was made to Branch Manager for getting the locker operated again, in the presence of CBI officers and independent witnesses to ascertain about its content. This time locker operation register of the bank was signed by Smt.Anita Bajaj for operating the locker. On being asked key of locker no.127 was produced by Smt.Chandni Srivastava from her black coloured hand bag and handed over the same to Smt.Anita Bajaj.

7. After opening of the locker, items found in the locker were taken out, there were two newspaper wrapped packets containing Indian currency notes, one plastic packet pouch containing five gold bars, one chocolate coloured jewelry pouch containing two gold bars and one red colour jewelry pouch containing three gold bars. Another red coloured jewelry pouch containing eight gold bangles, one Tanishq mini biscuit of 25 grams and four gold coins. Apart from gold jewelry, Rs.9.5 lakhs were found in the locker. Sh.O.P. Malhotra, Government Registered Valuer valued 10 gold bars and other gold items to be of Rs.2,13,81,150/-.

8. It is stated in complaint of ED that during the investigation of CBI it revealed that Smt.Chandni Srivastava impersonated herself as Smt.Anita Bajaj and got opened one account no.60045917165 at Bank of

Maharashtra, UPSC Branch. Smt.Chandni Srivastava also got opened locker no.127 in that bank by impersonating as Smt.Anita Bajaj, by using forged identity documents as well as forging the signatures of Smt.Anita Bajaj. After obtaining the illegal gratification on behalf of A.K. Srivastava, A-2 B.L. Bajaj used to procure gold bars of 1 kg weight and same were being kept in locker no.127 of above mentioned bank. This bank locker was opened and was being operated by Smt.Chandni Srivastava in benami name of Smt.Anita Bajaj. After the registration of the FIR trap was laid as aforesaid bank when Smt.Chandni Srivastava had operated the above said locker no.127. During investigation of CBI documents were collected relating to opening of aforesaid account no. 60045917165 and locker no.127. In those documents, identity documents i.e. photocopy of election ID and PAN card both were in the name of Anita Bajaj however having photograph of Smt.Chandni Srivastava. In the search of black coloured hand bag of Smt.Chandni Srivastava, at the time of trap dated 25.02.2011 also led to recovery of photocopy of election ID card no.ZYH0524421 which is in the name of Anita Bajaj but photo of Smt.Chandni Srivastava.

9. Pursuant to FIR and charge sheet filed by CBI, Enforcement Directorate recorded ECIR No.01/HIU/2014 on 06.03.2014 at Headquarters Office for investigating the case relating to offence of money laundering against accused persons. During the investigation of ED statement of A.K. Srivastava (A-1) was recorded on 20.03.2014, 25.03.2014 as per Section 50 of PML Act. In that statement A-1 A.K. Srivastava did not admit having received illegal gratification through B.L.

Bajaj (A-2) and that he kept the bribe money after converting the same into gold bricks, in locker no.127 of Bank of Maharashtra, taken in the name of Smt.Anita Bajaj. Similarly statement of Smt.Chandni Srivastava (A-3) was also recorded on 05.09.2014. It is stated in the complaint that A-2 B.L. Bajaj has been evasive throughout in recording of his statement u/s 50 of PML Act. His statement was completely contrary to facts and circumstances and telephonic conversation recorded by the CBI. A-4 Smt.Anita Bajaj initially avoided service of summons on different dates however her statement could be recorded on 10.12.2014. It is mentioned that during the investigation Vinod Gupta, Jeweler joined the investigation and vide letter dated 03.09.2014 confirmed inter alia that he sold six gold bricks of 1 kg each to B.L. Bajaj against receipt of cash payment of Rs.1.20 crores. He enclosed five purchase receipts of gold bricks with his letter.

10. It is mentioned in the complaint that number of summons were issued to Gurvinder Singh Bhatia, Chairman cum Managing Director of M/s Bhatia International Limited as per the details given in tabulation form in para 13.1 of the complaint but he did not appear and finally his statement could be recorded only on 25.11.2014. Summons were also issued to Ratan Pal Singh Bhatia on different dates as mentioned in para 14.1 and finally a show cause notice was issued. Similarly summons were issued on number of occasions to Jaswinder Singh Bhatia as per details given in para 15.1 and finally a show cause notice was issued. Statement of Bijay Kumar Mandhani of M/s Maheshwari Brothers Limited was recorded on 12.11.2014. In his statement it came that during the

investigation of CBI he was allowed to be made approver and was given pardon by Court of law by order dated 17.11.2011. Bijay Mandhani told that he knew G.S. Bhatia being from same trade. He stated that he received a call from Mr.Srivastava to meet in Hotel Maurya Sheraton, in the month of November in Delhi. He accordingly met Mr.Srivastava in Hotel Lobby, where he handed over him number of B.L. Bajaj and asked to meet him in connection with coal supply tender. Bijay Mandhani told that accordingly he met B.L. Bajaj in one of the Hotel lobby where he was asked remuneration for A.K. Srivastava for coal supply tender. Bijay Mandhani further stated that he was instructed by B.L. Bajaj to inform to Mr.Bhatia who was second supplier, to meet him (B.L. Bajaj) in connection with coal supply tender.

11. Bijay Mandhani further stated in his statement u/s 50 of PML Act that B.L. Bajaj introduced himself as a key person and started bargaining rate of remuneration/bribe @ Rs.200 per metric tonne, however rate was finalized at the rate of Rs.150 PMT and he gave Rs.1 crore to B.L. Bajaj in cash in first or second week of January 2011 against the supply order of 1,20,000 MT coal. Bijay Mandhani further stated that he had brought Rs.1 crores in 2-3 installments from Hyderabad, from his undisclosed income of his coal trade and handed over to B.L. Bajaj in Delhi, remaining portion of decided bribe could not be paid owing to raid conducted by CBI on Bajaj and Srivastava. During investigation of ED statement of Rita Gupta, Deputy Manager, Bank of Maharashtra UPSC branch was also recorded.

12. It is stated in the complaint that from the above mentioned facts it is very much clear that accused persons derived proceeds of crime as defined u/s 2(1)(u) of PML Act as a result of criminal activity relating to scheduled offence and accused persons were directly or indirectly involved, attempted or assisted in process or activity connected with proceeds of crime, including its concealment, possession or use or projecting of the same as untainted property and thus committed offence u/s 3 r/w 4 of PML Act. As such the present complaint has been filed in terms of Section 45(1) of PML Act for prosecution of A-1 to A-4.

13. Upon filing of the complaint, ld. Predecessor of this court vide order dated 01.04.2015 upon taking cognizance of the offence u/s 3 /4 of PML Act summoned the accused persons i.e. A-1 to A-4. Accused persons upon their appearance were provided copy of complaint and copy of relied upon documents. Taking into consideration the material on judicial record ld. Predecessor of this Court vide order dated 21.01.2016 ordered for framing of charge for offence u/s 3 punishable u/s 4 of Prevention of Money Laundering Act, 2002 against all the accused i.e. A-1 to A-4.

14. Charges were framed under the aforesaid sections on 20.02.2016, all the accused persons upon understanding the contents of charge pleaded not guilty to the charge and claimed trial.

15. In order to substantiate the charge ED has examined following witnesses :

Witness No.	Name of Witness	Description of witness
PW1	Smt. Rita Gupta	Deputy Manager, Bank of Maharashtra
PW2	Sh. Kamal Singh	The then, Assistant Director, ED

PW3	Sh. Vinod Kumar Gupta	Proprietor of M/s Tirupati Jewellers
PW4	Sh. J.P. Mishra	Complainant / Assistant Director, ED
PW5	Sh. A.K. Singh	Proprietor of Century Dyeing Pvt. Ltd.
PW6	Sh. Bijay Kumar Mandhani	Director of M/s Maheshwari Brothers Coal Ltd.
PW7	Sh. Ram Singh	Dy. SP/CBI/IO of CBI case
PW8	Sh. H.K. Lal	Joint Director, ED who passed provisional attachment order
PW9	Sh. Ashok Gautam	Deputy Director, ED who recorded ECIR

Statement of accused

16. Upon completion of PE, all the incriminating evidence as come on the judicial record were put to the accused persons separately for recording their statement in terms of Section 313 Cr.PC. A-1 Abhay Kumar Srivastava in his statement u/s 313 Cr.PC denied the evidence of PW1 and stated that he had never interacted with Smt.Rita Gupta (PW1), regarding opening of account and locker in question, nor has been involved in submitting of any document. It is stated that ED has not substantiated its claim by filing relevant documents/ annexures of CBI charge sheet. As such in the absence of crucial documents being proved, evidence of PW1 lacks any direct connection of his involvement in the matter. A-1 further denied the evidence of PW1 to the effect that Branch Manager C.K. Verma had introduced a gentleman and a lady and instructed PW1 to open saving account and locker in the name of that lady.

17. A-1 stated that Mr.C.K. Verma has not been examined by ED, because had he been examined, he would have denied any involvement of A-1. While denying the entire evidence of PW1, A-1 stated that he had no

connection to individual by name Anita Bajaj or the PAN card as referred to in evidence of PW1. A-1 stated that prosecution has failed to establish any link between him and the documents as referred to in the evidence of PW1. It is stated that it has already come in the evidence of IO of the ED that he had not seized any bank documents during investigation, nor the annexures of CBI charge sheet has been placed on judicial record of this case. A-1 further denied having signed any bank documents including locker agreement etc. While denying the evidence in totality it is stated that PW2 Kamal Singh never prepare or requisition seizure memo of the locker, as prepared during the investigation of CBI. A-1 did not deny recording of his statement u/s 50 of PML Act by PW2 however stated that such statement was recorded under a stressful environment.

18. While denying the evidence of other witnesses as well, A-1 stated that he denies all the allegations as outlined in the ECIR. It is stated by A-1 that coal supplier lobby was against him on account of number of measures taken by NALCO to reduce the fuel cost, that had hit the profit of coal suppliers hard. It is stated that none of the witness examined by ED has deposed regarding any money having been given to him. None of the witness has stated that gold has been given to A-1. It is stated that prosecution witness as examined deposed against him primarily due to reliance on unverified information and pressure. Many of their statement is based on hearsay. A-1 states that he has been falsely implicated in this case without any credible evidence and prosecution has failed to establish any nexus between him and alleged offence or proceeds of crime. A-1 denies having met with Mr.Madani.

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19. A-2 Bhushan Lal Bajaj in his statement u/s 313 Cr.PC while denying entire incriminating evidence put to him, stated that he had given the statement u/s 50 of PML Act to ED under a tremendous pressure as they were threatening him to arrest. A-2 denies having collected any packet from Bijay Kumar Mandhani and further states that he never met with A.K. Srivastava. A-2 denies having demanded or taken any remuneration for A.K. Srivastava or for himself. A-2 further denies having met with G.S. Bhatia or taken his number. A-2 further states that his wife Anita Bajaj never had any locker in Bank of Maharashtra and never operated the same. A-2 states that he has been falsely implicated in the present case and he has no connection with the alleged recovery from the locker.

20. A-3 Ms.Chandni Srivastava also denied the entire evidence in the same manner as stated by A-1. A-3 states that she had never visited the bank nor interacted with PW1 regarding opening of account or operating any locker in question. A-3 further denies having been involved in preparation, submission and verification of documents as referred to in the evidence of PW1. A-3 states that prosecution witnesses are deposing against her due to unverified information and assumptions. It is stated that she has been falsely implicated in this case and she had never been trapped. It is stated that no witness has been examined to show that she demanded any money, cash or gold or in any manner having knowledge of any such event as alleged.

21. A-4 Anita Bajaj has also denied the entire prosecution evidence in totality and stated that she is innocent and falsely implicated in

present case of ED. A-4 Anita Bajaj states that on 25.02.2011 she was at her residence, someone from CBI called her and asked her to come to Bank of Maharashtra. A-4 states that she along with her daughter Neha Arora went to the bank and came to know that a locker in her name had been opened by someone. A-4 states that she never opened any bank account or locker in Maharashtra Bank, UPSC Branch. A-4 states that she know Vinod Kumar Gupta but never purchased or collected any gold bricks in her life. It is stated that CBI falsely arrested her and thereafter ED has made a false case against her and her husband as she had no connection with alleged recovery from the locker.

Defence Evidence

22. On behalf of accused persons following witnesses have been examined :

Witness No.	Name of Witness	Description of witness
DW1	Dr. Neha Arora	Daughter of A-2 and A-4 (**on behalf of A-2 & A-4**)
DW2	Sh. Ranbir Singh	Ahlmad who produced charge-sheet from the court of Ms. Jyoti Kler, Special Judge, CBI. (**on behalf of A-2 & A-4**)
DW3	Sh. Subhash Chander Rai	Sr. Manager, NALCO (**on behalf of A-1 & A-3**)
DW4	Sh. Bajrang Lal Bagra	Director Finance, NALCO (**on behalf of A-1 & A-3**)
DW5	Sh. Gurwinder Singh Bhatia	MD / Owner of M/s Bhatia International Ltd. (**on behalf of A-2 & A-4**)

23. It is matter of record that when the case was at the stage of final arguments and even submissions of ld. SPP for the ED, ld. Sr.

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counsels appeared on behalf of A-1 and A-3 as well as A-2 and A-4, were heard, on behalf of ED an application under Section 311 r/w Section 91 Cr.PC was moved for production of recovered articles vide locker operation cum seizure memo dated 25.02.2011 and additional evidence of PW7. This court vide order dated 26.04.2025 allowed the said application and permitted recalling of PW7, for enabling prosecution to prove the case property i.e. recovered articles as per locker operation cum seizure memo already Ex.PW7/B.

24. In pursuance to such order, additional evidence of PW7 was recorded on 13.05.2025. On the same day additional statement of accused in terms of Section 313 Cr.PC was recorded, wherein accused denied the evidence and took the similar plea of being falsely implicated.

Submissions

25. I have heard Sh.N.K. Matta as well as Sh.Zoheb Hossain, ld. SPPs for ED and I have also gone through the written submissions filed on behalf of ED. Similarly I have also heard Sh.N. Hari Haran, ld. Sr. Advocate as well as Sh.Mayank Tripathi, ld. Counsel for A-1 and A-3. I have also heard Sh.Tanvir Ahmad Mir, ld. Sr. Advocate as well as Sh.S.P. Yadav, ld. Counsel for A-2 and A-4.

26. Sh.N.K. Matta, ld. SPP for ED while opening up the case on behalf of ED submitted that case of the ED for offence u/s 3/4 of PML Act has been duly proved. Ld. SPP submits that it be noted that accused herein have already been convicted in predicate/schedule offence and the judgment dated 20.12.2023 in CBI case no.202/2019 is proved on the record as Ex.PW7/D. It is submitted by ld. SPP for ED that beside that

there is sufficient evidence on the record showing that proceeds of crime were layered by converting into gold bars and to conceal the same in a locker. It is argued that recovery of gold bars from the locker which was in the name of Ms.Anita Bajaj (A-4) and was being operated by A-2 Smt.Chadni Srivastava. It is submitted that the *modus operandi* as adopted by accused persons in itself clearly establish the money laundering as defined under Section 3 of the Act.

27. Ld. SPP for the ED submits that proceeds of crime were generated when the illegal gratification was accepted by A-1 Abhay Kumar Srivastava through A-3 Bhushan Lal Bajaj and this fact has been duly established from the evidence of PW5 A.K. Singh, PW6 Bijay Kumar Mandhani. The factum regarding converting of illegal gratification into gold bars is proved from the statement of PW3 recorded u/s 50 of PML Act which is Ex.PW3/A. Moreover a letter Ex.PW3/B. As such it is submitted that all the ingredients of the offence have been established. Ld. SPP for ED submits that presumption in terms of Section 22, 23 and more particularly in terms of Section 24(a) of the Act can be drawn regarding proceeds of crime being involved in money laundering.

28. It is also argued by Sh.Zoheb Hossain, ld. SPP for ED that factum of generation of proceeds of crime, in itself is sufficient to prove the offence of money laundering as defined u/s 3 of PML Act. While relying upon the observation of Apex Court in judgment of **Y. Balaji vs. Karthik Desari** 2023 SCC OnLine SC 645 (para 97 to 99), it is submitted that it is enough for prosecution to establish that there was generation of proceeds of crime and accused was involved in any process or activity in

connection with the proceeds of crime. It is submitted that Enforcement Directorate need not to establish money trail or the conversation of bribe amount into gold bars as the very concealment of proceeds of crime or any activity done with it, in itself is an offence of money laundering.

29. Sh.Zoheb Hossain, ld. SPP for ED further argued that in the present case accused have not been convicted only for scheduled offence of Section 7, 13(1)(d) r/w 13(2) of Prevention of Corruption Act 1988. As per the judgment dated 20.12.2023, accused herein have also been convicted for offence u/s 419, 466, 471 and 474 of IPC. It is submitted that offence of impersonation and using of forged documents u/s 419 and 471 respectively of IPC are also scheduled offence. Moreover conspiracy among all the four accused persons in committing of scheduled offence, which generated the proceeds of crime, in itself is sufficient for proving the ingredients of Section 3 of PML Act. While referring to the evidence of PW1 Rita Gupta it is submitted that from the evidence of PW1 it is established that A-1 and A-3, used forged documents by the help of which they got opened a bank account and a locker in the name of Anita Bajaj which was being used by Smt.Chandni Srivastava, by impersonating as Anita Bajaj. It is submitted that PW1 has established that fact coupled with the fact that PW7 has established that at the time of the raid on 25.02.2011, both Anita Bajaj and Chandni Srivastava were apprehended by the team of CBI and when the locker was operated, in the presence of independent witnesses, 10 gold bars beside other articles were recovered.

30. Sh.N. Hari Haran, ld. Sr. Advocate appearing for A-1 and A-3 submitted that offence u/s 3 of PML Act is a standalone offence. Mere

conviction in scheduled offence, ipso facto does not stand proved the case of ED. It is argued that intention of the legislature while enacting separate enactment for money laundering was that the offence of money laundering is to be independently proved, even if there is conviction of accused in the scheduled offence. It is submitted that basic ingredients required for proving offence of “money laundering” is the source of the “proceeds of crime” as defined u/s 2(1)(u) of the Act. Moreover proof that the proceeds of crime having been generated by the accused by any criminal activity in relation to scheduled offence. Ld. Sr. Advocate submits that in the present case even if it is assumed for the time being that on account of conviction in scheduled offence, it is proved that there was a generation of illegal money, however there is no evidence at all led by ED to prove as to what happened thereafter. Ld. Sr. Advocate has further referred to Section 33 of Indian Evidence Act (Section 27 of Bharatiya Sakshya Adhiniyam) and submitted that ED cannot rely upon an evidence led in the trial of scheduled offence except in the situation as mentioned in the above said section. As such ED is required to establish generation of proceeds of crime and that same was used for any of the activity/process as mentioned in the definition of money laundering.

31. It is argued that in the charge it is alleged that accused persons committed money laundering by converting proceeds of crime of Rs.2,13,81,150/- into ten gold bars and other jewelry articles. Whereas in the complaint of the ED there is allegation only with regard to purchase of three gold bars from Vinod Kumar Gupta of Tirupati Jewelers. Therefore there is no evidence at all nor alleged or proved in the complaint or in

whole trial about the source of ten gold bars. In the absence of same mere recovery of gold bars in the scheduled offence, in itself does not establish the offence of "money laundering".

32. Ld. Sr. Counsel while referring to the evidence of PW3 Vinod Kumar Gupta argued that the said witness has not supported the prosecution case and had stated that letter E.PW3/B was written on the dictation of officials of ED as officer of the ED was forcing him to write with the threat to implicate him. Even otherwise the gold bars if at all as per allegations were purchased from PW3, same were not identified by anyone, to be the same as were recovered from the locker. It is also argued that the invoices annexed with the letter have not been proved as they are Marked PW3/X-1 to X-5. It is further submitted by ld. Sr. Counsel that PW4 J.P. Sharma has admitted in his evidence that except recording of statement u/s 50 he has not done anything in the investigation. Source of the proceeds of crime has not been investigated, PW4 stated in cross-examination that ED investigation was with respect to six gold bars, whereas the charge is in respect of ten gold bars. It is argued that PW4 in cross-examination admitted that he did not find any witness stating that gold bars were handed over Chandni Srivastava and no witness has even seen being gold bars handed over to A.K. Srivastava.

33. It is argued that much reliance has been placed on the evidence of PW6 Bijay Kumar Mandhani, his evidence cannot be taken into consideration firstly because that he was an accused in scheduled offence and turned approver, however has not been made accused in the ED case for no plausible reasons. It is submitted that even otherwise the

evidence of PW6 is unworthy of any reliance as that witness has admitted in his evidence recorded on 10.07.2023 that no transaction relating to money took place in his presence and that he had not stated in his evidence that he personally handed over money to B.L. Bajaj. This witness has further admitted in cross-examination of 22.11.2024 that he cannot give any details of source of Rs.One crore and further admitted that he had never received any call from A.K. Srivastava regarding handing over of money on his behalf.

34. It is further submitted by ld. Sr. Counsel for the accused that it came in the evidence of PW4 J.P. Sharma who investigated the matter that he could not record the statement u/s 50 of G.S. Bhatia or R.P. Bhatia, despite giving notices to them for joining the investigation. It is submitted that it be noted that above noted G.S. Bhatia and R.P. Bhatia were accused in scheduled offence but they have not been made either accused or witness in the present case for no justifiable reasons. It is argued that G.S. Bhatia was rather examined as defence witness being DW-5 (on behalf of A-2 and A-4) and in his examination in chief he stated that none from the NALCO or any other person demanded any illegal gratification for supply of coal to NALCO under the tender of year 2010. Even in the cross-examination on behalf of A-1 and A-3, DW-5 admitted that neither him nor his company has ever given any money or gold bar to any government officer associated with NALCO regarding awarding of tender. Reliance has been placed on para 18 of the judgment of Delhi High Court in **Sanjay Kansal vs. Assistant Director, ED** MANU/DE/3387/2024, wherein the judgment of Single Judge Bench of Allahabad High Court in Mohan Lal

Rathi's case has been referred to in which while relying upon the observation of Apex Court in Vijay Madanlal Chaudhary's case it was stated that merely an accused in predicate offence has been granted pardon, would ipso facto does not result in his acquittal in offence under PML Act, unless the accused person seeks pardon even in case under PML Act also by making full and true disclosure of whole of the circumstances within his knowledge relating to offence under PML Act.

35. I have heard Sh.Tanvir Ahmad Mir, ld. Sr. Advocate appearing on behalf of A-2 and A-4 as well as gone through the written submissions filed by ld. Sr. Counsel. It is submitted by ld. Sr. Advocate that at the outset the scheme of the enactment of Prevention of Money Laundering Act 2002, as amended upto date, would clearly show that section 43 and 44 of the Act make it clear that offence punishable under PML Act and scheduled offence though are connected offences but are otherwise separate and standalone offence. It is submitted that therefore in the Act it has been made clear that both scheduled offence as well as offence of "money laundering" under PML Act shall be tried by the same Special Court, however trial would go separately but simultaneously. It is submitted that Section 44(1)(c) of PML Act therefore specifically provides that if the court which has taken the cognizance of scheduled offence is other than the Special Court which has taken the cognizance on the complaint of offence of money laundering, thereupon on an application on behalf of ED the trial relating to scheduled offence would be committed to the court where the trial of money laundering is pending. Ld. Sr. Counsel specifically referred to Explanation (i) attached to Section 44(1) of the Act

and submitted that intention of the legislature is very much explicit that Special Court during trial of offence of "money laundering" shall not be dependent upon orders passed or evidence recorded in trial of scheduled offence. Trial of both sets of offences shall not be construed as joint trial.

36. It is argued that keeping in view such legal mandate it has to be borne in mind that no evidence, observation of court or any material proved during the trial of scheduled offence, can be taken as a proof in the trial of the money laundering offence under PML Act. Scheduled offence as well as offence of money laundering even if connected with each other, would still remain separate and independent and therefore evidence has also to be led independently to prove offence of 'money laundering'. In support of this contention reliance has been placed on judgment of Hon'ble Apex Court in **Vijay Madanlal Chaudhary and ors. vs. Union of India** (2023) 12 SCC 1 **Nathi Lal and others vs. State of UP and Another** 1990 (Supp) SCC 145.

37. Ld. Sr. Counsel further argued that another legal proposition which is to be kept in mind is with regard to statement u/s 50 of PML Act. It is submitted that statement u/s 50 of PML Act cannot be considered to be a substantive evidence and therefore mere exhibition of statement u/s 50 of the Act of any ipso facto does not prove the contents of that statement. Statement u/s 50 of PML Act therefore cannot be taken at parity with a documentary evidence.

38. Ld. Sr. Counsel for the accused no.2 and 4 further argued that presumptions under Section 23 or 24 of PML Act are not conclusive presumptions rather rebuttable presumption. It is argued that court can

draw any presumption under those provisions only when the prosecution has proved foundational facts by leading direct and independent evidence for proof of ingredients of Section 3 of the Act. In support of this contention reliance has been placed on judgments of Hon'ble Apex Court in **Vijay Madanlal Chaudhary's** case (supra) and **Anees vs. State Govt. of NCT** (Criminal Appeal No.437/2015 decided on 03.05.2024).

39. Ld. Sr. Counsel for A-2 and A-4 also argued that in the present case there is no clarity as to whether the offence under Section 3 of PML Act for which charge has been framed is with regard to three gold bars or of ten gold bars. It is submitted that the star witness for proving the charge under PML Act is PW-3 Vinod Kumar Gupta who had rather not supported the prosecution story as a whole and therefore evidence of PW-3 does not establish anything. It is argued that although PW-3 was permitted to be cross-examined as a hostile witness, by ld. SPP for ED, however the said witness has not been cross-examined even with regard to contents of his statement u/s 50 of PML Act Ex.PW3/A or with regard to letter Ex.PW3/B. It is submitted that there is no evidence at all establishing the essential ingredients of money laundering. In support of this contention reliance has been placed on judgment of Hon'ble Apex Court in **Baldev Singh vs. State of Haryana** (2021) 18 SCC 523, **Ram Kishan vs. Harmeet Kaur & Anr.** (1972) 3 SCC 280, **Baijnath Sah vs. State of Bihar** (2010) 6 SCC 736, **Raman Bhuraria vs. Enforcement Directorate** 2023 SCC OnLie Del. 657, **Chandra Prakash Khandelwal vs. Directorate of Enforcement** 2023 SCC OnLine Del. 1094 and **Sanjay Jain vs. Enforcement Directorate** (Bail Appln. 3807/2022 decided on 05.06.2023).

40. Ld. Sr. counsel further argued that testimony of PW6 Bijay Kumar Mandhani and PW5 A.K. Singh is not worthy of reliance for the reasons that they were co-accused in the trial of predicate offence and ED ought to have made them accused in this case, however they have not been made as such. Therefore testimony of an accomplice to the crime requires independent corroboration which is missing in the present case. In support of this contention reliance has been placed on judgments in **Kamal Kishore vs. State through Delhi Administration** 1997 SCC OnLine Del. 966 and **Surinder Kumar Khanna vs. Intelligence Officer, Directorate of Revenue Intelligence** (2018) 8 SCC 271. It is argued that charge sheet filed by the IO of the ED is mere his opinion which is inadmissible in evidence in the absence of any oral or documentary evidence. Reliance has been placed on **Ashok Chawla vs. Ram Chander Garvan, Inspector CBI** ILR (2011) III Delhi, **Dablu Kujur vs. State of Jharkhand** (2024) 6 SCC 758 and **Rajesh Yadav and Another vs. State of Uttar Pradesh** (2022) 12 SCC 200.

Ingredients of offence of Money Laundering

41. Having considered the submissions made at bar and having gone through the record, before going into factual aspect and evidence, it would be useful to precisely discuss legal aspect involved in the present case. It be noted that accused herein have already been stood convicted in predicate offence under Section 7, 13(2) r/w 13(1)(d) of P.C. Act as well as u/s 120B r/w 419,466, 471, 474 IPC vide judgment dated 20.12.2023 Ex.PW7/D by ld. Predecessor of this court. It is again matter of record that such conviction has been challenged by the accused therein by way of appeal which is pending before Hon'ble High Court of Delhi. It is pointed

out by ld. Counsels for the accused persons that sentence in that matter has already been suspended by Hon'ble High Court, pending appeal. However convictions of accused persons herein in trial of "scheduled offence" has only limited relevance.

42. This court in present case is concerned with the proof of charge of offence of "money laundering" framed against the accused. Accused persons have been charged for offence under Section 3 of PML Act of offence of money laundering. Chapter II of the Act deals with the offence of money laundering. Section 3 defines what is offence of money laundering. Section 3 as it stands today, defines the offence of money laundering as :

> **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 indulged 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

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(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.

43. Offence of money laundering as defined under Section 3 originally at the time of enactment of PML Act in 2002, has though undergone certain important changes by way of amendment of 2013 and of amendment of 2019. However it be noted at the outset that the basic ingredients of offence of money laundering are the same. Expression used in section 3 as "directly and indirectly" attempting to indulge in the process or activity connected with the proceeds of crime has been specifically added. Not only that, even persons who "knowingly assist" in any process or activity connected with the proceeds of crime are within the scope of the Act. The definition as finally couched in the Act at present is much more wider in scope as can be seen from the language and syntax of the section. Thus one can make out that the very scope of the offence of money laundering, though is the same, however different facets of the offence have been clarified by adopting different expressions, in order to remove any ambiguity regarding any process connected with use, possession or any activity relating to proceeds of crime. Over the passage

of time, these words have been added in Section 3 to clarify the legal requirement for proving the offence of money laundering. It be noted here that such amendments have been made in the line of recommendations made by FATF (Financial Action Task Force).

44. Taking the offence u/s 3 as existing in the law, as on today, from the bare language of Section 3 of Act, it is clear that offence of money laundering is an independent offence regarding the process or activity connected with the 'proceeds of crime' which had been derived or obtained as a result of criminal activity relating to scheduled offence or any property which may be directly or indirectly derived or obtained as a result of any criminal activity, relatable to scheduled offence. Section 3 of PML Act can be well understood by dissecting its essential expressions. As laid down by the Hon'ble Apex Court in **Y. Balaji vs. Kartik Desari and ors.** 2023 SCC OnLine SC 645, offence of money laundering involve three 'P' i.e.

(1) **Person**

(i)Those who are actually involved.

(ii)Those who are directly or indirectly attempt to indulge.

(iii)Those who knowingly assists.

(iv)Those who are knowingly a party.

(2) **Process**

Any of the following acts independently or one or two or more of them jointly, are covered within the scope of offence :

(a)Concealment ;

(b)Possession ;

(c)Acquisition ;

(d)Use and projecting ;

(e)Claiming it as untainted property.

(3) **Product**

(i)Proceeds of crime or

(ii)Any property representing proceeds of crime being the end result of any of the above said activities.

45. Thus involvement in any of such process or activity connected with the proceeds of crime constitutes the offence of money laundering. Offence of money laundering is otherwise has nothing to do with the criminal activity relating to scheduled offence except the extent that the proceeds of crime 'derived or obtained as a result of that crime' or it represent any property derived or obtained from any criminal activity relatable to scheduled offence.

46. Thus proving of offence of money laundering being a independent offence, would be in separate trial and not at all dependent on the trial of predicate offence, except to limited extent that it is to be established that a scheduled offence has been committed or criminal activity in relation to scheduled offence has been committed by which proceeds of crime have been generated. It is thereafter to be proved in the trial of money laundering that proceeds of crime were laundered in any of the form as noted above.

<u>Proceeds of Crime</u>

47. Therefore the expression 'proceeds of crime' has assumed very importance for proof of offence of money laundering. As per Section

2 (u) - "proceeds of crime" means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property (or where such property is taken or held outside the country, then the property equivalent in value held within the country)."

48. The Explanation added with the section 2(1)(u), clarifies that proceeds of crime also include property not only derived or obtained from the scheduled offence but also include property which is derived or obtained as a result of any criminal activity 'relatable' to scheduled offence. It is clear from the language of Section 2(1)(u) of the PML Act that the expression "proceeds of crime" refers to a property, which is "derived" or "obtained" by any person as a result of criminal activity relating to scheduled offence. A plain reading of the aforesaid definition indicates that the expression of 'proceeds of crime' is in three parts. The first part relates to proceeds of crime "derived" or "obtained" by committing scheduled offence and the second relates to property of an equivalent value and thirdly any property derived by committing of any criminal activity, which is relatable to scheduled offence.

49. If we further elaborate the three components of proceeds of crime, first component is directly connected with commission of scheduled offence. In other words any property which is obtained directly or indirectly by committing a criminal activity relating to scheduled offence. Thus it must be shown by some evidence that any movable or immovable property, has been "derived" or "obtained" directly from criminal activity relating to a scheduled offence. For example unaccounted money found in

possession of anyone in itself is not ‘proceeds of crime’ unless it is established by evidence that such money is “derived” or “obtained”, directly as a result of criminal activity relating to a scheduled offence. So the connection with a criminal activity relating to a scheduled offence is very necessary which makes it ‘proceeds of crime’ as defined under section 2(1) (u) of Act.

50. The second part of the definition of the expression ‘proceeds of crime’ includes within its ambit, a property equivalent to the value of the property, which is derived from any criminal activity and is held outside the country. In other words, if any property that is derived or obtained from any criminal activity relating to a scheduled offence is held outside India, then a property of an equivalent value held in India, would also fall within the scope of expression of proceeds of crime.

51. The third part of proceeds of crime has been added by way of Explanation attached to section by way of amendment of 2019, which clarifies that even a property which may not be derived directly or indirectly by committing criminal activity relating to scheduled offence but by committing criminal activity which can be relatable to scheduled offence. The expression ‘relatable’ to scheduled offence indicate that prosecution need not in all possible situation require to lead evidence to establish direct proximity of deriving or obtaining of such property and criminal activity relating to scheduled offence. In other words if it is sufficient to establish by evidence that property has been derived as a result of any criminal activity which may be relatable to scheduled offence, then there may not be necessity for any positive evidence of

connection of property/output and commission of scheduled offence. Such property would also be within the scope of proceeds of crime.

52. The scope of definition of 'proceeds of crime' explained by Hon'ble Supreme Court in **Vijay Madanlal's case AIR Online 2022 SC 1139**. The Supreme Court observed as :

> "251. The "proceeds of crime" being the core of the ingredients constituting the offence of money-laundering, that expression needs to be construed strictly. In that, all properties recovered or attached by the investigating agency in connection with the criminal activity relating to a scheduled offence under the general law cannot be regarded as proceeds of crime. There may be cases where the property involved in the commission of scheduled offence attached by the investigating agency dealing with that offence, cannot be wholly or partly regarded as proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act - so long as the whole or some portion of the property has been derived or obtained by any person "as a result of" criminal activity relating to the stated scheduled offence. To be proceeds of crime, therefore, the property must be derived or obtained, directly or indirectly, "as a result of" criminal activity relating to a scheduled offence. To put it differently, the vehicle used in commission of scheduled offence may be attached as property in the concerned case (crime), it may still not be proceeds of crime within the meaning of Section 2(1)(u) of the 2002 Act. Similarly, possession of unaccounted property acquired by legal means may be actionable for tax violation and yet, will not be regarded as proceeds of crime unless the concerned tax legislation prescribes such violation as an offence and such offence is included in the Schedule of the 2002 Act. For being regarded as proceeds of crime, the property associated with the scheduled offence must have been derived or obtained by a person "as a result of" criminal activity relating to the concerned scheduled offence. This distinction must be borne in mind while reckoning any property referred to in the scheduled offence as proceeds of crime for the purpose of the

2002 Act. Dealing with proceeds of crime by way of any process or activity constitutes offence of money-laundering under Section 3 of the Act.

252. Be it noted that the definition clause includes any property derived or obtained "indirectly" as well. This would include property derived or obtained from the sale proceeds or in a given case in lieu of or in exchange of the "property" which had been directly derived or obtained as a result of criminal activity relating to a scheduled offence. In the context of Explanation added in 2019 to the definition of expression "proceeds of crime", it would inevitably include other property which may not have been derived or obtained as a result of any criminal activity relatable to the scheduled offence. As noticed from the definition, it essentially refers to "any property" including abroad derived or obtained directly or indirectly. The Explanation added in 2019 in no way travels beyond that intent of tracking and reaching upto the property derived or obtained directly or indirectly as a result of criminal activity relating to a scheduled offence. Therefore, the Explanation is in the nature of clarification and not to increase the width of the main definition"proceeds of crime". The definition of "property" also contains Explanation which is for the removal of doubts and to clarify that the term property includes property of any kind used in the commission of an offence under the 2002 Act or any of the scheduled offences. In the earlier part of this judgment, we have already noted that every crime property need not be termed as proceeds of crime but the converse may be true. Additionally, some other property is purchased or derived from the proceeds of crime even such subsequently acquired property must be regarded as tainted property and actionable under the Act. For, it would become property for the purpose of taking action under the 2002 Act which is being used in the commission of offence of money-laundering. Such purposive interpretation would be necessary to uphold the purposes and objects for enactment of 2002 Act.

> 253. Tersely put, it is only such property which is derived or obtained, directly or indirectly, as a result of criminal activity relating to a scheduled offence can be regarded as proceeds of crime. The authorities under the 2002 Act cannot resort to action against any person for money-laundering on an assumption that the property recovered by them must be proceeds of crime and that a scheduled offence has been committed, unless the same is registered with the jurisdictional police or pending inquiry by way of complaint before the competent forum. For, the expression "derived or obtained" is indicative of criminal activity relating to a scheduled offence already accomplished. Similarly, in the event the person named in the criminal activity relating to a scheduled offence is finally absolved by a Court of competent jurisdiction owing to an order of discharge, acquittal or because of quashing of the criminal case (scheduled offence) against him/her, there can be no action for money-laundering against such a person or person claiming through him in relation to the property linked to the stated scheduled offence. This interpretation alone can be countenanced on the basis of the provisions of the 2002 Act, in particular Section 2(1)(u) read with Section 3. Taking any other view would be rewriting of these provisions and disregarding the express language of definition clause "proceeds of crime", as it obtains as of now."

53. So from above discussion, it is clear that offence of 'money laundering' is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is essentially concerning the process or activity connected with such property, which constitutes the offence of money laundering. Keeping the legal proposition as discussed above, in mind let us examine the facts and evidence of present case to examine whether the offence of money laundering has been established or not.

Relevance of Judgment of Conviction of accused in trial of scheduled offence

54. Before this court advert into the factual aspects, evidence led in the present case, in view of the submissions made at bar it is appropriate to examine the question of relevance of the judgment of conviction of accused persons herein in trial of scheduled offence. Much emphasis has been given on behalf of ED to the judgment of conviction exhibited as Ex.PW7/D in the evidence of PW7. Ld. SPP for the ED has rather referred to certain observation made by the ld. Special Judge who gave the judgment Ex.PW7/D.

55. It is established law that scheduled offence and offence of money laundering are different and separate offences and therefore under the scheme of PML Act the trial of scheduled offence and of offence of money laundering have been kept separate. However owing to inter-connection of scheduled offence and deriving of proceeds of crime used for money laundering, there has always been a connection between these two offences. It is for that reason if the trial of scheduled offence results into acquittal or discharge or quashing of the FIR of the scheduled offence, there is automatic culmination of proceedings/trial of offence of money laundering.

56. It is argued by both ld. Sr. Advocates appearing for two sets of accused persons that conviction of accused persons herein in scheduled offence, has no effect at all. ED/prosecution in this case is otherwise required to prove ingredients of Section 3 of PML Act irrespective of outcome of the trial in scheduled offence.

57. Ld. SPP for the ED on the other hand argued that judgment dated 20.12.2023 Ex.PW7/D in CBI case No.202/2019 in trial of scheduled offence, whereby accused herein stood convicted, is certainly relevant to be taken into consideration. It is submitted that there has been a conclusive judicial finding on material aspects which are also in issue in the present case including issue regarding payment of illegal gratification, committing offence of impersonation as well as using forged documents.

58. Having heard the submissions at bar, law with regard to judgment in a trial of a separate offence is well settled that a judicial finding in a trial of one offence, has some relevance however cannot be considered as an evidence in separate trial of another offence (may be different or similar offence). Although situation is little different when it comes to the question of trial of scheduled offence and trial of offence of money laundering under PML Act. As noted above on account of inter-connection of these two offences albeit being separate, since certain ingredients of both the offences being common when the judicial finding in the proceedings/trial of scheduled offence results into discharge, acquittal or quashing it would certainly render the proceedings/trial of money launder redundant. Because when the very commission of scheduled offence is not proved, the question of origin/generation of proceeds of crime would obviously not arise.

59. However reversal of the same is not true. In case of conviction in scheduled offence, it does not result into automatic conviction in trial of offence of money laundering. The judgment of conviction in scheduled offence may have limited relevance to the extent

that there is one judicial findings that scheduled offence was actually committed. However conviction in the trial of scheduled offence would not automatically lead to conviction in money laundering. Therefore in the present case conviction of accused persons in CBI case has no effect in concluding against the accused persons for offence of money laundering because of ingredients of offence of money laundering are separate to be proved. Having so stated some evidence is required to be led, not for proof of scheduled offence but only for proof of connection of subject matter of money laundering and scheduled offence.

60. In the light of submissions as made by ld. SPPs for the ED as well as by ld. Senior Advocates appearing for accused persons, for the convenience of all concerned, this court formulate following issues to adjudicate :

(i) Whether prosecution/ED has proved generation of proceeds of crime?

(ii) Whether presumptions u/s 24 of PML Act can be drawn against the accused?

(iii) Whether offence of money laundering has been proved on the record or not?

Issue No.1 (Whether prosecution/ED has proved generation of proceeds of crime)

61. In the light of the facts as discussed above, first and foremost aspect to be examined is whether generation of "proceeds of crime" has been established. Issue regarding proof of generation of proceeds of crime involve important factual aspects i.e. (a) opening of bank account and of

locker by forgery and impersonation; (b) recovery of gold bars from the locker; (c) receiving of bribe.

62. At the outset this court makes it clear that above noted three factual aspects have essentially been in issue during trial of scheduled offence. This court is of the view that there cannot be a repetition of examining entire witnesses, as examined in the trial of predicate offence/scheduled offence. In the opinion of this court in a trial for offence of 'money laundering', commission of "scheduled offence" need not to be proved as it is within the domain of trial of "scheduled offence". What however required to be established is only a connection of (i) property (subject matter of trial of money laundering" is directly or indirectly derived by criminal activity relating to scheduled offence. For eg. - Bribe received/accepted and kept by public servant or any person on his behalf in any other form of money or in any other form is process of crime.

<u>(a) opening of bank account and of locker by forgery and impersonation</u>

63. In the present case ED has examined PW1 Smt.Rita Gupta who is Deputy Manager from Bank of Maharashtra, and testified that in year 2010 when she was posted as Deputy Manager of above said bank in UPSC Shahjahan Road Branch. PW1 testified that CBI had made inquiries from her in respect of a saving account and locker opened in that branch in the name of Smt.Anita Bajaj. PW1 says that during that year Sh.C.K. Sharma, Branch Manager introduced her with a gentleman and a lady and instructed her to open saving bank account and locker in the name of said lady. PW1 stated to have complied with those directions.

PW-1 states that said lady produced original Voter card and PAN card, photocopy of the same. PW1 identified account opening form of account no.60045917165 in the name of Anita Bajaj along with photocopy of PAN card, Voter Identity card in the name of Anita Bajaj which are collectively Ex.PW1/A. PW1 further identified Q2 to A5 and Q7 and Q8 on the account opening form, on which the said lady had signed. On being shown the photograph on it, PW1 identified the photograph of accused Smt.Chandni Srivastava, present in the court, in the name of Anita Bajaj.

64. PW1 further testified that for the purpose of hiring a locker no.127 that lady by the name of Anita Bajaj, a CDR of Rs.10,000/- and locker agreement was executed, signed by that lady who visited the bank. Relevant documents have been identified by PW1, which she had also proved during the trial of scheduled offence and in the judicial record of this case same was collectively exhibited as Ex.PW1/B. PW1 also identified locker call register for period form 29.07.2007 to 25.02.2011 maintained in the aforesaid bank's branch and collectively Ex.PW1/C. Witness identifies page no.133 of the said register, showing entry dated 21.06.2010 at 04.30 p.m. regarding operation of locker no.127 in her presence. PW1 similarly identify entry at page no.154 of said register dated 09.11.2010 regarding operation of that locker. PW1 in her deposition identified A-1 Abhay Kumar Srivastava and A-3 Smt.Chandni Srivastava to be those persons who had visited the bank. PW1 states that during investigation of ED she was called upon and she wrote her statement in her hand writing which is Ex.PW1/D (D-21). During her evidence on specific question to identify the gentleman and the lady, who

visited the bank on 21.06.2010 for opening of the SB account and locker, PW1 identified accused Abhay Kumar Srivastava and Smt.Chandni Srivastava.

65. It is argued by ld. Sr. counsel appearing for A-1 and A-3 that opening of SB account and of locker cannot be considered as proceed of crime as locker cannot be deemed to be derived or obtained as a result of criminal conspiracy related to any scheduled offence, in view of the definition given under Section 2(1)(u) of PML Act. Ld. Sr. Counsel appearing for A-2 and A-4 submitted that name of A-2 and A-4 has not been given in the evidence of PW1. As per the PW1 she identified A-1 and A-3 to be one who visited the bank and got opened the SB account and locker.

66. Ld. SPPs for ED argued that bank account and locker operated by Smt.Chandni Srivastava impersonating as Anita Bajaja in itself constitute the proceed of crime and reliance has been placed on the judgment of Delhi High Court in **Kumar Food Industries vs. Union of India** 2022 SCC OnLine Del. 729.

67. Having examined the evidence of PW1, at the outset it be noted that PW1 Rita Gupta being an official of Bank of Maharashtra, can be considered to be an independent witness who had otherwise no concern with the matter except to depose only with regard to opening of SB account and locker and subsequently operation of that locker at the time of raid. PW1 in her deposition referred to documents relating to account opening form, which were produced in original during the trial of scheduled offence and are exhibited as Ex.PW1/A in the judicial record of

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this case. PW1 identified the signatures on those documents Mark Q-2 to Q-8 to be of lady who visited to the bank and PW1 got her signatures on those documents. PW1 later in her deposition identified accused Smt. Chandni Srivastava to be the same lady who had visited the bank and signed on those documents by impersonating as Anita Bajaj. The documents of KYC annexed with account opening form for account no. 60045917165 such as PAN card no.AECPB2918L, voter identity card no. ZYH0524421, were in the name of Anita Bajaj however the photograph on those documents were of Smt.Chandni Srivastava. From deposition of PW1 two important aspects stands proved. One documents were forged for opening of account and locker; second impersonation was done by misusing name of accused Anita Bajaj and her documents of identity.

68. No doubt there may not be evidence as to who actually did such forgery by using the KYC documents/documents of identity of Smt.Anita Bajaj by affixing the photograph of Smt.Chandni Srivastava. But fact remains from the evidence of PW1 it is established that those forged documents have been used by none else than A.K. Srivastava (A-1) and Smt.Chandni Srivastava (A-3), when they visited the Bank of Maharashtra and met with PW1 for opening of the said saving account and locker. There is nothing in the cross-examination of PW1 to disbelieve the testimony of PW1 on material aspects.

69. Certain contradictions have been referred to in the written submissions filed on behalf of A-1 and A-3 between the statement of PW1 Rita Gupta recorded u/s 50 of PML Act (Ex.PW1/D) and her deposition as it is submitted that witness Rita Gupta stated that she do not remember if

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A.K. Srivastava was present on 21.06.2010, whereas she deposed in her deposition about the presence of A.K. Srivastava along with Chandni Srivastava. Similarly it is pointed out that there is no reference regarding Branch Manager C.K. Verma in her statement u/s 50, whereas Rita Gupta deposed about the same in her evidence. Further it is pointed out that PW1 in her deposition stated that her statement us/ 50 might have been recorded with the assistance of ED official, whereas her statement is stated to be voluntarily recorded by her only.

70. Such contradictions as referred to in the written submissions, in the opinion of this court do not affect the substratum of evidence of PW1 on material aspects. First of all it is established law that statement u/s 50 of PML Act is not a substantive evidence, although is relevant and material. Particularly when it was recorded by the witness herself in her hand writing and that fact has not been disputed or disproved. Now even if we take the deposition of PW1 into consideration, PW1 identified A-1 A.K. Srivastava in the court. She being an independent witness did not identify any other accused to be A.K. Srivastava and rightly identified him only beside Chandni Srivastava. So far\ as the contradiction regarding non mentioning of A.K. Singh, Branch Manager in her statement u/s 50. it is sufficient to say that statement u/s 50, cannot be considered to be the last and final word or to be encyclopedia. It is matter of record that at relevant time it was A.K. Singh who was working as Senior Branch Manager of that branch of Bank of Maharashtra. Therefore such contradiction has no much relevance.

71. In statement of accused recorded u/s 313 Cr.PC, both A-1 and A-3 though have denied having interacted with PW1 Rita Gupta regarding opening of account and locker in question, A-1 A.K. Srivastava in his statement took the plea that on that particular day he was at Ministry of Mines, Government of India, Shastri Bhawan for delivering a presentation before the Ministry. A-1 states that he informed about the said fact to Investigating Officer of the ED but no efforts were made to collect relevant documents from the Ministry to verify that fact. However A-1 Abhay Kumar Srivastava has not appeared in the witness box to depose specifically in this regard for reasons best known to him. No doubt DW4 Bajrang Lal Bagra has deposed that he knew accused Abhay Kumar Srivastava, who had been earlier working as Director (Finance) in NALCO and inter alia testified regarding copy of minutes of meeting dated 21.06.2010 Ex.DW4/A, taken under Right to Information Act from K.N. Ravindra, Company Secretary and PIO of NALCO.

72. Sh.Mayank Tripathi, ld. counsel for A-1 has put much reliance on this minutes of meeting to establish that at particular point of time, A-1 was not possible to be present in the bank for the purpose of opening of SB account, locker etc. However this document can hardly be of any reliance to disbelieve PW1, firstly because DW4 in his cross-examination by ld. SPP for ED admitted that he cannot specifically state as to at what time Mr.A.K. Srivastava attended the meeting of 21.06.2010. DW4 rather voluntarily went on to testify that he can state only on the basis of copy of minutes Ex.DW4/A that he attended that meeting which started at 04.00 p.m. DW4 further admits that he had not prepared the minutes of meeting

Ex.DW4/A. Thus even if the evidence of DW4 is taken on the face of it, even if the minutes of meeting dated 21.06.2010 Ex.DW4/A is taken into consideration, still it can be stated that it is not proved that on the particular date and time when the SB account, locker was got opened in the presence of PW1, A-1 A.K. Srivastava and his wife A-3 Chandni Srivastava could not have been presence in that bank. Rather the minutes of meeting establish that on that particular day A-1 was very much in Delhi. Moreover as noted above there is no explanation as to why A-1 did not come forward in the witness box to depose in this regard to take the plea of alibi as taken in his statement of accused.

73. It is established law that a plea of alibi or in other words a plea of accused that at particular day and time, he was not present at the place, where prosecution alleges and claims that he was in fact at another place, can be proved when evidence has been led to establish that it was impossible for accused to be present at the time and place where prosecution alleges. So place as alleged, should be so far off to the place where accused claimed to be present at relevant time and date to show that it was next to possible to believe that accused could be present at the place as alleged by prosecution. In the present case plea taken by accused A.K. Srivastava that in Delhi he was attending a meeting, which he has sought to prove by proving the minutes of the meeting Ex.DW4/A does not establish that it was impossible for him to be present along with his wife Chandni Srivastava in UPSC Branch of Bank of Maharashtra on that day in Delhi itself.

74. Even otherwise evidence of PW1 cannot be disbelieved for the reason that there is no reason why that witness would depose falsely or out of any prejudice being witness from the bank and independent person having no concern at all with any of the accused persons. Thus from the testimony of PW1 this court concludes that it is established that it is A-1 and A-3 who went to Bank of Maharashtra for opening of SB account and locker on the basis of forged documents and by impersonation.

(b) <u>recovery of gold bars from the locker</u>

75. As noted above, further the case of the CBI in scheduled offence is with regard to recovery of gold bars from the locker which as per evidence of PW1, has already been proved to have got opened by A-1 and A-3. Regarding recovery of gold bars, PW7 is Ram Singh, Deputy SP of CBI who investigated the CBI case RC No.1(A)/2011(CBI/ACU-I) Ex.PW7/A. PW7 says that after registration of that case CBI laid a trap in the presence of independent witness to intercept the person depositing/ keeping three gold bricks, purchased from illegal gratification, obtained from G.S. Bhatia. PW7 says that he got the information that Ms.Chandni Srivastava and Anita Bajaj, on the directions of A-1 A.K. Srivastava are proceeding to Bank of Maharashtra to deposit three gold bricks. He along with other CBI team members including two lady officials and two independent witnesses proceeded towards the Bank of Maharashtra. PW7 testifies that he along with other members of CBI team reached near the premises of Bank of Maharashtra at about 09.30 a.m. and directed the members of the team to remain present at some distant place and not to be visible. PW7 says that he along with an independent witness took a

position and they say two ladies went inside the bank. One of the lady official was also kept nearby PW7. PW7 says that after sometime both those ladies came out of the Bank and were challenged by him as to whether they have kept gold bricks in the bank locker. PW7 says that both of them got perplexed and denied. On the instructions of PW7, two lady officials of CBI apprehended those ladies and took them inside the bank.

76. PW7 further testified that he enquired about the locker operation register, about the persons who have operated the locker on that day, upon checking the same it was found that one locker in the name of Smt.Anita Bajaj was operated. After conversation both those ladies apprehended, revealed their names to be Chandni Srivastava and Anita Bajaj. The key of the locker no.127 was found in possession of Smt.Chandni Srivastava. PW7 says that Chandni Srivastava was directed to operate the locker again with those keys, in the presence of CBI team and independent witnesses and bank officials present there, in the meantime PW7 stated to have come to know that locker was in the name of Anita Bajaj. PW7 says that then he enquired from Anita Bajaj as to whether operated the locker, to which she denied and stated that same was operated by Smt.Chandni Srivastava. PW7 says that said locker was again operated by observing all legal formalities, in the presence of CBI team including independent witnesses and bank officials.

77. As per PW7 upon opening of the locker, there was a recovery of ten gold bars of 1 kg each, currency notes of about Rs.10 lakhs, jewelry etc. regarding which locker operation cum seizure memo was prepared which is Ex.PW7/B. PW7 also proved the charge sheet no.3 in the CBI

case already exhibited as Ex.PW2/A. PW7 testified that by judgment dated 20.12.2023 in CBI case no.202/2019 titled as CBI vs. A.K. Srivastava and others, accused have already been convicted in predicate offence, the copy of judgment is Ex.PW7/D.

78. As noted above at the final stages of the matter, upon an application moved on behalf of ED, PW7 was recalled for further examination on 13.05.2025 and PW7 testified that in continuation of his earlier deposition, he can identify the case property recovered from that locker and seized during the investigation of CBI RC case no.1(A) of 2011 vide locker operation cum seizure memo Ex.PW7/B. Thereupon CBI malkhana official produced the case property. PW7 identified the case property and four gold bars of 1 kg each with ID No.AF22203, AF23823, AF21379 and AF07774 are exhibited as ED-P1 to ED-P4. Similarly three other gold bars of 1 kg each with different ID numbers, were separately exhibited as ED-P5 to ED-P7. Two other gold bars of 1 kg each were exhibited as ED-P8 to ED-P9 and one gold bar of 1 kg contained in another bag was also exhibited as ED-P10. Beside that PW7 says that cash recovered from said locker of Rs.9.5 lakhs has already been deposited in Bank of India, CGO Branch by the orders of the court. PW7 on being specifically asked stated that beside members of CBI team, independent witnesses, officer of the Bank, accused Anita Bajaj, accused Chandni Srivastava were also present when entire proceedings were conducted.

79. Having considered the submissions at bar and taking the evidence of PW7 on the face of it, this court is of considered view that evidence of PW7 atleast establish the recovery of ten gold bars from the

locker no.127, which was in the name of Smt.Anita Bajaj and was being operated by accused Chandni Srivastava by impersonating as Anita Bajaj. Further from the evidence of PW7 it is also established that during the trap proceedings conducted after the registration of FIR in scheduled offence by CBI, it was established that accused Smt.Chandni Srivastava as well as accused Anita Bajaj were found visiting the UPSC branch of Bank of Maharashtra for the purpose of operating locker no.127. On these material aspects, came in the evidence of PW7 as discussed above, nothing substantive came in the cross-examination to disbelieve the evidence of PW7 with regard to recovery of ten gold bars, cash, jewelry articles as well as with regard to operation of that locker by accused Chandni Srivastava as Anita Bajaj as reflected from locker observation register.

80. Certain important factual aspects in the evidence of PW7 are (a) CBI raiding team apprehended both Chandni Srivastava and Anita Bajaj at the time of raid, when they were coming out of the Bank. As noted above by this court there is nothing in the cross-examination of PW7 to disbelieve this aspect. No doubt accused Chandni Srivastava in her statement u/s 313 Cr.PC, simply denied the testimony of PW7 with regard to apprehending of her along with Anita Bajaj, when they were coming out of the bank, when CBI team laid the trap. Accused Anita Bajaj in her statement took specific plea while denying the testimony of PW7 that on that day she was at her residence and someone from CBI called her and asked her to come to Bank of Maharashtra UPSC Branch and according to accused Anita Bajaj she went along with her daughter Dr.Neha Arora and

came to know that there was a locker in her name opened in that bank by someone.

81. Accused Anita Bajaj has not appeared in the witness box to substantiate this fact for reasons best known to her. No doubt in defence her daughter Dr.Neha Arora appeared as DW-1 and stated that on 25.02.2015 she came to her mother's house for dropping her children, when her mother informed her that she has been called at UPSC office. DW1 says that she accompanied her mother for going there. At UPSC Branch of Bank of Maharashtra certain officials suddenly took her mother inside the office and she tried to accompany her, she was stopped by those officials. DW-1 says that she waited for her mother at that place for two hours, as per DW-1 when she enquired, officials told her that she may go and her mother would not be released, DW-1 says that later she came to know when she along with her husband went to CBI office in evening that her mother has been arrested in a case.

82. DW-1 in her cross-examination however admits that the facts/ evidence as given by her, were not stated by her to anyone at any point of time either in the shape of complaint either to CBI or any other agency. DW1 further admits that she has not given evidence of the facts as stated in this case as DW-1 even during trial of CBI case. DW-1 admits that she came to know about the details of the case in which her mother was arrested, next day morning. DW-1 admits that she never made any complaint despite coming to know about arrest of her mother in the CBI case, till giving evidence in the present case. Even otherwise evidence of DW-1 lacks certain important details such as as to who called her mother

for reaching to Bank of Maharashtra UPSC Branch, there is nothing proved in writing showing that her mother was called for reaching to that bank and by which agency. This is very important because it is not possible for a lady to just reach to Bank of Maharashtra UPSC Branch only on the asking of someone. DW-1 herself is a doctor and it is minimum to expect that there should have been something in writing for a woman to call at a particular place that too by any lawful agency. In the absence of any such particulars, evidence of DW-1 is inherently unbelievable.

83. Another factual aspect proved in the evidence of PW7 is that PW7 specifically deposed that key of the locker no.127 was recovered from the possession of accused Chandni Srivastava and that when they went inside the bank it revealed that said locker was in fact in t he name of Anita Bajaj. Admittedly Anita Bajaj has denied even during the trial of this case of having got opened any such locker in her name in that bank. Such aspect coming in the evidence of PW7 has not been denied specifically by accused Chandni Srivastava in her statement u/s 313 Cr.PC. Certain contradictions have been referred to in the written submissions filed, in the evidence of PW7. However those contradictions hardly affect the material aspect of the evidence of PW7 i.e. recovery of gold bars and operation of locker by Smt.Chandni Srivastava as Anita Bajaj.

84. Though initially the evidence of PW7 was inter alia criticized for the reason that PW7 has not proved the case property. But as noted above PW7 was recalled vide order dated 26.04.2025 and case property was duly proved. Regarding recovery of gold bars from the above

SHELENDER MALIK Digitally signed by SHELENDER MALIK Date: 2025.07.21 14:16:11 +0530

mentioned locker, it was argued by ld. Sr. Advocates appearing for accused persons that alleged recovery of gold bars from the bank is not proved for the reason that in the entire testimony of PW7 it is reflected that case property remained unsealed. It is argued that even PW7 admits that during his entire investigation of CBI, the alleged recovered gold bars were not got identified by any jeweler, particularly from Vinod Kumar Gupta (PW3) of Tirupati Jewelers. It is submitted that mere exhibition of documents as Ex.PW3/X-1 to Ex.PW3/X-5 (bills to show alleged purchase of gold bars), is not sufficient. Even otherwise these documents reveal that none of the bills mention the name of the purchaser or any serial number of the gold bars etc. The valuation report also show discrepancy. Even ED in its investigation failed to got identified the case property for proving the laundering. It is further submitted that PW7 in his cross-examination admits that none of the bank official including Rita Gupta were present during locker operation and seizure of case property.

85. Having giving thoughtful consideration to the submissions and examining the evidence of PW7 as well as PW3, when the aspect of ten gold bars recovered from locker no.127 which was in the name of Anita Bajaj and was being used by Smt.Chandni Srivastava is proved, this court is of considered view that there was no legal necessity of proof of sealing of case property when seizure of case property is very much in the presence of independent witnesses beside other members of CBI raiding team. Keeping of case property in the malkhana of CBI, also does not affect the credibility of evidence of PW7 because the alleged article recovered is in fact ten gold bars of 1 kg each. One must not lose sight of

the fact that recovery of ten gold bars of 1 kg each, in itself reflective of the fact that those gold bars were illegally procured and kept in the bank locker. There can hardly be any legal justification regarding keeping of gold bars of 1 kg each in the locker. Examining those gold bars in itself show that those gold bars could not have been procured by any lawful channel as the very existence of ten gold bars of 1 kg each, in itself was against the law of land. Such gold bars could have been converted only by illegal money. Therefore once the recovery of gold bars is established and seizure memo has been prepared and proved in the testimony of PW7, then the fact that said case property was kept in the malkhana of CBI, hardly has any effect on the testimony of PW7 as there cannot be any possible scenario that CBI would plant such case property after arranging it from somewhere else.

86. Moreover the above noted contradictions as raised during the arguments, could have been more pertinent and relevant to be raised during the trial of scheduled offence. Be that as it may, it be noted that even otherwise there has not been specific denial in the statement of accused Chandni Srivastava or Anita Bajaj, recorded u/s 313 Cr.PC regarding recovery of ten gold bars from the locker no.127 of Bank of Maharashtra UPSC Branch. Mere denial of evidence of PW7 as "incorrect", is not sufficient. It is not even the case of these accused persons that there was no recovery of ten gold bars from the locker at that time.

87. So far as the issue regarding getting the recovered ten gold bars identified from any jeweler or more particularly PW3 Vinod Kumar

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Date: 2025.07.21 14:16:31 +0530

Gupta of M/s Tirupati Jewelers, or M/s Khanna Jewelers or Rajasthan Jewelers, either during the investigation of CBI or during investigation of ED, certainly create a lapse. In an ideal situation, there should have been efforts in the investigation to go beyond mere recovery of gold bars and to trace the source of the same. Even in the investigation of ED, the gold bars could have been identified from either Vinod Kumar Gupta (PW3) or from any jeweler. However this court is of considered view that the recovery of ten gold bars of 1 kg each in itself is illegal and patent proof of money laundering because having ten gold bars of 1 kg each is not permissible under law. There is no necessity for proving the conversion of illegal money into gold bars, atleast in a case of recovery of gold bars because the very existence of ten gold bars of 1 kg each, was per se illegal. Anyone possessing ten gold bars of 1 kg each, need not to be asked for any explanation when the very possession of the same is proof of conversion of illegal money into gold bars. It was not a case of recovery of gold jewelry or gold in any lawful shape, for which any explanation is required or any source to be traced as to where from same was got prepared. The ten gold bars of 1 kg each in itself is proof of illegal conversion of money into illegal gold, therefore this court is of considered view that non-identification of the same from any jeweler, particularly from PW3, would not make much of the impact on the prosecution case.

88. No doubt it is specific case of the prosecution/ED that the gold bars were got arranged by accused B.L. Bajaj from Vinod Kumar Gupta of Tirupati Jewelers (PW3). Witness Vinod Kumar Gupta in his statement u/s 50 of PML Act Ex.PW3/A has specifically stated so.

SHELENDER MALIK Digitally signed by SHELENDER MALIK Date: 2025.07.21 14:16:38 +0530

However if we go through the evidence of PW3, which is heavily relied upon by the defence. In evidence of PW3 witness Vinod Kumar Gupta states that he is proprietor of Tirupati Jewelers and he knew accused B.L. Bajaj and his wife Anita Bajaj for last 20-21 years as they had been his customers. PW3 when shown his statement u/s 50 of PML Act, deposed that he tendered it on 24.07.2014 and was exhibited as Ex.PW3/A. PW3 thereafter was shown a letter dated 03.09.2014 Ex.PW3/B, regarding which witness stated that it was written and signed by him at point A, however voluntarily deposed that he wrote such letter on the dictations of officials of ED as officers were forcing him to write it and threatened that he would be implicated in the case. PW3 went on to testify that he had not sent any retail invoice (regarding purchase of gold bars) to Assistant Director.

89. PW3 when did not support the prosecution case completely was allowed to be cross examined. In cross-examination PW3 admits that he had never made any complaint to any senior officers of ED regarding writing of letter Ex.PW3/B on the dictation of any ED official with the threat of implicating him. During cross-examination of PW3 by ld. Counsel for A-2 and A-4 recorded on 21.05.2022 witness even stated that his statement u/s 50 PML Act Ex.PW3/A was written by him on the dictation of ED official and it was not given voluntarily and was dictated by ED official.

90. Evidence of PW3, on prima facie perusal, no doubt reflect that it has not supported the prosecution case. Firstly because PW3 in his examination in chief itself stated that the letter Ex.PW3/B was written by

him on the dictation of official of ED and he was forced to write it on account of threat for implicating him. PW3 in his cross-examination by ld. Counsel for A-2 and A-4, even stated regarding his statement u/s 50 of PML Act given during investigation in his own hand writing which is Ex.PW3/A, on the dictation of ED official and was not voluntarily. This court finds force in the submission of ld. Sr. Counsels for the accused persons that PW3 has not at all deposed anything regarding purchase of gold bars from him by B.L. Bajaj or any of the accused persons. Those facts though have been stated in his statement u/s 50 of PML Act but mere exhibition of the same in examination in chief, would also not serve the purpose. It is established law that statement of a witness recorded /s 50 of PML Act is not a substantive evidence. Such statement is though admissible in evidence but evidentiary value of the same is to be assessed. Contents of statement u/s 50 of PML Act, ipso facto cannot be considered to be an evidence unless witness has deposed those facts on the strength of an oath, in evidence given in the court (**Manish Sisodia vs. ED** 2023 SCC OnLine Del. 3770, **S. Nagarajan vs. ED** Crl.RC (MD) No.1025 of 2024 decided on 30.04.2025).

91. Ld. SPP for ED has submitted that conversation of bribe money into gold bars stand corroboration from statement and letter Ex.PW3/A and Ex.PW3/B of PW3 Vinod Kumar Gupta. His subsequent retraction from those statement and letter, more so after about eight years, without any plausible explanation for such delay, does not affect the statement and the letter Ex.PW3/A and Ex.PW3/B. It is argued by ld. SPP for ED that a prolonged retraction from the statement, cannot affect the

prosecution case and the version as given in the statement at original point of time. It is submitted that though there is no statutory time fixed but retraction must be contemporaneous or within reasonable time. Reliance has been placed on judgment of Apex Court in **State of Orissa vs. Ganesh Chandra Jew** (2004) 8 SCC 40, **Maulana Naseeruddin Mohd. Haneefuddin vs. State of Gujarat** (2007) 12 SCC 545, **State vs. Mohd. Afsal** (2003) 71 DRJ 178, **KTMS Mohd. vs. Union of India** (1992) 3 SCC 178.

92. There is not dispute with regard to the legal proposition in above referred judgments as relied upon by ld. SPP for the ED which are essentially with regard to confessional statements, to the effect that belated retraction from confessional statement would not affect the prosecution case and such confessional statement can still be relied upon. Same analogy may be applied that even in case any regular statements given by any witness during investigation, and later retracted at very belated stage during the trial, same can be viewed with some suspicion. Moreover PW3 even in his cross-examination by ld. SPP for the ED also admits that he never approached any senior officer of the ED to give complaint when he alleged in his examination in chief that his letter Ex.PW3/B was dictated to him by threat to implicate, by ED official.

93. However this court is of view that even if there may be a belated retraction from the statement and letter Ex.PW3/A and Ex.PW3/B, mere taking into consideration those statements would not serve the purpose of prosecution because witness did not specifically deposed those facts as are stated in his statement Ex.PW3/A given u/s 50 of PML Act. It be noted here that it is not so mechanical or simple to just get the statement

u/s 50 of PML Act exhibited during the examination in chief of the witness to prove the facts mentioned in that statement when witness did not depose the same in his deposition. In any case the law of evidence does not change. Any fact need to be proved by specific deposition given by the witness while giving evidence. In the absence of same mere reference of statement would not be proof of facts mentioned in that statement. This court has already noted above that Section 50 statement is not a substantive evidence though relevant and admissible. Therefore facts mentioned in the statement has to be proved by deposition of the witness and not by mere exhibition of the statement.

94. Therefore this court finds that evidence of PW3 does not establish that gold bars were purchased from him i.e. Vinod Kumar Gupta. However having so concluded, this court is also of considered view that even if that aspect has not been proved from the evidence of PW3 but as noted earlier the fact that evidence could not be led in the trial or a witness did not support the prosecution case in the trial regarding proof of purchase of gold bars from him by any of the accused, would not affect the prosecution case because the very existence of gold bars is indicative of the fact that same was purchased either from PW3 or from anyone else but was purchased by illegal money and was in itself proof of nothing but money laundering. Illegal possession of gold in the shape of ten bars of 1 kg which is not permissible by law or rules, is in itself an evidence of converting illegal money into gold which is in itself an evidence of money laundering. Therefore even if evidence of PW3 does not establish one aspect of the prosecution case, still in peculiar facts of the present case the

property of alleged money laundering are gold bars, this court is of considered view that non-identification of gold bars, absence of evidence of purchase of the same would not affect the case of ED. Situation would have been different had there been any other property, being subject matter of charge of money laundering. In that situation there could have been a legal necessity for proof of connect of property with the illegal money/ bribe money.

(c) receiving of bribe

95. Another important aspect of the present case is regarding proof of receiving of bribe and use of same for purchasing of gold bars. This court has already noted above that there is no legal necessity for proving those aspects which were otherwise required to be proved during the trial of predicate offence. The question of demand and acceptance of bribe amount by A-1 through A-2 was essentially an issue to be examined and decided in the trial of predicate offence. Trial court decided that aspect affirmatively and convicted the accused inter alia for offence u/s 7, 13(1)(d) r/w 13(2) of P.C. Act, 1988.

96. Having so stated prosecution still has led some of the evidence for proving this aspect regarding receiving of bribe by A-1 A.K. Srivastava through A-2 B.L. Bajaj. In this context the first evidence is of PW6 Bijay Kumar Mandhani who states that he has been in business of coal trading since 1980 and is Director of company by name Maheshwari Brothers Coal Limited. PW6 says that in middle of 2010 there was a tender called by NALCO for supply of 2 lakhs metric tonne of coal. Three parties participated in the tender process including his company

Maheshwari Brothers Coal Limited and Bhatia International and Gupta Coal Company. PW6 says that Gupta Coal Company could not qualify the tender on technical grounds. Only two parties qualified and he got the information NALCO is dividing the tender into ratio of 60 : 40 between L1 (Maheshwari Brothers Coal Limited) and L2 (Bhatia International).

97. PW6 says that in November 2010 he got a call from some unknown number to meet A.K. Srivastava in Hotel Maurya. PW6 says that he met him in the lobby, where he discussed about the allotment of 2 lakhs tonne of coal and asked him to meet B.L. Bajaj (A-2), for remuneration. PW6 says that A-1 A.K. Srivastava gave him number of Mr.Bajaj and in the month of December he met with A-2 B.L. Bajaj in the lobby of a five star hotel in Delhi. Bajaj asked him for remuneration for Mr.A.K. Srivastava and for himself for smooth transaction of supply and timely payment and he said that if he do not agree for the remuneration, he may face problem in supply. PW6 says that he did not agree and finally after negotiation, it was fixed @ Rs.150 per metric tonne. PW6 says that Bajaj told him to give his number to G.S. Bhatia of Bhatia International. PW6 says that he spoke to G.S. Bhatia and discussed about that matter and told about the amount of remuneration agreed. PW6 told that he told Mr.Bhatia to give 50% after the letter of intent and balance after the supply. Later PW6 stated to have come to know that Bhatia had given two installments of Rs.80 lakhs and another installment of Rs.20 lakhs to his representative. PW6 says that he had given Rs.1 crore to his friend A.K. Singh in two or three installments and then A.K. Singh made the payment to Mr.Bajaj against the remuneration.

98. PW6 in his deposition recorded on 09.06.2023 stated that he handed over two packets of Rs.50 lakhs each in cash to A.K. Singh for handing over to B.L. Bajaj for consideration of Mr.A.K. Srivastava against the demand made by A.K. Srivastava through B.L. Bajaj for smooth functioning of supply. Those packets were handed over by A.K. Singh to B.L. Bajaj somewhere near Oberoi Hotel.

99. ED has also examined PW-5 A.K. Singh who deposed that in year 2004-005 he met with Bijay Kumar Mandhani at Tirupati Balaji and became friends. PW5 testifies that he do not know A-1 A.K. Srivastava or Bhushan Lal Bajaj. However he had met with B.L. Bajaj once with Bijay Kumar Mandhani. PW5 says that Bijay Kumar Mandhani handed over one packet to B.L. Bajaj in his presence, near Hotel Oberoi in January 2011. PW5 identifies B.L. Bajaj in the court. PW5 says that he do not know what was inside of that packet exactly. PW5 also says that his statement u/s 164 Cr.PC was recorded during the investigation of CBI which is Ex.PW13/1 (as proved during the recording of evidence of same witness in the trial of predicate offence). PW5 testifies that Mandhani told him that in that packet there was money inside.

100. Testimony of PW5 and PW6 have been challenged by ld. Sr. Counsels for both the sets of accused persons on the ground that there is inherent contradiction on material aspects in the evidence of PW5 and PW6, moreover another witness namely G.S. Bhatia of Bhatia International Limited, who according to prosecution case had shared the amount of bribe to be given to accused, with Bijay Mandhani, whose statement was also recorded u/s 50 of PML Act but was not cited as a

prosecution witness. It is argued that this aspect affects the very root of the prosecution allegations. It is further argued that more particularly said G.S. Bhatia has subsequently appeared as defence witness DW-5 and in his deposition denied that neither he nor his company made any payment of illegal gratification either in the form of money or gold to any government/non-government person with regard to NALCO tender.

101. Evidence of PW6 Bijay Kumar Mandhani has also been challenged on the ground that he being alleged bribe giver, was granted pardon and turned approver during the proceedings/trial of CBI case in predicate offence, however in the present case of offence of money laundering Bijay Mandhani has not been made approver or accused, his testimony in the present case therefore is unworthy of any reliance in the absence of any supporting evidence. It is argued that even taking the evidence of PW6 on the face of it, there is no proof of alleged meeting of him with A-1 at Maurya Sheraton Hotel. It is argued that there is no evidence of demand of any money from him by A-1. Moreover it is not proved even from the evidence of either PW6 or PW5 that the packets contained money only.

102. At the outset it be noted that this court has already observed in earlier paras of this judgment that in the peculiar facts of the present case when ten gold bars of 1 kg each have been recovered from a locker, got opened on the basis of forged documents and operated by impersonation in the name of Anita Baja used by Chandni Srivastava, prosecution/ED was not required to lead any evidence to prove conversion of bribe amount into gold bars once possession of the gold bars in the locker is proved as the

very recovery of gold bars from such locker in itself establish the money laundering. In the peculiar circumstances of this case when offence of impersonation and forgery are also “scheduled offence”, for which accused persons stood convicted, even if there may not be direct evidence of conversion of bribe amount into gold bars, it would not affect the prosecution case.

103. Having so concluded, this Court having examined the testimony of PW5 and PW6, finds that their testimony to some extent, establish the case of prosecution. Firstly because PW6 in so many words has testified in his examination in chief that he received a call from unknown number to meet A-1 A.K. Srivastava in Hotel Maurya Sheratan. PW6 went on to testify that he actually met with A.K. Srivastava where he discussed about the allotment of two lac tonnes of coal. PW6 further testified that A-1 A.K. Srivastava asked him to meet A-2 B.L. Bajaj for ‘remuneration’ as contact number of B.L. Bajaj was provided by A.K. Srivastava. PW6 further testifies that thereafter he met with B.L. Bajaj who asked for the ‘remuneration’ for A.K. Srivastava and for himself for smooth transaction of supply and timely payment. PW6 also testified regarding negotiation of the amount which was ultimately fixed to Rs.150 per metric tonne. PW6 also testified that Bajaj asked him to give his number to G.S. Bhatia of M/s Bhatia International and accordingly PW6 spoke to G.S. Bhatia and told him about his discussion with Mr.Bajaj regarding the payment of bribe amount.

104. PW6 was cross-examined at length. There is no denial that there are certain contradictions in the evidence of PW6 viz a viz PW5

regarding the fact as to who actually paid the bribe amount because as per PW6 he gave Rs.1 crore to A.K. Singh (PW5), in two or three installments and A.K. Singh thereafter made the payment of bribe amount to Bajaj. Whereas PW5 A.K. Singh in his testimony stated that he had seen Bijay Mandhani handing over packet to Bajaj. Similarly there are certain other contradictions in the cross-examination of PW6. Another person who allegedly handed over the bribe amount was Mr.G.S. Bhatia, was also not examined by prosecution but was examined by defence as DW-5.

105. If we go through the testimony of DW-5 Gurinder Singh Bhatia, no doubt he inter alia in his examination in chief stated that in respect of tender of year 2010 none from NALCO or other person demanded illegal gratification for supplying the coal to NALCO under the tender for the year 2010. DW-5 says that he never paid any amount of gratification to anyone in this regard. However in cross-examination DW5 admits that he was prosecuted in CBI RC AC-I/2011/A/0001 and stood convicted in that case vide judgment dated 20.12.2023 Ex.PW7/D. DW-5 also admits that accused in this case were his co-accused in that case. Although DW-5 voluntarily goes on to state that the above said judgment has already been challenged by way of an appeal in High Court of Delhi. DW-5 further admits in cross-examination of ld. SPP for ED that he was summoned by ED in the investigation of present case and gave the statement u/s 50 of PML Act already Ex.PW4/E and identifies his signatures on the same.

106. Although DW-5 in examination in chief denied having paid any bribe amount but it is matter of record and undisputed that he/G.S.

Bhatia was one of the accused in the trial of scheduled offence and stood convicted. It is also admitted by DW-5 that he gave the statement u/s 50 of PML Act which is Ex.PW4/E. Now if we go through said statement, in that statement he admits having paid bribe amount. In the entire evidence of DW-5 he never said that the statement u/s 50 was never given by him or was got recorded by any coercion or pressure. Rather DW-5 admits that said statement bears his signatures at point B. Thus this court can draw from the testimony of DW-5 that even if he might have given evidence in defence of accused but one can make out from the testimony, judgment Ex.PW7/D wherein he stood convicted as well as the statement u/s 50 of PML Act Ex.PW4/E, wherein he admitted that he had paid the bribe amount to accused Bajaj.

107. Having examined the evidence of PW6, PW5 and DW-5, no doubt there have been certain inherent flaws in the testimony of these witnesses for establishing regarding payment of bribe amount but as noted above this court is not going to decide the question whether Bijay Mandhani and G.S. Bhatia had paid the bribe amount to A-1 A.K. Srivastava throughg A-2 B.L. Bajaj as this question has already been decided in the trial of scheduled offence. The conviction of the accused persons in scheduled offence, is under challenge by way of an appeal in High Court, therefore also this court cannot give any judicial findings on that aspect which was within the domain of trial court. However from the above discussion of evidence it can atleast be concluded that there has been some transaction regarding paying bribe amount regarding awarding of tender of NALCO to the company of PW6 and Bhatia International.

<u>Issue No.2</u> <u>(Whether presumptions u/s 24 of PML Act can be drawn against the accused)</u>

<u>&</u>

<u>Issue No.3</u> <u>(Whether offence of money laundering has been proved on the record or not)</u>

108. Ld. SPP for ED has made the submissions that guilt of the accused is also proved beside the evidence led, in view of the presumption which can be drawn u/s 24 of PML Act. It is argued that none of the accused has led any substantive evidence to rebut those presumptions. On the other hand ld. Sr. Counsels for accused persons argued that presumption u/s 24 of PML Act can be drawn only upon proof of foundational facts regarding the ingredients of Section 3 of PML Act i.e. existence of proceeds of crime, involvement of accused in any of the process or activity connected with proceeds of crime. It is submitted that in the present case since foundational facts have not been proved, therefore presumption u/s 24 of PML Act cannot be drawn.

109. Having considered the submissions, taking into consideration the evidence as discussed above, this court in view of the findings on three factual aspects examined under Issue no.1, this court has already concluded that prosecution has led sufficient evidence for proving generation of proceeds of crime by commission of scheduled offence of impersonation, use of forged documents as well as receiving of illegal gratification. Having so concluded question for consideration is whether this court can take presumption in terms of Section 24 of PML Act. Section 24 reads as under :

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> "24. Burden of proof.—In any proceeding relating to proceeds of crime under this Act,— (a) in the case of a person charged with the offence of money-laundering under section 3, the Authority or Court shall, unless the contrary is proved, presume that such proceeds of crime are involved in money-laundering; and (b) in the case of any other person the Authority or Court, may presume that such proceeds of crime are involved in money-laundering."

110. On meaningful reading of provisions of Section 24 of PML Act it would be clear that in respect of 'proceeds of crime', for accused persons charged with offence of money laundering, court can presume that such proceeds of crime are involved in money laundering, unless contrary is proved by accused. Thus in other words, under this provision burden is upon accused of proving that 'proceeds of crime' are untainted or that proceeds of crime are not connected in any manner with scheduled offence. Onus is on the accused to prove that subject matter of money laundering i.e. the property is one which has not been acquired by tainted money. The scope of Section 24 was dealt with by Hon'ble Apex Court in **Vijay Madanlal Chaudhary vs. Union of India and ors.** 2022 SCC OnLine SC 929. Para 343 and 345 are relevant and are being reproduced herein below :

> "Be that as it may, we may now proceed to decipher the purport of Section 24 of the 2002 Act. In the first place, it must be noticed that the legal presumption in either case is about the involvement of proceeds of crime in money-laundering. This fact becomes relevant, only if, the prosecution or the authorities have succeeded in establishing at least three basic or foundational facts.

First, that the criminal activity relating to a scheduled offence has been committed. Second, that the property in question has been derived or obtained, directly or indirectly, by any person as a result of that criminal activity. Third, the person concerned is, directly or indirectly, involved in any process or activity connected with the said property being proceeds of crime. On establishing the fact that there existed proceeds of crime and the person concerned was involved in any process or activity connected therewith, itself, constitutes offence of money-laundering. The fact that the person concerned had no causal connection with such proceeds of crime and he is able to disprove the fact about his involvement in any process or activity connected therewith, by producing evidence in that regard, the legal presumption would stand rebutted.

Be it noted that the legal presumption under Section 24(a) of the 2002 Act, would apply when the person is charged with the offence of money-laundering and his direct or indirect involvement in any process or activity connected with the proceeds of crime, is established. The existence of proceeds of crime is, therefore, a foundational fact, to be established by the prosecution, including the involvement of the person in any process or activity connected therewith. Once these foundational facts are established by the prosecution, the onus must then shift on the person facing charge of offence of money-laundering — to rebut the legal presumption that the proceeds of crime are not involved in money-laundering, by producing evidence which is within his personal knowledge. In other words, the expression "presume" is not conclusive. It also does not follow that the legal presumption that the proceeds of crime are involved in money-laundering is to be invoked by the Authority or the Court, without providing an opportunity to the person to rebut the same by leading evidence within his personal knowledge."

111. Thus it is clear from above observation that presumption u/s 24 of PML Act can be drawn regarding involvement in the offence of money laundering only upon proof of foundational facts. This court in view of its finding on Issue No.1 is of considered view that those foundational facts have been duly proved on judicial record. At the cost of repetition this court would observe here that ED was not supposed to lead the entire set of evidence as led during the trial of scheduled offence as it is not the requirement of law. Still for the purpose of proving the connection of commission of scheduled offence and generation of proceeds of crime there from, evidence has been led to prove the same. Even if for the time taken that there is no evidence or sufficient evidence regarding proof of receiving of bribe amount and conversion of the same in purchase of gold bars, this court still finds that the factum that the bank account and locker were got opened on the basis of forged documents. The offence of using of forged documents is also an offence of scheduled offence. Similarly from the evidence of PW7 as discussed earlier, it is established that two of the accused persons namely Chandni Srivastava and Anita Bajaj coordinated with each other for committing offence of impersonation as both these accused persons were apprehended, when Chandni Srivastava was impersonating as Anita Bajaj and using locker no.127 for keeping the gold bars therein.

112. Beside this recovery of ten gold bars of 1 kg each from the locker no.127 of Bank of Maharashtra, UPSC Branch stood established. This court has observed in earlier paras of the judgment that the very recovery of ten gold bars, is in itself a proof of conversion of illegal money

into gold bars. Once those ten gold bars were found lying in the locker which was being operated by accused Chandni Srivastava, connect of the accused Chandni Srivastava with that money stood established. Thus even those facts in itself are sufficient to prove foundational facts and therefore this court is of considered view that presumption under Section 24 of PML Act can well be drawn to conclude that accused persons were involved in offence of money laundering.

113. It be noted here that all the four accused herein stood convicted for offence of criminal conspiracy u/s 120B IPC along with offences of scheduled offence. No doubt the conviction of accused in scheduled offence or for offence of criminal conspiracy, cannot be taken into consideration for this case as conclusive evidence. However this court finds that there is sufficient evidence available on judicial record of this case showing that there was coordinated, concerted acts of each of the accused persons herein, in commission of offence of money laundering for the reasons : (a) Accused no.1 A.K. Srivastava and accused no.3 Smt.Chandni Srivastava went together to the Bank, for opening the saving account and locker in Bank of Maharashtra UPSC Branch by using forged documents; (b) Accused No.3. Chandni Srivasvata and accused no.4 Anita Bajaj, were apprehended together, when both of them were coming out from the bank after operating the locker no.127; (c) At the time of apprehension of accused Chandni Srivastava, the key of the locker no.127 was found in her possession whereas the said locker was in the name of accused Anita Bajaj; (d) Accused Anita Bajaj had admitted all through that she had never opened the saving account or locker in that bank; (e) PW6

was called to Delhi and met with A-1 A.K. Srivastava who instructed him to meet A-2 B.L. Bajaj, by giving him his contact number; (f) PW6 met with A-2 B.L. Bajaj and negotiated the amount of bribe to be paid; (g) A-2 B.L. Bajaj was in contact with PW3 Vinod Kumar Gupta, jeweler of Tirupati Jewelers.

114. So from the above circumstances, this court finds that there was prior concert and coordination among the four accused. A-1 A.K. Srivastava and A-2 B.L. Bajaj both involved their wives respectively i.e. A-3 and A-4 in concealing "Gold Bars" of 1 kg each by keeping in a Bank locker taken in the name of wife of A-2 i.e. A-4 Anita Bajaj, however was being operated by wife of A-1 i.e. A-4 Ms.Chandni Srivastava. These circumstances, in itself reflect prior meeting of mind of accused persons. In this context it is important to note that there cannot be direct evidence of conspiracy hatched among accused persons. Therefore this court is of considered view that there is sufficient evidence on the record establishing that all the accused conspired with each other in commission of offence of money laundering.

<u>Effect of Amendment of 2013, 2019 on the scope of Section 3 of PML Act</u>

115. Another aspect to be dealt with by this court is a legal issue as raised by ld. Sr. Counsel appearing for A-2 and A-4. Sh.Tanveer Ahmad Mir, ld. Sr. Advocate argued that as per prosecution's case offence of money laundering was committed during the period between May 2010 and February 2011 as recorded in the order of framing of charge, by ld. Predecessor of this court. It is submitted that definition, nature and scope of offence of money laundering underwent significant changes subsequent

to the amendments in 2013 and 2019. Therefore this court is required to determine whether the offence of 'money laundering' as it stood prior to the amendment of 2013 and 2019 are made out or not. It is submitted that expression 'proceeds of crime' and 'projecting' were substituted vide Amendment of 2013 to "proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming". It is argued that it is evident that activities of concealment, possession and acquisition were criminalised only after the alleged commission of offence in the present case.

116. It is argued by ld. Sr. Advocate that scope of offence of money laundering u/s 3 of PML Act was further enhanced by Amendment of 2019. Accused persons cannot be held liable for the offence of money laundering as amended after 2013, 2019 amendments as accused persons are protected by constitutional provision under Article 20(1) of Constitution of India as that provision ensures that any individual cannot be held accountable which was legal when they occurred but later made illegal by subsequent legislation.

117. It is submitted that prosecution in the present case is heavily relying upon alleged acts of concealment, possession and acquisition whereas those cannot be taken into consideration in the light of dictum of Apex Court in **Kedarnath Bajoria vs. State of WB** (1953) 2 SCC 142 wherein it was held that when an act is declared a criminal offence, by legislature and provides penalty for it, such declaration is always prospective and cannot be applied retrospective as per the provisions of Article 20(1). It is submitted that retrospective conviction and sentencing

does not prohibit procedural amendments, however when it comes to making amendment in penal/substantive law, it would always operate prospectively. It is submitted that retrospective applicability of the amendment, has also been taken into consideration by Apex Court in **Vijay Madanlal Chaudhary and others vs. Union of India** (supra).

118. Sh.Zoheb Hossain, ld. SPP for ED on the other hand submitted that argument to the effect that ingredients of 'concealment', 'acquisition' or 'use of proceeds of crime' were not part of Section 3 of PML Act prior to 2013 is completely misconceived. It is argued that in fact section 3 had always a wider remit as explained by the Apex Court in **Vijay Madanlal's** case (para 263). It is submitted that involvement of any person in 'any process or activity' connected with proceeds of crime was sufficient to attract the offence of money laundering and would include within its sweep, its acquisition, concealment or use.

119. Having heard the submissions, this court at the initial paras of this judgment had stated that the offence of money laundering as defined under Section 3 of PML Act though underwent changes by way of amendment of 2013 and 2019, however the basic ingredients of offence of money laundering remain same. The expressions used by way of amendment of 2013 as well as in 2019 were essentially to give specific expression to the basic requirement of law. As such it is not that by way of amendment of 2013 and 2019 any scope of offence of money laundering were enhanced or changed. Such opinion of this court is drawn on account of the observation made by Apex Court in **Vijay Madanlal Chaudhary's** case (supra) :

“If the argument of the petitioners is to be accepted, that projecting or claiming the property as untainted property is the quintessential ingredient of the offence of money-laundering, that would whittle down the sweep of Section 3. Whereas, the expression “including” is a pointer to the preceding part of the section which refers to the essential ingredient of “process or activity” connected with the proceeds of crime. The Explanation inserted by way of amendment of 2019, therefore, has clarified the word “and” preceding the expression “projecting or claiming” as “or”. That being only clarificatory, whether introduced by way of Finance Bill or otherwise, would make no difference to the main original provision as it existed prior to 2019 amendment.

To put it differently, the section as it stood prior to 2019 had itself incorporated the expression “including”, which is indicative of reference made to the different process or activity connected with the proceeds of crime. Thus, the principal provision (as also the Explanation) predicates that if a person is found to be directly or indirectly involved in any process or activity connected with the proceeds of crime must be held guilty of offence of money-laundering. If the interpretation set forth by the petitioners was to be accepted, it would follow that it is only upon projecting or claiming the property in question as untainted property, the offence would be complete. This would undermine the efficacy of the legislative intent behind Section 3 of the Act and also will be in disregard of the view expressed by the FATF in connection with the occurrence of the word “and” preceding the expression “projecting or claiming” therein.

The Explanation as inserted in 2019, therefore, does not entail in expanding the purport of Section 3 as it stood prior to 2019, but is only clarificatory in nature. Inasmuch as Section 3 is widely worded with a view to not only investigate the offence of money- laundering but also to prevent and regulate that offence. This provision plainly indicates that any (every) process or activity connected with the proceeds of crime results in offence of money-laundering. Projecting or claiming the proceeds of crime as untainted property, in itself, is an attempt to indulge in or being involved in money-laundering, just as knowingly concealing, possessing, acquiring or using of proceeds of crime, directly or indirectly. This is reinforced by the statement presented along with the Finance Bill, 2019 before the Parliament on 18.7.2019 as noted above."

120. Thus it is clear from the above observations of the Apex Court which are directly in context of Section 3 of PML Act. While there may not be any dispute to the legal proposition that any substantive law operates prospectively and procedural law may operate retrospectively. Legal position in this regard has been laid down by Apex Court in **Sree Sankaracharya University of Sanskrit & ors. vs. Dr.Manu and Anr.** (2023) 19 SCC 30, wherein Apex Court laid down following principles to determine whether an explanation appended to the statute can be given retrospective effect :

(i) If a statute is curative or merely clarificatory of the previous law, retrospective operation thereof may be permitted.

(ii) In order for a subsequent order/provision/ amendment to be considered as clarificatory of the previous law, the pre-amended law ought to have been vague or ambiguous. It is only when it would be impossible to reasonably interpret a provision unless an amendment is read into it, that the amendment is considered to be a clarification or a declaration of the previous law and therefore applied retrospectively.

(iii) An explanation/clarification may not expand or alter the scope of the original provision.

> (iv) Merely because a provision is described as a clarification/ explanation, the Court is not bound by the said statement in the statute itself, but must proceed to analyse the nature of the amendment and then conclude whether it is in reality a clarificatory or declaratory provision or whether it is a substantive amendment which is intended to change the law and which would apply prospectively.

121. Thus it is clear even from the above referred observation of Hon'ble Supreme Court that merely because a provision has been described as an explanation or clarification, court is not bound by the said statement in the statute itself. However it must proceed to analyze the nature of the amendment. In the context of Section 3 of PML Act if we examine the definition of Section 3 prior to the amendment of 2013, as well as subsequent to the amendment of 2013 and 2019, one can easily make out that expression "*...directly or indirectly attempts to indulge or knowingly assist or knowingly is party or actually involved in any process or activity connected with proceeds of crime and projecting it as untainted property...*" were very broadly worded and necessity of bringing amendments were only to make the broader language of the section to be more explicit and specific. As such there was nothing added in the substantive portion of the offence of money laundering except to make clear the different facets/modes of that offence. As such this court finds that the definition of offence under Section 3 of PML Act as it exists now in the statute can be taken into consideration while deciding the criminal liability of accused persons herein.

Conclusion

122. In view of the aforesaid reasons, this court holds all the four accused i.e. A-1 Abhay Kumar Srivastava, A-2 Bhushan Lal Bajaj, A-3 Smt.Chandni Srivastava and A-4 Smt.Anita Bajaj guilty for offence under Section 3 read with Section 4 of PML Act. They all are convicted for the said offence.

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Announced in the open Court
on 21.07.2025

(Shailender Malik)
Spl. Judge (PC Act) CBI-21
RACC/New Delhi