2025:DHC:5236

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

% Reserved on : ***24th April 2025***

Pronounced on : ***03rd July 2025***

\+ CRL.M.C. 9462/2023 CRL.M.A. 35362/2023 CRL.M.A. 35363/2023

JACQUELINE FERNANDEZ .....Petitioner

Through: Mr. Siddharth Aggarwal, Sr. Advocate along with Mr. Aman Nandrajog, Mr. Prashant Patil, Mr. Gaurav Arora, Ms. Arshiya Ghosh, Advocates.

versus

DIRECTORATE OF ENFORCEMENT .....Respondent

Through: Mr. Zoheb Hossain, Special Counsel for ED with Mr. Vivek Gurnani, Panel Counsel for ED along with Mr. Kartik Sabharwal, Mr. Pranjal Tripathi, Mr. Kanishk Maurya and Mr. Sai M Sud, Mr. S. Vats, Advocates.

CORAM:

HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

INDEX

ANISH DAYAL, J.

1. This petition has been filed by the petitioner seeking quashing of ECIR/DLZO-II/54/2021 dated 8th August 2021 ('***impugned ECIR***') and 2nd supplementary complaint dated 17th August 2022 ('***impugned complaint***') filed under Sections 3 & 4 of The Prevention of Money Laundering Act 2002, ('***PMLA***') by the Directorate of Enforcement / Respondent ('***ED***') and all subsequent proceedings emanating therefrom, pending before the ASJ /

Special Court PMLA, Patiala House Courts, Delhi in Complaint Case 123/2021.

I. FACTUAL BACKGROUND

2. In August 2021, a complaint was lodged by *Mrs. Aditi Shivinder Singh* (‘***complainant / Ms. Aditi Singh’***) before DCP Special Cell, alleging extortion of crores of money from her since June 2020. She alleged that she had been receiving calls from persons impersonating as senior officials of the Government of India and had been duped into parting with funds of about *Rs.200 crores*.

3. On 7th August 2021, complainant informed that a further demand of *Rs.1 crore* had been made. A trap was accordingly laid to trap the receiver of the extortion money.

4. *Pardeep Ramdanee* was apprehended during the trap who disclosed that he used to collect money on the directions of *Deepak Ramnani*. *Deepak Ramnani* disclosed that he used to collect money for *Sukesh Chandrashekhar* (‘***Sukesh’***), who was lodged in Rohini Jail No.10. Raids were conducted and *Sukesh* was arrested with two mobile phones, a charger and some documents.

5. During interrogation, he apparently disclosed that he impersonated a Senior Officer and extorted monies from the complainant on the pretext of providing relief to her husband in the nature of release from Tihar Jail.

6. *Sukesh* was arrested on 8th August 2021 and remanded to custody. On the basis of the complaint of extortion, F.I.R. No.208/2021 was lodged by the Special Cell for offences punishable under Sections 170/384/386/388/419/420/506/120 B of the Indian Penal Code,1860 (‘***IPC***’) and Section 66 (D) of the Information Technology Act 2000 (‘***IT Act***’) [*predicate offence*]. Since Sections 384/386/388/419/420 and 120 B of IPC forms part of scheduled offences in the Schedule, Part A of PMLA, ED

registered the impugned ECIR on the 8th August 2021 to investigate the offences under PMLA.

7. As regards the predicate offence, after conclusion of investigation, Economic Offence Wing ('***EOW***') filed a charge sheet under Sections 170/186/353/384/386/388/406/409/419/420/468/471/353/506/120B of IPC, Section 66 D of IT Act, and Section 3 and 4 of the Maharashtra Control of Organised Crime Act, 1999 ('***MCOCA***') against *Sukesh, Leena Paulose*, *Dharam Singh Meena* (Asst SI, Rohini Jail), *Subhash Batra* (DSP, Rohini Jail), *B. Mohanraj*, *Arun Muthu*, *Joel Daniel Jose*, *D. Kothari*, *Deepak Ramnani*, *Pradeep Ramdanee*, *Avtar Singh Kochar*, *Kamal Poddar*, *Jatinder Narula* and *Avinash Kumar*.

8. In the 3rd supplementary charge sheet, petitioner was arrayed as a prosecution witness (PW-4) on the basis that she had been defrauded by *Sukesh*.

9. The alleged extorted amount of *Rs. 200 crores* arising out from the predicate offence constitutes the '*proceeds of crime*', as defined under Section 2 (1) (u) of PMLA. EOW's investigation revealed that extorted money was put to multiple uses by *Sukesh*, one of which was gifting branded goods to models /actresses to secure friendship with them. For such purchases, *Sukesh* channelized the *proceeds of crime* into various bank accounts of his associates, accommodation entry providers in Chennai, Kerala, Mumbai, etc. and arranged payments through banking channels.

10. As part of this *modus operandi*, *Sukesh* contacted the petitioner, who was a well-known and reputed actor in the film industry, through accused *Pinky Irani*. *Sukesh* was apparently introduced to petitioner as a business tycoon based in South India and owner of Sun TV.

11. It also transpired that aside from the petitioner, a number of other celebrities also received gifts from *Sukesh*, contact being established through *Pinky Irani alias Angel*, who was an associate of *Sukesh*. It is alleged that petitioner received gifts worth at least *Rs.5.71 crores* from *Sukesh*, knowing fully well of his criminal antecedents. The monies were received through *Pinky Irani* as well as *Leepakshi Ellawadi*.

12. A broad list of gift items received by the petitioner from Sukesh, as per ED was tabulated as under:

Sr. No.	**Gift Item**
(i)	***USD 172913*** transferred into foreign bank account of petitioner's sister *Geraldine J. Walker*
(ii)	***AUD 26740*** transferred into foreign bank account of petitioner's brother *Warren J. Fernandez*, for purchase of a SUV.
(iii)	***Rs.1.89 crores*** was sent to Bahrain for purchase of two vehicles for petitioner's parents.
(iv)	Horse called Espuela purchased by Sukesh costing *Rs.57 lakhs* for petitioner and *Rs.7 lakhs* was paid for allotment of stable and membership of the horse.
(v)	4 cats to petitioner
(vi)	15 pairs of earrings
(vii)	5 Birkin bags
(viii)	High-end bags from Chanel, Gucci, YSL
(ix)	Clothes and shoes from super luxury brands
(x)	Cartier bangles, bracelets and chains.
(xi)	Hermes bangles
(xii)	Tiffany Bracelet and Rings
(xiii)	Watches from Rolex, Roger Dubuis, Franck Muller
(xiv)	A Mini Cooper (which was returned by the petitioner)
(xv)	Cash of *Rs. 15 lakhs* given to *Ms, Advaita Kala*, who was a screen writer and had been approached by the petitioner for writing a script for a web series being produced by the petitioner.
(xvi)	Private jet trips and hotels stays for the petitioner on various occasions.

13. As per the impugned ECIR, following aspects are noted with regard to the *dissipation of proceeds of crime* (*paragraph 18.5* of the impugned ECIR):

13.1 Accused *Deepak Ramnani*, in his statement recorded on 17th October 2021 under Section 50 of PMLA, *inter alia* admitted that he

had arranged transfer of funds into the bank account of *Geraldine J. Walker*, sister of petitioner, through *Avtar Singh Kocher*, on directions of petitioner. (*paragraph 18.5.1.4 ECIR*)

13.2 Accused *Pradeep Ramdanee* in his statement recorded on 6th October 2021, admitted that he had gone to the house of *Ms. Advaita Kala* in Gurgaon/Gurugram and delivered a parcel containing *Rs.15 lakhs* on directions of his brother, *Deepak Ramnani*. (*paragraph 18.5.1.5 ECIR*.

13.3 In a statement under Section 50 of PMLA, recorded of *Sukesh*, it was *inter alia* stated that petitioner was a close friend and he had given lots of expensive gifts like bags, jewellery, high-end clothing, earrings, bags from ultra-luxury brands, bangles and bracelets, watches, all of which cost about *Rs.7 crores*. He further stated he had helped her sister *Geraldine* with a car, a new *BMW X5*, and gave an amount of *USD 1,80,000*, sent through *Deepak Ramnani*. He also stated that he had brought her parents a *Maserati* car and her mother a *Porsche* car in Bahrain, and also gave *USD 50,000* to her brother in Australia.

13.4 Statement of *Shaan Muttathil*, make-up artist of petitioner, was recorded on 28th October 2021. He stated that in January 2021, he was contacted by a lady named *Angel* who introduced him to *Sukesh (as Shekhar)*, through video call and requested to introduce *Sukesh* to the petitioner. He stated that he got a call which was stated to be from the Home Minister and was asked to get in touch with *Sukesh*, as he was an important person with the Government (which was a spoof call).

13.5 Statement of *Pinky Irani* was recorded on 30th November 2021 and 1st December 2022. She stated that she introduced *Shaan Muttathil* to *Sukesh;* numbers were exchanged and subsequently, petitioner got in

touch with *Sukesh*. As per instructions of *Sukesh*, she used to visit showrooms of luxury bags, clothes, shoes and used to select items and after receipt of payment confirmation, she used to pick up those items and deliver them to petitioner, either herself or through her manager *Prakash*. She further stated that two *Gucci* shoes, one *Louis Vuitton* (***LV***) bag and one sling bag had also been given to *Shaan Muttathil*.

13.6 Statements of petitioner had been recorded on 30th August 2021 and 20th October 2021. A complaint was filed before the ASJ on 4th December 2021 wherein petitioner was not an accused. Statements were then recorded on 8th December 2021. 1st supplementary complaint was filed on 5th February 2022 by the ED in which petitioner was not an accused. Statements of petitioner were then recorded on 20th May 2022 and 27th June 2022. 2nd supplementary complaint was filed on 17th August 2022 where petitioner was arrayed as accused no.10. Subsequently, a 3rd supplementary complaint was filed on 6th September 2022 and a 4th supplementary complaint on 6thApril 2023.

14. Petitioner was admitted to bail by the ASJ on 15th November 2022 and bail conditions were subsequently modified by order dated 10th August 2023.

15. In the 3rd supplementary complaint dated 06th September 2022, ED recorded that petitioner had joined the investigation and was asked to go through the documents which form part of ED's charge sheet and were retrieved from her mobile phone by ED or produced by her.

16. Petitioner *inter alia* confirmed the following:

a) Communication with *Ms. Advaita Kala*, in respect of receipt of *Rs.15 lakhs*.

b) List of *gifts*/ *articles* given to her by *Sukesh* through *Pinky Irani* and *Leepakshi Ellawadi*.

c) E-mails disclosing dates on which she visited *Kerala*, *Chennai* and *Bangalore*.

d) Papers relating to *Porsche Car, Maserati Car, BMW X5*, bank account statements of commonwealth bank account of her brother, *Wells Fargo* Bank Account of the sister, *Standard Chartered* Bank account of *Ms. Tan Kim Yok*, petitioner's own bank accounts, the bank accounts of her father in *Ahli, United Bank*.

e) Petitioner further produced the articles which were detailed as part of the supplementary complaint. Though the list is long (*at page no.34-35 of the 3rd supplementary charge-sheet of FIR No.208/2021*), but for purposes of reference, the categories and numbers of articles are being tabulated as under:

Sr. No.	ARTICLES
(i)	47 number of clothes of brands *Burberry*, *Louis Vuitton*, *Kenzo Tiger*, *McQueen*, *Elisabetta Franchi*, *Varana World*, *Zimmermann*, *Dolce*, *Alexis*, *Gucci*, *Rhode*, *Dior*, *Givenchy*, *Chloé*, *Fuschia*.
(ii)	62 number of shoes of brands *Louboutin*, *Balenciaga*, *Dior*, *Louis Vuitton*, *Gucci*, *Alaïa*, *Burberry*, *Alexander McQueen*, *Valentino*, *YSL* (*Saint Laurent*), *Fendi*, *Hermes*, *Bottega Veneta*.
(iii)	5 number of watches of brands *Piaget*, *Roger Dubuis*, *Franck Muller*, *Rolex*, *Chopard Imperiale*.
(iv)	32 number of bags of brands *Dior*, *YSL Rive Gauche*, *Louboutin*, *Chanel*, *Dior*, *Fendi*, *Hermes*, *Bottega*, *Birkin*, *Louis Vuitton*, YSL (*Saint Laurent*), *Balenciaga*, *Dior*, *Gucci*.
(v)	20 number of bags of brands *Chanel, Serpenti Viper, Tiffany, Cartier, Louis Vuitton*.
(vi)	4 sunglasses of brands *Dior*, *Ever Dior*, *Fendi*.
(vii)	1 chair of brand *Osim*.
(viii)	1 *LG Dishwasher*.
(ix)	2 *Mini Saddles* and *Whips* of brand *Hermes*.
(x)	13 number of belts of brands *Louis Vuitton* and *Gucci*.

(xi)	1 Dinner Set of brand *Versace*.
(xii)	9 number of paintings.

II. CASE PUT UP BY PETITIONER

17. *Mr. Sidharth Aggarwal*, Senior Counsel for petitioner, highlighted following aspects in context of the factual background stated above:

17.1 Investigation revealed that *Sukesh* was running a crime syndicate from *Rohini Jail*. EOW first detected activities of the syndicate in July 2021 after *Ms. Aditi Singh's* predicate offence complaint on 6th August 2021. Before 6th August 2021, there was no public information about the criminal syndicate and *Ms. Aditi Singh*.

17.2 Petitioner was not part of the extortion racket being run by *Sukesh* with the aid of *Deepak* and *Pradeep Ramdanee*.

17.3 Petitioner played no role in extortion of money from *Ms. Aditi Singh* and that she has been arrayed as a prosecution witness; she claims to have been defrauded by *Sukesh*.

17.4 The *proceeds of crime* were used by *Sukesh* to bribe jail officials for getting special facilities and for undertaking air travels, giving high-end branded gifts to Bollywood celebrities, and therefore, the proceeds had been put to *multiple* uses.

17.5 Petitioner was reluctant to accept gifts from *Sukesh* but *Pinky Irani* played a substantial role in misleading her. As per the 3rd supplementary complaint, petitioner had no previous interaction with accused *Sukesh* and her interactions only started during the period of commission of the crime by the accused in the case.

17.6 Petitioner had voluntarily given her statement under Section 164 of the Code of Criminal Procedure, 1973 (‘***Cr.P.C.’***) before the

Metropolitan Magistrate (**MM**), as she was an important prosecution witness.

17.7 Allegations against petitioner were purely speculative in nature formed on the basis that she knew that gifts/ articles/ benefits received were *proceeds of crime*.

17.8 ED's case was that in addition to the petitioner, other celebrities also received gifts from *Sukesh* viz. *Ms. Nora Fatehi, Ms. Nikita Tamboli, Ms. Chahat Khanna, Ms. Sophia Singh*.

17.9 All these celebrities had also been questioned by the EOW and had stated that *Pinky Irani* played a role in establishing contact between *Sukesh* and them and that *Sukesh* was using the alias, *Shekhar*.

17.10 *Ms. Nikita Tamboli, Ms. Chahat Khanna and Ms. Sophia Singh* also met *Sukesh* inside Tihar Jail.

17.11 In the statement of petitioner recorded under Section 164 of C.r.P.C, she stated that when she refused to speak to *Sukesh*, after becoming aware about his criminal antecedents, *Pinky Irani* convinced her that *Sukesh* was a billionaire who has been implicated due to his political background.

17.12 In these statements, petitioner stated that *Pinky Irani* continued to persuade her that she was making a wrong decision and that she should not believe what the media said, since *Pinky Irani* personally worked for *Sukesh* for 12 years.

17.13 *Pinky Irani* remained a member of the crime syndicate as per ED, as she concealed the real identity of members of the syndicate and never told Bollywood celebrities about *Sukesh's* real identity. *Pinky Irani* had to create an aura, status and influence of *Sukesh* before various Bollywood celebrities so that they come under the influence of *Sukesh*

and he could easily dispose of the *proceeds of crime*. Petitioner's counsel, therefore, contended that petitioner was ignorant of his criminal status. ED acted in a biased manner by presenting all other celebrities as witnesses while arraying petitioner as an accused.

17.14 *Shaan Muttathil* shared an article in February 2021 regarding *Sukesh* with the petitioner. The article had no whisper about the predicate offence of extortion of *Rs. 200 crores* and only mentioned other things about *Sukesh*.

17.15 On 15th February 2021 *Pinky Irani* went to meet the petitioner and re-assured her that *Sukesh* was a genuine guy and everything mentioned in the article was something of the past and due to political rivalry. She delivered a *Tiffany's* diamond proposal ring which had '*J*' and '*S*' initials along with flowers and chocolates. *Pinky Irani* was promised *Rs. 2 crores* for introducing petitioner to *Sukesh* and *Rs. 10 crores* for sorting out the differences between him and petitioner.

17.16 Petitioner then remained in constant touch with *Sukesh* till he was arrested in August 2021 and news broke out regarding the extortion of at least *Rs.200 crores* having been committed by *Sukesh*. The articles were gifted to her between February to August 2021 while petitioner met *Sukesh* in June 2021. In this period, there was no whisper in any public space regarding the extortion of *Rs. 200 crores* from *Ms. Aditi Singh* by *Sukesh*.

17.17 Petitioner's counsel relied upon ED's complaint dated 04th December 2021, where it is stated that *Sukesh* had impersonated the Law Secretary and the Home Secretary in order to extort money and was a "*master conman*" with technology at his disposal. In these

circumstances, the benefit of doubt was to be given to petitioner of being ignorant about the predicate offence and the *proceeds of crime*.

17.18 ED was placing a huge burden on petitioner to be vigilant enough to escape from the web of con, led by *Sukesh*, to fraudulently establish a relationship with her.

17.19 ED was only relying on the knowledge of criminal antecedents of *Sukesh* which were diluted by the efforts of *Pinky Irani* in the mind of petitioner. The criminal antecedents were based on the sharing of the article dated 10th February 2020 which stated that *Sukesh* was lodged in *Tihar Jail*. ED stated that she had not made any efforts to find out what his status was. ED completely exonerated celebrities who actually travelled to jail and instead placed the highest burden on petitioner.

III. CASE PUT UP BY ED

18. *Mr. Zoheb Hossain*, counsel for ED, pointed out the following aspects based on the factual background stated above:

18.1 Petitioner had admitted the receipt of articles as tabulated and listed above, as also, the amounts transferred to her parents, brother and sister, as also, the purchase of cars. She had further admitted the communication with *Ms. Advaita Kala* and the receipt by Ms. Kala of *Rs. 15 lakhs* on her behalf.

18.2 Petitioner was aware about the criminal antecedents of *Sukesh,* the fact that *Sukesh* was lodged in Tihar Jail and the fact that *Ms. Leena Maria Paul* was the '*partner'* of *Sukesh*, in February 2021 itself, when *Shaan Muttathil* shared the news article, as also, through *Pinky Irani*.

18.3 The article mentioned the Look-Out Circular ('**LOC**') issued by the Central Bureau of Investigation ('**CBI'**) against *Leena Maria Paul*

in a bank fraud case and also stated that *Leena Maria Paul* as being the '*partner*' of *Sukesh*.

18.4 The article further mentions involvement of *Sukesh* in three criminal cases, namely, arrest in *TTV Dinakaran case*, arrest of *Leena Maria Paul* and *Sukesh* in the 2013 *Canara Bank fraud case* (*Rs. 19 crores*) and arrest of *Leena Maria Paul* and *Sukesh* in the year 2015 by EOW, Mumbai Police for defrauding people in the name of investments in their bogus firms.

18.5 Petitioner admitted to have found various articles on *Google* search on *Sukesh*, which reflected his criminal antecedents and despite that, received gifts and money in cash and through banking channels, between February 2021 to July 2021, till he was arrested by the Delhi Police.

18.6 Petitioner continued to receive financial benefits from *Sukesh* (which are nothing but *proceeds of crime*) despite being aware of his criminal activities.

18.7 Petitioner never revealed the truth of financial transactions and concealed facts till confronted with evidence. Petitioner wiped out entire data from her mobile phone after the arrest of *Sukesh* and therefore tampered with evidence. She also asked her colleagues to destroy evidences. Thus, petitioner was knowingly involved in possession and use of the *proceeds of crime*.

18.8 Petitioner was summoned on five occasions to tender her statement under Section 50 of PMLA. The statements reveal that petitioner deliberately varied the narration of facts to mislead the investigation. She initially denied knowing the actual name of *Sukesh*, which, later on, upon being confronted with evidence, was admitted by

her. As regards cash transactions with *Ms. Advaita Kala*, of money delivered by, she first denied having entered into any such transaction, but upon being confronted with evidence, was admitted by her.

18.9 Petitioner continued to receive, enjoy and possess, the *proceeds of crime*, for herself and her family members. She initially did not admit the factum of having received huge monies and valuable gifts transferred to her parents, brother and sister, in India and abroad.

18.10 Petitioner kept on improving her statements about receipt of gifts and luxury items from *Sukesh*. During recording of statements, she initially denied the purchase of cars by *Sukesh* for her parents. *Sukesh* then admitted the said fact, and when petitioner was confronted, she admitted receipt of cars by her parents. It shows her connivance with *Sukesh* to conceal *proceeds of crime*.

18.11 Petitioner continuously vacillated and changed her stand with regard to the quantum of *proceeds of crime*. Till the recording of the last statement, she continued to make new disclosures, like property purchased by *Sukesh* in Sri Lanka.

18.12 In her statement recorded on 30th August 2021, she disclosed certain number of gifts and later on increased the list of gifts. Till 8th December 2021, petitioner never disclosed anything about her relationship with *Pinky Irani*.

18.13 The process of collection of evidence is going on and the possibility that further *proceeds of crime* are used, concealed, possessed and enjoyed by petitioner, could be unearthed.

18.14 Even *Sukesh* deleted the data from his mobile phone, the investigation *qua* use and possession of *proceeds of crime*, depends on

evidence such as disclosures made by *Sukesh* in his statements, *Pinky Irani's* phone data and statements of *Shaan Muttathil*, etc.

18.15 Petitioner has deliberately tried to create obstacles in the process of investigation and hide the truth.

18.16 Petitioner stated in a statement on 8th December 2021, that in February 2021 she came to know the real identity of accused *Sukesh* at the instance of *Shaan Muttathil*. In a statement dated 20th May 2022, she stated she saw various articles about him on *Google*, in that, he was involved in a bank fraud case.

18.17 A search on Google would show various material in the form of articles and videos reflecting criminal antecedents of *Sukesh and Leena Maria Paul*, including their images. These articles exist even today and have been there since 2013.

18.18 In the months of March, May and June 2021, transfers were made to the bank accounts of petitioner's sister and brother, even though, she was only introduced to *Sukesh* as "*Shekhar Ratna Vela*" in February 2021 i.e. within 14 days of petitioner having spoken to *Sukesh* and them video calling each other on WhatsApp. The above conduct of petitioner attributes knowledge and *mens rea*.

18.19 Section 3 of PMLA entails that the process or activity connected with *proceeds of crime* is a '*continuing activity*' and continues till such time when a person is *directly* or *indirectly* enjoying the *proceeds of crime* (by concealment/ possession/ acquisition/ use/ projecting or claiming it as untainted property, in any manner).

18.20 To embellish ED's argument as regards the change of stance in statements made by petitioner (after being confronted with evidence), a

table was presented by ED as part of written submissions, which has been reproduced hereunder, for reference:

	Submission of Jacqueline Fernandez (suppression of facts)	**Disclosure statement by other persons**	**Change of statement by Jacqueline Fernandez**
Misled the investigation w.r.t. Advaita Kala	She stated that, *"I did not send Rs. 15 lacs in cash to Advaita kala and only send her some chocolates and flower."* *Ref.* (Statement dated 30.08.2021) ***(See Ann. P-3 @ Pg. 74)***	Sukash statement dated 12.10.2021 (Q-26) wherein he stated that *"I also paid 15, 00,000/- to Advaita Kala on the request of Jacqueline"*. ***(See Pg. 347 Para 12.3(i) of PC)***	She admitted that *"Sukash arranged Rs. 15 lakhs in cash and delivered through his person at Advaita Kala's house location which was shared by her with Sukash on whatsapp."* *Ref.* (Statement dated 20.10.2021-Q12) ***(See Ann. P-4 @ Pg. 79)***
Misled the investigation w.r.t. Cars gifted to parents	She stated that *"No this is incorrect, he (Sukash) did not purchase any car for my parents in Bahrain."* *Ref.* (Statement dated 20.10.2021-Q6) ***(See Ann. P-4 @ Pg. 79)***	Sukash statement dated 12.10.2021 (Q-26) wherein he stated that *"she had received a lots of expensive gifts like bag, jewellery, high end clothing, apart from these, I have helped her sister in USA with a new BMW X5 and amount of approx 180,000 USD sent through Deepak Ramnani also bought her parents Maserati car and her mother Porsche car in Bahrain also gave 50k USD to her brother in Australia.* ***(See Pg. 347 Para 12.3(i) & 12.3(iii)***	She admitted that *"2 cars were also gifted to my parents in the month of April 2021 in Bahrain, One Porche and one Massarti. Those cars are still with my parents."* *Ref.* (Statement dated 08.12.2021- 4th para-last 2 lines.) ***(See Ann. P-6 @ Pg. 259)*** She has reiterated in her statement dated 19.07.2024, that her parents had received 02 cars. However she did not provide the purchase value of the cars. *Ref.* (Ans to Q2

		of PC)	and Q3 of statement dated 19.07.2024)
Misled the investigation w.r.t. Car and money gifted to her sister	She stated that *"As far as I know my sister did not receive any car from Sukash."* *Ref.* Statement dated 20.10.2021-Q2 ***(See Ann. P-4 @ Pg. 78)***	Sukash statement dated 12.10.2021 (Q-26) wherein he stated that *"she had received a lots of expensive gifts like bag, jewellery, highend clothing, apart from these, I have helped her sister in USA with a new BMW X5 and amount of approx 180,000USD sent through Deepak Ramnani also bought her parents Maserati car and her mother Porsche car in Bahrain also gave 50k USD to her brother in Australia.* ***(See Pg. 347 Para 12.3(i) & 12.3(iii) of PC)***	She admitted that *"My sister Geraldine J walker got received an amount totalling to USD 172913 in her bank account maintained with Wells Fargo".* *Ref.*: Statement dated 08.12.2021- 5th para. ***(See Ann. P-6 @ Pg. 259)*** Note: bank account statement of Wells Fargo bank reveals that an amount was indeed transferred to the agency from where the BMW car was purchased.
	She stated that " *To my knowledge, the amount loaned to my sister is USD 150,000/-* *Ref.* (Statement dated 20.10.2021-Q3) ***(See Ann. P-4 @ Pg. 78)***		
Misled the investigation w.r.t. Gifts by Sukash	She provided details of certain gifts by Sukash. *Ref.* (Statement dated 30.08.2021) ***(See Ann. P-4 @ Pg. 76)***	Sukash statement dated 12.10.2021 (Q-26) wherein he stated that *"she had received a lots of expensive gifts like bag, jewellery, highend clothing, apart from these, I have helped her sister in USA with a new BMW X5 and amount of approx 180,000USD sent through Deepak*	The list of gifts subsequently increased, which included items like Mini Cooper Car, Jewellery, Hermes bags, Paintings, Watches. The complete list is annexed as annexure-A. *Ref.* (Statement dated 08.12.2021.) ***(See Ann.***
	She stated that " *She or her family did not receive any gifts*		

	except (USD 15,00,00 to her sister, Horse and 4 cats) *Ref.* (Statement dated 20.10.2021 Q-10.) ***(See Ann. P-4 @ Pg. 79)***	*Ramnani also bought her parents Maserati car and her mother Porsche car in Bahrain also gave 50k USD to her brother in Australia.* ***(See Pg. 347 Para 12.3(i) & 12.3(iii) of PC)***	***P-6 @ Pg. 260-263)***
Misled the investigation w.r.t. Horse	She stated that "*Sukesh told me that he had purchased a horse called Espuela through Mr. Suresh Taphoria*". *Ref.* (Statement dated 20.10.2021-Q8) ***(See Ann. P-4 @ Pg. 79)***		Suresh Tapuriah was shown JF's statement 19.07.2024 (Q-7). Mr. Suresh Tapuriah stated that he never said that he had purchased any horse for her out of the funds arranged by Sukash or anyone else. She is lying. His statement is contradictory to the statement of Jacqueline Fernandes and investigation in this regard, is under way. *Ref.* (Statement of Suresh Tapuriah dated 01.10.2024- Q8.)

19. Accordingly, it was stated by ED's counsel that it was not a fit case for quashing ECIR at a pre-charge stage in light of the fact that: (i) the scheduled offence exists; (ii) *proceeds of crime* have been generated; (iii) *proceeds of crime* have travelled to petitioner; (iv) petitioner has been involved in the process of activity connected with the *proceeds of crime* including use, possession, concealment.

IV. SUBMISSIONS ON BEHALF OF PETITIONER

20. *Mr. Siddharth Aggarwal*, Senior Counsel for petitioner *inter alia* made the following submissions:

20.1 The predicate offence emanates from FIR No. 208/2021 registered by the Special Cell, Delhi Police, against unknown person on a complaint by *Ms. Aditi Singh* alleging extortion of *Rs.200 Crores*. The impugned ECIR was registered on that basis on 08th August 2021. Petitioner's statements were recorded on five occasions and she was not arrested during the said period. On 02nd November 2021, a charge sheet was filed in the predicate offence against *14 accused* including *Sukesh.* Sections 3(5) and 4 of MCOCA were added since investigation revealed *Sukesh* along with others operated an organised crime syndicate.

20.2 Petitioner was arrayed as an accused only in the 2nd supplementary prosecution complaint filed on 17th August 2022, on the basis that she had received and enjoyed *proceeds of crime*. In the 3rd supplementary charge sheet filed in the predicate offence on 14th January 2023, petitioner was presented as a *prosecution witness* and her statement was recorded on 02nd January 2023. The matter was at the stage of framing of charges. It was submitted that petitioner is, therefore, effectively a witness in the duping case and at the same time accused in PMLA.

20.3 Definition of '*proceeds of crime*' under Section 2(i)(u) of PMLA was similar to '*property derived or obtained from commission of organised crime*' under Sections 3(5) and 4 of MCOCA. A comparison was presented of the MCOCA provisions with Section 3 of PMLA asserting that MCOCA provisions were subsumed within Section 3 of PMLA. Same was presented in the form of a table, which is extracted as under:

s.3(5) of MCOCA	s.4 of MCOCA	s.3 of PMLA
Whoever holds any property derived or obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of rupees two lacs.	*If any person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of rupees one lac and such property shall also be liable for attachment and forfeiture, as provided by section 20.*	*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.*

20.4 Therefore, if provisions of MCOCA which form part of the predicate offence are subsumed under Section 3 of PMLA, it is illogical and untenable that petitioner has been arrayed as an accused in PMLA offence, whereas presented as a witness for the prosecution in the predicate offence. Petitioner's counsel relied on ***T.T. Antony v. State of Kerala and Others*** (2001) 6 SCC 181, and ***Amitbhai Anilchandra Shah v. Central Bureau of Investigation and Another*** (2013) 6 SCC 348, and contended that ED cannot arrive at a different conclusion on the same set of facts and, therefore, prosecution under Section 3 of PMLA ought to be quashed.

20.5 The contradictory stands place petitioner in an irreconcilable conflict and violated her constitutional right against self-incrimination as she will have to record evidence on oath in the predicate offence and on the same facts face prosecution under PMLA. Reliance was placed on Explanation to Section 44(1)(d) of PMLA that trial under PMLA and

that of the scheduled offence could not be considered as a joint trial. The Trial Court, therefore, did not have power to look into the material of the predicate offence and determine that petitioner's prosecution under PMLA would be antithetical.

20.6 There was no quarrel of attachment of the articles which were given by *Sukesh* to petitioner, but there was an issue regarding the implication under PMLA.

20.7 There was no evidence with ED to show that petitioner knew of the original event of duping of *Ms. Aditi Singh* of *Rs.200 Crores* by *Sukesh* and his associates. Petitioner herself was a victim of the same *modus operandi* used in the predicate offence and similarly placed as other victims who had not been prosecuted. The '*pick and choose*' manner of prosecution was not permissible.

20.8 ED placed an unreasonable burden on petitioner, expecting knowledge that *Sukesh's* gift were *proceeds of crime*. No evidence suggests public knowledge *Sukesh's* jail status for *Rs.200 Crores'* extortion.

20.9 ED acknowledges that *Sukesh* was a '*master conman*' who was using technology to brainwash people. *Sukesh* was using spoof calls to contact petitioner's staff, inducing them to introduce him to her. Statements of *Shaan Muttathil* and *Pinky Irani* were relied on to show that they corroborate the fact of duping through spoofed calls. However, ED's approach to others who were similarly placed shows striking disparity. Actresses *Nikita Tamboli, Chahat Khanna* and *Sofia Singh* admittedly met *Sukesh* inside Tihar Jail and yet received gift from him. Reliance was placed on ***Ramesh Manglani v. Directorate of Enforcement*** 2023 SCC OnLine Del 3234, ***Sanjay Jain v. Enforcement***

Directorate 2024 SCC OnLine Del 1656 and ***Sanjay Kansal v. Assistant Director, Directorate of Enforcement*** 2024:DHC:3765, on disparate treatment of similarly placed persons.

20.10 Test laid down in ***Pavana Dibbur v. The Directorate of Enforcement*** 2023 INSC 1029, as to when a person can be made an accused in PMLA even if they are not an accused in the predicate offence, has not been met. Section 3 of PMLA includes any *post facto* accessory who knowingly aids in the use, possession, or concealment of the *proceeds of crime*. Petitioner cannot be termed as a *post facto* accessory to the offence of money laundering as the role attributed to her is not of aiding, utilization or concealing *proceeds of crime*.

20.11 Possession of gifts can constitute an offence only if petitioner had any knowledge of the predicate offence. Such knowledge is attributed to petitioner on the basis of a news article of February 2021. Said article is dated 2020, which is prior to the scheduled offence and does not pertain to the scheduled offence at all. It was ED's own case that petitioner confronted accused *Pinky Irani* about the said article and was convinced by her and accused *Sukesh* that he was from a respectable political family who had been targeted.

20.12 Prosecution case is, therefore, based on conjectures and surmises i.e. the possibility that petitioner would have also found out about the criminal activities of *Sukesh* if she '*would have*' searched him on Google. This does not translate to any positive evidence of petitioner's knowledge of the scheduled offence and, therefore, to make out any offence under Section 3 of PMLA or establish foundational facts to apply the *presumption* under Section 24 of PMLA. Reliance was placed on ***Vijay Agarwal Through Parokar v. ED*** 2023 SCC OnLine

Del 3176; ***C.P Khandelwal v. ED*** 2023 SCC OnLine Del 1094; ***Arvind Kejriwal v. ED*** 2024 SCC OnLine SC 1703.

20.13 Provisions under Sections 3 (5) and 4 of MCOCA are similar to Section 2 (1) (u) of PMLA, as noted above. While MCOCA covers property derived or obtained from '*commission of organized crime'*, the PMLA provision read under Section 3 of PMLA covers offences related to *proceeds of crime*.

20.14 Petitioner being exonerated and not charged under MCOCA provisions, is an admission by the prosecution that she does not derive or obtain property from commission of organized crime. Quite in contrast, petitioner has been accused in the PMLA matter. The question is whether one can be prosecuted under PMLA while being a victim under provisions of MCOCA.

20.15 Knowledge / *mens rea* of an accused under PMLA has to be of '*proceeds of crime'* and not that the person from whom the property has been received is a criminal.

20.16 Petitioner's counsel focused on the issue of '*relatability*' or '*connection'* with the predicate offence. He argued that implicating the petitioner is akin to holding somebody responsible for possession of goods / possession downstream of articles being bought by *proceeds of crime*. If the receiver of the articles, as is petitioner, was not in the knowledge that they were *proceeds of crime*, not having any connection with the original extortion complaint, the person cannot be implicated. The fact that accused in the predicate offence, i.e. *Sukesh*, is '*tainted'*, it may not matter; but what matters is that there is knowledge that what is received from him, are *proceeds of crime*. An illustration was provided in that accused may also advance certain gifts or articles which are not

necessarily sourced from the *proceeds of crime*, but from legitimate means.

20.17 Reliance was placed on the decision in *paragraphs 15* and *17* of ***Pavana Dibbur v. E.D*** (*supra*) on the issue of relatability and knowledge. These aspects were relied upon by the High Court of Karnataka in ***Razorpay Software Pvt. Ltd. V. UOI*** (2024) SCC OnLine Kar 23, in *paragraph 27*. In this case, *Razorpay* was an intermediary and had a statutory duty of due diligence and did not verify the genuineness of person applying for accounts in which monies were received, which were allegedly *proceeds of crime*. In *paragraph 36* the Court held that there was no evidence to suggest that the payment gateway had knowledge that the fund transferred was derived from criminal activity; at best, the accused would be negligent in setting up merchant IDs, but the intent was essential to constitute an offence under Section 3 of PMLA.

20.18 Prosecution for two offences, in which ingredients are the same, cannot be done on the basis of Section 71 of IPC and Section 26 of the General Clauses Act, 1897 ('***GCA***').

20.19 Conduct of petitioner, post reading the article relating to *Sukesh* being implicated in the crime, at best is an *omission*, which in criminal law is not actionable, unless it's an '*illegal omission*'. Prosecution must show that petitioner was legally bound to establish a connection based on the newspaper article. Reference is made to Sections 32 and 43 of IPC.

20.20 Considering there was a ring given to the petitioner with an inscription of '*J*' and '*S*' on it, even as per prosecution, the context of the gifting was that of a '*suitor*'. The articles were not given out of any

transaction or consideration and neither were received as that of an *admirer* to a *fan*.

20.21 The question arises whether there is a legal duty to verify articles and the context. Aspects of *illegal omission* are statutorily provided, for example Section 21 of the Protection of Children from Sexual Offences (***POCSO***) and Section 39 of Cr.P.C. This aspect gets conflated with use of phrase '*knowingly*, *actually*, *willfully*' in the PMLA provisions.

V. SUBMISSIONS ON BEHALF OF ED

21. *Mr. Zoheb Hossain*, Counsel for ED, at the very threshold, submitted that petitioner seeks quashing of the FIR at the stage when charges itself have not been framed. ED has questioned the maintainability of the petition itself having been filed without challenge to the cognizance by order dated 1st September 2022, by the Special Court, of the ECIR along with the 2nd supplementary complaint. Further submissions were presented as under:

21.1. Reliance is placed on various decisions of the Supreme Court where the courts have been cautioned for invoking inherent jurisdiction to quash criminal proceedings at the stage of framing of charge. Attention was drawn to the decision in ***Rathish Babu Unnikrishnan v. State Govt. of NCT of Delhi &Anr.*** (2022) SCC online SC 513, in particular to *paragraphs 14-17*. Essentially, the Supreme Court has noted that quashing of criminal proceeding should be exercised very sparingly and with circumspection, and the Courts will not be justified in embarking upon inquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR. The Supreme Court therefore observes that at the pre-trial stage, when factual controversy is

in the realm of '*possibility*', particularly because of a legal presumption, the Court should be slow to grant relief of quashing.

21.2 ED's Counsel refers to the legal presumption under Section 24 of PMLA which reverses the burden of proof. Section 24 of PMLA is adverted to which has two limbs. In case of a person charged with offence, the Court '*shall'* presume that such *proceeds of crime* are involved in money laundering, unless the contrary is proved; and in case of any other person, the Court has a discretion to impose such presumption. ED's counsel pointed out that challenge to the constitutionality of this provision was dismissed by the Supreme Court in the decision of ***Vijay Madanlal Chaudhary v. Union Of India & Ors***. (2022) SCC OnLine SC 929 (Neutral Citation *2022:INSC:757, paragraphs and extracts of which are referred to herein by the Court.*), in particular, *paragraph 99*.

21.3 Adverting to the decision in ***Vijay Madanlal Chaudhary*** (*supra*), ED's counsel focused on *paragraph 95 to 99* of the said decision. The Supreme Court in interpreting the purport of Section 24 of PMLA, notes that prosecution should succeed in establishing three basic foundational facts:

> *a. that the criminal activity relating to scheduled offence has been committed;*
> *b. the property in question is derived or obtained, directly or indirectly, as a result of the criminal activity;*
> *c. the person concerned is, directly or indirectly, involved in any process or activity connected with the said property.*

21.4 On establishing these foundational facts, a legal presumption arises under Section 24 of PMLA, which can be rebutted by the accused, showing that no causal connection exists. ED's counsel underscored

that such a rebuttal is a factual rebuttal, which can only be done by producing evidence during the trial.

21.5 Essentially the flow, as per the Supreme Court, is the establishment of the foundational facts, which triggers the legal presumption, which then, can be rebutted factually by leading evidence. ED's counsel therefore submitted that accusation on the petitioner includes not only of *possession* but *concealment* as well, which comes within the purview of '*process or activity'*. Not only did petitioner confess to *possession*, but also admitted having received considerable and substantial gifts by her and her family only through successive disclosures. He therefore contends that this would amount to an '*act of concealment*' which the prosecution would prove during trial.

21.6 ED's counsel relies upon ***Soma Chakravarty v. State*** (2007) 5 SCC 403 (*paragraph 10*) contending that at the stage of framing of charge, the Court can form an opinion that the accused '*might'* have committed an offence and there is no requirement to arrive at a conclusion that the accused '*has'* committed the offence.

21.7 ED's counsel reiterated that what is enough at this stage is that the accused "*might have committed the offence*". To displace the implication, accused would have to place evidence in trial.

21.8 Response of ED's counsel to the defence taken by accused that she "*did not know*" was essentially based on Section 3(i) of PMLA. The elements which constitute an offence under Section 3 of PMLA have been slated to be disjunctive as per the Explanation. These elements are: *concealment*, *possession*, *acquisition*, *use*, *projecting it as untainted property* and *claiming it as untainted property*. He contended that possession of articles given by *Sukesh* were not disputed. He contended

that it is evident that there was concealment by petitioner since there were piecemeal disclosures, substantiated as under.

21.9 The issue of projecting it as *untainted property* was also evident, since petitioner did not disclose various gifts given to her and her family in one go, but only during further investigation and interrogation.

21.10 ED's counsel adverted to Section 3 (ii) of PMLA to contend that the process or activity connected with *proceeds of crime* is a "*continuing activity*" and continues till the person is directly or indirectly enjoying the *proceeds of crime*. Regarding the aspect of "*knowingly*", it would have to be determined during trial, whether the accused is able to rebut the presumption imposed by Section 24 of PMLA.

21.11 ED's counsel referred to the statements, particularly petitioner's statement in relation to the issue of transaction with *Advaita Kala*. She was a known scriptwriter and had allegedly been paid for the web-series by *Sukesh*. In this regard, initially the accused in her responses, denied that the money had been given by *Sukesh* but later improved upon her statement. (*statement of 20th October 2021*). *Sukesh* was arrested on 9th October 2021 and gave his statement and thereafter all the improvements took place in petitioner's statement.

21.12 In response to *question 15*, in statement recorded on 30thAugust 2021, petitioner stated that she did not pay the *Rs.15 lakhs* to *Advaita Kala*. In *question 17*, she agreed that there were WhatsApp conversations between her and *Advaita Kala*. In answer to *question 20*, when she was confronted with the photocopy of statement of *Advaita Kala*, stating that she had received cash of *Rs.15 lakhs* from accused through some person, accused responded and stated that she does not agree to sending her *Rs.15 lakhs* cash on that date or *Rs.15 lakhs* cash at

all. This was improved upon by petitioner in her statement recorded on 20th October 2021 where she stated in *question 12* that she would like to correct her earlier statement relating to *Advaita Kala*. She stated that *Sukesh* was aware that she was in talks with *Advaita Kala* for a movie script and he was keen to produce it and then offered to send her an advance of *Rs.15 lakhs* cash. He arranged the cash and delivered it through his person, whom petitioner did not know. This aspect has been mentioned in the complaint where it stated that on being asked about cash transactions of *Rs.15 lakhs* with *Advaita Kala*, she denied having sent any money in cash and stated she had only sent chocolates and flowers to her.

21.13 ED's counsel then focused on petitioner's concealment of information by adverting to various gifts which were received by her family. In her statement of 20th October 2021, accused gave details of her family members and was asked whether petitioner's sister Geraldine received *USD 1,80,000* from *Sukesh* and she admitted she had received *USD 1,50,000* from *Sukesh* but qualified the same as a loan from *Sukesh* for a mortgage on the house which was transferred to her sister's bank account. She was asked about whether *Sukesh* had purchased a new *BMW car 5 series* for her sister and she denied it. She admitted that the funds of *AUD 26740* were transferred to her brother in Australia by *Sukesh* and not *USD 50000* as claimed by *Sukesh*. She admitted that *Sukesh* had purchased a horse called *Espuela* which she was free to use. She further admitted that *4 cats* had been received from *Sukesh*. She denied that *Sukesh* had purchased any cars for her parents in Bahrain.

21.14 It was pointed out by ED's counsel that in the statement recorded on 30thAugust 2021, accused had not disclosed the details of

the amounts received by her sister and her brother from *Sukesh* or about receiving the horse, cats and other gifts. On 20th October 2021, she did not disclose these facts on her own but only when she was asked about the same.

21.15 During the statements recorded on 30thAugust 2021 and 20th October 2021, accused had been silent on the role played by *Pinky Irani* and how the articles had been reaching her. Accused admitted to have received gifts but did not disclose details from *Sukesh*, that were sent through *Pinky Irani* but she did not disclose the important part played by *Pinky Irani* in this process.

21.16 Petitioner later admitted in statement dated 8th December 2021 that her parents had received two cars in April 2021, as also that sister received *USD 172913* in her bank account as also gave a list of gift items received through either *Pinky Irani* or *Leepakshi*. (*Leepakshi was a stylist friend. who had been allegedly employed by Sukesh as a personal shopper*). This is in contrast to her statement on 20th October 2021when she denied that *Sukesh* had gifted BMW car to her sister and two cars to her parents and that *Pinky Irani* was aware of the gifting of these cars to her parents. ED's counsel also focused on the destruction of evidence by her. In her statement of 20th May 2022, accused was trying to portray that she was a victim of manipulative actions by *Sukesh*. She relied on evidences in the form of photos and videos sent by *Sukesh* but the same have been destroyed by her by deleting the data on the mobile. She then stated that *Sukesh* had told her that he had coal mines as well and is into arms and ammunition business with Russia. She never disclosed these details earlier.

21.17 ED's counsel drew attention to the fact that in the continued relationship with *Sukesh*, knowing that he was a businessman and had been searching about him on Google, it was surprising that she never bothered to find out whether *Sukesh* owned *Kalyan Jewelers* or that he had *coal mines* or that he had *50% ownership* of *Leela Hotel* in Chennai, as had been represented by *Sukesh*.

21.18 In statement of 27th June 2022, she admitted that she had deleted her mobile phone data on 11 August 2021 after knowing about the arrest of *Sukesh*. On being confronted that she had earlier lied about the issue with *Advaita Kala* and the number of gifts received from *Sukesh*, she stated that she did it on account of fear or was unable to recollect. It was only when she was confronted with the evidence, she admitted to having received gifts from *Sukesh*. She stated that she was stressed and she wanted to save the reputation of her and the family members.

21.19 As per the complaint, she also admitted that she had requested *Shaan*, *Leepakshi* and *Prashant* to delete data from their phone with respect to the messages, chats, pictures with *Sukesh*.

21.20 Accused was shown a news article dated 10th February 2020, which related to *Look-Out Notice against actress Leena Maria Paul* in *CBI case*, where cases were reported against *Sukesh*, which included *TTV Dhinakaran case*, *EOW Mumbai case* and *Canara Bank fraud case*. Accused denied having received these articles, and later claimed that she had received another news article from 2017 related to *Sukesh* and some South Indian politician controversy. However, she was shown WhatsApp conversations between *Shaan Muttathil* and *Pinky Irani* on 11th February 2021 to 13th February 2021, where the news article of 10th

February 2020 was shared and then she admitted that the news article had been shared with her.

21.21 As per prosecution she had clearly admitted that she had gone through various articles on the internet after searching for *Sukesh* but she accepted the explanations offered by *Pinky Irani* and *Sukesh* himself and ignored his earlier antecedents.

21.22 At time of framing of charges, the probative value of the material on record cannot be gone into and material brought on record by prosecution has to be accepted as true. Whether the accused has committed the offence or not, can only be decided in trial.

21.23 For quashing of charge, principle to be adopted is that if the entire evidence produced by the prosecution is to be believed would it constitute an offence or not. Reliance was placed on ***State of Maharashtra v. Salman Salim Khan and Another*** (2004) 1 SCC 525.

21.24 Truthfulness, sufficiency, and acceptability of material produced cannot be gone into at the time of framing of charge which can only be done at the stage of trial. Reliance was placed on ***Umesh Kumar v. State of Andhra Pradesh and Another*** (2013) 10 SCC 591, in particular *paragraph 30*. The Supreme Court in ***Saranya v. Bharathi and Another*** (2021) 8 SCC 583, held that at the stage of framing of charge the Court has to consider the material only with a view to find out if there was ground for *presuming* that the accused had committed the offence. At that stage, the High Court was not required to appreciate the evidence on record and considered the allegation on merits.

21.25 *Mens rea* aspect could only be examined at the stage of trial. The case of petitioner is that ECIR should be quashed since she had no knowledge that she was in receipt of *proceeds of crime* and, therefore,

it is alleged by her that element of *mens rea* was absent which is essential pre-requisite. *Mens rea* or knowledge is a triable issue and can only be examined at the stage of trial upon leading evidence. Reliance was on the decision of Supreme Court in ***Anoop Bartaria v. Dy. Directorate of Enforcement***, 2023 INSC 413 in *paragraphs 27 and 28* and ***Bholu Ram v. State of Punjab & Anr.***, (2008) 9 SCC 140 in *paragraph 61*. The disputed defence of the accused can only be appreciated by the Trial Court. Reliance was placed on the decision of the Supreme Court in ***S. Krishnamoorthy v. Chellammal*** (2015) 14 SCC 559.

21.26 The Supreme Court categorically stated in ***Anoop Bartaria*** (*supra*) that determining knowledge of the accused that they were dealing with the *proceeds of crime* would be a condition precedent or *sine qua non* for the prosecution for lodging a complaint. The direct involvement of the petitioners in the activities that the *proceeds of crime* would require trial.

21.27 There was no bar on prosecution under PMLA if a person is arrayed as a witness in the predicate offence. Reliance was also placed on ***Pradeep Nirankarnath Sharma v. Directorate of Enforcement & Anr.***, 2025 SCC OnLine SC 560 where it was held that in case is involving of such magnitude a trial is imperative to establish the full extent of wrongdoing and to ensure accountability.

21.28 Reliance was also placed in ***Amit Katyal v. Directorate of Enforcement***, 2024:DHC:7113 where it was reiterated that predicate offence and the offence under PMLA are independent offences, and even if a person is not an accused in the predicate offence they can still be arrayed as an accused under PMLA.

21.29 Reliance was also placed of this Court's decision in ***Sanjay Kansal v. ED*** *(supra)* and ***Satish Babu Sana v. Directorate of Enforcement*** 2024: DHC: 5335-DB, where the Division Bench of this Court held that proceedings under PMLA are separate and distinct from that of the predicate offence. On this issue, reliance was also placed on ***State of Bombay v. Kathi Kalu Oghad***, 1961 SCC OnLine SC 74, ***Laxmipat Choraria & Ors. v. State of Maharashtra***, 1967 SCC OnLine SC 30 and of the Allahabad High Court in ***Mohan Lal Rathi v. Union of India through Directorate of Enforcement*** 2023:AHC-LKO:59826, wherein it was held that pardon under Section 306 of Cr.P.C. to a person and scheduled offence could not *ipso facto* result is acquitted in the offence under PMLA. The matter was further appealed before the Supreme Court and was dismissed as withdrawn. Reliance was also placed on ***Deepak Chandak v. State of Jharkhand through CBI*** 2004 SCC OnLine Jhar 672 and ***State (Delhi Admn) v. Jagjit Singh***, 1989 Supplementary (2) SCC 770.

21.30 ED's counsel relied upon Section 132 proviso of the Indian Evidence Act 1872 ('***IEA***'). The said provision does not excuse the witness from answering on the ground that the answer will incriminate him. While the proviso protects the witness in stating that no answer given by the witness shall subject him to any arrest or prosecution. At the stage, it was merely being stated that there was an apprehension that the petitioner who was a witness in the predicate offence was handling *proceeds of crime* which would be proved in trial.

21.31 Reliance was also placed on Section 44(d) of PMLA, Explanation (i) clearly indicated that the trial of predicate offence under the predicate/scheduled offence and that of the PMLA could not

constitute a joint trial. In this regard, reliance was placed on ***Vijay Madan Lal*** (*supra*) *paragraphs 112* and ***Pavana Dibbur*** (*supra*) *paragraphs 15-17* on the issue that except for the proceeds which emanated from the crime every other aspect was different between the predicate offence and in this offence.

21.32 Section 3(5) and Section 4 of MCOCA and Section 3 of PMLA being similar cannot restrain the ED from prosecuting the petitioner. It was submitted that the offence of money laundering was a standalone offence and the investigation conducted by the predicate agency cannot impact the same and was not binding the ED. Merely because a petitioner is not charge-sheeted it does not mean he is acquitted or exonerated by the investigating agency. Reliance was placed on ***Laxmipat Choraria*** *(supra)* noting that a person is often made a witness or an otherwise being the character of an accused to enable the prosecution to gather evidence against other main accused persons. It was well settled that investigation into money laundering was independent and Parliament being conscious of such eventuality to introduce Explanation (i) to Section 44(1)(d), upheld in ***Vijay Madan Lal Chaudhary*** (*supra*) in *paragraph 112*.

21.33 Even under Section 319 of Cr.P.C., there is a power to array any person to an accused who may not have been charge-sheeted. Reliance was placed on ***Sukhpal Singh Khaira v. State of Punjab***, (2023) 1 SCC 289. Merely because a petitioner is not made an accused in the predicate offence does not mean she has been exonerated and cannot impact the investigation by the ED.

21.34 It was also well settled that the same set of facts will give rise to an offence punishable under different laws. Reliance was placed on

Monica Bedi v. State of Andhra Pradesh (2011) 1 SCC 248. Both the concepts of *autrefois acquit* and *autrefois convict* do not apply in this case. Reliance was placed on Section 232 of Cr.P.C. contending that acquittal was a judicial process and the omission to make the petitioner is an accused in the predicate offence did not amount to an exoneration or an acquittal. Therefore, Article 20(2) benefit cannot be given to petitioner nor Section 300 of Cr.P.C. provision would benefit petitioner in any way.

21.35 It was, therefore, submitted that petitioner fulfils all the ingredients of offence under PMLA considering that she misled the investigation by first denying and then answering affirmatively after confrontation and, therefore, had concealed the *proceeds of crime* which is covered under Section 3(2) of PMLA and qualified by "*in any manner whatsoever*". Further, it had been alleged by the ED that she had tampered evidence by wiping out data from her phone and that of her colleagues. Therefore, as far as ED was concerned, they have imputed knowledge to petitioner and it was for her to place her defence during trial.

VI. SUBMISSIONS IN REJOINDER MADE ON BEHALF OF PETITIONER

22. *Mr. Siddharth Agarwal, Senior Counsel* for petitioner, in his rejoinder essentially stated a under:

22.1 The whole matter arises out of *proceeds of crime* emanating from the fraud which was allegedly perpetrated by *Sukesh* on *Ms. Aditi Singh* of about *Rs.200 crores*. The said *Rs.200 crores*, as per prosecution, was used for different purposes; one of the said purposes

was to give gifts to models and actresses and only one of these sets of gifts was given to petitioner. The issue asserted by the ED was that mere possession is enough.

22.2 Countering this, Senior Counsel for petitioner submitted that six other persons, including those who have met *Sukesh* in the jail, were not being prosecuted, therefore why the differential treatment?

22.3 He posed a question as to what was the distinguishing factor by the ED. He relied upon the decision in ***State of M.P. v. Sheetla Sahai & Ors.,*** (2009) 8 SCC 617 where the Supreme Court stated that one cannot pick and choose at the stage of charge. He further relied on ***Radha Mohan Lakhotia v. Deputy Director*** 2010 SCC OnLine Bom 1116**,** stating that at best, the said proceeds in the hands of the petitioner would be liable for attachment, but not for prosecution.

22.4 The basis of knowledge asserted by ED was twofold - ***first***, the news report, and ***second***, the assumption that petitioner '*ought to have known'* about the criminal antecedents of *Sukesh*. He, therefore, asserted that this cannot impute knowledge to the petitioner that what she had received was coming from the *proceeds of crime*, i.e. the money of which *Ms. Aditi Singh* had been defrauded. There could be a possibility, at best, that the proceeds were from legitimate money. The presumption, therefore, being drawn out that the petitioner was in the know, that gifts she had received were coming from *proceeds of crime* was flawed.

22.5 He contended that knowledge was necessary at the stage of charge as per the decision in ***State of Maharashtra v. Som Nath Thapa*** (1996) 4 SCC 659, which dealt with a case of customs officer under whose watch RDX had come through the customs for use in the Bombay

blasts. An argument had been taken that he was not in the know that this RDX was to be used for unlawful purposes. The Supreme Court, however, stated that RDX has no other legal use and therefore did not discharge *Som Nath Thapa*.

22.6 Senior counsel therefore distinguished the petitioner's case stating that what she had received were '*regular articles of commerce'* and cannot be said to be unlawful; the goods did not come with a stamp that they were untainted and therefore knowledge cannot be imputed to the petitioner.

22.7 He further countered the assertion of the ED's counsel on Section 24 of PMLA on the point of presumption. He cited the decision of ***Vijay Madanlal Choudhary*** (*supra*), and drawing attention to *paragraphs 93 and 97*, effectively stated that the foundational facts had to be established even for this purpose, which was not done by the ED.

22.8 On the issue raised by the ED that these aspects will need to be considered during trial, Senior Counsel stated that trial is necessary when there are disputes relating to the facts, which was not there in this case. Petitioner was willing to admit the facts placed by the ED since she had none of her own facts to counter the same. The facts relating to receipt of the gifts by her were admitted by her, so therefore there was no dispute in that regard. However, the undisputed facts did not establish knowledge of the *proceeds of crime* in the hands of the petitioner.

22.9 Senior counsel embellished the issue of the petitioner being witness to the predicate offence, but being accused in the other, on the basis that predicate offence included an offence of MCOCA, which was the same and, in some cases, wider than that of money laundering, for which he had referred to a table which was supplied previously. He

clarified that he was not arguing that a witness in one case could not be accused in the other, but was stating that in this specific case, being the predicate offence involving MCOCA, which is similar to and larger than the money laundering offence, the petitioner ought to have been excluded from accusation.

22.10 Definition of *proceeds of crime* under Section 2(1)(u) of PMLA is similar to "*property derived or obtained from commission of organized crime*" under Section 4 of MCOCA. Despite a specific punishment under Section 4 of MCOCA for possessing unaccountable wealth, petitioner has not been arraigned as an accused by EOW. Two different agencies carrying out investigation of offences intertwined with each other, presenting petitioner in two completely different and contradictory roles.

22.11 Petitioner has been arraigned, as a prosecution witness in the predicate offence, requiring her to be depose on oath before the Trial Court and face cross-examination, while she stands and as an accused in PMLA proceedings before the same Court. EOW had exonerated petitioner in the predicate offence on basis that she did not have any knowledge of the predicate offence and did not participate at any time before the predicate offence or post the commission of the same.

22.12 Reliance has been placed on ***TD Sonia v. Deputy Director, Director of Enforcement Government of India***, Supreme Court order dated 2nd December 2022 in SLP Crl. No.10667/2022; ***Swarna Daga Mimani v. Director of Enforcement***, Supreme Court order dated 13th March 2023, in SLP Crl. No. 345/2023; ***T.D. Tataji v. The Deputy Director of Enforcement, Government of India***, Supreme Court order dated 21st November 2022 in SLP Crl. No. 10360/2022; and ***Directorate***

of Enforcement v. Gagandeep Singh & Ors. 2022 SCC OnLine Del 514.

22.13 Petitioner did not have any knowledge about the predicate offence or *proceeds of crime*. Respondents' entire case hinges on a solitary article published on 2020 which allegedly showed petitioner's knowledge of *Sukesh's* criminal antecedents. Regarding the article, petitioner relied upon the statements of *Pinky Irani,* who confirmed that she had assured petitioner and *Shaan Muttathil* that since Shekhar was a political bureaucrat, such things keep happening to taint *Sukesh's* reputation. The article was a thing of the past. As per *Pinky Irani*, petitioner believed her and then started receiving gifts from him.

22.14 The article in any case did not have anything to do with the predicate offence in question. Petitioner's contention is that at best there is an omission on the part of the petitioner to conduct due diligence, but it cannot form the basis of prosecution under PMLA.

22.15 Omission to do an act for which there is no legal obligation cannot be said to be an 'illegal omission'. From December 2020 till August 2021, there was nothing on any public forum/ newspaper about the extortion case of *Aditi Singh* and *Sukesh*.

22.16 Reliance was placed on ***Emperor vs. Bepin Behari Ganguly***, 1931 SCC Online Cal. 230 (*paragraphs 3-4*); ***The Queen v. Anthony Udayan***, (1883) ILR 6 Mad 280 (*paragraph 2*); ***Nanubhai Vastabhai Katariya v. State of Gujarat*** 1999 SCC OnLine Guj 235, (*paragraphs 26 & 33*). ***Prakash Industries Ltd. v. Union of India & Anr***, 2023 SCC Online Del 336, (*paragraphs 63-67*). ***Razorpay Software Pvt Ltd v. Union of India*** (*supra*), (*paragraphs 27-31,36-38*). ***Dennis Sagaya***

Jude v. Directorate of Enforcement, NC:2024:KHC:25046, (*paragraphs 19, 24-25*).

VII. ANALYSIS

23. The petitioner seeks quashing of an ECIR registered under Section 3 and 4 PMLA, in which she has been arrayed as accused No. 10. The predicate offence, arises from FIR No.208/2021 lodged by the Special Cell, New Delhi, pursuant to which EOW (*the investigating agency*) filed the charge sheet under various sections of IPC and Section 3 and 4 of MCOCA against *Sukesh* and various other associates. The predicate offence was based on a complaint of extortion of about *Rs. 200 crores* by the complainant, *Ms. Aditi Singh*.

24. The gravamen of PMLA complaint relates to *proceeds of crime* and acts and omission by accused leading to the offence of money laundering under Section 3 PMLA. Said provision is extracted as under:

> "*3.* ***Offence of money-laundering****.—Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the 26[proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming] it as untainted property shall be guilty of offence of money-laundering.*
> *Explanation.—For the removal of doubts, it is hereby clarified that,—*
> *(i) a person shall be guilty of offence of money-laundering if such person is found to have directly or indirectly attempted to indulge or knowingly assisted or knowingly is a party or is actually involved in one or more of the following processes or activities connected with proceeds of crime, namely—*
> *(a) concealment; or*
> *(b) possession; or*

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

25. Section 2 (1) (u) PMLA defines '*proceeds of crime*' extracted as under:

"***Section 2 (1):***
(u) "proceeds of crime" *means any property derived or obtained, directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence or the value of any such property [or where such property is taken or held outside the country, then the property equivalent in value held within the country] [or abroad];*
Explanation.—For the removal of doubts, it is hereby clarified that "proceeds of crime" include property not only derived or obtained from the scheduled offence but also any property which may directly or indirectly be derived or obtained as a result of any criminal activity relatable to the scheduled offence;"

26. The only other provision which is relevant for assessment of petitioner's case is Section 24 of PMLA, which creates a presumption against the accused and reverses the burden of proof. The said provision is extracted as under:

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

27. To support their prayer for quashing of ECIR, various grounds were asserted by petitioner, that can be usefully crystalized as under:

(i) Petitioner is not an accused in the predicate offence which arises from the same set of facts.

(ii) Petitioner was made a witness in the predicate offence and therefore it would compromise her position while giving evidence before the same court which tries both predicate and the PMLA offence and violates her constitutional right against self-incrimination;

(iii) Predicate offence includes provisions of MCOCA which also deals with property derived or obtained from commission of organized crime and is therefore akin to *proceeds of crime* under PMLA and petitioner has been exonerated from the predicate offence;

(iv) Petitioner herself was a victim of this *modus operandi* used by the accused *Sukesh* in the predicate offence;

(v) Other victims, similarly placed, of accused *Sukesh* in the predicate offence have not been proceeded under PMLA; ED is adopting *pick-and-choose* policy;

(vi) ED's best case to impute *knowledge* to the petitioner regarding *proceeds of crime* relates to a 2020 article which was given to petitioner in February 2021. Not only is there evidence through statements of co-accused that petitioner was misled into believing that *Sukesh* was not associated with any real criminality, instead was victim of motivated and instigated actions. Further, at best, petitioner could be accused of an omission to not carry out due diligence regarding criminal antecedents of *Sukesh*, which, in itself, is not an illegal omission.

(vii) There was no dispute on facts of the case; petitioner had admitted receipt of all gifts / articles from *Sukesh* and therefore, she does not need to be subject to trial for this purpose or for any other factual determination. All the evidence placed by ED points out to an intricate *modus operandi* conceived, perpetuated and implemented by *Sukesh* through his associates primarily the *Ramnani brothers* and *Pinky Irani* in order to mislead, dupe and hoodwink the petitioner into receiving gifts/articles as tokens of *Sukesh*'s appreciation and admiration of the petitioner.

(viii) It's not uncommon for a petitioner, as a reputed actor, to receive gifts from her fans and this was an accepted practice in the film industry.

28. Each of these contentions need to be assessed, particularly in light of ED's response. The facts in question are largely not disputed between the petitioner and ED, particularly that there was a predicate offence, there existed *proceeds of crime* (though petitioner denies that she was aware that they were *proceeds of crime*), and petitioner and her family were recipient of

certain gifts, articles and money transactions emanating from the accused *Sukesh*.

29. Charges are yet to be framed as per the submission of counsels, proceedings are underway before the Trial Court.

30. Before venturing into a journey to assess these submissions, it is instructive to examine, at the outset, two decisions of the Supreme Court which have been widely referred by both parties *viz*. ***Vijay Madanlal Choudhary and Ors***. (*supra*), a three-bench 2022 decision of the Supreme Court and, ***Pavana Dibbur*** (*supra*), a 2023 decision of the Supreme Court.

VII.A. Vijay Madanlal Choudhary and Ors.

31. The Supreme Court was dealing with a batch of petitions with pleas concerning validity and interpretation of provisions of the PMLA and the procedure followed by ED while investigating offences under the PMLA, as being violative of the constitutional mandate.

32. Certain aspects that have a bearing on determination in this matter, forms part of the discussion and opinion of the Supreme Court. *Firstly*, is the analysis of the purport of Section 24 of PMLA. It was specifically held in *paragraphs 95 to 99, 103* of the Supreme Court's opinion that Section 24 had reasonable nexus with the purposes and objects to be achieved by the Act and cannot be regarded as arbitrary or unconstitutional. Relevant for this case are the following extracts:

> "*95. ...The respondents have rightly invited our attention to several other statutes providing for shifting of the burden of proof on the accused, as in the case of Section 24 of the 2002 Act. The constitutional validity of similar provisions has been upheld by this Court from time to time. In the case of*

Noor Aga, it has been observed that the Court while interpreting the provision, such as Section 24 of the 2002 Act, must keep in mind that the concerned Act has been the outcome of the mandate contained in the international convention, as is the case on hand. Further, only because the burden of proof under certain circumstances is placed on the accused, the same, by itself would not render the legal provision unconstitutional. The question whether the burden on the accused is a legal burden or an evidentiary burden, would depend on the statute and its purport and object. Indeed, it must pass the test of the doctrine of proportionality. In any case, as the burden on the accused would be only an evidentiary burden, it can be discharged by the accused by producing evidence regarding the facts within his personal knowledge. Again, in the case of Seema Silk & Sarees, this Court restated that a legal provision does not become unconstitutional only because it provides for reverse burden as it is only a rule of evidence. So long as the accused is entitled to show that he has not violated the provisions of the Act, such a legal provision cannot be regarded as unconstitutional. For, the accused is then entitled to rebut the presumption.

96. Suffice it to observe that the change effected in Section 24 of the 2002 Act is the outcome of the mandate of international Conventions and recommendations made in that regard. Further, keeping in mind the legislative scheme and the purposes and objects sought to be achieved by the 2002 Act coupled with the fact that the person charged or any other person involved in money-laundering, would get opportunity to disclose information and evidence to rebut the legal presumption in respect of facts within his personal knowledge during the proceeding before the Authority or the Special Court, by no stretch of imagination, provision in the form of Section 24 of the 2002 Act, can be regarded as unconstitutional. It has

reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act. In any case, it cannot be perceived as manifestly arbitrary as is sought to be urged before us.

97. 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 nature of process or activity has now been elaborated in the form of Explanation inserted vide Finance (No.2) Act, 2019. On establishing these foundational facts in terms of Section 24 of the 2002 Act, a legal presumption would arise that such proceeds of crime are involved in 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.

98. The person falling under the first category being person charged with the offence of money-laundering, presupposes that a formal complaint has already been filed against him by the authority authorised naming him as an accused in the

commission of offence of money-laundering. As observed in P.N. Krishna Lal, the Court cannot be oblivious about the purpose of the law. Further, the special provisions or the special enactments as in this case is required to tackle new situations created by human proclivity to amass wealth at the altar of formal financial system of the country including its sovereignty and integrity. While dealing with such provision, reading it down would also defeat the legislative intent.

99. 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.

…..

103. We, therefore, hold that the provision under consideration namely Section 24 has reasonable nexus with the purposes and objects sought to be achieved by the 2002 Act and cannot be regarded as manifestly arbitrary or unconstitutional."

(emphasis added)

33. The Supreme Court categorically stated that the burden on accused was an evidentiary burden to be discharged by producing evidence regarding the facts "*within his personal knowledge*".

34. Legal presumption would arise on establishing at least three basic or foundational factors - that ***first***, there is a scheduled offence; ***second***, that the property in question has been derived from that criminal activity; and ***third***, that person accused in PMLA is directly or indirectly involved in any process or activity connected with the said *proceeds of crime*.

35. Having established these foundational facts, the offence of money laundering gets triggered and a legal presumption arises that the *proceeds of crime* are involved in money laundering; that the accused has no causal connection with *proceeds of* crime and is able to disprove the fact about their involvement, by producing evidence, which would result in a rebuttal of the presumption.

36. The Supreme Court clarified that the onus flows from Section 106 of IEA and rebuttal can be through replies under Section 313 of Cr.P.C. or by cross-examining prosecution witness. The procedure entailed under Section 24 of PMLA was therefore not arbitrary or unreasonable.

37. ED emphasizes, underscores, and reiterates that these three foundational facts have been established in this matter and therefore presumption arising under Section 24 of PMLA can be rebutted by petitioner by leading evidence during trial. Plea for quashing is, therefore, premature and cannot be entertained.

38. This Court *prima facie* does not see any infirmity in the submission of ED. There is no dispute about the first and second foundational facts and the

only issue, at best, arises on the third foundational fact i.e. petitioner is directly or indirectly involved in any process or activity connected with the *proceeds of crime*.

39. Section 3 of PMLA itself provides the embellishment on what entails a '*process or activity*' by virtue of the *Explanation*. Dissecting the *Explanation*, the following material aspects become evident:

a) Accused can be *directly* or *indirectly* involved;

b) Accused could have *attempted to indulge*, *knowingly assisted*, or *knowingly be a party*, or *actually involved* in concealment / possession / acquisition / use / projection as untainted property / claiming as untainted property;

c) The above could be "*in any manner whatsoever*";

d) Process or activity is a '*continuing activity'* and continues till the accused enjoys the *proceeds of crime*.

VII.B. Pavana Dibbur v. ED

40. In ***Pavana Dibbur*** (*supra*), the Supreme Court was dealing with a complaint file by ED under Section 45(1) of PMLA in which the appellant *Pavana Dibbur* was accused. The appellant filed a petition before the High Court of Karnataka under Section 482 of Cr.P.C. seeking quashing of a complaint.

41. One of the submissions by counsel for the appellant was that she had not been arraigned as an accused in the charge sheets relating to the predicate offence and, therefore, could not be roped in as an accused for the offences under PMLA. Reliance was placed on ***Vijay Madan Lal Choudhary*** (*supra*), submitting that the Court held that if an accused in the predicate offence is acquitted/discharged, he cannot be prosecuted for an offence under PMLA.

This was refuted by the Counsel appearing for ED, submitting that a person can be held guilty of commission of an offence under PMLA even if not an accused in the predicate offence.

42. Dealing with this, the Supreme Court noted that an offence under Section 3 of PMLA can only be committed after predicate offences is committed. A specific example relating to extortion under Section 384-389 of IPC was adverted to by the Supreme Court, noting specifically that a person unconnected with the offence of extortion may assist the accused in the concealment of the proceeds of extortion and, therefore, can be guilty of the offence of money laundering.

43. In a case where prosecution for the predicate offence ends in acquittal, accused are discharged, or proceedings were quashed, the predicate offence will not exist. Since no one can be prosecuted for an offence under Section 3 of PMLA in such a scenario, as there will be no *proceeds of crime*, accused under PMLA will benefit. However, an accused in PMLA case who comes into the picture after the scheduled offences have been committed, by assisting in concealment or use of the '*proceeds of crime',* need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA. The contention of appellant's counsel was, therefore, rejected. Relevant paragraphs from the decision are extracted as under:

> *"15. Coming back to Section 3 of the PMLA, on its plain reading, an offence under Section 3 can be committed after a scheduled offence is committed. For example, let us take the case of a person who is unconnected with the scheduled offence, knowingly assists the concealment of the proceeds of crime or knowingly assists the use of proceeds of crime. In that case, he can be held guilty of committing an offence under Section 3 of the PMLA. To give a concrete example, the*

offences under Sections 384 to 389 of the IPC relating to "extortion" are scheduled offences included in Paragraph 1 of the Schedule to the PMLA. An accused may commit a crime of extortion covered by Sections 384 to 389 of IPC and extort money. Subsequently, a person unconnected with the offence of extortion may assist the said accused in the concealment of the proceeds of extortion. In such a case, the person who assists the accused in the scheduled offence for concealing the proceeds of the crime of extortion can be guilty of the offence of money laundering. Therefore, it is not necessary that a person against whom the offence under Section 3 of the PMLA is alleged must have been shown as the accused in the scheduled offence. What is held in paragraph 270 of the decision of this Court in the case of Vijay Madanlal Choudhary1 supports the above conclusion. The conditions precedent for attracting the offence under Section 3 of the PMLA are that there must be a scheduled offence and that there must be proceeds of crime in relation to the scheduled offence as defined in clause (u) of subsection (1) of Section 3 of the PMLA.

16. In a given case, if the prosecution for the scheduled offence ends in the acquittal of all the accused or discharge of all the accused or the proceedings of the scheduled offence are quashed in its entirety, the scheduled offence will not exist, and therefore, no one can be prosecuted for the offence punishable under Section 3 of the PMLA as there will not be any proceeds of crime. Thus, in such a case, the accused against whom the complaint under Section 3 of the PMLA is filed will benefit from the scheduled offence ending by acquittal or discharge of all the accused. Similarly, he will get the benefit of quashing the proceedings of the scheduled offence. However, an accused in the

PMLA case who comes into the picture after the scheduled offence is committed by assisting in the concealment or use of proceeds of crime need not be an accused in the scheduled offence. Such an accused can still be prosecuted under PMLA so long as the scheduled offence exists. Thus, the second contention raised by the learned senior counsel appearing for the appellant on the ground that the appellant was not shown as an accused in the charge sheets filed in the scheduled offences deserves to be rejected.

ACQUISITION OF THE FIRST AND SECOND PROPERTY

17. The allegation against the appellant in the complaint is that she purchased the property worth crores, though she did not have the source of income which would generate enough money to buy the subject properties. The allegation against the appellant is that she allowed and facilitated accused no.1– Madhukar Angur, to conceal the siphoned/misappropriated amounts by using her bank account. Another allegation is that she is shown to have purchased the second property from accused no.1, though she did not have the resources to

pay the consideration. The allegation is that she allowed the accused no.1 to use her bank accounts to facilitate siphoning the proceeds of the crime. Another allegation is that both the first and second properties have been acquired out of the proceeds of crime. The first property, ex-facie, cannot be said to have any connection with the proceeds of crime as the acts constituting the scheduled offence took place after its acquisition. The case of the appellant is that she possessed a substantial amount, as can be seen from the declaration made by her under the Income Declaration Scheme, 2016 in September 2016 and therefore, at the time of the

> *acquisition of the second property, more than sufficient money was available with her to acquire the second property. The issue of whether the appellant used tainted money to acquire the second property can be decided only after the evidence is adduced. This is not a case where any material is placed on record to show that the sale consideration was paid from a particular Bank Account of the appellant. Therefore, it is not possible to record a finding at this stage that the Second property was not acquired by using the proceeds of crime. We also make it clear that we have considered the issue only in the context of the applicability of the PMLA. We have not dealt with the issues of valuation and legality of the sale deeds."*
>
> (emphasis added)

44. Clearly the Supreme Court has categorically opined that an accused in a PMLA case may not necessarily be an accused in the predicate offence, and till the proceeding in the predicate offence ends in an acquittal/discharge of all accused or are closed in their entirety, the '*proceeds of crime*' would still be in contention and PMLA offences would subsist, to be tried independently. Based on this assessment, for the purposes of this case, the first argument mooted by the petitioner's counsel would, therefore, stand to be rejected.

45. As regards the argument that petitioner herself was a victim and was misled and duped by the accused *Sukesh,* the contention has to be seen in light of the fact that the predicate offence subsists independently from the PMLA offence. The fact that these offences are independent has been conclusively determined in ***Vijay Madan Lal Choudhary*** (*supra*) in *paragraph 112*. In this regard, reference to Section 44(1)(d) of PMLA read with the Explanation (i) is relevant, which mandates that the trial of both sets of offences may be by the same Court but shall not be constituted as a joint

trial. For ease of refence to Section 44(1)(d) Explanation (i) is extracted as under:

> ***"44. Offences triable by Special Courts-*** *(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*
> …….
> *(d) a Special Court while trying the scheduled offence or the offence of money-laundering shall hold trial in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) as it applies to a trial before a Court of Session.]*
> *Explanation. —For the removal of doubts, it is clarified that,—*
> *(i) the jurisdiction of the Special Court while dealing with the offence under this Act, during investigation, enquiry or trial under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trial;….."*
> (emphasis added)

46. An argument was raised by petitioner that petitioner being a witness in the predicate offence indicates lack of *mens rea* and that she was not a *post facto* accessory to the offence of money laundering, as no role was attributed to her of aiding, utilizing, or concealing *proceeds of crime*. The test in ***Pavana Dibbur*** (*supra*), according to petitioner, was not satisfied on the facts of this case. Petitioner contends that possession of gifts can only constitute an offence if petitioner had any knowledge of the predicate offence.

VII.C. Re: Petitioner's 'knowledge'

47. Knowledge of the predicate offence, as per petitioner, arose only on the basis of a news article of 2020 which petitioner became aware of in February 2021, handed over by *Shaan Muttathil*. The news article contained information about involvement of *Sukesh* along with his wife *Leena Maria*

Paul in bank fraud cases. However, petitioner claims that she was disabused of the criminality of *Sukesh* on the basis of vehement assertions made by Pinky Irani in favour of *Sukesh*. Petitioner does not state, in addition, that she had done any due diligence on *Sukesh's* criminal background subsequently. There are two issues which arise on the aspect of knowledge:

i) ***Firstly,*** petitioner being mere aware of *Sukesh's* criminal antecedents in February 2021 and then being disabused of the perception; and

ii) ***Secondly***, lack of any due diligence by petitioner in this regard thereafter.

48. To substantiate the first aspect, petitioner's counsel seeks to rely upon statements of petitioner and that of *Pinky Irani* in this regard, in particular, which are extracted as under:

Petitioner's response to question no.2 in her statement recorded on 20th May 2022:

*"**Q. 2 What happened next?***
Ans. Post Shaan informing me about Shekhar, I decided not to communicate with him. He messaged me countless times, but I didn't respond for 2 days. On the 3rd day Angel came to my house unannounced. She said that Shekhar is very sorry and that he was meaning to tell me in person about his past as he was free man now, when he comes to Mumbai the following week. She convinced me that she had been working with Shekhar for 13 years and knows him and his family very well. She described how she met him and how he is working directly with the home ministry. She also described how she goes to Delhi herself and does meetings on behalf of Shekhar at the home ministry. She mentioned that Shekhar is so busy now, he has many people meeting him on a daily basis and that his family is a very well educated successful one.

She asked me to once speak to hi.in and he will tell me the. Whole truth. That night I spoke to him and Shekhar denied everything and stated that his name is Shekhar and that is what he goes by. He also stated that he works in politics as a political fixer which is. A term I had never heard of or understood. He explained that because of his political background and work, he is usually made a scapegoat in the public eye. He said this is just media stories and holds no ground. he said if all of this is true then how can he be talking to me and continuing with his business and still be working in politics, which he proved to us many times by calling from the home ministry's office. he also broke down and said he can't do this work anymore as it is now affecting his personal life and he will only focus on his business not politics. I believed what he was saying to me as I felt being in the media eye maybe he was a target and if he was still continuing with his life then the articles were not true. I decided to continue speaking to Shekhar.

……

Pinky Irani's response to question no.2 and 5 in her statement recorded on 4th December 2021:

Q2. Did Jacqueline knew that Sukash was in jail?

Ans- No, she was not aware that Sukash/ Shekhar was in jail. Though, once during the time of Valentine's i.e. 14 February, 2021, Shan Mu had inquired me about an article in which it was mentioned something about a lady being in jail with him. But then, I had assured them (Shan and Jacqueline) that since Shekhar was a political bureaucrat and these things keep happening to taint the reputation and that article and the said lady was something of the past. She believed me and then both of them were in good terms again and then she again she started receiving gifts from him.

Q5. You are being shown a copy of mail with the subject Reputation Management Inquiry. Please explain the context of it.

> *Ans- I have seen the copy of the mail and have put my dated signatures on it. Shekhar wanted me to inquire about the article that was showing on google during valentines and as Jacqueline was linked to Shekhar, she was scared for being associated with him and put her reputation at stake. Therefore, he asked me to get that article removed and I approached my son Heroines to inquire if that could happen and this is the same mail that he had sent to the concerned person in Google. Later, I was told by Shekhar himself that he paid 2-3 crores to get the article removed."*

49. Petitioner's counsel for the purposes of plea of quashing, invites this Court to accept the statement of *Pinky Irani* at face value and also the impact of *Pinky Irani's* efforts to disabuse petitioner of the notion of *Sukesh's* criminality. This, in the Court's opinion, cannot be an inviolable conclusion at this stage, particularly when the witnesses have not been examined and have been not been subjected to cross-examination. Whether the petitioner was in fact disabused of the notion in the true sense and, therefore, wiped the mental slate clean of any knowledge of *Sukesh's* criminality, importing to herself a notion that he had no criminal implications on him, requires assessment through examination of witnesses. The Court cannot reach a conclusion at this stage on what is a fairly nuanced issue.

50. It could very well be that the prosecution is able to establish in its favour that petitioner ignored the newspaper article completely, or took *Pinky Irani's* assertions at face value but retained the lurking suspicion that *Sukesh* was an offender, or that she chose to push these issues under the carpet, knowingly and consciously, in order to continue to receive the benefit of the gifts that she was receiving. All these are evidently a matter of trial.

51. Reliance placed on ***Vijay Aggarwal*** *(supra)*, ***CP Khandelwal*** *(supra)* and ***Arvind Kejriwal****(supra)*, on petitioner's ignorance of predicate offence

may not be relevant, as ***Vijay Aggarwal*** *(supra) and* ***CP Khandelwal*** *(supra)* were matters of bail whereas ***Arvind Kejriwal****(supra)* was a matter challenging the validity of arrest.

52. Similarly, reliance on ***TD Sonia v. Deputy Director, Director of Enforcement Government of India*** *(supra),* ***Swarna Daga Mimani v. Director of Enforcement and Others*** *(supra),* ***T.D. Tataji v. The Deputy Director of Enforcement, Government of India*** *(supra) and* ***Directorate of Enforcement v. Gagandeep Singh & Ors*** *(supra)* may also not be relevant as these cases are peculiar on their facts and circumstances and do not apply to these facts or establish any legal principle.

VII.D. Re: Petitioner's Omission

53. On the *second* aspect of whether there was an omission by the petitioner to pursue due diligence post the reading of the article and *Pinky Irani's* assertions, yet again the issue will need to be threshed out in trial. Petitioner's counsel states that the omission, if at all, cannot be an illegal omission since there was no duty cast on the petitioner. The Court, however, is not willing to accept that argument, particularly at this stage. The reason being that it is not merely about the omission being legal or illegal, but also the alleged inaction on the part of the petitioner to cross-check the criminality of *Sukesh*, particularly in the context of having received vast amounts of gifts for herself and her family. The prosecution's case is that the petitioner chose to *brush things under the carpet* but retained knowledge, or even a lurking or robust suspicion that there was criminality involved.

54. These are evidently matters of trial, and the plea of the petitioner, at this stage, even before charges are framed, cannot be accepted. The Court is being effectively asked by petitioner to take into account the fact of the

newspaper article being disclosed in February 2021, and *Pinky Irani's* statements (which were misleading), and reach a conclusion that indeed the slate of petitioner's knowledge about *Sukesh's* criminality had been wiped clean, and no element of Section 3 of PMLA can stick. The arguments revolving around lack of knowledge being a determinative factor, which would invite a quashing of the ECIR, cannot therefore, be accepted, pre-trial.

55. The argument based on Sections 32 and 43 of IPC regarding there being no "*illegal omission*" is premature. The issue hinges upon the aspect upon knowledge under PMLA and is qualified in the Section 3 (i) Explanation of PMLA – *directly or indirectly, attempt or assists, or in any manner whatsoever*. Whether the offence would be made out against petitioner would involve an application of these aspects to the facts as fleshed out during trial. The prosecution's case is based upon direct knowledge of petitioner on the criminal antecedents of *Sukesh* and her attempt to conceal facts and tamper with the evidence, all of which may potentially lead to establishing their case under PMLA.

56. *Reliance to* ***Razorpay*** (*supra*) might not be relevant considered it is based on its own peculiar facts- where ***Razorpay*** (*supra*) involved an obligation of statutory due diligence for a payment gateway. The Court held that at best it was negligent but there was no intention, on the basis that there was no *prima facie* material available to substantiate that the payment gateway knowingly facilitates the transfer.

57. Reliance on ***Emperor vs. Bepin*** (*supra*), on the issue of *illegal omission* may not be apposite, since it was related to an offence of *abetment* of some revolutionary songs being sung in an organization's meeting, where accused was the President. The petitioner's case is not a case of actionability or legality of not carrying out due diligence, but either establishing or

disproving the degree of knowledge of petitioner and its relevance to the PMLA provision.

58. Reliance of petitioner's counsel on ***P. B. Desai v. State of Maharashtra & Anr.*** (2013) 15 SCC 481, is also not relevant for the purpose. The case dealt with medical negligence, professional misconduct and examined legal aspects of '*omission'*. ED's case against the petitioner is not merely based on alleged '*omission*', but *inter alia* on establishing '*knowledge'* and thus the argument cannot subsist in isolation.

VII.E. Re: Petitioner as 'witness'

59. ED's submission that an individual who is a witness for predicate offence can be prosecuted as an accused under PMLA, needs to be examined. Reliance placed on ***Amit Katyal v. Union of India*** (*supra*) is apposite. Relevant extracts are as under:

> "*97. The objection taken on behalf of the petitioner is that he has been cited as a witness in the said RC, wherein his statement has been recorded under Section 164 of Cr. P.C., 1973. However, in the ECIR, he has been made an accused. This position of the petitioner in the two offences is incongruous and irreconcilable under the law.*
> *98. It is no longer res integra that the predicate offence and the offence under PMLA, 2002 are independent offences and even if the person is not an accused in the predicate offence, he can still be arrayed as an accused under PMLA, 2002.*
> *99. The petitioner may have been an offender by indulging in the scheduled offence, but there is prima facie evidence to show that the proceeds of crime generated through scheduled offences have been laundered by him. The petitioner can be an accused under PMLA, 2002 without being an accused in the said RC/CBI case/predicate offence.*

> *100. This aspect has been clarified by the Apex Court in the case of Pavana Dibbur, (supra) and Vijay Madanlal Chaudhary, (supra).*"
>
> (emphasis added)

60. The Division Bench of this Court in ***Satish Babu Sana*** (*supra*), was dealing with a similar assertion, wherein petitioners were arrayed as witnesses under scheduled offence, but a PMLA case had been registered against them as an accused. The Court taking into account ***Vijay Madanlal Choudhary*** (*supra*) stated as under:

> "*85. Admittedly, in the present case, the petitioners in the case registered by the CBI were arrayed as the witnesses to a case under scheduled offences. However, during the process of investigation, case under the provisions of PMLA has been registered wherein they have been arrayed as accused. The ratio of law laid down by the Hon''ble Supreme Court in* ***Vijay Madanlal (Supra),*** *clearly spells out that it may happen in cases that a person who is witness in offences related to scheduled offences, during his interrogation, may put-forth some material which would indicate his involvement in the commission of offence under PMLA. This Court in a catena of decisions has already held that proceedings under the scheduled offences and PMLA are separate and distinct and have no binding upon each other.*
> *86. The Hon''ble Supreme Court in* ***Vijay Madanlal (Supra)*** *further held as under:-*
>
> ***"112.*** *Reverting to clause (d) of sub-section (1) of section 44, it postulates that a Special Court while trying the scheduled offence or offence of money- laundering shall hold trial in accordance with the provisions of the 1973 Code as it applies to a trial before a court of sessions. Going by the plain language of this provision, no fault can be found for conducting trial in the respective cases in the same manner as provided in the 1973*

Code. However, the grievance is about the insertion of Explanation vide Finance (No. 2) Act, 2019. As a matter of fact, this insertion is only a clarificatory provision, as is evident from the opening statement of the provision which says that "for the removal of doubts, it is clarified that". None of the clauses inserted by this amendment travel beyond the principal provision contained in clause (d). Clause (i) of the Explanation enunciates that the jurisdiction of the Special Court while dealing with the offence being tried under this Act, shall not be dependent upon any orders passed in respect of the scheduled offence, and the trial of both sets of offences by the same court shall not be construed as joint trials. This, in fact, is reiteration of the earlier part of the same section, which envisages that even though both the trials may proceed before the same Special Court, it must be tried separately as per the provisions of the 1973 Code. In so far as clause (ii) of the Explanation, at the first glance, it does give an impression that the same is unconnected with the earlier part of the section. However, on closer scrutiny of this provision, it is noted that the same is only an enabling provision permitting to take on record material regarding further investigation against any accused person involved in respect of offence of money-laundering for which complaint has already been filed, whether he has been named in the complaint or not. Such a provision, in fact, is a wholesome provision to ensure that no person involved in the commission of offence of money-laundering must go unpunished. It is always open to the Authority authorised to seek permission of the court during the trial of the complaint in respect of which cognizance has already been taken by the court to bring on record further evidence which request can be dealt with by the Special Court in

> *accordance with law keeping in mind the provisions of the 1973 Code as well. It is also open to the Authority authorised to file a fresh complaint against the person who has not been named as accused in the complaint already filed in respect of same offence of money- laundering, including to request the court to proceed against such other person appearing to be guilty of offence under section 319 of the 1973 Code, which otherwise would apply to such a trial.""*
> (emphasis added)

61. ED's reliance on ***State (Delhi Admn.) v. Jagjit Singh***, 1989 Suppl. (2) SCC 770 and the following extracted paragraphs is also relevant in context of Section 132 of IEA. Relevant extracts are extracted as under:

> "*13. Therefore, a witness is legally bound to answer any question which is relevant to the matter in issue even if the answer to such question is likely to criminate him directly or indirectly. Proviso to Section 132 expressly provides that such answer which a witness is compelled to give shall not subject him to any arrest or prosecution nor the same can be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer. The provisions of proviso to Section 132 of the Indian Evidence Act clearly protect a witness from being prosecuted on the basis of the answers given by him in a criminal proceeding which tend to criminate him directly or indirectly. In view of this provision, the apprehension of the respondent that his evidence as approver will be used against him in the other four criminal cases where he figures as an accused is without any basis. On the other hand, he is absolutely protected from criminal prosecution on the basis of the evidence to be given by him when examined by the prosecution as an approver in the said case. This submission of the respondent is,*

> *therefore, not tenable. It is pertinent to refer in this connection the decision of this Court in Laxmipat Choraria v. State of Maharashtra [AIR 1968 SC 938 : (1968) 2 SCR 624 : 1968 Cri LJ 1124] wherein it has been observed by Hidayatullah, J. as he then was that:*
>
> > *"Under Section 132 a witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any criminal proceeding (among others) upon the ground that the answer to such question will incriminate or may tend directly or indirectly to expose him to a penalty or forfeiture of any kind. The safeguard to this compulsion is that no such answer which the witness is compelled to give exposes him to any arrest or prosecution or can it be proved against him in any criminal proceeding except a prosecution for giving false evidence by such answer."*
>
> *(emphasis added)*

62. The apprehension of petitioner that any evidence would be self-incriminating cannot lead to quashing of the ECIR as statutory and constitutional protections are already provided and will have to be assessed in that rubric. This alone cannot assist the petitioner and release her from the yoke of prosecution under ECIR.

VII.F. Re: MCOCA and exoneration

63. As regards the petitioner's assertion that offences under Sections 3(5) and 4 of MCOCA (*which form part of the predicate offence*) and Section 3 of PMLA are similar, it would be necessary to first extract the said MCOCA provisions hereunder:

"Section 2(1)(e) MCOCA:

"*Definitions.— (1) In this Act, unless the context otherwise requires,—*

(e) "organised crime" means any continuing unlawful activity by an individual, singly or jointly, either as a member of an organised crime syndicate or on behalf of such syndicate, by use of violence or threat of violence or intimidation or coercion, or other unlawful means, with the objective of gaining pecuniary benefits, or gaining undue economic or other advantage for himself or any other person or promoting insurgency;"

Section 3(1)(5) MCOCA

"*Punishment for organised crime.—(1) Whoever commits an offence of organised crime shall,*

(5) Whoever holds any property derived of obtained from commission of an organised crime or which has been acquired through the organised crime syndicate funds shall be punishable with a term which shall not be less than three years but which may extend to imprisonment for life and shall also be liable to fine, subject to a minimum fine of Rupees Two lacs."

Section 4 MCOCA:

"*4. Punishment for possessing unaccountable wealth on behalf of member of organised crime syndicate.—If any person on behalf of a member of an organised crime syndicate is, or, at any time has been, in possession of movable or immovable property which he cannot satisfactorily account for, he shall be punishable with imprisonment for a term which shall not be less than three years but which may extend to ten years and shall also be liable to fine, subject to a minimum fine of Rupees One lac and such property shall also liable for attachment and forfeiture, as provided by Section 20.*"

64. Petitioners' counsel submitted that invocation of Sections 3 (5) and 4 of MCOCA in the predicate offence automatically invites the offence of holding any property derived or obtained from commission of an organized crime, which is similar to what Section 3 of PMLA provides (*relating to proceeds of crime*).

65. It was, therefore submitted, relying on ***T.T. Antony*** (*supra*), that the ED cannot arrive at a different conclusion on the same set of facts, and therefore, the ECIR ought to be quashed.

66. ED's response is based upon the standalone offence of money laundering, and that investigation by the '*predicate offence agency*' cannot impact the same.

67. Reliance for this, was placed on ***Vijay Madanlal Choudhary*** (*supra*). Relevant paragraphs are extracted as under:

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

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

(emphasis added)

68. As per ED, merely because the petitioner was not accused in the predicate offence, would not mean that she has been exonerated or acquitted of the predicate offence.

69. Reliance was placed on Section 232 of Cr.P.C. while contending that acquittal is a judicial process and is not similar to an omission to array a person as an accused, and therefore, petitioner cannot be said to have been exonerated. In this regard, Section 232 of Cr.P.C. is extracted as under:

> "*232. Acquittal.—If, after taking the evidence for the prosecution, examining the accused and hearing the prosecution and the defence on the point, the Judge considers that there is no evidence that the accused committed the offence, the Judge shall record an order of acquittal.*"

70. In ***Monica Bedi v. State of A.P***. (*supra*), the Supreme Court drew a distinction between two separate offences, in that, the rule of double jeopardy would not be applicable if the offences were distinct. Relevant paragraph of the said judgment reads as under:

> "*26. What is the meaning of the expression used in Article 20(2) "for the same offence"? What is prohibited under Article 20(2) is, that the second prosecution and conviction must be for the same offence. If the offences are distinct, there is no question of the rule as to double jeopardy being applicable. In Leo Roy Frey v. Supdt., District Jail [AIR 1958 SC 119 : 1958 Cri LJ 260 : 1958 SCR 822] , the petitioners therein were found guilty under Section 167(8) of the Sea Customs Act and the goods recovered from their possession were confiscated and heavy personal penalties imposed on them by the authority. Complaints thereafter were lodged by the authorities before the Additional District Magistrate under Section 120-B of the Penal Code, 1860 read with the provisions*

of the Foreign Exchange Regulation Act, 1947 and the Sea Customs Act. The petitioners approached the Supreme Court for quashing of the proceedings pending against them in the Court of the Magistrate inter alia contending that in view of the provisions of Article 20(2) of the Constitution they could not be prosecuted and punished twice over for the same offence and the proceedings pending before the Magistrate violated the protection afforded by Article 20(2) of the Constitution. This Court rejected the contention and held that criminal conspiracy is an offence under Section 120-B of the Penal Code but not so under the Sea Customs Act, and the petitioners were not and could not be charged with it before the Collector of Customs. It is an offence separate from the crime which it may have for its object and is complete even before the crime is attempted or completed, and even when attempted or completed; it forms no ingredients of such crime. They are, therefore, quite separate offences. The Court relied on the view expressed by the United States Supreme Court in United States v. Rabinowich [59 L Ed 1211 : 238 US 78 (1914)]"

(emphasis added)

71. In the opinion of this Court, arguments of the petitioners are unmerited in so far as they contend that the investigating agency, in the predicate offence, did not make the petitioner an accused. This will certainly not lead to a logical corollary that she cannot be accused for a PMLA offence.

72. Argument under Section 71 of IPC and Section 26 of GCA does not hold water considering petitioner has been implicated for only the offence under PMLA. The question for prosecution under two offences does not arise.

73. It is well settled that the offence and the trial, both for the scheduled offence and PMLA offence, are independent. In any event, the ***T. T. Antony*** (*supra*) line of cases relate to registration of second or multiple FIRs.

74. Moreover, as per ***Sukhpal Singh Khaira*** (*supra*), the Court under Section 319 of Cr.P.C, can also array a person as an accused, who may not have been charge-sheeted. Section 319 of Cr.P.C. reads as under:

> "*319. Power to proceed against other persons appearing to be guilty of offence.—(1) Where, in the course of any inquiry into, or trial of, an offence, it appears from the evidence that any person not being the accused has committed any offence for which such person could be tried together with the accused, the Court may proceed against such person for the offence which he appears to have committed.*
> *(2) Where such person is not attending the Court, he may be arrested or summoned, as the circumstances of the case may require, for the purpose aforesaid.*
> *(3) Any person attending the Court, although not under arrest or upon a summons, may be detained by such Court for the purpose of the inquiry into, or trial of, the offence which he appears to have committed.*
> *(4) Where the Court proceeds against any person under sub-section (1) then—*
> *(a) the proceedings in respect of such person shall be commenced afresh, and the witnesses re-heard;*
> *(b) subject to the provisions of clause (a), the case may proceed as if such person had been an accused person when the Court took cognizance of the offence upon which the inquiry or trial was commenced.*"

75. Also, the determination in ***Pavana Dibbur*** (*supra*), in this regard, is also relevant, which has already been noted in *paragraph 43* above.

76. In any event, as per the provisions of MCOCA, prosecution would have to prove that there was an '*organized crime*' and an '*organized crime syndicate*' and only then, property derived from the same would invite a conviction under Section 3(5) of MCOCA.

77. It would not mean that if the aspect of *organized crime* could not be proven, the criminality under the provisions of IPC would not subsist i.e. for extortion.

78. Even if the offence under MCOCA were not proven by the prosecution (*in the proceedings for the predicate offence*), the *proceeds of crime* would still remain, if the IPC offence stands proved.

79. At this stage (*pre-trial and pre-charge*), therefore, inviting the Court to quash the FIR on the basis of the similarity between the provisions contained in MCOCA and PMLA is unmerited and unwarranted.

VII.G. Re: Pick and choose by ED

80. Petitioner's submission is that ED, as a prosecutor, has adopted a *pick and choose* policy and did not proceed under PMLA against similarly placed persons who had also received gifts and articles from *Sukesh Chandrasekhar.* Essentially, the petitioner pleads that actresses *Nikita Tamboli, Chahatt Khanna* and *Sophia Singh*, met *Sukesh* inside Tihar Jail where he was lodged and also received gifts from him. Further, it was contended that a family member of actress *Nora Fatehi* received a BMW car from *Sukesh*.

81. Despite this, these individuals have not been arrayed as accused persons by the ED, despite having first-hand knowledge of *Sukesh* being in prison. This disparate treatment has been presented as yet another argument and a ground for quashing of the ECIR.

82. In this regard, the petitioner relies upon ***Ramesh Manglani*** (*supra*) ***Sanjay Jain*** (*supra*) and ***Sanjay Kansal*** (*supra*).

83. A perusal of the said decisions would show that they relate to grant of regular bail in connection with the ECIRs under the PMLA and not situations relating to quashing of ECIR, which is the subject matter of this case.

84. The issue of parity may be an aspect which the Court does consider while granting bail, however, the same cannot by extension or extrapolation, be made applicable to a case of quashing, which would erase the ECIR *qua* the accused petitioner, completely.

85. Whether the investigating agency chose a *pick and choose* policy or decided not to proceed against the others, based on the merits of the case, is not an issue under consideration before this Court; petitioner is always at liberty to raise this issue at an appropriate stage.

86. Petitioner's arguments relating to '*regular articles of commerce*' is too simplistic to be accepted. ***Som Nath Thapa*** (*supra*) was decided on its own peculiar facts and circumstances. The issue in the instant case, would be whether the goods were *untainted* and not the nature of articles, which again is a matter of trial.

VII.H. Re: Quashing

87. Aside from the specific issues addressed above, what is most important to be considered is, whether quashing, in any event, can be considered at this stage. ED submits that it is a settled legal proposition that inherent jurisdiction of the Court should not be invoked to quash criminal proceedings at the stage of the framing of charge.

88. In this regard, the ED relies upon the judgment in ***Rathish Babu Unnikrishnan*** (*supra*), in particular, the following paragraphs:

> "*14. Bearing in mind the principles for exercise of jurisdiction in a proceeding for quashing, let us now turn to the materials in this case. On careful*

reading of the complaint and the order passed by the Magistrate, what is discernible is that a possible view is taken that the cheques drawn were, in discharge of a debt for purchase of shares. In any case, when there is legal presumption, it would not be judicious for the quashing Court to carry out a detailed enquiry on the facts alleged, without first permitting the trial court to evaluate the evidence of the parties. The quashing Court should not take upon itself, the burden of separating the wheat from the chaff where facts are contested. To say it differently, the quashing proceedings must not become an expedition into the merits of factual dispute, so as to conclusively vindicate either the complainant or the defence.

15. The parameters for invoking the inherent jurisdiction of the Court to quash the criminal proceedings under Section 482CrPC, have been spelled out by S. Ratnavel Pandian, J. for the two-Judge Bench in State of Haryana v. Bhajan Lal [State of Haryana v. Bhajan Lal, 1992 Supp (1) SCC 335 : 1992 SCC (Cri) 426 : AIR 1992 SC 604] , and the suggested precautionary principles serve as good law even today, for invocation of power under Section 482CrPC : (SCC p. 379, para 103)

> *"103. We also give a note of caution to the effect that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the court to act according to its whim or caprice."*

16. In the impugned judgment [Rathish Babu Unnikrishnan v. State (NCT of Delhi), 2019 SCC OnLine Del 12340] , the learned Judge had rightly relied upon the opinion of J.S. Khehar, J. for a Division Bench in Rajiv Thapar [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] , which succinctly express the following relevant parameters to be considered by the quashing Court, at the stage of issuing process, committal, or framing of charges : (Rajiv Thapar case [Rajiv Thapar v. Madan Lal Kapoor, (2013) 3 SCC 330 : (2013) 3 SCC (Cri) 158] , SCC p. 347, para 28)

> *"28. The High Court, in exercise of its jurisdiction under Section 482CrPC, must make a just and rightful choice. This is not a stage of evaluating the truthfulness or otherwise of the allegations levelled by the prosecution/complainant against the accused. Likewise, it is not a stage for determining how weighty the defences raised on behalf of the accused are. Even if the accused is successful in showing some suspicion or doubt, in the allegations levelled by the prosecution/complainant, it would be impermissible to discharge the accused before trial. This is so because it would result in giving finality to the accusations levelled by the prosecution/complainant, without allowing the prosecution or the complainant to adduce evidence to substantiate the same."*

17. The proposition of law as set out above makes it abundantly clear that the court should be slow to grant the relief of quashing a complaint at a pre-trial stage, when the factual controversy is in the realm of possibility particularly because of the legal presumption, as in this matter. What is also of note is that the factual defence without having to adduce any evidence need to be of an

> *unimpeachable quality, so as to altogether disprove the allegations made in the complaint.*
>
> *18. The consequences of scuttling the criminal process at a pre-trial stage can be grave and irreparable. Quashing proceedings at preliminary stages will result in finality without the parties having had an opportunity to adduce evidence and the consequence then is that the proper forum i.e. the trial court is ousted from weighing the material evidence. If this is allowed, the accused may be given an unmerited advantage in the criminal process. Also because of the legal presumption, when the cheque and the signature are not disputed by the appellant, the balance of convenience at this stage is in favour of the complainant/prosecution, as the accused will have due opportunity to adduce defence evidence during the trial, to rebut the presumption.*
>
> *19. Situated thus, to non-suit the complainant, at the stage of the summoning order, when the factual controversy is yet to be canvassed and considered by the trial court will not in our opinion be judicious. Based upon a prima facie impression, an element of criminality cannot entirely be ruled out here subject to the determination by the trial court. Therefore, when the proceedings are at a nascent stage, scuttling of the criminal process is not merited.*"
>
> *(emphasis added)*

89. In ***Soma Chakravarty v State*** (*supra*), the Supreme Court was dealing with an appeal against dismissal of revision against the framing of charge. The Supreme Court reiterated the well-entrenched principle in the following paragraph:

> "*10. It may be mentioned that the settled legal position, as mentioned in the above decisions, is*

> *that if on the basis of material on record the court could form an opinion that the accused might have committed offence it can frame the charge, though for conviction the conclusion is required to be proved beyond reasonable doubt that the accused has committed the offence. At the time of framing of the charges the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution has to be accepted as true at that stage. Before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commitment of offence by the accused was possible. Whether, in fact, the accused committed the offence, can only be decided in the trial.*"
>
> (emphasis added)

90. What is highlighted in this decision and the paragraph referred to above is that, even if, at the stage of framing of charge, the Court arrives at a finding (basis the material on record) that the accused "*might*" have committed the offence, the charge in that regard may be framed based on such finding.

91. It is only through trial that the prosecution is to prove that accused has committed the offence. At the stage of framing of charge, probative value of the material cannot be gone into and the material brought by the prosecution has to be accepted. The fundamental principle which forms part of the paragraph extracted above is, "*Whether, in fact, the accused committed the offence, can only be decided in the trial.*"

92. For the petitioner to, therefore, push a plea of quashing of the ECIR, at this stage, when the arguments on charge are still going on, before the Trial Court and the charges have yet to be framed, is unwarranted and cannot be accepted.

93. It amounts to essentially making this Court assess the material on record, ignoring the probative value of the same and assuming that no other aspect would emanate during the trial which could potentially further the case of the prosecution.

94. The Court is effectively being asked to conduct a pre-trial trial, basis only the material on record and to arrive at a finding that the ECIR is liable to be quashed and no offence is made out.

95. What is important to underscore is that the petitioner's case itself relies upon the statements of witnesses *inter alia Pinky Irani, Shaan Muttathil, the Ramnani brothers*.

96. Whether these statements are complete, watertight, non-porous, not capable of eliciting further evidence, are clearly not conclusions that the Court can reach in these proceedings.

97. Petitioner is effectively asking the Court to reach a conclusion, even with regard to elements of '*knowledge'*, imputed to the petitioner, for having received the *proceeds of crime* and conclude that the element of *mens rea* was absent.

98. In this regard, it may be important to note that it is the submission of the petitioner that petitioner enjoys a high reputation in the film industry and is a well-known celebrity and was habituated and accustomed to getting very expensive gifts from fans and admirers and that the same is an accepted practice in the film industry and that her plea for ignorance is thus, merited.

99. The Court is being asked, on the basis of material on record, to effectively conclude that petitioner was innocent, devoid of any knowledge of *Sukesh's* criminal antecedents and was conclusively and effectively duped and misled by *Pinky Irani*, to disabuse her as regards the information contained in February 2021 newspaper report.

100. In ***Anoop Bartaria*** (*supra*), the Supreme Court has noted as under:

> "*30. Having regard to the definition contained in Section 3, it would be a folly to hold that the knowledge of the accused that he was dealing with the proceeds of crime, would be a condition precedent or sine qua non required to be shown by the prosecution for lodging the complaint under the said Act. As the definition itself suggests 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. Hence, apart from having knowledge, if a person who directly or indirectly attempts to indulge or is actually involved in the process or activity connected with the proceeds of crime, is also guilty of the offence of money laundering. In the instant case, the direct involvement of the petitioners in the activities connected with the proceeds of crime has been alleged, along with the material narrated in the complaint which would require a trial to be conducted by the competent court.*"
>
> (emphasis added)

101. In ***Anoop Bartaria*** (*supra*), the Supreme Court was dealing with a prayer to quash the prosecution complaint in the ECIR. The Court referred to ***State of Haryana v. Bhajan Lal*** 1992 Supp (1) SCC 335, to highlight that the power to quash a complaint should be exercised very sparingly and with circumspection and that too, in the rarest of rare cases. It would be instructive to extract the relevant passage from the judgment in ***Bhajan Lal*** (*supra*):

"*102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we have given the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.*

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a

> *Magistrate as contemplated under Section 155(2) of the Code.*
>
> *(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.*
>
> *(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.*
>
> *(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.*"

102. In ***Anoop Bartaria*** (*supra*), as also, in this case, the plea of the petitioner does not fall in any of the abovementioned parameters as laid down in ***Bhajan Lal*** (*supra*).

103. The judgment in ***Anoop Bartaria*** (*supra*), was relied upon, more recently by the Supreme Court in, ***Pradeep Nirankarnath Sharma v. Enforcement Directorate*** 2025 SCC OnLine SC 560. The Supreme Court was dealing with an appeal against a dismissal of the appellant's criminal revision by the High Court, against an order rejecting the appellant's discharge, in a PMLA case.

104. Two aspects are of significance in the decision of ***Pradeep Nirankarnath Sharma*** *(supra)*. ***Firstly***, that the Court highlighted that

judicial intervention at a preliminary stage must be exercised with caution and proceedings should not be quashed in absence of compelling grounds. ***Secondly***, the concept of continuing offence under the PMLA was dealt with. In this regard the Court stated as under:

> *"31. The illegal diversion and layering of funds have a cascading effect, leading to revenue losses for the state and depriving legitimate sectors of investment and financial resources. It is settled law that in cases involving serious economic offences, judicial intervention at a preliminary stage must be exercised with caution, and proceedings should not be quashed in the absence of compelling legal grounds. The respondent has rightly argued that in cases involving allegations of such magnitude, a trial is imperative to establish the full extent of wrongdoing and to ensure accountability.*
>
> *32. The PMLA was enacted to combat the menace of money laundering and to curb the use of proceeds of crime in the formal economy. Given the evolving complexity of financial crimes, courts must adopt a strict approach in matters concerning economic offences to ensure that perpetrators do not exploit procedural loopholes to evade justice."*
>
> (emphasis added)

VII.I. Re: Petitioner's Conduct

105. In addition to the grounds raised by the petitioner and assessed above, certain pertinent issues raised by ED in relation to the conduct of petitioner have also informed the Court's opinion in rejection of the petitioner's plea.

106. ***Firstly***, is the content of 2020 news article which was apparently shared by *Shaan Muttathil* with petitioner. A perusal of the article would show that it is dated 10th February 2020 and is titled as "*Look Out Notice against actress Leena Maria Paul and CBI case*". The article mentioned that the CBI had issued a Look Out circular against *Leena Maria Paul*, a South Indian actress, who was accused of impersonation and extortion in connection with a bank fraud case.

107. CBI later revealed that the conspiracy was hatched by *Leena Maria Paul,* who was the partner of *Sukesh*. The article specifically mentioned as under:

> "*Sukesh is accused in many cheating cases across the country. He is currently lodged in Tihar Jail in connection with a bribery case involving Amma Makkal Munnetra Kazhagam, leader T. T. V. Dhinakaran. He also faces charges of posing as a Supreme Court Judge in a phone call to a Delhi Judge in a bid to secure his release on bail*."

108. Then again, it mentions that :

> "*Leena Maria Paul was first arrested along with Sukesh in 2013 for cheating Canara Bank of 19 crore rupees. They were again arrested in 2015 by the Economic Offences Wing of the Mumbai Police for trying to make people invest in a bogus firm on the promise of high returns*."

109. By any normal standards, as per ED, this would have been enough to alert a person about the criminal antecedents of *Sukesh*. However, ED submits that petitioner chose to bury this under the carpet and ignore it, pursuant to what she alleges as aggressive persuasion by *Pinky Irani* to disabuse her of the opinion. During this time, from February 2021 till July

2021 petitioner and her family continued to receive articles and gifts from the accused *Sukesh.*

110. Though petitioner stated that this was not the article she had received from *Shaan Muttathil* but that *Shaan Muttathil* had shared earlier news article dated 2017 which showed that *Sukesh* was involved in some political controversy, petitioner did admit that she was extremely upset and scared when she saw the article. In this regard, it may be useful to extract the statement of the petitioner recorded on 27th June 2022:

> "***Q.9 I am showing you the news article dated 10.02.2020 under the headline "Look Out Notice Against Actress Leena Maria. Paul in CBI Case" (Artnexure-2). As per the news article, the following cases were reported against Sukesh Chandrasekhar;***
>
> ***(1) TTV Dinakaran Case - Delhi Police***
>
> ***(2) Canara Bank Fraud Case***
>
> ***(3) EOW Mumbai Case***
>
> ***Do you agree****?*
>
> *Ans. this was not the article sent to me by Shaan. There was an article with Sukesh and some South Indian politician controversy that was dated 2017.*
>
> ***Q.10 I am showing you printouts of whatsapp conversation between Shaan Muthathil and Pinky Irani (Annexure 3) held on 11.02.2021 to 13.02.2021. In this conversation, Shaan Muthathil had shared aforesaid news article dated 10.02.2020 under the headline. "Look Out Notice Against Actress Leena Marla Paul in CBI Case" to Pinky Irani while you stated that Shaan Muthathil had shared the news article to you. From this whatsapp conversation it appears that ·Shaan Muthathil had shared this news article to you as well. Why are you lying ?***

Ans. Shaan had shared a news article with me but it was not this one. I only remember at that time he shared a news article with me that only discussed Sukesh and not leena. Also, what shaan and pinky have discussed on whatsapp I am not aware of the conversations between them.

Q.11 As per the news article, it is reported that Sukesh Chandrasekhar is lodged in Tihar Jail.Do you agree?

Ans. when I received the article from shaan about a controversary that Sukesh was involved in, the first thing I saw was that his name was Sukesh and that was the full form of his name. not Shekhar Ratna vela like how he gave me. The article did not mention that he was in tihar jail at the time as it was an old article.

Q.12 I am showing you printouts of whatsapp conversation between Shaan Muthathil and Pinky Irani (Annexure 4) held on 13.02.2021 between 11:24 AM to 3:39PM (Annexure 4). In this conversation, Shaan sent messages viz, "we saw a article", "she is also to high profile and she has known ppl on high end. And she go to know the news. She is like is it all just soo froud' "who is that girl who is in jail?" As per these messages, you had sent news article to Shaan which he had forwarded to Pinky Irani and you all were aware that Sukesh Chandrasekhar was lodged in Jail. Please comment on it.

Ans. No Shaan had received this article from a contact of his which he did not mention to me. He forwarded me an article (the one with Sukesh and some political controversary) and forwarded an article to pinky as well, as per the messages. I did not forward any article to Shaan. Shaan also was very scared at the time as he saw the articles. l also was extremely upset and

scared at the time when I saw the article that Shaan had sent me.

Q.13 As per the news article dated 10.02.2020 under the headline "Look Out Notice Against Actress Leena Maria Paul in CBI Case" wherein it is mentioned that "Sukesh Chandrasekhar is accused in many cheating cases across the country. He is currently lodged in Tihar Jail in connection with a bribery case involving Amma Makkal Munnetra Kazhagam leader TTV Dinakaran" This clearly shows that you, being a celebrity who conscious more about public image, were aware that Sukesh Chandrasekhar was lodged in Jail and despite you continued to receive gifts from him and enjoyed the same. Please comment.

Ans. After I received the first news article from shaan dated 2017, I then read 2 to 3 more articles on Sukesh on the internet. I was extremely scared when I first saw all these articles and completely stopped talking to both Angel and Sukesh. After 2 days angel showed up to my house unannounced with a ring from Sukesh stating that he is very sorry for not sharing these articles with me and that he was planning to come down to Mumbai for Valentines day and tell me everything. She then went on to explain that in politics and the business world there is very cut throat competition and this scale of media fabrication is normal. And that she knew Sukesh for freely speaking to me, dressed in normal clothes from a normal location. For me there is no way a person if he was in jail would be able to communicate with me so freely and also have access to technology and be able to do purchases whenever he wanted.

> ***Q.14 It clearly means that the person introduced to you was not Shekhar Ratna Vella but was Sukesh Chandrasekhar. Was that reason you got upset and stopped communicating with him?***
> *Ans. I stopped communicating with him because I got scared firstly that he had all these allegations made on him. Also I live alone and have no family in Mumbai so was scared that maybe my life or safety could be in danger. Secondly he had lied to me about his name which was really Sukesh and I felt cheated and betrayed.*"

111. The said extract of statement is being reproduced above only to show the flow of the questioning and response by petitioner in this regard. Considering that the matter is at the stage of framing of charge and the trial has to begin, the Court is not passing any observation in this regard. However, for the purposes of this assessment, these set of circumstances do not persuade the Court that ECIR needs to be quashed.

112. ***Secondly***, ED's submission that when petitioner was searching about *Sukesh* on Google, she had not bothered to find out that *Sukesh* owned '*Kalyan Jewelers'* or had '*coal mines'* or not or had '*50% ownership of Leela Hotel, Chennai*' as he claimed. In the same statement on 27th June 2022, petitioner apparently admitted that she had deleted her mobile phone data from iPhone 12 Pro on 11th August 2021 after learning about the arrest of *Sukesh*.

113. ED's counsel highlighted that petitioner did not reveal the truth of financial transactions with *Sukesh* and concealed facts till confronted with evidence. Petitioner had also asked colleagues to destroy the evidence. Following aspects have been highlighted by ED:

i) Petitioner had initially denied knowing the actual name of accused *Sukesh,* and later on, when confronted with evidence, admitted that it was known to her.

ii) With respect to cash transaction with *Advaita Kala* i.e., money delivered by *Sukesh* of *Rs.15 Lacs* to *Advaita Kala*, she initially denied having entered into any transaction, but later admitted the same later to be correct. Payment to *Advaita Kala* happened in August 2021, which was well after the arrest of *Sukesh* and knowledge of his criminal antecedents in February 2021.

iii) Petitioner did not admit the factum of receiving huge monies and valuable gifts which were transferred to her parents, brother and sister. She kept improving the statements about the receipt of gifts and luxury items. During recording of statement, petitioner denied purchase of cars by *Sukesh via* her parents, but being confronted with the statement of *Sukesh*, she admitted the same.

iv) She later admitted to new disclosures of property being purchased by *Sukesh* for her in Sri Lanka.

v) Initially, in the first statement recorded on 30th August 2021, she disclosed a certain number of gifts but these were increased till 8th December 2021.

vi) Disclosure about the relationship with accused *Pinky Irani* was made only on 8th December 2021.

vii) Since data was wiped out from her phone as well as by *Sukesh*, the investigation is based upon evidence such as disclosures by accused *Sukesh* and *Pinky Irani* and statements of *Shaan Muttathil* and other witnesses.

viii) In the month of March, May and June 2021, transfers were made to the bank accounts of the sister and brother of the petitioner to the tune of *USD 172913* and *AUD 26740*.

114. ED had submitted a tabulation to show improvement by petitioner in the statements; the said tabulation is extracted above in *paragraph 18.20*.

115. Further, ED has given another tabulation in the reply/counter basis the evidences collected during the investigation to provide a timeline/sequence of events. This table is also being extracted herein for ease of reference:

Date/Month & Year	Event	Remarks
Dec, 2020 to Jan, 2021 end	Sukesh Chandrasekhar trying to reach out to JACQUELINE Fernandez through Accused Pinky Irani **from Jail**	Unsuccessful. But Sukesh got in touch with Shaan Muthatil, hairdresser of Jacqueline Fernandez. **Sukesh was in Jail since 2018.**
End Jan ,2021	Sukesh got in touch with Jacqueline Fernandez	
1st Feb -12th Feb, 2021	Sukesh started sending gifts to Jacqueline Fernandez including Tiffany diamond ring with J&S engraved on it as Valentine Day gift.	Beginning of relationship with Jacqueline Fernandez.
12th/13th Feb, 2021	Shaan Muthatil shares news article and YouTube video with Jaqueline Fernandez & Accused Pinky Irani. Learning about Sukesh Chandrasekhar, Jacqueline Fernandez got upset with Sukesh Chandrasekhar & stops talking to him.	Jacqueline got to know of criminal antecedents of Sukesh Chandrasekhar & Leena Maria Paul through news article/YouTube video shared by Shaan Muthatil & through Google internet searches including the fact of Sukesh being in jail.
14th to 18th Feb, 2021	Jacqueline Fernandez accepts explanation given by accused Pinky Irani on Sukesh Chandrasekhar being framed by media being a 'political bureaucrat'.	Jacqueline Fernandez accepts explanation offered by accused Pinky Irani and re-establishes contact with Sukesh Chandrasekhar through audio & video calls on WhatsApp.

Mid Feb, 2021 to Aug, 2021	Sukesh Chandrasekhar showers Jacqueline Fernandez & her family members with gifts in cash and kind in India and abroad. Close contact between Jacqueline Fernandez & her family members and Sukesh Chandrasekhar.	Jacqueline Fernandez continues to use, possess and enjoy the proceeds of crime given by Sukesh Chandrasekhar.
June, 2021	1st meeting between Jacqueline Fernandez and Sukesh Chandrasekhar at Chennai.	1st meeting between Jacqueline Fernandez & Sukesh Chandrasekhar when Sukesh was out on parole from Jail.
July, 2021	2nd meeting between Jacqueline & Sukesh at Chennai.	
2nd/3rd Aug, 2021	Sukesh Chandrasekhar delivers Rs 15 lakhs to Ms. Advaita Kala on request of Jacqueline Fernandez.	Jacqueline Fernandez continues to receive, use, possess and enjoy proceeds of crime from Sukesh Chandrasekhar till 1st week of Aug 2021.
7th August, 2021 night	Sukesh Chandrasekhar & his gang members apprehended. Sukesh was found at Rohini Jail.	
11th August,2021	Jacqueline Fernandez deletes her mobile data and also asks her accomplices to delete data from their mobile.	On learning about arrest of Sukesh Chandrasekhar from media, Jacqueline Fernandez destroys evidences and asks other too to destroy crucial evidence.
Mid Aug, 2021	Searches at Chennai leading seizure of luxurious cars and beach bungalow of Sukesh Chandrasekhar and Leena Paul.	More Proceeds of Crime (PoC) recovered.
18.08.2021 & 06.10.2021	Statement of Ms. Advaita Kala giving evidences on funds received from Jacqueline Fernandez.	Evidence on funds received from Jacqueline Fernandez.
30th August, 2021	Jacqueline Fernandez appears before ED & statement recorded.	Jacqueline Fernandez denies any monetary transaction with Ms. Advaita Kala and partially discloses receipt of Proceeds of Crime from Sukesh Chandrasekhar.

Oct, 2021	ED custody of Sukesh Chandrasekhar, Leena Paul & others wherein Sukesh discloses his relationship with Jacqueline Fernandez.	More disclosures on Jacqueline Fernandez.
20/10/2021	2nd statement of Jacqueline Fernandez & confrontation with Sukesh Chandrasekhar. Shaan Muthatil admits to relationship of Pinky Irani, Sukesh Chandrasekhar & Jacqueline Fernandez.	Jacqueline Fernandez discloses more on Proceeds of Crime received by her and her family yet denies receipt of cars for parents – in collusion with Sukesh Chandrasekhar. Jacqueline Fernandez still silent on Pinky Irani's role.
Nov, 2021	Accused Pinky Irani traced at Mumbai and her statements recorded by ED.	More disclosures on Proceeds of Crime going to Jacqueline Fernandez by Pinky hitherto never admitted by Jacqueline Fernandez.
8th Dec, 2021	3rd statement of Jacqueline Fernandez recorded.	On learning that ED has got to know of Pinky Irani, Jacqueline Fernandez discloses her relationship with Pinky Irani & Sukesh Chandrasekhar and receipt of Proceeds of Crime.
20th May, 20222	4th statement of Jacqueline Fernandez recorded.	Jacqueline Fernandez revealed more on Sukesh Chandrasekhar and his so-called business enterprises. Jacqueline Fernandez admitted having searched for Sukesh on Google and getting to know of his criminal antecedents earlier.
27th June, 2022	5th statement of Jacqueline Fernandez recorded.	Jacqueline Fernandez further disclosed information regarding conversation with Sukesh Chandrasekhar about one property purchased by Sukesh for her at Sri Lanka.

116. In this regard, what ED highlights is that the Explanation to Section 3 of PMLA clearly indicates that 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/possession/ acquisition/use/projecting it as untainted property or claiming it to be sold.

117. ED's submission regarding "*continuing activity*" is basis that petitioner gave staggered disclosures. Factual aspects are narrated in paragraphs above [*paragraph 21.12- about* payment to *Advaita Kala; paragraph 21.13* - in relation the gifts and amounts received by her family; *paragraph 21.15* - regarding the role played by *Pinky Irani; paragraph 21.19* - regrading deletion of data from mobile phones and *paragraph 21.20*- regarding the denial of news article].

118. Taking into account these submissions of ED, the Court's opinion that the ECIR is not amenable to be quashed, stands further endorsed and fortified.

119. ED's reliance on ***Umesh Kumar*** (*supra*) which relied upon ***Salman Salim khan (****supra)* is instructive since it highlights that the Court cannot under Section 482 of Cr.P.C weigh the correctness and sufficiency of evidence and exercise may be too premature. Relevant paragraphs of ***Umesh Kumar*** (*supra*) are extracted as under:

> *"30. In State of Maharashtra v. Salman Salim Khan [(2004) 1 SCC 525 : 2004 SCC (Cri) 337 : AIR 2004 SC 1189] this Court deprecated the practice of entertaining the petition under Section 482 CrPC at a premature stage of the proceedings observing as under : (SCC pp. 527-29, paras 4, 8 & 12)*
>
> > *"4. ... The arguments regarding the framing of a proper charge are best left to be decided by the trial court at an appropriate stage of the trial. Otherwise, as in this case, proceedings*

get protracted by the intervention of the superior courts.

***

8. ... The High Court by the impugned order had allowed the said application and quashed the order made by the learned Sessions Judge framing a charge under Section 304 Part II IPC against the respondent herein while it maintained the other charges and directed the appropriate Magistrate's Court to frame de novo charges….

***

12. We are of the opinion that though it is open to a High Court entertaining a petition under Section 482 of the Code to quash charges framed by the trial court, same cannot be done by weighing the correctness or sufficiency of evidence. In a case praying for quashing of the charge, the principle to be adopted by the High Court should be that if the entire evidence produced by the prosecution is to be believed, would it constitute an offence or not. The truthfulness, the sufficiency and acceptability of the material produced at the time of framing of charge can be done only at the stage of trial. ... we think the High Court was not justified in this case in giving a finding as to the non-existence of material to frame a charge for an offence punishable under Section 304 Part II IPC, therefore, so far as the finding given by the High Court is concerned, we are satisfied that it is too premature a finding and ought not to have been given at this stage."

(emphasis added)

120. All aspects pleaded in the case put by petitioner (recorded in paragraph 17 above) are subjective issues which require to be established through trial. As an illustration, the petitioner contends that there was *reluctance* on her part, she was *misled, hoodwinked, persuaded*, she *voluntarily participated* in the investigation, she was *ignorant*, and was subjected to over indulgent actions of an admirer/fans/suitor, and in substance has been *conned*. All these aspects, are not established, crystallized, or proved yet. *Ex facie* these are subjective issues and petitioner is asserting that the Court accepts these as inviolable truths or as an optimistic interpretation of the facts in her favour. Conclusivity can only precipitate during the trial which is the filtration mechanism offered by the criminal justice process. Accepting these interpretations in favour of the petitioner at this stage would upend the process completely.

121. Whether Petitioner knew that what was received were '*proceeds of crime*' is yet again an aspect tethered to establishing petitioner's '*knowledge*' regarding criminal antecedents of *Sukesh* and the credibility of assertion that she was completely persuaded and misled by *Pinky Irani* to ignore it. The nuance that petitioner's counsel is attempting to draw between *knowledge of criminality* and *knowledge that articles were proceeds of crime* may not be disjunctive issues sitting in two separate silos. Attribution of knowledge for the purposes of PMLA implication may potentially bring in its fold the full range, spectrum and degrees of "*knowing*". For example, whether turning a blind eye to an obvious fact or disturbing news or a critical disclosure of illegality, would amount to "*knowing*" or not is a matter that, in this Court's opinion, can be determined post-trial, when the Court has all strands of evidence for appreciation.

VIII. CONCLUSION

122. In view of the above, the Court is of the opinion that the petition and plea of petitioner cannot be entertained for quashing of the ECIR/DLZO-II/54/2021 dated 8th August 2021 and 2nd supplementary complaint dated 17th August 2022.

123. The petition is, therefore, dismissed.

124. All observations made by this Court are purely for the assessment of this petition and are not meant to be any statement on the merits of the matter, particularly since proceedings are pending before the Special Court for arguments on charge.

125. Pending applications are rendered as infructuous.

126. Judgement be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JULY 03, 2025 /SM/RK/MK/AK/*tk*+kp