# IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

**BEFORE**

**HON'BLE SHRI JUSTICE SHEEL NAGU**

**&**

**HON'BLE SHRI JUSTICE VIRENDER SINGH**

**CRIMINAL REVISION No. 2536 of 2022**

**BETWEEN:-**

**1. HARI SHANKAR GURJAR S/O SHRI SHRIRAM GURJAR, AGED ABOUT 66 YEARS, 39 MIG HARDA (MADHYA PRADESH)**

**2. SMT. SEEMA GURJAR W/O SHRI HARI SHANKAR GURJAR, AGED ABOUT 59 YEARS, R/O 39 MIG, HARDA (MADHYA PRADESH)**

**.....PETITIONERS**

***(BY SHRI AJAY MISHRA – SENIOR COUNSEL WITH MS NIKITA KAURAV– ADVOCATE)***

**AND**

**DIRECTORATE OF ENFORCEMENT THROUGH ASSISTANT DIRECTOR, 209 PALIKA PLAZA PHASE II, MTH COMPOUND INDORE (MADHYA PRADESH)**

**.....RESPONDENT**

***(BY SHRI VIKRAM SINGH – ADVOCATE)***

**Reserved on : 31.01.2023**

**Pronounced on : 23.03.2023**

*This petition having been heard and reserved for orders, coming on for pronouncement this day,* ***Hon'ble Shri Justice Virender Singh*** *pronounced the following :*

**O R D E R**

At the very outset, the ld. Senior Counsel for the petitioners 'not pressed' the petition qua petitioner No.1 Harishankar with liberty to raise all the grounds available in law before the trial Court, therefore, the petition qua petitioner No.1 Harishankar is dismissed as not pressed with the aforesaid liberty. As such, arguments heard on merits of the prayer made on behalf of petitioner No.2 Smt. Seema Gurjar.

**2**. The challenge herein is to the order framing charge dated 03.06.2022 as well as the charge framed against her for the alleged commission of the offence of money laundering as defined under Section 3 of the Prevention of Money-Laundering Act, 2002 which is punishable under Section 4 thereof.

**3**. The entire thrust of ld. Senior Counsel for the petitioner is that since neither petitioner No.2 Smt. Seema Gurjar has been named in the FIR bearing Crime No.41/2009 for the offence punishable under Sections 13(1)(e) and 13(2) of the Prevention of Corruption Act, 1988 registered by Lokayukt Police, Bhopal nor was she charged, prosecuted, convicted or sentenced for any other 'Scheduled Offence', which is sine qua non to constitute the offence defined under Section 3 of the Prevention of Money Laundering Act, 2002

(for short 'PMLA'), therefore, the offence as defined under Section 3 of PMLA is not made out against her and her prosecution is an abuse of the process of law and deserves to be quashed.

**4**. The brief facts of the case sought to be asserted by the Directorate of Enforcement against the petitioner are to the effect that:

(i) Petitioner No.2 Smt. Seema Gurjar is the wife of petitioner No.1 Harishankar Gurjar. During the check period from 01.01.1988 to 14.07.2009, the petitioner no.1 had remained posted as Range Officer in the Department of Forest, Govt. of Madhya Pradesh.

(ii) While working as a public servant in the aforesaid official capacity, during the check period, Petitioner No.1 Harishankar amassed pecuniary resources and property highly disproportionate to his known sources of income. On 14.07.2009, upon the corresponding information, the then Lokayukt Police registered a case by recording FIR No.41/2009 under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. Subsequent to filing the FIR, the Lokayukt Police armed with search warrants issued by the competent Court carried out search operation at the residential premises of petitioner no.1 situated at 39 and 40, MIG, Harda and his official resident at Kalibeeth (Roshni) District Khandwa.

(iii) On the basis of information emanated from the documentary and other material evidence collected during the course of search and subsequent investigation carried out, Lokayukt Police found that the petitioner no.1 during the check period had earned an income from known sources of Rs.42,09,692/- and incurred an expenditure of Rs.1,28,09,072/-. It was found that an amount of Rs.85,99,380/- was disproportionate to his known sources of income even though he belonged to a middle class family.

(iv) On conclusion of the investigation, the Lokayukt Police filed charge sheet against petitioner no.1 for violations of Section 13(1)(e) and 13(2) of the PC Act and against his wife i.e. petitioner No.2 Seema Gurjar under Section 109 of IPC.

(v) In conclusion of trial, the ld. trial Judge, for the reasons recorded in the impugned judgment, held both the petitioners guilty for the offence charge with and awarded punishment to them. They filed Criminal Appeal No.603/2013 before this Court and were granted suspension. The appeal is pending consideration.

**5**. The trial Court vide impugned order opined that there is sufficient material on record to *prima facie* frame charges against

petitioner No.2 for money laundering under Section 3, punishable under Section 4 of PMLA.

**6**. The ld. Senior Counsel Shri Mishra appearing on behalf of petitioner No.2 would *inter alia* submit that in the case registered against her husband under the PC Act, the petitioner was prosecuted only for offence under Section 109 of IPC which is not a scheduled offence under the PMLA, while to constitute an offence of Section 3 of the PMLA, it is sine qua non to commit a scheduled offence, therefore, the impugned order framing charge as well as the charges framed against petitioner No. 2 are liable to be quashed.

**7**. Shri Mishra referred to conclusion (d) recorded in para 187 of the judgement pronounced by the Hon'ble Apex Court in **Vijay Madanlal Choudhary v. Union of India 2022 SCC OnLine SC 929**, which reads as under:

> 187.(d) The offence under Section 3 of the 2002 Act is dependent on illegal gain of property as a result of criminal activity relating to a scheduled offence. It is concerning the process or activity connected with such property, which constitutes the offence of money-laundering. The Authorities under the 2002 Act cannot prosecute any person on notional basis or on the assumption that a scheduled offence has been committed, unless it is so registered with the jurisdictional police and/or pending enquiry/trial including by way of criminal complaint before the competent forum. If the person is finally discharged/acquitted of the scheduled offence or the criminal case against him is quashed by the Court of competent jurisdiction, there can be no offence of money-laundering against him or anyone claiming such property being the property linked to stated scheduled offence through him.

**8**. On the other hand, the learned counsel appearing on behalf of respondent No.1, while taking this Court through several factual aspects involved in the matter, vehemently contended that though commission of scheduled offence is a fundamental pre-requisite for initiating proceedings under the PMLA, the offence of money-laundering is independent of the scheduled offences. There is sufficient evidence to show prima facie involvement of the petitioner No. 2 that she was actively involved in converting the tainted money in to legal money or in projecting tainted money as untainted one. Therefore, the trial Court has rightly framed the charges and there is no scope for interference in the impugned order or the charges framed against petitioner No.2.

**9**. In view of the above submissions of both sides, the points that arise for determination in this Criminal Petition are as follows:

1. Whether the impugned order rejecting the application preferred by the petitioner No.2 for discharge is legally sustainable?

2. Whether the charges framed against the petitioner No.2 are liable to be quashed by exercising the revisional jurisdiction?

**10**. We have given anxious consideration to the submissions made by both the sides and carefully gone through the material placed on record.

**11**. The charges qua petitioner No.2, quashing of which is being sought, are as follows :

> ''मैं डॉ. धर्मेन्द्र टाडा, सप्तम अपर सत्र न्यायाधीश एवं विशेष न्यायाधीश धन–शोधन निवारण अधिनियम 2002, भोपाल (म0प्र0) आप सीमा गुर्जर पति हरिशंकर गुर्जर पर निम्नलिखित आरोप अधिरोपित करता हूँ, कि :– आपने (अभियुक्त क्र.2) –
>
> (i) हरिशंकर गुर्जर (अभियुक्त क्र. 1) के साथ अपनी आय के ज्ञात स्त्रोतों सहित बहुत बड़ी मात्रा में संपत्ति अर्जित की थी। लोकायुक्त पुलिस, भोपाल ने भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 13(1)(ई) और 13 (2) के तहत दिनांक 14.07.2009 को एफआईआर 41/2009 दर्ज कर अनुसंधान उपरांत लोकायुक्त पुलिस भोपाल ने सक्षम न्यायालय खण्डवा के समक्ष दिनांक 09.03.2010 को अभियोग पत्र प्रस्तुत किया। इस प्रकार, लोकायुक्त पुलिस द्वारा भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 13(1)(ई) और 13 (2) के तहत आप पर इस आधार पर आरोप लगाया गया था कि आप आरोपी क्र.2 की आरोपी नंबर 1 के साथ आय के ज्ञात स्त्रोतों से अधिक संपत्तियां है। पीसी अधिनियम, 1988 की धारा 13(1)(ई) और 13 (2) के तहत अपराध था जो पीएमएलए, 2002 की धारा 2 (वाई) के तहत अनुसूचित अपराध होकर पीएमएलए 2002 की अनुसूची भाग ''क'' पैरा ''8'' के तहत आता है।
>
> (ii) विशेष न्यायालय भ्रष्टाचार निवारण अधिनियम खण्डवा म.प्र. द्वारा विशेष पुलिस स्थापना लोकायुक्त कार्यालय, इंदौर द्वारा प्रस्तुत अभियोग पत्र पर विशेष सत्र प्रकरण क्र. 4/2010 निर्णय दिनांक 05.03.2013 को आपको अभियुक्त क्र.1 के साथ भ्रष्टाचार निवारण अधिनियम 1988 की धारा 13(1)(ई) और 13 (2) सहपठित धारा 109 भा.दं.सं. के तहत दोषसिद्ध पाते हुए 3 वर्ष के सश्रम कारावास तथा पच्चीस हजार रूपये के अर्थदण्ड से दण्डित किया गया तथा अर्थदण्ड के व्यतिक्रम पर 8 माह का अतिरिक्त कारावास भुगतने का दण्डादेश दिया गया।
>
> (iii) प्रवर्तन निदेशालय द्वारा की गई जांच में यह पाया गया कि 1988 से 14.07.2009 की जांच अवधि के दौरान आपके द्वारा किए गए दावे से अधिक आरोपी क्र. 1 ने कमाई की एवं ज्ञात स्त्रोतों से आय से अधिक 66,73,487/– रूपये की अनुपातहीन सम्पत्ति विशेष न्यायालय ने अपने निर्णय में पाई। आपने अपनी आय के स्त्रोंतों से अधिक आपके परिवार के अन्य सदस्यों के नाम चल और अचल संपत्तियों में निवेश एवं व्यय किया। इस प्रकार राशि 66,73,487/– रूपये जो आरोपी क्र.1 ने आपराधिक कदाचार से अर्जित किया था और इस प्रकार इसके कानूनी स्त्रोतों को आरोपी संख्या 1 द्वारा प्रर्वतन निदेशालय के समक्ष संतोषजनक रूप से नहीं समझाया जा सका।

(iv) न्यायनिर्णयन प्राधिकारी द्वारा आदेश दिनांक 10.06.2011 द्वारा डिप्टी डायरेक्टर ईडी, अहमदाबाद द्वारा जारी अनंतिम कुर्की आदेश की पुष्टि की। न्यायनिर्णयक प्राधिकारी ने उनके सामने रखी सामग्री और एकत्र किए गए साक्ष्यों के आधार पर, पीएमएलए, 2002 की धारा 50 के तहत बयान दर्ज किया और तर्को का खंडन किया, आपने ए–1 के साथ स्पष्ट रूप से स्थापित किया है कि प्रतिवादियों ने उल्लंघन किया था। आपने ए–1 के साथ आय के असत्यापन योग्य स्त्रोतों से 66,43,487/– रूपये की चल–अचल सम्पत्ति प्राप्त की और भ्रष्टाचार निवारण अधिनियम, 1988 की धारा 13(1) (ई) के प्रथमदृष्ट्या अपराध कारित किया।

(v) आपको पूरी जानकारी थी कि आपके पति आरोपी क्र. 1 अपने वेतन और कानूनी स्त्रोतों के अलावा अन्य अवैध आय अर्जित कर रहे हैं। हालांकि, आपने दावा किया है कि आपने ब्यूटी पार्लर और हस्तशिल्प के अपने व्यवसाय में उस पैसे का उपयोग किया है और अपने पति (आरोपी नंबर 1) द्वारा गलत तरीके से अर्जित धन को कानूनी आय के रूप में साबित करने का प्रयास किया है और इस प्रकार आपने जानबूझकर अपने पति को संबंधित गतिविधि में सहायता की है तथा ऐसे अपराध का दुष्प्रेरणा किया। अपराध की आय के साथ और अपराध की आय को बेदाग संपत्तियों के रूप में उपयोग करके अर्जित संपत्तियों को पेश किया। आपने जानबूझकर अपने पति को अवैध आय अर्जित करने में मदद की औऱ प्रेरित किया। आपने (आरोपी क्रमांक 2) जानबूझकर प्रयास किया और अपने पति आरोपी क्र. 1 के भ्रष्टाचार से प्राप्त सम्पत्ति/धन/आगम को निष्कलंक सम्पत्ति के रूप में पेश करने का जानबूझकर प्रयास किया।

इस प्रकार से अपराध के आगमों को छिपाकर, कब्जे में रखकर, अर्जन कर, उपयोग करने में प्रत्यक्ष–अप्रत्यक्ष रूप से लिप्त होकर, जानबूझकर सहायता कर व उसका पक्षकार बनकर ऐसे अपराध से प्राप्त धन आगम को निष्कलंक सम्पत्ति (untainted property) के रूप में प्रस्तुत करके तथा ऐसे धन के निष्कलंक सम्पत्ति होने का दावा करके धन–शोधन (Money-laundering ) का अपराध कारित किया।

ऐसा कर आपने धन–शोधन निवारण अधिनियम 2002 धारा 3 में परिभाषित अपराध किया जो कि धन–शोधन निवारण अधिनियम 2002 की धारा 4 के तहत दण्डनीय होकर इस न्यायालय के संज्ञान में है।''

**12**. It is well established principle of law that at the stage of framing of charge, the trial Judge has to consider the broad probabilities of the case, the total effect of the evidence and the documents produced before the Court, any basic infirmities appearing in the case and so on,

but should not make a roving enquiry into the pros and cons of the matter and weigh the evidence as if he was conducting a trial. This apart even a strong suspicion leading to presumption as to possibility as against certainty makes out a case for framing of charge or if the allegations prima facie make out even a strong suspicion to the effect that the accused might have committed an offence, the Court is under obligation to frame charge. The defence or the documents of the defence cannot be considered at this stage. It is not necessary at that stage to assigned detail reasons for framing charge. On the subject, the trial Court has rightly placed reliance on **Yogesh @ Sachin Jagdish Joshi v the State of Maharashtra (2008) 10 SCC 394, Sanghi Brothers v Sanjay chaudhary (2008) 10 SCC 681, Lalu Prasad Yadav v State of Bihar (2007) 1 SCC 49** and **Bharat Parikh v CBI (2008) 10 SCC 109.**

**13**. Various contentions have been raised by both the learned counsels for the respective parties with regard to the factual matrix of the matter. The core contention raised on behalf of petitioner No. 2 is that since the offence under Section 109 of IPC is not included in the list of scheduled offences under the PMLA, prosecution of petitioner No.2 under the provisions of PMLA is not sustainable, and therefore, registration of the subject ECIR (Enforcement Case Information Report), which is based on the scheduled offences, is unsustainable and continuation of proceedings based on such ECIR against her amounts to abuse of process of law. For this reason, the subject ECIR

registered against petitioner No. 2 as well as her prosecution into the same are liable to be quashed.

**14**. Section 3 of PMLA states *inter alia* that whoever knowingly assists or knowingly is a party or is actually involved in any process or activity connected with proceeds of crime including its concealment, possession, acquisition or use shall be guilty of offence of money-laundering. For the sake of convenience, Section 2 (u), which defines 'proceeds of crime', Section 2 (y) which defines 'scheduled offence' and Section 3 of the PMLA, which defines 'money laundering' as well as Sections 107 and 109 IPC which define and prescribe punishment for 'abetment' are being reproduced here:

> **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 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 process 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 intended 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.

**2. Definitions. —**

(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;

Explanation.- for the removal of doubts, it is hereby clarified that "proceeds of crime" including 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;.

(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 thirty lakh rupees or more; or

(iii) the offences specified under Part C of the Schedule;]

**Section 107 The Indian Penal Code:**

**107. Abetment of a thing.—**A person abets the doing of a thing, who—

(First) — Instigates any person to do that thing; or

(Secondly) —Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to the doing of that thing; or

(Thirdly) — Intentionally aids, by any act or illegal omission, the doing of that thing. Explanation 1.—A person who, by wilful misrepresentation, or by wilful concealment of a material fact which he is bound to disclose, voluntarily causes

or procures, or attempts to cause or procure, a thing to be done, is said to instigate the doing of that thing.

**Illustration**:

A, a public officer, is authorized by a warrant from a Court of Justice to apprehend Z. B, knowing that fact and also that C is not Z, wilfully represents to A that C is Z, and thereby intentionally causes A to apprehend C. Here B abets by instigation the apprehension of C.

Explanation 2.—Whoever, either prior to or at the time of the commission of an act, does anything in order to facilitate the commission of that act, and thereby facilitate the commission thereof, is said to aid the doing of that act.

**Section 109 The Indian Penal Code:**

109. Punishment of abetment if the act abetted is committed in consequence and where no express provision is made for its punishment.—Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

**Explanation.—**An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment.

**Illustrations**

(a) A offers a bribe to B, a public servant, as a reward for showing A some favour in the exercise of B's official functions. B accepts the bribe. A has abetted the offence defined in section 161.

(b) A instigates B to give false evidence. B, in consequence of the instigation, commits that offence. A is guilty of abetting that offence, and is liable to the same punishment as B.

(c) A and B conspire to poison Z. A in pursuance of the conspiracy, procures the poison and delivers it to B in order that he may administer it to Z. B, in pursuance of the conspiracy, administers the poison to Z in A's absence and thereby causes Z's death. Here B is guilty of murder. A is

> guilty of abetting that offence by conspiracy, and is liable to the punishment for murder.

**15**. A bare reading of the aforesaid provisions would show that the scheme of the PMLA indicates that it deals only with laundering of money acquired by committing a scheduled offence. In other words, PMLA deals only with the process or activity connected with the proceeds of a scheduled crime, including its concealment, possession, acquisition or use and it has nothing to do with the launch of prosecution for scheduled offence and continuation thereof. Scheduled offence is only a trigger point to initiate investigation under PMLA and once ECIR is recorded, case registered under PMLA is independent, distinct and stand alone. Even if the predicate/scheduled offences are compromised, compounded, quashed or even in case the accused is acquitted, it does not affect proceedings under PMLA (**Samsuddin v UoI 2016 SCC OnLine Ker 41249** & **Prakash Industries v UoI 2023 SCC OnLine Del 336**). It is only the property which is derived or obtained, directly or indirectly, as a result of criminal activity to a scheduled crime and not the person is relevant to find out as to whether any offence of laundering money has been committed or not. Therefore, the accessories to the main accused, even if they are not named in the FIR of the scheduled offence, can also be held liable equally for the offence of money laundering, as stated in Section 3 of PMLA if they are involved in any of the process mentioned in the Act with regard to the ‘proceeds of

crime'. In the case on hand, along with her husband, who has been held guilty of committing a scheduled offence i.e. 'criminal misconduct by a public servant' of amassing disproportionate property to his known sources of income and has been awarded 4 years RI with fine of Rs. one crore under Section 13(2) r/w S. 13 (1) (e) of the Prevention of Corruption Act, 1988, Petitioner No.2 has also been convicted under Section 109 of IPC for abetting that offence by knowingly possessing, concealing, using, assisting, facilitating and projecting or claiming the proceeds of crime as untainted property and has been awarded punishment for three years' R.I. with fine of Rs. 25,000/- vide judgment dated 05.03.2023 passed by Special Judge, Khandwa in Special Case No.4/2010. As petitioner No.2 has been accessory or hodman to petitioner No.1, she has been made accused in the offence of money-laundering.

**16**. It would be helpful to observe the speech delivered by the then Hon'ble Finance Minister Mr. P. Chidambaram while introducing the Prevention of Money Laundering (Amendment Bill), 2002 in the Rajyasabha on 17.12.2012 states to the effect:—

> "…firstly, we must remember that money-laundering is a very technically-defined offence. It is not the way we understand 'money-laundering' in a colloquial sense. It is a technically defined offence. It postulates that there must be a predicate offence and it is dealing with the proceeds of a crime. That is the offence of money laundering. It is more than simply converting black-money into white or white money into black. That is an offence under the Income Tax Act. There must be a crime as defined in the Schedule. As a result of that crime,

> there must be certain proceeds - It could be cash; it could be property. And anyone who directly or indirectly indulges or assists or is involved in any process or activity connected with the proceeds of crime and projects it as untainted property is guilty of offence of money laundering. So, it is a very technical offence. The predicate offences are all listed in the Schedule. Unless there is a predicate offence, there cannot be an offence of money-laundering"

**17**. The petitioner No.2 stands charged for having committed offence of abetment punishable under Section 109 of IPC, while in the same trial her husband has been convicted for the offence under Section 13(2) r/w 13(1)(e) of the Prevention of Corruption Act, 1988. The controversy in the instant matter is not with regard to her involvement in the offence punishable under the Prevention of Corruption Act but raised a question whether she can be proceeded against under the provisions of the PMLA. It has further been argued that petitioner No. 2 was not even named in the FIR registered against her husband and there was no charge against her in the said FIR, even then the prosecution under the PMLA has been launched against her, which cannot be said to be in conformity with the settled legal principles in any manner.

**18**. As has been said above that the offence under the 2002, Act deals only with laundering of money acquired by committing a scheduled offence. Except that it starts with an offence of possessing, concealing, using, converting or projecting proceeds of a scheduled crime as untainted money, it has nothing to do with the launch of

prosecution for scheduled offence and continuation thereof and once a case is registered under PMLA, it is an independent offence. Conviction for a scheduled offence is not a prerequisite for prosecution under the PMLA. Since there is plenty of evidence to prima facie show involvement of petitioner No. 2 in assisting her husband to conceal, convert or to project proceeds of a scheduled crime as assets earned or acquired through valid and legal means. In this case, there is even more evidence to show her indulgence in the crime. Her husband has been convicted for a scheduled offence in the same trial and she herself has been convicted for abetment of such offence. When there is a conviction for a scheduled offence, no doubt remains that there exist *prima facie* case to prosecute her under Section 3 of the PMLA which is punishable under Section 4 thereof.

**19**. It is true that there is no mention of any scheduled offence in the conviction order of petitioner No. 2 and she has been awarded punishment only under Section 109 IPC, but the offence of abetment created under the second clause of Section 107 requires that there must be some act or illegal omission. Abetment alone or in itself has no meaning unless it is related to some act. Abetment is always of some action. This is the reason why no separate punishment has been provided for abetment in Section 109 of the Indian Penal Code, rather it has been said that the punishment for abetment shall be the same as is provided for the offence which has been abetted. A charge under Sections 107/109 should, therefore, be in combination with or along

with some other substantive offence committed in consequence of abetment.

**20**. In the present case, the husband of petitioner no. 2 has been prosecuted for amassing disproportionate assets. He had been prosecuted for that offence under Section 13(2) r/w 13(1)(e) of the PC Act. It is alleged that she knowingly assisted in activities connected with the proceeds of scheduled crime committed by her husband. She assisted her husband by concealment, possession, use etc. of tainted money and also by claiming it as untainted property and thus, abetted the offence punishable under section 13(1)(e) r/w 13(2) of the PC Act. They have been prosecuted, convicted and sentenced for amassing disproportionate property as well as abetting the offence of amassing disproportionate property. There cannot be any dispute that amassing disproportionate property as punishable under section 13(1)(e) of the PC act is a scheduled offence under the PMLA. Thus, she had abetted a scheduled offence and has been convicted accordingly with the aid and assistance of section 109 of the Indian Penal Code. Therefore, even if there is no mention of Section 13(1)(e) of the PC Act in her conviction order, still it cannot be said that she has not committed or has not been punished for a scheduled offence. Since, the offence under Section 109 IPC cannot be read or punished in isolation or independently, merely on the basis of omission to mention S.13(1)(e) in her conviction or sentence order, it cannot be said that she has not

committed any offence scheduled in paragraph 8 of part 'A' of the 'Schedule' appended to the PMLA.

**21**. Further, the serious allegations have been made in the charge sheet filed by the CBI that petitioner No.2 helped petitioner No.1 to convert tainted property into untainted one. Several documents showing the modus operandi, the money trail, as well as possession, use, concealment and involvement of the petitioner in projecting the tainted money into untainted are available on record which is prima facie sufficient to provide material to frame the charge.

**22**. It would also be apposite to mention here that charge framed by the Trial Court reflects that in ST No. 04/2010, the charge under Section 109 r/w Section 13(2) r/w 13(1)(e) PC Act was framed. This has not been disputed by the petitioner before this Court. If that be so, non-mention of the charge in the same form in the final judgement appears only to be a bonafide mistake. Even if it is assumed that no charge was framed in such form, it does not make any difference as it is not the contention of the petitioner that she ever raised any objection in this regard during about 10 years long period of trial. Keeping in view the provision of Section 215, 464 & 465 Cr.P.C. we do not find any substance in the submission that petitioner No.2 was not prosecuted for the offence punishable under the PC Act.

**23**. The ld. Sr. counsel for the petitioner referred to para 31 & 33 of **Vijay Madanlal Choudhary (supra)**, and submitted that the trial Court has considered entire property of the petitioner as 'proceeds of

crime' which is not proper, but since this is a disputed question of fact and has to be decided by the trial Court following the due process of law and is not going to affect the legality or validity of the order under consideration as even a single instance or property is sufficient to prosecute the petitioner under the PMLA, we are not inclined to assess or to hold an inquiry to find out as to which or how many properties are 'proceeds of crime' making the petitioner liable to be prosecuted for the charge framed against her.

**24**. The plea of double jeopardy has also been taken as petitioner No.2 has already been convicted for the offence under Section 109 of IPC for the same set of evidence. However, in the present situation, the doctrine of double jeopardy is not applicable as the person is being tried under the scheme of PMLA and not under the Penal Code/PC Act. For this, reliance can be placed on the decisions in **Leo Roy vs. Superintendent District Jail AIR 1958 SC 119, Assistant Collector of Customs vs L.R. Malwani (1969) 2 SCR 438, Kalawati vs State of H.P. AIR 1953 SC 13, State of Rajasthan vs Hat Singh AIR 2003 SC 791, O.P. Dahiya vs Union of India (2003) 1 SCC 122, Mohd. Ali vs Sri Ram Swarup AIR 1965 All 161, Jitendra Panchal vs Narcotics Control Bureau (2009) 3 SCC 57 and Monica Bedi vs State of A.P. (2011) 1 SCC 284.**

**25**. Double Jeopardy is often confused with double punishment. There is a vast difference between the two. Double punishment may arise when a person is convicted for two or more offences charged in

one indictment however; the question of double jeopardy arises only when a second trial is sought on a subsequent indictment following a conviction or acquittal on an earlier indictment. This doctrine is certainly not a protection to the individual from peril of second sentence or punishment, nor to the service of a sentence for one offence, but is a protection against double jeopardy for the same offence that is, against a second trial for the same offence.

**26**. Shri Mishra, the learned Sr. Counsel for the petitioner has taken a plea that when the main offence itself was said to be committed for a check period (01.01.1988 to 14.07.2009) prior to the time the offences under the PC Act have been made a scheduled offence vide Prevention of Money-Laundering (Amendment) Act, 2012 (2 of 2013) and being a penal statute, it can have no retrospective or retroactive operation, the prosecution of the petitioner is not valid in law. He further submitted that any penal action for alleged offences committed prior to the enactment and operation of law violates Article 20(1) of the Constitution of India. In support of his submissions, he has placed reliance upon several decisions of Supreme Court viz. **Kalpnath Rai v. State, (1997) 8 SCC 732** [para 33 and 34], **Niranjan Singh Karam Singh Punjabi v. Jitendra Bhimraj Bijjaya, (1990) 4 SCC 76** [para 8] and **Chirag Harendrakumar Parikh v. State of Gujarat 2016 SCC OnLine Guj 1635**.

**27**. So far as this plea of the petitioner is concerned, suffice it to refer paragraph 43 of the verdict of the Hon'ble Supreme Court

rendered in **Vijay Madanlal Choudhary v. Union of India 2022 SCC OnLine SC 929 (supra)**, wherein the issue of retrospectivity is settled observing to the effect:—

> "43. Needless to mention that such process or activity can be indulged in only after the property is derived or obtained as a result of criminal activity (a scheduled offence). It would be an offence of money laundering to indulge in or to assist or being party to the process or activity connected with the proceeds of crime; and such process or activity in a given fact situation may be a continuing offence, irrespective of the date and time of commission of the scheduled offence. In other words, the criminal activity may have been committed before the same had been notified as scheduled offence for the purpose of the 2002 Act, but if a person has indulged in or continues to indulge directly or indirectly in dealing with proceeds of crime, derived or obtained from such criminal activity even after it has been notified as scheduled offence, may be liable to be prosecuted for offence of money laundering under the 2002 Act – for continuing to possess or conceal the proceeds of crime (fully or in part) or retaining possession thereof or uses it in trenches until fully exhausted. The offence of money laundering is not dependent on or linked to the date on which the scheduled offence or if we may say so the predicate offence been committed. The relevant date is the date on which the person indulges in the process or activity connected with such proceeds of crime. These ingredients are intrinsic in the original provision (Section 3, as amended until 2013 and were in force till 31.7.2019); and the same has been merely explained and clarified by way of Explanation vide Finance (No. 2) Act, 2019. Thus understood, inclusion of Clause (ii) in Explanation inserted in 2019 is of no consequence as it does not alter or enlarge the scope of Section 3 at all."

**28**. To remove any doubts, later, vide the Finance (No.2) Act, 2019 an explanation has also been added to Section 3 of PMLA w.e.f. 01.08.2019, which reads thus:

> (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.

**29**. Since the judgements referred to by the ld. Sr. Counsel for the petitioner do not deal with the law governing field in the present case, they are of no avail to the petitioner.

**30**. In the present case, so far the petitioner No.2 is concerned, there is sufficient prima facie evidence to show that she had full knowledge that her husband i.e. petitioner No.1 by misutilizing his official position as Ranger in the Forest Department earned income disproportionate to his known source of income which he could not satisfactorily account for, the disproportionate assets so earned have been utilized by him for acquiring properties in his own name and also in the name of petitioner No.2, she claimed that money to be earned by her business of beauty parlor and handicraft and attempted in this way to prove the ill-gotten money of her husband as a legal income and thus, knowingly assisted her husband in the activity connected with the proceeds of crime by projecting the properties so earned as untainted property. Recently, by interpreting "and" in Section 3 of the Prevention of Money Laundering Act, 2002 (PMLA) as "or", it has been held by the Supreme Court that mere possession or concealment of the proceeds of the crime is sufficient for the offence

of money laundering and that it need not be projected as an untainted property. There is ample evidence to prima facie show that petitioner No.2 was in possession of proceeds of crime committed by her husband and she also tried to conceal such money. By inducing her husband H.S. Gurjar, a public servant, to acquire disproportionate assets, she will be assisting or will knowingly be a party to an activity connected with the proceeds of crime. The relevant expressions from Section 3 thereof are thus wide enough to cover the role played by her. The material in the charge sheet is sufficient regarding *prima facie* involvement of petitioner No.2 in the alleged offence. The answer to the first question posed above, therefore, is in the affirmative whereas the answer to the second question is in the negative.

**31**. In the circumstances, it is held that there is no infirmity in the impugned order dated 03.06.2022 of the learned trial Court holding that *prima facie* case exists against petitioner No.2 of the alleged commission of the offence under Section 3 of the PMLA, 2002 punishable under Section 4 of the said enactment, inasmuch as, she allegedly acted *prima facie* in the company of her husband i.e. petitioner No.1 in a careful deliberate manner and engaged in money laundering with the proceeds of crime and thus, obtained property as the result of the criminal activity relatable to the scheduled offence as the proceeds of crime to make her *prima facie* culpable under Section 3 of the PMLA, 2002.

**32**. In view of the foregoing discussion and analysis, this petition qua petitioner no.2 is found to be without any merit and is, accordingly, **dismissed**.

**(SHEEL NAGU)**
**JUDGE**

**(VIRENDER SINGH)**
**JUDGE**

vinod