

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

% **Reserved on: 10th January, 2022**
Pronounced on: 17th February, 2022

+ CRL.REV.P. 493/2017 & CRL.M.A. 19061/2021 (Direction) &
CRL.M.A.19985/2021 (Direction)

DIRECTORATE OF ENFORCEMENT Petitioner

Through: Mr. Anurag Ahluwalia, CGSC
with Mr. Danish Faraz Khan,
Advocates

versus

GAGANDEEP SINGH & ORS Respondents

Through: Mr. Vikram Chaudhari, Senior
Advocate with Mr. Rishi Sehgal
and Ms. Ria Khanna, Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

J U D G M E N T

CHANDRA DHARI SINGH, J.

1. The instant criminal revision petition has been filed by the Petitioner under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973, (hereinafter "Cr.P.C.") and Section 47 of the Prevention of Money Laundering Act, 2002 (hereinafter "PMLA") seeking setting aside of Order dated 15th May, 2017, passed by the learned Special Judge, New Delhi District, Patiala House Courts, in CC

No. 158/2014 titled as “Enforcement Directorate vs Gagandeep Singh & Ors”, whereby all the accused persons were discharged on the ground that *no prima facie* case was made out against them.

FACTUAL MATRIX

2. It is the background of the case that criminal proceedings under PMLA were initiated against Respondents by the Petitioner on the basis of independent intelligence gathered by them regarding money laundering activities. An FIR bearing No. 29/2011 under Section 21/25/29/61 of the Narcotic Drugs and Psychotropic Substance Act, 1985, (hereinafter “NDPS Act”) and 420/468/471/120B of the Indian Penal Code, 1860 (hereinafter “IPC”) was registered by the State Special Operation Cell, Amritsar against the Respondents alongwith other accused, and a Mutual Assistance Request (MAR) Note Verbale No. 458/2014 dated 27th August, 2014 (Letter of Request), was also issued by the Australian Competent Authority regarding the involvement of the Respondents in criminal activities that constitute offences under Part A and Part C of the schedule to PMLA, based on which, on 24th September, 2014, the Directorate of Enforcement (hereinafter “ED”) initiated criminal proceedings under the PMLA against the Respondents.

3. In the said FIR, dated 6th December, 2011, one Mukhtiar Singh and Swaran Singh were accused for being found in possession of 3 kilograms of Heroin and 1 kilogram of Heroin respectively. Subsequently, the present Respondents No. 1 and 2 were also arraigned as accused in the FIR on the statement of the co-accused Mukhtiar Singh and Sukhwant

Singh, however, no recovery of contraband was made from the Respondents herein. Thereafter, learned Judge, Special Court, Amritsar took cognizance and Chargesheet was filed against all accused, including Respondent No. 1 and 2. Vide Order dated 6th December, 2011, Respondent No. 1- Gagandeep Singh was charged, under Section 420 of the IPC for cheating Gurcharan Singh by way of inducing him to get issued mobile number 9781553753 on fake documents, under Section 468 of the IPC for forging certain other documents with the intention of using them to cheat and under Section 471 of the IPC for fraudulently using a genuine document that he knew to be forged, and Respondent No. 2- Paramdeep Singh was charged under Section 25 of the NDPS Act for knowingly using an Indica Car, bearing No. PB 02 BQ 8414, as conveyance for permitting it for the commission of the offence, from which Rs. 15 lakhs were recovered.

4. It is the case of the Petitioner that the Respondents were found to be involved in an international syndicate of laundering the money generated out of drug trafficking in Australia and other countries. The “Operation Zanella” of the Australian Federal Police revealed that the proceeds of the crime were laundered by the Respondents and their associates by sending the same through their Australian bank accounts to their bank accounts in Hong Kong and were thereby, made available to carry out activities of organized crime in different countries. While the private Respondents No. 1 to 3 are based in India, their counterparts, namely, Gulshan Kumar, Mandeep Singh, Sanjeev Kumar Saini and Ravinder Pal Singh are based in Australia and together they had been

carrying out cross border criminal activities. The said counterparts in Australia have already been apprehended.

5. Subsequently, on 22nd November, 2014, a Criminal Complaint under Section 45 of the PMLA was filed by the ED against all the Respondents for commission of offence under Section 3 of the PMLA, on the basis of investigation carried out for the alleged money laundering activities of the Respondents. Investigation conducted by the ED supported with the documents received and collected clearly establishes the involvement of Respondents in commission of offence of money laundering under Sections 3 and 4 of the PMLA. Letters of request were also sent to Australia, Hong Kong, USA and Canada under Section 57 of the PMLA requesting for the details of the accounts and transactions done by and on behalf of the Respondents.

6. Vide Order dated 3rd August, 2015, the Respondents were acquitted of charges framed against them by the learned Additional Sessions Judge/Exclusive Court at Amritsar in FIR No. 29/2011 holding that the prosecution failed to lead any cogent or trustworthy evidence to prove that the accused, Respondents herein, entered into a criminal conspiracy and observed as under: -

“46. I have given my thoughtful consideration to the arguments advanced on behalf of accused Paramdeep Singh and Gagandeep Singh. As far as accused Paramdeep Singh and Gagandeep Singh are concerned, the first head of charge framed against them is under section 25 of NDPS Act for having used Indica car for carrying of Rs.15 lac India currency being drug money. However, if the entire prosecution case is scrutinized, there is no even a single piece of evidence on the basis of which it can

be held that the money recovered from the possession of accused was earned from the drug business or was drug money. It is also important to mention here that the names of these two accused namely, Paramdeep Singh and Gagandeep Singh were not there in the FIR and were later on arrayed as accused on the basis of statements of co-accused. As narrated by Investigating Officer that the co-accused had stated that these two accused namely Paramdeep Singh and Gagandeep Singh were also indulging in the drug business and were earning drug money. As per allegations of the prosecution case as is apparent from the statement of Investigating Officer, these two accused were sending payments to Pakistan and statement of one Jasbir Singh was also recorded regarding the involvement of the present accused in the drug trade. However, said Jasbir Singh has not been examined by the prosecution, meaning thereby that there is no evidence of any person which can show that the accused were dealing in any manner in the drug money. As far as disclosure statements of Mukhtiar Singh and Sukhwant Singh are concerned, such statements cannot be used against the co-accused i.e. the present accused and apart from their statements, there is no other evidence on the basis of which it can be held that they were in any manner involved in the drug trade of that a sum of Rs.15 lac recovered from the car was drug money.

47. Thus, as far as the first head of charge is concerned, prosecution in the present case has failed to prove on file that recovery of Rs.15 lac effected from the possession of accused Paramdeep Singh and Gagandeep Singh was drug money or that they were in any manner dealing in the drug trade or had used such car having registration number PB02-BQ-8414 in the said drug trade business.

48. The next head charge framed against these accused are that certain documents were forged by

these two accused and used the same as genuine. However, the prosecution in the present case has neither proved on file any document which can be said to have been forged by these accused namely Paramdeep Singh and Gagandeep Singh nor it is alleged in evidence that any such forged document was used as genuine. In this regard, cross-examination of Investigating Officer is very much relevant wherein he admitted that no forged document was recovered from the possession of accused, meaning thereby that as far as charge under section 420/468/471 IPC is concerned, the same are also not proved on file.

49. These two accused namely Paramdeep Singh and Gagandeep Singh are also served with charge-sheet under section 29 of NDPS Act. However prosecution in the present case has failed to lead any cogent or trustworthy evidence to prove on file that these accused had entered into a criminal conspiracy with all other accused to send the drug money to Pakistan. Hence, as there is nothing on file on the basis of which it can be held that these two accused namely Paramdeep Singh and Gagandeep Singh had in any manner indulged in any act falling under NDPS Act, they stand acquitted of the charge under section 29 of NDPS Act also.

50. In view of above detailed discussion, this court is of the considered view that prosecution in the present case, has miserably failed to bring home the guilt against accused Mukhtiar Singh, Swaran Sing, Paramdeep Singh and Gagandeep Singh beyond any reasonable shadow of doubt. As such, they are acquitted of the charges framed against them.”

7. After further investigation, on 19th September, 2015, a supplementary Complaint was filed against the Respondents before the learned Special Judge, Patiala House Courts, New Delhi, based on the

documents received from the Counselor (Police Liaison), Australian Federal Police, Australian High Commission, and other material gathered by the Petitioner. It was submitted by the Petitioner that examination and scrutiny of these documents revealed active involvement of Respondents No. 1 to 3 in transferring of proceeds of crime generated from drug trafficking.

8. A second supplementary complaint was filed on 3rd May, 2017, on the basis of additional documentary evidence received from the Commonwealth Bank, Australia before the learned Special Judge, Patiala House, New Delhi took cognizance on the same.

9. On 15th May, 2017, considering all the material before it, in the case arising out of the FIR 29/2011, the learned Additional Sessions Judge, Patiala House Courts, New Delhi passed the Order by which all the accused persons/ Respondents No. 1 to 3 were discharged and their properties attached were also released. It was observed by the learned Additional Sessions Judge that as per the material available it cannot be established that the accused persons were involved in any offence involving money laundering and the complaints have been made on the basis of suspicion of the Petitioner. It was further noted that any suspicion which is not well founded cannot be considered a *prima facie* proof. The learned Additional Sessions Judge, further, held that since no scheduled offences under either Part A, Part B, or Part C of the Schedule to the PMLA were made out against the Respondents, hence, proceedings under the Act cannot be invoked. The Petitioner is impugning the said Order dated 15th May, 2017 in the instant Criminal Revision Petition.

SUBMISSIONS

10. Mr. Anurag Ahluwalia, learned CGSC appearing for the ED/Petitioner, submitted that Respondents No.1 to 3 were active members of money laundering syndicate and were involved in transferring the proceeds of crime generated from drug trafficking in Australia. They have, also, been chargesheeted by the Special State Operation Cell, Amritsar, under the NDPS Act. It is submitted that the learned Additional Sessions Judge erred in concluding that *prima facie* case was not made out against the Respondents and as such the Order dated 15th May, 2017, is illegal and deserves to be set aside.

11. It is submitted that the learned Additional Sessions Judge, while passing the impugned Order has not appreciated that the documents relied upon, and the supplementary complaints filed corroborated that the accused persons/ Respondents No. 1 to 3 have committed the offence of money laundering under Section 3 of PMLA by laundering the ill-gotten funds, dealing with proceeds of crime generated through drugs and acquiring and concealing untainted property. It is further submitted that the Respondent No. 4 Company, operated by the Respondents No. 1 and 2, is registered as a money changer, whereas, investigation has revealed that the company has been used for laundering proceeds of crime made punishable by the PMLA.

12. Learned counsel for the Petitioner submitted that during investigation and searches carried out by the Petitioner, incriminating material including documents in the form of hard copies, electronic

devices, Indian currency worth Rs. 77 lakhs and foreign currency worth Rs. 3 lakhs were recovered and seized from the residential premises of the Respondents. Subsequently, on 25th September, 2014, the Respondents were arrested under Section 19 of the NDPS Act. Upon further investigation, it had been found that the Respondents no. 1 to 3 transferred huge amounts of proceeds of crime suspected to be drug-trafficking money and purchased properties, both immovable and movable, worth Crores of Rupees, including one property, that is, House no. 414, Basant Avenue, Amritsar, (worth Rs. 165 Crores) in the name of Respondent No. 1 and 2 and their wives, where 10 bricks of gold weighing 1 kg each, valuing about Rs. 2.70 Crores, were seized and the property bearing No. K- 38, 2nd Floor, Kirti Nagar, New Delhi, worth Rs. 98 lakhs belonging to Respondent No. 3. The said properties had been provisionally attached on 18th November, 2014, vide Provisional Attachment Order No. 01/2014 and on 18th May, 2015 vide Provisional Attachment Order No. 01/2015 under Section 5(1) of the PMLA.

13. Upon further investigation, it was also found that Respondent No. 2 was operating NRI/NRO accounts of his sister, Ms. Amandeep Kaur, in which an amount of more than Rs. 3 Crores had been deposited. The said amount has been frozen under Section 17 (1A) of the PMLA and thereafter, the Adjudicating Authority after hearing found that the frozen properties were involved in money laundering and were liable for confiscation. Since, the Respondents were not able to explain the source of income for the purchase of their properties, vide Order dated 25th March, 2015, the Provisional Attachment Order was confirmed.

14. Learned counsel appearing on behalf of the Petitioner submitted that the complaint as well as the documents filed alongwith the complaints have been scrutinized by the Petitioner and they establish active involvement of the Respondents in transferring proceeds of crime on behalf of the Organised Crime Group, generated from drug trafficking. Further, the searches and investigation carried out revealed that there were certain properties worth Crores of Rupees and large amount of currency in possession of the Respondents, for which they were not able to disclose the source of income.

15. It is submitted that the statements of the Respondents No. 1 to 3 were recorded under Section 50 of the PMLA on several occasions from 27th-30th September, 2014. It is submitted that the Respondent No. 1 *inter alia* stated that he was dealing in sale and purchase of foreign exchange and also involved in money transfer from India to other countries illegally and that he was aware about the source of money that were being transferred between him and his counterparts abroad. Respondent No. 1 further stated that 30 per cent of the amount being transferred to him were relating to proceeds from drawn from illegal activities being carried out in other countries. Further, Respondent No. 2, in his statement further disclosed the information regarding his companies and the status of cases pending against him. Respondent No. 2 stated that he directed one Mr. Sanjeev Saini to deposit Australian money in his company's account, that is, SK Trading Private Limited, in Australia, and AVS Trading Limited in Hong Kong, in such a way that the legal authorities do not notice such deposits. Respondent No. 3, in his statement under Section 50 of the

PMLA, stated that he was doing illegal business of sending foreign currency abroad and that he was receiving payments regarding these foreign payments from foreign countries, including Australia, New Zealand, Canada, China, Hong Kong and USA. Relying on the statements of the Respondents No. 1 to 3, the learned counsel for the Petitioner submitted that the learned Additional Sessions Judge did not consider the statements as well as other evidence gathered during investigation while passing the impugned Order. Learned Judge also did not take into account the fact that there were receipts of money which were also corroborated from the statements by the Respondents.

16. It is submitted by the learned counsel appearing on behalf of the Petitioner that the documents established the fact that the Respondents knowingly assisted the accused persons in Australia and other countries and they knew that their counterparts were laundering money generated from drug trafficking. However, the learned Additional Sessions Judge held that, unless a person knew that the doer of the illegal act was going to commit the illegal act, the person cannot be stated to have committed any scheduled offence as defined under Section 2 (x) and (y) of the PMLA.

17. Learned counsel appearing on behalf of the Petitioner submitted that a Coordinate Bench of this Court had dismissed the bail application of the Respondents vide Order dated 2nd February, 2015, observing that the ED, Petitioner herein, was able to *prima facie* show the involvement of the accused persons in the offence of money laundering.

18. Learned counsel appearing on behalf of the Petitioner relied on the judgments of *State of Maharashtra & Ors. vs. Som Nath Thapa & Ors.*, **1996 (4) SCC 659** and *State vs. S Bangarappa*, **2001 (1) CC Cases SC 1** to submit that at the stage of framing of charge the Court has not to apply the same standard of test, that is to be applied at the time of judgment and recording finding on guilt etc.

19. *Per Contra*, Mr. Vikram Chaudhari, learned senior counsel appearing on behalf of the Respondents opposed the instant Criminal Revision Petition and submitted that there is no apparent error in the finding of the learned Additional Sessions Judge while discharging the Respondents. It is submitted that the Respondents have not committed any offence as alleged by the Petitioner/ED and there has been no involvement of the Respondents whatsoever in the case made by the Petitioner.

20. Learned senior counsel for the Respondents submitted that the primary and principal condition for initiation of investigation under the PMLA and to make out a case under Section 3 of the Act, is the commission of a scheduled offence from which the proceeds of crime are culminating. It is submitted that there is an umbilical cord connection between the scheduled offence and the offence of money laundering. Learned senior counsel for the Respondents relied upon *Nikesh Tarachand Shah vs. Union of India*, **(2018) 11 SCC 1**, wherein the Hon'ble Supreme Court observed as under: -

“11. Having heard the learned counsel for both sides, it is important to first understand what

constitutes the offence of money laundering. Under Section 3 of the Act, the kind of persons responsible for money laundering is extremely wide. Words such as "whosoever", "directly or indirectly" and "attempts to indulge" would show that all persons who are even remotely involved in this offence are sought to be roped in. An important ingredient of the offence is that these persons must be knowingly or actually involved in any process or activity connected with proceeds of crime and "proceeds of crime" is defined under the Act, by Section 2(1)(u) thereof, to mean any property derived or obtained directly or indirectly, by any person as a result of criminal activity relating to a scheduled offence (which is referred to in our judgment as the predicate offence). Thus, whosoever is involved as aforesaid, in a process or activity connected with "proceeds of crime" as defined, which would include concealing, possessing, acquiring or using such property, would be guilty of the offence, provided such persons also project or claim such property as untainted property. Section 3, therefore, contains all the aforesaid ingredients, and before somebody can be adjudged as guilty under the said provision, the said person must not only be involved in any process or activity connected with proceeds of crime, but must also project or claim it as being untainted property."

21. Learned senior counsel also pointed out that the intent of legislature is reflected by the explanation given by the Finance Minister during debate to carry out amendments under the PMLA, on 17th December, 2012, while discussing the connection between the scheduled offence, also known as predicate offence, and the offence of money laundering. According to him, there must be a crime as defined in the Schedule and as a result of the said crime, there must be proceeds of

crime, which could be either in the form of currency or property. It was said that unless there is a predicate offence, there cannot be an offence of money laundering.

22. The position has been reiterated in *Madhu Koneru vs. Director of Enforcement, 2021 SCC OnLine TS 646*, it was observed that ED can only proceed only for those offences which are scheduled offences under the IPC. It considered the view taken in *Arun Kumar Mishra vs. Directorate of Enforcement, 2015 SCC OnLine Del 8658*, wherein a Coordinate Bench of this Court observed that the impugned ECIR in the matter was liable to be quashed where the CBI had closed investigation on the ground that no material was available to charge the accused of the schedule offences.

23. It is submitted that in the event of the proceedings under the investigation/trial into the scheduled/predicate offence result in recording of a finding that neither is the person concerned involved in any criminal activity relating thereto, nor have any proceeds of crime been derived or obtained therefrom, no proceedings/trial under PMLA can continue.

24. With reference to the offences under Part C of the Schedule to the PMLA, that is, offences having cross-border implications, it is submitted by the learned senior counsel for the Respondents that there are two contingencies that need to be considered while establishing an offence under Part C, first, that the offence is committed outside India the proceeds of the crime are transferred into India or, second, that the offence is committed in India and the proceeds of crime are transferred

outside India. It is submitted that in absence of either of the two, mere investigation or trial of any scheduled or predicate offence in India cannot *ipso facto* result in invocation of the provisions under PMLA.

25. It is submitted by learned senior counsel that the learned Special Judge has rightly discharged the Respondents in view of the fact that the only scheduled offence which was alleged against the Respondents was under NDPS Act, and even with respect to the alleged schedule offences, the Special Court (NDPS), Amritsar, held that there was no involvement of the Respondents in the same and no proceeds of crime were generated. Hence, no prosecution can continue under the PMLA as initiated by the Petitioner/ ED, and as such, the petition is liable to be dismissed as the same is devoid of any merit.

FINDINGS AND ANALYSIS

26. Heard learned counsel for the parties and perused the record. I have perused the Impugned Order dated 15th May, 2017.

27. The Respondents No. 1 and 2, before this Court, have been acquitted of charges under Section 420/468/471 of the IPC and Section 29 of the NDPS Act, vide Order dated 3rd August 2015. It was observed by the learned Additional Sessions Judge/Judge, Special Court, Amritsar that the prosecution failed to bring home guilt against the concerned Respondents. The Petitioner filed a supplementary complaint on the basis of findings and recovery made during further investigation. Thereafter, taking into account all the material before it, the learned Additional Sessions Judge discharged the Respondents of Section 3/4 of the PMLA

and Section 20/22/27A of the NDPS Act. The present Petitioner is aggrieved by the said Order of discharge and has impugned the same by invoking the revisional jurisdiction of this Court.

28. At the outset, it is pertinent to consider the relevant provisions of the PMLA, as the major charge against the Respondents was made under the Act. Relevant provisions of the Act are specified as under:-

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

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

2 (x) “Schedule” means the Schedule to this Act;

2 (y) “scheduled offence” means—

- (i) the offences specified under Part A of the Schedule; or*
- (ii) the offences specified under Part B of the Schedule if the total value involved in such offences is [one crore rupees] or more; or*
- (iii) the offences specified under Part C of the Schedule.*

3. Offence of money-laundering. —Whosoever directly or indirectly attempts to indulge or

knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime including its concealment, possession, acquisition or use and projecting or claiming it as untainted property shall be guilty of offence of money-laundering.

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

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

(a) concealment; or

(b) possession; or

(c) acquisition; or

(d) use; or

(e) projecting as untainted property; or

(f) claiming as untainted property,

in any manner whatsoever;

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

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

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

29. The legislation of PMLA had been enacted with the objective to prevent and control money laundering and to confiscate and seize the property obtained from the laundered money. The PMLA is a specific and special enactment to combat the menace of laundering of money, keeping in view the illegal practices that have been surfacing with respect to transfer and use of tainted money and subsequent acquisition of properties by using the same. The offence of money laundering is three-fold including the stages of placement, whereby the criminals place the proceeds of crime to the general and genuine financial system, layering, whereby such proceeds of crime are spread into various transactions within the financial system and finally, integration, where the criminals avail the benefits of crime as untainted money. The offence of money laundering under the PMLA is therefore, layered and multi-fold and includes the stages preceding and succeeding the offence of laundering money as well.

30. The offence of money laundering, however, is not to be appreciated in isolation but is to be read with the complementary provisions, that is, the offences enlisted in the Schedule of the Act. The bare perusal of the abovementioned provisions of the PMLA establishes the pre-requisite relation between the commission of scheduled offences under the PMLA

and the subsequent offence of money laundering. The language of Section 3 clearly implies that the money involved in the offence of money laundering is necessarily the proceeds of crime, arising out of a criminal activity in relation to the scheduled offences enlisted in the Schedule of the Act. Hence, the essential ingredients for the offence of Section 3 of the PMLA become, first, the proceeds of crime, second, proceeds of crime arising out of the offences specified in the Schedule of the Act and third, the factum of knowledge while commission of the offence of money laundering. In the present matter, at the initial stage of proceedings, the Respondents were charged for offences under Section 21/25/29 of the NDPS Act and 420/468/471/120B of the IPC, however, the learned Additional Sessions Judge, Amritsar, observed that material produced before the Court as well as the allegations made against the Respondents were largely made upon suspicion. Though certain material, properties and cash, were recovered and attached/seized but the fact that such properties were obtained through proceeds of crime of drug trafficking could not be established.

31. In view of the observation that the no scheduled offence was made out against the Respondents, this Court finds that an investigation and proceedings into the PMLA could not have been established against them at the first instance.

32. Further, the essential consideration is the extent of powers that may be exercised by this Court in the revisional jurisdiction. The Cr.P.C. makes provision for the High Court to exercise its revisional jurisdiction in furtherance of any proceeding before any subordinate Criminal Court.

The provision under Section 397 of the Cr.P.C. unequivocally states that the High Court or the Sessions Court which is exercising its revisional jurisdiction shall apprise itself solely of the question of correctness, legality and propriety of order of the subordinate Court. A bare reading of the provision of the Cr.P.C. suggests that the Court shall limit itself to the findings, sentence or order passed by the subordinate Court, against which the Revisionist is seeking relief before the Courts concerned, and shall not go beyond the analysis and observations made by the subordinate court. By extension, a limitation and bar is, hence, set out on the scope of the powers that may be exercised by the concerned Court under the provision which precludes the Revisional Court to go into the enquiry of evidence and submissions made before the subordinate Court at the time of passing of the impugned Order, against which the revision is sought.

33. Presently, the aforesaid order of the learned Additional Sessions Judge/Special Judge is under challenge before this Court in its revisional jurisdiction. The Hon'ble Supreme Court has given its findings with regard to the scope of powers of the revisional jurisdiction and has observed in *Ashish Chadha vs. Smt. Asha Kumari & Ors*, (2012) 1 SCC 680, that the Hon'ble High Court of Himachal Pradesh overstepped its revisional jurisdiction when it considered the matter on the basis of merits of the evidence before the learned Trial Court, and as such it could not have appraised the evidence as a revisional court. A five-judge bench of the Hon'ble Supreme Court in *Hindustan Petroleum Corporation Ltd. vs Dilbahar Singh*, (2014) 9 SCC 78, held as under: -

“43. The consideration or examination of the evidence by the High Court in revisional jurisdiction under these Acts is confined to find out facts recorded by the Court/Authority below is according to the law and does not suffer from any error of law....

... However, to satisfy itself to the regularity, correctness, legality or propriety of the impugned decision or the order, the High Court shall not exercise its power as an appellate power to re-appreciate or re-assess the evidence for coming to a different finding on facts. Revisional power is not and cannot be equated with the power of reconsideration of all questions of fact as a court of first appeal. Where the High Court is required to be satisfied that the decision is according to law, it may examine whether the Order impugned before it suffers from procedural illegality or irregularity.”

34. This Court, in view of the aforesaid findings and the law laid down by the Hon’ble Supreme Court, in its revisional jurisdiction will not proceed into the enquiry of the records, documents and other evidence in consideration before the learned Trial Court, but shall constrain itself to the findings of the learned Court below in the impugned order and to the question whether there is any patent illegality, error apparent on record or incorrectness.

35. At this stage in revisional jurisdiction, the question to be assessed is whether in the observations made by the learned Additional Sessions Judge there was gross illegality, incorrectness or apparent impropriety while discharging the Respondents. It is deemed necessary to establish the degree of consideration to be given to the material on record as well as the facts before the Court, at the stage of framing of charges.

36. In *State of Maharashtra & Ors. vs. Som Nath Thapa and Ors.*, (1996) 4 SCC 659, Hon'ble Supreme Court was of the opinion as laid down as under: -

“31. ... if on the basis of materials on record, a court could come to the conclusion that commission of the offence is a probable consequence, a case for framing of charge exists. To put it differently, if the court were to think that the accused might have committed the offence it can frame the charge, though for conviction the conclusion is required to be that the accused has committed the offence. It is apparent that at the stage of framing of a charge, probative value of the materials on record cannot be gone into; the materials brought on record by the prosecution has to be accepted as true at that stage.”

37. Further, in *State of M.P. vs. Mohanlal Soni*, (2000) 6 SCC 338, Hon'ble Supreme Court has noted as under :-

“7. The crystallized judicial view is that at the stage of framing charge, the court has to prima facie consider whether there is sufficient ground for proceeding against the accused. The court is not required to appreciate evidence to conclude whether the materials produced are sufficient or not for convicting the accused.”

38. The Hon'ble Supreme Court while reiterating and elaborating on the extent of consideration of the material on record at the stage of framing of charge has observed in *Onkar Nath Mishra and Ors. vs. State (NCT of Delhi) and Anr.*, (2008) 2 SCC 561, as under: -

“11. It is trite that at the stage of framing of charge the court is required to evaluate the material and documents on record with a view to finding out if the facts emerging therefrom, taken at their face value,

disclosed the existence of all the ingredients constituting the alleged offence. At that stage, the court is not expected to go deep into the probative value of the material on record. What needs to be considered is whether there is a ground for presuming that the offence has been committed and not a ground for convicting the accused has been made out. At that stage, even strong suspicion founded on material which leads the court to form a presumptive opinion as to the existence of the factual ingredients constituting the offence alleged would justify the framing of charge against the accused in respect of the commission of that offence.”

39. The observations and findings of the Hon’ble Apex Court elucidates that a Court need not go into deep and elaborate consideration of the material and evidence on record while framing charges against the Accused. The extent of exercise of discretion by the Court is limited to the *prima facie* satisfaction of the Court and if the Court does not find reasonable grounds of suspicion against the Accused, it may discharge him of the offences alleged against him.

40. In the present matter, the Petitioner had filed a Supplementary Complaint based on certain additional documents received by it against the Respondents, including, the Prosecution Report of Commonwealth Director of the Public Prosecution by the Australian Federal Police. The Petitioner based its findings against the Respondents on the said documents and alleged certain facts based on the apprehension that the amount being transferred from the business accounts of the Respondents were proceeds of drug trafficking and hence, was laundered money. Keeping in view all the material, including the abovementioned

document, the Additional Sessions Judge was not satisfied that the apprehension and suspicion of the Petitioner was well founded and even for the offences under the NDPS, no recovery was brought on record. It was observed that the additional evidence did not disclose *prima facie* any material to infer that the accused persons, Respondents herein, were involved in the commission of the offences alleged against them.

CONCLUSION

41. Keeping in view the facts of the case, the submissions made, documents on record, judgments cited and the contents of the impugned Order, this Court finds force in the argument that since no offences were made out against the Respondents as specified in the Schedule of the PMLA, the offence under Section 3/4 of the PMLA also, do not arise as the involvement in a scheduled offence is a pre-requisite to the offence of money laundering. The Petitioner was not able to establish the allegations against the Respondents and as such the material produced was not sufficient to find guilt against them. Further, at the stage of framing of charges, the learned Additional Sessions Judge, had to only satisfy itself of the apprehension that whether the accused persons had committed the offences based on the material before it, without going into the extensive appreciation of the evidence. Since there was no material on record that casted a shadow of doubt over the Respondents, they were rightly discharged of the offences. Therefore, there is no apparent error, gross illegality or impropriety found in the Order of the learned Additional Sessions Judge.

42. Considering the arguments advanced by the parties, contentions made in the pleadings and on perusal of the impugned Order, this Court does not find any cogent reason to interfere with the Order of the learned Additional Sessions Judge, Patiala House Courts, New Delhi, dated 15th May, 2017, in the revisional jurisdiction.

43. The petition, is accordingly, dismissed.

44. Pending applications, if any, also stand disposed of.

45. The judgment be uploaded on the website forthwith.

(CHANDRA DHARI SINGH)
JUDGE

February 17, 2022
Aj/ms

न्यायमेव जयते